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# Review of Whistleblowing disclosures

## **Powys County Council**

**Overall the concerns raised by the whistleblowers, were either not substantiated or had already been recognised by the Council. However, there were serious failings in relation to governance arrangements of the Waste Aim High group, and in the appointment of the Organisational Change Liaison Officer.**

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### Summary

1. The Public Interest Disclosure Act 1998 established the Auditor General for Wales as a 'Prescribed Person' who is able to receive whistleblowing disclosures from employees of the bodies falling within his audit regime.
2. The Auditor General received a written disclosure from an employee of Powys County Council (the Council). The letter set out a number of concerns relating to the Council's waste collection and processing arrangements. Concern was also raised about the appointment of an Organisational Change Liaison Officer (OCLO), and the appointment of the Chief Executive.
3. Shortly afterwards we received a separate and unrelated whistleblowing disclosure from another Council employee. The subject of the disclosure was a concern that the Council was, in many areas, failing to meet its statutory obligations for monitoring in relation to public health and safety risks. The whistleblower also raised concerns about the appointment of the OCLO as mentioned by the first whistleblower.
4. The concerns raised by the whistleblowers can be summarised as follows:
  - The Council was operating a number of 'old' waste agreements that were not delivering value for money and were in need of review.
  - There was a risk that the Council's waste strategy could be inappropriately influenced by the involvement of an external contractor on the Aim High Waste group.
  - An individual employed within the Municipal Waste Operations, and member of the Aim High Waste Group, was promoted to an influential position within the Council (OCLO) without following due process. It was suggested that the promotion rewarded the individual's partiality to the Chief Executive given their senior position within the Trade Union, and also alleged that the Chief Executive's own appointment did not follow Council policy.
  - Internal whistleblowing arrangements were not effective, with a perceived culture of bullying and harassment within the Council. In particular it was felt that it was difficult to challenge decisions without being portrayed in a poor light by senior management.
5. We have considered the allegations received, where relevant, as part of our ongoing audit of the Council's accounts. Given that both employees had raised concerns outside of the Council, we also examined the appropriateness and reliability of the Council's internal whistleblowing arrangements.
6. Our audit took place between January and October 2010. We collected documentation in relation to the allegations and met with and interviewed several relevant senior officers, employees and former employees to form our conclusions on the basis of the allegations. We are grateful to these individuals for their help and co-operation. We have not consulted with parties external to

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the Council since our report is confined to an examination of governance arrangements within the Council.

7. Our findings are summarised below, and are explained in more depth in the detailed report:
- Governance arrangements for a number of waste management contracts need to be strengthened to demonstrate value for money and propriety. This has been recognised by the Council and action to improve these arrangements has been taken.
  - Governance arrangements within key waste management projects allowed strategic decisions to be potentially influenced by external beneficiaries, although the evidence suggests that this did not occur.
  - There were substantial failings in the process of the appointment of the Organisational Change Liaison Officer, leading to the perception of favouritism and even collusion, although our review has found no evidence to support those perceptions.
  - The Council's internal whistleblowing arrangements could be improved, which would help demonstrate management's commitment to dealing with staff concerns.

**Governance arrangements for a number of waste management contracts need to be strengthened to demonstrate value for money and propriety. This has been recognised by the Council and action to improve these arrangements has been taken**

8. The disclosures set out concerns about contract payments to two external contractors. The concern was that despite payments of £250,000 and £300,000 from February 2008 to November 2009, no tenders had been issued for the work and there were no contracts in place. It was also suggested that there was inadequate, if any, monitoring of performance or cost, or any plans in place to review them.
9. The Council operates a number of waste contracts/agreements, some of which have been in place for many years. Others have been subsumed into Council operations following the expiry of grant funding from external sources. Services provided under various agreements with two contractors named in the disclosure, include household food waste collection and recycling, a full locality kerbside collection pilot and the use of a materials recovery facility. Many of these contractual arrangements have been rolled forward as opposed to being put out to competitive tender.
10. Officers interviewed believe these contractual arrangements have added value in the localities where they are operated and provide benefits with wider impact than waste collection, for example, employing people with learning difficulties and working with schools and communities to promote social inclusion and sustainability. Additionally, the contractors were seen as having considerable expertise in the field of food waste recycling.
11. It was generally recognised and accepted by all the officers we spoke to that arrangements relating to a number of legacy waste contracts and agreements are in need of modernising. In particular, there is a need to improve the governance arrangements to be able to demonstrate value for money and propriety. Internal audit have also examined these arrangements and have reported their findings which include recommendations for improvement.
12. These changes have been recognised and accepted by the Aim High Waste Group, as reflected in the action points contained in the minutes of the meeting held on 15 July 2008: *'Review existing contracts and take actions necessary to ensure such contracts support the delivery of the preferred option. This may require the engagement of legal specialists to advise on the scope we have to revise contractual arrangements.'*
13. We are satisfied that the Council is sufficiently aware of the need to modernise these contractual arrangements and intends to secure improvements as soon as practicable and within the confines of agreed contract terms and conditions.

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## **Governance arrangements within key waste management projects allowed strategic decisions to be potentially influenced by external beneficiaries, although the evidence suggests that this did not occur**

14. One of the whistleblowers was concerned that the Managing Director of one of the external contractors referred to above was part of the Aim High Waste group, and consequently had undue influence over the decisions for future waste strategy. As part of the Aim High group this individual would have had unrestricted access to economically sensitive data. It was also indicated that there were no mitigating controls in place, or declarations of interest.
15. It is clear that in the current economic climate, combined with environmental concerns, there are significant drivers for local authorities to minimise costs and maximise recycling in respect of waste processing activities. In particular, the increasing cost of land fill tax and fines for failing to meet Welsh Assembly Government recycling targets has sharpened the Council's focus on future waste strategy.
16. In response to these and other pressures, the Council established a Waste Project Group within its Aim High corporate improvement programme (referred to as the 'Waste Group' from this point onwards). The Waste Group included from the outset the Managing Director of the external contractor on the basis of the private sector knowledge and experience he could bring to the deliberations.
17. One of the activities of the Waste Group was to identify the various waste collection options available to the Council and evaluate them accordingly. The group identified two main options. Option 1 involved a full kerbside sort to include the use of coloured plastic boxes (tin cans, cardboard, glass etc), a wheelie bin for residual waste and a plastic caddy for kitchen waste. Option 2 involved less sorting at kerbside (no plastic boxes) and the need for greater processing of plastic refuse bags at the refuse processing plant.
18. The Waste Group was initially supportive of Option 1 and looked to pursue it as the Council's preferred way forward. However, the whistleblower saw this as the least desirable and most expensive option and also the option most likely to benefit the external contractor. This led the whistleblower to question the influence of the contractor's Managing Partner on the Group in arriving at this preference.
19. The Waste Group also gave consideration to the establishment of a Community Involvement Company (CIC) as a vehicle for delivering waste collection services for the Council. This, as a means of potentially externalising service provision, could have significant consequences for the Council's workforce who may have to transfer to the CIC as part of a TUPE arrangement. The contractor's Managing Director and the Council's current Chief Executive attended a meeting in the Welsh Assembly Government to discuss the potential for taking this idea forward. We can understand why this may have given rise to the perception of a potential conflict of interest.
20. We were advised by senior officers, including the Council's Monitoring Officer, that there was early recognition that there were risks associated with the appointment of an external contractor to the Waste Group. The Council sought

to mitigate the risk by the adoption of a confidentiality agreement between itself and the contractor's Managing Director. We are not persuaded that from a governance perspective such an agreement would have been the most appropriate means of mitigating risk. We are more concerned that the Council could not produce a copy of a signed confidentiality agreement with the contractor when requested to do so.

21. With regards to the preferred option for waste collection, the Council subsequently decided to appoint external consultants, Deloitte, to advise it further. We understand that Deloitte have now identified an option (closely aligned with the original Option 2) which may be the most advantageous for the Council to consider. Additionally, the scope for establishing a CIC has been reduced because of the requirement for it to compete with other private contractors for any council funded refuse collection contracts. There may also be implications of this approach for securing certain types of revenue funding.
22. We can therefore conclude that although the whistleblowing disclosure to us was made in good faith, the concerns about undue influence and inappropriate choice of service model cannot be substantiated given that no decision has yet been made and the likely implications of following the recommendations in the Deloitte report. The Council will need to carefully and fully consider its options with the benefit of independent and impartial advice.
23. We found no evidence that the Contractor has obtained any direct advantage as a result of its Managing Director serving on the Waste Group, although we can see how the perception arose that the Group's objectivity could have been impaired. This arrangement is no longer in place.

Recommendation	
R1	The Council should give early and careful consideration to the risks and mitigating governance arrangements when third parties are involved in any of the Council's working groups.

**There were substantial failings in the process of the appointment of the Organisational Change Liaison Officer, leading to the perception of favouritism and even collusion, although our review has found no evidence to support those perceptions**

24. The disclosure centred around two appointments, the OCLO and the Chief Executive. The allegation is that neither of the appointments followed the Council's own HR policies, and that the OCLO appointment was as a 'reward' for that individual ensuring Trade Union support for the local environment initiative and lobbying members to ensure the ratification of the Chief Executive appointment.
25. The concern about the appointment of the OCLO was raised with us independently by two further Powys County Council employees interviewed as part of our review. We have examined the appointment process. This has



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involved a review of the HR file, and discussions with officers from HR, the Chief Executive and the newly appointed OCLO, amongst others.

26. The OCLO was previously the branch Chairman for Unison, and we were provided with a copy of the Unison newsletter dated October 2009. A front page article entitled 'New Chief Executive' contained the following paragraphs:  
*'Well, at long last we've got someone who knows about local authorities as our new Chief Executive.  
Well done Jeremy! You held the fort after Jackie Tongue left and then again after Mark Kerr went on to pastures new. You've earned it!'*
27. We were informed that the article in the Union newsletter was written by the Union Branch Secretary (coincidentally the wife of the Organisational Change Liaison Officer). The Union Branch Secretary has explained that the article reflected the Union Branch sentiment that Council money would be best spent on giving someone from within its own ranks an opportunity at the Chief Executive's job for a trial period. This would avoid the costly expense of paying head-hunters and consultants who could recruit a potentially unsuitable candidate who knew little about the challenges facing the Council.
28. We were informed prior to the appointment of the Chief Executive from interim to permanent in September 2009, that the Council did not intend to advertise this post externally and that a decision on the proposed course of action would be made by full Council. We commented at that stage that the Council should ensure it was following its own policies and ensure the appointment complied with legal requirements. We were given assurances that the Council had taken legal advice which confirmed there were no impediments to the proposed course of action.
29. In relation to the appointment of the OCLO, we have found no evidence to suggest that there was anything other than a professional relationship between the OCLO and the Council's Chief Executive.
30. The Unison Branch Chairman was, in 2009, employed by the Council as a Waste Collection Supervisor. He had served with the Council for more than 30 years in a variety of previous roles. This individual also served as a member on the Waste Group referred to previously.
31. We understand that by 2009 he was closely involved with projects looking at service re-design and the harmonisation of terms and conditions.
32. To recognise this, in August 2009, the Director for Environmental Services signed a form proposing that the individual could assume a temporary new role within Environmental Services in which he could help canvass staff views and communicate management's change agenda. The proposal was approved and the form indicated that the role would be for an initial period of six months, and would attract no increase in salary.
33. In September of 2009 the Senior Manager, HR and Organisational Change, was directed by a senior officer as a matter of 'urgency' to make the arrangement permanent, and to widen the role from Environmental Services to a corporate role as OCLO. A review of the personnel file showed no evidence of any application for this post or interview and it was confirmed, through our review, that no applications were invited or any interviews held. Subsequently, we were provided with a scoring matrix which made reference to items that would be

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required to be exhibited from the completed job application form and selection interview for this post (if they had taken place). The Senior Manager HR also completed a Job Description and evaluated the role. This resulted in the OCLD receiving a 33 per cent increase in salary from his previous role. The appointment form was signed off by the Council's Chief Executive.

- 34.** We have a number of concerns about the process leading up to this appointment. Our comments relate to process and governance arrangements and should not be interpreted by any reader of this report as any form of reflection on the merits, qualifications and experience of the appointed individual.
- The appointment was made without any advertisement of the role or any form of competitive selection process, interview or even application form.
  - We have reviewed the Council's relevant HR policies and procedures and cannot relate this appointment to the provisions of these documents. We do not believe that the HR policies cater for a decision of this kind and we cannot conclude that the appointment complied with existing Council policies, in particular the Redeployment Policy (para 9), Equal Opportunities Policy (paras 1.2 and 1.3), and the Recruitment and Selection Policy (paras 2.9.2 and 2.12.2).
  - Despite interviewing all individuals associated with the process, we have been unable to establish the identity of the senior officer who requested the Senior Manager HR to process the role into a permanent, corporate position as a matter of 'urgency'. We are not clear why the decision was considered urgent.
  - The permanent role attracted a salary increase of some 33 per cent which we believe is significant in the context of the transparency failings noted above.
  - Our review of the individual's HR file found that whilst a Scheme of Delegation Form had been signed by the Senior Manager HR and the Chief Executive, the file did not contain documents to explain why the role was created and why this individual was appointed. Documents referred to above, such as the Job Description and Scoring Matrix were not provided until asked for during our review and, consequently, after the appointment was made.
- 35.** Having looked at this issue independently and impartially, we can conclude that there was a degree of inevitability that onlookers would draw unfavourable conclusions from the events reported above. In particular, this conclusion is supported by the comments in the Union newsletter and the subsequent appointment a very short time later without a competitive process, and not following the Council's own policies.
- 36.** Additionally, we have been unable to establish the way in which the temporary role became permanent despite the change being described as a matter of urgency. Officers associated with the process have been unable to provide satisfactory explanations in this regard.

Recommendation	
R2	The Council should ensure that its HR policies are fit for purpose and that they are adhered to with all appointments throughout the organisation.

## The Council's internal whistleblowing arrangements could be improved, which would help demonstrate management's commitment to dealing with staff concerns

37. Given the receipt of two unrelated whistleblowing disclosures to the Auditor General within such a short space of time, and both expressing reservations about internal arrangements, it was considered appropriate to give some consideration to the appropriateness and reliability of the Council's internal whistleblowing arrangements. Whilst one of the whistleblowers had indicated that they had raised issues internally and consequently his position of employment was made more difficult, we have not reviewed this specific issue.
38. The Council's whistleblowing policy is set out under section 15.6 of the Council's HR policy documents, which are hosted on the Council's intranet. Whilst the policy can be located reasonably quickly, there is more scope to promote its existence and raise awareness, for example, by dedicating a 'Raising Concerns' page on the intranet or putting posters up on office notice boards.
39. The HR policies on the intranet are marked as 'pending review'. This is the case for the whistleblowing policy since it makes references to individuals and posts that no longer exist within the Council.
40. Raising a concern under a whistleblowing policy is normally a daunting undertaking for any employee. They will want to be assured that their concerns will be taken seriously and that there will be no adverse implications to their employment because of the disclosure. A policy that is out of date and contains references to persons no longer in post will, whether merited or otherwise, create an impression that dealing with staff concerns is not a high priority for the Council. It also increases the likelihood of disclosures being made outside of the Council itself.
41. The whistleblowing policy, in our view, could be made clearer in terms of where concerns can be taken outside of the Council for consideration. If employees wish to exercise this right then references to the appropriate Regulator or 'Prescribed Person' will mean that external disclosures will end up in the right place and will be dealt with in accordance with proper professional practice.
42. Public Concern at Work is a charity that specialises in promoting responsible whistleblowing. It provides a confidential helpline that staff can use to discuss their concerns and get advice. The Council's policy could usefully be expanded to include a reference to this free service.
43. We have been advised by Internal Audit that internal disclosures are made from time to time and are dealt with in accordance with the policy. This is

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encouraging. We should also add that we have not previously received whistleblowing disclosures from staff at Powys County Council. However, we would further recommend that caseload statistics are collected and reported to an appropriate Council scrutiny committee with details, where possible, about the concerns raised and how they have been addressed.

- 44. Further to the views expressed by the whistleblowers about bullying and harassment, a number of staff we met as part of the review raised issues in relation to the culture of the Council. These issues are always a 'personal view' of the workplace and are difficult to assess objectively. A theme emerging was that of a culture where staff views were not important to management and if they didn't like the way the Council was moving they were free to leave and work somewhere else.
- 45. We recognise that the Council, as are all public bodies, is operating in a challenging economic environment and organisational changes are having a significant impact on how things get done. Such change brings uncertainty to many staff and any fears relating to job design and security will be amplified. Powys County Council is one of the biggest, if not the biggest, employer in the County and this may compound the anxiety on staff given their limited opportunities to work elsewhere.
- 46. Senior management has recognised that the Council needs to change its working practices and culture, and the Interim Head of HR saw the Council as very proactive in terms of promoting 'Dignity at Work'. We were informed that the Council was one of only a few in Wales that had recently undertaken a 'stress audit'. Whilst there was scope for improvement, most of the recorded stress was due to factors outside of the workplace. The level of sickness absence amongst the workforce was one of the lowest in Wales. A focus group was being established to take the findings of the 'stress audit' forward. The Council had adopted a healthy lifestyle initiative and had secured a corporate health gold standard award.

<b>Recommendation</b>	
R3	The Council should revise and update its whistleblowing policy to bring it up to date and ensure it meets best practice.





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