

CYNGOR SIR POWYS COUNTY COUNCIL

**County Council
21st January 2015**

REPORT AUTHOR: County Councillor Darren Mayor, Portfolio Holder for Adult Social Care and County Councillor Graham Brown, Portfolio Holder for Commissioning and Procurement

SUBJECT: Question from County Councillor Gwilym Williams

The background to my question is regarding adult and social care, when a consultant drew up contracts and awarded them to four national large providers for people's care in their homes.

It came to my attention when these contracts were being awarded I was told that the consultant after he had finished his contracts and left Powys, he was going to work for one of these providers.

At the beginning of 2014 when I was Chairman of the Radnorshire Committee when the portfolio holder Darren Mayor attended, I asked the above question was the consultant going to work for one of these providers. They assured me and promised that this was not going to happen. It then came to light, confirmed by Darren Mayor, that the consultant was now working for one of these companies, therefore, is it ethical for this to happen?

I now understand there is to be an independent inquiry into how these contracts were awarded, and obviously we must wait the decision, but any inquiry will look at what has happened in the past, I would like to look to the future.

My question would be to the portfolio holder in light of the above can all consultants that award contracts for Powys County Council, and then leave the authority, be not allowed to work for these companies for at least one year after the contract was awarded?

The Solicitor to the Council has been asked to look into the legal issues involved in attempting to impose such a "restraint of trade" clause into our consultancy contracts. I am advised that his enquiries are continuing but it is clear that it is unusual for such clauses to be imposed, perhaps because such a clause could be used by the consultant to suggest that they are employees rather than

consultants. Consideration will also need to be given as to the issue of enforceability against the individual consultant, rather than against the company that the Council contract with. For tax purpose, most (if not all) of the consultants we engage, set themselves up as Limited Companies for trading purposes and the consultancy contract is with the company, rather than with an individual. In such an arrangement, the restraint of trade clause (if enforceable at all) would only be enforceable against the company and not against the individual. There is a risk that the individual consultant could attempt to circumvent the effect of such a clause by setting up a second company in a different name and using that second company to undertake work for our appointed Contractors.