

WHISTLEBLOWING INVESTIGATION
ON BEHALF OF
POWYS COUNTY COUNCIL
AND THE GOVERNING BODY OF LLANFYLLIN HIGH SCHOOL
BY JONATHAN WALTERS

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SECTION 1

THE INDEPENDENT INVESTIGATOR

- 1.1 My name is Jonathan Walters. I am a practising barrister having been called to the Bar in 1984. I am based in Swansea.
- 1.2 I was appointed as the independent investigator by Powys County Council in November 2016.
- 1.3 I have prepared this report which sets out the evidence I have obtained and the conclusions I have made in accordance with the terms of my instruction.

SECTION 2

THE BACKGROUND TO THE INVESTIGATION

- 2.1 On or about the 29th October 2016 Powys County Council (the council) received a written complaint about a number of matters concerning the governance of Llanfyllin High School (the school).
- 2.2 As a result of that complaint the solicitor to the council shared the fact that a complaint had been made with the then [REDACTED] and it was jointly decided by the [REDACTED] and the council that an investigation of the concerns should be conducted by an independent person under the provisions of the school's and the council's Whistleblowing Policies.
- 2.3 As a result of the above, I have been asked to investigate the concerns and prepare a written report of my findings. Accordingly, I have investigated the matter and prepared this report in accordance with the Terms of Reference.
- 2.4 At this juncture I wish to set out a few background matters to give some context to the report. The matters should be borne in mind when considering my findings and recommendations.
- 2.5 In September 2015 [REDACTED] became [REDACTED] upon the earlier retirement/resignation of the [REDACTED]. In late 2015 and early 2016 the school was in complete turmoil as a consequence of the disclosure that it had been in breach of the council's Scheme for the Financing of Schools (the Scheme). The consequences for the school of its breach were, at one

time, considered to be dire. I was appointed to conduct an investigation into the breach of the Scheme.

- 2.6 An ESTYN inspection of the school occurred in the later winter of 2016 and the conclusions of the report were particularly unfavourable leading to a need to undertake serious work of improvement.
- 2.7 Prior to my report being published [REDACTED], the then [REDACTED] [REDACTED] of the school resigned for personal reasons. Mr. Darren Mayor, an LEA governor took over the mantle for a short period.
- 2.8 In May 2016 I published the report of my investigation. As a result the council took action against the LEA governors on the governing body including Mr. Mayor which led to their suspension from the governing body. [REDACTED] stepped in to become the [REDACTED]. The LEA governors remained suspended for almost the whole of the autumn term of 2016. Upon reinstatement, Mr. Mayor became the chair of governors in December 2016 a role which he currently occupies.
- 2.9 The academic results of the school in the summer public examinations were a lot worse than had been anticipated leading to further difficulties for the school.
- 2.10 At the end of the summer term of 2016 [REDACTED] who had been the school's [REDACTED] left the school to take up another appointment at a school in [REDACTED]. The governing body decided to recruit another [REDACTED] [REDACTED] but instead the [REDACTED] decided that a new financial officer should be appointed to commence work in the autumn term.

2.11 During the autumn term the Mr. Mayor, the former chair of governors was reappointed to the governing body as a community governor. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.12 I understand the school is now very close to being placed into special measures.

SECTION 3

THE TERMS OF REFERENCE

3.1 These are the Terms of Reference upon which I have acted.

TERMS OF REFERENCE

1. The Governing Body of Llanfyllin High School and Powys County Council jointly appoint Mr. Jonathan Walters, barrister (the independent investigator) to undertake a non-disciplinary investigation into concerns raised on the 29th October 2016 about the governance of Llanfyllin High School.
2. In so far as is practicable the investigating officer will undertake the independent investigation with reference to the whistleblowing policies of Llanfyllin High School and Powys County Council.
3. The independent investigator will interview such witnesses as he deems appropriate and necessary for the purposes of the investigation.
4. The independent investigator will prepare a report for the Chair of the Governing Body of Llanfyllin High School and Powys County Council setting out his findings and conclusions and will recommend whether any further action is required to be taken by either the Governing Body and/or Powys County Council.
5. It is expected that the investigation report will be completed and provided as aforesaid by the 21st December 2016 subject always to any necessary extensions from time to time as agreed with the solicitor to Powys County Council.

SECTION 4

METHODOLOGY

- 4.1 In advance of the taking of oral evidence I was provided with the Terms of Reference. I also asked [REDACTED] to provide me with a number of documents concerning the governance of the school and its academic performance which he duly provided.
- 4.2 Clearly, the first priority was to interview the person who had raised concerns. That individual wished to retain their anonymity albeit their identity is obviously known to me and the solicitor to the council. I considered that request to be entirely reasonable and understandable and one within the spirit of the Whistleblowing Policies. I shall henceforth refer to the whistleblower as 'WB' in order to avoid revealing their identity. Also, I will not make reference to the gender of WB in this report.
- 4.3 I met with WB on two occasions having previously set out in writing what I understood was the basis of the complaint being made. At the first and second meetings I asked WB questions about the matters which I had identified in order to obtain evidence. I typed the answers given and ultimately submitted the drafts to WB for amendment and/or approval which were duly returned to me amended as required. I was also assisted by WB providing helpful additional written evidence to me in between the two meetings. Having considered that written evidence I divined the issues and concerns being raised by WB into a single document which I shall refer to as the 'Particulars of Complaint'. After obtaining WB's approval as to the accuracy of the document I then shared the same with such members of the governing body of the school who wished to provide me with evidence relevant to the investigation. I was also provided with a substantial amount of documentation by WB which appears in the bundle of documents attached to this report.

- 4.4. Initially, it had been my intention to interview each and every potential witness and to type out their answers to the specific matters raised in the Particulars of Complaint but it became apparent to me before I embarked on that process that in order to do so I would need to spend a considerable amount of time interviewing the witnesses in what would have been an overly laborious process. Accordingly, having provided each witness with the Particulars of Complaint I invited them to send to me their written responses for consideration. The exceptions to this process were in regard to [REDACTED] and [REDACTED] [REDACTED] of the council. I asked both of them written questions which were answered in writing.
- 4.5 The decision as to who to provide the Particulars of Complaint was mine alone albeit I did not refuse any request. One individual governor had intimated a desire to be interviewed but, notwithstanding the provision of the Particulars of Complaint and chasing emails by me that individual did not respond further. Another governor enquired about providing information but ultimately did not do so. I also asked the [REDACTED] whether [REDACTED] would be prepared to be interviewed notwithstanding his [REDACTED] but there was a negative response to that enquiry. I also considered whether it would be necessary to interview [REDACTED]. I considered the responses of the governors to the contentions of WB and as there were no factual challenges to the matters directly involving [REDACTED] I decided it was not necessary or proportionate to interview him. I consider my duty is to conduct a proportionate investigation. In considering who I wished to interview, therefore, I decided to only interview those people who I believed could realistically offer evidence of relevance to the investigation.
- 4.6 A few of the witnesses who provided responses to me have provided me with additional documentation which I have also included in the documentary bundle.

4.7 I now set out the names of the persons who provided a written response to the Particulars of Complaint. Their evidence is in bundle A.

(1) Darren Mayor

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.8 In addition to the above I asked questions of two officers of the council namely [REDACTED] and [REDACTED] on discrete points. The evidence of all of the witnesses is contained in a separate bundle.

4.9 As to the documentation the bundle has been paginated and where I have referred to a document in this report I have included the page reference in brackets and in bold type as follows **(B.15)**.

CONTENTS OF THE BUNDLES

- Bundle A the witness evidence
- Bundle B contains the documents

THE STANDARD OF PROOF WHICH HAS BEEN APPLIED

4.10 Many of the facts in this investigation have proved to be uncontroversial. Where there is a material dispute of fact between witnesses I am mindful that I am applying the civil standard of proof to my fact finding namely the balance of probabilities. Of course, this is an inquisitorial and not an adversarial process

and the evidence of witnesses has not been tested and I have to bear that in mind when reaching my conclusions.

4.11 I also remind myself that it is wholly unnecessary for me to make findings of fact on each and every issue raised by WB. I must focus on the findings of fact which are relevant to the disclosures which can properly be categorised as whistleblowing disclosures.

SECTION 5

THE RELEVANT LEGAL PRINCIPLES AND THEIR APPLICATION TO THE DISCLOSURES

What is whistleblowing?

- 5.1 'Whistleblowing' is a vernacular term which is not to be found in any U.K. legislation. A worker makes a 'whistleblowing' disclosure if they make a 'protected disclosure'. A protected disclosure is defined in Part IVA of the Employment Rights Act 1996 (ERA 1996). S.43A states as follows:

"in this Act a protected disclosure means a qualifying disclosure (as defined by section 43B which is made by a worker in accordance with any of sections 43C to 43H."

The necessary ingredients of a qualifying disclosure

- 5.2 S.43B ERA 1996 deals with the *definition* of a qualifying disclosure as follows:

"43B

*(1) In this Part a "qualifying disclosure" means any **disclosure of information** which, in the **reasonable belief of the worker** making the disclosure **is made in the public interest and tends to show one or more of the following...**"*

- (a) That a criminal offence has been committed is being committed or is likely to be committed.*
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.*
- (c) That a miscarriage of justice has occurred is occurring or is likely to occur.*

- (d) That the health or safety of any individual has been, is being, or is likely to be endangered.*
- (e) That the environment has been, is being, or is likely to be damaged or*
- (f) That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

The protected disclosure

- 5.3 If a disclosure is a qualifying disclosure as set out above the disclosure is a protected disclosure. There is no longer any requirement that the disclosure should be made in good faith i.e. not for improper motives.

Detriment

- 5.4 If a worker makes a protected disclosure they are protected from victimisation by virtue of s.47B ERA 1996. Victimising a worker by inflicting a detriment upon them is actionable in the Employment Tribunal. The detriment may be imposed either by the employer or a co-worker.

Who is protected?

- 5.5. It is appreciated that the protection under the legislation is afforded to workers only. The term is given a fairly wide meaning by reason of s.43K of ERA 1996. It is not necessary for me to consider whether WB meets the statutory definition of worker as irrespective of whether or not the statutory protection is afforded to the individual it is right and proper that when concerns are raised about the governance of a maintained school an investigation of those complaints by the local authority should ensue and the individual making the complaints should not be subjected to detrimental treatment because they have complained.

The type of disclosures which are protected

5.6 It will no doubt be appreciated that not every complaint made by an individual constitutes a whistleblowing complaint. The policies of both the council and the school are concerned only with whistleblowing complaints. The council's policy states this:

"A qualifying or protected disclosure is a disclosure of information made in the public interest which in the reasonable belief of the person making the disclosure tends to show one or more of the following:-

- illegal practices (for example, a criminal offence).

- a failure to comply with a legal obligation.

- the health and safety of an individual, whether this is a member of the public or staff being endangered.

- damage to the environment.

- miscarriage of justice.

- deliberate concealment of any of the above."

5.7 I have also been provided with a Model Whistleblowing Policy for Schools which I understand the school follows. It has a rather more extensive list of potential categories of disclosure but, in reality, its ambit is no wider than the council's policy. I assume that it has been adopted by the school. Even if it has not then a complaint does not cease to be a whistleblowing complaint because the employer does not have a policy in situ.

Reasonableness of belief

5.8 It is no doubt appreciated that the legislation deals with the protection from detriment of those who make protected disclosures. An entitlement to protection is relatively easily obtained: a worker obtains protection from detriment even if their complaint is wrong: provided they meet the statutory test under s.43B ERA 1996 they are protected.

5.9 However, in the context of a these complaints I am of the opinion that my task is not to consider whether WB simply held a reasonable belief in what was alleged but whether the allegations are likely to be true or not and, further, whether they fall within one of the categories of whistleblowing disclosure identified by the Whistleblowing Policy of the council which mirrors the categories of qualifying disclosure set out in the ERA 1996. That is because to simply consider whether WB held a reasonable belief or not is a rather pointless exercise when there are allegations of poor governance which WB seeks to have remedied. In my judgment, individuals make formal complaints either to obtain personal redress or to rectify wider failings and if those matters are not addressed by means of an investigation then there is little point in making the complaint.

Legal obligation

5.10 In so far as the whistleblowing complaint raises concerns about the conduct of employees then the fact is that all employees are subject to terms and conditions of employment by virtue of their contracts of employment with the council. Every contract of employment establishes a raft of express legal obligations on the part of the employee. In addition to express terms there are implied into all contract of employment the following terms:

- a. that the employee will comply with all lawful and reasonable instructions of the employer
- b. that the employee will perform their duties with reasonable care and skill
- c. that the employee will not behave in a manner calculated to, or which is likely to, destroy or serious damage the trust and confidence that the employer has in the employee.

- 5.11 Both express terms and implied terms create legal obligations and, accordingly, I have to consider whether any of the concerns raised amount to allegations of breach of contract by the employees concerned.
- 5.12 For the purpose of this investigation, therefore, I have considered whether all of the alleged complaints fit into one of the categories of qualifying disclosure as set out in s.43B of ERA 1996. Having conducted that exercise I conclude that with only one exception the disclosures concern only the alleged breach of a legal obligation as per section 43B(1)(b) ERA 1996. In relation to allegation 17, I consider that it involves an allegation of the commission of a criminal offence concerning dishonesty under section 43B(1)(a) and also of a breach of legal obligation under s.43B(1)(b).
- 5.13 In the context of the governing body both it and its members are under a duty to comply with all the legislation which sets out the functions and obligations of school governing bodies. In that regard I have considered the provisions of The School Government (Terms of Reference) (Wales) Regulations 2000 (hereinafter referred to as the 2000 Regulations) and The Government of Maintained Schools (Wales) Regulations 2005 (hereinafter referred to as the 2005 Regulations).

The public interest

- 5.14 Of course, there is an additional matter which I have to consider in the context of concerns being raised and that is whether WB held a reasonable belief that it was in the public interest to raise the concerns.
- 5.15 I can take this matter fairly shortly: I am entirely satisfied that it was in the public interest that these matters were raised. It is in the public interest that schools are governed in accordance with statutory obligations and for the benefit of the pupils, staff and the community as whole. It is equally in the public interest

that individuals who work in schools are held accountable in order to ensure that the school's performance is, at the very least, satisfactory.

SECTION 6

THE FINDINGS AND CONCLUSIONS ON THE ALLEGATIONS

- 6.1 I do not consider it necessary to rehearse in any detail the evidence that I have obtained. The witness evidence is contained in Bundle A. I have not appended the evidence which I obtained from WB in order to protect WB's identity. Suffice it to say that the Particulars of Complaint sets out the relevant contentions from WB.
- 6.2 The most efficient way of setting out the findings of fact is to set out the contentions contained in the Particulars of Complaint in bold type and to make the findings of fact in relation to each one. I shall also provide my conclusions in respect of each one referring, where necessary, to the evidence I have obtained.

ALLEGATION 1

To consider whether the Governing Body of Llanfyllin High School is complying with its administrative, legislative and financial obligations and responsibilities.

PARTICULARS

- a. **Before the 2015 AGM there were no Terms of Reference (TORs). Decisions taken as a result of responsibilities being delegated to the chair or a committee must be reported back to the Governing Body. This has not been the practise. TORs were prepared using Governor Wales templates and distributed and accepted. For the committees these were supposed to be reviewed at the last committee meeting of the academic year and proposed to the Governing Body (GB), so that when the committees reorganised at the subsequent AGM they**

would have a starting point. The finance committee did this, including TORs for the committee chair. The [REDACTED] [REDACTED] recently denied all knowledge of these. As the GB discussed these on more than one occasion and the rest of the committee would have known, it is inconceivable that [REDACTED] did not know. Therefore, it appears that the curriculum committee has been operating without any TORs. They did not review them, even although they read the finance committee report, which specifically noted the review. The GB voted and accepted the reviewed TORs for the finance committee.

FINDINGS OF FACT AND CONCLUSIONS

6.3 I am satisfied that whenever functions of the governing body are delegated then Terms of Reference should be drawn up: this is a legal requirement under regulation 54(2) of the 2005 Regulations. [REDACTED] who is the [REDACTED] [REDACTED] confirms that there were no Terms of Reference for that committee. The evidence, therefore, supports the contention of WB that there were no Terms of Reference drawn up for the curriculum committee. The evidence provided by [REDACTED] is that there had not been a meeting of the curriculum committee since May 19th 2016 and in that sense it has not in fact operated at all. The Terms of Reference for a committee should be drawn up by the governing body and not by the committee see regulation 54(2) above. It is not necessary for me to determine who was personally responsible for drawing up the Terms of Reference or why such a document was not provided as they are required as a matter of law. In respect of the failure to devise Terms of Reference for the curriculum committee, **I uphold the whistleblowing complaint.**

b. In Autumn 2015 [REDACTED] tenure as a parent governor expired, along with 2 others. There were 4 candidates for 3 positions. On or about the day that ballot papers were due to be distributed to parents, [REDACTED] asked [REDACTED] about the election [REDACTED] responded that they were going to do some jiggery pokery so that [REDACTED] would fill a

vacant LA governor post; therefore, there'd be no need for an election of parent governors. At the subsequent AGM ██████████ ██████ proposed ██████ in ██████ absence, ██████████ a post ██████ held previously. ██████ was specifically asked if we had been notified by PCC in writing that ██████ had been appointed. ██████ assured us that we had. It was subsequently found out that this was not true. Therefore, a further election was held. By this second election both the chair's and vice-chair's TORs had been ratified by the governing body and were made available for the second election. ██████ was elected. Immediately after ██████ election ██████ declared that ██████ was unable to fulfil the TOR requirement to produce a List of Actions during the meeting.

FINDINGS OF FACT AND CONCLUSIONS

- 6.4 I am satisfied that save in two respects WB's allegation is factually correct. WB's evidence is to an extent corroborated by ██████████. I also rely upon the evidence of ██████████ for an explanation of the position. It is unnecessary for me to reach conclusions on the exact circumstances of the production of the List of Actions by ██████████ (although I note the explanations given by a number of people) as that could not be categorised as a whistleblowing disclosure within section 43B(1)(b) ERA 1996. As to whether ██████████ misled the governing body, ██████ asserts that at the time ██████ believed ██████ had conveyed the correct information and I cannot find that ██████ deliberately lied. Therefore, there was no breach of regulation 3(3) of the 2000 Regulations which I believe requires the governing body and, by implication, its members to act with integrity.
- 6.5 As to the complaint that there was some form of impropriety concerning the appointment of ██████████ to the governing body no doubt fuelled by the use of the words 'jiggery pokery' I cannot, however, discern any breach of legal obligation on the facts as alleged by WB. Furthermore, I am satisfied with the explanation provided by ██████████ that a pragmatic and reasonable

solution to the matter was employed. Therefore, **I do not uphold the whistleblowing complaint.**

- c. After [REDACTED] resigned in May 2016 the clerk was asked to circulate the TORs before the election of a new chair, which [REDACTED] did. DM was elected on these TORs. On 5 December 2016, due to the expiry of Darren Mayor's (DM) tenure as a governor, a new election was required. He stood uncontested. After the election he stated that he wouldn't sign the TORs because he had never read them [REDACTED] is contesting them both on the grounds of them being too arduous, in particular the [REDACTED] reporting back to the GB.

FINDINGS OF FACT AND CONCLUSIONS

- 6.6 The bulk of this allegation post-dates the whistleblowing complaint and is not within my Terms of Reference but I permitted WB to give evidence about it and for the witnesses to be asked about it as it considered it might inform my findings on other issues. The part of the complaint which predates the written whistleblowing complaint does not contain any allegation of impropriety at all and cannot be categorised as any form of complaint. For the sake of completeness, however, having considered the matter it appears to me that the fact that the [REDACTED] would not sign the Terms of Reference which had been presented to him cannot amount to a whistleblowing allegation. Had the allegation been that the [REDACTED] was purporting to operate the governing body without any Terms of Reference at all then that would have been a matter of legitimate concern. What is important is that there are Terms of Reference which are agreed by the governing body and I have already found that in relation to the curriculum committee there was no such document at the time that the complaint was made. I note from the evidence of Mr. Darren Mayor, which I accept, that he recognises the need for Terms of Reference and he intends that the governing body utilise Governors Wales templates. As a consequence of the above, **I do not uphold the whistleblowing complaint.**

- d. At the October 2016 meeting a committee was put together to meet with the primary school to discuss collaboration. When asked for TORs the governing body was told that this was not necessary because it was only a “fact finding” discussion. That committee has now decided to write to the CEO of PCC, on behalf of the two GBs to inform him of the two schools’ intentions to explore federation.

FINDINGS OF FACT AND CONCLUSIONS

6.7 The evidence is clear on this and I find that the WB is factually correct but that the decision to write to the CEO was taken at the meeting of the 6th December 2016 and the notes of the meeting confirm that fact. [B.253] Thus, consideration of the decision to write to the CEO at that point is outside my Terms of Reference. However, the issue is whether there needed to be Terms of Reference for the fact finding meeting itself. In my judgment Terms of Reference were not required for a fact finding meeting. **I do not uphold the whistleblowing complaint.**

- e. On 31 October DM's term as a governor expired. As previously explained all terms of office were discussed at the last meeting of the academic year, specifically the ones due to expire. A table of names and expiry dates had been supplied by the clerk. It is difficult to imagine how the governing body and [REDACTED] were so aware of the other terms that had expired but not the LA governors. The 3 LA governors must have known that their terms had expired because they were in discussions with PCC to be reappointed after their suspensions. LR informed the governing body that, in consultation with [REDACTED] we did not have to elect a chair. [REDACTED] stated that there was not enough time for governors to consider who to nominate (we had at least 5 working days plus a weekend). All of the meetings since September have been EGMs, which allow for late notice of business and papers. This is another example of the governing body not complying with the legislation.

FINDINGS OF FACT AND CONCLUSIONS

6.8 Although it is not entirely clear on the face of the complaint I accept that this matter concerns the late election of the [REDACTED]. The election of a chair of governors is provided for by regulation 39 of the 2005 Regulations which provides that a chair must be elected annually. Mr. Mayor was suspended from the beginning of the autumn term 2016 and could not hold the office of chair of governors whilst he was not a member of the governing body see regulation 39(5). Between September and the date of the whistleblowing complaint no election had taken place. As a matter of law the governing body should have held an election for the chair of governors long before it in fact ultimately did. By virtue of regulation 39(6) it is clear that the election should have been held at the first meeting after the vacancy arose. That vacancy arose when Mr. Mayor was suspended. The complaint made by WB is based on a valid interpretation of the legislation. I should add these remarks: the fact that a chair was not elected does not invalidate any of the proceedings of the governing body see regulation 46(5) of the Regulations. Furthermore, whilst, as a governing body it is legitimate to take advice from both Governors Wales and the council on the legal obligations of the governing body, the fact is that the governing body must adhere to legislation. In all the circumstances I consider that the failure to elect a chair by the date of the whistleblowing complaint was a breach of a legal obligation and, therefore, **I uphold the whistleblowing complaint.**

- f. **On 5 December 2016 an AGM was held. There was a need to renew the HT's delegated financial responsibilities, as per the PCC Scheme. The specific financial limits were presented. However, the chair was unaware of the other delegated powers that required approval and these had to be provided from the previous year's minutes.**

FINDINGS OF FACT AND CONCLUSIONS

6.9 This matter relates to a meeting which occurred after the date of the whistleblowing complaint. It does not in fact assist me in reaching any

conclusions on those matters which are within my remit. In any event it would not be a whistleblowing complaint. At its worst it suggests that the chair needed to be reminded of all the delegated powers and that does not amount to a legitimate whistleblowing complaint. Therefore, **I do not uphold the whistleblowing complaint.**

~~g. **The school is required to have a financial policy that abides by the PCC Scheme and it should be reviewed annually. In 2015 it had not been reviewed since 2008. [REDACTED] instigated an immediate review followed by an end of year review, in the Summer Term. However, because of the [REDACTED] decision to change the business manager role (BM) to a finance officer role (FO) the recommendation to the governing body by the committee had to be withdrawn, as indicated in the committee chair's report. The report presented asked that the outgoing BM review what he could before his post was disestablished and advised an audit review. Neither was done. Due to the new eFin System this has been further hindered, with the excuse that it was not known how the system worked. Neither the SLT nor the finance staff made any effort to seek advice from PCC; the matter was finally resolved after the committee emailed [REDACTED], who passed it on to [REDACTED]. The matter was then resolved. This should have happened much sooner.**~~

FINDINGS OF FACT AND CONCLUSIONS

6.10 This allegation straddles the date of the whistleblowing complaint but the earlier parts clearly pre-date it. It is a complaint that the school failed to carry out an audit review for a considerable period of time. Clearly, the school had a financial policy and I note that the minutes of the governors meeting of the 29th June 2016 refer to [REDACTED] advocating an "internal audit

review as the last audit was in 2012.”[B.40] I also note that there was no requirement in the council’s Scheme for such a review to be undertaken and, therefore, there was no breach of any legal obligation by the governing body in failing to carry out a review. At the meeting referred to above the views of the [REDACTED] are minuted as expressing a preference to have the new finance officer and e-financial system in place first. The action was that [REDACTED] *was to seek further advice and to liaise with members.”* I am prepared to accept that on the evidence I have read the financial policy was not annually reviewed for a considerable period of time. At the very least the [REDACTED] and the [REDACTED] should have given consideration to the need to do so. Implied into their contracts of employment is a duty to act with reasonable care and skill. In my judgment the failure to ensure a review was carried out indicates that they both fell below the standards required of them and that they were in breach of a legal obligation namely the implied term in their contracts of employment.

- 6.11 Further, the process of resolving the issue was a slow one and it was not assisted by the fact that the [REDACTED] left the school at the end of the summer term of 2016. The suggestion is that there was a failure on his part to progress the issue. The evidence suggests that once apprised of the matter the governing body was content to allow the matter to be dealt with by the incoming financial officer and in such circumstances there can be no breach of contract by either the [REDACTED] or the [REDACTED] post June 2016. Of course, I have taken evidence about the fractious nature of the relationship between the [REDACTED] and the [REDACTED] and in my judgment that is likely to have had a bearing on the actions of the [REDACTED] albeit that in itself would not have excused a failure to obey a reasonable instruction. I accept that ultimately the matter was resolved by the finance committee contacting the council but I do not accept that a failure to do so by members of the SLT or the [REDACTED] in the autumn term amounted to a breach of their contracts of employment as the governing body

condoned their actions. For the reasons already given, I **uphold the whistleblowing complaint.**

- h. **In September 2016 the school had lost the HT and BM within 18 months and had not carried out an audit review, as requested and recommended. This was addressed on more than one occasion and directly to the [REDACTED] during a meeting; however, no response was given.**

FINDINGS OF FACT AND CONCLUSIONS

6.12 The lack of an audit review is not disputed by any witness. Clearly, as I have found, it would have been good practice to perform an audit review prior to June 2016 and it should have been undertaken in accordance with a reasonable instruction to do so thereafter. The failure to do so post-June 2016 would have amounted to a breach of contract and, therefore, a breach of legal obligation if the proposals of the [REDACTED] were not agreed to by the governing body. The fact that the [REDACTED] was asked about the matter and did not respond does not amount to an allegation of a breach of legal obligation in itself. However, I accept the evidence of [REDACTED] corroborated as it is by the minutes of the meeting that the matter was discussed during the meeting on June 29th 2016 [B.40] and the [REDACTED] noted a preference to have the new finance officer and e-Fin system in place before the audit was carried out. It was noted that the [REDACTED] would seek further advice and liaise with members. That evidence is suggestive of acquiescence (as I have already found) and that there was no culpable failure to act on the instruction originally envisaged by the governing body. Therefore, **I do not uphold the whistleblowing complaint.**

- i. **The post of [REDACTED] is an administrative one. However, he has been relied on as a [REDACTED] almost since the beginning. Notwithstanding this, the previous [REDACTED] could only have handed over his managerial responsibilities to the [REDACTED]. The [REDACTED] has indicated that the**

handover was virtually non-existent. Due to this the whole term has been a 'catch up' situation. The extraordinary committee meeting called in September was predominantly called to discuss the plan that had to be put to PCC to recover the projected deficit. This plan had to put to PCC by the end of September. By the time the meeting was called the school had neither made a plan for the projected deficit nor the policy review.

FINDINGS OF FACT AND CONCLUSIONS

- 6.13 The evidence of WB is disputed and the evidence I have obtained conflicts as to the state of readiness of the governing body to comply with its obligation. Witnesses have provided evidence about the background to this matter and the extraordinary meeting which occurred on the 23rd September 2016. Explanations are provided for the problem with the budget which had arisen. It is not necessary for me to attempt to reach conclusions as to why the plan was not in place until September 2016 although it clearly ought to have been produced earlier. WB does recognise that the lack of a handover between the [REDACTED] and the [REDACTED] exacerbated the problem being experienced by the school at that time. I note that the action required at the meeting on the 23rd September 2016 was that the [REDACTED] and the [REDACTED] were to produce an updated budget taking account of the resignation of the [REDACTED] in order to provide it to the council at the end of September. I also note that the actions also required [REDACTED] and the [REDACTED] to provide a covering letter explaining there would be a deficit in attempting to provide the current curriculum unless there was a change in funding. [B.43] The evidence of WB, however, is that the [REDACTED] asserted that no plan was needed to avoid the deficit because of the resignation of his [REDACTED]. and WB accepted that that was the case. On the evidence I have been provided, therefore, the school had complied with its obligations by the end of

September 2016 in that no plan was required at that time and, therefore, **I do not uphold the whistleblowing complaint.**

- j. **The finance committee met in September 2016 and decided that with the financial issues on the horizon the curriculum committee needed to feedback the academic requirement so that a sound financial plan could be developed and put to PCC. This clear action was communicated to the GB and curriculum committee via the chair's report, which is the report that the [REDACTED] chair was reluctant to have discussed in October, and carried it over until November. In November when it was decided to have the AGM on 5 December the [REDACTED] directed all committees to meet before then. Neither the curriculum committee nor the wellbeing committee met; both citing staff workload as the excuse. Even with a depleted committee some effort should have been made to meet.**

FINDINGS OF FACT AND CONCLUSIONS

- 6.14 I do not accept that the complaint of WB amounts to a whistleblowing complaint within the meaning of the policies or the legislation even taken at its highest. In effect, the complaint refers to the fact that there was a degree of lethargy in dealing with important issues which is delaying the creation of a financial plan and no more. Even if I am wrong about that then I accept the evidence of [REDACTED] that she was not reluctant to have the finance report discussed in the October meeting even though that is the perception of WB. I recognise the fact that the report was on the agenda for the meeting which is support for my finding. I also accept the evidence of [REDACTED] as to the fact that a number of items took longer than expected to discuss. In fact, an additional item was added i.e. the presentation by [REDACTED]. Of course, thereafter the contentions are not within my Terms of Reference but I note the evidence of [REDACTED] and [REDACTED] in connection with them. I have read the explanations provided to

me and I am satisfied that they provide a reasonable explanation for the facts alleged by WB. **I do not uphold the whistleblowing complaint.**

- k. **The GB delegates the recruitment of staff to the HT. The finance committee is responsible for the staffing structure, establishment and issues. The GB approved the need to appoint a BM. The [REDACTED] changed this to an FO. At the finance committee meeting in September it was decided to not replace the [REDACTED]. It was subsequently announced by the [REDACTED] that he had replaced his [REDACTED]. Without discussion with the committee, the [REDACTED] announced that he was establishing a new teaching post to cover absence. In December the now [REDACTED] placed an advert for 5 zero hours cover supervisors, the GB found out about this during the 5 December meeting. His excuse was that things had moved on. The GB should not delegate the responsibility of permanently varying the staffing establishment and nothing suggests that this has been done.**

FINDINGS OF FACT AND CONCLUSIONS

- 6.15 I find the complaint of WB to be factually correct. There is no evidence to gainsay it. It concerns the fact that the decision of the governing body to replace a business manager was unilaterally altered. Such a decision would put the head teacher in breach of his contract of employment in that he had failed to comply with the instruction of the governing body and/or it constituted a breach of the implied duty of trust and confidence. I note that very little objection seems to have been made at the time of this change of roles but I find that although the governing body subsequently condoned what had occurred nevertheless there was a breach of legal obligation in the first instance.

6.16 However, I am concerned only with the decisions of the [REDACTED] rather than the [REDACTED] as matters post-October 2016 are not within my Terms of Reference. I find that it is for the governing body to set the parameters of the staffing establishment of the school. It is not for the head teacher to change that in such a way that it impacts on the budget. If there is no budgetary impact I am satisfied that it is within the remit of a head teacher to make appointments which he or she considers necessary to fulfil the objectives of the school. In light of the findings at paragraph 6.15 **I uphold the whistleblowing complaint**

ALLEGATION 2

To consider whether the governing body has properly held the head teacher and staff to account in respect of recent academic results.

PARTICULARS

- a. **The GB has not been given any real analysis of the poor maths results. The results were touched upon during [REDACTED] presentation at the GB meeting in October but not to any great degree. The [REDACTED] did state that there were robust plans in place; however, he was unable to quantify these. The GB has been informed that English was poor but not how poor or what will be done, other than what has been done and not worked. It seems to be a common thread that only the symptoms are dealt with i.e. poor performance by pupils, rather than the cause being dealt with i.e. poor provision of learning (teaching). There has not been a meaningful discussion about why the science results are good and how this is being effectively shared. The governing body has no knowledge of the results of the non-core subjects. The only data given has been from PCC and ERW.**

FINDINGS OF FACT AND CONCLUSIONS

6.17 The evidence of WB was quite precise. None of the governors who have given evidence have fully contradicted that evidence although I accept that [REDACTED] and [REDACTED] have given some explanations of how matters were being addressed. In my judgment the duty of the governing body as per regulation 5 of the 2000 Regulations is, inter alia, to hold the head teacher and SLT to account for poor results. If it does not do so then it fails to monitor and evaluate the progress of the school. I do not doubt that there has been discussion of the reasons for poor results but the fact that the curriculum committee has not met is an indication of the fact that no meaningful attempt had been made to address the issues fully by the date of the whistleblowing complaint. Although I note the evidence from Mr. Mayor who describes the steps that are being taken by him as chair to address the issue I am satisfied that the governing body is in breach of its legal obligation as alleged. **I uphold the whistleblowing complaint.**

b. **The ERW targets document was given to show an improvement in attainment year on year. However, it is apparent that because of the gender differential these don't make sense. The middle year group has a significantly different gender profile and, if this is factored in, the results become much more variable. This was mentioned during a meeting but no satisfactory answer was given. In November 2016 the GB divided responsibility for the Estyn recommendations between the committees. However, there has been no opportunity for these to be discussed, due to a lack of meetings.**

FINDINGS OF FACT AND CONCLUSIONS

6.18 The evidence of WB is again quite specific albeit the particulars limit the allegation considerably. None of the governors who have given evidence have contradicted that evidence in any meaningful sense. I accept, therefore, that the

evidence of WB is factually accurate to the 29th October 2016. I do not accept, however, that an “unsatisfactory” answer to an issue of itself renders anyone in breach of a legal obligation i.e. their contract of employment. Therefore, **I do not uphold this part of the whistleblowing complaint.**

ALLEGATION 3

To consider whether the governing body has set aims and objectives in order to improve standards of attainment at the school.

PARTICULARS

Legislation requires the GB to set out the School’s aims and objectives. ■ had been pushing for this during his first tenure as community governor. A power point presentation was given on 19 October 2015. However, due to poor minuting and recollection the opportunity was lost to set these. The GB knew Estyn was coming and there was an action on the chair ■ and ■ to discuss and disseminate a proposal for discussion by the end of term, for final ratification before Estyn arrived. This was not done and the GB was given the aim decided by ■ & ■ during the next ■ report, just before Estyn arrived. The plan is just a strap line, which hasn't been achieved.

FINDINGS OF FACT AND CONCLUSIONS

- 6.19 The ‘particulars’ of this generalised complaint considerably narrows the focus of the investigation. It appears to be a somewhat historic allegation of a failure to adequately set the aims of the school prior to the Estyn inspection in February 2016. It is suggested this has not been achieved. In my judgment this allegation has not been addressed factually by those who have given evidence and there is, therefore, no dispute as to its factual content.

6.20 However, notwithstanding the wording of the complaint itself I have been provided with evidence to the effect that a Post Inspection Action Plan (PIAP) was drawn up and followed. I have been provided with a copy of the same. [157-188] I am informed that the PIAP was agreed between Estyn, the council and the governing body. I am also told that the school's aims, as well as how they intend to achieve them, are set out in The School Development Plan 2015-2017 entitled 'Our Five Bridges.' [127-156] I have been provided with a copy of the same. That plan precedes the inspection by a considerable margin. Whether or not it was adequate and whether or not it has been complied with are, in my judgment, irrelevant. I am only considering whether the governing body and/or the [REDACTED] [REDACTED] were in breach of a legal obligation in respect of failing to set the aims and objectives of the school. Clearly, there has been no breach in terms of publishing aims and objectives as I have seen the School Development Plan which meets the requirements of the legislation. It is simply impossible for me to determine whether the head teacher or other members of staff are in breach of their contracts of employment in light of the alleged failure to meet the aims created by the [REDACTED] and the [REDACTED] [REDACTED]. That would require an in depth analysis of the reasons for the alleged failures and an investigation of such complexity under these Terms of Reference is simply untenable and now, in light of the departure of the [REDACTED], wholly unjustified and disproportionate. Whatever the position prior to the Estyn inspection in terms of preparation for that inspection I am satisfied that the school had published aims and objectives both before the inspection and thereafter. Therefore, **I do not uphold the whistleblowing complaint.**

ALLEGATION 4

To consider whether the [REDACTED] and [REDACTED] have adequately shared information with the governing body on Powys County Council's VSS.

PARTICULARS

The VSS policy has not been shared and discussed by the governing body. This reticence to share information or manage the governing body is

repeated in the sharing of the Fair Funding consultation and the Finance Scheme consultation. On 9 November 2016 [REDACTED] and the [REDACTED] received these documents. On 14 November the [REDACTED] didn't know of their existence. They were forwarded to the finance committee on 14 November and published on HWB+ with the committee report for 5 December. [REDACTED] sent them to the clerk on 22 November asking them to be disseminated, which they were finally on 4 December.

FINDINGS OF FACT AND CONCLUSIONS

- 6.21 I am concerned only with the alleged failure to place the VSS scheme before the full governing body prior to the 29th October 2016. There is some conflicting evidence on this matter. However, I have read evidence from [REDACTED] that the information relating to VSS was circulated to all governors by [REDACTED] on 19th September 2016. She also indicated that the VSS was discussed by the finance committee on 23rd September 2016 as evidenced by Item 5 of the minutes. [B.45] I note the views of the finance committee as expressed in those minutes was that it was not felt that the school could participate in the first phase of the VSS. It was again considered by full governors on 9th November 2016 [B.60] having been carried over from 13th October 2016.
- 6.22 I have also read evidence from Mr. Darren Mayor that it was not considered necessary to debate the VSS as the school at that time could not countenance any further reductions in establishment size.
- 6.23 I find that WB is correct that the VSS was not debated by the full governing body prior to the 29th October 2016. It was certainly a matter brought before the governing body by the 9th November 2016. I conclude that whilst it would have been preferable for the governing body as a whole to have considered the VSS at an early stage so that it could decide whether or not the school should engage with the VSS that was, in my view, simply a matter of judgment by the [REDACTED] and [REDACTED] as to whether or not the VSS was likely to be relevant as

matters then stood. Even if that was a misjudgement it would fall well short of a failure to comply with a legal obligation when there was no legal obligation on the governing body to debate the VSS. Therefore, **I do not uphold the whistleblowing complaint.**

ALLEGATION 5

To consider whether the governing body is in breach of an obligation to discuss the said policy and accept its implementation.

PARTICULARS

PCC wanted all governing bodies to discuss the VSS document and make an informed decision whether to accept or reject it. This has not been done, only the finance committee has seen the document. Something of this importance is beyond the committee's remit.

FINDINGS OF FACT AND CONCLUSIONS

- 6.24 This is, to an extent, the same allegation but worded in a somewhat different manner and I repeat my findings above. For the sake of completeness, I observe that as the finance committee had seen the documentation: it was not being withheld improperly from governors. In any event it was eventually referred to at a subsequent meeting.
- 6.25 In addition, the evidence I have obtained from [REDACTED] of the council is that there was no direction issued by the council that any governing body had to consider VSS. It was an entirely voluntary scheme [REDACTED] has supplied me with the relevant communications. [B.198-203] There was, therefore, no legal obligation to debate the scheme. In any event, I have obtained the following evidence which I accept: the school teaching establishment has been reduced in recent years from over 70 to 50 members and because there had already been a

fairly dramatic reduction in the size of the establishment VSS would not be offered by the school and, therefore, it was not a relevant consideration. In any event, even had a direction been given by the council I do not consider that it would have had the effect of creating a legal obligation on the part of the governing body to consider it. **Therefore, I do not uphold the whistleblowing complaint.**

ALLEGATION 6

To consider whether Llanfyllin High School has a finance policy that is compatible with its electronic financial system.

PARTICULARS

Ever since PCC directed the school to move on to eFin, the need to update the finance policy was known. The GB knew that a revised policy needed to be prepared and asked that the [REDACTED] and [REDACTED] be tasked with this. At the beginning of the Autumn Term the [REDACTED] was working from the 2008 document, which he had been given in September.

FACTUAL FINDINGS AND CONCLUSIONS

- 6.26 The whistleblowing component of this complaint can only relate to the alleged failures of the [REDACTED] and the [REDACTED] to comply with an instruction to ensure that the school's finance policy was compatible with the council's eFin system. None of the responses I have received from the governors have contradicted this and nor is there any suggestion that no such instructions were given. Accordingly, I find that the evidence indicates that there was a breach of legal obligation by the [REDACTED] and the [REDACTED] to address this issue in a timely fashion. Reassuringly, the school is now putting in place a revised financial policy to meet the necessary requirements. Notwithstanding that fact, WB is correct in asserting a breach of legal obligation

to follow reasonable instructions given by the employer. Therefore, **I uphold the whistleblowing complaint.**

ALLEGATION 7

To consider whether the governing body has put in place an adequate system for the analysis of examination results.

PARTICULARS

There is a general misunderstanding by the governing body about its role in analysing data. Most governors simply accept data at face value and do not ask why or how the data results have come about. The governing body simply takes the information without challenge. Hence, it would appear that the ERW target setting form was simply populated to show a small but steady progress. However, when one looks at the gender differences it is impossible to justify the figures. This was not identified by the GB and the [REDACTED] could not supply an adequate explanation.

There was no analysis of the PCC data for all schools; otherwise this would have been presented to the governing body.

The [REDACTED] has spreadsheets which show current progress and projected outcomes; however, without sharing these, well in advance of meetings, it is impossible to analyse trends and issues in order to question the [REDACTED].

There appears to be no evidence to suggest that the curriculum committee analyses or question outcomes in any detail.

FINDINGS OF FACT AND CONCLUSIONS

6.27 This allegation amounts to a contention that the governing body has failed to 'grasp the nettle' when considering the poor performance of pupils as evidenced by the examination results from the summer of 2016. In my judgment it is the overall lack of analysis which is of importance and not the minutiae as set out in the complaint particulars. I do, however, accept the compelling evidence of [REDACTED] on this matter. I do not consider that there has been anything like the urgency required in order to address the academic shortcomings of the school. The reasons for this are, in my judgment, multi-factorial. On the evidence I have heard I conclude that the following factors are contributory:

- a. the failure on the part of the [REDACTED] to anticipate that the results would be worse than expected and to address issues as they were occurring. I conclude he was not expecting the results to be as poor as they were and that he was shocked by them
- b. the apparent 'silo mentality' of the [REDACTED]. This does not suggest that he was in denial about the problems at the school but that he appears to have been reluctant to be open and transparent about the full extent of them. There seems to have been an unwillingness to engage fully with the governing body which I suspect stems, in part, from a fear of the response
- c. the [REDACTED] during the whole of the first part of the autumn term which was probably impeding his ability to operate efficiently and to plan strategically
- d. the conflict between the [REDACTED] and the [REDACTED] which contributed to the above 'silo mentality'
- e. the removal of the four LEA governors and, in particular, the chair causing a near paralysis of action on the part of the governing body
- f. the failure of the governing body to galvanise itself in the autumn term for the serious tasks ahead.
- g. the apparent view of the governing body that it could simply 'tread water' until the return of the LEA governors.

6.28 All of these factors played a part in the failure of the governing body prior to the 29th October 2016 to analyse why things had gone so badly wrong and to address them. The school is not far from being placed into special measures. In my judgment it was at crisis point during the whole of the autumn term of 2016 and I can see little evidence of a recognition of that fact prior to the date of the whistleblowing complaint. I consider that the governing body has failed to comply with regulation 5(3) of the 2000 Regulations. Therefore, **I uphold the whistleblowing complaint.**

ALLEGATION 8

To consider whether the governing body was given an opportunity to consider and discuss a report written by the [REDACTED] [REDACTED] at the meeting in October 2016.

PARTICULARS

This was initially placed on the meeting agenda for October as a finance update. However, in accordance with delegated responsibilities and the PCC Scheme it had to be a report. [REDACTED] simply wanted governors to read the report but not discuss. At this stage the budget is in surplus but will soon be in deficit, mainly because by the FY 2019-20 86% of the budget will be spent on salaries. The school is required to provide 50% of the curriculum in Welsh, it currently provides 65%. The class sizes and subjects offered are dictated by the cost of staff. Currently some English medium classes have > 30 pupils whilst Welsh medium can have as few as 3. The school now only teaches one foreign language and Business Studies will cease next year. The curriculum has to be discussed [REDACTED] didn't want the discussion to occur and then left it so late that it had to be carried over to another meeting.

FINDINGS OF FACT AND CONCLUSIONS

6.29 Before the governors meeting in October 2016 I accept that there was an email exchange between [REDACTED] and [REDACTED] [REDACTED] as to whether it was necessary for there to be a discussion of the finance committee report or whether it was enough to circulate it. [B.217] [REDACTED] asserted that the governing body needed the opportunity to ask questions and, therefore, I find that the report was added to the agenda appropriately. I am satisfied that the report written by [REDACTED] had to be carried forward to the meeting on Nov 9th 2016 because of the length of time spent discussing [REDACTED] presentation, the time spent reading the minutes of the previous meeting and discussing the appointment of community governors. I accept that the meeting ran out of time to consider the finance report. I do not find that that was a deliberate act to silence the author of the report. I note that on the 9th November 2016 at the re-scheduled meeting the finance report was discussed and I have read the minutes of the meeting. [B.61] Notwithstanding the fact that the report was not considered at the meeting in October 2016 there was no breach of legal obligation by the governing body or any member thereof. Therefore, **I do not uphold the whistleblowing complaint.**

ALLEGATION 9

To consider whether at the meeting of the governing body in October 2016 it complied with an obligation to disseminate minutes of the previous meeting in good time and whether at that meeting the minutes of the previous meeting in July 2016 were approved by governors who had not been present at the July meeting.

PARTICULARS

On 12 October 2016, the day before the next meeting, [REDACTED] was asked for the minutes of the meeting 4 months previously. They were distributed on 13

October. They were also handed out on the evening of the 13th. The excuse given was that it had slipped through the net when the [REDACTED] was employed in October. These minutes should have been distributed in July. The October Agenda was drafted by [REDACTED] and [REDACTED]. If they had approached the GB for inputs, as TORs require, this may have been spotted. [REDACTED] wanted an immediate acceptance of these minutes. However, a request was made for time to read them. Once read, all present, except one, accepted the minutes, this included a new governor at [REDACTED] first meeting and governors who hadn't been at the meeting.

FINDINGS OF FACT AND CONCLUSIONS

- 6.30 I find that it is factually correct that the draft minutes of the previous meeting which had occurred in June 2016 were not disseminated until the 12th October 2016. I also find that this was as a result of the failure of the [REDACTED] to do so.
- 6.31 Regulation 47 of the 2005 Regulations is silent as to the timing of the circulation of draft minutes. There is no legal requirement that they be circulated in advance of the next meeting although in my judgment it would make good sense to do so. Understandably, at the start of the meeting [REDACTED] requested time to read the minutes. He was given time to do this and the meeting could not proceed until he had done so. It is impossible for me to determine how long it took [REDACTED] and, one would hope, all those present at the previous meeting to read the minutes. There was a proposal that the minutes be accepted as accurate and [REDACTED] [REDACTED] abstained because he could not remember whether they were an adequate reflection of the previous meeting's business.
- 6.32 There is a dispute of fact as to whether all of those present bar [REDACTED] approved the minutes. That is of significance because obviously those who were not present at the previous meeting should also have abstained. The evidence does not support the contention that every other person at the meeting voted to

approve the minutes. Even if this occurred there would only be a breach of regulation 47(1) of the 2005 Regulations, in my judgment, if the numbers of those who voted to approve the minutes and who actually were present at the earlier meeting were less than those who were also present and who rejected the minutes. That has not occurred in this case and I find that no breach of a legal obligation occurred. Therefore, **I do not uphold the whistleblowing complaint.**

ALLEGATION 10

To consider whether [REDACTED] and the [REDACTED] failed to prepare written reports for the governors meeting in October 2016 and, if so, whether they ought to have done so.

PARTICULARS

Reports were requested. However, the [REDACTED] view was that an update was a report by another name and that the [REDACTED] would only be reporting on the academic issues, due to the serious situation. By November, when the meeting was carried over, a full report should have been provided. [REDACTED] reports follow a template that covers various issues including discipline and complaints. It is known that a pupil on a school trip in the summer was injured and taken to hospital in [REDACTED]; a pupil on the same trip was caught drinking, and the substance abuse policy was not followed; there are at least 3 complaints pending; 2 that may have safeguarding issues. These needed to be reported to the GB but have not. What [REDACTED] knew about these we do not know as [REDACTED] didn't report. [REDACTED] update, as minuted, is simply a repetition of [REDACTED] email in September. The rest of her information was about the GB's conduct covered under process and procedures.

On 5 December 2016 the [REDACTED] could not shed light on the complaints and said that he'd have to check the definition of a complaint and report back before the end of term, he has not. One parent is to consult with a governor about her complaint of her child being bullied, the [REDACTED] is

the safeguarding officer. Very recently it has become apparent that a child may have been excluded and has since left because he is over 16. The legislation covering exclusion specifically does not allow the withdrawal of a child to avoid exclusion. The discipline and exclusion committee has not been informed.

FINDINGS OF FACT AND CONCLUSIONS

- 6.33 The Terms of Reference of the investigation preclude consideration of whether reports were required for the meeting in November 2016. No written reports were prepared for the October 2016 meeting. In my judgement there is no legal obligation that a report should be made in writing. Indeed, in reporting on the progress made towards achieving the aims of the school under regulation 6 of the 2000 Regulations or in reporting on the exercise of delegated functions under regulation 52 of the 2005 Regulations there is no requirement that such a report is in writing. Therefore, **I do not uphold the whistleblowing complaint.**

ALLEGATION 11

To consider whether the [REDACTED] acted without authority to overturn the decision of the governing body to appoint a new finance manager.

PARTICULARS

After the governing body agreed to appoint a new business manager the [REDACTED] did not approach the governing body with his intention to change it to a finance officer.

FINDINGS OF FACT AND CONCLUSIONS

- 6.34 The evidence supports this complaint. Notwithstanding the fact that the [REDACTED] decision was ratified he did in fact fail to adhere to a reasonable

instruction of the governing body and accordingly he was in breach of a legal obligation. **I uphold the whistleblowing complaint.**

ALLEGATION 12

To consider whether there were attempts by the [REDACTED] to raise the matter at 11 above at the governing body meeting in October which were not minuted and whether such matters should have been minuted.

PARTICULARS

Sufficient particulars are provided as per the allegation.

FINDINGS OF FACT AND CONCLUSIONS

6.35 There is no evidence to gainsay the factual allegation. [REDACTED] and [REDACTED] do not recall this being raised by the [REDACTED] at October's governors' meeting but they do not assert positively that no such requests were made. [REDACTED] stated, however, that if that had been the case [REDACTED] could not imagine why the requests would not have been minuted. In my judgment it would have been reasonably expected if the matter was considered to be a contentious issue that the requests be minuted. If the [REDACTED] had asked that they be minuted and there was a refusal then that too should have been minuted. In the absence of any suggestion that the matter was of concern at the time it is not surprising that the requests were not minuted. In any event, there could have been an amendment to the minutes at any time before approval by the governing body at the following meeting. In the circumstances, I do not consider that there has been a breach of any legal obligation. Therefore, **the whistleblowing complaint is not upheld.**

ALLEGATION 13

To consider whether the proposed extension of delegated authority to the [REDACTED] in respect of purchases complies with the financial responsibilities and obligations of the governing body.

PARTICULARS

With the change in the system and with the policy review still not complete the school is relying on the old process with some modifications. The [REDACTED] has twice asked for approval to spend above the delegated limits. The finance committee does not have the power to sanction this. On the first occasion the [REDACTED] could approve this under 'emergency' powers. The meeting in October should have clarified some of this; however, the discussion was moved to the November meeting. Therefore, [REDACTED] could not use [REDACTED] 'emergency' powers after the October meeting. [REDACTED] solution was to agree with the [REDACTED] suggestion of raising the [REDACTED]'s delegated authority from £10,000 to £160,000. This would give the power to authorise £160,000 any number of times, unchecked.

FINDINGS OF FACT AND CONCLUSIONS

- 6.36 There is no evidence to gainsay what is being alleged by WB. I therefore find that WB is factually correct. Nevertheless, I conclude that the allegation does not give rise to a contention that any individual is in breach of a legal obligation. For the sake of completeness I have received evidence that this issue is now being addressed by the [REDACTED] in any event. In light of the findings above, **I do not uphold the whistleblowing complaint.**

ALLEGATION 14

To consider whether the governing body has a credible financial policy in place and, if not, whether this is in breach of its obligations as a governing body.

PARTICULARS

The [REDACTED] and [REDACTED] were tasked with amending the policy in June. They did not.

The [REDACTED] was tasked with amending the policy as soon as the new system was in place in September. He did not.

The excuse of workload and the results does not obviate the [REDACTED] from managing the business side of the school; one of his excuses for not having a business manager was that he wanted to get closer to the finances.

In September 2016 the [REDACTED] was working from the 2008 policy. If this work had been undertaken in July 2016 the transition to a cashless system would have been simpler from a policy point of view.

The excuse of not knowing the system has now been disproven, PCC suggests that the old policy, using the previous system, would suffice with only editorial changes. This should have been actioned by [REDACTED].

FINDINGS OF FACT AND CONCLUSIONS

- 6.37 It is essential in my judgment that the school has in place a credible financial policy. It is a legal requirement see regulation 5(2)(b) of the 2000 Regulations. No one has asserted otherwise. Furthermore, none of the governors have sought to assert that what is being alleged is factually incorrect. Therefore, I find that factually the allegation is true. I note that it is alleged that there was a need to make amendments to the financial policy which is support for the conclusion that the policy in place was not fit for purpose. There may well be some considerable mitigation for what occurred although I do not accept that the [REDACTED] can be excused from all responsibility for ensuring that a credible financial policy was in place. I therefore find that the [REDACTED] and [REDACTED] were, on the face of it, in breach of their contracts of employment in failing to comply with reasonable instructions to ensure that a

credible financial policy was in place. I also find that by reason of the above the governing body was also in breach of its obligations under the 2000 Regulations.
I uphold the whistleblowing complaint.

ALLEGATION 15

To consider the circumstances leading to the appointment of community governors in October 2016 and whether the governing body acted in accordance with policy and/or procedure and/or its responsibilities/obligations when making the said appointments.

PARTICULARS

Whether the appointment of [REDACTED] was, in all the circumstances, in accordance with the policy of the governing body and/or procedure and/or its responsibilities/obligations when making the said appointment.

FINDINGS OF FACT AND CONCLUSIONS

- 6.38 In essence, this is an allegation about whether the governing body followed due process in appointing [REDACTED] as a community governor. There can be no suggestion that there was a breach of legal obligation in any other sense as provided the process was lawful and that the applicant was not disqualified from being a governor, the question as to who should be a community governor is a matter for the governing body alone. Therefore, whilst I do acknowledge that WB and [REDACTED] are very concerned about the fact that [REDACTED] has returned as a community governor when in part [REDACTED] bears clear and obvious responsibility for the predicament the school finds itself in, I cannot make any findings on whether it was appropriate for [REDACTED] to return as a community governor. The appointment of community governors is a matter entirely for the governing body. Furthermore, the council is not permitted to become involved in the appointment of community governors and, therefore, I focus entirely on the procedure followed.

6.39 I make the following findings on the appointment process: the governing body had four vacancies for community governors in the autumn of 2016. The governing body had started to carry out a skills audit to identify skills that the governing body required and the [REDACTED] was co-ordinating this matter. [REDACTED], the [REDACTED] had informed [REDACTED] that she had spoken to [REDACTED] who had expressed an interest in returning to the governing body [REDACTED] [REDACTED] telephoned [REDACTED] to check that this was correct. She confirmed that she was interested. The [REDACTED] did not believe that [REDACTED] was an appropriate choice of candidate and he made his views clear as per the emails shortly before the October meeting. [xxx] Notwithstanding this fact [REDACTED] rightly in my view indicated that the appointment would be for the governing body as a whole and no one is allowed to veto an application.

6.40 At the governors' meeting on the 13th October 2016 there was a discussion of this issue. I have seen the confidential minutes of the meeting. [B.56] I have also been provided with what was read out at the meeting by the [REDACTED] [REDACTED] [B54-55] The matter was then the subject of a vote and the governing body elected to invite [REDACTED] to return as a community governor.

6.41 The 2005 Regulations are not prescriptive as to how community governors are appointed. Regulation 8 simply states that community governors are appointed by the governing body. That presupposes simply that a majority of the governing body takes a decision to appoint and that is the extent of the procedure. The Governors Wales 'Procedure for the Appointment of Community Governors' which I have obtained is not binding on any governing body but is simply a guidance publication and although it refers at paragraph 2 to an election procedure that is a misnomer because community governors are not elected but appointed.

6.42 I have been unable to discern any breach of the 2005 Regulations in the appointment of ██████████ as a community governor. Of course, whether or not a skills audit should have been carried out and whether or not ██████████ should have been invited back onto the governing body are not for me to decide as they are not matters which give rise to breaches of any legal obligation on the part of the governing body. In all the circumstances, **I do not uphold the whistleblowing complaint.**

ALLEGATION 16

To consider whether the governing body has refused to minute objections to the appointment of a community governor which were raised at the meeting of the governing body in October 2016 and, if so, whether such refusal was justified.

PARTICULARS

Sufficient particulars are provided as per the allegation.

FINDINGS OF FACT AND CONCLUSIONS

6.43 I have read the minutes of the meeting of the 13th October 2016. I am satisfied that there was no refusal to minute the fact of the objection to the appointment of ██████████: it was minuted. However, I am satisfied that the complaint is that it was the nature of objections themselves which were not minuted and that they should have been. I am satisfied that what occurred was that ██████████ instructed the ██████████ that ██████████ shouldn't attach to the minutes the document read out by the ██████████ as he had requested.

6.44 [REDACTED] also stated in evidence that before giving the instruction she checked with both [REDACTED] and also with Governors Wales and was told she should only attach the whole document if it was pure fact and didn't include any personal opinion. As the written objection contained a mixture of fact and opinion it was not, therefore, appended to the minutes.

6.45 In my judgment there was a legal obligation on the [REDACTED] to attach the document created by the [REDACTED] to the minutes. Regulation 48(1)(c) of the 2005 Regulations requires the governing body to make available "*any report or other paper considered at any such meeting*" and that must mean that any document considered by the governors will be annexed as a part of the minutes.

6.46 In my judgment the paper produced and read out by the [REDACTED] [REDACTED] was considered at the meeting albeit the contentions in it were rejected as valid reasons for non-appointment. The contention that the document should not be appended because it contained matters of opinion is not tenable. It is inevitable that from time to time reports considered by governing bodies will contain matters of mixed fact and opinion and should be annexed in full.

6.47 I accept unreservedly that [REDACTED] sought advice on the matter and that [REDACTED] acted entirely in good faith. [REDACTED] endeavours were entirely laudable in circumstances where [REDACTED] was uncertain of her obligations. I do not consider the advice [REDACTED] received was correct and it is no fault of [REDACTED] that [REDACTED] followed it. In all the circumstances, however, **I uphold the whistleblowing complaint.**

ALLEGATION 17

To consider whether false representations were made to parents of prospective pupils of the school who resided out of catchment concerning the funding of school transport and whether this led to greater funding of the school by Powys County Council than otherwise would have been the case and/or whether if there was a deception whether it increased the senior staff's pay scales.

PARTICULARS

Sufficient particulars are provided as per the allegation.

FINDINGS OF FACT AND CONCLUSIONS

6.48 This allegation is in a somewhat different category to the other allegations. It involves an allegation of the commission of an unspecified criminal offence involving dishonesty and a breach of legal obligation i.e. the contract of employment by the [REDACTED].

6.49 As indicated above I have carried out previously an extensive investigation into the school's breach of the council's Scheme for the Financing of Schools. I have already provided an extensive report on that matter at the behest of the governing body and the council and I do not intend to reopen that report here. At the time of conducting the investigation I was alert to the possibility that the breach of the policy was deliberately designed to maintain the levels of salary of the most senior staff at the school. I could find no evidence of dishonesty and nor was such an allegation made. I did not make a finding of dishonesty because I was entirely satisfied that the motives of [REDACTED] were entirely curriculum and performance driven albeit misguided. I have also been provided with evidence from Mr. Mayor that when a senior teacher moves up the pay scale one cannot reverse a pay award: the pay scale is established. There is, therefore, no

personal financial benefit to keeping the numbers in the school higher. Furthermore, the practice of subsidising school transport had been in situ well before the council prohibited it in its Scheme and, therefore, numbers had been increased by that practice before it became prohibited.

6.50 I find that inevitably parents of pupils who were travelling from out of catchment were induced to send their children to the school because, inter alia, the transport cost to them was low. I find to that extent the parents were misled: that is obvious. However, I do not accept that this was as a result of any intention to mislead parents nor was there a deliberate policy of concealment. In my investigation I found that the school did not hide its policies and a number of people genuinely believed that there was no objection to its practice. Of course, I was not able to interview ██████████ about this matter and had I done so my conclusions might have been somewhat different but based on the evidence I had available to me then and now I do not accept there was any deliberate deceit or dishonesty. **Therefore I do not uphold the whistleblowing complaint.**

SECTION 7

RECOMMENDATIONS

7.1 I make a number of recommendations in light of the evidence I have been provided with during this investigation and I give brief reasons as to why I make each recommendation. It might be that some of what I recommend has been overtaken by events but nonetheless I consider it would be helpful if I were to set out my views in writing.

RECOMMENDATION 1

7.2 That the governing body establishes a committee with the sole purpose of analysing the academic results in order to better understand the reasons for poor performance and to address the same.

REASON

7.3 I am not satisfied that any adequate attempt has been made to address the matters in order for the school to make progress in meeting its aims and objectives.

RECOMMENDATION 2

7.4 That in so far as the finance policy is still not fit for purpose that immediate action is taken to remedy this.

REASON

7.5 The school is in breach of the 2000 Regulations if a credible plan is not in place.

RECOMMENDATION 3

7.6 That the governing body ensures that terms of reference are in place for all the committees it operates. The terms of reference need be no more onerous than those set out by Governors Wales.

RECOMMENDATION 4

7.7 That terms of reference are devised for the chair and acting chair.

REASON

7.8 I am concerned that transparency of action is maintained and that the chair/vice chair of the governing body understand the parameters in which they must operate. Powers which are to be delegated should be made expressly clear and terms of reference are an essential part of that process. Too many informal ad hoc chats with head teachers leads to a misalignment and blurring of the roles and responsibilities of both the chair/vice chair and head teacher.

RECOMMENDATION 5

- 7.9 The minutes of meetings should include areas of disagreement and reasons for the same. They should include all papers and reports referred to and they should be appended.

REASON

- 7.10 To comply with the 2005 Regulations and to ensure transparency of process.

RECOMMENDATION 6

- 7.10 That the draft minutes of every meeting are circulated to all governors well in advance of the next meeting and certainly not less than seven days before the next meeting.

REASON

- 7.11 It is important that the minutes of meetings are properly scrutinised and not rubber stamped.

RECOMMENDATION 7

- 7.12 That the head teacher and the chair of governors should provide a written report to the governors meeting which should be circulated to all governors not less than 7 days before the date of the meeting at which the reports are to be

considered. Where reports refer to data or are based upon the same then the data should also be provided at the same time. The reports should set out a full history of the actions of the chair and any interactions with the head teacher and vice versa (subject to any confidentiality issues).

REASON

7.12 To allow for meaningful consideration and discussion and to avoid a situation where facts are known to some but not all governors and to avoid unilateral and unaccountable actions.

RECOMMENDATION 8

7.13 That the governing body makes immediate progress in identifying how it proposes to deliver a curriculum in the years ahead in order that realistic financial planning can occur.

REASON

7.14 In light of the likely falling roll due to compliance with the council's Delegated Scheme for the Financing of Schools the school needs to ensure that it is not operating a deficit budget. Early planning is essential in order to avoid catastrophic consequences including compulsory redundancies.

RECOMMENDATION 9

- 7.15 Governors should be provided with additional support by way of training in order to undertake their duties in accordance with legislation and good practice. This may involve 'shadowing' other governing bodies or governors in order to understand best practice.

REASON

- 7.16 I am not convinced that all governors understand the predicament that the school is facing. This has occurred in part because of a longstanding failure to hold the SLT to account for performance. This is a failing of members of the governing body both collectively and individually.

RECOMMENDATION 10

- 7.17 Governors should receive training on whistleblowing and the proper treatment of whistleblowers.

REASON

- 7.18 Some of those who have provided evidence have spoken in intemperate language about the perceived whistleblower and the events leading to the complaint.

RECOMMENDATION 11

7.19 On his return from his sabbatical the chair of governors should meet as soon as practicable with the acting head teacher and the council's education officers in order to ensure that there is a strategy in place to avoid the school entering into special measures.

REASON

7.20 In my view the governing body was treading water during the autumn term of 2016 waiting for the return of Mr. Mayor as a governor. His month long sabbatical in January 2017 was most unfortunately timed. No doubt it was long planned. If it was then it should have been made clear to the other governors prior to the election in early December 2016 and not shared for the first time with the whole governing body on the 31st December 2016. In my judgment such conduct fell below the high standards I would ordinarily expect of Mr. Mayor. Another month has past, therefore, and in my judgment time is now of the essence for the school. It is essential that progress is made in addressing weaknesses and failings.

30th January 2017

Jonathan Walters
River Chambers
Swansea