

Appendix

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Mr. Alan Morris
Wales Audit Office;
24 Cathedral Road
CARDIFF;
CF11 9LJ

18th December 2008

Dear Mr. Morris

Re: Annual Audit Letter

As promised please find herewith the combined responses of my Executive to your draft Annual Audit Letter. We came into power following the May 2008 Elections, since that date my Executive and I have not received any assistance or guidance to help us govern Anglesey from the Corporate Management Team. We were aware of member conflict during the last administration and naively thought that our united group would provide strong and positive Political leadership to the Authority. Events have demonstrated that this is not so. In fact there is a feeling that the Officers would welcome some if not all of the Executive to fail. We have observed during the last seven months that the Corporate Management Team do not like Political challenges and questions and perceive strong questions to further scrutiny as being member/officer conflict.

Since May 2008 a number of issues which have been raised in your draft letter were never raised by the Corporate Management Team with either myself, the relevant Portfolio Holder or any member of the ruling group. I refer to the Ombudsman's damning report on Housing Benefit, the overspend in the Social Services Budget and the draft Fleet Management Report. We had raised the matter of an absence of an Asset Management Plan at a very early stage in our Executive Meetings. We have also raised the question of poor Corporate Governance but are seen to be challenging the Officers who then respond with references to the Constitution and to delegated Powers.

We did reconsider the School Rationalisation programme and postponed the recommendations which had been arrived at in respect of a segment of the Local Authority area. We believed that the Rationalisation programme should apply to the whole of the Local Authority area and this is now progressing. My Executive have no problem in taking unpleasant and unpopular decisions for the greater

good of the Authority. We do not expect to be praised for our efforts but a little assistance would be appreciated in delivering our programme to the Electors of Anglesey. In May 2008 they purged the previous administration at the Polls and if we fail to deliver value for money and a decent Council service then in 2012 the same fate could befall us.

The Corporate Management Team had since 2004 been subjected to considerable pressure from some of the ruling executive to do things their way. Events during 2007 clearly demonstrate that there was very little integrity in some of the decisions made. Personal attacks by way of correspondence was evident. Some of those statements have by now been proved to be totally malicious and not what one would expect from Senior Officers of the Authority

Our Human Resources Department is failing, there is a serious issue with sickness within the Authority, yet despite several of the Executive bringing this to the Managing Director's attention there has been no movement to resolve these serious issues of Personnel Management. We have noted with interest your annual letter to Denbighshire in which you state that the Authority's Corporate Governance arrangements are insufficient to deliver the scale of improvement needed to achieve its priorities. This despite leadership at the Political level being stronger and more strategically focused than in the past, senior officers are not consistently providing the level of direction and corporate discipline needed to deliver the Council's improvement ambitions. One cannot help but feel that we are experiencing the same inertia. The draft annual letter for Anglesey however implies the opposite. We did turn down the opportunity of partaking in a workshop which Wales Audit Office had arranged (but spent the time explaining our problems and difficulties to Non Jenkins and Rod Alcott). I would hope that our reasons for doing so are now clearer to you.

Every member of the Executive attended a two day workshop facilitated by Professor Zoe Radnor of Warwick Business School in October 2008. There was a full and frank discussion about our hopes and aspirations, culminating in a vision for 2011. Poor working relationships between the Executive and the Corporate Management Team was given a thorough airing and Professor Radnor left the workshop enlightened as to the causes of the conflict by the body language of some of our Senior Officers.

As part of our efforts to improve Corporate Governance we have arranged to undertake an Appraisal for the Managing Director and we have asked him to prepare a draft report on reorganising the corporate structure to resolve the lack of corporate management that is referred to by the auditors in paragraph 94 to 96. We are concerned that the Managing Director and the corporate management team have not shared the auditor's assessment of corporate arrangements and their response (final report presented to Auditors in November 2008) to it with us. We are also concerned about our IT strategy and the lack of Project Management across the Authority.

I have previously mentioned the Social Services overspend which was not raised with this Executive until some time into the new financial year when it was very obvious that the current Financial year for this department was also likely to show a substantial overspend on its budget. This is slightly in contradiction to the comments in paragraph 4 that there was no material weakness in internal financial control. Much the same happened in respect of the Ombudsman's report on Housing Benefit. No mention had been made that there were difficulties within the section until the publication of the damning report. A draft Fleet Management Report was prepared in May 2008, this was not discussed with the Executive at all and we had no input into any responses you may have received before publishing your final report in the last few days.

You may feel that this Executive has laboured the "Graigwen" Amlwch issue, I would contend however that the manner in which this property was purchased and the role played in the saga by members of the Corporate Management Team displays a lack of honesty, integrity and verges on being criminal malfeasance in public office. This may explain why my Executive are so concerned about the issue. I am including herewith the response to this particular issue.

Dealing with paragraphs 16 to 22 of the Draft Annual Letter, we raise the following concerns and queries:

Para 19

- 1.1 You note the unanimity of the Executive's decision on 16/07/07 and 10/09/07, suggesting that it is a strong indication of the decision they intended to make. However, you appear to ignore completely the obvious material impact that knowledge of the existence of a restrictive covenant would have had
- 1.2 This factor would naturally have raised doubt and concern and would have been extremely likely to trigger further queries and deeper scrutiny from Members.
- 1.3 There can be no certainty at all as to the decision the Executive would have made had Officers provided this crucial and easily accessible information and had the Executive not been unnecessarily forced by Officers to make a decision under the emergency process.
- 1.4 We therefore contend that your conclusion in relation to what decision the Executive would have made is flawed and is actually no more than a guess. The facts merely support a conclusion to the effect that when forced to make an emergency decision by Officers and whilst not informed of significant relevant facts by Officers, the Executive (unsurprisingly) agreed with the proposal that was put to them by Officers. We would have expected your conclusion to strike a very different balance and to also comment upon whether the democratic process functioned as it should in this case.

*Face orange's
Standard's Centre
Simon P. Smith*

- 1.5 An objective layman would also expect significant concern to be expressed that Officers had not actually carried out a basic level of due-diligence that Members should reasonably be able to expect and assume from the professionals advising them
- 1.6 A separate concern relates to the unnecessary misuse of the emergency process and the detrimental effect on proper democratic scrutiny. As Members, we rely on advice from Officers on a daily basis and it is of fundamental importance that all such advice is objective and transparent if Members are to be effective in their elected role. Transparency and objectivity are also foundation stones in the bond of trust that must exist between elected representatives and Officers if we are jointly to serve the public effectively and appropriately. You will doubtless appreciate that this case has brought to light practices and issues which are harmful to the confidence Members naturally place in Officers. The position of trusted expert advisors to elected representatives is a privileged one with considerable influence, so it is essential that the External Auditor is able to explicitly re-assure Members and their Electors. We look to you to make recommendations that will safeguard that objectivity and transparency in the way Officers work and where issues arise, to tackle them robustly in the interests of the Electors.
- 1.7 We would ask that you modify this paragraph to reflect that the evidence merely reflects the decision the Executive made with the partial information they were given by Officers and the very limited time they were given by Officers to consider before "deciding". We would also ask that you state clearly the fact that it cannot be said with any certainty how they might have determined, had they had the relevant facts and the proper time to apply appropriate scrutiny and questioning.

Para 20

- 1.8 Reference is made in this paragraph, that the Council has substantive legal powers to undertake the purchase of property by auction but you have then left this general and superficial point entirely without the necessary context.
- 1.9 The Council's Constitution at para 3.5.2.5 states that "The Officer with delegated powers or in a case of doubt the Managing Director can take **any action** in consultation with the appropriate member of the Executive or Regulatory Committee Chairperson and/or Vice Chairperson between meetings which she/he considers urgent; **which does not involve expenditure for which there is no budget provision**; and which conforms to the Council's policies subject to the details of such action being reported for information to the next appropriate meeting of the Executive or Regulatory Committee"
- 1.10 In this case there is no doubt that no specific budget provision had been made for the purchase of Graig Wen- it appears in no budget book nor financial committee paper prior to the date of the Auction and the above

- paragraph **only** allows any action not involving expenditure where no budget provision has been made.
- 1.11 Further the previous Standing Orders are also consistent with this position and I think add further light – stipulating very sensibly to avoid conflict that even in cases where Officers may have delegated powers, where they refer a matter to a Committee/Sub-Committee for a decision, then they lose any delegated power and sovereignty rests with the Committee/Sub Committee and Officers cannot then wrest back the decision making power on that item.
- 1.12 I also make the observation that the Monitoring Officer has admitted as much in her initial recommendation not to attend the Auction.
- 1.13 Lastly and most obviously, if the Officers did have delegated power as you suggest then why did the Officers ask the Executive for a determination in the first place?(and an emergency one at that)
- 1.14 With the utmost respect, the audit work carried out in regard to this particular issue appears to be surprisingly superficial even to a layman such as myself and fails to establish definitively whether the Officers had power to make the purchase in these particular circumstances or not.
- 1.15 This is very surprising indeed and is clearly far less than the level of diligence the public should be able to naturally expect from a Company with PWC's professional reputation and expertise. This point is of fundamental importance to the whole matter at hand and whether Officers had power to make the purchase having failed to obtain a lawful decision from the Executive is an issue around which much else turns in this case. One cannot help but feel that someone has been "got at" here.
- 1.16 We would ask that you modify this paragraph to reflect that the constitution specifically does not allow expenditure on items for which there is no budget provision; and that therefore it is very clear indeed that Officers did not have the powers to undertake the purchase without a lawful and constitutional decision from the Executive (or another appropriate Committee)
- 1.17 If you do not believe that my interpretation is correct, I would ask that you definitively state with clear reasons, whether or not the Officers had delegated power with regard to all of the facts and circumstances exactly as they stood in this case. We do not believe that it can be left as it stands as this creates an incorrect assumption that the fundamental point is in doubt.

General

- 1.18 We are also concerned to note the extreme delay and then the apparent abandoning of the two draft reports that were commenced into this matter following my written complaint to PWC. I understand that drafts were provided to Officers in November 2007 and July 2008. On 9th October 2008 Mr Jeremy Coleman the Auditor General wrote to me in response to concerns that I had raised saying that these reports were still with the Officers for "fact checking". We are astonished that such a vast period of

time was allowed for "fact checking", fully eleven months in the case of the first report and three months in the case of the second report. Whilst Mr Coleman stated in his response that it was normal (and of course proper) to check facts with the parties to the report, it would be astonishing and of considerable media interest if the lengthy time frames seen here were also considered "normal"

- 1.19 Of particular concern to us is the abandoning of the two reports by the auditor. The issue of Graigwen which has excited considerable public concern, has at its core, issues relating to the accountability of Senior Officers and whether they appropriately informed and appropriately sought a decision from the illegally constituted Executive or whether in fact Executive members were bamboozled into a position where they had to make an emergency decision armed with information that was insufficient for them to act in the best interests of the public who elected them.
- 1.20 Some basic and inviolable principles of democracy would appear to have been subordinated by Officers throughout this particular case which is why I am at great pains to get at the facts and to ensure that this cannot happen again here in Anglesey
- 1.21 You will therefore understand that it is with the very utmost level of concern that I now turn to the perceived influence of the Monitoring Officer in this case. Mr Howse from PWC stated clearly when he met with a group of concerned Executive members that the Monitoring Officer had "effectively parked a Sherman tank on our lawn", the clear message was a description of an astonishingly legal manoeuvre threatening PWC with litigation via an eminent barrister if she were to be criticised in any way in a PWC report. We were told that she had also sent a copy of the Barrister's CV to PWC. The clear impression left with members present at the meeting with PWC that day was of a carefully calculated legal intimidation of PWC
- 1.22 The Executive are concerned as to the appropriateness of the actions of the Monitoring Officer when faced with proper independent scrutiny, but of even greater concern is the perception that would be created to the layman that PWC have actually been inappropriately intimidated by the Monitoring Officer. Given the considerable public and media interest in this case and as Leader of the Council, I have to be able to steadfastly assure the electors of Anglesey that this is not so.
- 1.23 In the light of the known evidence and facts of this case, the astonishingly long periods allowed to Officers to "fact checking", the statements made by Mr Howse implicitly indicating PWC clearly felt intimidated by the Monitoring Officer's actions, the abandoning of not one but both draft reports by PWC and finally the inclusion of only a brief (and unfortunately I presently believe) materially factually inaccurate (short) reference in the Annual Management letter, I do not feel that I can presently provide this assurance to the electors of Anglesey.
- 1.24 In paragraph 20 to 22 you state that you have decided not to exercise your discretion to seek a declaration under S32 (1). I am of the view that the

Public Interest is not served in this case as the electors are not safeguarded from financial losses. The losses will have already occurred firstly through legal action to remove the restrictive covenant that existed in respect of Graig Wen and secondly through a fall in house prices. I do not believe that it is for the Electors of Anglesey to carry this loss when their elected representatives did not make a lawful nor a properly informed decision to proceed.

- 1.25 Your suggested reasons for not declaring the transaction illegal and unlawful as not being in the public interest is somewhat difficult to comprehend. To say that the transaction had been completed and would be complex to unravel is not good enough. The principle of your argument here is to entirely condone unlawful action merely because it will require further action to reverse it. Adopting this principle would mean that no wrongs would ever be righted. To have the accounts declared unlawful would not of its own trigger the unravelling of the original transaction nor would it be a mandatory step, nor the only course of action open to redress. I would ask that you review this aspect before publishing the Annual Letter. My arguments for doing so are clearly laid out in paragraphs 1.8 to 1.17 above.
- 1.26 I finally wish to make an observation regarding the non inclusion of a highly significant e-mail obtained under Freedom of Information Act disclosure. The e-mail originated from the Monitoring Officer to Ms Eimir Thomas the Acting 151 Officer on 19th July 2008. I append a copy of it to this letter for the avoidance of doubt. This clearly recognises a flawed procedure leading up to the Auction but despite it being illegal and unlawful a decision is taken to proceed and commit the County Council to expenditure of £300000 for the purchase plus subsequent legal fees for removing the restrictive covenant.
- 1.27 When all these matters are taken into consideration there is little doubt why the Executive have no faith in the Corporate Management Team. We are more than willing to take whatever action is necessary to resolve these issues.

On a personal note I would ask that both myself and Councillor R.G.Parry who wrote to you in January 2008 regarding the circumstances of the purchase of Graigwen receive a response to our correspondence. The public of Anglesey whom we represent and who have the power to cancel our mandate at the next election would not wish that the District Auditor be intimidated into a "whitewash" Your report must be fair but it must also be complete and robust. That would give us the confidence for the future to deal with issues fairly, objectively and without fear or favour to any person.

Yours Sincerely,

Cllr. Phil Fowlie; Leader; Anglesey County Council