

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2011-012/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor Barrie Durkin

RELEVANT AUTHORITY: Isle of Anglesey County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal commencing at 10.00 am on Tuesday 15 May 2012 and continuing on 16 and 17 May 2012 at the Tre-Ysgawen Hall Hotel, Capel Coch, Llangefni. The hearing was open to the public.

1.3 Cllr Durkin attended and was represented Mr Simon Vaughan, Barrister. The Public Services Ombudsman for Wales ("the Ombudsman") was represented by Mr Gwydion Hughes, Barrister.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 23 August 2011, the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against Cllr Durkin. The allegations were that Cllr Durkin had breached the Isle of Anglesey County Council's Code of Conduct by:

making repeated personal attacks of an offensive nature against Miss Lynn Ball, the then Director of Legal and Democratic Services and Monitoring Officer and Mr David Bowles, the former Interim Managing Director; and

by making numerous requests for information thereby placing excessive demands and significant burden upon Mr Huw Pritchard, the Council's Corporate Information Officer.

2.1.2 In May 2008 Cllr Durkin was elected as a member of the Isle of Anglesey County Council. Cllr Durkin considered that he had been elected to root out dishonesty and corruption.

2.1.3 In September 2009 Cllr Durkin wrote to the then Acting Managing Director of the Council, Mr Parry-Jones, alleging that Miss Ball had acted unlawfully in dealing with the Council's purchase of Craigwen. In October 2009 Cllr Durkin complained to Mr Parry-Jones that Miss Ball's planning permission was granted in breach of the Council's constitution and the house was not built to plan. On 20 February 2010 Cllr Durkin emailed a letter dated 19 February 2010 stating that the position of Miss Ball was untenable as she had been forced to make a retrospective planning application. On 6 April 2010 Cllr Durkin issued a press release making reference to Mr David Bowles and Miss Ball as dishonest and corrupt. On the same date Cllr Durkin wrote to all members of the Council and Chair of the Recovery Board raising the issue of the planning application and criticising the actions of Miss Ball. It was alleged that Cllr Durkin had raised complaints in correspondence and in the public domain regarding Miss Ball's planning application. In August 2010 Cllr Durkin posted on a blog site again raising questions about the honesty and integrity of Miss Ball and Mr Bowles. In February 2011 Cllr Durkin issued a press release suggesting that the position of Mr Bowles was untenable and repeated his comments on a blog site that Mr Bowles was helping to cover up corruption and dishonesty.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Durkin's solicitor submitted written representations to the Case Tribunal on his behalf on 11 November 2011 and provided further documentary evidence under cover of a letter dated 17 February 2012.

2.2.2 Matters commented on by Cllr Durkin can be summarised as follows. When making the comments at the heart of the complaint made against him, Cllr Durkin was acting as a member of the Council in bringing to light activities which he perceived as improper. He was discharging the duties placed upon him as an elected representative of the Isle of Anglesey County Council. By exposing the seemingly questionable practices of others he was actively contributing to the good governance of the area, effectively representing the interests of the electoral division concerned and was trying to ensure that the highest standard of conduct and ethics were maintained.

2.2.3 It appeared that officers and members who had been criticised by Cllr Durkin had tried to suppress him and it was reasonable for him to challenge such individuals in print and electronic media as well as through the regular channels. Cllr Durkin had used somewhat potent (but fair) language in exposing the highly inappropriate behaviour of certain council officers and he was right to bring the matter of Miss Ball's planning to light as his observations were correct. Miss Ball's reluctance to accept the enforcement officer's advice and her actions in relation to the construction of her home justified Cllr Durkin's criticisms, which were relevant to the issue of whether she had conducted herself in such a way as to call into question her suitability for the posts she held. Miss Ball is a senior officer and it

was unreasonable for her to believe that she was being bullied or harassed by Cllr Durkin and this is supported by the terms of her correspondence to him.

2.2.4 Miss Ball drafted the “Terms of Engagement” document which in an earlier draft sought to target Cllr Durkin’s seat in order to remove him from the council which lends weight to his claim of corruption at the heart of the Council. Cllr Durkin received intimidating and threatening correspondence which led him to believe that he was the victim of a campaign of bullying and harassment but that he was committed to exposing impropriety at the Council and refused to let those whom he felt were responsible defeat him. Cllr Durkin felt that Mr Bowles wanted to sweep everything under the rug and move on without bringing the wrongdoers to account.

2.2.5 Cllr Durkin felt his actions were understandable and clearly not motivated by any ill will felt towards individuals for purely personal reasons. Any comments made about the integrity of officers of the council were made because information made known to Cllr Durkin suggested that they had engaged in behaviour which made them unsuitable candidates for their respective roles.

2.3 The Ombudsman’s Written Representations

2.3.1 The Ombudsman responded to Cllr Durkin’s written representations in a letter dated 28 November 2012. The Ombudsman considered that Cllr Durkin's actions have served to detract from his fulfilment of his duties. Cllr Durkin’s actions in relation to Miss Ball in particular have gone far beyond that of a reasonable member in bringing these matters to light. The Ombudsman did not accept that in voicing his perceptions Cllr Durkin was effectively representing the interests of the electoral division concerned.

2.3.2 The Ombudsman considered the language used in the public forum to voice the concerns of Cllr Durkin was inappropriate. It was Cllr Durkin’s failure to adhere to formal protocol in the pursuit of his concerns and subsequent refusal to accept explanations offered which was the basis for the Ombudsman’s criticism.

2.3.3 The Ombudsman did not accept that the language used by Cllr Durkin although potent was fair. The Ombudsman stated that the use of phrases such as “dishonest, corrupt and unlawful” were extremely serious and had the potential to cause irreparable damage to an officer’s career.

2.3.4 The allegation of impropriety on the part of the officer did not in the Ombudsman’s view give Cllr Durkin an absolute right to conduct himself in a manner which was capable of breaching the Code.

2.3.5 The Ombudsman agreed that Cllr Durkin was initially correct in bringing the matter with regard to Miss Ball’s planning to light but it was the repetitive approach and the language and means of communication used to voice his concerns which were considered inappropriate and unreasonable.

2.3.6 The Ombudsman disagreed with Cllr Durkin about the conduct of Miss Ball in relation to the deviation from the approved plan. The Ombudsman considered

that the deviation which occurred was unintentional and subsequently appropriately resolved and therefore an inference of impropriety cannot be made. The Ombudsman did not agree that Miss Ball's actions revealed a careless disregard for the Council's constitution. In any event the Ombudsman re-iterated that Cllr Durkin's perception of impropriety did not give him the freedom to use critical and unreasonable language without breaching the Code.

2.3.7 The Ombudsman disagreed with Cllr Durkin regarding the allegation of bullying and harassment of Miss Ball. The Ombudsman referred to the potent and heavily critical language used by Cllr Durkin about Miss Ball and his relentless repeating of resolved matters over a number of years. The Ombudsman referred to his own guidance and pointed out that the question is whether an individual was reasonably entitled to believe they were being bullied. With regard to the terms of Miss Ball's correspondence the Ombudsman pointed out that he would not expect Miss Ball to evidence her personal feelings in written correspondence with Cllr Durkin.

2.3.8 With regard to the terms of engagement document, the Ombudsman pointed out that Miss Ball drew up the document on the instructions of the political group leaders and was not the originator of the document. The reference to Cllr Durkin as a "dissident" was removed from the final document.

2.3.9 The Ombudsman did not accept Cllr Durkin's actions were understandable and not motivated by ill will as there were appropriate channels for him to pursue his concerns. The Ombudsman considered that Cllr Durkin's comments were beyond the parameters of the right to freedom of expression afforded by Article 10 and did not consider that a finding of breach was an infringement of those rights pursuant to the European Convention on Human Rights.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal heard oral evidence and submissions as follows.

Public Services Ombudsman for Wales

3.2.1 Mr Hughes for the Ombudsman presented the Ombudsman's report and outlined the breaches alleged against Cllr Durkin namely failure to show respect and consideration towards Miss Ball and Mr Bowles in breach of paragraph 4(b) of the Code, bullying of Miss Ball in breach of paragraph 4(c) of the Code and bringing the office into disrepute in breach of paragraph 6(1)(a) of the Code.

Miss Lynn Ball, Head of Legal and Administration and Monitoring Officer

3.3.1 Miss Ball gave evidence under affirmation and confirmed that she was the Director of Legal Services and Monitoring Officer at Anglesey County Council at the relevant time. Miss Ball confirmed that she had been asked by a Councillor to review his certificates to support his use of designatory letters after his name as other Councillors had complained he was not entitled to use them. Miss Ball examined the certificates produced and wrote to all Councillors saying that they

had been produced to her. Cllr Durkin and another Councillor suggested to Miss Ball that there was evidence to show that the designatory letters were not correct and Miss Ball advised Cllr Durkin on the telephone to report this matter to the Ombudsman if he was concerned there was a breach of the Code. In cross-examination Miss Ball stated that she did not go behind the certificates produced to her and took them at face value. Miss Ball stated that she felt it was appropriate for the Councillors to take their concerns to the Ombudsman if they considered there was a breach.

3.3.2 Miss Ball stated that Cllr Durkin had made an allegation following a Council meeting that his personal information as objector to the Auditor's report on the issue of Craigwen had been disclosed and that it was the responsibility of an officer within the legal department. Cllr Durkin stated that certain information had been provided to him in an unredacted format and the Council must have sent it to others without the redaction thereby breaching his confidentiality. Miss Ball raised the issue with the Corporate Information Officer, Mr Huw Pritchard, who confirmed that the information had not been redacted on Cllr Durkin's copy as it was he who was making the request and there was no need to keep his own name confidential. Miss Ball explained that Cllr Durkin had received an explanation about this matter some months previously from Mr Pritchard. In any event when reviewing the registers of members' interests Miss Ball noted that Cllr Durkin had stated that he had objected to an item of expenditure and thereby placed the information in the public domain. In cross examination Miss Ball accepted that it was a process of deduction but since there was only one objection to the report and it was a common document and Cllr Durkin had put it into the public domain it was unreasonable for him to claim that his information had been deliberately released by an officer of the Council. Miss Ball stated that Cllr Durkin had made a serious allegation against officers of the Council with no thought.

3.3.3 Miss Ball dealt with her planning application in detail. She explained that she had drafted a memo to accompany her planning application outlining the circumstances and requesting that the matter was dealt with by the full committee and not by way of devolved powers. Miss Ball then received the approved planning as the planning department had taken the view that her reserved matters application was not a full planning application and therefore did not need to go to Committee. Miss Ball stated she immediately brought the matter to the attention of the then monitoring officer who took the matter up with the planning department. It was subsequently agreed that, as the matter had been dealt with, the memorandum to the planning department from the monitoring officer should be placed on file to cover the position.

3.3.4 Miss Ball explained that the house when completed was approximately 1 metre smaller than the plan. Miss Ball explained that she thought it was because the builder had faced an obstacle on the ground. In 2009 Miss Ball demolished the old retaining wall and built a new wall. As a result of Cllr Durkin's complaints planning enforcement looked into the matter and advised that the wall was too high. Miss Ball was also required to alter the driveway to create a splay and she was asked to do some works to a drain and landscape the garden. Miss Ball stated that planning enforcement required her to make an application for retrospective planning consent to deal with the under build. Miss Ball stated that she was initially

reluctant as she did not think it was required but eventually she made the application to break the stalemate between her and the planning department. Miss Ball explained that her reluctance to make the retrospective application was partly because she feared Cllr Durkin would use it against her. Miss Ball stated that Cllr Durkin's allegations were that she had built a house larger than plan. Miss Ball did not accept that she had done anything intentionally wrong and explained she was a layperson and trusted her builder and surveyor to deal with the planning aspects of the build. Miss Ball did not accept that the house was demonstrably not to plan and explained that the plans did not show the house was built on a hill.

3.3.4 Miss Ball stated that she felt Cllr Durkin had used the planning issue in relation to her house as a basis to attack her honesty and integrity. Miss Ball stated that Cllr Durkin's allegations had the effect that she was worried she would lose her employment. Miss Ball stated that her neighbour had advised her that Cllr Durkin was outside her house with a film crew on an occasion and she felt uncomfortable in her own home. In cross-examination Miss Ball did not accept that Cllr Durkin's comments were fair. Miss Ball stated that she felt that Cllr Durkin was not genuinely motivated and when she was unsympathetic towards him he turned his antipathy towards her personally.

3.3.5 Miss Ball confirmed that she was responsible for drafting the terms of engagement document and that it was drafted following a meeting in February with all the group leaders.

Mr Huw Pritchard, Corporate Information Officer

3.4.1 Mr Pritchard gave evidence under oath and confirmed he was the Corporate Information Officer for Anglesey County Council. Mr Pritchard confirmed the evidence given by Miss Ball regarding the redacted document which named Cllr Durkin. Mr Pritchard explained that Cllr Durkin's copy was not redacted as he was the subject making the request and it was not necessary but that the same information sent to others would be redacted. In any event Mr Pritchard confirmed that the information had not gone to any other party as it had not been requested.

3.4.2 Mr Pritchard stated that he believed very strongly in an individual's right to request information and he was slow to refuse any of Cllr Durkin's requests. He confirmed that only 2 requests had been refused. Mr Pritchard stated that he had worked overtime to respond to Cllr Durkin's requests within the appropriate timescale but accepted that Cllr Durkin was not made aware of this. Mr Pritchard stated that Cllr Durkin had made 80 requests but clarified the position further by explaining that there had been 48 requests containing 80 questions. Mr Pritchard explained that Anglesey had the highest number of Freedom of Information requests by members in North Wales and this was a problem for the Council and officers. Mr Pritchard explained that the costs were in the region of £17,600 for Cllr Durkin's requests but again accepted that Cllr Durkin may not have known this.

3.4.3 Mr Pritchard stated that he felt undermined when Cllr Durkin questioned his impartiality and did not accept that he was being over sensitive. Mr Pritchard stated that he had worked hard to establish his independence and felt it keenly when that was questioned, especially given the difficulties within Anglesey at this time. Mr

Pritchard stated that Cllr Durkin was always pleasant to him on the telephone and in person.

Mr David Bowles, Former Interim Managing Director

3.5.1 Mr Bowles gave evidence on oath and confirmed that he was the Chief Executive of Anglesey Council at the relevant time having started in October 2009. Mr Bowles stated he met with Cllr Durkin in October 2009 to discuss his concerns about issues generally. Mr Bowles stated that Cllr Durkin had said to him he was raising the issue of Miss Ball's planning application "because she was on the warpath again". Mr Bowles stated that he thought it was tit for tat.

3.5.2 Mr Bowles stated that he looked into the concerns regarding the performance of Miss Ball and commissioned an independent peer review. Mr Bowles was satisfied that Miss Ball had the necessary skills and he considered it was essential to have a strong monitoring officer in place. Mr Bowles stated that following the report he considered that he should point out to members that there would be employment law consequences should the behaviour against Miss Ball continue. Mr Bowles stated that he wanted to protect Miss Ball as he considered she had been the subject of a campaign to undermine her authority.

3.5.3 Mr Bowles stated that Cllr Durkin demonstrated a pattern of conduct of attacking people when they did not agree with him. Mr Bowles stated that he began to experience this with Cllr Durkin. Mr Bowles stated that he was robust and well used to dealing with difficult situations but he felt harassed when a press release was sent to the newspapers in Lincolnshire as he felt this was an unjustified instruction into his home life. Mr Bowles stated that the comments made on the internet were damaging to his future career as they implied he was dishonest and corrupt. Mr Bowles accepted that this sort of thing "came with the territory" but stated that he did not enjoy it and this went beyond robust debate. Mr Bowles stated it would be very difficult for him to feel bullied by anyone but he did feel outraged from time to time especially when he condemned a leak of Cllr Durkin's information as "shocking" and then Cllr Durkin blamed him for the leak.

3.5.4 Mr Bowles did not accept that he had sought to sweep issues under the carpet and stated that where allegations supported by evidence were brought to him he would deal with them. Mr Bowles stated that he told Cllr Durkin if he had evidence of fraud to take matters to the Police. Mr Bowles did not accept he had "marginalised" Cllr Durkin by setting out proposed arrangements for his contact with staff. Mr Bowles stated that some of the restrictions were good practice and the other restrictions were because Cllr Durkin could not be trusted. Mr Bowles did not accept that Cllr Durkin could not use normal channels to air his concerns.

3.5.5 Mr Bowles stated that in his view Cllr Durkin was not genuinely motivated because of the statement made to him that he was raising the planning issue "because Miss Ball was on the warpath". Mr Bowles said his own treatment by Cllr Durkin suggested that he was not genuinely motivated. Mr Bowles pointed to private and confidential letters sent to Cllr Durkin but Cllr Durkin choosing to respond publicly. Mr Bowles stated that he considered Cllr Durkin was seeking to

undermine him because it was a pattern of conduct where he personally attacked those who did not agree with him.

Cllr Barrie Durkin

3.6 Cllr Durkin gave evidence on oath as follows:

3.6.1 Cllr Durkin was outraged that he had been identified as the objector to the annual report. Cllr Durkin was convinced that this was because an unredacted document had come into the public domain. It was because that information had been released that he made the declaration of interest and the response of the authority had been totally inadequate. Cllr Durkin stated he felt intimidated and harassed by the letter received from Miss Ball asking him to retract the allegations and apologise. Cllr Durkin thought that it was unlikely that his name had been uncovered through the declaration of interests and that it had been sent out deliberately to undermine him.

3.6.2 Cllr Durkin stood by his comments that the actions of Miss Ball had been unlawful in relation to the purchase of Craigwen and pointed to the report to planning committee which refers to unlawful acts. Cllr Durkin stated that in allowing the matter to proceed Miss Ball had allowed the unlawful act.

3.6.3 Cllr Durkin stated that the Council had a bad image especially relating to planning matters and this was why he felt that he should bring these issues out in order to move forward. In his view the Council could not move forward because the Monitoring Officer had built a house that was not built to plan and had refused to do anything about it. Cllr Durkin stated that when he had raised the matter three years earlier there had been a classic cover up and on the insistence of David Bowles he had reported the matter to planning enforcement. Cllr Durkin maintained that the house was not built to the plans and in particular stated that the plinth was not on the plans. Cllr Durkin stated that he was amazed that retrospective planning had been granted and that the plinth was not an issue.

3.6.4 Cllr Durkin denied that his complaint had been prompted by annoyance at Miss Ball's letter to him in October and did not accept that it was tit for tat. Cllr Durkin stated that he genuinely felt aggrieved that the house was not built to plan and the timing of his complaint was purely co-incidental. Cllr Durkin denied that he had used the same tactic previously to get Miss Ball removed from a Standards Committee hearing and maintained that on both occasions it was a genuine attempt to get things corrected.

3.6.5 Cllr Durkin stated that although Miss Ball's house was not in his ward he had been asked to raise the matter by another Councillor who felt unable to do so as he knew the family. Cllr Durkin stated that he felt marginalised and that to continue in his role on the planning committee would be perpetuating the disrepute and he therefore felt he needed to fully explain the reasons for his resignation in a public document. Cllr Durkin stated that he felt deflated and disappointed and that he had no confidence in Mr Bowles. Cllr Durkin said that he would do whatever he saw fit to raise his concerns.

3.6.6 Cllr Durkin explained that following the letter from David Bowles restricting his access to officers he considered that he had no alternative but to continue in the public domain as clearly his concerns were not being taken seriously. Cllr Durkin stated that he felt in total disarray after receiving the letter and he genuinely believed that democracy was under attack. Cllr Durkin stated that he had never walked in unannounced on officers and never imposed himself or had a wrong word with any of them. Cllr Durkin stated that these restrictions frightened him. The letter alleged he wasn't to be trusted and officers should be careful in his company. Cllr Durkin stated that he genuinely wanted the people of Anglesey to know how he had been treated and he had no other mechanism to relay his feelings other than in public.

3.6.7 Cllr Durkin stated that he genuinely felt that the terms of engagement document was anti-democratic and it upset him enormously. Although he was not mentioned in the final version he was aware of the draft and he considered that it was bullyboy tactics to silence him. For those reasons he felt absolutely justified in responding in the ways that he did. Cllr Durkin maintained that Mr Bowles wanted to sweep issues under the carpet and turned his attack on him when he would not drop these issues.

3.6.8 Cllr Durkin denied that he was in any way involved with sending the press release to Mr Bowles hometown and also stated that he was not outside Miss Ball's house with a T.V. crew.

3.6.9 Cllr Durkin accepted that he had had training on the Code of Conduct but at the time of the Ombudsman's report he genuinely could not recall.

3.6.10 Cllr Durkin confirmed that he would not approach issues in the same way in the future. Cllr Durkin considered his actions had been futile and had caused him a great deal of personal stress and anxiety.

3.7 Mr Vaughan made submissions on Cllr Durkin's behalf. In so doing, he dealt with both matters of fact and whether those facts amounted to a breach of the code.

3.7.1 Mr Vaughan stated that Cllr Durkin has a fundamental right to express himself and any finding of breach would be an unjustified interference with that right. Simply because Cllr Durkin adopted an approach that would not have been adopted by more rational people doesn't automatically put him in breach. It was submitted that if Cllr Durkin's motive was genuine he should be afforded greater latitude.

3.7.2 Mr Vaughan submitted that so far as Cllr Durkin was concerned there had been a breach of his confidence as he genuinely believed an unredacted document had been sent out. Cllr Durkin made a natural and proper enquiry. Cllr Durkin does not accept that it was likely that the information came into the public domain via the register of member's interests and he does not accept that he was the cause of the breach. Therefore his failure to apologise or accept the explanation offered does not amount to a breach.

3.7.3 With regard to the planning issue it was submitted that it was a legitimate public concern and the plinth to him was a significant matter. Cllr Durkin accepted the explanation given in 2007 and only raised the issue again after other councillors brought the matter to his attention. The timing of the complaint was coincidental.

3.7.4 It was submitted that in his press release outlining his reasons for resigning from the planning committee he needed to explain why he had taken that step. Cllr Durkin was forced into a corner and was entitled to form his opinion that this put his position in jeopardy.

3.7.5 Mr Vaughan stated that with regard to Mr Bowles, Cllr Durkin felt that he had become partial and was protecting his officers and this had influenced his behaviour. It was submitted that Mr Bowles letter was a disproportionate response and attempted to marginalise Cllr Durkin. Therefore Cllr Durkin's stridency in his responses was appropriate. It was Mr Bowles who was harassing and bullying Cllr Durkin not the other way around

3.7.6 The terms of engagement document justified Cllr Durkin turning to the internet. He was restricted in his approach to the officers and he was isolated. Cllr Durkin remained of the view that there was misconduct and it became clear to him that he was going to be denied the opportunity to pursue it other than through the web.

3.7.7 It was submitted that, as Cllr Durkin was raising his Freedom of Information requests as a member of the public, he was not acting in his capacity as a councillor and therefore the code was not engaged in relation to Mr Pritchard. In any event if the requests had been vexatious there was a statutory right to refuse them and they should have been refused on that basis.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following **undisputed** material facts:

4.1.1 Cllr Durkin is a member of the Isle of Anglesey County Council ("the Council").

4.1.2 On 2 May 2008 Cllr Durkin signed a Declaration of Acceptance of Office thereby undertaking to abide by the Code of Conduct.

4.1.3 Cllr Durkin was previously a community councillor; he was elected as a member of Llanfair Mathafarn Eithaf Community Council on 28 February 2005.

4.1.4 Cllr Durkin resigned as a community councillor on 3 August 2006.

4.1.5 Cllr Durkin has been a member of the following committees of the Council: Planning and Orders Committee, Development Overview Committee, Audit Committee, Governance and Risk Management Committee, Special Educational Needs Sub-Committee and General Grants Committee.

4.1.6 Cllr Durkin attended training sessions offered by the Council on the Code of Conduct on 30 June 2008, 29 January 2009 and 28 April 2010.

4.1.7 At the material time, Miss Lynn Ball was the Director of Legal and Community Services and the Monitoring Officer of the Council; she was appointed as such in November 2004. Her employment with the Council began in November 2001 when she was appointed as the Deputy Monitoring Officer and Legal Services Manager.

4.1.8 In July 2009 the Wales Audit Office issued a critical Corporate Governance Inspection Report regarding the Council. The Report includes the following statements:

- "The Council is ineffective in dealing with issues of conflict and inappropriate behaviour. The Council has failed to respond to a number of previous external reviews that have highlighted issues of conflict and inappropriate behaviour. The history of conflict and inappropriate behaviour can be traced back as far as the Council's inception in 1996."
- "The Council has a reactive approach to dealing with issues of conflict and inappropriate personal behaviour."
- "The history of internal conflict and inappropriate behaviour has had a corrosive effect. A great deal of time and energy is diverted to dealing with conflict and inappropriate behaviour."
- "The Council's reputation has been seriously damaged."
- "Conflict has led to a rift between political and managerial leadership."
- "Whilst there are good features in the performance of many services the Council lacks clear direction."

4.1.9 In the aftermath of the Report, the Welsh Assembly Government intervened in the management of the Council.

4.1.10 Mr David Bowles was appointed to the post of Interim Managing Director of the Council by the Welsh Government following its intervention in the management of the Council and as part of the Council's recovery process.

4.1.11 On 30 July 2009, Cllr Durkin met with the then Acting Managing Director (Mr Richard Parry Jones) to address allegations made by Cllr Durkin against unnamed officers of the Council. It was agreed that the new Interim Managing Director (Mr Bowles) would investigate the allegations when he came into post. Mr Parry Jones wrote to Cllr Durkin on 3 August 2009 with the purpose of providing him with an attendance note of their meeting on 30 July 2009.

4.1.12 On 16 September 2009, Cllr Durkin wrote to Mr Parry Jones concerning an issue commonly referred to as "Craigwen" and referring to the full Council meeting on 15 September 2009. In the letter Cllr Durkin stated "It was also more than noticeable, that although it has been agreed by all members to draw a line under Craigwen...[named another councillor]...has no intention of doing so. This being

the case and as I am myself far from happy with the Monitoring Officer's input to PWC Report to ensure another cover up of her own unlawful actions, I believe nothing less than a judicial review should be called for."

4.1.13 By means of background on "Craigwen" – in July 2007 the Council acquired a property and land commonly referred to as "Craigwen" at auction. The purchase was highly controversial and the subject of an independent Audit Report by Price Waterhouse Coopers ("PWC"). The Report concluded that the purchase was lawful but identified that the decision taken to purchase was procedurally flawed. The issue was widely reported in the public domain and discussed at great length by the Council.

4.1.14 On 16 September 2009, Miss Ball wrote to Cllr Durkin about a complaint he had previously made about Mr Huw Pritchard, the Council's Corporate Information Officer. The complaint was about release of confidential information about Cllr Durkin to other members. In processing a freedom of information request, officers had failed to redact Cllr Durkin's name from one of the documents (which related to the Craigwen purchase); Cllr Durkin was concerned that other members also requesting the information were alerted to his identity by virtue of this failure.

4.1.15 Miss Ball wrote again to Cllr Durkin on 6 October 2009 offering an explanation as to how the members would have learnt of his identity (other than by reason of the failure to redact his name by the officers processing the freedom of information act request) and provided him with documentation in support of her explanation. She also stated "When you have had an opportunity to reflect on the attached documentation I hope that you will be in a position to provide me with a satisfactory explanation of your conduct in this matter. You may also consider retracting your allegations and making appropriate apologies to those concerned."

4.1.16 On 8 October 2009, Cllr Durkin replied to Miss Ball. He referred to "your harassing and intimidating letter dated 6 October 2009." He also added "I need to know whom you refer to as those concerned, so if necessary I will be in a position to write to them individually."

4.1.17 On 7 October 2009, Cllr Durkin wrote to Mr Parry Jones referring to a planning permission granted to Miss Ball to build a house on Anglesey. He said "It is with regret that I find it necessary to raise this issue for a second time." He stated, to the effect, that the finished house departed from the approved plans and from certain conditions of the planning permission. He also stated "As the Monitoring Officer should be leading by example and the perception given that there is one rule for the councillors and senior officers, and another for everyone else...I would be grateful if you would have these breaches addressed."

4.1.18 Cllr Durkin had previously raised Miss Ball's planning application (with the Council's former Managing Director, Mr Derek Jones).

4.1.19 By means of background, in 2001 Miss Ball's mother made a planning application for outline planning permission for the erection of a dwelling on a site called "Land adjacent to Cross Keys Gwalchmai." Planning permission was granted subject to conditions in December 2001. In 2003 Miss Ball made a

“reserved matters” application. In that application she stated she was the owner of the land, whereas in fact her mother was, the property being subsequently transferred to Miss Ball in 2006. Prior to submitting her application, Miss Ball informed the then Monitoring Officer (Mrs Julie Oppenshaw) that she was making the application. In accordance with Mrs Oppenshaw’s advice, Miss Ball submitted a memorandum with her application to advise the Planning Officer that it should be referred to Committee, rather than being dealt with (in the usual way) under delegated powers. Shortly afterwards Miss Ball received the reserved matters approval, which had not been referred to Committee. The matter was reported to the Planning Committee by Mrs Oppenshaw.

4.1.20 Following Cllr Durkin’s letter of 7 October 2009 the matter was referred to the Council’s Corporate Director (Planning and Environment) who passed it on to the Enforcement Team. Following an investigation by the Enforcement Team, Miss Ball was asked to submit a retrospective planning application in respect of her property and this was received by the Council on 5 February 2010.

4.1.21 On 21 October 2009 Mr Bowles met with Cllr Durkin to discuss the latter’s complaints and concerns.

4.1.22 On 24 November 2009 Mr Bowles met again with Cllr Durkin to discuss Cllr Durkin’s conduct in relation to the allegations which he had made. Following that meeting Mr Bowles wrote to Cllr Durkin on 1 December 2009. Mr Bowles stated that he was anxious that any legitimate concerns about misconduct by elected members or officers be properly and thoroughly investigated, in the first instance within the Council or externally if the matter was serious and not one which the Council should itself investigate. He added “I do have the advantage of not being associated with any issues of the past. Regrettably references by councillors to organisations outside the Council before internal procedures are exhausted can be seen to be tit for tat especially if the external regulators look at them and find that there is little substance to the allegations” and “It is important the whole Council is able to move forward and draws a line, we cannot allow previous incidents and issues to hamper the Council as it moves forward”. He stated he would be pleased to discuss two specific issues with Cllr Durkin. One of these was Cllr Durkin’s request in relation to information concerning the Auditor’s Management letter and the acquisition of Craigwen. Mr Bowles said “Again I am happy to sit down with you and discuss any residual concerns that you may have, however this issue was referred to in the second recommendation within the Corporate Governance Inspection Report and there is an expectation from the external regulators and the Recovery Board that a line has been drawn under this matter.”

4.1.23 In the above letter Mr Bowles also stated “I am aware that from time to time correspondence between you and officers of the Council may reflect frustrations by both parties and this is unhelpful in the context of officer/member relations generally. I would reiterate that I believe that in the overwhelming majority of instances where officers have responded to you where they have investigated matters, they have done so with the utmost care. I do not believe that they have sought to mislead individual members or conceal wrongdoing. I appreciate you may not share that view, but if I feel there is an objective basis for doing so, I am happy to investigate any matter that you refer to me, following a response from

officers, in an objective and fair manner. I must emphasise however that I would encourage you to accept on face value officer comments and advice, rather than resorting to challenge unless there are compelling reasons otherwise” and “I believe that the Council has already changed and will continue to change for the better. I personally will support further strengthening of the independence of the planning function. I have no doubt that you are sincere in your concerns that things may have been concealed in the past, but I think it is unhelpful to continue with that mind-set as the Council moves forward” and finally “I have much hope that you will take this letter in the spirit in which it is intended and that is to try and achieve a position where we can all move forward and enhance the reputation of the Council.”

4.1.24 In January 2010, a report entitled “Peer Review of the Work of the Monitoring Officer at Anglesey County Council undertaken at the request of the Interim Managing Director Mr David Bowles” was issued by Neil M Pringle Independent Consultant. The Report states “The purpose of the review is to assist the Interim Managing Director of Anglesey in his assessment of the validity or otherwise of criticisms which have been voiced about the action taken by the Monitoring Officer in relation to the issues identified. This in turn will assist the Acting Managing Director in determining what programme of support, if any, is required from the Monitoring Officer given the challenges which the Council faces in establishing appropriate standards of corporate governance. There is a clear recognition on the part of the Acting Managing Director that the Monitoring Officer’s role is an important supporting role to his own in establishing secure and efficient arrangements for the corporate governance of the Council.”

4.1.25 The “Summary and Overview” in the above Report states as follows:

“I have reviewed as requested the conduct of the Monitoring Officer in relation to the eight specific matters drawn to my attention as part of the brief. As I explained in the introduction to this review and the explanation of the methodology, I have conducted this review not on the basis of whether the same action would have been taken by every monitoring officer, but on the basis of an appropriate professional assessment as to whether the actions taken by the Monitoring Officer displayed the broad range of competencies expected of an effective monitoring officer.

My overall view is that the Officer demonstrates those competencies and that she appropriately adapts them to the local circumstances of Anglesey County Council. As is illustrated in the recent Corporate Governance Inspection, there are particular challenges in relation to appropriate standards of governance within Anglesey. It is clear from the Inspection Report that the Council has struggled with issues of governance over considerable period of time. That places considerable demands on the exercise of the role of monitoring officer, particularly when there has been variable managerial and political support for the exercise of that role.

It would also be remiss of me in conducting the review not to record my concern as to the nature of the issues which have been referred to me for review and to the extent of the retrospective scrutiny to which the Monitoring

Officer's actions are being subject. It does not reflect an organisation that has the confidence to take responsibility for its own governance. I would be concerned, from the nature and extent of the allegations made against the Monitoring Officer that they may be interpreted as undermining a monitoring officer who is seeking to assist the Council in maintaining appropriate standards of governance. I do believe there is a need to recognise that the successful discharge of the monitoring officer's role requires appropriate managerial and political support. The nature, style and content of the references to the Monitoring Officer's discharge of her duties have the potential to leave the Council vulnerable to an employment law challenge. I emphasise that I made those assessments based on the examination of the eight issues which have been referred to me."

4.1.26 On 19 February 2010 Mr Bowles wrote a confidential letter to all Council members. In the letter Mr Bowles stated "When I took up my appointment as the Council's Interim Managing Director I received a number of complaints against the Monitoring Officer. All of the complaints were made by members, though most were made by one particular member. A number seemed to be hearsay and were potentially repeating the concerns expressed by that one member. The main complainant went as far as describing Ms Ball as not fit for purpose. The allegations included claims of undue influence on the Council's external auditors; impropriety in correspondence/evidence provided to the Public Services Ombudsman in connection with his enquiries; collusion with a leading member of the opposition; inconsistent use of discretion on the issue of Section 5A/5 Reports; unauthorised/inappropriate disclosure of information and the misuse of the Standards Committee to place information in the public domain."

4.1.27 In the above letter Mr Bowles also stated that in response he had instructed a suitably qualified independent person (who had been both a monitoring officer and a chief executive and who had worked with the WAO) to carry out a peer review into the work of Miss Ball, covering issues such as those described. He went on to state "That investigation is now complete and has shown that in all cases Ms Ball acted appropriately and professionally and with a high degree of competence and skill. This is consistent with Ms Ball's high standing outside of the Council and my own review of documents. The role of Monitoring Officer is a difficult one which can be perceived as obstructive even though the purpose of the advice given is to keep members within the law and various codes."

4.1.28 Mr Bowles also, in the letter, informed the members that the investigator had raised concerns that the pursuit of the allegations against Miss Ball exposes the Council to risk of employment related litigation. Mr Bowles also added "I endorse that analysis, but would go further. I believe that the Monitoring Officer has been the subject of a concerted campaign of bullying and harassment. I find this conduct abhorrent and totally at odds with the Council's legal obligations as employer. If Ms Ball were to seek claims against the Council for her treatment, I have no doubt that there would be a genuine prospect of the Council losing such a claim. If such claims were brought under the appropriate legislation the claims would be uncapped and possibly run well into seven figures. We therefore have obligations not just to Ms Ball as an employee but also a duty to council tax payers to ensure that this situation does not arise" and "While I have received no

indication from the Monitoring Officer that she intends to take legal action, should she do so recovering compensation against the Council, then the Council will be seeking financial indemnity from any members who have played a part in what has the appearance of a poisonous vendetta” and “As far as the Council is concerned the allegations discussed above are now a dead letter. If any member raises these issues again I shall consider such action to be evidence of serious misconduct and I shall personally report the matter to the Ombudsman requesting that they be referred to the Adjudication Panel for Wales” and “This continuing conduct by a few members and especially one member strikes at the heart of issues highlighted in the Corporate Governance Inspection Report. The fact that it persists many months after publication of the auditor’s report will be a matter of grave concern to the Minister and the Recovery Board” and “I have written separately to the main complainant rejecting the allegations and drawing attention to the highly corrosive effects that whispering campaigns can have, that I will not tolerate such campaigns and drawing their attention to the potential financial implications for them personally. Given the number of allegations made by that one member, it seems highly unlikely that they were made in good faith” and “It should be noted that in addition to the legal risk that such conduct poses to the Council, together with the damage it causes to relationships between members and officers, this kind of behaviour is hugely wasteful of resources both in terms of the direct cost of engaging external investigators, but also in the officer time which it diverts from more productive purposes” and “It is important that officers are held accountable for their performance and reports going to the next Council meeting will put in place appropriate mechanisms to appraise officers. If any member wishes to make a complaint against any officer now or in the future, any such complaint will be rejected unless it is put in writing, signed and supported by evidence. Any member who is also a member of a group will also be expected to have such a complaint endorsed in writing by their group leader” and “If any member is aware of continuing attempts to undermine any officer they should advise the member to use the proper process; if the member fails to do so it will clearly point to improper motives. I hope you will not tolerate officers being undermined simply for doing their job properly and professionally” and finally “I regret, again, having to write in these terms and no doubt if my position starts to be undermined, it will be evident why.”

4.1.29 On 20 February 2010 Cllr Durkin emailed a letter dated 19 February 2010 to all members of the Council. He wrote “Having raised the legitimate concerns of public perception regarding the honesty and integrity of Lynn Ball.....appertaining to her planning application and new build house in Gwalchmai in 2007, I receive nothing more than an abusive threatening letter from the then Managing Director Derek Jones in what I perceive as a blatant attempt to keep me quiet and brush the whole affair under the carpet...Subsequently an investigation has now forced Lynn Ball to make a retrospective planning application under the threat of enforcement....If this is the type of example the Head Of Legal Services and Monitoring Officer wishes to lead by, its little wonder the County Council is in so much dispute. I firmly believe her position is now untenable.”

4.1.30 On 23 February 2010 Mr Bowles wrote confidentially to Cllr Durkin. He referred to the above email and to the letter sent to all members on 19 February 2010. He stated “My letter went to great lengths to point out to elected members

how undermining and destructive unsubstantiated allegations are against officers. My letter particularly dealt with such allegations made against the Monitoring Officer” and “It was therefore with great dismay that I read the contents of your letter of 19 February which, in effect, makes unsubstantiated allegations calling into question the honesty and integrity of Ms Lyn Ball as Monitoring Officer. Your letter is merely scurrilous and its publication to other elected members must regrettably call into question your motives. Perhaps you could kindly confirm to me whether or not you were in receipt of and had read my letter of 19 February before you sent your email.....In any event I trust you now have had an opportunity to read my letter, consider its contents and to review your letter in the light of what I say. Please be warned that I am taking your letter extremely seriously and am considering whether your letter amounts to a breach of the Code of Conduct.....Irrespective of whether a complaint is made to the Ombudsman or not I believe that I should give you the opportunity of withdrawing unreservedly the allegations contained in your letter of 19 February. You should make an unreserved written apology to Ms Ball withdrawing the allegations and this should be copied to all persons who have received a copy of your letter of 19 February. If the allegations became public knowledge then such an apology and withdrawal should also be made public. This is a simple straightforward request which puts you to proof of your good faith in these matters, following my letter of 19 February. Please let me have your response before 4.00 pm on Friday 26 February 2010. Irrespective of whether you make an apology and withdrawal, I must consider what further action should be taken bearing in mind the seriousness of your allegations and your history of previous allegations against Miss Ball.”

4.1.31 In February 2010, Carl Sargeant AM Minister for Social Justice and Local Government addressed the Council. He said the Council had made some progress in rectifying the problems identified by the Auditor General but needed to do much more. He stated “At the heart of these problems is poor member behaviour – conflict within and outside this Chamber, poor relationships between members and officers and a persistent focus on minor and internal issues that both prevents the Council from operating effectively and seriously damages its public reputation. No doubt many of you have stories to tell about these issues but let us be quite clear that personalising things or apportioning blame will get us nowhere. The problems that you face are too deep seated to be caused solely by individual misbehaviour. Instead they arise because this Council does not focus enough on the real needs of this Island and its citizens. Debate too often concentrates on personal and parochial conflicts that are completely irrelevant to those you serve....Focussing on personal rivalries and allegations like this is self-indulgent in any circumstances. Doing so despite the numerous and pressing problems that this Island faces is even worse. It is betrayal of Anglesey’s citizens and communities who deserve action and leadership not petty bickering. Putting that right involves several things. Firstly and most obviously misbehaviour needs to be addressed properly and anyone who obstructs recovery should be dealt with particularly severely. Those in positions of authority within the Council like Group Leaders need to take appropriate action and I am pleased that some of them have....I agree with all of the Board’s recommendations and have asked it to monitor developments closely over the next few months. I expect to see clear and rapid progress towards these recommendations – otherwise I may be forced to direct you to take the necessary action....The most important step you can take is

to develop and support a collective culture which looks outwards at those problems and concentrates on resolving them. By doing that you will isolate poor behaviour and show it to be the self-indulgence that it is. You will demonstrate to me and the Recovery Board that recovery is possible. As part of this I have asked my Recovery Board to meet you individually. The Board will want to know how you as individuals can help make this Council fit for purpose. They and I will want to hear about how things improve – not about accusations and allocation of blame. I know that many of you are committed to putting Anglesey and its citizens first and you must now stand up to those members who do not share these priorities....I do not want to be involved in running a Council that should be running itself....I particularly do not want to extend my involvement by giving you more stringent and detailed directions. But be in no doubt that I can and if necessary I will. I could, for instance, establish and dissolve committees, make internal and external appointments, amend your constitution, entitlement to and level of your entitlements to allowances or your arrangements for delegated powers. I could even take functions off you altogether....If you aim to serve those who elected you then you have a central role in putting an end to the problems you have faced....There is only a short window of time for you to make real progress on these issues and I cannot allow petty politics of the Council to put in jeopardy the future the Island....Without your immediate active support and involvement the recovery that I am demanding will not happen....Failure to complete the tasks required will drive me to consider the future of the Council as an autonomous body.”

4.1.32 On 5 March 2010, Mr Bowles wrote a further confidential letter to Cllr Durkin. He referred again to the letter dated 19 February 2012 emailed by Cllr Durkin to members on 20 February 2012. He stated “I have given this matter further thought. As the Council’s head of Paid Service I have a duty to ensure that the Council takes adequate steps to protect the interests of its staff under their contracts of employment. This includes protecting staff from harassment and bullying. Where I have concerns that elected members may be responsible for bullying and harassment I have to consider what safeguards need to be imposed in each and every case. Since you have recently made serious allegations acting the honesty and integrity of an officer of this Council I feel obliged to impose some particular rules about your future dealings with Council officers as an elected member”. Mr Bowles then set out those arrangements namely, by prior appointment; making known in advance the subject matter of the discussion; the meeting to be restricted solely to the business previously notified; attendance at the meeting by two officers. Mr Bowles added “These restrictions do not prevent you from undertaking your duty as a councillor in public meetings of the Council or its committees nor does it prevent you from attending public reception desk in the Council office to request information as if you were a member of the public “and it is regrettable that I must write to you in these terms but you have brought this on yourself through your own misbehaviour.”

4.1.33 Cllr Durkin replied on 9 March 2010. He stated “Please accept this letter as a formal request for you to provide substantive evidence in support of your accusation of misbehaviour.”

4.1.34 Cllr Durkin's Solicitors wrote to Mr Bowles on 10 March 2010. They said Cllr Durkin had written his letter of 19 February 2010 before receiving Mr Bowles' letter of the same date and that Cllr Durkin stands by his letter of 19 February, does not agree to withdraw the letter nor provide any sort of apology in respect of its contents, and further that he would welcome a referral to the Ombudsman so as to enable him to be given the opportunity of explaining his view on the matter in a formal setting.

4.1.35 On 21 March 2010, Cllr Durkin wrote to Mr Bowles (about another matter). He stated "It is clear to me that contrary to your record of fair play and rooting out wrongdoing, you have shown yourself to be more akin to attacking the messenger. This has clearly manifested itself over the last week or two and will no longer be tolerated. I believe my Solicitor has written to you to no avail. So there can be no misunderstanding I welcome intervention; it should have been here long ago after all the Council has not been properly run since its interception in 1996. I welcomed and supported you in your endeavours to move the Council forward. However we clearly have a difference of opinion on how to do this. You wish to bury the past, shove wrongdoings under the carpet so to speak, where I wish to see those involved in unlawful activities who have brought the Council into so much disrepute, brought to book, not just relating to issues of planning but fraud and corruption."

4.1.36 On 6 April 2010, Cllr Durkin issued a press release to all members of the Council. He stated "Having exposed a number of dishonest activities by some senior officers and reported them to the Authority which on investigation were found to be valid, I have been isolated, victimised, scandalised, threatened and bullied in the main by the Authority's Interim Managing Director David Bowles who gives the perception that he would rather abuse and attack the messenger than accept the message and when challenged complains about being bullied." Cllr Durkin also made reference to Mr Bowles' past career history and to Mr Bowles' letter dated 19 April 2010 setting out the details. He also referred to Mr Bowles' letter dated 23 February 2010 adding "These allegations [against Miss Ball] were proven following an investigation by the planning authority long before David Bowles wrote his letter on 23 February 2010." Referring again to the letter of 23 February 2010, he refers to it as containing "threats, threats and more threats" and "In my opinion David Bowles is not fit for the required purpose we urgently require at Anglesey County Council. Some of his ideas on moving the Council forward are fine but when he includes covering up dishonesty perpetrated by any of his officers he should seriously consider his position and go, particularly having used such scandalous behaviour against an elected member to do it." Finally "I am not prepared to be threatened bullied or associate with such dishonest people any longer, either they go, or I will."

4.1.37 Also on 6 April 2010, Cllr Durkin sent a letter to all members of the Council and to the Chair of the Recovery Board (appointed by the Welsh Assembly Government). He referred to his letter of 19 February 2010 ("regarding a house built by the Director of Legal Services/Monitoring Officer Lynn Ball not to plan and in breach of a number of fundamental conditions which I first raised with Derek Jones in July 2007 receiving nothing more than a torrent of abuse and threats in reply"). He stated "Since then Lynn Ball has had every opportunity to abide by

those conditions but deliberately chose not to do so until I again raised the issue with Mr David Bowles before Christmas 2009. For this although fully vindicated I have been victimised, persecuted, scandalised and unilaterally sacked from the ruling group” and “However we now see on behalf of Lynn Ball an application submitted retrospectively in order to regularise works.....to be resolved at Wednesday’s Planning Committee. This in itself again vindicates my complaint....If this is the best example Lynn Ball as the Director of Legal Services/Monitoring Officer can lead by, its little wonder that the likes of (names a former councillor) was able to corrupt the Planning Committee on a number of occasions with complete immunity.....We are now engulfed in allegations by members of the public that some senior officers are involved in fraudulent conspiracy....If this sort of culture of wrongdoing is true then the sooner the Welsh Assembly takes over the running of the Council the better.”

4.1.38 On 8 April 2010, Mr Bowles replied to Cllr Durkin’s letter of 9 March 2010. He sought to provide examples arising just before and since his appointment, where Cllr Durkin had called into question the honesty integrity and professionalism of Miss Ball. The letter referred to Cllr Durkin’s letters of 7 and 8 October 2009 his emailed letter of 19 February 2010 and his letter of 21 March 2010, describing the accusations therein as “intemperate and unhelpful”.

4.1.39 On 9 April 2010, Mr Bowles wrote to Cllr Durkin in response to the press release of 6 April 2010. He stated “I would urge you to desist from correspondence of this type as it is disruptive and corrosive. I would also urge you not to repeat any of these allegations in public as this would be highly damaged not only to the interests of the Council but also because making such wild and inaccurate allegations concerning individuals could amount to defamation for which you will be liable”.

4.1.40 On 24 April 2010, Cllr Durkin’s press release dated 6 April 2010 was posted on a Blog site – The Druid - Fighting for Anglesey (“the Druid Blog”) under a thread headed “Councillor Barrie Durkin’s press release (updated)” where it was described as already being in the public domain. The Druid Blog site is accessible to the public. The home page states that it is a political blog of Mr Paul Williams a former Welsh Conservative Assembly candidate. The site is set up to allow users to create new threads or discussion topics and also to enable persons to post comments in relation to any threads already created.

4.1.41 On 22 April 2010, Cllr Durkin wrote to the Chair of the Council’s Standards Committee stating “I wish to make a complaint appertaining to threatening and bullying behaviour by.....Mr Bowles against myself. Once my complaint is accepted I will furnish you with anything else that is required”.

4.1.42 The Chair of the Standards Committee responded on 26 April 2010. He advised that the Committee does not have the power or remit to handle complaints against officers and referred Cllr Durkin to the official guidelines in the Council’s constitution.

4.1.43 On 26 April 2010, Mr Bowles wrote to all members of the Council. He stated “Members will be aware of an increasing number of smears and allegations

made by Cllr Durkin. Some of these are directed at me and my general approach is not to dignify them with any comment at all. I do however feel that I must comment when these allegations refer to other officers of the Council.” He referred to Cllr Durkin’s press release dated 6 April 2010. He also stated “I can confirm to you that no evidence has been found to substantiate the allegations that some senior officers are involved in a fraudulent conspiracy” and “I am not aware that Cllr Durkin has any evidence to substantiate such a serious allegation and if he has evidence he has not presented it to me”.

4.1.44 On 5 May 2010, the Holyhead and Anglesey Mail featured a story entitled “I’ll face Ombudsman says Councillor, investigation now justified”. This related to Miss Ball’s retrospective planning application and a large picture of her appeared beside the story. Cllr Durkin is quoted as saying “If Mr Bowles wants to take me to the Ombudsman then I say bring it on, I have nothing to fear. I feel totally justified in my investigations, this coming before the Committee proves it. You cannot have one rule for people right across the Island and another for councillors or officers”. Mr Bowles is quoted as saying “I find it highly regrettable that Cllr Durkin continues to make so many unfounded allegations and I am currently in the process of compiling a very serious complaint to the Ombudsman about his own conduct.”

4.1.45 On 8 June 2010, a document called “Terms of Engagement of the Council’s Political Groups” was signed by the leaders of main political parties represented on the Council. The document contains the terms of political agreement made between the leaders of the four political groups of the Council, committing members of the group to “agree to isolate those who have consistently blocked progress” by “publicly identifying those individuals”. The agreement specifically refers to the identity of two councillors, one of whom is Cllr Durkin.

4.1.46 At 22.34 on 6 June 2010, Cllr Durkin posted a comment on the Druid Blog expressing his views on the Terms of Engagement agreement. He wrote “Firstly the Terms of Engagement are ultra vires which will generate a Judicial Review to say nothing about the torrent of law suits that will follow over Anglesey County Council’s lack of care and abuse of Human Rights towards named councillors...It is unlawful segregation and an abuse of democratic power.”

4.1.47 On 30 June 2010, Carl Sargeant AM Minister for Social Justice and Local Government wrote to all members of the Council stating “I have been following recent political changes within the Council closely”, he said that whilst over the past year some progress had been made “...the underlying issues have never gone away. Council business too often focuses on internal disputes and rivalries rather than on delivering for the citizens of the Island. Too many members still prefer jockeying for their own personal advantage rather than serving those who elect them. As I said to you in February the people of Anglesey do not care about petty squabbles. They care about vital services and about their Council providing leadership in these difficult times. They are still not getting that” and “I do not see any prospect of my intervention ending in the foreseeable future....making progress will require all councillors to stop furthering their private agendas and act like elected public servants”.

4.1.48 On 8 July 2010, Cllr Durkin sent an email to Cllr Robert Parry which he copied to all members of the Council. A redacted version appeared on the Druid Blog on 10 July 2010.

4.1.49 At 23.52 on 8 August 2010, a post was created on the Druid Blog entitled "Another Day Another Anglesey County Council Scandal". Cllr Durkin is listed as making the following comments on the thread "...we are not dealing with honest people either. We are dealing with people who will say and do anything to cover up their dishonesty and that goes for Lynn Ball...and David Bowles amongst others".

4.1.50 On 9 August 2010, at 00.20 and 13.09 Cllr Durkin is listed as making the following comments "You may remember ex-councillor Mr David Louis Roberts. He is the councillor accused of corrupting the Planning Committee to help achieve a favourable outcome for the applicant. This he has now admitted to publicly but not before he was helped to cover it all up by Ms Lynn Ball's lack of duty". "They were treated this way because they would not succumb to David Bowles'...tyranny" "Lynn Ball's failure to adhere to her planning conditions until forced to. The lies being told by David Bowles to bolster their failing alliance" "It's with this in mind and the fact that Anglesey County Council is being run with an air of unlawfulness that I am asking the Assembly and the Recovery Board to take over the running of the Council as soon as possible, without David Bowles who has in my opinion done more damage to the running of the Council than anyone could ever imagine".

4.1.51 On 9 August 2010, Cllr Durkin sent a letter to the Minister Mr Carl Sargeant AM. This was posted on the Druid Blog on 11 August 2010. It contained the following statements "The problems the Council had prior to the intervention are nothing in comparison to those we have since David Bowles became Interim Managing Director who has nothing but antagonised, bullied, abused and threatened members and staff mainly to cover up wrongdoings by his officer and one particular senior councillor. We have a Legal Department interfering and influencing the Public Services Ombudsman for Wales in his enquiries of complaints. As Mr David Bowles is continually using the press to spurn his venom about individual councillors I too will be making this letter public with a copy to the Recovery Board".

4.1.52 On 10 August 2010, the Ombudsman received a letter dated 5 August 2010 from Mr Bowles in his capacity as Interim Managing Director of Anglesey County Council. He made a complaint that Cllr Durkin had breached the Code of Conduct. Mr Bowles alleged that Cllr Durkin had made repeated personal attacks of an offensive nature against Miss Ball in various letters, emails, press releases and blog sites, referring to her as "dishonest", that she "lacks integrity", is "corrupt" and that her position is "untenable". Mr Bowles alleged that Cllr Durkin's repeated behaviour towards Miss Ball seeks to undermine her position and are clear examples of bullying and harassment.

4.1.53 Mr Bowles also alleged that Cllr Durkin made numerous "groundless and inflammatory personal attacks" on him thereby failing to show him respect and consideration, Mr Bowles suggested that the repeated attacks were offensive and malicious and sought to undermine his position.

4.1.54 Mr Bowles also alleged that Cllr Durkin had made unjustified complaints and allegations against a number of the officers of the Council including officers in Planning and Highways, Legal and Finance, Housing Grants and Corporate Officers, mainly alleging corruption, fraudulent conspiracy and unlawful disclosure of information.

4.1.55 Mr Bowles also said that Cllr Durkin made numerous requests for information, repeatedly taking it upon himself to undertake “fishing expeditions” through the Council’s records to try and unearth non-existent wrongdoings on the part of Council Officers and then to distort minor discrepancies for his own purposes.

4.1.56 On 24 August 2010, Cllr Durkin was notified by the Ombudsman of his intention to investigate the complaints.

4.1.57 On 7 January 2011, at 21.44 and 23.37, the following comments were post on the Druid Blog attributed to Cllr Durkin – “Anglesey County Council is being run on lies deception and bully boy tactics” and “Many of my fellow councillors are constantly under threat of do as you are told or else....David Bowles is the main instigator and a trouble maker”.

4.1.58 On 19 January 2011, the following comments attributable to Cllr Durkin were posted on “The Photon Blog” at 15.38 – “....I will attend one of the meetings in due course whether I wish to raise the appalling way.....David Bowles have abused their positions against me and others to cover up their own wrong doings at a public meeting....”

4.1.59 The Photon Blog is a political blog site accessible to the public at large. The site is set up to allow users to create new threads or discussion topics and also to enable persons to post comments in relation to any threads that may have already been created.

4.1.60 On 28 January 2011, Cllr Durkin wrote to all members of the Council expressing his views on the recovery of the Council. He made the following statement, “Lies deception conjecture infighting may be a combination of all, however in my opinion sheer stupidity and an acute lack of understanding of the basic principle of decency and democracy tops my list...”

4.1.61 On 10 February 2011, Cllr Durkin issued a press release “Public regrets from the Interim Managing Director just not good enough” and “Since coming to Anglesey County Council as its Interim Managing Director David Bowles has taken every opportunity to attack threaten bully lie about and publicly abuse a number of elected members for no other reasons than having an opposition view, even to the extent of writing poisonous letters to them in his attempt to assault and undermine their honesty and integrity” and “...David Bowles...should remember he is not an elected member, he is hired hand of the Council employed in a political restricted post which he had breached far too often losing all sense of reasoning and impartiality making his position untenable”.

4.1.62 On 20 February 2011, comments attributable to Cllr Durkin were posted at 11.36 on the Photon Blog, namely "...to help David Bowles cover up alleged corruption and dishonesty involving some of his officers...".

4.1.63 The Ombudsman's final report was issued on 23 August 2011 and he referred the matter to the President of the Adjudication Panel for Wales.

4.1.64 The Ombudsman had, in April 2010, issued guidance for members of local authority in Wales on the model code of conduct. In his report (dated 23 August 2011) on the allegations against Cllr Durkin, the Ombudsman reproduces the guidance issued on paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

4.2 The Case Tribunal found the following **disputed** material fact:

4.2.1 Cllr Durkin's actions were motivated by a wish to root out dishonest corrupt and unlawful acts by the Council and certain of its members and in that light his actions were justified, fair and appropriate.

4.3 The Case Tribunal found the following in respect of the disputed fact:

4.3.1 That Cllr Durkin was not genuinely motivated by a wish to root out dishonest, corrupt and unlawful acts by the Council and certain of its officers and in light of that finding his actions were not justified, fair or appropriate.

4.3.2 In making that finding the Tribunal accepted the evidence of Lynn Ball in a number of respects. With regard to the reserved matters planning application and the first complaint made by Cllr Durkin in 2007 that Miss Ball had acted improperly when the matter had not gone to the full Planning Committee, the Tribunal noted that Cllr Durkin had been given a full explanation. It was accepted by Mr Durkin in cross-examination that with regard to that matter, no criticism could be attached to Miss Ball.

4.3.3 Cllr Durkin raised the issue further in his letter of 7 October 2009 to the then Chief Executive and the Tribunal found that the clear inference of that letter where it is stated, "the development in question is a house built and owned by the County Council's monitoring officer Lynn Ball and approved without going to Committee in breach of the County Council's Constitution" was to suggest some impropriety on the part of Miss Ball when Cllr Durkin knew that this was not the case.

4.3.4 The Tribunal also accepted the evidence of Mr David Bowles who stated in his evidence that Cllr Durkin had admitted to him in a meeting that he was raising the issue of Miss Ball's planning application again "because Miss Ball was on the warpath" as she had written to him on 6 October 2009 requesting he apologise for raising an unfounded allegation. Mr Bowles suggested that the matter was "tit for tat". The Tribunal found that this was the case and rejected Cllr Durkin's evidence on this issue, which was, that it was a genuine concern and the timing was purely co-incidental. The Tribunal concluded that the nature of the letter was designed to portray a misleading picture and was an attempt to attack Miss Ball's credibility rather than a genuine complaint. As such the Tribunal concluded that Cllr Durkin

was motivated by a desire to attack Miss Ball in retaliation for her letter of 6 October 2009.

4.3.5 The Tribunal also considered the nature of the correspondence written by Cllr Durkin regarding Miss Ball's conduct in the purchase of Craigwen. The Tribunal accepted the evidence of Miss Ball and considered the independent peer review which concluded that Miss Ball acted appropriately. The Tribunal rejected the evidence of Cllr Durkin that Miss Ball acted "unlawfully". The Tribunal concluded that in the face of this evidence which was available to Cllr Durkin it was not appropriate for him to suggest that Miss Ball had acted unlawfully and was seeking to cover up her own unlawful actions. In the face of this evidence the Tribunal were not persuaded that Cllr Durkin could have had any genuine motive for his comments.

4.3.6 With regard to Mr David Bowles, the Tribunal noted the nature of the correspondence that had been sent to Mr Bowles and the subsequent comments made by Cllr Durkin and placed in the public domain. The Tribunal accepted the evidence of Mr Bowles that he considered Cllr Durkin followed a pattern of conduct which was to attack those who did not agree with his views. The Tribunal concluded that Cllr Durkin had no credible evidence to suggest that Mr Bowles was attempting to cover up dishonesty and indeed had personal experience that Mr Bowles took all complaints seriously that were supported by evidence. Cllr Durkin was advised in correspondence to set his complaints out in writing with supporting evidence and also to report matters of fraud to the police. There is no evidence that Cllr Durkin took his complaints of fraud to the police. In all the circumstances the Tribunal were persuaded that the complaints that Mr Bowles was covering up fraud and dishonesty were unfounded, Cllr Durkin knew that they were unfounded but continued to repeat those allegations in public to undermine Mr Bowles.

4.3.7 The Tribunal also took into account the very public nature of the allegations made by Cllr Durkin in press releases and on the internet. The Tribunal rejected Cllr Durkin's evidence that this was because he had tried and failed to raise these matters through the appropriate channels but had been "marginalised". The Tribunal noted that Cllr Durkin could have continued to raise his complaints through the appropriate channels if they were supported by appropriate evidence. The Tribunal concluded that making very damaging allegations unsupported by evidence in public media was designed to undermine Mr Bowles and Miss Ball and was not a genuine attempt to root out corruption.

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 The Ombudsman's Submissions

5.1.1 It was contended that the finding of fact made by the Tribunal inevitably constituted a breach of the Code. It was not disputed that a finding of breach would interfere with Cllr Durkin's rights to free speech under Article 10 (1) of the Human Rights Act. It was submitted that the comments made by Cllr Durkin were political comment and attracted a higher degree of protection. It was submitted that the

inevitable infringement of those rights that would occur by a finding of breach was justified pursuant to Article 10(2).

5.1.2 It was submitted that each case is dependent upon its own facts and the Tribunal should have regard to the judgement in *Calver v Adjudication Panel for Wales [2012] EWHC 1172 (Admin)* when making its decision. It was submitted that the Tribunal were required to carry out a balancing exercise between the rights of Cllr Durkin to free speech on the one hand and the interests of the public in maintaining confidence in the democratic system.

5.1.3 It was submitted that given the Tribunal's finding that Cllr Durkin was not genuinely motivated his conduct amounted to a breach of the Code. It was submitted that continued and repeated serious allegations with no factual justification made in the public arena inevitably brought the authority into disrepute in breach of paragraph 6(1)(a) of the Code. The fact that Cllr Durkin repeatedly attacked Miss Ball and Mr Bowles accusing them of dishonesty and corruption without foundation was a failure to show them respect and consideration. To do so in the public arena, where Miss Ball felt she had no right of reply was particularly relevant.

5.2 The Respondent's Submissions

5.2.1 Mr Vaughan made no further submissions on Cllr Durkin's behalf other than those made within his general submissions on the disputed facts which included his submissions on whether the facts as alleged amounted to a breach of the Code. Those are detailed at paragraph 3.7 above.

5.3 Case Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Isle of Anglesey County Council's code of conduct.

5.3.2 Paragraph 4(b) of the Code of Conduct states that *"You must show respect and consideration for others"*.

5.3.3 Paragraph 4(c) of the Code of Conduct states that *"You must not use bullying behaviour or harass any person"*.

5.3.4 The Tribunal found that Cllr Durkin by his actions towards Miss Ball, in particular the language he used, failed to show respect and consideration and that his actions in relation to Miss Ball also amounted to bullying and harassment. The Tribunal concluded that making repeated serious allegations with no foundation against Miss Ball and suggesting that she was dishonest and corrupt undermined her authority and position and amounted to bullying and harassment.

5.3.5 The Tribunal found that as a more senior officer the actions of Cllr Durkin did not amount to bullying or harassment of Mr Bowles and that Mr Bowles had robustly dealt with Cllr Durkin. The Tribunal did however find that making

unfounded allegations in the public media that Mr Bowles was dishonest and corrupt did fail to show Mr Bowles respect and consideration in breach of paragraph 4(b) of the Code.

5.3.5 The Tribunal found no breach in relation to his conduct towards Mr Pritchard. The Tribunal did not accept that the Code was not engaged in relation to Mr Pritchard and noted that although the Freedom of Information Act treated everyone as members of the public from the point of view of the Act, Cllr Durkin was making the requests in his capacity as a councillor and for political purposes. However, when considering the evidence the Tribunal was satisfied that Cllr Durkin had made his requests perfectly properly and his letters to Mr Pritchard were appropriate in content and tone.

5.3.6 Paragraph 6(1)(a) of the Code of Conduct states that *“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”*.

5.3.7 The Tribunal found that Cllr Durkin’s actions also amounted to a breach of this paragraph of the Code. The Tribunal concluded that Cllr Durkin’s repeated unfounded allegations of a serious nature against senior officers of the Council in public was bound to undermine the authority and bring it into disrepute. In addition the language used by Cllr Durkin and the fact that the Tribunal found his motives were not genuine, further brought the office into disrepute.

5.3.8 The Tribunal accepted that a finding of breach and the imposition of a sanction is inevitably an interference with Cllr Durkin’s rights to free speech under Article 10(1) and also accepted that his actions come within the broad definition of political comment which attracts higher protection. Nevertheless the Tribunal concluded it was justified on the facts and circumstances to interfere with those rights, pursuant to Article 10(2) in order to maintain public confidence in the democratic system. The Tribunal found that Cllr Durkin had gone beyond political comment; he had embarked upon a relentless attack against Miss Ball and Mr Bowles, in the public domain, leaving Miss Ball with no right to reply; the allegations were unsupported by evidence and were potentially extremely damaging to both Miss Ball and Mr Bowles who were officers and employees of the Council rather than politicians.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Ombudsman’s Submissions

6.1.1 It was submitted on behalf of the Ombudsman that in looking at sanction the Tribunal should have in mind the following aggravating factors:

That Cllr Durkin had attempted a deliberate political and personal gain and that his motive was not a proper motive it was to stop Miss Ball pursuing him.

That there were repeated breaches and that the constant drip-feed of allegations has brought the authority and office into disrepute.

That there was an element of dishonesty as Cllr Durkin maintained his position that his motives were genuine.

That the behaviour was intentional and there was a continued denial of any wrongdoing.

That there was a persistent pattern of behaviour and failure to heed appropriate advice.

6.2 The Respondent's Submissions

6.2.1 Mr Vaughan on behalf of Cllr Durkin advised that he was not instructed to make any further submissions. Mr Vaughan however advised the Tribunal that to accept the submissions made on behalf of the Ombudsman that Cllr Durkin's actions were a deliberate attempt to make a personal or political gain and they amounted to dishonesty were not made out on the facts. Mr Vaughan submitted that the Tribunal would fall into error if they accepted these submissions.

6.2.2 Cllr Durkin confirmed that he had nothing further to say, save to thank the Tribunal for the respect and courtesy shown to him during the proceedings.

6.3 Tribunal's Decision

6.3.1 The Tribunal considered all the facts of the case and in particular the fact that Cllr Durkin had made a number of serious, unfounded allegations against officers of the Council which had been designed to undermine their authority. The Tribunal noted the effect of this behaviour on Miss Ball in particular who had been very upset and felt uncomfortable in her own home. The Tribunal noted the damaging effect Cllr Durkin's allegations had on the individuals concerned and the Authority as a whole during an already difficult time.

6.3.2 Cllr Durkin did not put forward any mitigation on his behalf. However, the Tribunal took into account the limited submissions of Mr Vaughan on the aggravating features and concluded that Cllr Durkin had not made the allegations for personal or political gain and there was no dishonesty on the part of Cllr Durkin. The Panel considered that Cllr Durkin was entitled to raise issues where he considered there was merit to them. However, the way in which he pursued those allegations in the face of the evidence and explanations given to him suggested that he had little insight into his conduct and the Tribunal were concerned that such conduct could be repeated. The Tribunal also took into account the general climate of mistrust between officers and Councillors in Anglesey at the time the conduct took place and considered the matter against that background.

6.3.3 The Tribunal were concerned that despite a warning from the Welsh Government Minister, Carl Sargeant AM, in February 2010 about the damaging effect of such conduct, Cllr Durkin persisted with his behaviour.

6.3.4 The Tribunal noted that Cllr Durkin had, on 5 July 2007, been found by the Isle of Anglesey County Council's Standards Committee to have failed to comply with the code of conduct of Llanfair Mathafarn Eithaf Community Council for which he was censured. The Tribunal were concerned to note this previous breach and were not confident that in future Cllr Durkin would not again behave in such a way so as to breach the member code of conduct.

6.3.5 The Tribunal considered the indicative sanctions guidance and the factors applicable to this case. The Tribunal considered that to take no action would not be appropriate in this case given the number of breaches found and the nature of those breaches. The Tribunal considered that a higher sanction was required to maintain public confidence in democracy. The Tribunal considered that the case fell within the range of matters where a suspension would be appropriate. However, the Tribunal were concerned that the behaviour could be repeated. The Tribunal considered whether a disqualification was appropriate in these circumstances but on balance concluded that this was disproportionate. The Tribunal were satisfied that a suspension was the most appropriate and proportionate sanction but concluded that the higher end of the suspension sanction was the starting point. The Tribunal took the view that the behaviour of Cllr Durkin was a serious failing and had caused significant upset to Miss Ball. The Tribunal considered that the period of suspension should be long enough to reflect the nature of the breaches found.

6.3.6 The Case Tribunal concluded by unanimous decision that Cllr Durkin should be suspended from acting as a member of the Isle of Anglesey County Council for a period of 12 months or, if shorter, the remainder of his term of office, with effect from 17 May 2012.

6.3.7 The Council and its Standards Committee are notified accordingly.

6.3.8 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed.....
Helen Cole
Chairperson of the Case Tribunal

Date...5 July 2012.....

Andrew Bellamy
Panel Member

Emma Boothroyd
Panel Member