

**FURTHER INVESTIGATION  
ON BEHALF OF  
POWYS COUNTY COUNCIL  
CONCERNING  
HOME TO SCHOOL TRANSPORT  
AT LLANFYLLIN HIGH SCHOOL  
BY JONATHAN WALTERS**

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## **SECTION 1**

### **THE INDEPENDENT INVESTIGATOR**

- 1.1 My name is Jonathan Walters. I am a practising barrister having been called to the Bar in 1984. I am based in Swansea.
- 1.2 I was appointed as the independent investigator by Powys County Council in August 2016.
- 1.3 I have prepared this report which sets out the evidence I have obtained and the conclusions I have made in accordance with the terms of my instruction.

## **SECTION 2**

### **THE BACKGROUND TO THE INVESTIGATION**

- 2.1 In May 2016 I reported on the issues which arose as a result of the breaches of Powys County Council's Delegated Scheme for the Financing of Schools. I need not set out the contents of that report here.
- 2.2 As a result of my report action was taken by Powys County Council against four of the LEA Governors on the board of governors at Llanfyllin high School. All four LEA Governors were Powys County Council councillors.
- 2.3 During the appeal process one of the councillors Mr. Peter Lewis happened upon a report prepared by PWC in 2014 which revealed that there were significant transport costs at Llanfyllin High School.
- 2.4 It has subsequently been contended by the LEA Governors that had I been aware of the additional information when conducting my investigation that my conclusions as to who in Powys County Council knew of the breaches of the Scheme might have been very different.
- 2.5 As a result of the above, I have been asked by Powys County Council to consider whether the content of the PWC report and the fact of its circulation to senior officers and all the councillors of Powys County Council in October 2014 would have made a difference to the conclusions in my initial report. Accordingly, I have investigated the matter and prepared this report in accordance with my terms of reference.

## **SECTION 3**

### **THE TERMS OF REFERENCE**

3.1 These are the Terms of Reference upon which I have acted.

To consider whether the PWC report of October 2014 would materially alter the findings and conclusions set out in the first investigation report.

## **SECTION 4**

### **METHODOLOGY**

- 4.1 In advance of the taking of oral evidence I was provided with the terms of reference.
- 4.2 Having considered the limited documentation made available to me at the outset I required some preliminary enquiries to be made with Price Waterhouse Coopers (PWC) concerning their involvement in the matter. I received a response to the same in September 2016. I was also able to identify a number of people who I considered could provide meaningful evidence to the investigation.
- 4.3 Ultimately, I interviewed the witnesses. No one asked to be accompanied. The interviews took place at Powys County Council premises in Llandrindod Wells and Welshpool and I also spoke to two witnesses by telephone. I emailed one witness and received a response by email from him.
- 4.4 The decision as to who to interview was mine alone. I consider my duty is to conduct a proportionate investigation. In considering who I wished to interview I decided to only interview those people who I believed could realistically offer evidence of relevance to the investigation.
- 4.5 When conducting interviews I informed the subjects of the interview of the fact that I was conducting a further investigation and that I would type what they had told me but that I would only manage to capture the gist of what I was being told. I informed them that I would email the draft notes of their evidence to them for approval or amendment or addition of material which they had failed to recollect at the time of the meeting. I duly provided the drafts to all the witnesses. All the

drafts were returned to me either unamended or with the necessary amendments thereon which then stood as their statements to the investigation.

4.6 In the case of [REDACTED]  
[REDACTED] I had received an email which he had sent to Mr. Darren Mayor. I then emailed him a further question and he provided his answer to me by email.

4.7 It was reassuring to note that there was little if any meaningful difference between the contents of the drafts and the perfected statements in so far as the issues were concerned.

4.10 As mentioned above at the outset of the investigation I had asked the solicitor to the council to make enquiries of PWC concerning their involvement in this matter. The response is in the bundle of documentation. As a result of interviewing Mr. Mayor he alerted me to the fact that it would be likely that PWC employees would have kept notes of meetings with council officers when discussing earlier drafts of their report for the council. In addition, he alerted me to the likely existence of a draft report.

4.11 I duly asked that further enquiries be made with PWC and I established that no notes were available but an earlier draft of the PWC report was available and that is included in the documentation bundle.

4.12 I now set out the names of the persons I have interviewed or of whom I have asked written questions.

- [REDACTED]
- b. Councillor Barry Thomas
  - c. Councillor Arwel Jones
  - d. Councillor Darren Mayor

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

i. [REDACTED]

4.13 The evidence of the witnesses is contained in a separate bundle.

4.14 I have also obtained a small amount of additional documentation. I have placed the documentation into a bundle. The bundle has been paginated. Where I have referred to a document in this report I have included the page reference in brackets and in bold type as follows **(B.15)**.

#### **CONTENTS OF THE DOCUMENTATION BUNDLES**

- Bundle A the witness evidence
- Bundle B contains the documents

#### **THE STANDARD OF PROOF WHICH HAS BEEN APPLIED**

4.15 Although there is no material dispute of fact as such between witnesses I am mindful that I am applying the civil standard of proof to my fact finding namely the balance of probabilities. Of course, this is an inquisitorial and not an adversarial process and the evidence of witnesses has not been fully tested and I have to bear that in mind when reaching my conclusions.



## SECTION 5

### THE EVIDENCE AND FINDINGS OF FACT

- 5.1 I now propose to set out the relevant parts of the evidence and to make findings of fact. I do not propose to set out each and every passage of relevant evidence as it is not proportionate to do so. I have simply set out the facts which allow me to reach conclusions as to whether the contents of the PWC report commissioned by Powys County Council would alter the conclusions I reached in the first report because (so it is alleged) it had alerted members of the council and senior officers to the breach of the Delegated Scheme for Financing of Schools and they did nothing to address it.
- 5.2 The PWC report prepared for the council concerning the cost of the provision of education in Powys was provided to the council in the summer of 2014. I have read the report dated June 2014. [B.1-66] I have also read the draft report which is almost identical to the final version of the report. [B.67-122] I accept the evidence of ██████████ that *"the rationale for the work was that PCC needed to start secondary school modernisation and rationalisation..... we decided we needed someone to come in and provide an independent baseline position in terms of pupil numbers and the impact those numbers would have on secondary school budgets."*
- 5.3 I also accept ██████████ evidence that he did not want to focus on individual schools: he wanted a strategic approach and, therefore, he wanted a general overview of the position. He intended to use the report as evidence in order to support moves for reorganisation. The report was intended to establish whether the numbers of pupils attending the schools would continue to decrease and whether there would be an increase in deficit budgets. It is clear that PWC cooperated and worked with the schools, the schools service and the finance

department at the council to prepare the report. The report was shared with the secondary schools head teachers and also, on the 21<sup>st</sup> October 2014, the report was shared with all the council's directors and members of the council. [B.139]

The report was also seen by [REDACTED]  
[REDACTED]

- 5.4 The evidence given by all the witnesses I interviewed is that absolutely no one noticed that in the report the analysis of Llanfyllin High School's budget revealed that it was consistently using a substantial amount of money for school transport. When one compares it to the other secondary schools its expenditure is significant and stands out clearly. Furthermore, it is even more significant when one considers the assertion by PWC at page 23 of the report that in all schools:

*"Home to school transport for all pupils is funded directly by the Council, with schools only funding in-school transport for educational and extra-curricular trips. However, there is an inconsistent cost recovery of school trips amongst the schools. Some schools do not charge pupils, whilst others ask for donations."* [B.23]

- 5.5. I find that it was remiss of PWC not to mention this anomaly in its observations on the budget of Llanfyllin High School which might have drawn attention to the detailed line for transport in the budget of the school.

- 5.6 In order to obtain the information for its report, PWC employees attended at Llanfyllin High School in the summer of 2014 and spoke to [REDACTED]  
[REDACTED]

- 5.7 After instructions in this matter were received in August 2016 I indicated that I would want to see PWC's views on the content of the report and particularly whether they alerted anyone within the council as to the likely breach of the council's financial policies. [REDACTED] sent a number of questions to PWC and

they responded by letter on the 2<sup>nd</sup> September 2016. [B.176-17] In short, it is clear that PWC were unaware of the content of the council's Scheme for the Financing of Schools and the transport expenditure did not of itself raise any alarm bells. The PWC partner confirmed that he had made enquiries of the PWC employee who attended at Llanfyllin High School and there was no recollection of being told that the school was using its delegated budget to fund home to school transport.

5.8 When I interviewed Mr. Mayor in December 2016 he indicated to me that [REDACTED] had confirmed that there had been a discussion with PWC around the use of the school's budget. The email from [REDACTED] makes it clear that he told the PWC employees that the school was using its budget to subsidise school transport. It is alleged by [REDACTED] that PWC were taking notes of what as being said. [B.183-184] I therefore asked [REDACTED] to write to PWC asking them to produce any notes of the meeting with [REDACTED]. Their response was by email on the 30<sup>th</sup> January 2017. [B.185] In effect, they indicated that they held a very short note of the discussion around transport costs. In their email PWC state this:

"1 - an extract from the notes taken during our meeting with Llanfyllin High School:

*"The school is constrained by their budget. For example, they would like to use their funding to put on a bus to support their intake model and use it for marketing"*

This is the only note that we have, that could relate to the issue in question. It was captured during a broad discussion on the financial pressures the school was facing, which included topics such as Special Educational Needs funding and the pressures from loss of specific grants.

The comment was not included in the draft or final report, as the focus of our engagement was to report on the actual financial feasibility of all the secondary schools in Powys, and not to suggest potential cost saving or income generating measures."

5.9 Mr. Mayor also alerted me to the fact that prior to the preparation of the final report there would have been discussions and earlier drafts of the PWC report. I therefore asked for notes of any such discussions and prior drafts. PWC confirmed in the above email that there were no notes retained by them but they did produce a draft report which is included in the bundle of documentation.

5.10 The draft report in fact does not reveal that there was further information which was omitted from the final report or that there was any different approach taken by PWC to the question of transport costs between the two reports. This is not surprising bearing in mind the evidence provided to me by PWC in their earlier letter of the 2<sup>nd</sup> September 2016.

5.11 I have little doubt that there was discussion between [REDACTED] and PWC about the use of the school's budget to fund transport costs. That would be entirely consistent with my conclusions contained in the first report. I do not believe that the fact was being hidden. I also accept that that would have been of no consequence to PWC bearing in mind the instructions they had received and the lack of knowledge of the council's scheme for financing of schools. Furthermore, I note that there are two income lines in the budget which does not rule out the school recouping some or all of the transport costs from parents. Without investigation by PWC the position would be unclear to them or to the reader of the report.

5.12 Furthermore, on receipt of the final report, Councillor Arwel Jones, the education portfolio holder was required to present a paper to the cabinet of the council on school reorganisation. [B.143-150] He told me this about his involvement with the PWC report:

*"1. I received a copy of the report and I confirm I read through it in the autumn of 2014. I didn't pick up the transport costs in Llanfyllin. Nothing was said to*

*highlight it in the report that was provided to me. Nothing in the report highlighted me to improper use of monies.*

*2. However, the issue which I was focussing on was financial deterioration and that there needed to be a reorganisation. In January 2015, the report which went to cabinet was designed to achieve this result. I believe [REDACTED] would have prepared the report on my behalf. My report highlighted the salient points which was an appraisal of the PWC report. I was not looking at schools individually but just as a whole. The re-organisation of the provision of education would lead to costs savings generally and I was not looking at the circumstances of individual schools. As a consequence of the above I was really not interested in what the school budgets were being expended on in individual schools: I was concentrating on the bottom lines and I simply missed the fact that Llanfyllin High School was spending a substantial amount of its budget on transport."*

5.13 In view of the fact that the report to cabinet did not mention the likely misuse of the school's budget and that the report itself was not written by councillor Jones I interviewed the [REDACTED]  
[REDACTED]

5.14 [REDACTED] told me this:

*"1. In about early January 2015 I drafted a report for cabinet on behalf of Councillor Arwel Jones who was the Education Portfolio holder. The report went before cabinet on the 27<sup>th</sup> January 2015.*

*2. In order to prepare my report I had to consider the contents of the PWC report which had been commissioned by PCC into secondary school provision in Powys.*

3. *I can say I did not notice the line in the Appendices concerning transport costs for Llanfyllin. At that time I was not aware of clause 5.2 of the Scheme for Financing of Schools so it would not have been of any significance to me anyway. I was aware that some pupils were coming to the school from across the border but nothing more than that. Furthermore, my focus was on the picture generally and not on an individual school's expenditure.*
4. *I remember seeing the PWC report and some further spreadsheets from PWC on transformation modelling. I worked closely with PWC. I wasn't aware of them asserting that the transport was being funded from the school's delegated budget. In any event that is not something I had involvement with. I was looking at the overall strategic picture.*
5. *When I prepared my report for Councillor Jones I simply took from the PWC report the information necessary for discussion of the relevant issues by the cabinet. The use of delegated budgets was not of relevance."*

5.15 [REDACTED] told me this about his knowledge of the content of the PWC report and how he discovered the misuse of the school's budget:

- "4. *I read the PWC report at the time to prepare for the secondary heads meeting on 10<sup>th</sup> September and I took the information out of it which I felt was useful. I've looked again at the line in the PWC report concerning transport costs at Llanfyllin. I didn't pick it up because I was looking at it in terms of the total expenditure and at surplus or deficit positions, pupil number projections and premises costs. I wasn't particularly focussing on the other budget lines. I was not interested in the transport budget figures as this was going to be looked at separately.. I have a great sense of frustration that we didn't pick it up. I feel I was close to getting there with my references to taxis but I didn't quite make the link. At the time I had no*

*reason to. The 'penny only dropped' in August 2016 when I was alerted to the entry for transport for Llanfyllin in the PWC report. I had completely forgotten about the report and could not recollect seeing the entry at the time. With hindsight it is now clear but as I have already said in 2014 transport was not an issue.*

5. *When I eventually discovered what had been happening at Llanfyllin it was a total surprise and I took immediate action. If in 2014 it had become known to me then I would have taken the same action. There would be no reason from me to react differently."*

5.16 I also asked [REDACTED] about the reaction of [REDACTED] in January 2016 when the misuse of the school budget became common knowledge and she said this:

*"I remember in January 2016 or thereabouts when the issue of the misuse of the delegated budget first arose. I remember being surprised and my recollection is that [REDACTED] was equally surprised."*

5.17 I interviewed [REDACTED]. He was on the periphery of this matter due to the nature of his portfolio. As he says in his evidence (and I so find) that it is unlikely he read the report or its appendices. I asked him about what he, as a somewhat dispassionate observer, had noticed of the reactions of senior officers and members of the council to the apparent revelation of a breach of clause 5.2 in January 2016 and he said this:

"4. *I became aware of the home to school transport issue when matters blew up at the beginning of 2016. I observed the conversations of cabinet members and senior officers. I listened to the debate but I don't think I've really been asked to comment. As an observer, I witnessed what I believed to be extreme surprise, shock and concern on the part of both cabinet members and officers.*

5. *I have been asked whether perhaps the response of cabinet members and officers was feigned. In my view their reactions were genuine: otherwise it would have taken a prolonged and inordinate amount of effort designed and intended to deceive me. I think that is most unlikely."*

5.18 I need not set out any further part of the evidence. It is abundantly clear that until Mr. Peter Lewis noticed the transport line in the PWC report no one had mentioned this matter in any of the debates and discussions nor in the interviews I conducted for the first investigation.

5.19 On the evidence that I have obtained I make the following findings of fact:

- a. In about early 2014 PWC were commissioned by the council to write a report in order to assist the council in moving forward with an agenda of school reorganisation
- b. The report was not commissioned to focus on the budgets of particular schools
- c. There was a meeting between PWC and [REDACTED] and [REDACTED] in the early summer of 2014.
- d. PWC were told by [REDACTED] that the school had used its delegated budget to fund transport costs
- e. PWC were not aware of the significance of the same and did not alert any council officer to that fact
- f. There were discussions between PWC and council officers about a draft of the report
- g. There is no evidence that during the discussion there was mention of the misuse of the school budget by Llanfyllin High School
- h. The final report was completed in June 2014 and it was widely distributed within the council in October 2014
- i. The final report was read by senior officers and by some councillors



- j. The final report could have alerted senior council officers and councillors to the potential misuse of the school budget
- k. The final report was a missed opportunity to discover the breach of the council's scheme and to address the issue of home to school transport in October 2014
- l. The final report did not in fact alert **anyone** to the misuse of the school budget
- m. Had it done so then it would have been actioned at that time
- n. The report to cabinet in January 2015 did not raise the matter as the author of the report was unaware of the significance of the issue
- o. There was genuine shock and surprise when the matter finally emerged as an issue at senior officer and member level in January 2016

## **SECTION 6**

### **CONCLUSIONS**

6.1 It has been contended by a number of people that by no later than October 2014 senior officers and councillors of the council must have known that Llanfyllin High School was misusing its delegated budget by funding the cost of home to school transport for certain pupils in breach of the council's Scheme for the Financing of Schools. It follows that if true all the expressions of shock and surprise in January 2016 were faked and deceitful. These are serious allegations because, if true, a number of senior officers and councillors have told innumerable lies about the matter.

6.2 Whilst I can readily understand the suspicion of interested parties that the PWC report in 2014 did alert senior officers and councillors to the breach of the council's scheme, there are a number of factors which militate against such a finding:

a. no one picked the matter up at the material time including the LEA governors of Llanfyllin High School

b. no one advanced this matter or referred to this report during the first investigation which suggests that no one was aware of its potential significance

c. if the allegation is true there would have been a collective decision by a number of senior officers and councillors to withhold the PWC report from consideration by me in the hope that it would not materialise and that is not a credible contention

c. the genuine reactions of senior officers and councillors when the matter finally emerged in January 2016

**6.3 On the evidence I have obtained, therefore, I do not consider that the PWC report alters the conclusions I reached in the first investigation report concerning the actions of governors, councillors or officers of the council.**

**6.4 It follows that I do not consider that the PWC report alters any of the recommendations I made in the first investigation report and there are no further recommendations necessary as a result of this second investigation report.**

1<sup>st</sup> February 2017

Jonathan Walters

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Swansea

