

Archwilydd Cyffredinol Cymru  
Auditor General for Wales

# Review of Allegations made under Whistle Blowing Legislation

## **Powys County Council**

**Audit year:** 2012-13

**Issued:** April 2014

**Document reference:** 186A2014



# Status of report

---

This document has been prepared for the internal use of Powys County Council as part of work performed in accordance with statutory functions.

No responsibility is taken by the Auditor General or the staff of the Wales Audit Office in relation to any member, director, officer or other employee in their individual capacity, or to any third party.

In the event of receiving a request for information to which this document may be relevant, attention is drawn to the Code of Practice issued under section 45 of the Freedom of Information Act 2000. The section 45 Code sets out the practice in the handling of requests that is expected of public authorities, including consultation with relevant third parties. In relation to this document, the Auditor General for Wales and the Wales Audit Office are relevant third parties. Any enquiries regarding disclosure or re-use of this document should be sent to the Wales Audit Office at [infoofficer@wao.gov.uk](mailto:infoofficer@wao.gov.uk)

# Contents

---

We found no evidence of impropriety or bias by officers or members of the Council in relation to the issues raised by the whistle blowers. However, in common with the findings of our December 2010 whistle blowing report, there was often a lack of an audit trail to support key decisions and events.

---

## Summary report

---

Summary of concerns raised with the Wales Audit Office, our approach and conclusions	4
--	---

---

## Detailed Findings

There was no evidence of improper involvement of the Chief Executive in the job evaluation process but there was a lack of documentation supporting some decisions	7
--	---

---

Decisions relating to the departure of the Strategic Director of Law and Governance were made appropriately	8
---	---

---

The Council did not follow best practice in relation to the award of contracts to a consultancy firm, employed to support its modernisation agenda	10
--	----

---

Information governance in terms of human resource files and the Council's e-mail policy need improvement	11
--	----

---

There is scope to significantly improve the Council's own whistle blowing arrangements; whilst policy and procedural changes can be quickly introduced it may take longer to ensure staff have confidence in the arrangements	12
---	----

---

# Summary report

---

## Summary of concerns raised with the Wales Audit Office, our approach and conclusions

1. In late December 2012 a number of senior officers from Powys County Council contacted the Wales Audit Office in confidence to raise concerns about a number of issues which they believed involved the improper use of public money. The officers wished to raise their concerns with the Wales Audit Office in recognition of the Auditor General and Appointed Auditor's statutory positions as prescribed persons within the context of the Public Interest Disclosure Act 1998. Given that the concerns related to the alleged decisions and actions of senior management, the officers did not have the confidence to use the Council's own whistle blowing arrangements. A number of similar concerns were also received anonymously.
2. We met with the officers to hear their concerns and, in addition, they provided us with detailed written submissions in support of their concerns.
3. Following a preliminary consideration of the issues raised and a review of the written material, we considered that the concerns fell within the scope of our audit of the accounts. Further investigative work was necessary to gain assurance on the effectiveness of key aspects of the Council's corporate governance. In particular, we are required to satisfy ourselves that the annual disclosure the Council makes in the accounts on its corporate governance framework is consistent with our knowledge of the Council as its external auditor. We are also required to satisfy ourselves that the Council has proper arrangements in place to secure economy, efficiency and effectiveness in the use of public funds.
4. The concerns raised by the officers coincided with key organisational and cultural changes taking place within the Council and uncertainty about individuals' roles and responsibilities and indeed their ongoing employment. We have been very mindful, throughout the course of the audit, of the impact this could have on the sensibilities of those affected by changes.
5. The concerns raised with us related to four main areas:
  - the alleged improper involvement of the Council's Chief Executive in job evaluation outcomes affecting the Council's democratic services officers (one of whom being his wife);
  - the propriety of decisions relating to the agreed departure of the Strategic Director of Law and Governance;
  - the involvement of consultants in the Council's modernisation agenda and the value for money arising from their appointment; and
  - the probity of decisions relating to the disposal of Leighton Model Farm to include the conduct of members involved with the process.
6. In relation to the sale of Leighton Farm, we had already reviewed the majority of issues raised as part of our audit of the Council's 2011-12 accounts. The findings of our original review were reported to the Audit Committee in January 2013 and we concluded that: *'It is not clear to us why the decision was considered urgent which*

---

*meant there was insufficient time to consider why the Monitoring Officer concluded the revised agreement was in the best interests of the council, whilst the Section 151 Officer raised significant concerns listed above. There is no evidence to suggest these were given proper consideration and attention'. The additional issues raised with us since then have been discussed with the Council and there are no other matters we would wish to bring to your attention.*

7. We met with the Chief Executive in late February 2013 to inform him of the allegations we had received and that they would be examined as part of the ongoing audit of accounts. The Council's Audit Committee was also informed that we had received disclosures and we would provide it with an update once we had considered the matters fully.
8. Our audit was undertaken in stages to consider issues that we believed were most serious or time sensitive. Given the imminent departure of the Strategic Director of Law and Governance at the end of March 2013 and the seriousness of the allegations made about the conduct of the Chief Executive, these matters were looked at first. The officers who approached us directly with their concerns wished to remain anonymous. However, knowing their identities, their roles in the organisation and the seriousness of some of the allegations, influenced our approach to gathering evidence.
9. We were also mindful that during the course of interviews with senior officers and our review of documentation, wider concerns about due process and the regularity of matters covered in the original disclosures were also evident. These are referred to later in this report. It should be noted that a large number of senior officers who we either met during the course of the audit or examined documentation arising from them have since left the Council's employment under voluntary severance, redundancy, or resignation.
10. To ensure the robustness of our findings under challenging circumstances, it was decided (using our statutory powers) to obtain copies of internal Council e-mails without informing the Council's officers in advance. Our e-mail review was targeted at key individuals subject to the allegations and was focused on a selection of key words and phrases. Our e-mail review was undertaken using appropriate levels of information security at our disposal. We informed the Chief Executive we had done so, once our review had arrived at the point where we could present draft interim findings to the Council. We are therefore able to provide a higher level of assurance in support of our findings as a consequence of this approach.
11. Our draft interim findings were provided to the Chief Executive on 4 July 2013. We received an interim response from the Chief Executive on 18 July and a more substantive response on 2 October 2013. The Chief Executive also commissioned an internal review into the issues we had raised by the Solicitor to the Council and that review was completed on 11 November 2013. This report sets out the lines of enquiry our audit followed, the Council's response to our interim findings and our final conclusions on the matters considered as part of the audit. We also report on matters arising from our review that were not raised by the 'whistle blowers' but we believe require further consideration by the Council.

- 
12. Our conclusions are summarised below and described in the detailed report. We found no evidence of impropriety or bias by officers or members of the Council in relation to the issues raised by the whistle blowers.

However, in common with the findings of our December 2010 whistle blowing report, there was often a lack of an audit trail to support key decisions and events. Some key decisions were not documented and there were instances of key documents or supporting information not being found or not existing. Whilst we found no evidence to support allegations made, we can understand why officers raised their concerns in the absence of full transparency and the perceptions this can create.

13. Our conclusions in response to the specific issues raised are:
- there was no evidence of improper involvement of the Chief Executive in the job evaluation process but there was a lack of documentation supporting some decisions;
  - decisions relating to the departure of the Strategic Director of Law and Governance were made appropriately;
  - the Council did not follow best practice in relation to the award of contracts to a consultancy firm, employed to support its modernisation agenda;
  - information governance in terms of human resource files and the Council's e-mail policy need improvement; and
  - there is scope to significantly improve the Council's own whistle blowing arrangements; whilst policy and procedural changes can be quickly introduced it may take longer to ensure staff have confidence in the arrangements.

# Detailed findings

---

14. Our detailed findings are set out below for each of the four concerns raised with us by Council officials:

## There was no evidence of improper involvement of the Chief Executive in the job evaluation process but there was a lack of documentation supporting some decisions

15. In summary, the allegation made to us was that the Chief Executive had intervened in the job evaluation process for the scrutiny services officers, one of whom is his wife. The inference being that his involvement was to ensure that his wife would either benefit financially or not suffer any pay detriment as a result of a lower pay grading.
16. Our audit followed the following key lines of enquiry:
- Did the job evaluation outcomes for the Council's scrutiny officers comply with policies and procedures?
  - Was the process free from bias or improper influence?
17. In answering these questions we interviewed the Chief Executive, the Strategic Director of Law and Governance, the Head of Legal, the Head of HR and officers involved with the detailed job evaluation process. We examined the records available and examined e-mails relating to the issue using carefully defined search criteria and key words.
18. The Council have informed us that this process was undertaken against a context of making the arrangements for the scrutiny function within the Council more robust, which is consistent with messages we had given from our work. One of the improvements envisaged was the move away from committee clerks to scrutiny officers and democratic services officers, a model that had been adopted by other local authorities.
19. As part of addressing the changes required, the Chief Executive did source job descriptions from other local authorities adopting this model, but we found no evidence to support the allegation that he inappropriately influenced the job evaluation process which affected his wife's pay and grading.
20. The job evaluation process within the Council evaluated each role under one of two scoring methodologies (Hay and NJC) depending on the type of job being evaluated. There were a number of job descriptions being referred to through the process but it was not clear how the final job description was decided upon. Additionally, the reason for the final scoring methodology (which set the salary for the post) was not clearly documented. The role was scored by both methodologies and the final score was set at the higher of the two. Whilst officers have since given explanations as to why this methodology was appropriate, we would have expected the process to have been better documented and evidence retained on file to support the decision-making process.
21. Whilst we can conclude that we have found no evidence of any bias or improper influence in the process of job evaluation by the Chief Executive, the lack of a full and

---

complete audit trail and documentation, means that we can also see how perceptions of bias could occur. Previously we have reported to the Council the need to keep full and proper records to justify key staff related decisions in a transparent manner (Whistle blowing report December 2010). Given the obvious potential sensitivities surrounding these posts, we would have expected the audit trail in this area to have been sufficiently robust and well documented to protect all parties concerned from allegations of bias.

22. The monitoring officer's recent review has re-examined the grading of the posts and has concluded that the current evaluation is appropriate and in compliance with the Council's job evaluation scheme.

## Decisions relating to the departure of the Strategic Director of Law and Governance were made appropriately

23. In addition to concerns raised with us by Council staff about the decision to allow the Strategic Director of Law and Governance to leave the Council's employment on the grounds of the post being made redundant, a councillor wrote to us with their concerns and the local press also commented about the matter.
24. The essence of the concerns were that an officer with significant service, with an entitlement to retire with a local government pension, was able to leave the Council's employment on the grounds his post had been declared redundant. This meant he was entitled to draw a 'full' pension and receive a redundancy payment. Additionally, concern was expressed about the post holder being asked to stay on after the agreed departure date to undertake other duties and whether changes in severance terms (making them less generous) introduced later should have applied in this individual's case.
25. Our review considered whether the decision to allow the departure of the Strategic Director of Law and Governance under redundancy terms complied with policies and procedures and was appropriate legal advice obtained and followed.
25. We interviewed the former Strategic Director of Law and Governance before he left the Council's employment. We also reviewed Council minutes, reports, e-mails and independent legal advice the Council had obtained relating to the matter.
26. We can appreciate the concerns raised by staff, members and the media in relation to the decision that the post was declared redundant and that the officer, who was relatively recently promoted to the role, received a redundancy package in addition to his full pension entitlement. However, the recent phasing out of the retirement age for Local Government workers (and others more widely) is a key consideration in this matter and will remain an important consideration going forward in the context of other officers. Essentially, there is no presumption or obligation on employees to retire at age 60 or any other age. In this case, although the Strategic Director of Law and Governance would have been able to retire and take his pension without abatement around the time of the Cabinet meeting on 14 June 2011, he was also entitled to



- 
- continue working should he have wished to do so without any presumption that he would or should retire.
27. On 20 June 2011 HR wrote to the Strategic Director of Law and Governance following the Cabinet meeting of 14 June 2011 stating the date of departure was to be agreed with the Chief Executive, but would be no later than 31 March 2012 in accordance with the decision of the Cabinet. The Strategic Director of Law and Governance was tasked with a number of important projects and outcomes before leaving. On 28 March 2012, the Chief Executive wrote to him requesting that he continue in the Council's employment pending a further review at the end of August to complete some corporate projects. His entitlement on departure is confirmed as that agreed in June 2011 (given this was the entitlement when the decision was formally approved). The letter also stated that: 'the release of the payment would be predicated by a business case which I anticipate would be produced as a result of the work with (the organisational change) consultants'.
  28. We are informed by the Chief Executive that this was considered an operational matter under the constitution, and Cabinet approval was not required for the change in circumstances, although the decision was made in consultation with the relevant Cabinet members. The constitution is not definitive about powers to vary a Cabinet decision, and decisions of this nature are not currently required to be recorded. However, it does require officers to consider whether a decision 'is of such a nature' that it should be referred to a decision-making body. Given that a decision of Cabinet was being varied and the high profile and sensitive nature of a decision to extend a senior officer's voluntary severance arrangement, it may have been more appropriate for the decision to be referred back to Cabinet for approval. The Council should consider covering such circumstances in future changes to its constitution.
  29. A further detailed report was presented to Cabinet on 23 October 2012 setting out the latest position in relation to the Strategic Director of Law and Governance post holder. This report reflected independent legal advice, confirming the deletion of the post of Strategic Director of Law and Governance from the Council's management structure with effect from 30 April 2013 and that the original terms for departure should be honoured. Cabinet resolved that the post holder's entitlement to 78 weeks' pay for redundancy purposes would be unaffected. Although the Council changed its policy in relation to voluntary severance reducing the number of weeks' salary entitlement, the Council took legal advice to inform its decision that the original terms should be applied.
  30. Our conclusion is that the Council followed its own policies when making the post of Strategic Director of Law and Governance redundant, and it acquired appropriate independent legal advice which confirmed the actions were reasonable.

---

## The Council did not follow best practice in relation to the award of contracts to a consultancy firm, employed to support its modernisation agenda

31. Concerns were raised with us about the appointment and involvement of the consultants engaged to support the Council with its modernisation agenda. The concerns were varied but mainly centred around the view that the tendering arrangements for management consultants was 'frequently opaque' and, in this case, it was viewed that their remit was only properly known by the Chief Executive, Strategic Director of Law and Governance and some members of the Cabinet; there had been no evaluation of whether all or part of the work undertaken could have been managed in-house; and there were concerns over the application of the Council's procurement rules.
32. Our audit followed the following key lines of enquiry:
  - Was the role and remit of the consultants engaged to assist in modernisation open and transparent; and was their brief objective and impartial, as far as the potential outcomes on senior management was concerned in the context of reorganisation and the modernisation agenda?
  - Did their appointment comply with Council and EU procurement policies and procedures?
33. We discussed the matter with the Chief Executive, Head of HR, Strategic Director of Finance, and the Council's Procurement Officer, as well as examining documents and reports relating to the engagement of the consultants to assist the Council with its modernisation agenda.
34. We understand, based on discussion with officers and a review of minutes and reports, the purpose and requirements for the work in the context of the Council's modernisation agenda. Some of the work undertaken was of a sensitive and challenging nature as far as senior officers were concerned, eg cultural development, evaluation of skills and competencies, and this inevitably introduced anxieties and tensions. We can fully appreciate why some aspects of the work could not be fully shared with all staff and the need for confidentiality. Similarly, the consideration as to whether there was capacity to undertake some of this work in-house was considered and reported to Cabinet when the decision to appoint consultants was taken. We have therefore not examined these aspects of the allegations further.
35. In terms of the contracting arrangements, the consultants were initially appointed in 2010 to undertake work relating to the job evaluation that was ongoing at the time, at a cost of £155,000 (plus VAT). We are satisfied that the procurement of the service at this time complied with the Council's tendering requirements.
36. Three further contracts were subsequently awarded to the same consultants for 'Improving Organisational Effectiveness' with a contract value of £481,497 (plus VAT) which brought the combined value of all four elements up to £636,497 (plus VAT). These were approved by Cabinet at each stage.

- 
37. EU Procurement Directives require that where contracts are greater than the threshold of £156,442 (from January 2010) or £173,934 from January 2012, contracts should be awarded through a tender procedure. Where a single scheme involves more than one contract, the estimated value of all the contracts must be aggregated to decide whether the threshold is reached. In this case the combined value of the three contracts was therefore in excess of the threshold, despite each one individually being below it.
  38. To reduce procurement costs in the public sector, nationally tendered framework contracts exist for individual bodies to call upon to meet their requirements without the need to go through a full tendering process themselves. The review by the Council's monitoring officer has concluded that even though the combined value of these contracts was in excess of the EU threshold, as they were awarded to a firm on the framework contract, the contract award would have nevertheless satisfied the EU procurement rules as the award was made under Lot 4 of the then OCG framework RM662 for organisation and change management consultancy.
  39. However, even if that were the case, guidance for these national contracts indicates that best practice is to test the market by conducting further competition between companies on the national framework. Whilst the OGC guidance for Lot 4 indicates that a direct award can be made without competition from suppliers on the framework contract, it also indicates that due to inherent difficulties in determining which supplier would deliver the best value for money in meeting specific requirements, best practice is to conduct a further competition between suppliers on the list.
  40. Our review, supported by the subsequent review by the Council's monitoring officer, has identified that the documentation and reports supporting this contract award are unclear as to how much consideration was given to the issue of aggregating the contracts and value for money considerations. The monitoring officer's recent review also indicated that, although there was no competitive process, the approach adopted would in all likelihood have been the best option in terms of value for money because of the consultants existing knowledge and experience of working with the Council. However, there is no documented evidence to indicate that this was given full consideration before the decision was made to award the contract.
  41. Although the Council can indicate that EU procurement rules were not breached and that there was an argument for not following best practice to ensure value for money, the fact that these justifications were not documented and fully considered before proceeding represents a weakness in the decision-making process. An effective decision-making process should have highlighted these issues, documented their consideration and justified the approach prior to the contracts being awarded.

## Information governance in terms of human resource files and the Council's e-mail policy need improvement

42. A number of the issues reported above relate to the need to improve governance arrangements around decision making and record keeping. Previous audit reviews of both whistle blowing allegations and our audit of the financial statements, have

---

reported that personnel files (or supporting working papers) are not available or incomplete in terms of recording key decisions. Additionally, as part of this audit review, we asked to see a sample of eight voluntary severance applications and two redundancy files. We hoped to review the business cases and calculations to gain assurance of proper practice and consistency of approach. However, we found that none of the files requested contained hard copy agreements with signatures, and there were gaps in documentation in seven of the eight voluntary severance files selected for testing.

43. On one aspect of information governance, the Council has put in place an acceptable usage e-mail policy to protect itself and its sensitive data. The Council's e-mail acceptable usage policy states: 'Non-work e-mail accounts must not be used to conduct or support official Powys County Council business. Users of the Councils e-mail system are NOT permitted to send any Powys County Council information of a sensitive or confidential nature to their own personal e-mail address'. Whilst reviewing e-mails as part of our audit testing on this review, we identified incidents of Council employees forwarding Council e-mails and attachments to personal e-mail addresses. In so doing, these individuals failed to comply with the Council's policy. The Council therefore needs to review its policy, ensure all staff are made aware of its content and ensure it is complied with.

**There is scope to significantly improve the Council's own whistle blowing arrangements; whilst policy and procedural changes can be quickly introduced it may take longer to ensure staff have confidence in the arrangements**

44. This is the second occasion within the last three years that we have been approached by officers of the Council wishing to raise concerns outside of the Council's own internal whistle blowing arrangements. Whilst officers are able to approach us directly reflecting our role as a Prescribed Person under the Public Interest Disclosure Act, we do need to consider what this tells us about the robustness of the Council's own arrangements and the confidence staff have in these arrangements.
45. At the time of our investigation, we were informed by the Chief Executive that an internal anonymous disclosure had been received about the alleged conduct and capability of a senior member of staff and this was receiving attention. The fact that this internal disclosure was anonymous again indicated to us that staff do not have the confidence to raise a concern using the Council's arrangements and being prepared to come forward in person to discuss these with management.
46. In recognition of the above, and a wider initiative in the Wales Audit Office to look at the effectiveness of whistle blowing arrangements both in the NHS and in local government, we have undertaken a review of the Council's whistle blowing arrangements. Our approach has been to follow a diagnostic tool prepared by the

---

Wales Audit Office which draws on best practice as set out in the Publicly Available Specification: Whistleblowing Arrangements Code of Practice. In following this approach we have looked at:

- How good is the Council's whistle blowing policy? Is it up to date for legislative changes? Is it applied in practice?
- How committed is the Council to find out about staff concerns about wrong doing and do something about them?
- What is the awareness like of the arrangements established? How effective are the arrangements for raising awareness?
- Are staff given adequate training in the policy and know how to raise a concern? How are investigators chosen and are they given proper training?
- How many issues are raised under the whistle blowing policy? How are they recorded and reported to management and those charged with governance? Are there any themes or trends?

47. The Council's whistle blowing policy was found to be many years old and out of date. In particular the policy had not been updated to reflect important changes in whistle blowing legislation introduced on 25 June 2013. The Council recognises the need to update its whistle blowing policy and is doing so within an overall framework and project plan for updating its HR policies and procedures more generally. We have provided the Council's officers with sources of good practice and guidance to assist them with the development of the new whistle blowing policy.
48. The Council has not established a proactive approach to whistle blowing and we found little in place to promote awareness of the Council's arrangements, the provision of training to staff, line managers and investigators and ways in which new staff can be induced to the Council's policy and procedures. Whilst it was evident the policy envisaged an oversight role for elected members in the whistle blowing arrangements, this had not taken place in practice. For example, no report has been taken to members in the last few years about the role of the policy, caseload and how staff concerns had been addressed under the policy.
49. Under the circumstances we can understand why, together with the uncertainties of Council reorganisation and the lack of effective internal whistle blowing arrangements, officers have approached the Wales Audit Office with their concerns in the first instance. We have provided examples of good practice and guidance to officers for developing the Council's arrangements in tandem with the launch of a new whistle blowing policy. We have also offered to provide whistle blowing best practice facilitation to officers and members at an appropriate time.

Wales Audit Office  
24 Cathedral Road  
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: [info@wao.gov.uk](mailto:info@wao.gov.uk)

Website: [www.wao.gov.uk](http://www.wao.gov.uk)

Swyddfa Archwilio Cymru  
24 Heol y Gadeirlan  
Caerdydd CF11 9LJ

Ffôn: 029 2032 0500

Ffacs: 029 2032 0600

Ffôn Testun: 029 2032 0660

E-bost: [info@wao.gov.uk](mailto:info@wao.gov.uk)

Gwefan: [www.wao.gov.uk](http://www.wao.gov.uk)