

# REPORT

by the

**PUBLIC SERVICES OMBUDSMAN FOR  
WALES**

on an

**INVESTIGATION INTO AN ALLEGATION**

against

**Councillor Hefin Wyn Thomas**

of

**Isle of Anglesey County Council**



**PUBLIC SERVICES OMBUDSMAN FOR WALES**

**LOCAL GOVERNMENT ACT 2000**

**Report Number 201100479**

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## **PUBLIC SERVICES OMBUDSMAN FOR WALES**

### **Report by the Public Services Ombudsman for Wales on the investigation of an allegation made against Councillor Hefin Wyn Thomas of the Isle of Anglesey County Council, of a breach of the Council's statutory code of conduct for members**

#### **THE ALLEGATION**

1. On 27 May 2011, I received a self referral from Councillor Hefin Wyn Thomas. He said that he had received a criminal conviction and requested that this be looked into to establish whether he had breached the Code of Conduct of Anglesey County Council. A copy of his complaint and the supporting documentation is attached at Appendix A and documents are numbered sequentially.

#### **LEGAL BACKGROUND**

2. As required by Part III of the Local Government Act 2000 (the Act), Anglesey Council has adopted a Code of Conduct for members which incorporates the provisions of a model Code contained in an order made by the Welsh Ministers. A copy of that Code is at Appendix B and the Council has confirmed that it applied at the relevant time<sup>1</sup>. This confirmation is attached at Appendix Q. Council members are required to sign an undertaking that, in performing their functions, they will observe the Council's Code of Conduct. Councillor Thomas gave such an undertaking on 2 June 2008. A copy of that declaration is attached at Appendix C.

3. The provisions of this Code mean that a member accused of a breach whilst acting in a private capacity may only be considered as potentially being in breach of paragraphs 6 (1)(a) and of that Code.

4. Section 69 of the Act provides the authority for my investigation and the production of this report.

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<sup>1</sup>. A revised code of conduct under the provisions of S183, Local Government and Public Involvement in Health Act 2007.



## **MY INVESTIGATION**

5. Having considered the allegation as made to me, I concluded that it was appropriate to investigate whether Councillor Thomas had failed to comply with the following provision of the Code of Conduct:

Paragraph 6(1) *You must-*

(a) *not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;*

6. Councillor Thomas was informed of my intended investigation and a copy of this letter is attached at Appendix D.

7. During my investigation I have obtained information from the Council and from the Department for Work and Pensions. Copies of all statements and documents referred to in this report are attached and referenced as they arise in the narrative.

## **MY GUIDANCE ON THE CODE OF CONDUCT**

8. I issued guidance for members of local authorities in Wales on the model Code of Conduct in April 2010 ("my guidance"). I include at Appendix E an extract from the guidance which is relevant to this complaint.

## **EVENTS LEADING TO THE ALLEGATION AS ESTABLISHED BY MY INVESTIGATION**

9. Councillor Thomas submitted information which showed that he had received a criminal conviction in April 2011 for failing to declare his full income when applying for Incapacity Benefit.

10. The conviction covered two periods of time, the first being between 3 November 2005 and 2 May 2006; the second being between 10 July 2008 and 24 January 2010. As the matter forming the subject of the conviction for the first period of time was outside the remit of the Code of Conduct



which was in place at that time, I have discounted this event from consideration in my investigation.

11. The conduct during the second period from 10 July 2008 and 24 January 2010 fell within the provisions of the Code of Conduct that was in place from May 2008.

12. When these matters came to light, Cllr Thomas was initially charged with both of the following offences:-

*“(i) That on 11 July 2008 he dishonestly made a false representation, namely that the information provided on an Incapacity Benefit claim form was correct and complete whereas it was not as he had failed to declare that he was working. This was contrary to S111A (1) (a) and (3) of the Social Security Administration Act 1992 and,*

*(ii) That on 11 July 2008, for the purposes of obtaining for himself a benefit under relevant social security legislation he made a statement or representation, namely that an application form was correct and complete whereas it was not as it omitted to declare that he was working, which he knew to be false. This was contrary to S112 (1) (a) and (2) of the Social Security Act 1992.”*

13. However, following representations made on his behalf by his solicitor and an offer to plead guilty to the second charge, the first charge, that of dishonestly making a false representation, was withdrawn. The sequence of events is covered in documentation at Appendix A4 to A8.

14. On 12 April 2011, Councillor Thomas received a conviction of the charge set out in paragraph 12 (ii) above. The certificate of conviction is attached at Appendix F.

15. I obtained confirmation from the Department for Work and Pensions [“the DWP”] that the overpayment of benefit for the period 10 July 2008 to 24 January 2010 was in the sum of £6,231. The DWP also confirmed that



Councillor Thomas had repaid the whole amount of benefit that had been claimed in error (£7,726.25) prior to the court case. A record of the investigator's enquiry is attached at Appendix G and the responses are at Appendices H and I.

16. The certificate of conviction (Appendix F) shows that Cllr Thomas was fined £750 and ordered to pay a victim surcharge of £15 and costs of £100.

17. This matter was reported upon twice in the Daily Post newspaper and on the BBC Wales news website. The reports are attached at Appendices J, K and L.

18. In his submission to the Ombudsman, Councillor Thomas said that he had apologised for his conduct in full Council and to the two community councils in his ward. He said that he had stood down as leader of his group and as vice-chair of the Planning and Orders Committee and also had declined the offer of a portfolio position on the executive.

19. I received a letter from Councillor Thomas's solicitor, in which he set out his understanding of events leading to the conviction which confirmed the facts as outlined above, factors which he considered to be mitigation of the position and suggesting that in the circumstances, I should consider a reprimand may be appropriate. This is attached at Appendix M and my investigator's reply is at Appendix N.

20. I received confirmation from the Council that Councillor Thomas received training on the requirements of the Code of Conduct for members on 28 April 2010. This is attached at Appendix O.

21. I received a letter dated 25 October 2011 from Ms Lynn Ball, the Monitoring Officer of Anglesey County Council which is attached at Appendix P.



22. In this letter she advised that Cllr Thomas had sought her advice on the matter of his conviction and had followed it. She confirmed that he had:-

- (i) Stood down as group leader;
- (ii) Stood down as vice chair of the Planning and Orders Committee and the Licensing Committee;
- (iii) Refused the offer of a seat on the Council's executive;
- (iv) Issued a public apology in person to the full Council;
- (v) Agreed not to take on any special responsibilities until after May 2012;
- (vi) Self reported to the Ombudsman.

23. Ms Ball also said,

*"Subject to its factual findings, I consider that the Council's Standards Committee would attribute much significance to Councillor Thomas's prompt and unequivocal actions, when informing their decision about whether to impose any sanction.*

*Additionally, guidance on sanctions allows appropriate consideration to the wider impact of any penalty imposed. As the role of the PSOW, and the Standards Committee, involves raising standards generally, as well as dealing with individual cases, there would seem to be a strong argument for ensuring that Councillor Thomas is given explicit credit for the remedial actions which he sought to take."*

#### **COUNCILLOR THOMAS'S RESPONSE TO THE EVIDENCE**

24. Councillor Thomas was sent copies of the evidence obtained during the investigation and was asked to comment on whether it was accurate. He was also sent a questionnaire to complete inviting him to respond on specific matters. The letter and blank questionnaire are attached at Appendix S.

25. In the response, Councillor Thomas's solicitor said there were no obvious inaccuracies in the evidence submitted.



26. In the questionnaire response, Councillor Thomas confirms that he has been a member since 1995 and signed his acceptance of the Code of Conduct on 2 June 2008. He said that he had missed some of the training that had been arranged for members in 2008 and 2009 due to ill health but had attended three courses in 2010 and one course in 2011. He said that these courses had related to ethics and conduct. He also said that he was conscious of the need to have further training as a result of the referral.

27. Councillor Thomas said that he had nothing to add by way of explanation of how the overpayments had arisen over and above that given in his self referral documentation.

28. In response to the question as to what element or elements of his income he had understated or not declared to the DWP, he said that this related to his member's allowance and that he had not been aware that it was treated as income and that he had sought advice on the matter from DWP locally when completing the claim form.

29. Councillor Thomas also said that he was aware that allowances were subject to a "disregard" but was not aware of the specific limit. He said that he had declared all of his other income and had not had any dishonest intent. The response is attached at Appendix T.

#### **UNDISPUTED FACTS**

30. Councillor Thomas is an elected member of the Isle of Anglesey Council and agreed to abide by its Code of Conduct on 2 June 2008.

31. Councillor Thomas received training on the requirements of the Code of Conduct on 28 April 2010.

32. Councillor Thomas was convicted on 14 April 2011 of making a false statement about the accuracy of Incapacity Benefit claim forms with the purposes of obtaining benefit, having failed to declare his full income.



33. Councillor Thomas received benefit overpayments of £6,231 between 10 July 2008 and 24 January 2010 as a result of signing a benefit claim that he knew or should have known to be false.

34. Councillor Thomas repaid the sums he had received in incapacity benefit prior to the court case.

35. There were reports in the national and local media detailing the conviction and the reasons for it.

36. Councillor Thomas has self reported to me, publicly apologised for his actions, stood down from some official positions and will not be undertaking special responsibilities until after May 2012.

#### **DISPUTED FACTS**

37. There are no disputed facts.

#### **INITIAL ANALYSIS OF EVIDENCE**

38. The fact that Councillor Thomas received a criminal conviction for signing incapacity benefit application forms in 2008, which he knew or should have been known were false, is evidenced and undisputed.

39. The events took place in Councillor Thomas's personal life and therefore I can only consider whether Paragraph 6 (1) (a) of the Code is engaged as the remainder of the Code does not apply. I must consider whether his conduct in this matter should reasonably be regarded as having brought his office or authority into disrepute.

40. In coming to my final view I have taken into account the fact that the events entered the public domain and were reported in the media in the locality and nationally. I must bear in mind that higher standards are expected of a councillor than a member of the public; such matters are bound to affect the public perception of the Council and the office of councillor.



41. I note that Councillor Thomas is an experienced councillor who has received training on the requirements of the Code of Conduct for members.

42. I must bear in mind that the conviction involved a significant sum of money, this being benefits that came from the public funds.

43. However, it is clear that Councillor Thomas has recognised the impact of his criminal conviction upon the role of councillor in that he has personally apologised to the Council and his constituents for his actions.

44. I have taken into account the exceptional mitigation put forward by Councillor Thomas, his solicitor and the Monitoring Officer on his behalf; setting out his public apologies, that he repaid the money and has stood down from his official positions. I also note his willingness to undertake further training as a result of these matters.

#### **PROVISIONAL CONCLUSIONS**

45. My provisional finding was that there was evidence that Councillor Thomas may have breached the Code of Conduct for members in relation to paragraph 6(1)(a) of that Code in that he incurred a criminal conviction on 14 April 2011. However, I was mindful of the exceptional mitigation in this case and Councillor Thomas's willingness to undertake further training.

#### **PROVISIONAL FINDING**

46. My provisional finding under section 69(4) (b) of the Local Government Act 2000 was that no further action needed to be taken in respect of these matters. Accordingly and under a recently introduced procedure, I invited the Monitoring Officer to consider whether, after consulting the Chair of the Standards Committee, she wished to investigate these matters further and submit them for local consideration.



## **THE RESPONSE OF THE COUNCIL**

47. The Legal Department of the Council responded with a letter signed by Michael Wilson, the Chair of the Standards Committee, which expressed some concerns at the accuracy of the information that Councillor Thomas had submitted to the investigation. This letter is attached at Appendix U.

48. The letter stated that an incorrect submission had been made in Appendix M of the draft report in which Councillor Thomas was said to have been referred to the Standards Committee only once previously and that the outcome had been that the allegation against him had been rejected. The Council said that Councillor Thomas had received a two month suspension on 4 March 2003 for failing to declare an interest relating to his business as a self employed building contractor. The minutes of the proceedings and decision on this are attached at Appendix V.

49. The Council also pointed out that Councillor Thomas had been referred to the Adjudication Panel for Wales ["APW"]. The outcome on that occasion, being 22 June 2007, was that he was found to have committed a partial breach by failing to declare an indirect commercial relationship but that a sanction was not given. A copy of the APW report is attached at Appendix W.

50. The Council noted a parallel in Councillor Thomas's historic conduct in terms of failures to declare relevant information and the matters highlighted in my draft report. It also noted that Councillor Thomas's training record (Appendix O) showed that although he had attended training more frequently of late, his lack of attendance following his suspension and referral to APW were of concern.



51. The Council supplied a copy of the covering letter and information which is given to new members by the Corporate Finance Director which contains specific advice regarding income tax and benefits. These are attached at Appendix X and Y respectively. The second page of the covering letter tells members that,

*“The general position in relation to allowances is that they are treated just like pay from employment for tax purposes, and that allowances (even if foregone) can reduce any entitlement to benefits.”*

52. The attached guidance from Her Majesty’s Revenue and Customs (Appendix Y) goes on to advise members of their duties and entitlements in relation to income arising from their office, including their duty to declare all income on tax returns.

53. The Council’s letter notes that even with this advice, Councillor Thomas has stated that he relied on advice from the DWP at the time of completing his application form for incapacity benefit but has also refers to an incorrect understanding of the tax position as described in Appendix R. Councillor Thomas’s response to Question 5 of Appendix T states that he was unaware that a councillor’s allowance was treated as income as it is not subject to tax or national insurance.

54. The Council’s response said that Councillor Thomas’s reliance on the misinformation in Appendix R from DWP, which incorrectly states that a members allowance is not subject to tax, may be viewed as opportunistic and that, in any event, this document was not available to him at the time he made his claim. It also questions his past reliance on unspecified advice from DWP when making his claim for incapacity benefit given the advice available to him from the Council. It also points out that as a self employed farmer and building contractor, Councillor Thomas would in all likelihood use a consultant for his tax affairs.



55. The Council's letter goes on to question whether Councillor Thomas has been asked if he claimed any other benefits during his time as a councillor. It also states that there are anomalies that need to be considered further and that notwithstanding the mitigation in this case, the Council cannot be sure that a sanction would not be imposed.

## **CONCLUSIONS**

56. Having considered the response of the Council, I will firstly say that I believe that the undisputed facts as set out in paragraphs 30 to 36 of my report still stand. Further, I do not believe that it would be appropriate to investigate Councillor Thomas's benefits history beyond the scope of his self referral or to make enquiries of him in relation to his tax affairs, as the latter would be beyond my jurisdiction.

57. However, having considered the response and new material provided by the Council, I am persuaded that there is at least a possibility of a sanction being imposed should the matter be referred on for consideration, this being a criterion for me to refer reports containing evidence of a breach to the Standards Committee or APW.

58. I share the Council's concern about incorrect information being supplied to me by Councillor Thomas, through his solicitor, with regard to his disciplinary record as a member. The previous findings and referrals to the Standards Committee and APW were of course known to me when the report was drafted but I am persuaded by the point made that the response to my investigator was inaccurate. Indeed this remained the case after the draft report was issued when Councillor Thomas was given an opportunity to view all of the evidence and the response of his solicitor was that there were no obvious inaccuracies in the case papers.

59. I am also persuaded that this matter is worthy of further consideration due to the parallels in the cases, which have all had the failure to declare



relevant information at their core. I am also persuaded by the strength of the evidence provided by the Director of Finance as to the written advice that Councillor Thomas would have received when he was elected which covers the possible impact of his allowances on his benefit entitlement and tax affairs. I am unsure why he would continue to have any doubts about his benefit or tax position having received this information and with it being readily available to him at any later date.

### **FINDING**

60. My finding under s69 of the Local Government Act 2000 is that my report will be referred to the Monitoring Officer of the Isle of Anglesey County Council for consideration by its Standards Committee.



PETER TYNDALL  
Ombudsman

21 March 2012



## List of Appendices

<b>Appendix A</b>	<b>Complaint</b>
<b>Appendix B</b>	<b>Code of Conduct</b>
<b>Appendix C</b>	<b>Undertaking by Cllr H W Thomas dated 2 June 2007</b>
<b>Appendix D</b>	<b>Letter dated 10 August 2011 to Cllr H W Thomas</b>
<b>Appendix E</b>	<b>Extracts from the Ombudsman's guidance on the Code</b>
<b>Appendix F</b>	<b>Certificate of conviction</b>
<b>Appendix G</b>	<b>Enquiry to DWP</b>
<b>Appendix H</b>	<b>Email from DWP timed at 11:27 on 18 August 2011</b>
<b>Appendix I</b>	<b>Email from DWP timed at 11:53 on 18 August 2011</b>
<b>Appendix J</b>	<b>Daily Post article dated 29 March 2011</b>
<b>Appendix K</b>	<b>Daily Post article dated 13 April 2011</b>
<b>Appendix L</b>	<b>Report dated 12 April 2011 from BBC Wales Website</b>
<b>Appendix M</b>	<b>Letter dated 13 September 2011 from Gareth Parry</b>
<b>Appendix N</b>	<b>Letter dated 19 September 2011 to Gareth Parry</b>
<b>Appendix O</b>	<b>Training attendance list</b>
<b>Appendix P</b>	<b>Letter dated 25 October 2011 from Lynn Ball</b>
<b>Appendix Q</b>	<b>Email dated 1 November 2011 from Meirion Jones</b>



<b>Appendix R</b>	<b>Emails dated 16 November 2011 between DWP and Investigator</b>
<b>Appendix S</b>	<b>Letter dated 30 November</b>
<b>Appendix T</b>	<b>Response from Cllr Thomas</b>
<b>Appendix U</b>	<b>Letter dated 22 February 2012</b>
<b>Appendix V</b>	<b>Standards Committee report</b>
<b>Appendix W</b>	<b>Adjudication Panel report</b>
<b>Appendix X</b>	<b>Letter from Director of Finance</b>
<b>Appendix Y</b>	<b>Guidance from HMRC</b>



# Appendix

## A



## Code of conduct complaint form

Please use black ink if possible and fill in your name in BLOCK CAPITALS.

27 MAY 2011

P.S.O.W.

### A Your details

Your name in full

Address and postcode

E-mail

Daytime contact number  Mobile number

### Who are you complaining about?

Name of the member (or members) you consider has (have) broken the code of conduct

A/A

Name of their authority

ANGLESEY COUNTY COUNCIL

### C How do you think they have broken the code of conduct?

Please tell us what evidence you have for claiming that the member has broken the code of conduct (you can get copies of the code from the authority). Give as much detail as possible and continue on a separate sheet if you need to. Please attach copies of any relevant correspondence, documents and so on.

I WAS RECENTLY INVOLVED IN A COURT

CASE. I WOULD TAKE THIS OPPORTUNITY TO

ADVISE YOU THAT I WOULD REQUEST YOU TO

LOOK AT THE CASE TO DETERMINE IF

I HAVE BROKEN THE CODE OF CONDUCT.

FULL PAPERS WILL FOLLOW AS SOON AS I

RECEIVE THEM FROM MY SOLICITOR.









**CYNGOR SIR  
YNYS MÔN  
ISLE OF ANGLESEY  
COUNTY COUNCIL**

**Ms. Samantha Evans,  
Public Services Ombudsman for Wales,  
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P.S.O.W.

21 JUN 2011

P.S.O.W.

Your reference 201100479

Dear Ms. Evans,

Further to the form sent to you at the end of May asking you to look into my situation regarding Court Case 12<sup>th</sup> April, 2011, I now enclose further relevant papers received from my Solicitor.

He is of the firm opinion that there is no further action to take, but we are both anxious for you to view the documents and facts, so as to clear up the situation.

For your information, I would like to inform you of the following:-

I immediately stood down as leader of my group.

At the first opportunity, I made a full and public apology before the full Council on the 12<sup>th</sup> May, outlining my concern for any difficulties that I may have caused the County Council and my Electorate.

I have declined the offer of a portfolio on the Councils Executive. Also, I have stood down as vice-chair of the planning and orders committee.

I have two community councils in my ward and I have apologised to them for any embarrassment caused.

The events of the last few months have taken a great deal out of my self and the family. However, I have been greatly encouraged by the overwhelming support of my electorate, who have remained rock solid in their support of me as their councillor.

Yours sincerely,

Hefin W. Thomas.