Public Document Pack

Petitions Committee

Meeting Venue:
Committee Room 1 - Senedd

Meeting date:
18 February 2014

Meeting time:
09:30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

For further information please contact:

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Agenda

1 Introduction, apologies and substitutions (9.30) (Pages 1 - 13)

2 New petitions (9.30 -9.45)

2.1 P-04-535 Save our Fire Stations (Page 14)

2.2 P-04-536 Stop Factory Dairy Farming in Wales (Page 15)

2.3 P-04-537 Planting Trees to Reduce Flooding (Page 16)

3 Updates to previous petitions (9.45 - 10.30)

Natural Resources and Food

3.1 P-04-439 Ancient veteran and heritage trees of Wales to be given greater protection (Pages 17 - 19)

3.2 P-04-514 A Welsh clean coal and/or renewable energy power station instead of the proposed Wylfa B nuclear plant at Anglesey (Pages 20 - 28)

Health

3.3 P-04-452 Equal Rights for Tube-fed Youngsters (Pages 29 - 32)

3.4 P-04-460 Lives not Airports (Pages 33 - 37)

The following two items will be considered together

3.5 P-04-466 Medical Emergency - Preventing the introduction of a poorer Health Service for North Wales (Page 38)

3.6 P-04-479 Tywyn Memorial Hospital X-ray & Minor Injuries Unit Petition (Pages 39 - 46)

Local Government and Government Business

3.7 P-04-454 Call to end Councillor and Assembly Member Dual Role (Pages 47 - 48)

Education

3.8 P-04-458 Keep Further Education in the Public Sector (Pages 49 - 111)

Housing and Regeneration

3.9 P-04-489 A National affordable and priority housing Act of Wales (Pages 112 - 117)

3.10 P-04-510 Public inquiry into the Breckman case in Carmarthenshire (Pages 118 - 316)

Papers to note

Evidence Session

4 P-04-472 Make the MTAN law: Evidence Session with the Minister for Housing and Regeneration (10.30 - 11.00) (Pages 324 - 340)

Carl Sargeant, Minister for Housing and Regeneration

Joanne Smith, Senior Planning Manager

Rosemary Thomas, Head of Planning

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted

P-04-535 Save our Fire Stations

Petition wording:

We call upon the Welsh Government to ensure fire services throughout the country are protected from severe budget cuts which inevitably impact upon the service and response times.

Additional information: Due to severe budget cuts from the Welsh Government to local government, fire authorities are facing significant financial pressures and are being forced to reduce their budgets. We believe this will directly impact upon response times and potentially put people's lives at risk. As the Welsh Government has ultimate responsibility for the fire service, we believe the Welsh Government should make a financial intervention in the same way it has done for the NHS to protect the fire service from budget cuts.

Petition raised by: Jonathan Edwards

Date Petition first considered by Committee: 18 February 2014

Number of signatures: 698

P-04-536 Stop Factory Dairy Farming in Wales

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to update Planning Policy Wales and other relevant planning documents such as Technical Advice Note 6: Planning for Sustainable Rural Communities, to ensure that large scale indoor factory dairy farms are not created in the pursuit of short-term economic gain and to the possible detriment of many small-scale run farms. The recent approval of the farm in Welshpool, Powys cited paragraph 7.2.2 of Planning Policy Wales specifically in saying that it "…recognise(d) that there will be occasions when the economic benefits will outweigh social and environmental considerations." and we believe this must be urgently reviewed since the possible creation of a small number of new jobs should not outweigh the long term economic benefits afforded by the plentiful, efficient and sustainable asset of grazing which many Welsh dairy farmers fully recognise.

Large scale indoor factory dairy farms are designed to keep cows indoors rather than out on pasture, and have been shown to increase environmental damage, impoverish local communities, can severely compromise good animal welfare and become a financial drain on their surroundings. We believe that following the Welsh Government's decision to approve the farm in Welshpool, a review of planning legislation is of critical importance to ensure Wales fulfils its aspiration to become a truly sustainable country.

Petition raised by: World Society for the Protection of Animals

Date Petition first considered by Committee: 18 February 2014

Number of signatures: 9246

P-04-537 Planting Trees to Reduce Flooding

Petition wording:

We call on the Welsh Assembly to urge the Welsh Government to reduce flood risk to thousands of homes across the country by supporting the planting of at least 10 million trees over the next 5 years, creating hedges, tree belts and wooded areas targeted where they will best help soak up rainfall and slow down water runoff. This tree planting will count towards the 100,000 hectare tree planting target the Welsh Government has already set, to soak up C02 from the atmosphere.

Petition raised by: Coed Cadw

Date Petition first considered by Committee: 18 February 2014

Number of signatures: 2708

P-04-439 : Ancient veteran and heritage trees of Wales to be given greater protection

Petition wording:

We believe that the ancient, veteran and heritage trees of Wales are a vital and irreplaceable part of the nation's environment and heritage.

We call on the National Assembly for Wales to urge the Welsh Government to provide greater protection for them, for example by:

- Placing a duty on the new Single Environmental Body to promote the conservation of such trees by providing advice and support for their owners, including the grant aid where necessary;
- Amending current Tree Preservation Order legislation to make it fully fit for purpose in protecting ancient, veteran and heritage trees, in line with proposals by Coed Cadw (the Woodland Trust);
- Incorporating the database of trees recorded and verified through the Ancient Tree Hunt project as a dataset in any successor to the Wales Spatial Plan, recognising these as 'Trees of Special Interest' and providing this information to Local Planning Authorities in Wales so that it can be incorporated into their GIS system, for information.

Petition raised by: Coed Cadw Cymru

Date petition first considered by Committee: 4 December 2012

Number of signatures: 5,320

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-439
Ein cyf/Our ref AD-/00037/14

William Powell AM
AM for Mid & West Wales
Chair Petitions committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

21 January 2014

Dear Bill,

Ancient, Veteran and Heritage Trees in Wales

Thank you for your letter dated 16 December 2013 in which you sought my views regarding the petition for greater protection of ancient, veteran and heritage trees submitted to you by Coed Cadw.

I welcome Coed Cadw highlighting this matter and in my oral statement that I gave to Plenary on 5 November regarding the opportunities and challenges facing the forestry sector in Wales, I made reference to ancient and veteran trees and their biodiversity value.

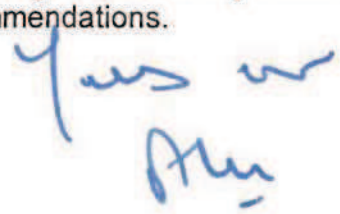
My forestry officials have been working to establish a Task and Finish Group with the remit of examining the adequacy of the protection that currently can be given to such trees and to report to me on whether there is scope to improve that protection.

A number of individuals from the public, private and voluntary sectors, each with expertise and experience in relation to the protection of trees in Wales, have been invited to participate in the Group and they have been asked to indicate by 20 January whether or not they wish to join it.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Alun.Davies@wales.gsi.gov.uk

Membership will therefore be confirmed by that date and the Group's initial meeting will then be arranged. Once they have completed their remit the Group will report to me with its recommendations.



Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

P-04-514 A Welsh clean coal and/or renewable energy power station instead of the proposed Wylfa B nuclear plant at Anglesey

Petition wording:
We call on the National Assembly for Wales to urge the Welsh Government to work with the new owners of Wylfa B, Hitachi, to encourage the use of clean Welsh coal or our other plentiful supplies of viable technologies/resources instead of a dangerous nuclear power plant.

In a report on clean coal technology from the 2010 XXI World Energy Congress in Montreal Canada, Hitachi state that they are developing a full portfolio of new clean coal technologies aimed at further efficiency improvement, 90% CO2 reduction, and near-zero emissions of other pollutants. As world leaders in clean coal technology, why don't Hitachi work alongside the Welsh Government to implement this technology at Wylfa B instead of an archaic and poisonous nuclear plant station like the failed Fukushima plants they helped to build?

Additional information:
Nuclear plants are a dangerous and uneconomical method of producing electricity, with a short unviable operational time span which costs tax payers tens of billions in development, subsidies and decommissioning costs. As well as being vulnerable to attack and natural disasters as seen in Fukushima, nuclear power has known health risks. A major German government report showed increased rates of childhood cancers and leukaemia around nuclear sites. With no known method of disposing of the nuclear waste, it will also contaminate the planet for thousands of years.

Welsh clean coal, gas, hydrogen, solar, wave, tidal, hydro, Maglev wind, geo thermal, refuse incineration, anaerobic digestion, biomass or a combination of all of these could be implemented at Anglesey and elsewhere instead of nuclear power. Ynys Mon's PAWB manifesto states that, whilst the current Wylfa only has up to 600 workers, up to 3650 new jobs could be found by developing local renewable energy projects alone.

Petition raised by: Sovereign Wales

Date petition first considered by Committee: 26 November 2013

Number of signatures: 104

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-514 A
Ein cyf/Our ref AD-/02013/13

William Powell AM
AM for Mid & West Wales
Chair Petitions Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

15 January 2014

PETITIONS COMMITTEE – SOVEREIGN WALES

Thank you for your letter of 16 December on behalf of the Petitions Committee regarding the petition from Sovereign Wales which calls for the development of clean Welsh coal technologies on Anglesey as an alternative to the development of a new nuclear power station at Wylfa.

Our *Energy Wales: A Low Carbon Transition* document of March 2012 sets out the Welsh Government's ambition to ensure full advantage is taken of the transition to a low carbon economy to secure a wealthier, more resilient and sustainable future for Wales. The document recognises the role of a range of energy sources in the transition process.

Fossil fuels continue to have an important role in ensuring security of supply. Carbon capture and storage (CCS) technologies will be a vital component in ensuring fossil fuels, including coal, have a longer term role in a low carbon energy mix. We are supportive of CCS provided it can be successfully commercialised and is supported by the appropriate regulatory framework. However, the technology has yet to be deployed at a commercial scale. We continue to provide support to coal industry in Wales, whilst ensuring state aid compliance, to ensure we maximise benefits to the economy.

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Energy Wales: A Low Carbon Transition also recognises the important role of a new nuclear power station at Wylfa in our energy future. *Wylfa Newydd* on Anglesey would provide a constant, reliable low carbon energy source which would complement the intermittency of renewable energy sources. A new nuclear power station could also provide significant long-term economic benefits to Anglesey and North Wales with the potential to contribute £2.34 billion to the economy over the period to 2025. An estimated 5,000 jobs could be created in the construction phase and around 800 long term jobs when operational.

The petitioner raises several additional issues in supporting information to the petition. With regards to the Fukishima incident, it should be noted that the Fukushima Daiichi reactors were constructed in the early 1970s to a 1960s design and these should not be compared with modern nuclear power station designs which incorporate 50 years of experience.

The Great East Japan Earthquake of magnitude 9.0 on Friday 11 March 2011 and the large tsunami it created caused considerable damage in the region. At the time, three of the six reactors were operating at the Fukushima Daiichi power station and all shut down automatically. The emergency diesel generators operated as required despite the earthquake exceeding their designed tolerances and continued to do so until the arrival of the tsunami which overtopped the sea defences and flooded the generators. This vulnerability had been identified before the earthquake but had not been operated on.

Dr Mike Weightman, the then UK Chief Nuclear Inspector, reviewed the safety of the UK's existing nuclear power stations following the Fukushima accident. Dr Weightman (who also led the international IAEA inspection at Fukushima) confirmed in his Report that the UK's nuclear power stations are fundamentally safe but identified lessons to be learned from the accident. These will be implemented for both the UK's existing nuclear power stations and any new stations that may be built.

The petitioner also raises concern of known health risks from nuclear power and references a major German government report which indicated increased rates of childhood cancers and leukaemia around nuclear sites. I understand this report is likely to be the KiKK study report published in 2007 which found an increase in childhood leukaemia in areas close to nuclear power stations in Germany. The independent UK Committee on Medical Aspects of Radiation in the Environment reviewed the KiKK findings using a much larger database of UK childhood cancers.

In May 2011 COMARE published as its 14th report a further review of the incidence of childhood cancer around nuclear power stations, with particular reference to the KiKK study and COMARE's 10th and 11th reports. In its 14th report, COMARE found no reason to change its previous advice that there is no evidence to support the view that of an increased risk of childhood leukaemia and other cancers in the vicinity of nuclear power stations due to radiation effects. (Paragraph C.4.126 UK Government National Policy Statement for Nuclear Power Generation (EN-6) Volume II.)

With regard to nuclear waste disposal, UK Government policy is that geological disposal will provide a safe disposal route for the UK's higher activity radioactive waste (HAW). This follows scientific advice and practice in other countries taking forward programmes for radioactive waste disposal. The UK Government is currently reviewing the siting processes and proposals for community partnership for hosting a geological disposal facility following a public consultation which ended in December 2013.

Yours ever

Alun

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

P-04-514 A Welsh clean coal and/or renewable energy power station instead of the proposed Wylfa B nuclear plant at Anglesey, - Correspondence from the Petitioner to the Clerking Team, 11.02.14

"Thanks to Mr Davies for his reply regarding the alternative Wylfa B clean coal/renewable energy petition. Mr Davies says that 5000 jobs could be created in the constructiuon phase of a nuclear power plant in Ynys Mon and only 800 as full time jobs afterwards. Ynys Mon's PAWB's (whom I have worked with on this petition and who have also sent in a reply to Mr Davies' response) maniffesto states that up to 2950 full time jobs could be created by equivelant renewable energy generation, with 700 extra also being employed over 20 years in the decommisioning process. This 3560 employment figure alone makes the proposed 800 full time jobs offered by the nuclear option seem redundant.

However, this is not the only major flaw of this plan. As recently highlighted by PAWB (Pobol Atal Wylfa B) in relation to a report in The Independent newspaper http://www.independent.co.uk/news/uk/politics/inside-westminster-our-politicalconferences-have-turned-into-glorified-trade-fairs-8835522.html "*PAWB* are *calling for a parliamentary standards investigation following revelations in The Independent that the Labour Party receives sponsorship from Horizon Nuclear. Horizon sponsored 'Welsh Night' at the recent Labour Party Conference in Brighton, that's the same Horizon who are hoping for the government to force through consumer "subsidies" – so they can profit from the building of a new nuclear reactor at Wylfa, north Wales. This sort of sordid sponsorship for influence is totally unacceptable. How could a future Labour government be relied on to consider the costs of nuclear safety, or assess the merits of rival greener energy sources when they appear to be in the pocket of the very company hoping to profit from new nuclear contracts? Countries such as Germany and Japan are pulling out of nuclear power following the Fukushima disaster and the cost of new nuclear plants are spiraling. Investors are reluctant to gamble on the nuclear industry without significant government financial assurances. No wonder Horizon are desperate to use any means to get support*"

The Independent also commented in their article: "*The truth is that while big donations to political parties have been cleaned up and made more transparent, the same cannot be said for the money made at party conferences. These companies and lobbyists do not pay for passes or fund events out of the goodness of their hearts: they are buying access and the possibility of influence"*

Horizon, who have been bought out by GE/Hitachi should not be in a position to buy access and possibly influence such serious political decisions. PAWB are very much justified in calling for a parliamentary standards investigation in to this matter. The Welsh Government will hopefully also support such a crucial investigation.

As quoted in Mr Davies' letter, Dr Weightman is incorrect in claiming that any nuclear power station is 'fundamentally safe'. Any power station, nuclear especially,

carries a weighted risk however much it is claimed otherwise. Potential terrorist attacks and acts of war also make makes this an empty phrase. In terms of radiation health implications around nuclear power sites, it seems that Mr Davies is claiming that the German Government's mentioned health report is incorrect or has been overtaken by more recent studies. I have written to Mr Hermann Gröhe, Federal Minister of Health for the German Government for his opinion on this. I hope his answer will enlighten everyone including myself on whether they are still standing by the findings of their report in to the effects of radiation on increased levels of childhood leukemia and cancers around nuclear power stations. In my view the prudent and responsible thing would be for the Welsh Government to invite members of the German Government over to Wales to provide their expert advice. Germany is world renowned as one of the most technologically advanced and technically astute nations on earth. It, along with Austria, Sweden, Italy, Belgium, The Netherlands, Spain, and Switzerland, to name but a few, have enacted laws not to build any new nuclear power stations. As of November 2011, countries such as Australia, Denmark, Greece, Ireland, Luxembourg, Malta, Portugal, Israel, Malaysia, Latvia, Lichtenstein and Norway have no nuclear power reactors and remain opposed to nuclear power. Other countries such as Japan, Mexico, Taiwan, the Philippines and the United States of America are also looking at ways of phasing out nuclear power.

Wales literally has no need for a dangerous, expensive and archaic nuclear power station - we already produce at least twice the energy we need. We have an abundance of natural energy and clean coal opportunities, which, if properly managed could make Wales one of the leading clean energy countries in the world. Building a new nuclear power station in Wales would go against all informed European and world trends. It is an antiquated proposition, out of time and out of touch. And if the Uk Government is so confident in the need for the proposed nuclear power stations as well as their apparent 'fundamental safety', perhaps they should put their faith into practice by building them them in Kensington, the Square Mile or Oxford.

Sincerely,

Gruffydd Meredith"

P-04-514 A Welsh clean coal and/or renewable energy power station instead of the proposed Wylfa B nuclear plant at Anglesey, Correspondence from People Against Wylfa B (PAWB), to the Clerking Team 10.02.2014.

Dear Kayleigh Driscoll,

I am writing on behalf of PAWB, Pobl Atal Wylfa B/People Against Wylfa B, in response to a letter sent by the Minister, Alun Davies AM, to the Chair of the Petitions Committee, William Powell AM.

The letter is disappointing and superficial in many respects. It refers to the role that the Welsh Government expects fossil fuels to continue to play in Welsh life. Superficial reference is made to carbon capture and storage technology, without elaborating on the fact that Hitachi claims to be a leader in this technology. The main thrust of the Sovereign Wales petition is that GEHitachi should not waste billions of pounds on expensive, hazardous and radioactively toxic nuclear reactors at Wylfa in Anglesey. The Welsh Government should discuss what the options are for Hitachi to invest in clean coal technology in Wales.

The Minister's analysis of the possibilities relating to the Wylfa B project is very superficial. Reference is made only to the potential economic benefits to north west Wales of proceeding with the construction of Wylfa B. Horizon has admitted publicly that at least 75% of the construction workforce for Wylfa B will come from outside the local area. In this context, that means the whole of north Wales, as far as Chester and Merseyside. Therefore, the prospect of jobs for local people has been greatly exaggerated.

The Minister does not refer at all to what would happen to the radioactive waste that would be generated from Hitachi's boiling water reactors. The nightmare facing the people of Anglesey and the rest of Wales would be to see waste that is twice as hot and twice as radioactive being stored at the Wylfa site for at least 150 years. Again, Horizon has admitted that this would be the case. The British state has no idea what to do with all the radioactive waste that has been produced over the last half century, let alone adding to the waste mountain with new, more dangerous types of radioactive waste. Who can give an honest assurance that storage of this kind at surface level in the north of Anglesey would be safe for such long a period? Who can guarantee political, economic, military, climatic and geological stability over such a period? The politicians in London and Cardiff who blindly support dangerous, outdated, and extremely expensive technology are oppressing the people of Wales environmentally, socially, linguistically and culturally, not to mention economically. Through the agreement between the Westminster Government and EDF on the strike price of £92.50 per megawatt/hour over a period of 35 years, and the construction of two EPR reactors at Hinkley Point C, less than 20 miles from the Welsh parliament across the Severn estuary, we saw that we as electricity consumers and taxpayers will be paying through the nose for expensive nuclear electricity

that will threaten all of our ecosystems. We are thankful that, at the moment, the European Commissioner for Competition has called in this contract for inspection to see whether it contravenes EU competition guidelines. It has already published an initial report that is highly critical of the contract, and the fact that it relies heavily on unfair state subsidy. It is now expected that the Commissioner will prepare a thorough report on the contract. Accordingly, there is no guarantee that any new nuclear plant will be built in England or Wales.

Therefore, it would be appropriate for members of the Petitions Committee to give favourable and detailed consideration to the Sovereign Wales petition in its meeting on 18 February.

Sincerely,

Dylan Morgan, Coordinator PAWB, People against Wlfa B

P-04-452 : Equal Rights for Tube-fed Youngsters.

Petition wording:

We call on the National Assembly for Wales to urge the Welsh Government to ensure that funding is made available to ensure that the vital equipment and services required by tube-fed children and young people are made available to them.

For example, equal rights for tube-fed youngstersin the Caerphilly County Borough Council currently fall between 2 defined categories of need. The Aneurin Bevan Health Board say as they are not Continuing Health Care (CHC) children - 'only tube-fed' - they cannot fund the vital equipment and services we need. Caerphilly Social Services also say they cannot help as these children 'have significant health needs'. These definitions exclude and therefore discriminate against Tube-fed Youngsters and we demand an investigation into this practice in Caerphilly.Whilst our Youngsters do not 'qualify' for help from either Health or Social Services in the Caerphilly Borough we still have a Youngster with 24/7 care needs - the same as a newborn - often with disabilities due to a life-threatening illness.

Additional Information:

Our Youngsters need a 'label' in order to be able to automatically access funding for vital equipment and services. At present inter-departmental financial wrangling takes place on request for anything for a Tube-fed Youngster and this should not involve Parents / Carers.We just need the help for our Youngsters as quickly as possible.We ask that a quick, common-sense, long-term solution be achieved for our Youngsters and for the sake of the health and wellbeing of their Parents / Carers.

Petition raised by: Dr Tymandra Blewett-Silcock

Date petition first considered by Committee: 29 January 2013

Number of signatures: 142

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-452
Ein cyf/Our ref MD/00057/14

William Powell AM
Chair
Petitions Committee
National Assembly for Wales

16 January 2014

Dear William

Thank you for your letter of 16 December last year following the Committee's meeting of 26 November at which you considered my earlier letter to you of 6 August. That letter responded to issues that had been raised with the Committee over direct payments in the light of the petition Dr Tymandra Blewett-Silcock had raised in relation to her daughter, Poppy. Your latest letter asked for an update following the completion of Stage 2 proceedings on the Social Care & Well-being (Wales) Bill and whether, as the Bill now stands, it would help resolve the difficulties raised in Dr Blewett-Silcock's petition.

As I explained previously the provisions of the Bill will not only allow direct payments to be provided to meet the care and support needs of adults, children and carers where appropriate to do so, but enhance this provision. They seek to make it easier for people to be aware of the possibility of receiving a direct payment and being fully appraised of what this entails in order to make informed choices about how their care and support needs are met. They are not about the extension of direct payments to healthcare per se, as I am strongly of the opinion that the provision of healthcare is the fundamental role of the NHS. As such the consideration of the Bill at Stage 2 has made no difference in this respect to that I outlined in my letter to you of 6 August.

What is key here, however, is the way care and support is provided by social services (where a person has had a direct payment previously) and the NHS when part or all of that person's care becomes healthcare. The relationship between direct payments and continuing NHS healthcare (CHC) can be, as we know, a real issue of concern particularly for individuals whose care and support needs switch from the social services to healthcare. This issue was one of those debated at length during the recent review of the current National Framework for CHC in Wales. As a result the Committee will wish to be aware that a draft revised Framework has been issued for consultation. Part of this contains guidance which seeks to address this issue. The following extract from the draft framework will therefore be of interest to the Committee:

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Correspondence.Mark.Drakeford @wales.gsi.gov.uk

'Direct Payments and NHS Continuing Health Care'

8.46 As a matter principle, if an individual has existing Direct Payment arrangements, these should continue wherever and for as long as possible within a tailored joint package of care.

8.47 It is currently unlawful for Direct Payments to be used to purchase health care which the NHS is responsible for providing. Direct Payments can only be used for social care provision.

8.48 Where an individual whose care was arranged via Direct Payments becomes eligible for Continuing Health Care funding, the Health Board must work with them in a spirit of co-production. Although Direct Payments will no longer be applicable where an individual has a primary health need, this should not mean that the individual loses their voice, choice and control over their daily lives. Every effort should be made to maintain continuity of the personnel delivering the care, where the individual wishes this to be the case.

8.49 There may be circumstances where it is possible for an individual to retain some Direct Payment for the elements of their care for which the local authority is still responsible, e.g. opportunities for social inclusion. Partner organisations must work together to explore all the options available to maximise an individual's independence.

8.50 An individual in receipt of Direct Payments retains the right to refuse to consent to CHC assessment and /or care package, as detailed in Chapter 5. In such cases partner agencies must work together with the individual and their family/carers to ensure that the risks are fully understood and mitigated as far as possible.

You will see that while direct payments cannot as such be used for healthcare where a person becomes eligible for CHC, we are stressing the need for recipients to be able to continue to maintain a voice over their care and support and for health and social services to collaborate to ensure joint packages of care are provided to meet people's needs. In this way we aim to prevent the issues which we have seen arise previously, such as that experienced in the case of Dr Tymandra Blewett-Silcock's daughter Poppy.

Yours sincerely

Mark Drakeford

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

POPSY
Parents of Partially Sighted and Blind Youngsters
Reg Charity 1104560 www.popsy.org.uk

P-04-452 Equal Rights for Tube-fed Youngsters **4th February 2014 Response**

Thank you for following up our Petition !

Unfortunately, we still have no start date for our Direct Payments – 3 ½ years later.
I have reached the stage where I would like to just say 'forget it' but am not lucky enough to be in that position – I need the help Direct Payments is supposed to offer families like ours.

Since it was agreed that we would act as a 'test case' family for DPs for a tube-fed child in the Caerphilly Borough (even though this is not an issue in any other Borough in Wales) we have had several delays.
It is hard not to take this personally and I would like to think this is not due to retribution from the women in the offices we have to deal with on a local level. Only when a male Manager is consulted do we seem to get a common-sense, fair resolution that sticks to what we had already agreed on months before.
Discussions and agreements we make at meetings are never documented so we have no proof of anything when the issues outlined below happen - but at least we have our personal advocate to witness these 'games' now.

Recent Issues:

- An Overnight pay rate threat of ~£38 for a 10hr shift as 'Poppy did not need overnight care' ie. a waking member of staff was unnecessary.
  Obviously we need a standard hourly rate for a waking member of staff – this would have also reduced our 'pool' of hours to less than we were having before our DP request.
- The Option 2 'Hours per Week' Package we had chosen months before was then queried and we were told we would have less than we had agreed to.

At this stage I had to threaten that I would go back to the Press if they continued to play these games.
Only then did we have the agreed Package we had discussed and chosen months before finally 'approved'.
I am a shy person – speaking up like this takes its toll on me and my family.

Now, further delays finding an appropriate Employers Liability Insurer have been encountered with the Anuerin Bevan Health Board's Legal Department currently undecided if this cover is enough to 'cover health tasks'.

We are totally powerless as a family – I have just requested a start date of 3 February to accrue hours for this inconvenience.
Total incompetence doesn't even begin to describe this whole process – it is devastating for families and is a stark reminder of the 'life' we now face !?

We need an Independent 'Manager' to intervene in Health and Social Services 'Joint' cases like ours – obviously not being returned back to the local teams where you once again face the kind of games only experienced at school.

Best wishes,

Dr Tymandra Blewett-Silcock
Director

1 Rectory Gardens, Machen, CF83 8SU Tel: 01633 440949 eMail: popsycharity@hotmail.co.uk

P-04-460 Lives not Airports

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to consider the following.

Procedures currently in place that decide case by case the delivery of specialised medicines to patients through the Welsh Health Special Services Committee (WHSSC) are fundamentally flawed, damaging and extremely distressing to patients. New protocols and procedures are now required as a matter of urgency…The Welsh Government must review the whole procedure of allocating specialised medicines to patients. The system needs to be made far simpler to navigate. Doctors must have more say in the decision making process as they are the best judge of a 'patients' needs. Alternative ways to fund medicines, such as negotiating with manufacturers more realistic pricing structures and the possibility of individual short term free trials should be looked at.

Supporting Information:

Further details of the problems we see and our proposals are as follows...

1. When the WHSSC assess a requested drug the recommendations from the All Wales Medicines Strategy Group (AWMSG) should be no more than 18 months old. This is due to the fact those that are years old do not have a reliable bench mark. Reliable data for all medicines improve day by day as case studies multiply. The WHSSC should have the right to request an up to date review from the AWMSG and this should be carried out as a matter of urgency.

2. When the WHSSC declines a request for a medicine an appeals process is then initiated in which the patient, doctors or an advocate can be present but none are allowed to speak. This must not continue therefore the WHSSC should by law be required to hear the case with the full participation of the patient, doctors or advocate.

3. In many cases patients are extremely ill, alone and vulnerable. It should be a priority to make sure such patients have an advocate to help them through the procedures in place for the funding of medicines. Doctors have large case loads so are unable to give extra time to patients.

4. A review of the actual costs of specialized medicines that have been refused and the subsequent hospital admissions, alternative treatment costs should be carried out. This would be beneficial to determine the true costs of specialized medicines to the tax payers.

5. The WHSSC should have the power to grant a medicine if the medical teams have concluded that all other treatments have failed and that the said medicine in their opinion has a chance to benefit the patient.

6. The WHSSC should be given the option to at least give a patient a trial run with a drug to ascertain if a positive result could be expected.

Petition raised by: Jeremy Derl-Davis

Date petition first considered by Committee: 19 March 2013

Number of signatures: 51

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-460
Ein cyf/Our ref MD/03562/13

William Powell AM
Chair Petitions Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

committeebusiness@Wales.gsi.gov.uk

17 December 2013

Dear William

Thank you for your letter of 6 December on behalf of the Petitions Committee regarding Petition P-04-460 about specialised medicines delivered through the Welsh Health Specialised Services Committee (WHSSC) and for sight of the associated correspondence.

A review of the appraisal of orphan and ultra-orphan medicines in Wales has been carried out. The findings from the review provided a series of recommendations for the improvement of the appraisal process, including equity of access to orphan and ultra-orphan medicines across the UK. The review is open for public consultation until 23 December 2013 and I would encourage the petitioner to respond. I will make a statement early in the New Year on the next steps arising from the report. I have also announced a review of the Individual Patient Funding Request progress and officials are now progressing this.

I share your concern at the lack of response from WHSSC and note your invitation to them to give oral evidence to the Committee. I would hope they are able to answer your questions and provide the Committee with some reassurance about the issues raised.

Yours sincerely

Mark.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Mark.Drakeford @wales.gsi.gov.uk

P-04-460 Lives not Airports – Announcement by the Minister for Health and Social Services

Recommendations on Pegvisomant (Somavert®)

The Minister for Health and Social Services has agreed to the endorse the All Wales Medicines Strategy Group recommendation.

Date of decision:

19 December 2013

Statement of information:

The aim of All Wales Medicines Strategy Group (AWMSG) is to provide advice in an effective, efficient and transparent manner to the Welsh Ministers on strategic medicines management and prescribing. This enables the Welsh Ministers to provide guidance on a standard pattern of approach to prescribing issues across Wales whilst permitting local application but reducing duplication of effort.

The Minister for Health and Social Services is being asked to endorse the following AWMSG recommendation made at the 16 October 2013 meeting:

- Pegvisomant (Somavert®) is not recommended for use within NHS Wales for the treatment of patients with acromegaly who have had an inadequate response to surgery and/or radiation therapy and in whom an appropriate medical treatment with somatostatin analogues did not normalise IGF-1 concentrations or was not tolerated.

Links:
Further information can be accessed on the AWMSG's website: www.wales.nhs.uk/awmsg/ (external site)

P-04-460 Lives not Airports – Correspondence from Petitioner to the Clerking Team, 10.02.14

Many thanks for sending this Kayleigh. Please could you inform the panel that the Minister for Health has denied the use of Pegmisovant in Wales. I would also like you to pass on my sincere thanks to the Petitions Committee Members for the time and effort they have put into highlighting this matter, it is very much appreciated. I know they did all in their power to help my Wife Kate and others. Their work must naturally come to an end in this matter but I will be formulating a new strategy and can assure them this fight has only just begun.

Again Many thanks to you all.

Jeremy Derl-Davis

P-04-466 Medical Emergency – Preventing the introduction of a poorer Health Service for North Wales

Petition wording:

We the undersigned call on the National Assembly for Wales to urge the Welsh Government to ensure that the proposals contained within the Betsi Cadwalader University Health Board consultation- Health Care in North Wales is Changing does not result in poorer health provision and unnecessary deaths and suffering.

The proposals will have a detrimental effect on most areas of health provision and emergency services and in no way can the proposals be an improvement as is intimated. Already experiencing meltdown, the Health Service in Wales will head towards collapse, if these proposals are implemented in their present form

The current BCUHB consultation proposals in relation to Health Care in North Wales appear to be detrimental to general health provision and the safety of our communities. Accessibility, X-ray provision, Minor Injuries ,Mental Health, the Ambulance Services, the Out of Hours service and the ability of GP s to deliver an integrated service are going to be particularly hard hit by the proposals - as they are diametrically at odds with the Welsh Govt's vision in relation to the documents Together for Health , Setting the Direction , and Delivering Emergency Care Services - it appears also to be at odds with the Compact announced by the Health Minister on the 25th of September 2012.

Petition raised by: Mike Parry

Petition first considered by Committee: 19 March 2013

Number of signatures: 306

P-04-479 Tywyn Memorial Hospital X-ray & Minor Injuries Unit Petition

Petition wording:
We call upon the National Assembly for Wales to urge the Welsh Government to stop the withdrawal of X-ray facilities & the reduction in provision of services by the Minor Injuries Unit as a matter of urgency.

Petition raised by: Tywyn & District Health Care Action Group

Date petition first considered by Committee: 14 May 2013

Number of signatures: 4486

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysgol
Betsi Cadwaladr
University Health Board

Mr William Powell AC / AM
Chair of the Petitions Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

c/o the Committee Clerk
Stephen.George@wales.gov.uk

Ein cyf / Our ref: GL/SB/11097/800
Eich cyf / Your ref: P-04-466/P-04-479
☎: 01248 384910
Gofynnwch am / Ask for: Geoff Lang
Ffacs / Fax: 01248 384937
E-bost / Email: geoff.lang@wales.nhs.uk
Dyddiad / Date: 20 January 2014

Dear Mr Powell

Thank you for your further correspondence on behalf of the Committee concerning two petitions under consideration. You have asked for updates on specific aspects of the further correspondence from the petitioners.

The petitioners have raised concerns regarding transport difficulties in accessing services related to public transport for non-emergency services but also emergency transport. I will address the two points separately.

The Health Board is very much aware of difficulty in accessing health services via public transport in Gwynedd, and also in other parts of rural North Wales. In making decisions regarding the provision of services in Gwynedd, the Board had to weigh these difficulties with the need to provide a resilient service for the whole population, the difficulties in staffing many smaller units and maintaining essential nursing staff skills with a comparatively low level of activity.

The map used by the petitioners in demonstrating the challenges of public transport was one produced by the then National Public Health Service (now Public Health Wales) and used by the predecessor organisations of the BCU Health Board in evidence considered when reviewing provision of unscheduled care services.

This assessment and further, updated travel times assessments were also part of the evidence used by the Health Board in the assessment of the impact of the proposals for change under Healthcare in North Wales is Changing. Mapping of travel times by private transport was undertaken, particularly in support of the review of locality services including minor injuries services, X-ray services and community hospital inpatient services. This mapping showed that 99.6% of the population would be able to reach these services within 40 minutes' drive time if the proposals were implemented. (The principle that services should be accessible within 40 minutes' drive time was supported by 80% of respondents to the randomised household survey undertaken during the consultation and 57% of respondents in the open questionnaire survey.) It is fully accepted that it is the very remote rural areas that fall within the 0.4% of the

population with a further travel time. For this reason, we have also retained minor injuries services at GP practices in the rural areas; this includes, in rural Gwynedd, Botwnnog, Nefyn and Pwllheli on the Llŷn peninsula; Blaenau Ffestiniog; Tywyn and Bala. We are also exploring how we may use videoconferencing to support remote areas, to give additional assurance to staff in minor injuries services and reduce the number of unnecessary journeys made to A&E departments for a second opinion.

The Health Board has been discussing with Local Authority transport officers and Community Transport providers whether there can be any collaboration to improve the transport links to health service provision, through a North Wales Transport to Health Group. This group, which includes Welsh Government officer and Community Health Council representatives, aims to improve joint working for existing services and also to ensure any impact of potential future changes to services is understood and addressed where possible. We will also be continuing to monitor activity and demand for services. This includes repeating a snapshot survey of those attending community hospitals, in order to understand better any impact of the changes which have taken place to date, including for those who may have had to travel to a different unit. We will review the position in discussion with the Community Health Council as part of our ongoing regular meetings.

Turning to emergency transport, you have referenced the “golden hour” and the impact on certain conditions. A full review of the evidence in relation to access times to treatment was undertaken as part of a paper by Marcus Longley - The Best Configuration of Hospital Services for Wales: A Review of the Evidence - Access, Welsh Institute for Health and Social Care, April 2012. For a certain few specific conditions there is a direct link between time to treatment and outcome (including some respiratory conditions.) However for other services there is clear evidence that outcomes improve where a patient is treated by a more specialised team or a team which undertakes a higher volume of the relevant procedures – even if this means that this is not at the hospital closest to the patient’s home.

The services about which the petitioners have raised their concerns – minor injuries services and X-ray services primarily – are not, generally, services for which there is a need for access within an hour, nor are they services for which emergency transport would, generally, be appropriate. However, we are mindful of the need to consider the impact of travel times and to consider the evidence on access to treatment in any review of services and any potential proposals for change. Travel and transport assessments will continue to be undertaken.

With regard to the X-ray services, you will be aware that we amended the original consultation proposals for Bryn Beryl Hospital, Pwllheli (which would have seen the cessation of the service) to continue with two sessions a week. Following further consideration, we also have retained the X-ray service at Tywyn Hospital for two sessions a week. The activity and demand for the service is being monitored on an ongoing basis and will again form part of ongoing discussions with the Community Health Council.

P-04-466: Medical Emergency – Preventing the introduction of a poorer health service for North Wales

I believe that the response given above in relation to transport matters addresses the major concerns expressed by the petitioners in the further correspondence.

An additional matter raised is that of GP recruitment and retention. The challenges faced here are not unique to the Health Board in North Wales. Our primary care leads have been reviewing the position and considering actions to address the issues being encountered and are currently exploring new models of primary care provision on the Llŷn peninsula in particular. A presentation on the problems of recruitment and actions we are proposing to address these was given to the Community Health Council in December.

I am pleased that the petitioner had a helpful meeting with the new Chair of the Health Board, Dr Peter Higson; we will continue to monitor service outcomes and welcome any feedback from local community representatives.

P-04-479: Tywyn Memorial Hospital X-ray and Minor Injuries Service

The response given above in relation to transport and travel is also relevant to the concerns raised by the petitioners in this case.

We note the request for extension of the Minor Injuries Unit hours. The opening hours of the Unit were subject to the consultation and were confirmed by the Board at the meeting held on 18 January 2013. The decision was reaffirmed as part of the local resolution reached with the Community Health Council. (The X-ray services, as noted above, were retained as part of the local resolution.)

We have received formal approval of the business case for the redevelopment of Tywyn Memorial Hospital and co-location of the GP surgery from Welsh Government. Detailed work is being undertaken with the architects and planners and it is anticipated the work will be complete by the end of 2014/15.

I am also able to confirm that a tri-partite planning board has been established between Powys. Hywel Dda and BCU Health Boards and has met to explore how best we can collaborate to ensure that the needs of the rural mid Wales community are met.

We will ensure that the local community is kept informed of any significant developments.

I hope that these responses are of help in your consideration of the matters raised by correspondents. Please do contact me if there is any further information you require.

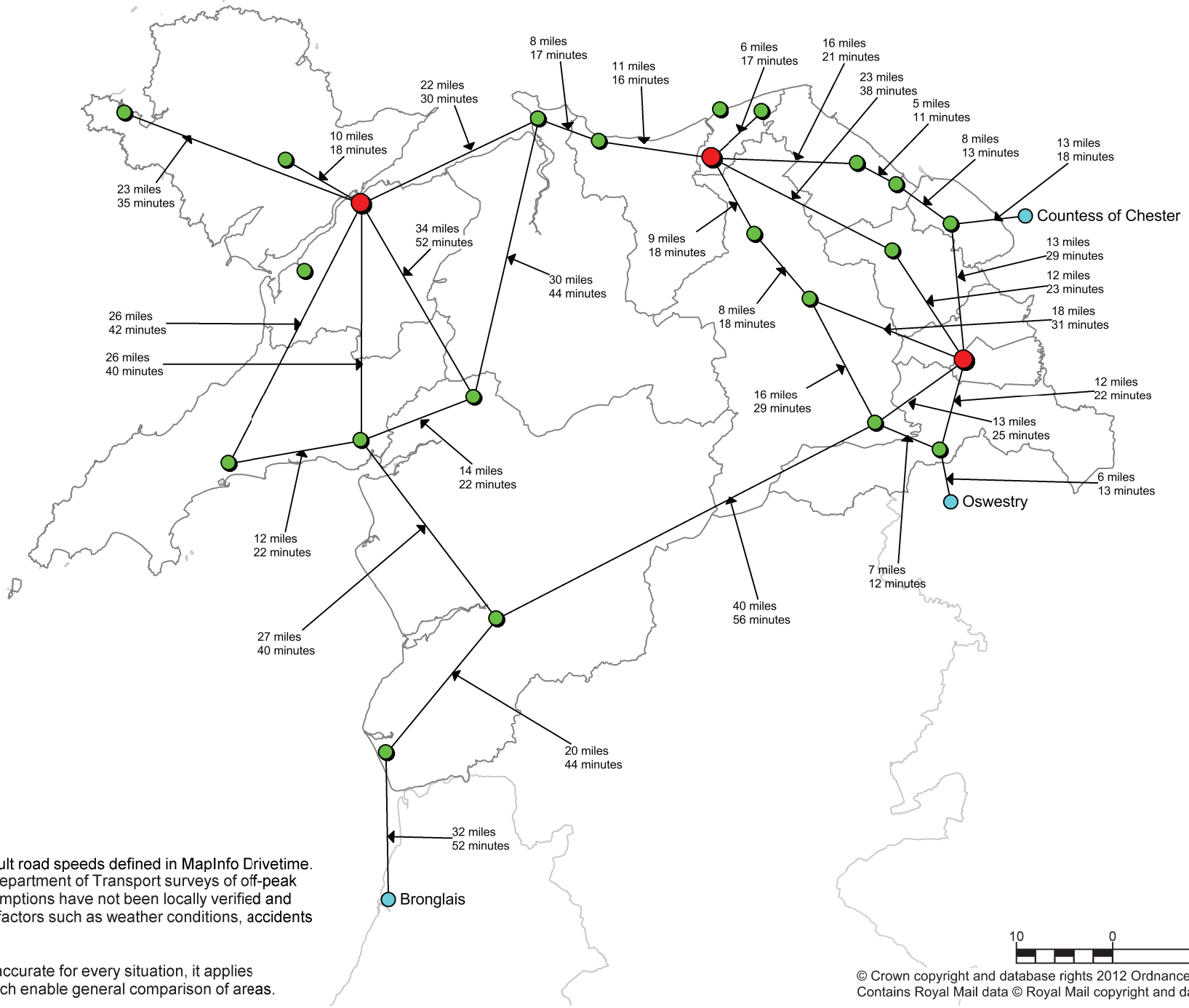
Yours sincerely

GEOFF LANG
ACTING CHIEF EXECUTIVE

Enc

Travel between key sites

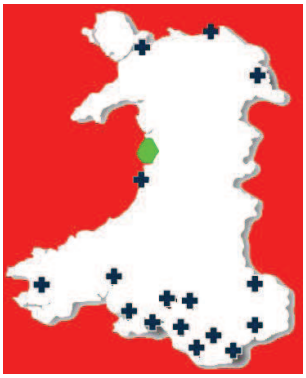
Approximate distances / times calculated using MapInfo Drivetime



Notes:
This map is created using default road speeds defined in MapInfo Drivetime. Default speeds are based on Department of Transport surveys of off-peak speeds on English roads. Assumptions have not been locally verified and cannot take into consideration factors such as weather conditions, accidents or roadworks.

Whilst the software cannot be accurate for every situation, it applies logical and consistent rules which enable general comparison of areas.

10 0 10 20 km



P-04-479 Tywyn Memorial Hospital X-ray & Minor Injuries Unit Petition – Correspondence from the Petitioner to the Committee

TYWYN & DISTRICT HEALTH CARE ACTION GROUP.
GRWP GWEITHREDU GOFAL IECHYD TYWYN AR CYLCH

11th February 2014

Re: Tywyn Memorial Hospital X-ray & Minor Injuries Unit Petition

Thank you for the opportunity to comment on the correspondence of 20th January 2014 from Geoff Lang, Acting Chief Executive of BCUHB in response to the information we provided via the Petitions Committee.

We would like to emphasise once again that, as representative of rural areas in mid-Wales, we are, in terms of this petition, specifically looking for fair treatment in respect of availability of unscheduled care in this area.

In his letter Mr Lang says "we have also retained minor injuries services at GP practices in the rural areas" and lists Tywyn as such a place. For Tywyn that statement is NOT true. The GP practice does not provide a service for unscheduled treatment of minor injuries. (I checked with the practice today).

In any case, for 6 months of the year it is as if the people of Tywyn & area do not matter or exist at all after 6pm or at weekends! The only service available for people to contact at these times is the inadequate Out of Hours service. They will then most likely be asked to travel great distances to be checked, normally either 120 or 140 miles round trip – not possible by public transport.

It is therefore not surprising that they will go to a place where they know service is available 24 hours a day, our nearest A&E at Bronglais Hospital, Aberystwyth. This must cost BCUHB because it is run by a different Health Board.

We know that local health professionals are also not happy with this situation. Many of them would prefer to see longer hours of local unscheduled care available throughout the year for their patients by whatever means.

Mr Lang's assumption that minor injuries do not usually need immediate treatment may, in general terms be valid, but it ignores the welfare of the patient or relative who may well not know that until they receive attention & guidance by somebody who has expertise & skill to reassure them. I have personal knowledge, in the last 12 months of

- A man who fell & put his head through a glass door in the evening & because he had no means of transport, and& the minor injuries unit was not open, waited overnight to get treatment the next day.
- A man who had a dog bite & also decided to wait until examination was available.
- A child with breathing difficulties whose mother was extremely worried because her child had previously had pneumonia and was directed by the Out of Hours service to make a round trip of 140 miles with a sick child!

I don't believe that cases like these point to fair & equal treatment. Any of those could have had very much more serious consequences.

22, Dolithel, Bryncrug, Tywyn, Gwynedd LL36 9RR
email: TywynHealth@aol.com

We are aware that the Health Minister & CHC agreed to the reduced hours of the MIU in Tywyn, but the Health Minister, in his statement of 17th July 2013 wrote “the demand for the service will be monitored & reviewed over a longer period …….. The Health Board will need to have plans for implementing and communicating its proposals so that people can be confident they will get the minor injuries services they need ……”.

There is no such confidence within the community of getting the services they need.

How does the Health Board intend to monitor the demand of people who are not able to get the service they need or go elsewhere?

The development of Tywyn Hospital is welcome but it remains to be seen what benefits will arise for the community because it will depend on the provision of services & availability of trained staff.

As stated in previous correspondence, we are also concerned about retaining good services from our nearest General Hospital at Bronglais, Aberystwyth. The Health Minister has commissioned a study of Health Care in Mid Wales. A copy of his statement is attached.

As a group we, in collaboration with patient groups from Aberystwyth & Machynlleth, have already had opportunity to comment on the terms of reference for the study and expect to play a part in the subsequent stages of the study. We obviously hope that the report, due to be completed in September 2014 does not remain on the shelf but will bring ongoing benefit to the people of Mid Wales.

Once again we repeat - the BCUHB aim of “***providing equality of access and service provision across the region”*** has NOT been met and indeed **the equality of service has been reduced**.

Brian Mintoft
Secretary

22, Dolithel, Bryncrug, Tywyn, Gwynedd LL36 9RR
email: TywynHealth@aol.com

P-04-454 : Call to end Councillor and Assembly Member Dual Role.

Petition wording:

The petitioner asks the Welsh Government to bring forward legislation to bar the practice currently exhibited by 7 currently serving Assembly Members to hold TWO elected positions simultaneously,namely holding office as a Councillor witin the Welsh Jurisdiction and also holding office as an elected Assembly Member in the National Assembly of Wales.

Petition raised by: Nortridge Perrott

Date petition first considered by Committee: 29 January 2013

Number of signatures: 52

P-04-454 Call to end Councillor and Assembly Member Dual Role – Correspondence from the Petitioner to the Committee, 06.02.14

MY RESPONSE:

To Chair..

Please maintain an active interest on behalf of the Petitions Committe to ensure the practice of DOUBLE JOBBING does not become a possibility at the NEXT Assembly elections:

1 BY Drafting a possible amendment to the relevant legislation to achieve this end.

2 By considering across the piece ALL possible difficulties in DUAL serving on BOARDS,NDPB's and other ASPB ;so that the difficulties encountered by CANDIDATES at the last Assembly election who had to stand down because of the vagaries and ambiguities of the current ELIGIBILITY criteria to stand as an Assembly candidate are without ambiguity.

3 USE the Electoral Commission and the NI Executive to formulate a clearer ,cleaner and mor acccessible CANDIDATE base for the Assembly..

Consider also the increase to 80 members and HOW the principles of CANDIDATURE eligibility should be translated to an enlarged Assembly.

your sincerely#

N Perrott/
Swansea /Petitioner/

P-04-458 Keep Further Education in the Public Sector

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to ensure:

1. Further education, along with publicly funded assets, is retained within the public sector.

2. Colleges continue to be bound by the national agreements in FE, such as the national pay scales.

3. The introduction of an all-Wales contract for FE lecturers.

4. Welsh Ministers do not dissolve colleges and give colleges the ability to transfer the property, rights and liabilities to another body.

Petition raised by: UCU Crosskeys Branch

Date petition first considered by Committee: 19 February 2013

Number of signatures: 246

National Assembly for Wales
Children and Young People Committee

Further and Higher Education (Governance and Information) (Wales) Bill

Stage 1 Committee Report

July 2013

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assemblywales.org

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:
Children and Young People Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2089 8242
Fax: 029 2089 8021
Email: CYPCommittee@wales.gov.uk

National Assembly for Wales
Children and Young People Committee

Further and Higher Education (Governance and Information) (Wales) Bill

Stage 1 Committee Report

July 2013

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Children and Young People Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the education, health and wellbeing of the children and young people of Wales, including their social care.

Current Committee membership

Ann Jones (Chair)
Welsh Labour
Vale of Clwyd

Angela Burns
Welsh Conservatives
Carmarthen West and South Pembrokeshire

Keith Davies
Welsh Labour
Llanelli

Suzy Davies
Welsh Conservatives
South Wales West

Rebecca Evans
Welsh Labour
Mid and West Wales

Bethan Jenkins
Plaid Cymru
South Wales West

Lynne Neagle
Welsh Labour
Torfaen

David Rees
Welsh Labour
Aberavon

Aled Roberts
Welsh Liberal Democrats
North Wales

Simon Thomas
Plaid Cymru
Mid and West Wales

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Summary of Main Conclusions

This report outlines the findings of the Children and Young People Committee's Stage 1 consideration of the Further and Higher Education (Governance and Information) (Wales) Bill.

We undertook detailed scrutiny of the Bill, which we believe should be improved through a number of specific amendments about governance arrangements for FEIs. These issues, along with relevant recommendations, are set out later in this report.

General principles

We have, as is required under Standing Order 26.10, also considered the general principles underlying the Bill:

- that legislative controls over Further Education Institutions (FEIs) should be relaxed; and
- that Her Majesty's Revenue and Customs (HMRC) should be able to share data on student grants and loans with the Welsh Ministers so that the process for applying for student grants and loans is simplified and made more efficient.

We are content with the second principle but have considerable misgivings about the justification on which the legislation is based.

Greater Autonomy for Colleges

In 2010 the ONS decided to classify FEIs as part of central government for the purposes of the national accounts. Further Education bodies in other parts of the UK were similarly reclassified. Among the factors that led to the ONS decision were the various statutory controls that the Welsh Ministers can exercise over FEIs. These include restrictions on borrowing, the power to modify governance arrangements and restrictions on operating through subsidiaries.

The impact of the ONS reclassification has yet to be felt but the Welsh Government believes it will have a negative impact on Welsh Government budgets, particularly capital budgets, and could de-incentivise FEIs from managing their resources effectively. The changes proposed in the Bill will allow the ONS to restore the previous

classification, which will mitigate these impacts and allow financial management arrangements for the sector to continue along current lines.

However, the greater autonomy the Bill will give FEIs could also be used in ways that might lead to a greater fragmentation of the sector, particularly in relation to staff pay and conditions, and a more competitive approach to the delivery of educational provision, including greater use of the private sector. There is also the issue of whether the Welsh Government will be able to continue to exercise effective financial controls over the funding that it provides to FEIs.

The previous Minister made it clear to us that the approach he took in bringing forward this Bill would not have been taken except for the ONS classification. Policy is, therefore, being driven primarily by what are essentially accounting rules.

Alternative Approaches

The option of relaxing Government controls to restore the previous ONS classification is not the only policy option available. The Scottish Government has decided to pursue a different path, which keeps FEIs directly accountable to Government.

However, this approach also has its difficulties including the need to make changes to FEIs accounting arrangements and get HM Treasury approval to relax some government budgeting rules. To date, the Treasury has not agreed to the Scottish Government's approach. However, the Scottish Government believes that a joint approach to the Treasury by the devolved administrations would have a greater chance of success and would welcome the development of a joint approach. The Welsh Government has decided against this approach in the belief that Treasury approval is unlikely to be forthcoming.

HM Treasury's Position?

The Welsh Government's assessment is that the Treasury is unlikely to respond positively to any approach. We are concerned that the Welsh Government's policy direction appears to be predicated on an assumption about a Treasury response that has not been tested. The Welsh Government has not written to the Treasury to clarify their views

or attempted to engage with them in dialogue. We would have expected that policy would be based on formally establishing the Treasury position.

We did not take evidence on whether the FE sector could benefit from greater autonomy or whether there are sufficient safeguards to ensure that autonomy is exercised responsibly. We are uncomfortable agreeing to that extra autonomy when the option of retaining direct accountability has not been fully explored with the Treasury.

The Committee's Recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Recommendation 1. We recommend a revised Explanatory Memorandum is produced setting out in more detail and with greater clarity the risks involved in the approach the Bill takes to mitigating the effects of the ONS classification. (Page 30)

Recommendation 2. We recommend the Welsh Government keeps under close review the effects of the Bill in practice and whether these effects have any repercussions for other parts of its legislative programme or on wider matters such as provision for the Welsh language and Additional Learning Needs. (Page 30)

Recommendation 3. We recommend, before the debate on general principles is held, the Welsh Government should explore fully with HM Treasury the scope for modifying Government accounting rules to help mitigate the effects of the ONS classification. (Page 34)

Recommendation 4. We recommend Schedule 1of the Bill should be amended to specify that at least two members of a college's governing body should be student representatives. (Page 41)

Recommendation 5. We recommend Schedule 1of the Bill should be amended to specify that student representatives on a college's governing body should be elected by the student body. (Page 41)

Recommendation 6. We recommend Schedule 1of the Bill should be amended to specify that there should be two representatives on a college's governing body who should be elected representatives of the staff of the institution. (Page 41)

Recommendation 7. We recommend Schedule 1of the Bill should be amended to specify that governing bodies should include representatives of local employers or businesses. (Page 42)

Recommendation 8. We recommend Schedule 1of the Bill should be amended to place a broad duty on governing bodies to consult

regularly with local employers, learners and communities about the educational provision at the institution concerned and how it impacts on local curriculum planning. (Page 44)

Recommendation 9. We recommend the Minister reconsiders the repeal, proposed in section 7 of the Bill, of section 139 of the Education Act 2002. (Page 49)

Recommendation 10. We recommend the Welsh Government considers with the Student Loan Company how best to retain, at a local level, appropriate support in person for those applying for student loans. (Page 52)

Recommendation 11. We recommend the Welsh Government considers carefully the impact of the Bill on provision for learners with Additional Learning Needs. (Page 54)

1. Introduction and the Committee's approach to scrutiny

1. At its meeting on 16 April 2013, the National Assembly's Business Committee referred the Further and Higher Education (Governance and Information) (Wales) Bill[1] ('the Bill') to the Children and Young People ('the Committee'), for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 19 July 2013.

2. The Bill and accompanying Explanatory Memorandum[2] was introduced into the Assembly on 29 April 2013 by the then Minister for Education and Skills Leighton Andrews AM. This was followed by a Legislative Statement in the Assembly by Leighton Andrews on 30 April 2013.[3]

3. Under Standing Order 24.5 Leighton Andrews ceased to be the Member in charge of the Bill upon his resignation from the Government on 25 June 2013. Huw Lewis AM, the new Minister for Education and Skills has taken his place as the Member in charge.

Terms of scrutiny

4. At the Committee's meeting on 1 May 2013 it agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

i) Whether there is a need for the Bill;

ii) the key provisions set out in the Bill and whether they are appropriate to deliver its stated purposes;

iii) the financial implications arising from the Bill;

[1] Further and Higher Education (Governance and Information) (Wales) Bill available at: http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245734&ds=4/2013
[2] Explanatory Memorandum available at: http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245735&ds=4/2013
[3] Record of Proceedings 30 April 2013: http://www.assemblywales.org/docs/rop_xml/130430_plenary_bilingual.xml#80084

iv) potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

v) whether there are any unintended consequences arising from the Bill;

vi) the views of stakeholders; and

vii) the level of detail on the face of the Bill compared to any powers contained in subordinate legislation.

The Committee's approach

5. The Committee issued a consultation[4] and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annex A.

6. The Committee took oral evidence from a number of witnesses on the Bill. The schedule of oral evidence sessions is attached at Annex B. Full transcripts of these sessions are available on the Assembly's website at: http://www.assemblywales.org/

7. The Committee would like to thank all those who contributed.

[4] Consultation documents: http://www.senedd.assemblywales.org/documents/s17062/Consultation%20letter.pdf

2. Policy Background

The White Paper consultation

8. The Welsh Government published a White Paper consultation document on a Further and Higher Education (Wales) Bill on 2 July 2012. The public consultation ended on 24 September 2012.

Further Education

9. The main areas of the proposals in the White Paper relevant to further education remain the same as in the Bill now introduced.

Higher Education

10. The proposals for the higher education sector in the White Paper were, however, significantly different to those in the Bill. The White Paper included proposals to address the need to reshape the framework of accountability and control which operates through the Higher Education Funding Council for Wales (HEFCW) to take account of the new tuition fee and funding regime which was introduced from September 2012.

11. On 6 March 2013, the then Minister for Education and Skills issued a written statement with the publication of the White Paper summary responses which said:

> "With regard to higher education I have asked my officials to undertake further analysis and development of the White Paper proposals. I will bring forward provisions relating to higher education reform through legislation later in this Assembly term. (…)The Further Education provisions and HMRC Data Sharing will go forward as legislation to be introduced in the spring of 2013."[5]

12. The White Paper did not consult on the proposals for data sharing for student loans and grants set out in section 9 of the Bill. The Welsh Government says that this is because these proposals were considered to be minor technical changes, which will ensure that the Welsh

[5] Welsh Government Summary of Responses to the White Paper – Further and Higher Education (Wales) Bill 2013 (paragraph 3): http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-written-ministerial-statements.htm?act=dis&id=243827&ds=3/2013

Ministers have the same functions as the Secretary of State for Business Innovation and Skills in England and the Department of Education in Northern Ireland.

The Further Education Sector in Wales

13. Further Education (FE) includes education and training provision mainly for people aged 16 and over,[6] from basic skills and work-based training to foundation level degrees. FE programmes are mainly taught in FE colleges and work-based and adult community learning environments.

14. Further Education Institutions (FEIs) in Wales consist of Further Education Corporations (FECs), established under the Further and Higher Education Act 1992 (FHEA 1992), and institutions which are designated by order under the same Act.

15. Following a series of college mergers, there are now 18 FEIs in total in Wales. These are made up of 14 FE corporations:

- Bridgend College;
- Cardiff and Vale College;
- Coleg Ceredigion;
- Coleg Gwent;
- Coleg Morgannwg;
- Coleg Powys;
- Coleg Sir Gâr;
- Deeside College;
- Gower College Swansea;
- Grŵp Llandrillo Menai;
- Neath Port Talbot College;
- Pembrokeshire College;
- Yale College;
- Ystrad Mynach College;

[6] National Assembly for Wales Research Paper, Further Education Structure in Wales, page 1, April 2013

There are also four designated FE institutions (Coleg Harlech WEA North; St. David's Catholic College, Cardiff; WEA South; and YMCA Community College).[7]

16. In July 2012, the Minister for Education and Skills, Leighton Andrews AM said that a further three college mergers are expected by August 2013.[8] The following mergers have been announced subsequently:

- Yale College and Deeside College will merge on 1 August 2013 to form Coleg Cambria;
- Ystrad Mynach College and Coleg Morgannwg will merge in August 2013 to form Coleg y Cymoedd, or College of the Valleys;
- Coleg Powys and Neath Port Talbot College will merge on 1 August 2013.

17. Coleg Sir Gâr[9] and Coleg Ceredigion[10] have both asked the Welsh Government for funding to support their merger business cases with the University of Wales, Trinity Saint David. Pembrokeshire College is also keen to engage in discussions around a dual sector (FE and HE) university to form a regional South West Wales alliance.[11] [12]

Key Statistics

18. A total of 195,900 learners were studying at Welsh FEIs in 2010-11, a fall of 22 per cent since 2006-07. Just over two thirds of these are aged over 20, while just under a third are aged 16-19. Most

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[7]Ibid, page 3
[8] Deeside College, Coleg Cambria – the new college for North East Wales, 3 December 2013; Coleg Morgannwg, College News, New name reflects landscape of college, 21 February 2013; Neath Port Talbot College, News/ Events, Coleg Powys and Neath Port Talbot College announce merger plans, 25 September 2012
[9] Welsh Government, Decision report, Funding to support the merger of Coleg Sir Gar and the University of Wales, Trinity Saint David, 5 November 2012 [accessed 5 March 2013]
[10] Welsh Government, Decision report, Funding to support the merger of Coleg Ceredigion with the University of Wales Trinity Saint David, 7 February 2013 [accessed 5 March 2013]
[11]Welsh Government, Programme for Government – 2012 Annex – Education, May 2012
[12] University of Wales Trinity Saint David, Transforming Education… Transforming Lives, 2012

learners (67.8 per cent in 2010-11) study on a part time basis. FEIs employed 8,810 (FTE) staff in Wales in 2010-11.[13]

Funding for the Further Education (FE) Sector in Wales

19. In 2012/13, FEIs in Wales received £311.9 million in funding from the Welsh Government (excluding work-based learning). This represents a rise of £8.7 million or 2.9 per cent in funding from 2011-12 to 2012-13.[14]

20. Welsh colleges are also able to generate their own income through the charging of fees, running full-cost courses, consultancy services, overseas students, childcare and other services. In 2008 (most recent available statistics), Welsh colleges had a total annual income of £89 million from non-government sources.[15]

Previous reviews of governance in further education

21. Governance of FE corporations has been the subject of a number of reviews. These include:

- The Webb Review[16] – 2006-07
- Stakeholder Review of FE Governance Arrangements[17] - May 2010
- The Humphreys Report[18] – March 2011

[13] Research Service calculations from StatsWales Full-time equivalent staff numbers at Further Education Institutions by institution
[14] National Assembly for Wales Research Paper, Further Education Structure in Wales, pages 18 and 19, April 2013
[15] Welsh Government, The structure of education services in Wales – Independent Task and Finish Group Report, March 2011, page 53
[16] The Report of the Independent Review of the Mission and Purpose of Further Education in Wales "The Webb Review", *Promise and Performance*, December 2007
[17] Welsh [Assembly] Government, Responsibility and Responsiveness – stakeholder Review of FE Governance Arrangements, May 2010
[18] The Humphreys Review Report *Independent Review of Governance Arrangements for Further Education Institutions in Wales*, March 2011

3. Purpose and effect of the Bill

Further Education Institutions

22. The Explanatory Memorandum says the Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions (FEIs) by removing and modifying existing legislative controls on them through:

- greater autonomy for further education institutions to make changes to their Instrument and Articles of Government;
- allowing further education corporations to dissolve themselves;
- allowing greater freedoms for further education corporations to borrow funds;
- allowing greater freedom for further education corporations to conduct themselves through subsidiary arrangements (such as a limited company or charitable incorporated organisation), without the consent of the Welsh Ministers;
- providing for the Welsh Ministers to direct the governing body of a further education corporation to resolve to dissolve itself;
- removing the power for the Welsh Ministers to appoint up to two members of a governing body of a further education institution;
- changing the powers of the Welsh Ministers to give directions to further education institutions;
- removing the requirement for the Welsh Ministers to prepare an intervention policy;
- removing the duty on further education institutions to consult with learners and employers;
- removing the power for the Welsh Ministers, by regulations, to restrict the provision of higher education in further education institutions.

23. These provisions are set out in Sections 1 to 8 of the Bill and in Schedule 1 (Instrument and Articles of Association).

ONS Classification of Further Education Institutions

24. The Explanatory Memorandum says that the provisions in respect of Further Education are to enable the Welsh Government to seek the

reversal of the ONS classification of Further Education Institutions (FEIs) as part of Central Government for the purpose of the National Accounts and so that they are again categorised as "Non-profit Institutions Serving Households" (NPISH).

25. In October 2010, ONS announced that it had reclassified Further Education Corporations in England and Wales, Sixth Form College Corporations (which only exist in England), Colleges of Further Education in Scotland and Institutions of Further Education in Northern Ireland to the General Government sector, from the Non-Profit Institutions Serving Households sector, where the ONS said that, they had been incorrectly classified since the early 1990s.

26. The ONS says[19] that these reclassifications arose from the discovery of public sector controls over these institutions, sufficient to result in ONS concluding that the public sector had control of these bodies' general corporate policy.

27. A number of different public sector controls were identified, but one of the most important related to borrowing by Further Education Colleges. In all cases, government consent was required for any Further Education College to borrow funds. Other public sector controls included controls over matters like governance arrangements and the ability to close or merge Further Education Colleges.

28. The ONS decided that this decision should be applied retrospectively to cover the period for which they should have been classified within the general government sector, from April 1993 in England, Scotland and Wales and 1989 in Northern Ireland.

29. The decision by ONS did not affect the legal status of colleges.

The effect of the ONS Classification on National Accounts

30. The classification decision was made in the context of the National Accounts. The National Accounts provide a framework for describing what is happening in national economies. All institutional units operating within an economy are classified to an institutional sector. It is a legal requirement for European Union countries to

[19] Office for National Statistics: Classification of Sixth Form and Further Education Institutions 13 October 2010. [http://www.ons.gov.uk/ons/guide-method/classifications/na-classifications/classification-articles/class/classification-of-sixth-form-and-further-education-institutions---october-2010.pdf]

compile specified statistical returns on the basis of European System of Accounts 1995 (ESA95).[20] The United Kingdom National Accounts are produced by the Office for National Statistics (ONS) on this basis.

31. Other than independent or private schools, the majority of pre-16 education institutions in the UK are classified in the general government sector.

32. Universities are, in general, classified outside of the public sector, as Non-Profit Institutions Serving Households. Although Universities receive considerable public funding, they have other sources of funding and have a high degree of autonomy, such that the ONS judges, that they are not controlled by Government.

33. The NPISH sector includes a number of bodies like universities, charities, trade unions or civic society bodies that could be regarded as being part of the "Third Sector" (i.e. not in the private sector or in the public sector) but in National Accounts terms NPISH is part of the private sector.

Changes relevant to ONS Classification

34. The key changes proposed by the Bill that are particularly relevant to the ONS classification decision include:

Borrowing

35. Currently colleges require the Welsh Minister's authority before entering into any borrowing arrangement. The ONS consider public sector controls on borrowing as one of the most important factors in their classification criteria.

Further Education Governance - Instrument and Articles of Government

36. The Bill proposes that a Further Education College will be able to modify or replace its instrument and articles of government but they must contain minimum requirements. Other than these essential elements, colleges will have the freedom to make changes to their governing body, composition and ways of working.

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[20] European System of Accounts 1995: http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/en/titelen.htm

37. The Bill also proposes the removal of the Welsh Ministers' existing power to appoint up to two members of a governing body.

Dissolution

38. At present, Welsh Ministers have the power to dissolve a college. In place of this power, the Bill gives colleges the ability to dissolve themselves and for their property, rights and liabilities to be transferred to another body. There is also a power for the Welsh Ministers to direct a college to dissolve itself.

39. The Bill includes provision for the Welsh Ministers to make Regulations setting out the process before dissolution can take effect and to which bodies a college can transfer its property, rights and liabilities to on dissolution.

Effect on Welsh Government and FEI budgets

40. The Explanatory Memorandum explains that if the decision to classify FEIs as central government is not overturned this would have an impact on Welsh Government capital budgets and inhibit FEIs carrying forward budget surpluses.

> "In summary, reclassification of FEIs as public sector bodies would have a negative impact on the DfES budget and would de-incentivise the sector to increase income streams outside of government funding and manage the FEIs as efficiently as they do now. The detail of how the budgets are scored will need to be considered with Treasury. Any financial implication will fall on the DfES MEG."[21]

41. The Explanatory Memorandum also says:

> "The effect of the reclassification of FEIs as central government public sector bodies has negative impacts for the FE sector in Wales that will lead to changes to the way financial information from colleges is collected and monitored and impact on how FEIs manage their internal affairs. The changes have significant implications for FEIs including:

[21] Explanatory Memorandum, paragraph 68

- any surpluses generated by colleges would be accounted for as Welsh Government funds;
- FEIs would be unable to retain a surplus in order to build reserves for future projects; and
- additional financial and accounting requirements."[22]

Higher education

42. Section 9 of the Bill gives effect to the Welsh Government policy to allow a data sharing link between Her Majesty's Revenue & Customs (HMRC) and Welsh Ministers, and anyone to whom the Welsh Ministers delegate or transfer functions, so that the process for applying for student grants and loans is simplified and made more efficient.

Sharing data on student grants and loans

43. Under the current system, a parent or partner has to send evidence of household income to the relevant local authority, usually by sending original documents which are then returned to them.

44. From February 2014, the Welsh Government's intention is that the system for determining:

- eligibility for the receipt of financial support;
- qualifying conditions for loans for living costs;
- grant calculations; and
- extra support for disabled and those students from low income families or with child-care responsibilities.

will be transferred from local authorities to the Student Loans Company (SLC)/Student Finance Wales (SFW). Student Finance Wales will therefore need to establish a process for verifying household income.

45. The Explanatory Memorandum says that the new system:

- will allow the Student Loans Company to verify household income figures electronically creating a more efficient application process which will help reduce fraudulent claims; and

[22]Explanatory Memorandum, paragraph 12

- the data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service.[23]

46. As a result, Student Finance Wales customers applying for means tested student finance will have their household income checked against HMRC income information for the sponsors (generally the parents) of the applicants. This will become an automated process and applicants and sponsors will no longer be required to present paper evidence of household income.

Other provisions

47. Section 10 sets out commencement arrangements, Section 11 cites the Bill's short title and Schedule 2 contains minor and consequential amendments to other legislation.

[23] Explanatory Memorandum, paragraph 2,

4. General principles and the need for legislation

The National Assembly's legislative competence to make the Bill

48. The Explanatory Memorandum[24] says that the National Assembly for Wales has the legislative competence to make the provisions in the Bill by virtue of paragraph 5 (Education and training) of Part 1 of Schedule 7, of the Government of Wales Act 2006.[25]

49. The Presiding Officer has decided that, in her view, the Bill is within the legislative competence of the National Assembly for Wales and issued a statement to this effect on 29 April 2013.[26]

Our view

50. *We have received no evidence suggesting that the Bill is not within the Assembly's legislative competence and have no reason to doubt that it is.*

General principles

51. The Bill seeks to change the law for two main reasons:

- To give greater autonomy to Further Education bodies to allow them to be reclassified by the Office for National Statistics (ONS) as "Non-profit Institutions Serving Households" (NPISH); and
- To allow Her Majesty's Revenue and Customs (HMRC) to share data relevant to student grants and loans with the Welsh Ministers so that the process for applying for student grants and loans is simplified and made more efficient.

52. The second of these principles is covered in more detail later in this report. However, it is relatively uncontroversial and we are generally content with the proposals in the Bill.

53. The first principle is, however, more contentious and has divided opinion among those from whom we have received evidence. Most of the evidence we have received has been broadly or strongly supportive

[24] Explanatory Memorandum, paragraph 4.
[25] Government of Wales Act 2006 c.32
[26] Presiding Officer's Statement on Legislative Competence: The Further and Higher Education (Governance and Information) (Wales) Bill: http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245736&ds=4/2013

of the need for legislation. However, there is strong opposition from Trade Unions representing staff working in the FE sector with one response suggesting that the implementation of the Bill will lead to 'Trade Union dissent and possible industrial action'.[27]

The Reason for Change

54. In relation to Further Education Institutions (FEIs), the Explanatory Memorandum says:

> "7. The Bill seeks to make changes to the existing statutory framework to remove controls exercised by the Welsh Ministers over Further Education Institutions (FEIs). The Welsh Government recognises the maturity of the Further Education sector in Wales and has concluded that the sector is best placed to determine how the needs of their learners and local communities should be met."

55. However, it is clear that greater autonomy for the sector is not the sole or even the main reason for the legislation. This was confirmed by the then Minister for Education and Skills on a number of occasions and unequivocally in giving evidence to the Committee on 19 June.

> "**David Rees:** … You originally told us that the emphasis, purpose and the main driver of this Bill was the reclassification by the Office for National Statistics. May I clarify whether you would have undertaken these changes without that driver being in place?
>
> **Leighton Andrews:** No."[28]

56. Other responses in favour of the Bill are also clear that, whatever the virtues of greater autonomy for the sector, the need to reverse the ONS classification is a very significant reason for their support for the Bill. For instance:

> "ColegauCymru welcomes the provisions in the Bill that would remove certain unnecessary restrictions and controls on colleges in such a way as to enable the Office for National Statistics (ONS) to restore to colleges their status as 'not for

[27] University and College Union (UCU Wales) written evidence (FEHE 4) – response to consultation question 5: http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=6772
[28] Children and Young People Committee (CYP) Transcript 19 June, paras 7 and 8

profit institutions serving households' (NPISH). This was the status that existed prior to the ONS announcement in October 2010 that FE colleges in the UK should be classified as part of central government."[29]

57. And in oral evidence they told us:

> "**Mr Graystone:** … When the Minister spoke to you, he said that he did not really want to do this, but the ONS, in a sense, has forced his hand. We would take a more positive view that you are doing it because you trust us and believe that we will deliver, but, equally, we know that the real reason is about the ONS classification. …"[30]

58. Opponents of the Bill recognised that the one of the main reasons for it was to reverse the ONS classification but questioned whether this was desirable and whether it would achieve what it set out to do:

> "UCU question the need for the Bill, if the main objectives of the Bill are to remove and modify existing legislative controls in order to reverse the ONS classification from Central Government to NPISH.
>
> "UCU have concerns that removing and modifying existing legislative controls, will not be in the best interest of the learners or the wider community.
>
> "The legislation could result in the reversal, but there is a risk that it will not give the ONS Classification Committee the assurances needed to do so. Therefore it is questionable that there is a need for the Bill, if it is not guaranteed that it will achieve what it proposes to do."[31]

59. In oral evidence, in which they also referred to advice the Union had received from Counsel,[32] they told us:

> "**Ms Phelan:** …. Can it be done in another way? The evidence, or the argument—we cannot evidence it, as we do not have a crystal ball—that we want to put forward firmly and strongly is

[29] ColegauCymru written evidence to the Committee (FEHE 1), paragraph 8, page 3:
[30] CYP Transcript 23 May 2013, para 51
[31] UCU written evidence (FEHE 4) – response to consultation question 1:
[32] Ibid - Appendix 1:

> that there is no need for this legislation. That is our view. If you read the counsel's opinion carefully, you will see that it is saying the same thing. The reality, in her view, is that, if you look at all the various regulations that currently exist and if you look at the current legal status of the institutions, you will see that they can do what they need to do within the current legal framework. You do not need to change it. The idea that you need to change it because of the ONS decision to reclassify as public sector in 2010 is something that she questions. …"[33]

60. However, since this evidence was given, the Office for National Statistics has been able to confirm to the Welsh Government that the Bill, as introduced, is sufficient to remove the legislative controls over FECs. Therefore, as long as any other non-legislative public sector controls are also removed, and the essentials of the Bill remain unchanged, FECs will be reclassified into the private sector as Non-Profit Institutions Serving Households.

Our View

61. *It is clear that the main policy driver for the changes proposed in the Bill is the perceived need to reverse the ONS classification of the FE sector in Wales as part of central government. Allowing the sector greater autonomy may be desirable in its own right but the greater autonomy allowed by the Bill, is primarily the means of securing the reversal of the ONS classification.*

62. *Whatever the merits of doing so, we are satisfied that the Bill, as currently drafted, will allow the ONS to reclassify the FE sector in Wales as Non-profit Institutions Serving Households.*

The consequences of the ONS classification

63. The ONS classification does not in itself make any changes to the Governance and accounting arrangements of FE institutions. However, their classification as part of central government has a number of consequences, particularly that the funding of FE bodies will be subject to UK Government budgeting rules and fiscal statistics.

[33] Committee Transcript 5 June 2013 – para 24

Accounting Rules

64. A Welsh Government briefing note for the Assembly's Finance Committee explained this as follows:

> "**Accountancy rules**
>
> 2. The UK National Accounts are produced under internationally agreed guidance and rules set out principally in the European System of Accounts 1995 (ESA 95), and the accompanying Manual on Government Deficit and Debt (MGDD).
>
> 3. These rules apply to all countries in the European Union, and the UK is legally required to produce the National Accounts on an ESA '95 basis.
>
> 4. In the UK the Office for National Statistics (ONS) is responsible for the application and interpretation of these rules.
>
> 5. The UK Government has chosen to base its departmental budgeting rules and fiscal statistics on National Accounts principles. As a consequence, ONS decisions on how organisations are treated in the National Accounts for budgeting purposes also inform the public sector boundary used in the production of Whole of Government Accounts (WGA).
>
> 6. Classification decisions also feed into a wide range of ONS economic statistics - the National Accounts themselves, public sector employment, etc.
>
> 7. If an organisation is classified as being part of the National Accounts then all of its transactions are included in the relevant Government department [or the Welsh Government's] budgets."[34]

[34] Finance Committee: 12 June 2013, paper FIN(4)-10-13 Paper 3 - Welsh Government Response - Further and Higher Education Skills: http://www.senedd.assemblywales.org/ieListDocuments.aspx?CId=229&MId=1692&Ver=4

Implications for Welsh Government budgets

65. The implications of this for Welsh Government and FEI budgeting arrangements are set out in detail in the same briefing note[35] and similar information is set out in the regulatory impact assessment that is part of the Explanatory Memorandum. The main negative impacts on the Welsh Government's budgets can be summarised as follows:

- Capital budgets - Capital grants from the Welsh Government to FECs are usually at a rate of 50%. However, the whole capital cost of projects would in future count against the Welsh Government's capital budget at 100% of the costs involved. The Welsh Government estimates that, on average this would mean a reduction of £20m available in the DfES capital budget each year;
- Non cash budgets - Depreciation of FE sector assets would count against Welsh Government non cash budgets, which is around £22m per year;
- Annually managed expenditure (AME) budgets - Year on year movement in pension scheme deficits would count against AME budgets and would need to be met in the first instance from within the DfES budget. The amount would vary but has ranged between £3.6m and £8.0m in recent years;
- Near cash budgets - On average, 21% of FEI income, such as student fees and commercial enterprises, comes from sources other than the Welsh Government. The implications of this are that surpluses generated by FEIs would lead to under spends in the DfES budget and deficits generated by FEIs would lead to over spends in the DfES budget. In turn this would lead to difficulties in building and managing surpluses to build reserves.

Implications for FEI budgets

66. For the FE sector, the main effect would be the loss of around £20m in capital spending as a result of the full cost of capital spending being counted against Welsh Government budgets.

[35] Ibid

67. Currently, the sector generates around 21% of its income from sources other than Welsh Government funding. Although they would continue to be able to generate this income, flexibility around how it is used would be lost. In particular, surpluses would have to be spent in the year they are made, which could mean that funds are not used in the most effective way.

68. There would also be an impact for staffing costs in both the Welsh Government and FEIs to prepare and move to new accounting arrangements.

Other Consequences

69. Opponents of the Bill have argued that the Bill could have a number of other consequences that have not been fully thought through. In particular, there is concern that it is in effect a 'privatisation' of the FE sector.

70. The UCU told us in written evidence:

> "12. UCU Wales are fundamentally opposed to the proposal to enhance the autonomy and decision making abilities of Further Education Institutions (FEIs) in Wales and believe that the consequences of this bill have not been fully considered by the Welsh Government, nor will it be if the procedure chosen to introduce the legislation remains the same. In our opinion, should the proposal become legislation, we will see the slow privatisation of post 16 educational provision in Wales. It will not produce wholesale change overnight, but it will allow Principals to 'privatise' any part of the service. The consequences of which are likely to lead to a profit driven/target lead culture, focussed on 'value for money', which is not conducive to fostering quality education that puts the needs of students and the community at its heart, which from our perspective, is the key mission of Further Education."[36]

71. This argument was rejected by ColegauCymru in their written evidence:

> "36. Several responses to the White Paper expressed concern that the FE colleges with their newly acquired freedoms would

[36] UCU written evidence (FEHE 4), page 3, paragraph 12:

disregard the policies for further education set by the Welsh Government; ignore national agreements on pay; sell off public assets; or even choose to privatise themselves as was apparently the case in England, and focus on profit rather than learners and their communities. ColegauCymru can give clear assurances that none of these will happen.

37. ColegauCymru will further develop its relationship with the Welsh Government. We recognise that an elected government expects its educational policies to be carried out. The Welsh Government will continue to set down conditions attached to its funding of colleges and there will be a revised financial memorandum."

72. The then Minister told us:

> "**Leighton Andrews:** They [FEIs] already have the power to create private companies, and have done so. In respect of the controls on borrowing, any lender to a further education institution, as with any lender to any other institution, will have clear conditions for the terms on which that capital is borrowed. They will have to operate within that. We have seen the further education sector mature over time and develop, and we have seen the focus that it has given. Clearly, the mission of further education institutions is to provide learning for students. Any move away from that would give rise to concerns that would be expressed to us. I do not think that we anticipate this causing any major problems."[37]

73. In respect of safeguards for the use of public money, he went on to explain:

> "The issue is whether or not we have safeguards for public finance. Clearly, we have safeguards for public finance, which are built in through the conditions of grant. I think that you need to bear in mind, of course, that there will continue to be financial monitoring of institutions. They will have to satisfy audit requirements, and they will have to publish annual reports and so on. I do not think, frankly, that there is anything

[37] CYP Transcript 15 May, para 25

here that creates conditions that gives rise to concerns for us."[38]

Our View

74. *We accept, that unless mitigating steps are taken, the financial consequences for Welsh Government and FE sector budgets is broadly as described by the Welsh Government. We accept that these consequences are significant and undesirable, that mitigating action should be taken and that the Bill as introduced is one way of providing this mitigation, although we would have liked to see more information on the risks of this approach in the Explanatory Memorandum*.

Recommendation 1: We recommend a revised Explanatory Memorandum is produced setting out in more detail and with greater clarity the risks involved in the approach the Bill takes to mitigating the effects of the ONS classification.

Recommendation 2: We recommend the Welsh Government keeps under close review the effects of the Bill in practice and whether these effects have any repercussions for other parts of its legislative programme or on wider matters such as provision for the Welsh language and Additional Learning Needs.

75. *We also accept that the Bill broadly maintains the current position (before the ONS's reclassification takes effect) in respect of budgeting arrangements and does not change in any fundamental way the freedom that FE bodies have always had to borrow, to create subsidiary bodies, to generate income from other sources and to enter freely into collective agreements with their staff*.

76. *However, we do not believe the Bill is the only approach that could have been taken. Neither are we convinced that alternative approaches have been fully or even minimally explored. We consider an alternative approach below*.

The Scottish Approach to the ONS classification

77. The situation faced by FE bodies in Wales is not unique. The ONS has made similar classification decisions in respect of the FE sectors in Northern Ireland, England and Scotland.

[38] Ibid, para 30

78. We understand that the Government in Northern Ireland has yet to finalise its response to the classification.[39]

79. In England, the UK Government has already taken much the same approach as is proposed in this Bill. The Education Act 2011[40] made virtually identical changes to the governance of FE bodies in England that are now being proposed in Wales.

80. The Scottish Government has taken a markedly different approach. It has decided that it will not seek ONS reclassification but will instead seek to mitigate the effects of the classification in other ways. This includes approaching HM Treasury to try to negotiate the relaxation of some government budgeting rules so that there is no need for the sort of legislative changes set out in the Bill.

81. This approach was explained in an exchange of correspondence[41] between the Committee Chair and the Scottish Government's Cabinet Secretary for Education and Lifelong Learning, Michael Russell MSP. In his letter of 26 June[42] Mr Russell outlined the approach being taken in Scotland:

> "We cannot support any suggestion that accounting rules, such as those proposed through ONS' decision, should determine our policy, or that democratic accountability should be sacrificed as a result of that decision.
>
> "Since 2010, the Scottish Government has been engaged in an extensive period of negotiation with HM Treasury on the basis for ONS' decision, the timing of implementation and the scope for mitigating the implications. While we continue to believe it is within power of HM Treasury to mitigate this decision, it has regrettably chosen not to do so. We continue to disagree with the HMT position. Indeed, we now believe there could be an inconsistency in the treatment of Scottish colleges and continue to press this point with HMT.

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[39] See Committee transcript of 15 May (para 110), 23 May (para 87) and 5 June (para 248)
[40] Education Act 2011 c.11
[41] CYP(4)-20-13(p.2) - 20 June 2013: http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=7266

[42] CYP(4)-20-13(p.3) - 26 June 2013:

> "In taking its position, HM Treasury has sought to use the distinctive nature of our response as a means to avoid fully reflecting the budgetary impact of ONS' decision in Scotland. I would therefore welcome the development of a joint approach with other devolved administrations to HM Treasury in pursuit of fairness, parity and increased flexibility. I believe there is much to be gained and learned from a shared approach on this issue."

The Treasury's Position

82. When we asked the then Minister for Education and Skills, Leighton Andrews, whether he had approached the Treasury, or had considered a joint approach with Scotland, he told us:

> "**Leighton Andrews:** I am always open to having a chat with Mike Russell in Scotland, but we are very clear as to what the answer from the Treasury would be; the rules are very clear. We discussed this in the Finance Committee last week, as you will recall, Chair. I do not think that anything is going to be changed by a conversation with Treasury. We are very clear about that. I do not think that it is any surprise to this committee if I say that Scotland is funded in such a way that it has slightly more flexibility in these matters than we do."[43]

83. When asked to clarify whether he had contacted the Treasury, he told us:

> "I have not and I have no intention of doing so."[44]

84. Pressed on whether the Treasury would be prepared to allow greater carry-over of reserves by FECs to allow them to build up reserves for future investment, he said:

> "I think that we know what the answer from the Treasury would be. I think that Scotland probably knows what the answer would be as well."[45]

85. We also wrote[46] to the new Minister for Education and Skills, Huw Lewis to ask him whether the offer of a joint approach to the Treasury

[43] Transcript 19 June – para 60
[44] Ibid – para 62
[45] Ibid – para 64
[46] CYP(4)-20-13(p.4) - 27 June 2013

with his Scottish counterpart was one he would consider. In his reply[47] he told us:

> "…To my mind, the content of the letter supports my predecessor's views on Treasury rules. In particular, Scotland have been engaged in an 'extensive period of negotiation with HM Treasury on the basis of ONS' decision', but that Treasury has chosen not to 'mitigate' its decision to not give extra budget cover to FEIs.
>
> …
>
> "In terms of a joint approach with other devolved administrations to HM Treasury, I do not consider this to be a viable option for two reasons. First, we have carefully considered the relevant Treasury guidance but note that the circumstances of re-classification by the ONS would not trigger a right to compensation for the Welsh Government. This is because the reclassification has arisen from a re-assessment of the existing position rather than any change of circumstances. In effect, the ONS position is that FEIs should always have been classed as General Government and therefore as part of the public sector.
>
> …
>
> "Second, a joint approach from the devolved administrations would be an extensive exercise with no guarantee of a successful outcome."

Our View

86. *It is clear from Mr Russell's letter that the accounting changes required as a result of the ONS classification apply equally to the Scottish Government and to FE bodies in Scotland, and that many of the effects are similar.*

87. *We have not had sufficient time to examine whether the approach taken in Scotland is the most appropriate one for Wales' circumstances. The Welsh Government is also well advanced along a different policy path, as set out in the Bill. If the Scottish approach is*

[47] CYP(4)-20-13(p.5) - 2 July 2013

appropriate to Wales, it may be too late to pursue it successfully within the time now available.

88. *The Welsh Government's assessment is that the Treasury is unlikely to respond positively to any approach. We are concerned that the Welsh Government's policy direction appears to be predicated on an assumption about a Treasury response that has not been tested.. The Welsh Government has not written to the Treasury to clarify their position or attempted to engage with them in a dialogue. We would have expected that policy would be based on formally establishing the Treasury position.*

89. *The previous Minister made it clear to us that the approach he took in bringing forward this Bill would not have been taken were it not for the ONS classification. Policy is, therefore, being driven primarily by what are essentially accounting rules. This is not say that the FE sector in Wales could not benefit from greater autonomy or that they are incapable of exercising that autonomy responsibly.*

90. *We are uncomfortable agreeing to that extra autonomy when the option of retaining direct accountability has not been fully explored with the Treasury.*

Recommendation 3: We recommend, before the debate on general principles is held, the Welsh Government should explore fully with HM Treasury the scope for modifying Government accounting rules to help mitigate the effects of the ONS classification.

5. The Welsh Government's powers of intervention and direction

91. The loosening of the Welsh Government's legislative powers of intervention and direction is a key feature of the Bill. However in the Explanatory Memorandum, the Welsh Government recognises the need to balance the changes proposed in the Bill with the need for public funds, the public interest and learners to be safeguarded. In their response to the White Paper Consultation, Estyn had said:

> "The changes proposed in the White Paper may give colleges more freedom to pursue these agendas, but it is important that the FE sector is held to account for its delivery of the education and training, economic and social priorities of the Welsh Government."[48]

92. Leighton Andrews told the Committee that he was confident that he would be able to exert influence over more autonomous FEIs through non-legislative means for example through conditions of funding as part of the new post-16 funding regime, "naming and shaming"; through the Quality Effectiveness Framework; audit and accounting requirements and through Estyn inspections.

Changes to the Financial Memorandum and grant funding conditions

93. We received a private technical briefing from ONS officials about the background to their classification and the factors that would be of importance to them in reaching a decision to reclassify FE bodies as NPISH. As part of this briefing the ONS were able to confirm that the Bill, as it stands, is sufficient to remove the legislative controls over FECs**, and therefore, as long as any other non-legislative public sector controls are also removed**, FECs will be reclassified into the private sector as Non-Profit Institutions Serving Households.

94. In response to a Member's question, Leighton Andrews, then Minister for Education and Skills and one of his officials, Mr Andrew Clarke, said:

[48] Welsh Government, Consultation Responses Part 1: Further and Higher Education (Wales) Bill, 2012, p189 [accessed 30 May 2013]

> "**Leighton Andrews:** We are clear that there are changes that we would need to institute in terms of the financial memorandum. We discussed this with the Finance Committee last week, if I remember rightly. Andrew, have we specifically talked through the controls with the ONS?"
>
> **"Mr Clark**: We have shared our existing controls with the ONS, and there are one or two places where it has indicated that they would need to be changed."[49]

95. The Minister then agreed to share details of these changes with the Committee Members.

Re-establishing a funding council?

96. Option 2 of the Regulatory Impact Assessment proposes the re-establishment of a funding council in Wales. The University and College Union are in favour of this option. However Leighton Andrews was very definite in his oral evidence to the Committee that he was not considering this:

> "**Leighton Andrews:** I do not think our view was that we needed a funding council. To our mind, there has been considerable consolidation within the further education sector over recent years. We have a small number of FE colleges now and our officials have established strong working relationships with those institutions. They know the people and there are direct lines of contact. It seems unnecessary to us to establish a new bureaucratic layer between further education institutions and the department."[50]

97. And later:

> "I just do not think that there is a need for it. In 2004 to 2006, we went down the route of significantly reducing the number of quangos in Wales and it is not my policy objective to bring back more quangos."[51]

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[49] CYP Transcript 19 June, paras 10 and 11
[50] CYP Transcript 15 May, para 13
[51] Ibid, para 18

Our View

98. *Based on the assumption that the Bill is needed to loosen the legislative controls over the FEIs in order to achieve a reclassification by ONS, we are reasonably satisfied that the Minister is retaining an appropriate level of non-legislative controls that are balanced with the need not to jeopardise the ONS reclassification.*

6. The implications for learners, communities and FE staff

Introduction

99. As we have made clear, we are not comfortable agreeing to extra autonomy for FE bodies when the option of keeping direct accountability does not appear to have been properly explored. However, we accept that the financial consequences of the ONS classification are significant and undesirable.

100. If it can be shown that the Treasury will not agree steps to mitigate these consequences, it is difficult to justify keeping the current legislative framework and accepting the negative financial impact that goes with it. In these circumstances, legislating, along the lines set out in the Bill, may be the only way of avoiding the financial consequences that stem from the ONS decision.

101. This presents something of a problem. We are satisfied, following the private technical briefing that we received from ONS officials, that the Bill as presented will allow the ONS to reclassify FE bodies in Wales as Non-profit Institutions Serving Households. However, it is also clear that if the Bill is amended in a way that reintroduces key controls over the sector this could put reclassification at risk.

102. However, a number of specific suggestions have been put to us in considering the Bill that do not appear to put at risk the ONS reclassification.

Instruments and articles of government

103. FE corporations will be able to vary their instruments and articles of government but Schedule 1 of the Bill sets out certain requirements that must always be complied with.

104. These requirements include:

- that the members of the governing body must include staff and students at the institution[52]; and
- publication of arrangements for obtaining the views of staff and students.[53]

[52] Paragraph 3 of Schedule 1 to the Bill

Staff and Learner Representatives

105. Concern has been expressed that the staff members of governing bodies may not be sufficiently representative of staff interests. In oral evidence, the UCU told us

> "**Ms Phelan**: If you look at paragraph 3 of Schedule 1, which talks about the eligibility of persons for membership, you will see that it is six sentences long. It says that regulations must make sure that staff and students at an institution are a part of its governance. It does not say how the staff and students will be put on the board of governors. It does not say that they will be elected. It does not say how many. There are circumstances where we have found that the chief executive has chosen the staff member to sit on the board, which is totally inappropriate, because the purpose of the board of governors is to scrutinise, and when you do not have appropriate scrutiny, that is when you have problems. One of the things that we will be looking at is persuading some of our colleagues to table amendments to that part of the Bill, because it is not tight enough. If we have to have it, we have to do some work on it."[54]

106. ColegauCymru were also in favour in principle of staff representatives being elected, although they were concerned that such a requirement might affect ONS reclassification:

> "**Mr Graystone**: Over 20 years, we have become used to having elected staff and elected students and we agree with that entirely. We are not sure about whether the Office for National Statistics would see the word 'elected' as affecting the relationship between the Government and colleges. We will give a commitment that staff and students will be elected, but you would need to get advice from the ONS to see whether that relationship would be affected. That is the way that we work and we do not think that hand-picking staff or students is the way forward…"[55]

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[53] Paragraph 6 of Schedule 1 to the Bill
[54] CYP Transcript 5 June, para 74
[55] CYP Transcript 23 May, para 108

107. The National Union of Students told us in their written response:

> "We feel very strongly that, as students are perhaps the single most important stakeholder in our FEIs, there should be at least two reserved places for students. This would avoid a possible repetition of situations in England where, following the Education Act 2011, some FE colleges did not maintain two student governor places. Considering the great emphasis that has been placed on learner voice in Wales recently, including the NUS Wales' Welsh Government-funded FE Project and the Learner Voice Survey, to not secure student representation on the body would be a retrograde step."[56]

108. They expanded upon this in oral evidence and explained that they would also like student representatives to be elected:

> "**Mr Rees**: …In terms of the word 'elected', we would like to see it mentioned in the Schedule that the student places should be elected. Currently, this is the case through the instruments and articles, but of course if FEIs have the ability to modify the instruments and articles, this could be altered.
>
> "Normally, it will be the students' union president who sits on the governing body, but it is worth bearing in mind that, currently, not all further education institutions have a students' union president. We consider that good practice, and the reason that we advocate the two governing places is that you have that role, but you also have another role to perhaps complement the skills and expertise that the president brings."[57]

109. The then Minister indicated that he would be prepared to support amendments that specified that at least two members of a governing body should be students:

> "**Leighton Andrews**: That is what we have demonstrated that we support. I am willing to consider any amendments that do not undermine the purpose of the Bill in respect of the ONS reclassification."[58]

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[56] National Union of Students (FEHE 10), written response to question 3, page 3
[57] CYP Transcript 5 June, paras 184 and185
[58] CYP Transcript 19 June, para 72

110. He also indicated that he would be prepared to accept amendments to ensure that both student and staff representatives should be elected.[59]

Recommendation 4: We recommend Schedule 1of the Bill should be amended to specify that at least two members of a college's governing body should be student representatives.

Recommendation 5: We recommend Schedule 1of the Bill should be amended to specify that student representatives on a college's governing body should be elected by the student body.

Recommendation 6: We recommend Schedule 1of the Bill should be amended to specify that there should be two representatives on a college's governing body who should be elected representatives of the staff of the institution.

Employer and Business Representatives

111. The Construction Industry Training Board (CITB) argued for the construction industry to be represented on governing bodies:

> "4.1 The Further Education Sector in Wales has traditionally been an important provider of Higher Level Education, mainly at levels 4 and 5 HNC/NHD provision for the Construction Sector. The sector generally has credibility and support amongst employers and has shown a willingness to innovate with the development of Foundation Degrees, Sustainability and Green Skills provision and part time courses.
>
> "4.2 In the light of the above comments it must be stated that Construction provision is expensive and that independent control of College Finances could either be a positive or negative factor in the maintenance of current provision or development of additional new provision depending on the interests of Senior Managers and Governors. The need for well informed and influential representation from the Construction Industry on the new revised Governing Bodies of Colleges

[59] Transcript 19 June paras 73 and 74

would be crucial to this success of reform and to ensure that 'expensive' specialist provision continues and thrives."[60]

112. However, in oral evidence there was an acceptance that this was not always practical and that a more general business representation was a more realistic approach:

> "[26] **Mr Williams**: I agree with you. It would be impractical to have everybody around the table in agreement, but a mechanism needs to be set up. It is important to have business representation, which could be from any sector. If you have business representation, I suppose that it gives different points of view on some of the decisions that have to be made. With any business or sector, if the correct person is there, I would say that it is going to be beneficial. In addition to that, you have to have sector input, so that the decisions that are made, curriculum-wise and provision-wise, are the right ones."

113. ColegauCymru also recognised the importance of business involvement:

> "**Mr Graystone**: … I do not think that any college has consulted employers because it has been told to do so by the Welsh Government; we just do it as part of our core business. You cannot run colleges if you do not consult with your learners and employers, if you do not have employers on boards, if advisory committees are not set up, and if meetings are not held for employers. It is core business for us. I think that most of us did not realise that we were required to do so; we just do it. It runs in the blood."[61]

Recommendation 7: We recommend Schedule 1of the Bill should be amended to specify that governing bodies should include representatives of local employers or businesses.

Duty to consult with local learners and employers

114. The Bill repeals the current duty on FEIs to consult with learners and employers As ColegauCymru point out above (without accepting that there is a need for a duty to consult) consultation with local

[60] CITB written response to (FEHE 18)
[61] CYP Transcript 23 May, para 106

employers and businesses is seen as a core part of colleges' engagement with the community.

115. Some witnesses expressed concern at the removal of the duty. The CITB told us:

> "**Mr Williams**: We would definitely be concerned about removing the duty. As I say, providing some traditional things is easier than looking ahead to what the world and young people will need in terms of employment. Some will be open to doing that and some will be sufficiently forward-thinking…"[62]

116. The NUS also expressed concern:

> "In terms of the impact upon NUS Wales, we will be working closely with ColegauCymru and FEIs to ensure that learners continue to be consulted, represented and included on governing bodies/ corporations, especially vital when the explanatory memorandum outlines in paragraph 25 that the Bill will 'repeal…the duty on FEIs to consult with learners and employers', p. 8, which is, understandably, of great concern to us."[63]

117. In oral evidence they expanded on this to question how FEIs would be encouraged to engage in local curriculum planning when there was not a duty to consult:

> "**Mr Rees**: We do not represent 14 to 16-year-old learners. Our membership is 16-plus. That said, one area where we have concerns is around the removal of the duty for FE institutions to participate in local curriculum planning. We advocate flexibility in the education system and that you should be able to access the qualifications and training that you require to pursue your career or vocation. The 14-19 networks and the local curriculum plan have been really beneficial. There are some accepted difficulties with local curriculum planning, but generally it has been beneficial in opening up opportunities for

[62] CYP Transcript 13 June, para 36
[63] National Union of Students (FEHE 10), written response to question 4, page 4

young people. We would want to know how FEIs would still be incentivised to engage in this collaboration."[64]

118. Estyn also expressed concern that the Bill will repeal the duty on FECs to consult with learners and employers.[65]

119. The then Minister in his initial oral evidence indicated that the reason for removing the duty was primarily to satisfy the ONS, but he did not appear to have any objection in principle to the inclusion of a duty:

> "**Leighton Andrews**: This goes back to the core reason for the Bill, which is the need to produce an outcome that satisfies the ONS. That does not mean that we do not regard consulting with learners and other stakeholders as being good practice; we would encourage that."[66]

120. In later evidence he indicated that he would accept amendments to ensure that governing bodies should include a representative of local employers and should also be under a duty to consult local learners and businesses.

> "**Leighton Andrews**: Again, it would depend on the formulation of any amendment. As I said, I would be willing to consider amendments that did not change the basic aim of the Bill in terms of the ONS reclassification…"[67]

Recommendation 8: We recommend Schedule 1of the Bill should be amended to place a broad duty on governing bodies to consult regularly with local employers, learners and communities about the educational provision at the institution concerned and how it impacts on local curriculum planning.

The ONS View

121. We received a very helpful and informative private technical briefing from ONS officials about the background to their classification and the factors that would be of importance to them in reaching a decision to reclassify FE bodies as NPISH. This was a private briefing

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[64] CYP Transcript 5 June, para 260
[65] Estyn written response (FEHE 5); page 2
[66] CYP Transcript 15 May, para 133
[67] CYP Transcript 19 June, para 74

and it is important to note that the ONS were unable to give unqualified answers to hypothetical questions. Nevertheless, our improved understanding of the factors that they will take into account leads us to conclude that if the Bill is amended as suggested above it is unlikely to materially affect the outcome of their decision to reclassify.

Our View

122. *We are satisfied that the amendments we have recommended above represent a proportionate and reasonable approach that will:*

- *Strengthen learner and staff involvement;*
- *Ensure that the needs of businesses and employers are heard on governing bodies;*
- *Ensure that learner and staff members of governing bodies are genuinely representative;*
- *Strengthen engagement with learners, businesses and the local community.*

123. *We are also satisfied that in principle none of the amendments that have been suggested to us, either separately or together, will put at risk reclassification by the ONS.*

7. Provisions relating to the higher education sector

Introduction

124. Section 7 and section 9 of the Bill deal specifically with issues relating to Higher Education.

125. Section 7 repeals the Welsh Minister's power to make regulations prohibiting the provision of higher education courses by FEIs without Ministers' approval and regulating the numbers and categories of students on such courses.

126. Section 9 provides a legal basis for Her Majesty's Revenue and Customs (HMRC) to supply information to the Welsh Ministers on household income in relation to the operation of the student loan scheme. This puts the Welsh Ministers on a par with their counterparts in the UK Government and in Northern Ireland (somewhat different arrangements apply in Scotland).

Power to Regulate Higher Education Courses in Further Education

127. Some concern was expressed about the removal of this power. NASUWT Cymru the Teachers' Union, said in their written submission:

> "The NASUWT notes the provisions to remove the power of Welsh Ministers to restrict the provision of higher education (HE) courses within the FE sector.
>
> "The NASUWT finds no merit in this proposal as the current power of Welsh Ministers provides an important safeguard to militate against competition and the adverse influence of market forces developing within the FE and HE sectors.
>
> "The NASUWT does not oppose the provision of HE courses within the FE sector as long as those charged with the responsibility for delivering the courses enjoy the same pay and conditions of service as their counterparts in HE.

> The NASUWT urges the CYPC to be alert to the fact that this proposal could lead to FE providers attempting to provide HE courses 'on the cheap'."[68]

128. HEFCW's written submission said:

> "We are currently responsible for the provision of tuition fee grant in respect of Welsh domiciled full-time undergraduate students. We have arrangements in place to manage the cost to our resources, and therefore to the Welsh public purse, arising from this responsibility. The proposed removal of controls as identified in the paragraph above could increase our financial exposure and we will wish to work with our colleagues in the Welsh government to explore any implications which arise."[69]

129. Higher Education Wales (HEW) did not express any concern about the removal of this power but pointed out that there would in practice continue to be a range of non-legislative controls in place:

> "In future we would expect there to continue to be effective controls in place for all providers of HE (including HEIs, FEIs, and alternative providers) to ensure that Welsh Government budget can be suitably managed and that public funding is used appropriately. We continue to support the current policy that any future expansion of HE in FE would be best achieved through franchise partnerships, for the reasons identified by HEFCW (see above 3.3 [earlier paragraph of HEW written evidence]). In removing the Welsh Government's powers under the Education Act 2002, we recognise that there is in practice a range of controls on future expansion of HE in FE. As part of the consultation on HE (Wales) Bill consultation, it will be necessary to ensure that appropriate future arrangements for all providers continue to remain in place."[70]

130. In his initial oral evidence the then Minister explained why he was proposing the repeal of the power:

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[68] NASUWT written evidence (FEHE 14), para 21
[69] HEFCW written evidence (FEHE 16), page 2
[70] HEW written evidence (FEHE 13), para 3.5

> "**Leighton Andrews**: The power has never been used and we do not anticipate it needing to be used."[71]

131. He expanded on this by saying:

> "**Leighton Andrews**: …These are policy issues rather than legislative issues. I do not think that the power is needed. There are other ways in which the validation of higher education, and the quality of higher education is safeguarded. Obviously, the Higher Education Funding Council for Wales and the Quality Assurance Agency for Higher Education will have a role in this. As I said, the power has never been used. In the context of future discussions on emerging higher education policies, we will want to look at the way in which there is collaboration between further and higher education institutions. However, I do not see the need for this power explicitly."[72]

132. However, in later evidence it was put to the Minister that giving up the power is not necessary for ONS reclassification and that, although it had never been used, it might be worth retaining to deal with future eventualities. In response, he agreed to reflect further on the position before stage 2.

> "**Leighton Andrews**: … You raise an interesting question here about the commonality of regulation of higher education across different institutions. I would rather think about that, in principle, in the general context of our future legislation, because there are other issues that are starting to arise, for example, through the provision of mass online open courses, and other matters that we might want to consider at that point."[73]

And:

> "**Leighton Andrews**: Let me go away and reflect on this, because it is an interesting discussion and we can return to it at Stage 2. I will go away and discuss this with officials."[74]

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[71] CYP transcript 15 May, para 203
[72] Ibid, para 209
[73] CYP Transcript 19 June, para 105
[74] Ibid, para 107

Our view

133. *We do not believe that it is good practice for Ministers to keep powers that are effectively redundant simply because of the possibility that they might be needed at some indeterminate point in the future. We do, therefore appreciate the stance taken by Ministers on this occasion.*

134. *However, given the possible changes in the sector in future and that there is likely to be a Higher Education Bill in the reasonably near future we believe it is sensible to reassess whether now is the most appropriate time to repeal this power.*

135. *We are pleased that the previous Minister agreed to reflect on this issue further before Stage 2 and we hope that his successor will also do so.*

Recommendation 9: We recommend the Minister reconsiders the repeal, proposed in section 7 of the Bill, of section 139 of the Education Act 2002.

Supply of Information in respect of student grants and loans

136. We have not received any strong views or compelling evidence in opposition to this proposal, indeed most evidence was in support. There was also widespread agreement that this was a technical matter needed to make improvements to the application process for student loans that would have few other effects. This was explained as follows by a Welsh Government official:

> "**Ms Martins**: … It is an entirely technical provision; it is kind of a lacuna, although it was policy at the time in the Higher Education Act 2004. There is a mechanism for automatic transfer from the tax office to the Student Loans Company, just for the verification of the information that students supply when they make applications for support. That allows the tax office to transfer automatically the information to the Student Loans Company in relation to students in Northern Ireland and England.
>
> "We were left out, so all of our applications had to be done on paper. The students had to provide everything on paper, and then, if we had any doubts—local authorities used to process

the applications—they would have to go to the tax office, and the tax office would have to verify that separately. It made the process a lot longer. That is all that this does; this does not ask for any additional information to be provided—

"Simon Thomas: It is only the manner of the sharing, not the actual information that is being changed.

"Ms Martins: Absolutely. It is the direct sharing of information between HMRC and SLC, which is working for us."[75]

137. However UNISON Cymru/Wales did express the following reservations:

> "We understand the need to modernise the Student Finance Wales delivery service but do not welcome the manner in which this is being pursued in the Bill's proposals. The Student Finance Wales delivery service is in effect being outsourced to the Student Loan Company (which has had a chequered history in its workings in England) with the intention of centralising what is currently a local and responsive service. The danger in the current proposals is that the service will be diminished and that students will suffer in particular those who wish to apply through the medium of Welsh and those with special needs."[76]

138. We were also made aware that responsibility for student loan applications was being transferred from local authorities to the Student Loan Company, although this is not dependent on the changes proposed in the Bill. The Student Loan Company told us:

> "**Mr Wallace**: My understanding is absolutely that the decision has already been taken and that significant conversations are already taking place between our organisations as we are building the service in Wales around the Transfer of Undertakings (Protection of Employment) Regulations 1981 opportunities for local authority staff. So, my understanding is that this is approved and authorised to go ahead. This is a technical section within the Bill to allow us to take advantage of some functionality and process efficiencies that we have developed for England and wish to effectively make available to

[75] CYP transcript 15 May, paras 179-182
[76] UNISON Cymru/Wales written evidence (FEHE 7), page 3

the Welsh service. However, if this Bill or this particular part of the Bill did not go through, we would still go ahead—

"Mr Wallace: [but] It would be the manual system, so it would have the same costs and inefficiencies that are in the system just now, so we would be denying ourselves the opportunity to take advantage of these benefits."[77]

139. In terms of the local, in person advice about student loans that students might receive in future we were told:

"**Mr Wallace**: If they are looking for information around the detailed application process for student funding, that is provided through Student Finance Wales. That will either be online or through a large amount of information, advice and guidance that we are going to be creating and producing. As I mentioned earlier, the role of the local authorities will be more of a signposting service to say to people, 'If you wish to apply for student finance, this is how you do it', and to direct them to the websites and the existing materials that we have. I do not see that local authorities would have a continuing role. That is my understanding: they would not have a continuing role in the provision of detailed information and would be more likely to be signposting people to the right places."[78]

Our View

140. *We are content that this is a technical change that is needed to put the Welsh Ministers on a par with their colleagues elsewhere in the UK and to allow improvements to the system for applying for student loans.*

141. *Although this is not directly related to the proposals in the Bill, we are concerned that the centralisation of responsibility for student loans with the Student Loan Company could lead to a more remote and less responsive service than is currently provided by local authorities. We believe that more thought needs to be given to how appropriate support in person, including in Welsh and for those with additional needs, can continue to be provided at a local level.*

[77] CYP transcript 23 May, paras 187 and 189
[78] Ibid, para 199

Recommendation 10: We recommend the Welsh Government considers with the Student Loan Company how best to retain, at a local level, appropriate support in person for those applying for student loans.

8. Effects on particular groups

142. We have received some submissions about the effect of the Bill on certain user groups.

Welsh language

143. We have already mentioned the need to continue to provide a responsive local service in Welsh for those applying for Student Loans. UCAC asked specifically whether FE bodies would continue to be subject to the provisions of the Welsh Language Measure 2011:[79]

> "Language policies: If the further education colleges were transferred to the NPISH category, would they be subject to the proposed Welsh Language Standards? To whom would they be accountable in relation to implementing the commitments of their Welsh Language Policies?"[80]

144. However, the then Minister told us:

> "**Leighton Andrews**: I do not think anything has changed in that regard at all by this Bill. I have had evidence from the University and College Union, but I have not seen anything—let me be careful here: I do not believe that I have seen anything from it on this point. If it has put it to you, that is interesting. However, I fail to see how this Bill changes the situation with regard to the Welsh language."[81]

Our View

145. *We would be very concerned if any of the provisions in the Bill led to a diminution of support or provision for the Welsh language in FE bodies. However, we are content that the Bill does not make any substantive changes in this regard*.

Support for Learners with Additional Learning Needs

146. We are grateful to the National Deaf Children's Society (NDCS) for drawing our attention to a number of issues in relation to support for learners with Additional Learning Needs (ALN). Their full submission

[79] Welsh Language (Wales) Measure 2011 nawm.1
[80] UCAC written evidence (FEHE 9), page 4
[81] CYP transcript 19 June, para 42

to the Committee[82] is available on the Committee's web pages. However among the points they raised were:

- That Ministers should be able to continue to collect data about how FEIs are responding to the support needs of learners with ALN;
- That Welsh Ministers should be able to intervene if FEIs are not appropriately supporting learners with ALN;
- That consideration needs to be given to how the Bill will operate in conjunction with planned reforms of ALN support;
- That regulations in respect of dissolution arrangements for FEIs should specifically include provision to ensure that the needs of learner with ALN are considered.

Our View

147. *While we are not convinced that the issues raised by the NDCS require changes to the Bill, we agree that they need to be considered carefully by the Welsh Government and appropriate amendments brought forward if necessary*.

Recommendation 11: We recommend the Welsh Government considers carefully the impact of the Bill on provision for learners with Additional Learning Needs.

[82] NCDS written evidence (FEHE 11)

Annexe A - List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=6772

Organisation	*Reference*
ColegauCymru	FEHE 1
ColegauCymru	FEHE 1A
ColegauCymru	FEHE 1B
Coleg Gwent	FEHE 2
University and College Union, Coleg Gwent, Newport Branch	FEHE 3
University and College Union (UCU Wales)	FEHE 4 FEHE 4A FEHE 4B
Estyn	FEHE 5
University and College Union, Crosskeys Branch	FEHE 6
UNISON Cymru	FEHE 7
The Learned Society Wales	FEHE 8
Undeb Cenedlaethol Athrawon Cymru (UCAC)	FEHE 9
National Union of Students Wales	FEHE 10
National Deaf Children's Society	FEHE 11
NIACE Dysgu Cymru	FEHE 12
Higher Education Wales	FEHE 13 FEHE 13A
NASUWT, Cymru	FEHE 14
Cardiff University	FEHE 15
Higher Education Funding Council for Wales	FEHE 16
Agored Cymru	FEHE 17
CITB Cymru Wales	FEHE 18
Leighton Andrews AM, Minister for Education and Skills	FEHE 19

Student Loans Company (Student Finance Wales) FEHE 20

The Committee also considered the following correspondence, which can be viewed in full at: http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=7266

Reference	Date
CYP(4)-18-13 (p7) - Letter from the Minister for Education and Skills Leighton Andrews AM, Welsh Government	4 June 2013
CYP(4)-21-13(p.2) – Letter from the Chair of Petitions Committee	12 June 2013
CYP(4)-20-13(p.1) - Chair to the Minister for Education and Skills Leighton Andrews AM - Follow up from Meeting on 19 June 2013	20 June 2013
CYP(4)-20-13(p.2) - Chair to the Cabinet Secretary for Education and Lifelong Learning (Scottish Government)	20 June 2013
CYP(4)-20-13(p.3) - Response from the Cabinet Secretary for Education and Lifelong Learning (Scottish Government)	26 June 2013
CYP(4)-20-13(p.4) - Chair to the new Minister for Education and Skills, Huw Lewis AM	27 June 2013
CYP(4)-20-13(p.5) - Response from the Education and Skills Minister, Huw Lewis AM	2 July 2013

Annexe B – Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=6429

Date	*Organisation*
15 May 2013 148. and **19 June 2013**	**Leighton Andrews AM**, Minister for Education and Skills, Welsh Government **Andrew Clark**, Deputy Director Further Education and Apprenticeship Division, Welsh Government **Grace Martins**, Senior Lawyer, Welsh Government
23 May 2013	**John Graystone,** Chief Executive, Colegau Cymru **David Jones,** former Chair, Colegau Cymru, Principal, Deeside College and Principal Designate, Coleg Cambria **Mark Jones,** Chair, Colegau Cymru; Principal, Bridgend College and Principal Designate, Gower College Swansea
23 May 2013	**David Wallace,** Deputy CEO & Director of Strategic Development, Student Finance Wales
5 June 2013	**Chris Jones**, Chair of University and College Union (Wales) Further Education Sector Committee **Margaret Phelan**, Regional Official, University and College Union (Wales), **Lisa Edwards**, Temporary Political Liaison Officer, University and College Union (Wales)

5 June 2013	**Kieron Rees**, Representation and Policy Officer, National Union of Students Wales
13 June 2013	**Gareth Williams**, CITB Cymru/Wales Careers and Qualifications Manager, Construction Skills Wales
13 June 2013	**Professor April McMahon**, Vice-Chancellor, Aberystwyth University **Professor Medwin Hughes**, Vice-Chancellor, University of Wales Trinity Saint David, and Swansea Metropolitan University of Wales Trinity Saint David, and University of Wales **Ben Arnold**, Policy Adviser, Higher Education Wales
19 June 2013	Office for National Statistics
(private session)	

P-04-489 A National affordable and priority housing Act of Wales

Petition wording:
We call on the National Assembly for Wales to urge the Welsh Government to create a National Housing Act of Wales to regulate the building of new houses in accordance with sustainable, affordable local and national needs and capabilities: to be regulated by an exclusive independent Welsh Inspectorate and Welsh housing projections panel. Around 80% of all new houses built in Wales, whether for renting or selling, should be local need, affordable housing (priced proportionally to average local authority wages) and priority given to local authority residents (people who have lived or worked continuously in the area for 10 years or more, or have work, business or other immediate spouse/family connections to the area). This will ensure that most of the local money flow circulates within local economies, keeping them healthy to develop within their means. This is a similar policy to the ones practised in National Parks in England such as the Peak District and North York Moors.

Supporting information:
A housing act would guarantee that new all house builds are built in strict proportion to the existing urban/rural balance and within the means of the economy, social cohesion and infrastructure capabilities of the local authorities, and of Wales as a whole. A basic minimal amount of new houses/flats could be built at the discretion of local authorities under agreed guidelines, with any other new houses/flats having to go through the scrutiny of an independent Welsh Housing Inspectorate and Welsh Government. Disproportionate high housing prices in many areas of Wales can often result in local families being driven out of the areas where they've grown up. The focus therefore needs to be on real local need including affordable housing and renovating existing buildings, rather than on unsustainable housing projections conjured up by far removed civil servants.

Petition raised by: Sovereign Wales

Date petition first considered by Committee: 4 June 2013

Number of signatures: 28

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref CS/02109/13

William Powell AM
Chair Petitions committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

21 January 2014

Dear William

Thank you for your letter dated 16 December 2013 regarding 'A National Affordable and Priority Housing Act of Wales' following my response to the Petitions Committee on the 12 November 2013.

I have noted the new correspondence from the petitioners in light of my letter and the various topics that have been raised. I will try to address these issues in turn.

Local Residency Test

The position in Wales around a Local Residency Test is set out in the 'Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness'. The Code of Guidance has been issued under section 169 of the Housing Act 1996 ("the 1996 Act") and sets out the framework to which local authorities are required to have regard to in respect of their functions under Parts 6 and 7 of the 1996 Act.

The Code was consulted upon in 2012 and a revised Code came into effect on 13 August 2012. The revisions that were implemented as a result of that exercise reinforced the flexibilities that local authorities have within the allocation system to meet local pressures by:

- adopting local priorities alongside the statutory reasonable preference guidance;
- taking into account other factors for prioritising applicants, including waiting time and local connection;
- operating local letting policies.

The revised Code provides clear guidance on the flexibility local authorities have in meeting local housing needs, and the importance of transparency and accountability to local

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communities in implementing the legislation. Local authorities therefore already have flexibility in how they interpret local connection depending upon housing pressures in their local areas across Wales.

I have been briefed on the UK Government's consultation document which sets out their proposals to issue new statutory guidance to help local authorities in England to tailor their allocation priorities to meet the needs of their local residents and their local communities. In Wales, I feel clarity and flexibility already exist in this area in the current 'Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness', and continues to reflect the divergence of housing policy between England and Wales. However, this area remains under review.

Local Development Plans

In relation to your comments regarding Local Development Plans (LDPs), as set out in Planning Policy Wales (section 9.2), the latest Welsh Government local authority level household projections should form the starting point for local authorities in assessing their housing requirements when preparing their LDPs. Local authorities should consider the appropriateness of the projections for their area, based on all sources of local evidence and in particular their Local Housing Market Assessment. In planning the provision of housing local authorities should also work in collaboration with registered social landlords, house builders, land owners and community groups. If an authority's local evidence indicates a different level of housing provision this can be a reason to deviate from the Welsh Government's projections, provided the evidence can be demonstrated to be robust.

To assist local authorities in their deliberations regarding housing provision in LDPs, the Welsh Government has provided access to the base data and the necessary software for the population and household projections to enable them to undertake further modelling to take account of more refined local circumstances.

Household Projections

We recognise the results of the 2008-based household projections quoted in the petition as those published by the Welsh Government via StatsWales.

Household projections provide estimates of the future number of households and give an indication of future housing demand. They are based on assumptions about changes in population size and in household composition. The assumptions are based on past trends. They are not forecasts and do not try to predict the effects of future government policies or other factors on the size and structure of the population.

It should be noted that the projected total figures for 2011 were only 2.5 per cent higher than those estimates of households from the 2011 census. To some extent this confirms the reliability of the model used, which itself is based on data from the previous two censuses (1991 and 2001).

Local authorities and others working on local plans are aware of the existence of the more recent 2011 census results and the possible implications for our previously-published household projections. Ahead of a new set of household projections some have gone further and commissioned research in order to inform the work on their Local Development Plan (LDP).

Since the first figures from the 2011 Census were published in July 2012 Welsh Government statisticians have worked to produce a new set of local authority population projections and household projections as quickly as possible. 2011-based household

projections are due to be published shortly. These projections will take into account the 2011 Census results and provide a new base for long-term planning for sustainable development in Wales.

The Welsh Government's Knowledge and Analytical Services Plan for 2013-14[1] indicated that local authority household projections were due to be updated by Welsh Government Statisticians during this financial year.

UK Statistics Authority

The UK Statistics Authority[2] is an independent body operating at arm's length from government and reports to the UK Parliament and devolved legislatures. The Authority is responsible for ensuring that official statistics are produced in compliance with the Code of Practice for Official Statistics. The wide range of official statistics produced by Welsh Government statisticians[3] are produced in compliance with that Code and this includes the local authority household projections.

Planning Inspectorate

Finally, the Planning Inspectorate is an independent executive agency of the Welsh Government and Department for Communities and Local Government and is empowered by the Welsh Ministers to take a range of decisions on their behalf. It promotes fairness, openness and impartiality as its core values and decisions by the Planning Inspectorate and the Welsh Ministers which fail to adhere to those values may be liable to challenge in the Courts.

I trust this now sets out our clear position in Wales which is very much based on local planning to meet local housing needs.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

[1] Available at http://wales.gov.uk/statistics-and-research/about/user-engagement/plans-practices/knowledge-analytical-services-evidence-plan/?lang=en
[2] http://www.statisticsauthority.gov.uk/about-the-authority/index.html
[3] http://wales.gov.uk/statistics-and-research/?lang=en

P-04-489 A national affordable and priority housing act of wales – Correspondence from the petitioner to the Committee, 09.02.14.

"We are very disappointed with Carl Sargeant's answers; we find his analysis to be supercilious, his explanations disappointing -and full of sophistry, distortions, red herrings and dissembling.

Under the title 'Household Projections' Mr Sargeant writes 'It should be noted that the projected total figures for 2011 were only 2.5 per cent higher than those estimates of households from the 2011census. To some extent this confirms the reliability of the model used ,which itself is based on data from the previous two censuses (1991 and 2001)'

Regardless of trends in household growth between 1991 and 2008, the reality is that the number of households in Wales grew from an estimated 1,297,295 in 2008 to 1,302,700 in 2011. This was an increase of only 0.4%in this three year period which is one sixth of his department's over projected increase of 2.5% and is the difference between the actual 5,405 household increase figure and the flawed 33,211 projected household figure for 2011. This over estimated 2.5 % figure over three years is no trivial matter if considered over a 25 year projected period - in fact it would mean an over projection of over 276,000 new households in this 25 year period. Most AM's and public sector workers now know that the household projections figures provided by the Welsh Government do not in any way correspond with the projected population figures. In other words household projected figures are massively over estimated. It seems that it's only Mr Sargeant who is unable to recognise or accept that these projected household figures have no bearing in reality.

The 2007-8 financial crisis also clearly had a huge effect on new household formation. Mr Sargeant has also failed to recognise these economic and demographic trends which, given the economic reality in Wales, are likely to persist for many years. He is willingly defending incorrect figures and projections. We would like to know why he is doing this. Mr Sargeant's reply is also misleading in many other ways. For a start, in the Local Residency Test section he talks of local authorities without mentioning housing associations. Yet he - and whoever wrote this letter - must know that most social housing in Wales is now controlled by housing associations.

In view of all this it is plain that the LDP plans for local authorities and the current Housing Bill are not fit for purpose and can not be allowed to continue. There can be no justification for them as the flawed Welsh Government figures completely undermine their validity. A National Priority Housing Act is a rational and sustainable way to ensure housing planning in Wales caters for the citizens of Wales in accordance with the remit of the Welsh Government under the devolution settlement.

Mr Sargeant informs us that 'Welsh Ministers [who] fail to adhere to [fairness, openness and impartiality] may be liable to challenge in the Courts' We sincerely hope it doesn't have to come to that and that common sense can prevail,

Sincerely,

Gruffydd Meredith"

P-04-510 Public inquiry into the Breckman case in Carmarthenshire

Petition wording:
We call upon the National Assembly for Wales to urge the Welsh Government to establish a public inquiry into the maladministration of Carmarthenshire County Council's planning department regarding the case of Mr. and Mrs Breckman of Maes Y Bont, Carmarthenshire.

Petition raised by: Alan Evans

Date petition first considered by Committee: 11 November 2013

Number of signatures: 63

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-510
Ein cyf/Our ref CS/02069/13

William Powell AM
Chair, Petitions Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

17 December 2013

Dear William

I refer to your letter of 6 December to my colleague Lesley Griffiths AM, Minister for Local Government and Government Business, concerning a petition to the National Assembly for Wales urging the Welsh Government to "establish a public inquiry into the maladministration of Carmarthenshire County Council's Planning Department, regarding the case of Mrs and Mrs Breckman" of Maes Y Bont, Carmarthenshire".

Local government legislation sets out the process through which complaints of Maladministration should be considered. This culminates in an investigation by the Public Services Ombudsman for Wales, where he considers that someone may have suffered a personal injustice through maladministration.

I understand that Mrs Breckman and Mr Roberts have pursued their complaint to the Ombudsman, who investigated the matter, and published a report into his investigation in July 2012, which found that the complainants had indeed been the victim of maladministration, in particular by failing to develop, or adhere to, a consistent complaints policy, and in developing a policy had denied the complainants access to services; these are general governance and service delivery, not planning, issues. The Ombudsman's report also recommended that the Council undertake a review of delegation procedures for the handling of planning enforcement cases in general.

From a planning perspective, enforcement powers are discretionary and should only be used where the authority considers that it is expedient to do so in the wider public interest. The decision whether or not to enforce against any alleged breaches of planning control at Blaenpant Farm is entirely a matter for the Council.

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Even if the Welsh Ministers were, exceptionally, to consider a public inquiry of this nature, such an inquiry cannot investigate or comment on the planning decision of a local planning authority – particularly as the developer has a statutory right of appeal against subsequent enforcement action, and any appeal would come before the Welsh Ministers for consideration. Any comment on a planning matter made by the Welsh Ministers or their officials before it is to be determined by the Welsh Ministers would be interpreted as prejudicial to the outcome and would leave any decision open to legal challenge.

Given that the Ombudsman has investigated the Council's failure to deliver services to Mrs Breckman and Mr Roberts, and has made a series of recommendations, and the Welsh Ministers cannot comment on the individual planning issues raised, I do not believe that there is a need to conduct a public inquiry. This would unnecessarily duplicate the Ombudsman's investigation of the matter. It is for the Council to respond to and implement the Ombudsman's recommendations as appropriate, and particularly to provide an apology to Mrs Breckman and Mr Roberts, for its failure to deliver an appropriate level of service in their particular case.

Issues of planning enforcement remain a matter for Carmarthenshire County Council.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Ombudsman
Ombwdsmon
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Our ref: MG/mm

Your ref: P-04-510

Date: 19 December 2013

Ask for: Marilyn Morgan

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Marilyn.morgan@ombudsman-wales.org.uk

Mr William Powell AM
Chair
Petitions Committee
National Assembly for Wales
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Dear Mr Powell

Thank you for your letter of 6 December 2013.

As you may be aware my office thoroughly investigated Mr and Mrs Breckman's complaint against Carmarthenshire County Council and I attach a full copy of the report issued on 5 July 2012 by my predecessor, Mr Peter Tyndall for the information of the Committee.

Mr Tyndall wrote to the Council on 10 December 2012 confirming that he was satisfied that the Council had provided satisfactory action to implement the recommendations in paragraphs 441, 443, 444 and 446. He was satisfied too that the recommendation set out in paragraph 442 had also been complied with.

Having received confirmation that the Council's Planning Committee considered a report on the enforcement issues arising from the haulage related uses on the site on 31 January 2013, Mr Tyndall also confirmed on 30 April 2013 that he was satisfied with the action the Council had taken in relation to recommendation 440.

In relation to the recommendation at paragraph 445, that the Council should make a fulsome apology to Mr and Mrs Breckman; Mr Tyndall was disappointed with the scope of the apology given. However, given that he had previously exchanged correspondence on this issue and had referred the Council to guidance issued by the Scottish Ombudsman on giving a meaningful apology, he told the Council on 30 April 2013 that although he remained dissatisfied on this issue he did not propose to expend further resources in pursuing the matter further.

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Mr Tyndall also informed Mrs Breckman that whilst he was disappointed with the scope of the apology actually tendered, it was nevertheless an apology and he did not consider that it would be appropriate to pursue the matter further, particularly given that the Council had, by that time in April, taken action to implement the other recommendations.

I hope this is helpful but please let me know if you need anything else.

Yours sincerely

Prof Margaret Griffiths
Acting Ombudsman

The investigation of a complaint by Mrs B against Carmarthenshire County Council

A report by the Public Services Ombudsman for Wales

Case: 201002343

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Introduction

This report is issued under section 21 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mrs B, her partner as Mr R, and their neighbours as Mr and Mrs T.

Summary
Mrs B complained that the Council failed to take enforcement action in respect of the use of the neighbouring farm for haulage and equine related activities and the erection of a large board and the placing of a removal lorry adjacent to their boundary. She also claimed that its decision to allow the development of an agricultural shed was perverse. She complained further that the Council was unreasonable when it applied its Persistent Complainants Policy to her and her partner and was aggrieved about the way in which her partner was referred to in an internal email.

Her complaint was partially upheld. The Ombudsman concluded that there had been a failure to take account of photographic and video evidence provided by Mrs B, information provided by their surveyor, and information available from the Traffic Commissioners about the licensing of the neighbouring farm as a heavy goods vehicle operating centre. He also concluded that the Council's decision in respect of the large board was inappropriately influenced more by the conduct of Mrs B and the neighbouring occupiers (with whom she was in dispute) than material planning considerations, and that the Council had shown a lack of objectivity in relation to her concerns. However, the Council's decision in respect of the removal lorry was one it was entitled to take. But the process by which it allowed the agricultural storage shed was flawed in that the Council had held reservations about the agricultural need for large sheds on the holding and had relied on advice which related to an earlier cattle shed proposal and which was stated to be opposed to a general storage type of shed. The Ombudsman also concluded that the Council failed to comply with its own procedures when it applied its Persistent Complainants Policy to Mrs B and her partner, and failed to respond adequately to her further complaints in which she raised new issues. However, the Ombudsman did not conclude that the reference to Mr R in the internal email pointed to maladministration.

The Ombudsman recommended that the Council should address the enforcement issues arising from the haulage related uses at the neighbouring farm, ensure that the concerns identified in the report are brought to the attention of its Members, and give consideration to

adopting a mechanism whereby enforcement matters could be considered or called in by its Planning Committee in appropriate cases. He further recommended the Council to use its best endeavours to persuade the neighbouring occupier to remove the large board which is now immune from enforcement action, and pay £2,500 to Mrs B, and a further £1000 if the Council is unable to secure the removal of the board within 6 months. Finally, he recommended the Council to review its planning and enforcement procedures, including its procedures for liaising with the Traffic Commissioners in appropriate cases, and to ensure by means of appropriate awareness training that its revised Persistent Complainants Policy was actually complied with.

The complaint

1. Mrs B complained on behalf of herself and her partner Mr R about the use of the neighbouring property (referred to in this report as "White Farm") as a haulage yard for the parking of heavy goods vehicles ("HGVs") and associated activities, and for a commercial equine business without planning permission. She complained that Carmarthenshire County Council ("the Council"):

- having determined in 2004 and 2006 that the main use of White Farm was for equine and haulage related purposes, was perverse when it subsequently allowed the development of 2 sheds (in January and November 2008) on the grounds that they were needed for agriculture;
- failed to take enforcement action in respect of the haulage and equine related activities, and the placing of a blue removal lorry and the erection of a large board adjacent to their boundary;
- failed to take her complaints seriously, and that its officers wrongly accused her of making unfounded and malicious complaints, of conducting a vendetta against the neighbouring occupiers ("Mr and Mrs T"), and of falsifying evidence; and
- was unreasonable when it applied its Persistent Complainants Policy to her and Mr R.

2. Mrs B is also aggrieved that Mr R was described as being "threatening to neighbours" in an internal email dated 16th January 2008.

3. Mrs B said that as a consequence, their residential amenities have been adversely affected since 2004, they have been unable to establish a cattery business as they had planned, they were prevented from pursuing their concerns with the Council effectively, they incurred legal and other expenses and suffered financial losses, including a reduction in the value of their property as a result of the unauthorised development on White Farm. They also suffered stress related health problems.

Investigation

4. Mrs B had earlier complained to my predecessor (in 2005) and then to me (in 2009) about what she saw as the Council's failure to take action in respect of alleged unauthorised development on White Farm. These complaints were not investigated, as it appeared on the basis of the information then available that the Council had not acted improperly from an administrative or procedural point of view. However, Mrs B's current complaint was accompanied by new evidence which appeared to indicate that haulage related uses were taking place at White Farm. This included the decision on a planning enforcement appeal relating to other land at White Farm issued in November 2010 in which the Planning Inspector commented that the licensed operation and use of the yard and buildings at White Farm as a haulage depot, storage of related items and HGV maintenance area, combined with the keeping of horses was not an agricultural use of the existing buildings and open yard. The Council was, therefore, notified that the investigation would include a review of the actions taken by the Council in response to Mrs B's concerns since 2004.

5. I obtained comments and copies of relevant documents from the Council, the Vehicle Operator Services Agency ("VOSA"), the Planning Inspectorate, and the British Cattle Movement Service. One of my investigating officers inspected the Council's relevant planning, public protection and complaints files. However, these did not include any file kept by the relevant Complaints Officer (as he had passed away prior to Mrs B's complaint being submitted, and the Council said any file he may have kept could not be located). Interviews were conducted with relevant Council officers and Councillors, and the Planning Inspector (now retired) who determined the appeal referred to in paragraph 4 above. Another Councillor provided written responses to questions. A former Council officer ("Officer F") declined to cooperate with the investigation, but attended for interview after being served with a witness summons. The investigating officer also visited Mrs B and Mr R at their home to discuss their complaint, and took photographs which I have seen. Finally, a telephone interview was conducted with Mrs B's surveyor. Whilst I do not refer in the report to every detail or document considered, I am satisfied that nothing of significance has been omitted.

6. I have also obtained specialist planning advice, a copy of which is attached to this report as Appendix 2.

7. Mrs B and Mr R, the Council, VOSA, and other persons interviewed were given the opportunity to see and comment on a draft of this report. VOSA, the former Planning Inspector and Mrs B's surveyor had no comments to make, and the report has been amended as appropriate to reflect comments received from Mrs B and Mr R, the Council and Officer F.

Relevant legislation

8. Information about the need for planning permission, including permission where a material change in the use of land has occurred, "permitted development rights" granted under the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO"), unauthorised development and the enforcement of planning control together with information about the licensing of heavy goods vehicles is included in Appendix 1 attached to this report. Appendix 1 also includes information about the Council's relevant policies and procedures, including its procedures for dealing with persistent complainants.

Background and main events leading to the Complaint

<u>Background</u>

9. White Farm is shown edged red on the attached plan and includes a quarry. White Farm also includes other land not shown on the plan. The property occupied by Mrs B and Mr R (which they purchased in December 2003) is shown edged blue. The access to their property is by means of a lane or drive over land (shown hatched black) which is part of White Farm.

10. Information on the Council's files indicated that Mr and Mrs T purchased White Farm in 2001. They bred horses on a commercial basis. Mr and Mrs T also undertook certain works to their property. This included improving the drive and forming a turning area (so that Mrs T could turn her four wheel drive vehicle whilst towing a horse box).

11. Mr and Mrs T also operated a haulage business which was not related to agriculture. The business included a number of tipper lorries marked with the name of their haulage business. Mr T also operated a recycling company. Until December 2005, White Farm was a licensed operating centre for 1 HGV operated by the recycling company.

12. In May 2004 the Council wrote to the local Community Council who had expressed concern that a lorry business was being operated at White Farm. The Council said that it had received complaints about the alleged use of White Farm as a haulage yard since July 2001, and that it had explained to the complainants (who included the former occupiers of Mrs B's property) that the use of one HGV vehicle operating from the farm did not constitute a change of use, but that as the allegation was that four HGV lorries were parked at White Farm, "that would be a different matter" and would be investigated further. The letter stated that photographic and documented evidence collected by one complainant appeared to suggest that there was a change of use as a number of lorry movements were observed. (According to the Council's files, the evidence included a schedule of lorry activity at White Farm over 3 months to the end of 2001. The schedule also identified several weekends when between 1 and 5 lorries were washed down and serviced at White Farm. Photographs taken in January 2002 showed a number of commercial HGVs on the site. A planning contravention notice[1] was served on Mr and Mrs T in April 2002.) In its letter to the Community Council, the Council explained that its enquiries established that Mr T owned and operated an HGV vehicle which was parked at the farm when not in use, that he also owned a HGV livestock/horse lorry, and a lorry with a manufacturer's branded lifting gear which he used for transporting bales of hay around, and that the parking of additional HGVs at White Farm over the Christmas period of 2001/02 was an isolated case and would not happen again. The letter indicated that White Farm was the licensed operating centre for one HGV, and that although White Farm was the contact address for the haulage business, the licensed operating centre for up to 5 HGVs was at another location. The letter contained the Council's explanation that no breach of planning

[1] See paragraph 11, Appendix 1

control had been identified which warranted enforcement action, and that it was not minded to take the matter further. Other correspondence indicated the Council's view that the volume of traffic and type of vehicles entering and exiting White Farm was reasonable for a medium to large sized farm in rural Carmarthenshire.

13. The Council's files indicated that the former occupier of Mrs B's property had informed the Council that he had been approached in an aggressive manner by Mr T. The Council's files also contained a page from a business directory website indicating that the haulage business at White Farm was open "Mon – Sun: 7am-7pm".

14. Mrs B and Mr R purchased their property in December 2003.

<u>The development of agricultural sheds at White Farm</u>

15. On 8th April 2004, Mrs T submitted a prior notification under the GPDO in respect of an agricultural implement store/hay shed. Following notification by the Council that a planning application was required, Mrs T submitted a planning application for the proposed shed, but this was refused by the Council on 18th August 2004. It was refused on grounds that there was insufficient justification for the proposed development due to the lack of agricultural activity at the farm unit, and that it was excessive in terms of mass and scale in proportion to the size of the unit (26.7 hectares) and the scale of agricultural activity then taking place on the unit. The Planning Officer's report stated that the unit was being used for the stabling/keeping of horses, that there appeared to be very little evidence of the prolonged keeping of livestock, and that the farming activity comprised hay making and a land reclamation scheme. It also said that the unit was a base for 2 lorries, that the existing sheds/outbuildings on the unit were not being used for agriculture, and that the existing dutch barn was being used for "fixing/repairing associated with the lorry business". The report referred to the applicant's intention to stock 20 beef cows on the unit and stated that the existing buildings were sufficient for the storage of hay bales and agricultural implements on the unit. It said:

"The Authority considers that as the unit at present is only being used for stabling/keeping of horses together as a base for a lorry business, there is insufficient justification for the shed due to the lack of agricultural activity on the holding".

16. On 22nd February 2005 and following an appeal against the Council's decision, planning permission was granted for the shed by the Planning Inspectorate subject to a condition that its use be restricted to agricultural purposes. The Planning Inspector's report referred to the presence of 2 commercial tipper wagons on the holding unconnected with agriculture, and noted that these and 2 earth moving machines were not included in the items to be stored in the proposed building. The report contained the Inspector's view that the unit was used primarily for the keeping of horses, that the main agricultural activity was haymaking, and that the existing buildings were not suitable to store large farm implements or a significant amount of hay. This shed is referred to as the "First Shed" in this report and shown on the attached plan. (At interview, Mrs B said it has been used for the stabling of horses since it was erected).

17. On 29th April 2005, the Council received a complaint from Mrs B to the effect that the First Shed had not been sited in the correct position. In an email sent to the Enforcement Officer (Officer D) on the same day, the Planning Enforcement Manager (Officer F) said "The silliness continues. [Mrs B and Mr R] are adamant the building is in the wrong place. If you can check it as discreetly as possible and let me know, I would be obliged". The Council's files do not indicate what other action was taken, but a handwritten note stated that it was "not expedient – 30/06/05" to take action. There is no indication that Mrs B was notified of the outcome until 21st November 2007 when she was advised that there was no breach of planning control in relation to the use of the shed or its dimensions and construction. (Further information about the Council's letter dated 21st November 2007 appears in paragraph 107 below).

18. On 15th August 2006 Mr and Mrs T's planning agent submitted a planning application which proposed a further agricultural building to be

erected adjacent to the existing First Shed. The covering letter indicated that it would be used to provide shelter for their existing stock of cattle. Mrs B objected to the application on a number of grounds, including the lack of agricultural activity on the holding. (Her letter also referred to haulage related activity at White Farm, referred to in paragraph 95 below).

19. Photographs taken during a site visit on 14th September by planning officers showed the First Shed being used for the storage of the horse lorry, a quad bike, a tractor, agricultural implements, bales of hay and animal bedding, and horse drawn carriages. The photographs also depicted other agricultural equipment stored outside the shed. (Other photographs taken on this occasion are referred to in paragraph 96 below).

20. The planning application was refused by the Council's Planning Committee on 28th September 2006 on the grounds that there was insufficient justification for the proposed shed due to the lack of agricultural activity. The size of the holding was stated to be 42.5 hectares. Officer B's report on the application stated that although 4 head of beef cattle had been brought onto the holding and that a total herd of 30 was proposed, there was not any justifiable need for a further agricultural shed of the size proposed, and that a number of the existing buildings were not being used for agriculture. It said that the main use of the First Shed was for the storage of implements and the parking of a tractor and horse transport lorry. The report also contained references to the uses taking place on the holding. In the first reference, the primary use of the site was described as equine and the secondary use as a lorry base/agricultural business. The second reference described the primary uses of the site as equine use and use as a lorry base, and that the scale of farming enterprises on the holding was clearly secondary to the main uses. The report also referred to the size of the proposed shed and continued:

> "The Authority considers that the siting of an additional large shed at this location in relation to the lack of agricultural activity taking place at the farm unit represents an undesirable development in

the open countryside and would be considered detrimental to the locality's visual amenity and rural setting".

21. Meanwhile, on 19th September 2006, the Senior Development Control Officer had sought advice from the Council's Property Services on the agricultural justification put forward in support of the application. He stated his view that at the time of the recent site visit, there was little evidence of any agricultural activity and that the primary use of the site was equine. An Estate Surveyor (Officer C) replied stating his initial view, based on the information which accompanied the application, that there was insufficient agricultural activity to justify a further building. However, on 28th September, following a meeting on site with the applicant's agent, he advised that he would support the proposal provided that the building was specifically designed to accommodate cattle, and was "not of a general storage design such as the [First Shed]". In his email, he referred to the Applicant's intention to build up the herd of cows to a breeding herd of some 20-30 cows.

22. At interview, Planning Officer B explained that by the time this email was received, it was too late to remove the application from the agenda of the Planning Committee and/or change the recommendation to one of approval. He said he advised the Applicant's agent informally that a new application for a similar proposal was more likely to be recommended for approval. However, no further planning application was received. Officer C said at interview that he was unaware that the application was refused.

23. On 13th December 2007, the Council registered a prior notification under the GPDO for a hay and implement shed of similar size and on the same site as the shed which had been refused planning permission in September 2006. Mr and Mrs T's agent's covering letter said that it was to be used to store farm implements "which are currently being stored in the open" and hay and other food stuffs, and that the "existing outbuilding" would provide shelter and accommodation for his client's expanding herd of cattle. The Estate Surveyor was not consulted on the proposal. Mrs B objected to the proposal on 2nd January 2008 saying that the primary business being operated from White Farm was the

haulage business “where a vast number of lorries are kept and operated from”, and that it had never been used for agriculture. She referred to the 4 bullocks on the farm and said that decision to allow the First Shed on appeal was not reasonable. She asked that the application be refused or placed before the Planning Committee.

24. On 7th January 2008, the Council determined that planning permission was not required and that the proposed development could proceed under the GPDO. This shed is referred to as the “Second Shed”. Planning Officer B’s report (under delegated powers) stated that the siting of the proposed shed was acceptable and related well to the existing complex of buildings associate with White Farm, and that the Authority did not agree with the objections and concerns expressed by Mrs B. The report contained no other reference to any assessment of the impact of the proposed shed on neighbouring property, or of any agricultural justification for the proposed shed. (At interview, the Head of Planning Services, Officer L, said that there would have been an assessment of the impact of the proposed shed. Planning Officer B said that the advice of Officer C given in respect of the earlier planning application was a material consideration, and that he was satisfied that agricultural justification for the additional shed had been proven. Officer L said that Mr and Mrs T had provided convincing evidence of their intention to build up a herd of cattle at the time of their appeal in respect of the First Shed, and, in September 2006 (when their planning application was being considered), had convinced Officer C of their intention in this regard. Officer C said that he was not aware of the GPDO notification in respect of the Second Shed, and would not have supported the development of a general purpose agricultural shed as there were sufficient such buildings serving the needs of the holding. He also said that if the cattle numbers had remained at 4, the applicants had not demonstrated an intention to develop the herd, and that would have constituted a lack of functional need for an additional shed.)

25. Mrs B wrote to the Council on 14th and 18th January 2008. She referred to quarrying operations taking place on White Farm, and claimed that incorrect procedures had been followed in that the Council should have sought a planning application for the proposed use of the

First Shed for cattle as it was located within 400 metres of her cottage. She asked what the First Shed had been used for, and said that after 3 years, the herd of cattle still numbered only 4 animals and that this should have been a material consideration when the GPDO determination in respect of the Second Shed was made.

26. According to an email dated 17th January 2008 to an Environmental Health Officer, Planning Officer B visited White Farm to establish what works were taking place. His email indicated that Mr T was excavating part of the site, and quarrying part of the rock face to level an area of land adjacent to the area where the Second Shed was to be sited, in order to provide access to the sheds. The email indicated that Mr T gave assurances that the excavated material would be used in the formation of foundations for the new shed. The email contained the Officer's view that the quarrying works were permitted by the GPDO as being required for agricultural purposes. In the email, the Officer stated that the excavation/quarrying works were probably causing a disturbance to Mrs B, but the works were temporary and likely "to cease in the coming days". (Further information about action taken by the Public Protection Department in respect of quarrying noise appears in paragraph 115 below).

27. The Council's Director of Regeneration & Leisure replied to Mrs B's correspondence on 28th February 2008. (By this time, the Council had implemented its Persistent Complainants Policy in respect of Mrs B and Mr R – paragraph 120 below refers, and the Director was the nominated point of contact with them). In his reply, the Director explained that the First Shed was subject to an agricultural condition which did not prevent its use for livestock, and that no change of use was involved. His letter also stated that previous site inspections by planning and enforcement officers "have proven claims that the said building is not being used for agricultural purposes". (The Head of Planning at interview, when asked whether this statement was correct, said it reflected statements in earlier planning reports about the use of the shed). The Director's letter continued:

> "Regardless of the size of the herd, on closer inspection of the farm holding at the time of the notification application, it was evident that there was a need for additional storage at the farm holding owing to the amount of hay and agricultural implements/machinery being stored out in the open".

28. The Director also explained that the recent quarrying works were deemed to be permitted development and that it was not expedient to request a planning application. His letter contained no reference to the earlier advice obtained from the Estate Surveyor.

29. According to information obtained from the British Cattle Movement Service, 4 male cattle were brought onto the holding in March 2006. One was removed in December 2007, 2 in April 2008, and the last on 5th September 2008.

30. On 19th September 2008, the Council received a planning application in respect of a replacement agricultural building. The supporting documents indicated that the proposed building was to replace the existing dutch barn. Mrs B and Mr R objected. Their concerns included the agricultural justification for the proposed building, and its scale and siting. Planning Officer B's report on the application said that the existing barn was used as a workshop for the repair and maintenance of agricultural machinery and vehicles, which was accepted as common practice on working farm holdings. The report referred to the justification for the proposed shed, and stated that "on closer site inspection it was noted that the land is being used for the grazing of livestock and horses ... [and] that the two existing sheds are being used for the storage of agricultural machinery/implements and also hay and animal feed". The report stated further that the proposed shed related well to the existing farm complex and would not adversely affect the amenities of Mrs B's property. Following further representations by Mrs B, an addendum report was prepared which stated that only horses had been seen in the fields adjacent to the farm complex. The application was approved on 18th November 2008, following a site visit by Members of the Planning Committee, subject to

conditions, including a condition which restricted its use to agricultural purposes. ("Third Shed").

31. Meanwhile, on 9th October 2008, the Planning Officer B wrote to Mr and Mrs T's agent to say that the Second Shed as built was 6 metres longer than had been approved under the agricultural notification procedure. The Officer advised that a planning application would be required to regularise the situation. No planning application was submitted and the files do not indicate that any other action was taken. (At interview, Officer B said there was a discrepancy in the way the shed had been built, but even if it was too big, his recollection was that it did not materially alter the impact on neighbouring properties or the principal justification for it.)

32. Mrs T died suddenly in December 2008.

33. On 15th January 2009, the Council's Director responded to correspondence from a consultant engaged by Mrs B. In his letter the Director referred to the development of the 3 sheds at White Farm. In relation to the First Shed he said:

> "Continuous site inspections undertaken by the Authority's Planning Officers and Enforcement officers have proven previous claims that the said building is not being used for agricultural purposes to be unfounded".

34. In relation to the Second Shed he said:

> "Again it is acknowledged that whilst the Authority did express concern for the need for a second shed to be built at this location … that application was ultimately refused. However regardless of the size of the herd and the levels of agricultural activity taking place at the farm unit, that same shed was permitted to be built under the farm holding's permitted developments rights as stipulated in the [GPDO]".

35. In relation to the Third Shed, he said:

> " …. It is considered the nature of this application is materially different to that of previous applications in that consent was sought for a 'replacement building' rather than a new agricultural building. Hence the need to demonstrate agricultural justification was not a material consideration in the determination of the application …Regardless of the above, it was noted that agricultural machinery/vehicles and fodder/hay bales were being stored outside. As such, the Authority is satisfied that there was a proven need for this shed at this location. It was also accepted that the dutch barn was falling into a state of disrepair and the need for a replacement building was warranted. On closer inspection of the inside of the said building it was noted that the shed was being used as a workshop for the repair and maintenance of agricultural machinery and vehicles, which it is accepted is common practice on working farm holdings".

36. He concluded by saying that the grant of planning permission for the replacement shed did not "represent a turnaround" by the Council.

37. The Council's files indicated that Mrs B sent emails to the Director in which she sought information about the type of agriculture the Council had "claimed" to be taking place at White Farm. On 12th March 2009 the Director wrote to Mr R and said that most farms were a mix of arable and livestock, and that in the absence of any planning expediency to investigate, there were no grounds to do so. On 17th March 2009, Mrs B wrote to the Director, and said there was no agriculture at White Farm. She said that haulage, scrap and equine, industrial and commercial businesses amounted to a change of use and that planning permission was required for any buildings, roads and alternations on farmland. Her letter continued:

> "A few items used for maintaining land for an equine business, dotted around a haulage/scrap yard, could never qualify as agricultural, as you should be aware. Its (sic) preposterous. Agriculture means farming and farming is arable or livestock. Agriculture is nonexistent at [White Farm]. There has never been

> agriculture at this unit. [The Head of Planning Services] and indeed yourself have always known this to be so".

38. Mrs B said that the 4 bullocks which had been brought on to the holding had been "despatched long ago", and that for "these monstrous sheds to be even considered, agriculture should have been proven, with agriculture being the main source of income". She asked for an explanation as to why "these enormous sheds" were ever allowed to be erected within 50 metres of her home.

39. In a further letter dated 13th March 2009, Mrs B said that the Council had refused to provide any evidence of agriculture at White Farm since 2001, yet had persisted in attempting to justify the grant of planning permission for the sheds under the guise of agriculture. She said:

> "One of your own planning officers wrote two damning appraisals regarding the absence of agriculture, with recommendations that these sheds be refused".

40. On 5th May 2009, the Director wrote to Mrs B regarding alleged breaches of planning control at White Farm. He said that he had already explained the Council's position with regard to the use of the agricultural sheds at White Farm, and saw no need to expand further. Mrs B replied on 14th May 2009. She said that the Council's claims of "agricultural and [White Farm] being a 'working farm' have never been substantiated…" whereas "Haulage, equine on a large scale, scrap metal, all visibly evident, are on record, with strong unequivocal evidence supporting claims … not that filmed evidence has ever been of interest to this department. …" She said that the Council should take enforcement action to secure the demolition of the sheds. A manuscript note attached to the letter on the Council's files indicated that a response would not be sent as "issues contained have been covered previously".

Mrs B's complaints about haulage and equine related activities at White Farm, the blue removal lorry and the erection of a large board on the boundary adjacent to her cottage

41. Mrs B said the initial contact she and Mr R had with the Council during 2004 was by telephone, and that she discovered there had been earlier complaints about haulage related activities at White Farm when they inspected the Council's planning files. On 24th November 2004, following a meeting with the local Member of Parliament and their ward member (Councillor 3), they sent a list of "illegal activities" taking place at White Farm to Councillor 3. These included:

> "At least 7 lorries at any one time parked on site as well as plant machinery, dumpers, JCBs, rusting metal containers, piles of aggregate as well as other [company's] lorries … plant machinery used on site … quarrying at various times … roadway created in field for lorries to travel back-forth … lorries & plant machinery parked on field for weeks during summer months … barn now operates as garage/workshop over weekends & evenings … All kinds of other lorries visit site … a working industrial site has now been created …"

42. Correspondence on the Council's files indicated that Mrs B's concerns were discussed at a further meeting between their MP's caseworker, Councillor AAA and the Planning Enforcement Officer (Officer D) on 23rd December 2004. On 6th January the MP's caseworker wrote to Officer D and asked for information about activities taking place at White Farm. These included activity in one of the buildings in the yard "… possible lorry repairs – can be ongoing 7 days a week", and whether planning was required for the horse ménage[2] and "horse walker" in the yard.

43. On 14th January 2005, Mrs B submitted a "diary of disturbance/noisy events" to the Council. This referred to "industrial and lorry operations site (sic), operating without planning consents at [White Farm]" and listed occurrences between 14th December 2004 and 1st

[2] An arena for schooling horses

January 2005. The diary referred to loud workshop noise, noise from lorries being driven around the site and on and off the site; noise from the use of a jackhammer to quarry stone for prolonged periods, noise from lorry engines being revved and noise from a "dumper rumbling back & forth, JCB loading lorry and further clearing of quarry". In the diary Mrs B said that the effect on them was "exceedingly stressful and debilitating … Can't bear to be outside … Our quality of life is zero at the moment". A note at the foot of the diary said "We have photographic and sound evidence. Our neighbour is unapproachable and is prone to violence".

44. There is no record of any visit by Officer D to Mrs B and Mr R in January, but the Officer said he made an unannounced visit to White Farm on 18th January 2005, and that his letter dated 24th January to the office of the local MP contained the details. In his letter, he said that he saw 2 commercial HGVs parked in the vicinity of the quarry, as well as a horse transporter and a lorry fitted with "hi-ab" lifting gear used for moving big bales from one location to another. His letter also stated that "no evidence existed to suggest that lorry repairs were taking place in any of the farm yard buildings", and that his inspection of the "only building capable of being used for the servicing of HGV vehicles" indicated that "although it was equipped with a substantial pit, no specialist equipment/tools/machinery required to service such vehicles were to be found", and that the building was in a clean and tidy condition. In his letter, the Officer also said he had seen evidence to indicate that Mr and Mrs T's commercial haulage vehicles were serviced and maintained at an offsite location. His letter contained the address of the licensed operating centre for the lorries (which was elsewhere), and continued:

> "a. It would be acceptable to park up to two [commercial] lorries at the farm at any one time.
> b. It would be acceptable for a lorry to receive minor mechanical/electrical attention at the farm provided that it is on an occasional basis and was undertaken by [Mr T] himself".

45. His letter also referred to a portacabin at White Farm which was allegedly being used for commercial purposes linked to the haulage business. He said that although it was being used for some operations linked to the haulage business, it was primarily used as a "base for [Mrs T] to carry out her various hobbies" and that "consequently, no planning permission [was] required". His letter also contained details of recent planning applications and GPDO determinations. These included determinations in respect of levelling off land at the top of the quarry and the importation of topsoil and subsoil. In relation to equine related developments, he said that planning permission was not required for the "horse walker" and that although planning permission should have been obtained in respect of the ménage, its impact on the amenity was not significant and no further action was considered necessary.

46. Meanwhile, on 6th January 2005, a surveyor wrote to the Council's former Planning Enforcement Manager (Officer F) on Mrs B and Mr R's behalf. In her letter she referred to an earlier telephone conversation and said:

> "From the information I have been provided with it would appear that there is in fact very little agricultural activity on this farm other than the making of hay or haylage[3] and grassland management to support the horses kept on the site. Furthermore the use of the buildings and yard areas have changed from agricultural to commercial haulage, plant hire, waste management, aggregate and quarry products, lorry workshops etc. and we question whether or not consent for Change of Use had been sought or granted for these activities".

47. In her letter, she directed the Officer to Mr and Mrs T's website in respect of the haulage business which in her view "clearly demonstrate[s] the type and scale of operations at [White Farm]". She asked the Council to confirm the planning position at the property. There was no reply to the letter, but Officer F subsequently attended a

[3] Fodder for horses made from grass

meeting with Mr R and their surveyor on 3rd May 2005. (More information about this meeting is contained in paragraph 62 below).

48. In January 2005, the Traffic Commissioner's inspectors commenced an investigation into a complaint that White Farm was being illegally operated as an HGV operating centre. (More information about this investigation is contained in paragraph 184 below).

49. On 21st January 2005, Mrs T wrote to Mrs B and Mr R and informed them of her intention to install 2 gates on the lane providing access to their property to ensure the safety and well being of her animals when being moved between the fields on either side of the lane. Mrs T said that gates would be padlocked and that keys would be provided. Works to install the gates and a "heavy duty enclosure along the access road" were undertaken shortly afterwards. Mrs B complained to the Council about the gate in March 2005, and Planning Officer D confirmed (in his letter dated 13th April 2005) following an inspection that the gates were permitted development, and advised her to seek legal advice if she considered that her private legal rights had been affected.

50. Meanwhile, on 30th January 2005 Mrs B wrote to the Council and complained of its "refusal to stop the illegal commercial and industrial activities that have been allowed to flourish at [White Farm]." She referred to intimidatory action by Mr and Mrs T in erecting gates with padlocks and narrowing the driveway making it difficult for emergency services and other visitors to access their property.

51. On 13th February 2005, Mrs B wrote again to the Council about its response to the MP's caseworker. She said there should have been a more in depth investigation which should have included a meeting with her and Mr R. She said that since the date of the Planning Officer's site visit, they had been threatened and intimidated by Mr and Mrs T. She said that part of the farm had developed into an "oversized lorry park with sometimes up to ten or eleven lorries together with plant machinery in use regularly …" and that Mr and Mrs T's haulage business website included a map directing potential customers to White Farm. She asked what monitoring activities were taking place. The Council replied on 23rd

February saying that its stance in relation to alleged breaches of planning control which had been investigated remained unchanged and that information about the source of complaints had not been disclosed to Mr and Mrs T.

52. Following a further letter from Mrs B dated 26th February, Planning Officer D said (in his letter dated 3rd March 2005) that the Council was minded not to take the matter further unless "clear, unambiguous proof (including photographs if possible)" was provided supporting her allegations. The Officer confirmed that Mr and Mrs T had not been forewarned of his visit on 18th January 2005.

53. On 23rd March 2005, Mrs B wrote again to Planning Officer D. She said that illegal operations were continuing and that she had noted "as many as 10-11 lorries parked at any one time, plus plant machinery". She also said that the garage/workshop was in use on a regular basis for servicing and repairing HGVs, particularly at weekends and some evenings. She said she had "clear, unambiguous evidence" supporting her claims, "but to present it to you at this time would only jeopardize our safety even further" and that she would produce it at the appropriate time. In another letter of the same date, she said it was for the Council to monitor the haulage related activities at White Farm at the times it occurred, so as not to put themselves at risk. The Council's files did not contain this second letter, and Mrs B said she did not receive a reply. (At interview, Mrs B said she had been filming activities at White Farm by means of video cameras fixed on her property. More information about the video recordings is contained in paragraph 69 below.)

54. On 24th March 2005, Mrs B sent a copy of the diary of disturbance/noisy events to the Council's Public Protection Department. (More information about action taken by the Council's Public Protection Department appears in paragraph 109 below).

55. Meanwhile, Mrs B's surveyor recorded that on 7th February 2005, she drove past the licensed operating centre used by Mr and Mrs T's haulage business, and saw one lorry which she believed was owned by them which she then followed to White Farm. The surveyor said she

was also informed by the owner of the operating centre that Mr and Mrs T were not using it for all their commercial vehicles, but that occasionally a lorry was parked there. On 24th March, Mrs B's surveyor telephoned the former Planning Enforcement Manager who suggested a meeting after a proposed meeting with Mr and Mrs T in April. Her note indicated that during the call, the Planning Enforcement Manager said he would need convincing that more than one or two lorries were being parked at White Farm, and that she informed him of the outcome of her enquiries at the licensed operating centre. He asked that she confirm this in writing. There is no indication she did so, but following a further telephone conversion on 21st April 2005, she attended a meeting with Mr R and the Planning Enforcement Manager on 3rd May – paragraph 62 below refers.

56. On 31st March, the Planning Officer D visited Mrs B in connection with her complaint about the gates and enclosure. According to his note, Mrs B said she was on her way out and that he had not made an appointment. He said he only needed five minutes of her time to explain the situation concerning her access "but she was not prepared to listen". He explained to Mrs B that "we did not operate on an appointment basis but would return again at a later date". Mrs B told him "to visit on Monday", accused him of having a "bad attitude", and her vehicle was still at her property when he left White Farm about 20-25 minutes later.

57. Mrs B referred to the officer's visit in her letter dated 5th April 2005 to the Planning Enforcement Manager, when she referred to the intimidation by their neighbours and said that Officer D should have realised that the unannounced arrival of a complete stranger would cause her alarm and distress. She said he was "impolite and hostile".

58. Meanwhile, on 7th March 2005, Mrs B wrote to the Council and complained that Mr T had parked a large removals lorry in the field immediately adjacent to her property. Officer D visited White Farm on 8th March 2005. According to his notes, he spoke to Mrs T and advised her that despite being used as an animal food storage container, it should be moved. The note indicated that Mrs T agreed. On 21st March 2005, Officer D wrote to Mr and Mrs T and informed them that failure to

remove the lorry within 28 days may result in formal enforcement action being taken against them which could ultimately lead to a prosecution in the Magistrates Court.

59. On 11th March 2005, following the grant of planning permission for the First Shed on appeal (paragraph 16 above refers), Mr and Mrs T submitted a prior notification under the GPDO in respect of their proposal to excavate a small area of quarry in order to erect the new shed. On 30th March 2005, Mrs T notified the Council that they were preparing the area and would be using a lorry to move material about on the farm, but would not commence excavations until they had consent. She also referred to the "constant harassment and invasion of privacy from [Mrs B and Mr R]" who she said were photographing them every time they moved, and said she now knew where Mr R was working. The Council notified Mrs T on 5th April that planning permission was not required.

60. On 11th April 2005 Mrs B wrote to the Council to ask what action was being taken to secure the removal of the removal lorry. On 14th April, the former Planning Enforcement Manager (Officer F) sent an email to the Officer D in which he said:

> "I am still getting copies of various correspondence concerning this site. Someone is going to get injured or worse if this carries on. Have you spoken to [Mrs T] about us undertaking a [site visit]? It is clearly within their power to take the heat out of this situation, and I am not sure if at present they are operating from the site wholly to the letter of the law. If they will play ball, we will play ball with them. Do you think this is the best way forward?"

61. The Council's files indicated that on 21st April 2005, Officer F, Planning Officer D and an Environmental Health Officer first visited Mrs T and then Mrs B (who was accompanied by a friend). According to the Environmental Health Officer's notes, Mr and Mrs T although aggrieved at the nature of some of the complaints, were "open to dialogue" and appeared to be prepared to consider taking certain action which would diffuse the situation. They also confirmed that recent quarrying activity

had finished. The note indicated also that Mrs B and Mr R agreed to stop filming. The file indicated that Officer F informed both parties that he would write to them in an attempt to mediate. (He did so, on 3rd June 2005 – paragraph 65 below refers).

62. On 3rd May 2005 Officer F attended a meeting with Mr R who was accompanied by his and Mrs B's surveyor. There were no notes of the meeting on the Council's files. (Officer F said that his letter dated 3rd June 2005 contained a summary of what was discussed – paragraph 65 below refers).

63. Mrs B and Mr R said that Mr R produced photographs of White Farm at the meeting. Copies of these photographs were provided to the investigating officer. One photograph is dated as having been taken on 15th February 2005 and depicts 5 commercial HGVs including one with Hi-ab lifting gear. The other photographs were not dated, but some predate the siting of the removal lorry adjacent to Mrs B's boundary (March 05). Some of these photographs depicted up to 7 commercial HGVs (including the Hi-ab lorry) parked at White Farm, together with other lorry parts. Mrs B said the photographs also showed vehicle servicing and maintenance activity. Mr R said that at the meeting he also offered video recordings of HGV activity at White Farm to the former Planning Enforcement Manager, which he declined to view. (More information about the video recordings appears in paragraph 69 below).

64. Mrs B's surveyor made brief notes of the meeting. These do not refer to photographs or the video footage. She noted that the former Planning Enforcement Manager advised Mr R to keep a written log and that the Council would investigate if a pattern emerged. (During a telephone interview, she said she believed that Mr R, who came to the meeting with lots of papers and photographs, would have produced photographs during the discussion, including photographs which Mrs B had taken, but she could not be certain given the passage of time. She said she could not be sure whether Mr R offered the video footage to the former Planning Enforcement Manager at the meeting, but said that the former Planning Enforcement Manager would have been made aware of the footage. She said she believed that her information about the

licensed operating centre would have been mentioned at the meeting. The former Planning Enforcement Manager, Officer F, said at interview that he did not recall being shown photographs during the meeting or being offered video footage of HGV activity, but that even if such material had been offered, it would not have proved anything in that it would not have indicated activity over a period of time and would not, in itself, have justified enforcement action. He said he did not recall Mrs B's surveyor saying she had established that the licensed operating centre was not being used by Mr and Mrs T.)

65. In his letter dated 3rd June 2005 to Mrs B and Mr R, Officer F said it was evident that the current situation was causing stress and distress to both parties, and it would be in the interests of all concerned if a solution to the perceived problems was found. He said that the Council's letter dated 24th January 2005 to the MP's caseworker (see paragraph 44 above) set out the Council's position, and that the only substantive change had been the grant of planning permission for the First Shed on appeal, and the GPDO consent in respect of quarrying activity to make up the floor levels for the new shed. His letter also stated that each complaint had been investigated, and that no breach had been identified, or in the case of a minor technical breach, it was not considered expedient to take further action. He also said that the Council's Public Protection Department had not identified any statutory noise nuisance. He proposed that Mrs B and Mr R cease their "alleged surveillance" of activities at White Farm and the frequent reporting of those activities which had been investigated by the relevant authorities. He said that Mr and Mrs T had agreed to move the lorry when the storage facility provided by the new shed was available. He also proposed that they increase the width of the access way between the "motorway style barriers" and to keep the gate open except when the area was being used for the temporary containment of animals. In this connection, he referred to concerns expressed by the Fire and Rescue Authority about the unsatisfactory access for fire appliances and to Mrs B's mobility difficulties which had been exacerbated by the positioning of the barriers and gates.

66. He sent a similar letter to Mr and Mrs T. He also sent copies to the Fire and Rescue Authority.

67. Meanwhile, on 26th May 2005, the Council's legal officer (Officer K) sent an email to the Planning Department in which he said he had reviewed a complaint from Mrs B in which she alleged that nothing had been done despite "overwhelming evidence" to stop her neighbours Mr and Mrs T from running a haulage business from their premises at White Farm without planning permission. The email indicated that Mrs B's vendor had not disclosed previous problems with the neighbours. In his response, the former Planning Enforcement Manager said:

> "We have had a right outing with this woman. In essence she picked a fight with the adjoining property owners who happen to own the land over which her access to her property travels. As normal in such disputes, common sense goes out of the window and they have been popping at each other, and trying to use max aggravation. I visited the site with [Planning Officer D and an environmental health officer] at end of April and spoke to both sides, and said that I would write as an independent person to try and mediate in the dispute. I am close to doing that now but it is not easy. The occupants of [White Farm] appear to be amenable to this course of action, but [Mrs B] and her partner [Mr R] are extremely difficult people to deal with – they do not see any point of view other than their own…."

68. On 2nd June 2005, Mrs B wrote to the Council's Chief Executive regarding what she referred to as the failure of planning officers to take action in relation to illegal activities on White Farm. The Council's files indicated that details of the Council's complaints procedure were sent to Mrs B. The Chief Executive replied initially (on 6th June) indicating that he was obtaining information from Planning Services. However, on 14th June, he advised her that as she was proceeding with a complaint to the Ombudsman, the Council would not be proceeding with the internal investigation into her complaint. Nevertheless, the Head of Planning Services arranged to visit Mrs B on 12th July 2005 (paragraph 74 below refers). Mrs B did not pursue her complaint further with the Council, and

was notified of my predecessor's decision not to investigate her complaint on 15th July 2005.

69. Mrs B's video footage appeared in a current affairs television programme which was broadcast on 16th June 2005. The Council's files indicated that the Council declined to give an interview to the programme makers but provided a written response which included copies of correspondence sent to the MP's caseworker in January 2005 and to Mrs B and Mr R on 3rd June 2005.

70. The television programme showed information about the earlier complaints made by the former occupiers of Mrs B's property, other neighbours and the Community Council. It also showed timed and dated video footage of lorry movements filmed by Mrs B in February and March 2005 as follows:

- 3 commercial HGVs were shown leaving within a short time of each other prior to 7 am on 26th February (a Saturday);
- 4 were shown leaving within a short time of each other prior to 7 am on 28th February (a Monday);
- 3 were shown leaving within a short time of each other prior to 7 am on 1st March (a Tuesday);
- 2 were shown leaving within a short time of each other prior to 7 am on 2nd March (a Wednesday);
- 1 was shown leaving prior to 7 am on 4th March (a Friday);
- 2 were shown leaving within a short time of each other prior to 7 am on 5th March (a Saturday);
- 1 was shown leaving prior to 7 am on 14th March (a Monday).

71. The commentator stated that the Council was aware of the footage but had not used it. The programme depicted Mr and Mrs T's refusal to be interviewed. There was mention also of the Council's "mediation attempt". Officer L, in his subsequent letter dated 13th May 2008 to the Head of the Planning Division at the former Welsh Assembly Government said that the "clip on the [television programme] showed the same lorry giving the impression of a constant movement of lorries".

72. Meanwhile, on 30th June 2005, Officer F responded to correspondence from Mrs B's solicitors, and requested any evidence which identified the alleged "clear continuing breach of planning control … as opposed to a past, temporary or intermittent breach or the occasional parking of lorries at [White Farm] other than those which would normally be associated with an agricultural holding …" There was no record on the Council's file of a response from the solicitors, but Mrs B had written to the Council expressing the view that both Planning Officer D and Officer F should be suspended. She referred to further acts of intimidation by her neighbours and that Mr T had informed her that the "war had just begun".

73. On 7th July 2005, Mrs T wrote to the Council's Head of Planning and said that she had assumed that it was Mrs B and Mr R who had complained about her, having observed them "hiding behind hedges with a video camera constantly aimed at [her] property". She invited Council officers to visit to discuss the allegations.

74. On 12th July 2005, the Head of Planning (Officer L) visited White Farm. According to his notes, he observed a large number of coloured horses and donkeys. He also observed the following vehicles on site:

> "lorry in garage (to be renovated) – owned by [Mr T]"
> 2 lorries in quarry (1 x [lorry with branded lifting gear], I x tipper)
> 1 lorry outside large shed (with [lorry with branded lifting gear])
> Horse transporter (for show horses) and animal transport lorry in new shed, along with 1 trailer and 1 piece of agricultural machinery.
>
> Whilst on–site, [1of Mr and Mrs T's commercial haulage lorries] arrived with top soil".

75. Officer L then visited Mrs B and Mr R. Also at the meeting were a councillor (attending on behalf of the local Assembly Member) and an administrative officer. According to the notes of the meeting, Mrs B and Mr R provided a list of what they believed to be outstanding breaches of planning control at White Farm. These included the operation of the

haulage business when there could be 10-11 lorries parked on the site at any one time; substantial lorry maintenance on site; the presence on site of an office for the haulage company, and the non removal of the removal lorry in the field adjacent to their property. Mrs B and Mr R wanted the Council to take enforcement action against Mr and Mrs T in respect of these matters and said that they considered the Head of Planning Services, the former Planning Enforcement Manager and the Planning Enforcement Officer to be personally responsible for the situation in which they (Mrs B and Mr R) had found themselves. They said they had been intimidated by the occupants of White Farm and believed they would be hurt. They also said that Officer F and Planning Officer D had acted unprofessionally in that no effort had been made by them to collect evidence. The note recorded Mrs B as saying that she had photographic and video evidence and logs of activities at White Farm. The note also indicated that Officer L said that he would not look at past investigations by enforcement officers as this was being done by the Ombudsman.

76. On 20th July 2005, Officer L wrote to Mrs B and Mr R. He confirmed that he would not be looking at her claim that earlier investigations of alleged breaches of planning control were inadequate as this matter had been referred to the Ombudsman. His letter contained a summary of the continued unauthorised uses and activity alleged by Mrs B and Mr R, and he said he would review the position as to any continued breach.

77. Correspondence on the Council's Public Protection files indicated that the Environmental Health Officers referred Mrs B and Mr R's concerns about their neighbour's actions to the Council's Anti-Social Behaviour Coordinator. On 10th August 2005 the Head of Planning (Officer L) attended a meeting with one of the Council's legal officers (Officer J), the Anti-Social Behaviour Coordinator, and a police officer. According to Officer J's notes, the meeting discussed a number of allegations of anti social behaviour made by Mrs B and Mr R against Mr and Mrs T. The note states: "Mostly civil complaints to police – some allegations of harassment – noise from lorries at 6am – some verbal abuse – number of frivolous/possibly malicious complaints". The note

indicated that earlier complaints in 2001 had been investigated, that much of the lorry traffic related to the operation of farm/improvement/changes and authorised quarry activity, and that all complaints since 2004 had been looked at, and that up to 2 lorries connected with the haulage business were allowed on the farm at any one time. According to the note, there were insufficient grounds on which to take further action against Mr and Mrs T. (At interview, Officer J said his recollection was that the comment "frivolous/possibly malicious complaints" was made by the Police Officer rather than by either Officer L or the Anti-Social Behaviour Coordinator.)

78. On 18th August 2005, Mrs B wrote to the Head of Planning Services to keep him "updated with activities at [White Farm]. She said that 5 lorries continued to operate from the farm. These did not include the horse box or the removal lorry parked next to her cottage. She said that Mr and Mrs T had located pigs and chickens in pens under the bedroom window of her home, which she said was "vindictive". She referred to the Council's earlier correspondence in 2001 which stated "only one lorry to be used at [White Farm] four would not be acceptable". In a further letter dated 24th August 2005, Mrs B said that "running a haulage business with eight/nine lorries" without planning permission was a breach of planning regulations and that she had provided "more than enough evidence to support this fact". She requested a response in relation to list of unauthorised activities she had provided at the meeting on 12th July.

79. The Head of Planning replied to Mrs B's letters, and a further letter dated 6th September 2005, on 29th September. He said he had reviewed both the history of investigations into activities and development at White Farm, and the present position, and that his letter was intended to be a comprehensive response. He said that the various matters referred to in his earlier letter dated 20th July 2005 had been properly investigated, that detailed responses had been provided to her, and that the Council would accept the Ombudsman's recommendations in the event of any maladministration. He said he remained of the view that activities at White Farm were not of a scale and character that made enforcement action justified or expedient. His letter continued:

> "I do not accept that only one lorry can be kept at [White Farm]; lorries are required for different purposes, including personal interest. Lorries at [White Farm] have an agricultural justification, hobby, personal transport and related to the haulage business. Lorries have also been involved in delivering materials to [White Farm] which add to the lorry related activity".

80. He said that the lorry parked in the field was used for the storage of hay and fodder. His letter continued:

> " …. Indeed, there can be an argument there has been a change of use to the parking of a lorry for this corner of the field. There is case law on the question of whether some moveable or temporary agricultural structures are operational developments in terms of Section 55 of the Town and Country Planning Act 1990. General advice on the subject concludes that each case must be determined on its merits. I would be interested to hear your adviser's view on whether a moveable structure (albeit a lorry) which is used to store hay and fodder is development".

81. Mrs B and Mr R and their solicitors pursued their concerns with the Council in further correspondence between 11th October and 15th November 2005. In his responses, Officer L said he did not accept that there was a haulage business at White Farm, and that the lorries at White Farm were there for a variety of reasons, one being that as a lorry owner/driver, one/two may be kept at the driver's premises. He also provided responses about Mrs B's complaints about the installation of a drainage pipe by Mr T in the field next to her property (namely that it was agricultural and did not require planning permission), and replacement of an extension to a shed (namely that it did not raise any adverse amenity objections and that it was not expedient to take any action). In his letter dated 1st November, Mr R said he had informed the former Planning Enforcement Manager at the earlier meeting that he had video and camera evidence, and said "to date we are still recording up to 5 [haulage] lorries leaving and returning on a daily basis". He invited Officer L to visit and "view past and present 'clear and unambiguous evidence' for yourself which should then enable you to confirm the true

facts and take the action required to cause … the illegal activities at [White Farm] to cease forthwith". His correspondence enclosed a list of "illegal activities" at White Farm. These included the operation of a haulage business and industrial site without planning permission, quarrying to extend the operating area for HGV related activities, the removal van parked by their boundary and the erection of a large board on the fence adjacent to their cottage. He also sought an explanation of Officer L's decision not to view the video evidence which had been offered to him during his visit on 12th July 2005. In its further responses, the Council (Planning Officer D) invited Mr R to complete further noise/nuisance monitoring logs as a record of activity at White Farm rather than use video evidence "the collection of which has caused some friction with your neighbour". The Planning Officer D also advised Mrs B's solicitors that the Council had never requested that "directed surveillance" be carried out and that such surveillance would not have been necessary in relation to the earlier planning investigations. The letter continued:

> "What has been discussed is the recording of activity that allegedly directly impinges on their living conditions by way of noise/disturbance. By definition, this would only relate to recordings of activities that directly affect them, and the use of surveillance techniques would clearly not be necessary or appropriate".

82. (Further information about the completed logs received by the Council's Planning Department on 1st March 2006 appears in paragraph 89 below).

83. Meanwhile, on 19th October 2005 the Council received a complaint from Mrs B that "a large wooden board approx 2 m wide x 2 m high" had been fixed to an existing 6 ft high fence directly facing their bedroom window. She said that it prevented light to their windows and "obscures our CCTV camera". (The window affected is one of 2 windows in the bedroom. Mrs B explained that they had fixed the CCTV camera to their property and directed it towards the pen which housed 2 pigs immediately adjacent to their boundary following an incident in which pig

faeces had been thrown through their bedroom window. The pigs had been given the same names as Mrs B's and Mr R's first names. They said they did not operate the camera, but hoped that its presence would serve as a deterrent to what they regarded as further intimidation by Mr and Mrs T.)

84. The Council's files contained photographs taken of the board on 26th October 2005 from White Farm. Planning Officer E said he did not visit Mrs B or make any assessment of the board from her property.

85. On 1st November 2005, the Head of Planning Services (Officer L) wrote to Mrs B and said that the privacy board required planning permission as it was in excess of 2m height. His letter continued:

> "I do note, however, it has been positioned in front of a CCTV camera that has been attached to your house. These developments are clearly the result of the on-going disagreement between you and your neighbour. I do not consider it in the 'public' interest to pursue any action for the submission of applications for either development".

86. At interview, Officer L explained his view that planning permission was required for the CCTV camera, as it did not constitute permitted development under the GPDO. He said that it was reasonable to assume that the objective of the installation was to "spy" rather than for security as stated in the GPDO.

87. On 9th November 2005, Planning Officer B noted telephone calls from Mrs B, and then Mr R. In her call, Mrs B referred to floodlighting at White Farm, and was advised that permitted development rights potentially applied, but her concerns would be referred to the enforcement section. The note indicated that Mrs B then criticised individual officers and the Council generally, and that the Officer explained that the Council was aware of the nature of her relationship with her neighbours. Mrs B then began making accusations against the Council, and terminated the call on being advised by the Officer that he was only concerned with the floodlighting matter and did not have the

time to listen to her complaining about the Council. In the note of the call from Mr R, Mr R claimed that the Officer had insulted Mrs B. The note continues:

> "I informed him that I was merely trying to explain that I was aware of the poor relationship between her and [Mr and Mrs T] and that she was 'straying' from the point – in that she was complaining about everything. Mr R then starts making allegations/accusations against [the Head of Planning Services] and the Enf Officers. I advised him to contact the Ombudsman if he was aggrieved by the LPA actions. I informed him that I wasn't going to tolerate any accusations now being made i.e. crookedness in the LPA. I terminated the phone call".

88. On 8th December 2005, Mrs T's application for a variation of her HGV operating licence, to include White Farm as an operating centre for 2 vehicles, was allowed at a public enquiry held by a Traffic Commissioner. This brought to 3 the number of HGVs licensed to be operated from White Farm. At interview, Council planning officers said they were unaware of the variation, or that White Farm had become authorised as a licensed operating centre for 3 HGVs. (More information about the events leading to the grant of the variation is contained in paragraph 184 below).

89. On 1st March 2006, the Council's Planning Department received the noise/disturbance logs (dated 15th January 2006) completed by Mrs B. A note on the log by Mrs B indicated it was a "retrospective" record of disturbance/noisy events "from 03 – end 05". It recorded incidents between December 2003 and June 2004, and then between August and September 2005. The entries between 2004 and early 2005 indicated specific and dated incidents of noise and disturbance from the use of "heavy duty plant machinery", welding and workshop noises, lorry maintenance and power hosing activities at weekends, lorries being loaded, use of cutting and drilling machinery, quarrying noise and lorry movements, indicating "lorries go out each & every day up to nine". A manuscript note indicated that the log had been completed from entries in Mrs B's diaries. The 3 entries in August and September 2005 related

to the arrival of pigs at White Farm, “malicious & inane chatter to pigs” who had been given the same names as Mrs B and Mr R, the use of “threatening language” by their neighbours, and the removal of the pigs in October 2005. A note stated: “most of these activities witnessed by photos, sound and video” which had been offered to Officer F and Officer L, but had been refused.

90. On 9th March 2006, Officer L forwarded the logs to the Council’s Public Protection Department. His memorandum stated that he had informed Mrs B that there were no planning issues that warranted further investigation. “However, the matter of excessive noise from the animals that are kept on the land and the use of equipment may warrant assessment under the Environmental Health Legislation”.
There is no record of a letter being sent to Mrs B from the Planning Department in response to the completed logs. (Further information about action taken by the Public Protection Department appears in paragraph 109 below).

91. Meanwhile, on 7th February 2006, Mrs B was convicted of assault on Mrs T, but her conviction was subsequently quashed on appeal when the Crown Prosecution Service declined to proceed. According to the note of the proceedings made by Mrs B’s solicitor, Mrs T admitted that she did not have planning permission for the haulage business which she was running from White Farm.

92. A further 3 programmes were broadcast by the television company between February and June 2006. In the second of these programmes, the Chair of the Council’s Redevelopment Committee (Councillor 1) was interviewed and said:

> “Parking of 2 lorries doesn’t constitute running a business. Should they park 3 there, obviously they would have to apply for planning permission. But having said that, obviously they have an Operator’s Licence issued by the Traffic Commissioners to keep 2 lorries at the farm”.

(Councillor 1 confirmed the transcript at interview). The programme stated that Mr and Mrs T had been given a licence to keep 3 HGVs at White Farm.

93. The programmes also depicted unpleasant exchanges between Mrs B and Mr R and their neighbours including a confrontation on 16th October 2005 in which Mr T asked Mr R how his job (as a driver) was going, and Mr R replying to the effect that if he was 20 years younger he would take Mr T's head off, adding that he was too old. The footage also showed Mr T towing Mrs B's car up the access way from where she had parked it to prevent the gate being closed, and a further confrontation on 27th December 2005 after Mr T had locked gates across the access way, apparently preventing Mrs B and Mr R from leaving their property. Mr R asked Mr T to open the gate, but Mr T pushed a piece of paper in Mr R's face (he was filming at the time) such as to push him backwards. Mr R accused Mr T of assault/hitting him in the face. Two property valuers were interviewed and made comments about the effect on the value of Mrs B's and Mr R's property of the dispute with the neighbours regarding the access way and the pigs.

94. On 16th March 2006 Mrs B submitted a complaint to the Council in which she alleged that the use of the First Shed had been changed to commercial purposes in connection with the use of White Farm as a haulage and industrial yard. The complaint was registered and a file opened. Apart from indicating a need for a "routine site visit" the file does not indicate the outcome of the complaint. However, according to a site history prepared by the Council, "no breach identified 05/07/06".

95. Mrs B, in her further letters to the Council dated 18th July and 10th August 2006, said she had not received a response to her complaint. She also asked that the Council secure the removal of the large board, and claimed that she was entitled to erect a security camera to protect the rear of their property, and that their neighbours had "enough cameras guarding themselves, together with cameras watching/spying on our every move". Planning Officer E replied on 16th August 2006 indicating that the alleged unauthorised use of the shed, the parking of the lorry adjacent to Mrs B's boundary and the large board, were among

the planning issues being reviewed, following which the Council would respond in detail, he anticipated by the end of August. (By that time, the Council had received and was considering the planning application in respect of the Second Shed – paragraph 18 above refers). In her further letter dated 21st August 2006, Mrs B asked that her completed nuisance log (referred to in paragraph 89 above) be addressed, and stated her view that White Farm was not being used for agriculture, but for haulage. On 11th September 2006, Officer E informed Mrs B that the Head of Planning Services and other officers would be carrying a review on site in the next few days and the outcome of the inspection would be confirmed in writing to Mrs B.

96. The Council's files indicate that the Head of Planning Services and Planning Officers B and E undertook a site inspection at White Farm on 14th September 2006. The visit was by appointment. Photographs taken by Planning Officer E included photographs taken inside the First Shed. (These are referred to in paragraph 19 above). The photographs also showed 1 of Mr and Mrs T's named commercial lorries parked in the yard, a low loader and separate trailer, 2 or 3 lorry backs and small shipping containers, some of which were being used for storage, a compressor and other items such as discarded vehicle wheels and tyres.

97. On 20th October 2006, Mrs B wrote to the Council to request a response to her earlier correspondence regarding "various breaches of planning" which she listed. These included the removal lorry parked next to her cottage, the large board, the installation of CCTV and the use of floodlighting at White Farm, and the non-agricultural use of the First Shed.

98. On 15th February 2007, and following an email from Mrs B, Planning Officer A wrote to Mrs B in relation to the lorry parked by her cottage and the large board. He said the lorry was used for the storage of hay and fodder, and explained his view that as it was a "temporary structure" it was outside the scope of planning control, and that no breach of planning control had occurred. In relation to the large board (which he referred to as "screening board"), he said it required planning permission. In his letter he quoted extracts from TAN 9, and continued:

> "I have considered the location of the board, its purpose following the erection of a CCTV camera at your property and its height above the permitted 2m threshold and I have concluded that in this case it is not in the 'public interest' to pursue any formal enforcement action. The enforcement case in relation to this matter is therefore closed."

99. The letter, which was signed by the Head of Planning Services (Officer L), contained no reference to other complaints. The board is still in place, and Officer L said that it is now immune from enforcement action.

100. The Council's files contained no indication of a substantive response regarding the use of the First Shed, until the Council wrote to Mrs B on 21st November 2007 when it said that its inspection of the barn had confirmed no change of use from the permitted agricultural use to the commercial operations of Mr and Mrs T's haulage company. (More information about the Council's letter of 21st November 2007 appears in paragraph 107 below).

101. In the meantime, on 2nd April 2007, Officer L responded to correspondence from the local Assembly Member. He enclosed a copy of a letter which he said had:

> "recently [been] sent to [Mrs B] in relation to a long list of complaints that she and [Mr R] have made in respect to the activities of their neighbours. The letter outlines, in detail, why no action is considered appropriate in these cases. My officers have investigated each and every complaint made by [Mrs B and Mr R] and they have taken considerable steps to try and resolve the dispute which has developed".

102. He said that relations between the parties had deteriorated to the point that the Council's Planning Division had been drawn into the dispute, and that his role was to take a considered view on each planning complaint in the light of relevant Government guidance and the individual circumstances of the case, and that "invariably with

enforcement cases, one of the parties may feel that they have been treated unfairly and are unhappy with the final outcome. The letter continued:

> "I cannot, in all reality, continually use resources in what has developed into a vendetta and I have failed to identify any unauthorised development where enforcement action is justified in terms of the public interest".

103. He also said that efforts had been made to mediate between the parties, but "given the quasi-judicial nature of planning enforcement and lack of cooperation with this regard, I fail to see how I can contribute any further". (According to the Council's file, the enclosed letter relating to the "long list" of complaints was the letter dated 15th February 2007 referred to in paragraph 98 above).

104. On 20th April 2007 Mrs B wrote to the Officer L in which she refuted the "assertions" he had made in his letter to the Assembly Member. She said:

> "Your officers have never investigated our claims that [White Farm] was, and still is, being used as an operation centre (sic) for heavy goods haulage vehicles [by Mr and Mrs T's haulage company] as was clearly shown on their web site at that time. This was denied by yourselves when we advised you of these activities... Their operating centre was [at another location] as you and your officers kept pointing out to us. However, at no time, did anyone from your department visit that address. Had they done so, they would have been told by the owners, as indeed were we, that [Mr and Mrs T's haulage company] did not operate from there…The photographic evidence obtained by us AT YOUR REQUEST [Mrs B's emphasis] and additional camcorder evidence shows many vehicles leaving [White Farm] in the early mornings and returning at various times in the evenings. This continued over a very long period and is unequivocal evidence, supported by many complaints from various local people and the community council, dating back to 2001, (see planning office file.) The menacing acts and threats emanating

from our neighbours towards us, is at best exceptionally disturbing and at worst positively terrifying… A previous owner of [Mrs B's property] experienced similarly threatening behaviour and tried to convey this to you in letters advising you of the threats made toward himself and his wife. He made his concerns known with regard to the illegal activities of this haulage company... The vendetta, to which you refer, is the one truthful account of what is taking place. It has been, and still is, a most spiteful and vicious vendetta continuously waged against US, not vice versa, as you would suggest. Friends, family and various sections of the media have voiced the view that never before have they witnessed a case being condoned by a planning department that is so clearly in denial".

105. In her letter Mrs B referred to the offer of mediation Officer F's letter dated 3rd June 2005 and said "it insults anyone's intelligence". She said his letter was not an attempt to make peace by agreement, but a proposal that she and Mr R "capitulate by making no further complaints and in exchange [Mr and Mrs T] MIGHT widen the driveway they so maliciously narrowed." She also referred to the removal lorry parked close to their cottage, and asked why the Council had failed to secure its removal. In relation to the large board, Mrs B said that it had been necessary to record the behaviour of Mr and Mrs T because they had thrown mud and faeces at and through their bedroom window which was within 2 metres of the pig enclosure, and that when the pigs were present, Mrs T talked to them, addressing them by Mrs B's and Mr R's first names and making "veiled threats of a serious nature e.g. '[Mrs B's first name], if you poke your nose into business that doesn't concern you, you will get hurt you silly little pig'…" Mrs B's letter continued:

"You were aware of this and, still you excused their behaviour by allowing the board to remain in situ. I reiterate that a vendetta of mammoth proportions is taking place for which you and your officers bear a great deal of responsibility and should be seeking to redress … I must remind you that you have been offered the opportunity to view evidence. Evidence which you requested and required us to gather so that you could make informed decisions

with regard to [White Farm] activities. You declined the officer, as did [the former Planning Enforcement Officer]…"

106. The Council acknowledged Mrs B's letter on 23rd April 2007 and said a response would be sent within 15 working days. Mrs B sent further letters to the Council on 31st May, 4th June and 23rd July 2007 requesting a response but no response was sent until 17th August 2007, by which time the Council had applied its Persistent Complainant's Policy to communications from Mrs B and Mr R. In its response dated 17th August 2007, the Council's Director of Regeneration and Leisure said that all complaints had been fully investigated with the conclusion that no breach of planning control had taken place. His letter contained no further details, and he advised Mrs B that all further correspondence should be addressed to him. (Mrs B said she believed that her letter of 20th April 2007 led to the Council's decision to apply its Persistent Complainants Policy in their case. More information about the use of the PCP is contained in paragraph 120 below).

107. On 21st November 2007, the Director sent a "final statement" on planning enforcement cases at White Farm to Mrs B. The letter referred to a number of complaints which the Council had investigated. These included the parking of the removal van, complaints about the use of the First Shed, and the large board. The letter stated that no breach of planning control had occurred in relation to the lorry, as it was a temporary structure being used in conjunction with the agricultural use of the land, and in relation to the First Shed, that no change of use to the commercial operations of Mr and Mrs T's haulage company had taken place. The Director's letter also said that a technical breach of planning control had occurred in relation to the large board, but the Council had concluded that "the matter would not unacceptably affect public amenity and it is inappropriate to undertake formal planning enforcement action", and referred to the earlier letter dated 15th February 2007 (see paragraph 98 above). In the letter, the Director advised them to submit any further information or evidence which would assist the Council in justifying formal enforcement action by letter addressed to him. The letter contained no reference to White Farm being licensed as an operating centre for 3 HGVs.

108. Mrs B's further correspondence with the Council in 2009 and 2010 about what she regarded as the unauthorised use of White Farm for haulage and non agricultural activities is referred to in paragraph145 and following paragraphs.

Action taken by the Council's Public Protection Department

109. The Council's Public Protection files indicate that on 30th December 2004, and following a complaint of noise from "industrial activity" at White Farm, an Environmental Health Officer visited Mrs B's property and observed a mixture of heavy plant machinery at White Farm which was not operational at the time. In January 2005, the Council installed sound monitoring equipment at Mrs B's property, which detected "isolated incidents of dog barking, with some noise from what appeared to be agricultural machinery/vehicles". Mr R stated that noise had not been a problem during the monitoring period.

110. A second sound monitoring exercise was carried out between 1st and 8th February 2005 following further complaints of noise from vehicle movements and dogs barking. In an email dated 9th March to Officer F, the Environmental Health Officer said that the evidence from the recent noise monitoring exercises "strongly suggests that [Mrs B] has taken steps to provoke the dogs into barking". On 14th the Environmental Health Officer wrote to Mrs B and Mr R, and informed them that there was insufficient evidence of a noise nuisance, and that the audio record strongly suggested that the dogs at White Farm "were being encouraged to bark by yourselves by the rattle of a window…." The Officer said that any evidence obtained from the exercise could not be relied upon. In her letter dated 15th March 2005 Mrs B said that she had opened the window to show that insignificant noise caused the dogs to react and bark for substantial periods of time.

111. In September 2005, the Council's Environmental Health Officer investigated Mrs B's complaint of noise from pigs which were located in a pen on White Farm adjacent to her bedroom window. The Officer concluded, following a home visit at 7 am, that the noise from pigs was not a statutory nuisance. The Officer also made a written assessment of a video recording of the pigs and other activity at White Farm made by

Mrs B between 11th August and 24th September 2005. The Officer concluded that dog barking, based on the video date, was excessive on occasions, and that a further monitoring exercise would be required to establish the level of noise disturbance from the pigs (which appeared to be at feeding times) prior to 7am. However, the file indicated that the pigs were removed in November 2005.

112. In July 2006, following a further period of sound monitoring, the Council issued an abatement notice to Mr and Mrs T in respect of noise nuisance from dog barking. The notice required them to abate the nuisance within 21 days. The file indicated that the Council subsequently undertook directed surveillance (having obtained authorisation under RIPA[4]) following further complaints of dog barking after the 21 day period had expired, but no dog barking was detected. (Mrs B explained that Mrs and Mrs T had got rid of the dogs, namely 3 Rottweiler's).

113. In March 2007, Mrs B and Mr R complained of nuisance from cockerel crowing during the night, and submitted a noise disturbance log. The cockerels were located in a pen on White Farm by the boundary adjacent to her cottage. The Council, following a period of noise monitoring, served an abatement notice on Mrs T on 2nd May 2007. The abatement notice was not complied with. Following a period of further monitoring, including directed surveillance under RIPA, the Council commenced a prosecution against Mrs T, and on 5thJune 2008 she pleaded guilty at the magistrate's court and was fined £500. According to the Council's file, the Council's application for a criminal anti-social behaviour order[5] to be made against Mrs T was not granted as Mrs T gave an undertaking to remove the cockerels. A press release issued by the Council indicated that Mrs T had accepted that harassment had been caused and apologised. Officer J reported on the outcome of the proceedings to the (new) Anti Social Behaviour Coordinator, who in her response asked if any reason had been given for the refusal to grant the criminal antisocial behaviour order. In her email dated 5th June 2008 she referred to an earlier decision not to

[4] Regulation of Investigatory Powers Act 2000 – see Appendix 1, paragraph 30
[5] Under the Crime and Disorder Act 1998

pursue a “stand alone” antisocial behaviour order “as there were so many malicious complaints made by [B] and [R] that it would have been impossible to police and therefore defeat the object of making it …” (At interview, Officer J said he assumed the reference to “malicious complaints” related to the comments made at the earlier meeting in August 2005 – paragraph 77 above refers - as that was the only time he could recall that consideration had been given to making a standalone application for an anti social behaviour order).

114. Meanwhile on 7th August 2007, an officer in the Public Protection Department wrote to Mrs B about her complaint of potential light nuisance arising from floodlights at White Farm. The officer explained that White Farm was a licensed operating centre for 3 HGVs, and was, therefore, exempt from action regarding light nuisance under the Environmental Protection Act 1990[6].

115. In January 2008 Mrs B complained of noise from quarrying activity at White Farm. (By this time, the Council had determined that Mr and Mrs T’s proposed Second Shed did not require planning permission, and a site visit by Planning Officer B had established that excavation and quarrying works were being undertaken to level land adjacent to the site of the proposed shed (paragraph 26 above refers). On 2nd April 2008, an Environmental Health Officer, following contact with Mrs T, wrote to Mrs B to inform her that further excavation works would be taking place at White Farm in connection with the foundations for the shed. The works, which would be completed in a few days, would take place between 8 am and 6pm (perhaps with some tidying up to 7pm), and there would be no work on Sunday. The letter stated that the work was likely to give rise to noise, but that the proposed hours of work were appropriate to limit the disturbance.

116. On 10th July 2008, the Assembly Member wrote to Planning Officer B on Mrs B’s behalf to say that quarrying works had recommenced at White Farm. The local ward councillor (Councillor 3) also contacted the Planning Enforcement Section in respect of the same issue. An

[6] Statutory Nuisance (Miscellaneous Provisions)(Wales) Order 2007.

environmental health officer visited White Farm on 11th July, when Mrs T explained that the works were required to facilitate access to the new shed, and to remove an area of rock face. She said the works was likely to last one week, and there would be no work on Sunday.

117. The Council's file indicated that Mrs T's proposal was acceptable. However, noisy activity continued, and following a noise monitoring exercise, the Council served an abatement notice on Mrs T on 21st July 2008. The notice required her to abate the noise nuisance within 24 hours. Correspondence from Mrs T dated 23rd July indicated that the timescale for complying with the notice was extended by 10 hours because the quarrying equipment had broken down. Mrs T made a further request for an extension on similar grounds on 4th August, and said she was not "doing this in order to antagonize the only neighbours that complain about us…" However, the Council established that a statutory noise nuisance existed. Consideration was given to bringing a prosecution against Mrs T, but on 10th September 2008, Officer J advised that a prosecution was unlikely to succeed as there was evidence to indicate that Mr and Mrs T had a reasonable excuse for not complying with the notice. At interview, the Council's Public Health Services Manager (Officer G) said that the quarrying activity had also ceased.

118. Other information on the Council's files indicated that Mr and Mrs T obtained retrospective consent from the CCW[7] on 10th July 2008 in respect of the excavation of the rock outcrop.

119. The Council's files indicate that Mrs B made a further complaint about dog barking noise at White Farm in February 2009. She was sent a noise log to complete, but this was not returned.

<u>The application of the Council's Persistent Complainants Policy ("PCP") in Mrs B's and Mr R's case</u>

120. The Council's files showed that Mrs B was sent details of its complaints procedure in June 2005 when she complained about the

[7] Countryside Council for Wales – see Appendix 1 paragraph 23

failure of planning officers to take action in relation to illegal activities on White Farm. However, she did not pursue her complaint, referring a complaint instead to the Ombudsman. She was notified of the Ombudsman's decision not to investigate her complaint on 15th July 2005 (paragraph 68 refers).

121. There is no record that Mrs B pursued further complaints under the Council's complaints procedure until January 2010 (see paragraph 158 below). There is no record of any meetings between the Council's planning officers and Mrs B and Mr R after August 2005.

122. Mrs B said she believed that her letter dated 20th April 2007 (referred to in paragraph 104 above) prompted the Council to apply its PCP in her case.

123. The Council's planning files contained a note dated 3rd July 2007 which listed 12 complaints about White Farm since April 2005. The note said that these matters had been investigated with the conclusion that no breach of planning control had been carried out by Mr and Mrs T, and that no formal enforcement action had been required. The note also said that the Council had received "some 32 letters/faxes from the Complainants [Mrs B and Mr R] since April 2005 in relation to the various matters outlined above", and that Officers L, F, Planning Officers A, D and E had been involved. A schedule listed 31 letters from Mrs B between 3rd February 2005 and 5th June 2007, and one letter from the Assembly Member. Planning Officer E confirmed that the schedule was prepared at the time consideration was being given to the use of the PCP.

124. The original version of the referral form completed by the former Departmental Complaints Office dated 5th July 2007 was not available for inspection during the investigation. However, a copy (on the file kept by the Chief Executive's Principal Executive Officer) contained a summary of the background leading to the referral. It said that in addition to planning officers, environmental health officers, legal officers and the Chief Executive had been involved in complaints. It referred to Mrs B's complaint to the Ombudsman in 2005 and said "since receiving

notification from the Ombudsman, over 30 letters have been received … regarding matters at [White Farm]". It also referred to regular telephone calls from Mrs B, and that she had been in contact with the media, Assembly Member, Assembly Government, and that the current affairs television programme "showed the complainants' version of events in June 2005". The form further stated that Mrs B had lodged formal complaints against police officers involved with the dispute. Documents, including correspondence, emails, notes of telephone calls and reports were stated as being attached, and reference was made to storage box files containing information about Mrs B and Mr R's complaints and correspondence between them and the Planning Department. The referral form stated that Mrs B and Mr R had exhausted the Council's corporate complaints procedure and that the Ombudsman had not investigated their complaint. It also indicated by means of a ticked box that there had "been a meeting with the customer to discuss the particular concerns". It continued:

> "Numerous site meetings have taken place since 2005. The complainants have refused to allow the Enforcement Officer for the area nor (sic) the Enforcement Manager into their property since June 2005. A meeting was held on 12th July with [a councillor on behalf of the AM, Officer L, and an administrative officer]. The notes are attached for information".

125. The copy form indicated that it had been signed by the former Complaints Officer.

126. No documents, correspondence, notes or reports were attached to the copy referral form inspected during the investigation. The schedule of correspondence from Mrs B (referred to in paragraph 124 above) indicated that 10 letters pre- dated 1st April 2005, and that 14 had been received since July 2005. 4 of the letters since July 2005 were specific complaints about alleged unauthorised development, and 3 were reminders requesting responses to earlier correspondence. The schedule did not include Mr R's letter dated 1st November 2005 or correspondence from solicitors instructed by Mrs B.

127. The referral was considered by the Departmental Representative (Officer H) on 20th July 2007. The referral documentation contained a "determination" that the referral should be dealt with under the PCP, that contact from Mrs B and Mr R "should be directed to and accepted by only ….. [name] Director of Regeneration and Leisure", and that the means of contact should be by letter only. The determination was subject to a review being held on 1st November 2007. (Officer H confirmed at interview that he signed the original determination). Email exchanges on 2nd August indicated that public protection officers were dealing with noise complaints which had been found to be fully justified and that ongoing contact with the Complainants was at an appropriate level given the circumstances. The exchanges indicated that the action taken under the PCP was limited to planning matters.

128. On 17th August 2007, the Director of Regeneration & Leisure wrote to Mrs B and Mrs R. His letter stated:

> "As the Director responsible for Regeneration and Leisure, which includes all planning matters, I am fully aware of the variety of complaints that you have made against my officers relating to [White Farm]. These have been investigated fully with the conclusion that no breach of planning control has taken place. This has been vindicated by the Ombudsman. As a consequence, I would respectfully request that any further **planning related** correspondence regarding [White Farm] come directly to myself and I will deal with them accordingly."

129. The letter contained no reference to the Council's PCP, or that Mrs B and Mr R could appeal. Mrs B said she was not aware that the PCP had been applied in her case until she received the Director's further letter dated 28th February 2008 (referred to in paragraph 139 below). She said the Council had not prior to July 2007 informed her and Mr R that it, for example, found their manner of communication unacceptable or warned them of its intention to apply the PCP in their case if they did not alter their conduct. (At interview, Officer H said that the former Complaints Officer was having daily phone calls with the Complainants and is sure that he would have warned them. However, the Council has

not produced any files, electronic records or emails in which the Complaints Officer's contact with Mrs B and Mr R was recorded. There is no indication in the records inspected to indicate that a decision was made to depart from the practice advised in Step 2 of the PCP procedure by not warning Mrs B and Mr R).

130. Mrs B replied to the Director's letter on 22nd August 2007. She asked why she had not received a reply to her letters of 20th April 2007 to the Head of Planning Services and her subsequent reminders dated 31st May, 4th June and 23rd July 2007. She requested a response and information about the "agriculture which takes place at [White Farm]". There was no reply to this letter until 21st November 2007 when the Director set out the Council's "final statement" regarding planning enforcement issues at White Farm (paragraph 107 above refers).

131. Meanwhile, there were email exchanges between officers (including the former Monitoring Officer) regarding requests by Mrs B for information under the Freedom of Information Act 2000. An email dated 12th November 2007 from the former Planning Enforcement Manager (Officer F) said:

> "I have been concerned for a considerable period of time as to the way this woman operates. There is no doubt in my mind that if we do not proceed in the way she feels we should, she will attempt to 'punish us'. What is happening at the moment is a clear form of harassment of officers, as she realises the work/time implications to those officers is considerable, which adds significantly to the workload/stress levels of those officers. The complaints come so thick and fast that it becomes confusing as to what you are dealing with, and she is always looking for the 'slip up' or statement which may be mis-interpreted, however minor the issue may be. I thought the whole purpose of branding her a malicious complainant, or whatever the term is, was a way of putting a stop to this. All it appears to have achieved is the complaints come via a different direction. The apparent work implications remain. She spends 15 minutes writing a letter (and enjoying herself, because she literally has nothing better to do), and a whole army of Council

workers seem to spend days trying to reply. This just cannot go on".

132. There is no information to indicate that a review of the case under the PCP took place on 1st November 2007. Mrs B and Mr R remained subject to the Policy until February 2011. (Further information about reviews of their status under the PCP held in January and August 2008, March and September 2009 and May 2010 appears in paragraphs 134, 143, 146, 156 and 170 below).

133. In January 2008, quarrying operations commenced at White Farm (paragraph 25 above refers) and Mrs B and Mr R said they had contacted Councillor 2, who is the Member for the neighbouring ward for additional support. On 16th January 2008 Councillor 2 sent an email to one of the Council's Legal Officers (Officer K) and the Council's former Monitoring Officer in which she referred to having received a number of telephone calls from Mr R, and requested advice. She stated that Mr R "phoned at least once a day and has tirades against the Planning Department and the Council. He is frequently on the phone for a long time and is not complementary about anyone …As well as this he is becoming a nuisance caller. I've heard he has been threatening to neighbours, so I am worried …." In a further email she said she was under the impression that Mr R had been told that he could only deal with the Director by letter and asked if the restriction could be extended to all members of the Planning Committee. Other email correspondence on 17th January 2008 indicated that the ward member, Councillor 3 had also contacted the Legal Officer with a "similar problem", and whilst not wanting to take the matter forward, wanted to know what the options would be.

134. The Council's files contained an unsigned "Case Review by Departmental Representative" document dated 24th January 2008. It contained the recommendation that the PCP continued to apply on the grounds that:

"[Mrs B and Mr R] are continuing to pursue previous unfounded allegations and they are also raising new allegations, which are

being investigated. Correspondence to the Planning Department is of high volume, which is still consuming large amounts of time that is disproportionate to the magnitude of the issues raised. …… As well as this correspondence with the Authority, Mr R is now contacting both his ward councillor and a councillor outside his ward with the same allegations. It was agreed at the review meeting, that the Councillor would also be covered under the persistent complainants policy. As such the councillors can now refer both [Mrs B and Mr R] to write to [The Director] in accordance with the persistent complainants policy".

135. Officer I said there was a meeting on 24th January 2008 to review the Complainants' status under the policy at which she was present, and that the "Case Review" document was the only record of the meeting. She said she could not recall who else was present. However, according to an email dated 7th December 2010 from the Council's Information and Data Protection Officer to Mrs B, "a formal meeting was not convened".

136. On 29th January 2008, the Council's Chief Executive wrote to Mrs B and Mr R. In his letter, he reminded them of the letter they had "received in August 2007, notifying [them] that all correspondence with the Authority must be in writing and addressed to [name], Director of Regeneration". The Chief Executive then said that he was aware that there had been "numerous" calls to the Councillor of a neighbouring ward. His letter continued:

> "I would like to inform you that, as the matters you raise are outside Cllr 2's ward she is therefore unable to advise and comment further. I am also aware that you have also contacted other officers via telephone. The Authority will deal with and respond to any new issues raised, but I reiterate, all correspondence to all staff and Councillors in relation to this case must, as requested, be sent in writing to [name] Director of Regeneration and Leisure who will deal with them accordingly. Staff are already aware and will be reminded of the means of communication available to you."

137. The Chief Executive also notified Mrs B and Mr R that requests for information under the Freedom of Information Act 2000 and other legislation should be directed to the Council's Information & Data Protection Officer. (Officer I said the Chief Executive's letter was sent to Mrs B and Mr R as a result of what had been agreed at the review meeting on 24th January 2008). The letter did not indicate the means by which (apart from communicating with the Director) Mrs B and Mr R could access other Council services.

138. Meanwhile, on 18th January 2008, the Assembly Member wrote to the Minister for Sustainability & Housing on behalf of Mrs B and Mr R. He said that matters had reached a point where the Council had deemed his constituents as "serial complainants", that Mrs B and Mr R were unable to make contact except by writing to the Director, and that Mrs B's correspondence "was not being answered within the timescale" and that being unable to contact the Council by telephone was making matters very difficult. In his letter he referred to development which had taken place at White Farm, and asked the Minister to intervene. On 25th February 2008, Mrs B also wrote to the Minister. She referred to her rights under the European Convention on Human Rights, and asked the Minister to bring pressure to bear on the Council to establish an independent public inquiry into their concerns about the Planning Department. On the same day, the Council's Director of Regeneration & Leisure wrote to the Assembly Member and advised that he was not in a position to meet with Mrs B as a decision had been taken that because of the time and resources that had already been used in her case, the Council was only prepared to deal with her in writing through himself. He said that the decision had not been taken lightly.

139. On 27th February 2008, the Director responded to correspondence from Mrs B dated 18th January and 13th February 2008 in which she had said that the Council was "trying to silence" her and that it was her "democratic right, as a resident of the county and a taxpayer to be able to contact anyone [she] deems necessary" within the Council regarding matters which affected her property and decisions made by the Council. In his letter, the Director said:

"There are instances however where the behaviour of a small number of individuals pursuing complaints cause this Council and public authorities generally serious difficulties because of their refusal to accept the responses which they receive, and sometimes even when responses come from independent agencies such as the Ombudsman. Such behaviour can cause disproportionate demands on Council time to the detriment of other service users, and it can also amount to harassment of officers and members. The Council in common with many other public authorities have therefore found it helpful to adopt a persistent complainants policy in order to manage these situations. Unfortunately, as has been explained to you, it has become necessary for this policy to be applied to you. It does not mean that the Council will not look into concerns which you raise – they will continue to do that – but it does mean that if you wish to contact the Council, you should do it through me.

In the past and in particular recently you and your partner have persisted in contacting a number of Councillors, including Councillors who have no responsibility for the matters which you raise, sometimes making telephone calls every day and often many times during the course of the day. They have complained to the Chief Executive about this conduct. This is in effect a form of harassment which is viewed very seriously, and only confirms why it is necessary for the council to deal with you in this way…"

140. (Mrs B said this letter was the first indication they had that the PCP had been applied to them.)

141. Subsequent correspondence from the Assembly Member and Mrs B's solicitors challenged the Council to substantiate its claims about "harassment of Councillors". On 15th April 2008, the Director replied to Mrs B's solicitors. He referred to the use of the PCP and said that this did not prevent Mrs B and Mr R from speaking to the Council about matters of concern. He also said that Mrs B and Mr R were fully aware of the telephone calls they had made (to councillors) and that "several members" had contacted his office with their concerns. He continued:

> "The fact of the matter is your clients were fully aware of the terms of the persistent complainants policy. Unfortunately, they chose to ignore that policy and undertook to make a number of telephone calls to Councillors, including councillors not responsible for the matters alleged. The basis of my reference to harassment was clearly explained and it was a factual statement supported by the information I was receiving directly from the members on the receiving end of your clients' calls. I do not consider these remarks to be defamatory in any sense, and your clients by their actions were clearly demonstrating why it was necessary for the persistent complainants policy to be applied them…"

142. On 13th May 2008, Officer L wrote to the Head of the Planning Division at the former Welsh Assembly Government. His letter contained a list of the complaints about alleged unauthorised activities at White Farm, which the Council had investigated with the conclusion that no breach of planning control had taken place and that no formal enforcement action had been required. His letter also referred to the Council's action in invoking its PCP in Mrs B's and Mr R's case on the basis that it had received some 32 letters/faxes from Mrs B and Mr R since April 2005 in relation to the matters which had been investigated.

143. On 22nd August 2008 a PCP review meeting was held. According to the minutes, the Director, the former Complaints Officer, the Departmental Representative, the Principal Executive Officer and the Anti Social Behaviour Coordinator attended. The minutes stated that the level of contact from Mrs B and Mr R on planning matters had decreased … but that correspondence is being focussed elsewhere including Community Safety via the Anti Social Behaviour Coordinator and on lobbying officials within WAG".

144. The minutes indicated that the restriction on Mrs B's and Mr R's contact with the Council was to be extended to other departments including Community Safety, but that Mrs B and Mr R would not be informed of their continuing status under the policy "based on the fact that previous correspondence relating to the PCP … has attracted complaints relating to human rights issues from the recipients."

145. On 19th February 2009 Mrs B wrote to the Council's Chief Executive. She said that the Council had labelled them persistent complainers to "bully, frighten and suppress, in the hope that awkward questions would cease…" Her letter contained a summary of the "offences" committed against them by Mr and Mrs T and said that the Council "by ignoring the abuse and assaults inflicted upon us, have condoned and encouraged [Mr and Mrs T's] actions, and are, therefore complicit". She then referred to the intimidating and upsetting effects of other actions by Mr and Mrs T. These included the removal van parked within feet of their cottage windows and the "ugly board" close to their bedroom window. She said that the Council had actively engaged in denying them the right to live peacefully and had never offered them any form of support or help, but instead had shown condescension, disrespect, and had actively engaged in a smear campaign against them. She said the Council's failures amounted to "misconduct and misuse of public office i.e. malfeasance …." Her letter did not specifically ask the Council to take any action. (At interview, Mrs B said her letter was not a formal complaint, but to make the Chief Executive aware of their position having been made subject to the PCP.) The Director replied to Mrs B's letter on 5th March 2009 – paragraph 148 below refers).

146. A further PCP review meeting was held on 5th March 2009. The Director, Complaints Officer, Departmental Representative, Head of Planning Services, Principal Executive Officer, Public Protection Services Manager and Senior Solicitor attended. The minutes indicated that contact from Mrs B and Mr R with regard to planning and public protection complaints had increased, and that the Director had received emails "which was not in line with the method of communication stipulated within the PCP". It was agreed that the use of the PCP "would be broadened further to cover the whole Authority" and that "to avoid further rhetorical correspondence from the parties concerned … [the Council] would not be notifying the parties concerned of their continuing status under the policy. It was agreed that matters relating to the parties concerned are somewhat unique and therefore an exception is justifiable in the circumstances". The minutes said that this was based on the fact that previous correspondence to Mrs B and Mr R relating to the PCP had

attracted complaints relating to human rights issues from them. The minutes continued:

> "However, a letter to remind the complainants of the terms of the policy would be drafted and sent to the complainants. This letter will also state that emails and telephone calls in relation to complaints will no longer be accepted by the Authority. Due to the quantity and nature of the emails, measures will also be taken to block their email address".

147. The minutes also recorded the decision that the Council's Public Protection Officers would continue to investigate current noise complaints in relation to dogs barking, but further enquiries would be channelled through the single point of contact (namely the Director of Regeneration and Leisure).

148. On the same day (5th March 2009) the Director wrote to Mrs B and Mr R. He referred to her letter dated 19th February 2009 to the Chief Executive, and to a number of recent complaints she had made to officers across the Authority including planning enforcement, land drainage, antisocial behaviour, public protection and the legal department. He said that all correspondence regarding any complaints across the Authority must be by letter and addressed to him, and that "emails and telephone calls in relation to complaints will no longer be accepted by the authority". He said that any letters which did not raise any fresh complaints would not be acknowledged or responded to. His letter continued:

> "I am satisfied that all officers within the Authority have investigated your complaints about your neighbours professionally and thoroughly over the previous five years and we do not accept your suggestion of malfeasance in public office. The matters which you raise in your recent letter have indeed already been investigated. I also understand that your neighbour has recently lost his wife and although this is unconnected with the complaints you have made, I feel that this does need to be taken into

consideration when officers are investigating any new complaints made about your neighbour…

We are sad to hear that the long standing problems you have experienced with your neighbour have not been resolved. Your views and perceptions of the Authority is also regrettable. I would like to reassure you that both you and your neighbour have been treated with parity. It is unfortunate that matters have not dissipated and that we have to adopt such a robust approach to your complaints".

149. (The file indicated that Mrs B had sent emails to the Director in which she sought information about the type of agriculture the Council had "claimed" to be taking place at White Farm. Information about the Director's response dated 12th March 2009 appears in paragraph 37 above. At interview, Officer I said that the intention at the review meeting on 5th March 2009 was to block email access to officers, and that there was never any intention to block access to Councillors.)

150. In a further letter dated 13th March 2009, Mrs B said she questioned the lawfulness of the Council's action in denying her access to Councillors. She said that far being persistent vexatious complainants, she and Mr R had legitimately pursued the Council in order that their questions over dubious decisions and failures were answered truthfully.

151. On 1st April 2009, Mrs B wrote an email to the Director and requested a copy of the Council's PCP. (Mrs B's note on a hard copy of the email said it was sent by fax "my emails had been blocked!"). Mrs B repeated her request for the PCP by further letters dated 6th and 7th April 2009. On 16th April 2009, the Director wrote to Mrs B and explained that the Council's PCP was in line with statutory guidance to local authorities on complaints handling issued by the Ombudsman. On 28th April 2009, and following a further request (on 18th April 2009), the Council sent Mrs B a copy of the PCP. The letter said that her status under the policy was subject to review. He said "This does not affect your right to access Council services and these can be accessed by normal means".

However, all correspondence regarding any complaints across the Authority must be by letter and addressed to him. (Mrs B said that she was unable to access services as she had been advised that no one from any department should communicate with them).

152. Officer I said that on becoming aware that the restriction on emails was affecting Mrs B's right to contact councillors, she contacted the Council's IT Department on 21st July 2009 to ask that emails from Mrs B and her agent's email addresses to Councillor 3 be allowed. The IT officer replied the same day indicating that the Councillor's email address was excluded from the "global blacklist rule", but that there was no way to test except by checking whether an email to the Councillor had been received. In her response Officer I said she would contact the Councillor to check for correspondence. She said she then left the Council to go on secondment, and assumed that the measures taken by the IT Department were successful. Mrs B was not notified that the restriction on emails was not intended to prevent her from emailing councillors, and the restriction remained in place until April 2010 (paragraph 169 below refers).

153. Meanwhile, on 4th and 9th June, Mrs B wrote to the Director regarding unauthorised development on another part of White Farm. The Director replied on 10th June 2009 stating that action by the Planning Enforcement Division was "proceeding as per policy". (At interview, the Head of Planning Services said the Director's letter related to unauthorised development on another part of White Farm. The Council's files showed that in July 2009, Mr T submitted a planning application seeking retrospective consent for unauthorised development on another part of White Farm, which included the formation of hard standing for parking and storage of agricultural vehicles and implements. Planning permission was refused by the Council on 10th September 2009).

154. On 11th and 16th June 2009 Mrs B wrote again to the Director in which she referred to "further industrial work" being carried out on White Farm adjacent to the sheds. In her letters she said the intention was to create a further hard standing which would result in additional flooding to

her land. She asked whether planning consent had been sought, and offered video evidence. She said that Officers B and E, who had been contacted on their behalf by a friend, had said that they were unaware of the works at White Farm, and she claimed that the Director, who was their only point of contact, had failed to pass on their concerns. On 22nd June, Mrs B sent an email to the ward member (Councillor 3) asking him to investigate. On 11th August 2009 the Assembly Member sent copies of Mrs B's letters to the Council. The Council in its response dated 13th August 2009 to the Assembly Member said it had replied to Mrs B's letters on 17th June 2009. However, Mrs B said she received no response and the Council has not produced a copy of the letter dated 17th June 2009. (At interview, Officer L said that Mrs B's letter of 11th June 2009 related to the use of material quarried from White Farm to lay tracks elsewhere on the holding including the site on which the Council took enforcement action. The Director said he did not recollect Mrs B's letters of 11th and 16th June 2009, but agreed they related to development in the yard at White Farm adjacent to the sheds. He was unable to say whether Mrs B had received a specific response to that correspondence. However, in its comments on the draft report, the Council produced a copy of a letter dated 18th June 2009 which it said was its response. In the letter, the Council's Director informed Mrs B that the contents of her letters had been referred to the Planning Department and acted upon where appropriate, and that the position in relation to the "enforcement case" was as stated in his letter dated 10th June 2009.) Mrs B's complaint to the Chief Executive in January 2010 about the Director's alleged failure to respond to her correspondence is referred to in paragraph 158 below refers.

155. Mrs B's solicitors wrote to the Director on 23rd June, 11th August and 15th September 2009. They referred to the Council's use of the PCP and said the Council should not ignore their client's legitimate complaint regarding recent construction works at White Farm. They requested details of any planning applications which had been submitted and the Council's investigations into their clients' recent complaints. The correspondence was referred to the Council's Legal Officer (Officer K) who replied on 17th September 2009. He said the Council had replied to Mrs B on 10th June 2009 (paragraph 153 above) refers. His letter

contained no reference to Mrs B's concerns about works near the sheds at White Farm. Mrs B's solicitors replied to Officer K's letter on 22nd October 2009. They said that Mrs B and Mr R were concerned that the new area of hard standing was being used to store the agricultural implements when it was for that purpose that planning permission for the sheds had been justified. They said that their client had photographic evidence that the sheds were being used for stabling numerous horses which they said was in breach of the conditions of planning permission. Their letter also said that Mrs B had video evidence of approximately 9 or 10 different lorries and haulage vehicles entering and leaving the site on a daily basis and was concerned that the large number of haulage vehicles coming in and out of the site suggested that the land was used more as a haulage business than a working farm. They said that the Council had been asked to specify the type of agriculture which was being carried on at the farm which had led them to conclude that there had been no breach of any planning permissions, and asked that the agricultural use which takes place on the farm be confirmed. The Council's files contained no response to this letter.

156. Meanwhile, on 30th September 2009 a further review of Mrs B's and Mr R's status under the PCP was held. The minutes indicated that there continued to be a high level of contact regarding planning matters from the complainants or from people representing them. It was agreed that the Council would continue to enforce the PCP, and that correspondence from Mrs B and Mr R in relation to previous complaints would only be acknowledged.

157. Mrs B wrote to the Chief Executive and Officer K on a number of occasions between November 2009 and April 2010. She asked for the names of all the councillors who had allegedly complained of harassment by her and Mr R. She said that the Council's claim that she and Mr B had "persisted in contacting a number of councillors" was untrue, and that she had been informed by the Assembly Member that Councillor 2 had not made any complaint. She asked that the Council substantiate its claim. Officer K referred to the Chief Executive's letter dated 29th January 2008 in which reference had been made to numerous calls being made to Councillor 2. He did not initially refer to any other

councillors, but subsequently (in March 2010) said that Councillor 2 and another Councillor (who was not named) had expressed concerns. Mrs B claimed that the Council had overlooked her complaints about unauthorised activities at White Farm. She denied that she was a persistent complainant and said that the Council, in implementing the PCP in their case, had failed to comply with the policy in that it had not notified them of its decision or sent them a copy of the procedure. Officer K said that the PCP was lawful and reflected statutory guidance issued by the Ombudsman, and that Mrs B had been informed of the decision to apply the PCP "back in August 2007".

158. Meanwhile on 26th January 2010, Mrs B wrote to the Chief Executive complaining that the Director had not replied to her correspondence dated 11th and 16th June 2009 in which she had referred to new engineering works at White Farm adjacent to the sheds "which she referred to as "illegal buildings". She said these sheds were not being used for farming purposes, and that the PCP required that "new issues" would be dealt with impartially.

159. On 7th February 2010 Mrs B submitted a further complaint to the Chief Executive saying she had evidence of White Farm "being illegally used as a haulage and scrap depot" over a five year period which the Council had refused to view, and had accused them (in the television programme) of doctoring the evidence. She said the First Shed was not being used for the storage of agricultural implements but to stable horses in connection with a commercial business, and that the Council, when approving the Second Shed which had been proposed as an agricultural implements store, failed to establish why the agricultural implements were not being stored in the First Shed. She said instead, the Council had accused them of making unfounded allegations and, despite her "irrefutable" evidence, insisted that White Farm was a working farm. She enclosed with her letter recently filmed video evidence of White Farm "being used as a haulage depot, scrap yard, and commercial horse dealing business". Her letter also enclosed copies of pages from Mr T's equine website. These indicated that horses were bred and sold at White Farm and included photographs of horses taken in the First Shed. Mrs B's letter said that her evidence

showed that there was “no sign whatsoever of any agriculture, only haulage and scrap and a commercial equine business”.

160. The Council’s files indicated that the Chief Executive informed Mrs B that her complaints were being discussed by relevant officers and that a response would be sent shortly. Planning Officer E prepared a summary of the video footage submitted by Mrs B which included the dates and times of HGVs entering and leaving White Farm on 11 days between 4th and 28th January 2010. The footage and the Officer’s summary depicted 111 HGV movements and 3 movements involving a small pick up van/lorry as follows:

- Monday 4th January 2010 (18 movements, including a lorry loaded with scrap cars leaving);
- Tuesday 5th January (18 movements including an empty flatbed lorry leaving & a lorry with high sided sheeted trailer arriving);
- Wednesday 6th January (2 movements);
- Friday 8th January (I movement, scrap cars on lorry arriving);
- Wednesday 13th January (36 movements, including an empty flatbed lorry leaving);
- Sunday 16th January (1 movement, scrap cars on lorry arriving);
- Friday 22nd January (6 movements).
- Monday 25th January (4 movements including a lorry with scrap cars arriving);
- Tuesday 26th January (8 movements including a lorry with scrap load leaving);
- Wednesday 27th January (13 movements including a lorry with cab only arriving and an articulated lorry leaving);
- Thursday 28th January (7 movements).

161. The majority of the HGV movements were by vehicles belonging to Mr T’s haulage company. The times of their movements did not appear to contravene the environmental conditions attached to the Operator’s Licence.

162. The DVD recording also depicted quarrying activity, footage and commentary (by Mrs B) about agricultural implements stored outside the

sheds, and commentary about noise from metal cutting, grinding and banging. In the commentary Mrs B expressed her belief that scrap vehicles which she had seen being brought onto White Farm were being taken apart in the Second Shed. The recording also depicted footage shot on Sunday 24th January with specific comments about maintenance work on a lorry outside the sheds. Further footage shot on Saturday 30th January depicted horses in one of the sheds and several commercial haulage vehicles.

163. Officer L said he viewed the video footage and made an unannounced visit to White Farm on 16th February 2010 when he took photographs. There were no notes of the visit on the file. The photographs depicted agricultural implements stored outside one of the sheds, horses inside a shed and a tracked "hymac" machine in the quarry area. The photographs also depicted 10 HGVs (one of which appeared to be a horse transport lorry, a milk float or similar, discarded vehicle parts, tyres, lorry container backs, shipping containers and skips. Officer L said he also observed a lorry in the third barn which had replaced the dutch barn. He said he saw nothing more than what he had seen in the past and there was nothing in his view which evidenced a material change of use to a haulage depot.

164. On 15th March 2010 the Chief Executive replied to Mrs B's complaints. He said that her complaint about the Director was unfounded. He said that the Director had provided a response with the advice that the "Planning Enforcement Section was proceeding as per policy".

165. In his letter, the Chief Executive also said that no evidence of car scrapping or haulage operation was found at White Farm. His letter contained no reference to the equine activity shown in the photographs. He said that any letters which did not raise new complaints would not be acknowledged or responded to. (The Council has not provided copies of the Director's correspondence referred to in the Chief Executive's letter).

166. In her response dated 22nd March 2010, Mrs B described the Chief Executive's letter as "utter waffle" and said he had deliberately refused

to address her two complaints. She maintained she had not received a reply from the Director to her correspondence, and that the filmed evidence showed a haulage yard, unauthorised use of sheds, HGVs, a heavily used quarry, scrap cars entering the site, numerous scrap vehicles, but no agriculture. She said that she had, that day, filmed evidence of "at least 5 haulage vehicles parked to the rear of the sheds, plus two on front yard, in addition plant machinery, another JCB in quarry area which has recently been in use, scrap materials, together with acetylene gas bottles on site". She referred to filmed evidence of haulage activities dating back to 2005 and said that to deny such filmed evidence was to display "fanaticism, prejudice and bigotry". She requested a full report on her complaints. There was no immediate reply to her letter, but on 25th May 2010 (following a further review of the PCP – paragraph 170 below refers), the Chief Executive wrote to Mrs B and said that the Director would remain as her single point of contact with the Council.

167. On 24th March 2010 Mrs B sent copies of her complaint correspondence to a number of councillors. She re-sent the information on 12th April 2010 indicating she had problems with emails. She said she did so following advice from an Assembly official. One councillor replied and said that as it involved "complicated and drawn out legal issues" he had been advised not to respond.

168. On 12th April 2010, a senior Assembly official sent an email to the Head of Planning Services requesting a reply to her earlier letter dated 22nd May 2009, in which she said that Mrs B had claimed that their rights were being infringed by the Council's refusal to allow them access to an elected representative. Officer K replied on 13th May 2010, stating that the Council had no alternative but to treat Mrs B and Mr R as vexatious complainants and apply the Council's PCP to them in August 2007. He stated that the PCP did not prevent them from making contact with their elected representatives "although I have to inform you that there were issues in this regard previously".

169. Meanwhile, on 23rd April 2010, an officer in the Chief Executive's department asked for the email restriction on Mrs B's email address to

be lifted. Her email indicated that "legal" had confirmed that the Council could not stop members of the public having access to their elected representative. On 24th April 2010, the Chief Executive wrote to Mrs B and said that a restriction had "unintentionally been placed on all emails that come in to the Local Authority" from Mrs B's email address. He said it was not the Council's intention to prevent her from having contact with any elected member and that the restriction had been lifted with immediate effect.

170. The restriction on emails from Mrs B's email address was referred to as being "unlawful" at a further meeting to review Mrs B's status under the PCP on 4th May 2010. The minutes also indicated that complaints were now being directed to the Chief Executive rather than the Director. The minutes referred to the outcome of the investigation of Mrs B's complaint about White Farm and said that nothing new was indicated. In relation to the video footage submitted with the complaint, the Head of Planning (Officer L) was reported as saying "it was clear that the tape had been wound forward over a large period to show [lorries coming in and out of the farm in succession]". It was agreed that the footage would be referred to the Police to check for evidence of editing. Officer L was also reported as saying that "cars were being dismantled at the farm, however, there is an operator's licence in place that allows for this to happen. Although there were lorries on the farm along with agricultural machinery. There was nothing to indicate that lorries were being repaired on site". He also said that the lorry use was not at a level which required planning permission. (A subsequent email dated 7th December 2010 indicated that the video footage was not in the event referred to the Police, as although it had been "edited to show a constant flow of traffic to and from the property, it had not been tampered with …" At interview, Officer L said that the video footage submitted by Mrs B was only a snapshot of lorry movements over a few days and did not indicate a sustained pattern of increased lorry movements over a longer period. He said he did not recall making the statement about there being scrap lorries at the farm, and believed this comment may have related to the unauthorised development on another part of White Farm. He also believed that the reference in the minutes to the dismantling of cars being authorised by the site operating licence was incorrect. Officer

K, who was present at the meeting, said the minutes do not reflect how he would have used the term “unlawful” in relation to the restriction on Mrs B’s email. He said he had earlier advised that such a restriction in certain circumstances could be argued to be potentially unlawful).

171. In an email to colleagues dated 16th August 2010, Officer L reported on a meeting he had attended with the Welsh Audit Office in which Mrs B’s case was mentioned. The email stated:

> “The view was expressed [by Audit Officials] that there was a prima facie case of a business being operated from the site based on the latest DVD and given the address on the lorry company’s website as [White Farm]: on the latter point [Officer L] indicated that the operational base was at [another location] and showed the Traffic Commissioner’s reports which records the operating centre [at the other location]. As for the DVD [Officer L] expressed some doubt on the credibility of [Mrs B and Mr R] as witnesses they had ‘doctored’ evidence when recording noise for a dog barking complaint previously and the continuity in the DVD was suspect with lorries departing at high frequency ... It was also pointed out that this ‘evidence’ was gathered days after [Mrs T] has passed away! Nevertheless the site was visited … and the photographs that were taken were shown at the meeting, they showed horses, agricultural machinery, horse box and lorry, bedding material and no evidence of a scrap business in operation … they seemed satisfied that this was a case of a neighbour dispute that had escalated”.

172. On 3rd December 2010 the Chief Executive wrote to Mrs B in response to 4 letters in which she had asked for information about her status under the PCP. He confirmed that the last review had taken place on 4th May 2010, that she continued to be classed as a persistent complainant, subject to an imminent review. On 28th January 2011, it was agreed at a further review meeting that Mrs B and Mr R be “removed from the [PCP] register”. The minutes stated that the original reasons for the application of the policy had not been evident over the

preceding 6 months. The Director notified Mrs B and Mr R of the decision on 1st February 2011.

173. Meanwhile, on 25th November 2010, the Planning Inspectorate issued its decision in respect of two planning appeals relating to unauthorised development on the other part of White Farm. The decision letter indicated that the Inspector made an inspection of the yard and buildings complex at White Farm (adjacent to Mrs B's property) in connection with Mr T's claim that the development was reasonably necessary for agricultural purposes. The decision letter said (at paragraphs 24 to 27):

> "I observed that the main activities on the land appear to be grazing and keeping of some 20 to 30 coloured horses, including a row of stables and an enclosure within the second steel building to accommodate several more horses, the storage of a tractor with a few implements and about 10 HGV vehicles, including lorries, vans and an oil tanker in the second building and yard area. In addition, there is much visual evidence of lorry maintenance, with many lorry wheels and tyres, and the storage of other vehicle items in the open yard area. From the visual and documentary evidence in this appeal it appears that the appellant's main business activities are horse showing/trading and HGV haulage. Agricultural activity appears limited to horses grazing, production of a hay crop for horse fodder and some drainage improvement works [on the other part of the farm].
>
> Both of the modern large barns were erected for agricultural purposes, but their current use appears to be largely related to horses, vehicles and haulage activities. There were approximately ten HGV vehicles on the site at the time of my visit, but not all were in operational use. During the inquiry, copies of 2 VOSA licences were produced to show that [White Farm] is an operational base for six lorries and five trailers owned by two different haulage companies. I understand that the Appellant also operates haulage and scrap metal businesses at other licensed vehicle operating centres [in another area].

> The licensed operation and the use of the yard and buildings as a haulage depot, storage of related items and HGV maintenance area, combined with the keeping of horses, is not an agricultural use of the existing buildings and open yard. This appears to be in contravention of the conditional planning permissions for the buildings and may be unlawful without further planning permission for an apparent change of use.
>
> It demonstrates to me that there is very little genuine farming activity at [White Farm] and that other, possibly unauthorised, commercial activities are occupying the land and the buildings reserved by planning conditions for agricultural use…."

174. The decision letter also recorded Mr T's statement that "he will do as he likes with his own land". The Inspector said "I take this to mean that there is little intention to be restrained by … a conditional approval". (At interview, the Inspector (now retired) said that Mr T gave evidence at the inquiry on oath. According to the Inspector's notes, Mr T stated he was operating the haulage business from the Farm. A transport consultant who gave evidence on Mr T's behalf said that there could be 5 vehicles parked at White Farm and that planning permission was not required. Planning Officer E said he recalled Mr T saying that he had been parking up to 5 lorries at White Farm for over 10 years, and that on the occasion of the Inspector's site visit, White Farm fitted the description of a haulage yard although some of the HGVs were not in use. Planning Officer B said he informed the Inspector of the Council's view that the parking of 2 HGVs at White Farm was acceptable, and said he could see why the Inspector made the comments he had in his decision letter about the use of the holding as a haulage depot).

175. On 1st December 2010, Officer L wrote to Mr T's planning consultant and referred to the Inspector's comments and to ongoing complaints about the activities at the complex. He said that on the basis of what had been said at the inquiry, the Council intended to proceed with enforcement action on the basis that non-compliance with agricultural conditions had occurred, and the use of land for the storage of lorries, lorry parts and other non-agricultural vehicles without planning

permission. The letter sought comments within 21 days. No enforcement action was taken, but the Council subsequently (in November 2011) granted planning permission for the change of use of agricultural land to mixed use for equine stabling/agricultural land (paragraph 181 below refers).

176. Meanwhile, on 20th December 2010, Officer L responded to the senior Assembly official who had referred to the Inspector's decision letter. He said that a single visit did not provide a conclusive picture of the overall use of the site, and that the Inspector's conclusion was different to that of the Inspector who had determined the earlier appeal in 2005 (paragraph 16 above refers). He also said that whilst there may be evidence of a business involving horses, it may not be in the public interest to take enforcement action.

177. On 14th February 2011, Mrs B sent a lengthy email to Officer L, the Chief Executive and other officers. She referred to her complaints since 2005 and the Inspector's decision, and said that the Council had "orchestrated a systematic and prolonged attack upon [their] honesty and integrity", that senior officers had engaged in "corrupt practice" and had conducted themselves "shamefully and without conscience", that "corruption has to be taking place, or is it racism?", and that the "use of vengeful and malicious smear campaigns [was] … acceptable amongst senior officers". She asked for the lorry and large board to be removed from their respective positions by her boundary, and for other scrap which had been parked near her entrance to be removed. She also asked that the sheds be removed. The Chief Executive replied on 21st February. He said that no new matters of complaint had been raised which required action.

Subsequent events

178. In March 2011, the Council established from VOSA that White Farm was the licensed operating centre for 2 HGVs operated by Mr T's haulage company. In October 2011, the Council further established that it was also licensed as an operating centre for an HGV operated by Mr T's recycling company.

179. On 3rd August 2011, and following a complaint by Mrs B that Mr T was exporting freshly quarried material from White Farm, the Council served a PCN on Mr T. Planning Officer A said at interview that he established that the quarried material was being used to surface tracks on another part of White Farm, and that it would have been necessary for the material to have been transported along the public highway from the quarry to the other part of the farm. He said no breach of planning control was involved. He said that he saw 3 or 4 lorries parked in the quarry area, and was told that they had been taken off the road, and were for sale. He saw another lorry which displayed the logo of Mr T's recycling company and was in obvious use.

180. On 10th October 2011 Mr T pleaded guilty to failing to comply with the enforcement notice relating to the unauthorised development of the other land at White Farm. A conditional discharge for 2 years was imposed and he was ordered to pay costs. He had complied with the enforcement notice a few days prior to the hearing. The Council said he had failed to attend earlier hearings in September, and a warrant had been issued for his arrest with bail attached.

181. On 10th November 2011, the Council granted planning permission for the change of use of agricultural buildings at White Farm to mixed use for equine stabling/agricultural and parking of equine vehicles, together with the retention of a lean-to stable building at White Farm. The consent related to the First Shed and the Third Shed (which had replaced the former dutch barn), and was granted subject to a condition which required the Council's approval of a site waste management plan. The planning officer's report on the application referred to the Council's earlier concerns regarding the low level of agricultural activity on the holding when it refused consent for the First and Second Sheds. It stated that the Planning Inspectorate, in granting planning permission for the First Shed had, however, accepted that sufficient agricultural justification had been provided by the applicant. In relation to the Second Shed, the report stated: "the Head of Corporate Property did subsequently offer his support to the application and the said shed was built under the provisions of the [GPDO]". The report contained no

mention of the Planning Inspectorate's decision letter issued in November 2010.

Information provided by VOSA on behalf of the Traffic Commissioner

182. VOSA confirmed that White Farm is named as an operating centre in 2 Operator's Licences. The first, issued on or before 1999, related to Mr T's recycling company, and was varied in March 2003 to authorise the use of White Farm as an operating centre for one HGV but no trailers. The licence also authorises the parking of 10 HGVs and 15 trailers at another site elsewhere.

183. The second operator's licence was issued in March 2001 to the operator of the haulage company (Mrs T), and authorised the parking of 5 HGVs and 2 trailers at another site in the locality. It was varied in December 2005 to allow the parking of 2 HVGs (but no trailers) at White Farm. The variation was granted subject to "environmental conditions". These prohibited vehicle movements before 6.30 am or after 7 pm on Mondays to Fridays, before 6.30 am or after 1pm on Saturdays, and no vehicle movements on Sundays or Bank Holidays. The vehicles were restricted to a weight of 32,000kgs, and no maintenance of vehicles at the operating centre was permitted save routine, minor repairs and or emergency repairs.

184. The variation of the Operator's Licence in December 2005 came about following an investigation by VOSA/Traffic Inspectors into a complaint received in January 2005 via the local MP that White Farm was being illegally operated as an operating centre. Observations had indicated that on 10th March 2005, no vehicles were parked at the designated operating centre, but 4 appeared to have been parked overnight at White Farm. A Traffic Examiner and a Vehicle Examiner had also attempted a site inspection at White Farm in January 2005 when Mr T was verbally abusive. Subsequently, Mrs T applied for a variation of the haulage company's operator's licence to add White Farm as an operating centre for 2 vehicles. In her correspondence, Mrs T referred to harassment by her neighbours (Mrs B and Mr R). The application was advertised and Mrs B and Mrs R submitted objections.

A senior vehicle examiner visited both Mrs T and the neighbouring occupiers, Mrs B and Mr R. The application was heard at a public inquiry in December 2005. Mrs B and Mr R attended. There was no attendance or representation from or on behalf of the Council.

185. Both licences were reviewed at a public inquiry in April 2010 which was concerned with disciplinary matters. These included the failure by the licensed operator (Mr T) to disclose a relevant conviction (common assault in June 2007), Mr T's conduct towards a Traffic Examiner in January 2005, certain roadworthiness matters, failure to comply with licence undertakings and that the licence holder may no longer be of good repute. The licences were confirmed on Mr T giving a number of additional undertakings and a formal warning was issued to the haulage company with regard to its future conduct as an operator.

The evidence of Mrs B, Mr R and their surveyor

What Mrs B and Mr R said

186. Mrs B and Mr R said that when they purchased their property (December 2003), there was a dwelling, a dutch barn, another stone building (used as a stable), a cowshed and a portacabin at White Farm. The portacabin was later removed when the cowshed was converted to an office and tack room. Soon after they moved into their own property they observed several heavy goods vehicles parked on the site now occupied by the sheds. 5 lorries were marked with the name of Mr and Mrs T's haulage business and there were three other lorries together with 2 trailers. They were awoken early in the mornings by the sound of cars arriving and then 4 or 5 lorries being started up and driven away. These would return between 5 and 7 pm. Another 2 or 3 lorries would be driven away and returned during the day.

187. Mrs B said that details of Mr and Mrs T's equine business comprising the breeding, showing and selling of horses have appeared on their neighbour's website for several years. There are up to 30 horses on the holding at any one time, as well as a number of donkeys. Mrs B said she has no objection to the use of the holding for equine purposes. However, she claimed that the Council is inconsistent when it appeared to accept in their neighbour's case that horse related activities

were sufficient justification for agricultural sheds, but not so, in other cases when it came to applications for agricultural dwellings.

188. They said that soon after moving in, Mr and Mrs T introduced themselves and informed them that the former owner of Mrs B's property had complained about the haulage business. Mr T informed them that he had told the former owner to "F*** off". Mrs B said they later believed this remark was intended as a warning. They said that Mr and Mrs T, it seems on becoming aware of their complaints to the Council about the haulage related activities, then harassed and intimidated them over the next few years.

189. Mrs B said that when they applied for planning permission for the cattery (during 2004), they asked Planning Officer B about the haulage related activities on White Farm. It was as a result of his comments (in which he asked how they were getting on with their neighbours) that Mrs B inspected the Council's planning files and discovered that a previous owner of their property (not their vendor) and 3 other neighbours had complained to the Council since 2001 about the haulage related activities on the holding. They were also advised by the Countryside Council for Wales and an organisation which advises landowners that there had been problems with the use of the neighbouring property. One of the neighbours informed them that he had been approached by Mr and Mrs T in a very threatening manner on the forecourt of a petrol filling station because he had complained. They said another former owner of their property had also complained about noise. However, the person from whom they purchased their property did not disclose the existence of any problems or difficulties with the use of White Farm or its occupiers.

190. Mrs B and Mr R said that during 2004, their contact with the Council about the activities on White Farm was by telephone, and they were made to feel that they were making it up. They said the Council also claimed not to have the resources to monitor out of hours lorry movements (namely before and after the normal working day). Mrs B said she then approached their local Member of Parliament, who wrote to the Council on their behalf. She said by this time she was scared of

her neighbours because of their threatening and intimidating behaviour. They said the Council's former Enforcement Manager (Officer F) visited them in 2005 and informed them that their neighbour's haulage operating base was elsewhere, and that the Council could not take any action unless there was evidence. He suggested that they take photographs but Mrs B said she informed him that they would make video recordings of the haulage related activity. They did so in 2005 and during telephone calls to Officer F, and at a meeting at which their surveyor was present, offered him the footage, but he refused to view it. He did not give any reasons. During that meeting (in May 2005), their surveyor had also said she had spoken to the owners of Mr and Mrs T's licensed operating centre and established that it was not being used by Mr and Mrs T. They offered the footage to Officer L also, but he likewise refused to view it, without saying why. They wrote to the Council on several occasions during 2005 about the number of lorries being operated from White Farm.

191. Mrs B said that the only time Officer L visited them was on 12th July 2005. She said that at the meeting they explained their view regarding the non-agricultural HGV and equine related activities taking place on the holding. They also mentioned the blue lorry. However, the Head of Planning quoted planning law and said he would look into it and get back to them. They are dissatisfied with the response contained in his letter dated 29th September 2005. They consider that his statement that the lorries had "agricultural justification, hobby, personal transport and related to haulage business" was foolish and flippant as it was difficult to see how an HGV could be used for personal use, except possibly to drive to one's place of work. It was similarly foolish and flippant of the Council to view the portacabin as a "hobby shed", as when they first met their neighbours, they were invited into the portacabin, and saw no evidence of any hobby or recreational activity. It was clearly an office used in connection with the haulage and equine businesses.

192. Mrs B said the Council was unreasonable when it failed to take effective action in respect of the large removals lorry which their neighbours had parked close to their boundary in March 2005. If it was genuinely being used for storing animal feed, then it is more likely to

have been placed near the yard where the horses were, rather than at the bottom of the paddock (which slopes down from the yard) adjacent to the boundary with their cottage. Mrs B said that if the holding was no longer being used for agricultural purposes, then there was no basis for the lorry remaining in its present position outside planning control.

193. The Council was similarly unreasonable when it decided it was not expedient to take enforcement action in respect of the large board (which the Head of Planning later described as a “privacy board”) erected on the boundary adjacent to their bedroom window. Mrs B said Council officers did not visit to inspect the board from their property or to assess its impact on their residential amenities. In her view, the Council was unreasonable when it failed to do that. Its decision was not in the public interest as it set a precedent for any householder, seeing a security camera on a neighbouring property, to erect a large “privacy board” without obtaining planning permission. Furthermore, Mr T had 11 security cameras located around his property, which seemed an excessive number, and they felt they were reasonably entitled to install one at the back of their property (which they did not operate) following the pig faeces incident. They said they have removed the security camera, and the pigs ceased to be kept on the holding about 2 or 3 years ago. However the board remains.

194. They said they did not object to the planning application in respect of the First Shed as they were scared of the neighbouring occupiers. However, they were informed by Planning Officer B and their local councillor (Councillor 3) that it would be refused. They agreed with the Planning Officer’s concerns about the size of the proposed shed and his assessment that there was insufficient agricultural activity on the holding to justify the new shed. They said that the shed was erected soon after planning permission was granted, and has been used for stabling horses ever since. Stalls have been erected inside. They observed this on one occasion when the large shed doors were open, and they took photographs. Their neighbours’ equine website also shows photographs of horses taken inside the shed. They said that at the planning inquiry held in September and October 2010, Mr T informed the Inspector that

the First Shed was used for horses, and that he did not sell the hay cut on the holding but used it for the horses.

195. They said they objected to their neighbour's planning application in respect of the Second Shed, and agreed with the Council's assessment that there was insufficient agricultural activity on the holding to justify the grant of planning permission. By this time (September 2006), 4 head of cattle had been brought onto the holding and the Officer's report said there was little evidence of the prolonged keeping of livestock on the land. However, they said the report was incorrect when it referred to the holding being used as a base for 2 haulage lorries, as up to 10 lorries were being operated from and parked there. In their view, the primary use of the holding was (and remained) the haulage related business, followed by the equine use, and that the only agricultural activity on the holding was (and remained) the cutting of hay and the making of haylage to provide winter feed for the horses. They also disputed the statement in the Officer's report regarding the use of the First Shed for the storage of implements and the parking of a tractor and horse transport lorry, as it was being used for the stabling of horses.

196. Mrs B said that the Council's subsequent decision in January 2008 to allow the development of the Second Shed under the GPDO represented a complete "U" turn from its earlier decisions in 2004 and 2006 that there was insufficient agricultural justification for the 2 sheds. She said there were no grounds on which the Council could reasonably determine that there was sufficient agricultural activity on the holding to justify the Second Shed being allowed under the GPDO. The haulage and equine uses had continued as the main uses on the site and there was no additional agricultural activity. The First Shed was still being used for horses, and there was, therefore, no scope for it to be used for cattle as had been represented by the applicant when giving notification of the proposed Second Shed. The other long stone building had been converted into stables and the dutch barn was being used for the maintenance of the lorries, and had a large maintenance pit for that purpose. Even the presence of the 4 bullocks (until December 2007 when Mrs B said they were removed from the holding) would not have made a difference, as the Council had already taken this into account

when it initially refused planning permission for the Second Shed. In their view, nothing had changed to warrant such a "U"-turn and the Council's decision was unreasonable. They said that the Council's letter dated 28th February 2008 in which it explained its understanding of the need for greater storage at the farm was wrong. The Council's letter referred to large amounts of hay and agricultural implements being stored out in the open. This was incorrect, because their neighbours made haylage (as distinct from hay), which is wrapped up in plastic covered bales and is always stored in the open. Furthermore, their neighbour had chosen to use the First Shed for non agricultural purposes, (namely the stabling of horses) rather than for the storage of agricultural implements.

197. They were also aggrieved that the Council had refused their request for the matter to be considered by the Planning Committee. They said they were not aware that under the Scheme of Delegation to officers, there was scope for matters delegated to officers to be brought to the attention of the relevant committee, for example, in exceptional cases.

198. Mrs B and Mr R said that as far as they could tell, the Second Shed was used in connection with the haulage and scrap business operated by Mr T. Prior to the planning inquiry at the end of 2010, they could hear the sounds of machinery and cutting equipment being operated in the shed, and had observed oxy-acetylene cutting equipment in their neighbours' yard. They had also seen lorries loaded with cars stacked on top of each other being driven onto the holding. However, they have not heard such sounds since the planning inquiry. They said that the sheds, by virtue of their size, location at an elevated level above their cottage, and their appearance have an adverse effect on their amenities.

199. Mrs B said that the Council's decision to grant planning permission for the Third Shed (which replaced the dutch barn) was also inconsistent with its earlier assessments in 2004 and 2006 that the level of agricultural activity on the holding was insufficient to justify the development of agricultural sheds. By this time (November 2008),

nothing had changed to increase the agricultural activity on the holding, and the cattle had been removed from the holding. The Planning Officer's report on the application was incorrect and misleading about the purposes for which the First and Second Sheds were being used. Had officers looked inside the sheds, they could not have mistaken their use for horses and other non agricultural purposes. Mrs B said that the Third Shed is used for lorry maintenance, and the garaging of a horse transporter lorry.

200. Mrs B said the Council has never explained to them what it considered to be the agricultural activities taking place on the holding which warranted its description as a "working farm" and justified the development of the Second Shed and planning permission for the Third Shed. Instead, the Council avoided the issue. She had pursued the matter further with the Director of Regeneration and Leisure in December 2008 and early 2009 but felt she was being fobbed off.

201. At the planning inquiry at the end of 2010, Mr T, in his evidence on oath said he had been operating either 5 or 6, or 6 or 7 heavy goods vehicles from the holding for 10 years, and this was confirmed by another witness who gave evidence on his behalf. Mr T also admitted that he bred and sold horses for profit and that the cutting of hay was for the horses only. He also said in his evidence that he could do what he liked. Mrs B said that this evidence was confirmation of everything she had been complaining to the Council about, and that the activities and operations being conducted on the holding had not changed by the time of the Inspector's site visit. There had been no intensification of the haulage related uses over what officers had seen prior to that date, for example, a Council planning officer had visited and seen 6 lorries in 2002 and then served a PCN on their neighbours. There had been complaints since 2001, and the Council had been referred to their neighbours' business websites regarding the non agricultural businesses being carried on and to Mrs T's statement during court proceedings that the haulage business did not have planning permission. The Council had also been offered their own filmed footage of lorry movements. Mrs B did not consider, therefore, that Council officers could claim that they were not aware of the scale of the haulage and equine related activities

or that these activities had, for example, intensified in the months prior to the planning inquiry.

202. They said they had also contacted their Assembly Member and officials at the Welsh Assembly Government because they were not making any progress with the Council. They also contacted the Traffic Commissioners in 2005, and again in 2011 when she asked if they could assist in relation to a security light on White Farm which shone directly into their bedroom. The Traffic Commissioners were unable to assist however, the security light is no longer being activated.

203. Mrs B said she approached the media in the summer of 2005 because she and Mr R felt they were being accused of making unfounded complaints by the Council, and because of their neighbours' threatening and violent behaviour. They felt that if this was exposed in a public way, their neighbours would back off. They offered their filmed footage of haulage activities to the Council prior to the programme being broadcast.

204. By the time of one of the later broadcasts (June 2006) the Traffic Commissioners had issued an HGV operator's licence which authorised the operation of 3 lorries from the holding. So, on the basis of Councillor 1's statement in the programme (to the effect that the operation of 3 or more lorries was deemed to be a business and a change of use), a material change of use had occurred, but the Council did not take any action.

205. They are aggrieved at the claims made by the Council's Head of Planning (Officer L) that they falsified the filmed footage which appeared on the television programme and the later footage which they filmed in 2010 and sent to the Chief Executive. The claim was first made in Officer L's letter dated 13th May 2008 to the Head of the Planning Division at the Welsh Assembly Government, and prompted the producer of the programme to write to the Assembly official objecting to the implied claim that the programme had breached the Broadcasting Code by misrepresentation or deception. The claim in relation to the later footage was made at the PCP review meeting in May 2010, when

Officer L also said that the footage should be sent to the Police to see if it had been tampered with, but may not have then told the officers who had heard the statement that the footage had not been tampered with. He made a similar claim at a meeting with officials from an external body in August 2010. Mrs B and Mr R claimed that his statements about the footage being doctored is a lie, because each segment shown was timed and dated. The footage was filmed on a CCTV camera which lays down the information onto a hard drive and cannot be meddled with. They said he also lied when he claimed at the meeting in August 2010 that they had filmed the footage only days after the death of their neighbour. Mrs T had died in December 2008, and they did not film any footage until September 2009 which they subsequently sent to the Council.

206. They said that Officer L could not have been mistaken when he said this. In their view, this comment when taken together with his other comments about them, indicated that he appeared to want to discredit them. He was not being impartial and appeared to be bending over backwards to help their neighbours. By making these claims, they felt that the Council was besmirching their characters.

207. They said they resumed filming the lorry movements in and out of the holding in March 2010 after the Chief Executive had discounted the footage sent to him in February 2010, but did not send it to the Council. They did not think there was any point as it would be rejected again however, they presented it to the Inspector at the public inquiry later in the year.

208. They said that the intimidation and harassment by their neighbours commenced soon after they contacted the Council in 2004 about the haulage related activities on the holding. The harassment and intimidation included interference with their use of the access way to their property over which they have a right of way in a number of ways. This ranged from whistling or calling out to them in a taunting or ridiculing way, to chain locking the gate across their access way and being verbally and physically abusive when asked to unlock it. Mrs B said that on the advice of a police officer, she purchased a camcorder to film these incidents. She had also been advised by a member of the

Crown Prosecution Service to have a camera available to record incidents of anti social behaviour. In January 2005, their neighbours erected motorway style crash barriers and gates on the access way, which they locked. Mrs B said this action caused her to become unwell, and she was unable to leave the property for several weeks. She said they eventually secured the reinstatement of their access way by means of a civil action against their neighbours, but this took 3 years to come to court, and was settled on the day of the hearing at their neighbours' request.

209. Other incidents which they found intimidating included throwing the contents of their rubbish bags (which had been put out for collection by the Council) along their access way, placing sheep's skulls in trees. Mr and Mrs T also followed Mr R to his place of work and photographed him. He said he felt threatened, as he was a driver and the photograph could have been used to cause him harm. Mr T has a number of previous convictions, including 5 convictions for assault, the latest of these was in February 2008 when he was convicted of assaults on 2 women. Mr T frequently burned tyres at night, and there was an incident in which a driver (who had delivered a load of tyres to White Farm) dropped his trousers and indecently exposed himself when he saw he was being filmed by Mrs B.

210. Mrs B said that the Council's officers (Officers F and L) were aware of these incidents. She said that she had contacted the Council's Anti- Social Behaviour Coordinator for help during the summer of 2005, but the notes of the meeting on 10th August 2005 appeared to trivialise their complaints by including a comment she had made about the removal of trees. In her comments on the draft report, Mrs B said Officer L failed to inform the meeting of Mr T's history of violence or of the threats made to the previous owners of their property. Had he done so, and had the frightening incidents of harassment and intimidation which they had earlier reported to the Ant-Social Behaviour Coordinator been discussed at the meeting, it is possible that further consideration might have been given to obtaining an anti-social behaviour order against Mr and Mrs T.

211. She is aggrieved at the claim recorded in the notes of the meeting that she made “frivolous/possibly malicious complaints”. She believed that Officer L made the comment about “frivolous/possibly malicious complaints” because he also accused them of doctoring video evidence, and because a police officer had informed her that he had been assured by Officer L that her complaints were completely without foundation. They are also aggrieved at the claim that they made malicious complaints, as recorded in an email dated 5th June 2008 between the new Anti Social Behaviour Coordinator and the Legal Officer (Officer J). The Council has not produced any record as to what “malicious” complaints they are alleged to have made. They said that either they (Mrs B and Mr R) were lying when they made allegations about unauthorised activities on their neighbours’ holding, or Council officers were lying when they said they had investigated and found no such activities taking place, despite the history of complaints dating back to 2001, their neighbours’ business haulage and equine websites, their own video footage which the Council refused to look at and which then appeared on the current affairs television programme, their neighbour’s admission during court proceedings regarding the use of the site for haulage operations without planning permission, and finally their neighbour’s admissions during the recent planning inquiry regarding the haulage and equine related uses on the holding.

212. They said they experienced very little harassment after Mrs T died in December 2008. However Mr T continued to operate his haulage and related businesses from the holding and to keep horses.

213. Mrs B and Mr R said they were wrongly accused of pursuing a vendetta against their neighbours by Officer L when he referred to the existence of a vendetta in his letter dated 2nd April 2007. They said the Council never substantiated this claim. They had not pursued a vendetta, but were the victims of a vendetta being waged against them by their neighbours because they had complained about their operations on the holding. In support of this view, they pointed to the admission made on behalf of Mrs T during court proceedings that the cockerel nuisance amounted to harassment. They are also aggrieved that Mr R was accused of being threatening to neighbours in an email from

Councillor 2 dated 16th January 2008 which appears to have been sent after a discussion with Officer L. Mr R said he has never threatened anyone, other than to tell Mr T (during an exchange regarding the access way which featured in the television programme) that if he was 20 years younger, he would take his head off. They accepted that the comment could be interpreted as a threat, but was qualified by the reference to Mr R's age (he is 75 years old), and he was driven to it by provocation.

214. Mrs B and Mr R said the Council's Environmental Health Officers took up their complaints about the dog barking nuisance. However, they said Officer L was unreasonable when, in reporting on a meeting in his email dated 16th August 2010, he accused her of doctoring the dog barking evidence gathering exercise without informing those at the meeting that a statutory nuisance was subsequently recorded. Mrs T was also successfully convicted in respect of nuisance from cockerel noise. Mrs B said their neighbour had undertaken quarrying operations on the holding on and off from the outset, and it had always been a nuisance. There was a major quarrying episode in January 2008 when Mr T was using the quarried stone to lay a concrete surface for the Second Shed. They did not know that the Council's persistent complaints policy had been applied to them at that stage. Mr R had telephoned the Planning Officer B who said he could not discuss it, and referred him to the Council's Director of Regeneration and Leisure. They contacted the Council's Environmental Health Officers, and at their request, completed a log of the quarrying. The quarrying activity then ceased, but was resumed in July/August 2008, when the Council served an abatement notice. Since that time, Mr T has from time to time, resumed quarrying operations. They said that White Farm is in a designated Site of Special Scientific Interest and Special Area of Conservation, and that Mr T should, therefore, notify the CCW of quarrying operations. However, CCW then informed them that it was a matter for the Council, who informed them that it was permitted under the GPDO. Mrs B said that apart from haymaking, there was no other agricultural activity taking place on the holding, and quarrying is not necessary for haymaking. It was to raise the level of the land on which to erect the sheds, and to create additional hard standing. In so doing,

they increased the height and slope of the bank which rises from their boundary up towards the sheds.

215. Mrs B and Mr R said the Council's Persistent Complaints Policy should not have been applied to them in the first place, and when it was, the Council failed to comply with the Policy. In their view a persistent complainant is a person who constantly complains about all manner of things without validity. In their case, they had complained about the operations on the neighbouring property and the Council's failure to deal with them, and had provided evidence in support of their complaints which the Council had ignored. They maintained that their complaints were valid in that they had put forward evidence which showed there had been a history of haulage related activities taking place on the holding since 2001. The portacabin was an obvious indication that the haulage operation was being run from the site, as the drivers would arrive on the holding in their private vehicles, gather at the portacabin, prior to driving off in the lorries. Their neighbours' equine and haulage websites had also indicated the nature of the business operations on the site. It was also obvious that horses were kept in the First Shed, and for the Council to say its officers had visited and seen no sign of unauthorised activities in that shed was, in their view, unacceptable. They said they did not keep, for example, a log of lorry movements because it was such common knowledge that the haulage business was being operated from the site. They also said that as their word had not been accepted and their photographic and filmed evidence refused, it was unlikely that any written logs would be accepted as the Council could have suggested (as they did in relation to the filmed evidence) that they were falsifying the evidence.

216. They said they had persisted with their complaints because of the Council's continuing failure to take action with regard to the illegal activities being carried on the holding. Their action in persisting did not make them unreasonable complainants. Everyone has a right to complain under the Human Rights Act. This was not a right to complain and tell lies, but a right to complain that something was genuinely wrong and should be put right where the Council had powers to take action.

217. Although the PCP was applied to them in July 2007, they did not know of it until February 2008. They said that as of July 2007, they were not aware of the Council's complaints procedure, and did not recall having made a formal complaint about the Council's failure to take action in respect of White Farm. The Council had not, prior to July 2007, informed them that it found their manner of communication unacceptable, or warned them of its intention to apply the Policy in their case. Mrs B said that when she received the letter dated 17th August 2007 from the Director of Regeneration and Leisure informing her that all planning related correspondence was to be sent to him, she believed initially that her correspondence was finally being taken seriously and that the Director was dealing with it personally because of the seriousness of her concerns. However, that proved not to be the case. Mrs B said they had not been notified of procedures relating to the PCP as claimed by its legal officer (Officer K) in his letter of 3rd March 2010. Nor had they received a letter from the Council's Chief Executive in August 2007 as claimed by the officer. The only letter they received in August 2007 regarding their communication with the Council was from the Director of Regeneration and Leisure, but this contained no reference to the Council's PCP.

218. Mrs B said that the statement in the Policy referral form to the effect that they had refused to allow enforcement officers access to their property since 2005 was untrue and would have misled the officers who decided to apply the Policy in their case. The only meeting referred to in the Policy referral form was the meeting on 12th July 2005 to discuss their complaints about unauthorised activities on the neighbouring holding. There was no other meeting at which they were warned of the Council's intention to apply the Policy to them if they did not, for example, modify their behaviour. The first they knew that the Policy had been specifically applied to them was when they received the letter dated 27th February 2008 from the Director of Regeneration and Leisure in which he referred to their efforts to contact Councillors and said that this could amount to harassment. This letter also referred to a previous explanation having been given for the Policy being applied to them. However they had not received any such earlier explanation, and the Council's response to their Freedom of Information request did not

produce an earlier letter which may have been sent, but which they had not received. They said they were horrified when they received the letter. They did not know whom they were alleged to have harassed. It could only have been a reference to Mr R's attempts to telephone Councillor 2 about the quarrying noise in early 2008. They had contacted Councillor 2 because their local councillor was not returning their calls. She also lived locally and was, therefore, aware of what was going on at White Farm. They were not aware that she had made a complaint and saw nothing in the material produced in response to their Freedom of Information request to indicate that anyone had complained. They did however see a heavily redacted email dated 16th January 2008 from Councillor 2 in which only the top line of text was revealed, and eventually (after 2.5 years) obtained an unredacted version, but only after Mr R made a Freedom of Information request. They used their telephone records from which to make a record of the occasions when they called her number and when they had spoken to her. As of the date of the email, Mr R had only spoken to Councillor 2 on 3 occasions over a period of 2 weeks. They said that Councillor 2 in her contact with them, had been very pleasant, helpful and supportive. She had given no indication that she was unhappy about their calls and had even agreed to visit them. Mrs B and Mr R said that when the Council accused them of harassing councillors, they understood the Council to be saying that because the PCP had been applied to them, they should not even have been contacting Councillors. However, the Council had never informed them that they should not contact councillors. They had also been advised both throughout and at this time (early 2008) by officials in the Welsh Assembly Government's Planning Division to contact their councillors.

219. In addition to not being told that the Policy had been applied in their case, they were not told, for example, they could appeal. It was not until they had made 4 requests did the Council send them a copy of the Policy. The Policy stated that they should have been informed and given reasons for the decision to apply it in their case. Had they been told, they would have asked for an explanation, and refuted the Council's claim that they had made "unfounded accusations".

220. Mrs B and Mr R said that although the Council's Policy required its application in individual cases to be reviewed every 6 months, as far as they could establish the first review was not held for 13 months. Furthermore, conscious decisions were made not to inform them of the outcome of reviews. At some stage, they became aware that the restriction on communications with the Council was extended from planning matters to all Council matters. The Council said it would only address "fresh issues", and that anything else which had been referred to in the past could not be raised again. They believed that the decision to block emails from their email address to all Council departments, officers and members was made at one of the review meetings. Subsequently, after a challenge by Mrs B, the Council was advised that this was illegal. The Council then informed them (by means of the letter dated 24th April 2010 from the Chief Executive) that the blocking of emails was "unintentional" implying that it was an accidental error. Mrs B believed that the Council was being dishonest to describe it as an error, when information she had obtained under the Freedom of Information Act indicated that the action had been deliberate. Email is an accepted medium in which to communicate with the Council. Furthermore, the Council had no right to interfere with their right to communicate with their elected members. As a consequence of the Council's action to block their emails, they had to write and post letters to the Council.

221. The purpose of their letter to the Chief Executive in February 2009 was to make him aware of their position having been made subject to the Policy. They then complained to the Chief Executive in 2010, sending him new video footage of lorry movements from their neighbour's holding. However, the Head of Planning had said he could not see any new evidence, and informed them that they were still subject to the Policy. They received a brief letter from the Council in February 2011 informing them that the Policy no longer applied to them.

222. Mrs B and Mr R said it was demeaning to be made subject to the Policy, and it made them feel very vulnerable. Their neighbours could carry on with activities which they had found disturbing and distressing. However, they (Mrs B and Mr R) could not say a word, as they had been

prohibited from making complaints to the Council. They had to use their friend to help them obtain information, for example, in relation to the GPDO determination of the Second Shed. He had also helped to pursue other matters on their behalf. When Mr T started to make the hard standing in 2009, Mrs B wrote to the Director of Regeneration and Leisure (on 11th June), heading her letter "Fresh Issues". In her view, further engineering works were taking place and she asked if these required planning permission. However, the Director ignored her letters, and she eventually complained to the Council's Chief Executive about the Director's failure to address these new issues. Mrs B said she did not know what the Chief Executive was referring to in his letter dated 15th March 2010 when he said that the Director had previously provided her with a response regarding alleged construction works on White Farm as she had not received anything from the Director in response to her latest concerns. She considered, therefore, that the Chief Executive's letter was misleading. She had raised a fresh issue because her neighbour was laying a new large area of hard standing on which to store his agricultural implements. He already had 2 sheds, neither of which was being used for agricultural implements (but for horses and the haulage associated operations), and he needed the extra space for his agricultural implements.

223. Mrs B and Mr R said they have the benefit of a covenant in their title deeds which should have protected them from obnoxious noise or nuisance. However, they felt there was very little chance of succeeding in legal action to enforce the covenant because the Council would have supported claims by their neighbours to the effect that they were making unfounded and malicious allegations. However, they felt that the Planning Inspector's report supported their claims.

224. They said they were not able to build the cattery as planned and have, therefore lost the opportunity of earning an income from this means. Even though they obtained planning permission, they were unable to build up the necessary funds after Mr R had to give up lucrative work in England to support Mrs B during the harassment and intimidation by their neighbours. Although he has part time work in the area, this is not as lucrative. They also had to use their savings to

pursue the civil case against their neighbours regarding the right of way. They also felt that potential customers would have been intimidated by their neighbours who filmed people coming and up down their drive. They did not apply for planning permission to convert the barn for bed and breakfast use, but the Planning Officer was supportive, indicating that such an application was unlikely to be refused. They also incurred legal fees in retaining solicitors to write to the Council on their behalf after the PCP was invoked, as they felt that the Council might have been more inclined to respond truthfully to a solicitor's letter than it had to them.

225. Mrs B and Mr R said the effect of their neighbours' threatening and intimidating actions and the Council's failures to take their concerns seriously was catastrophic. They both suffered health problems for which they received medical treatment, and Mrs B was unable to leave the property for a while. They felt very isolated as well as exhausted and drained after what has been an ongoing battle over 7 years which affected their own personal relationship as well as wider relationships. They said they were advised by valuers retained by the television programme that the value of their property had been significantly reduced by the unauthorised activities on the neighbouring property. They felt that their property was unsaleable, and that they could neither afford to sell it, nor remain.

Mrs B's comments on the draft report

226. Mrs B said that the statements of the Officers gave a very clear picture of 2 officers (namely Officer F and Officer L) directing operations and misleading others. She said Officer F's comments at interview demonstrated prejudice against both her and Mr R. His obvious contemptuous attitude towards them showed a total lack of objectivity, and that it would be reasonable to assume that his opinions and conspicuously held feelings about Mrs B would have been passed onto other officers. This in turn would have coloured their judgement and objectivity when dealing with matters pertaining to White Farm, making it impossible for her and Mr R to be treated fairly by other officers.

227. Mrs B said that derogatory remarks made about her by Officer F cast a slur on her character, and she refuted many of his claims, including the claim that she had reported her neighbours to an animal charity. She also refuted his claim that she was already in dispute with Mr and Mrs T by the time she complained to the Council about their haulage operations. She said the dispute about the access way would not have occurred had the Council, knowing the history of complaints and intimidation by Mr T towards the previous occupiers of their property and his violent and volatile nature, met them during 2004 to discuss their concerns and monitored and taken appropriate action in respect of Mr T's activities without insisting that they first lodge a formal complaint. Mrs B said she was living on her own at the property at the time, and on becoming aware of Mr T's violent reputation, had avoided any form of confrontation with her neighbours and was frightened to complain. She said she should not have been expected to have monitored Mr T's activities herself, and believed this to be the Council's responsibility in view of the information it held about him and the operations on White Farm. Such monitoring during evenings and weekends could have been achieved quite easily over a two or three week period, as at that time, the yard and the quarry area were clearly visible from the road. Mr and Mrs T had been outwardly friendly towards them during 2004 and there were no altercations until early 2005 when Mr and Mrs T interfered with their right of way and carried out further acts of intimidation. She said they did so in response to her MP's letter to the Council in November 2004. Had the Council taken action earlier in 2004, Mr and Mrs T would not have assumed that complaints had been made by her and Mr R, and would not have interfered with their right of way, or directed other forms of harassment against them. She said Officer F's attempt at mediation was not reasonable as it required her and Mr R to refrain from complaining about the activities which were affecting their quality of life, and therefore, favoured White Farm.

228. She said that Officer L also failed to act impartially in that he chose to believe Mr and Mrs T, accused Mrs B and Mr R of lying, and influenced all other officers who came into contact with them. This included the Director of Regeneration and Leisure whom she said could not be regarded as objective, as he took direction from Officer L. She

also believed that Officer E would have handled matters in an even handed objective and competent manner if Officer F and Officer L had allowed him to do so. She said she did not accept Officer L's claim that he had not accused her of "making a vendetta" as he had failed to display impartiality over the years. She denied that she had verbally attacked Officer L at a public meeting. She said the Council should have had procedures in place to safeguard individuals in exceptional circumstances such as theirs.

229. Mrs B said she did not recall making any communication by letter or telephone with the Complaints Officer (as claimed by Officer H). She also denied that she had verbally abused any officer, saying that there would have been a record had she done so. She said that if the concerns raised by Councillor 2 were serious, then the Council would have dealt with it as harassment and completed Form ADOR1 referred to in its PCP[8]. Mr R would then have been informed of the claim and given a right of reply.

Mrs B's and Mr R's surveyor

230. The Surveyor said she was employed as a rural practice surveyor by a private association of land and business owners during 2005 and 2006. She said that before writing to the former Planning Enforcement Manager (Officer F) in January 2005, she had established that White Farm was a licensed operating centre for one HGV. She did not receive a substantive reply from Officer F, but had a telephone conversation with him on 31st January 2005 in which he said that the enforcement officer had visited White Farm and found nothing wrong, and that Mr and Mrs T had a registered haulage depot at another location.

231. According to her notes, either she or lawyers (to whom Mrs B and Mr R had been referred for advice) had advised Mr R to visit the operating centre referred to by the Council, and someone at the site said that one lorry was occasionally parked there. She also made her own enquiries of the owners of the operating centre and established that occasionally a lorry was parked there.

[8] See Appendix 1, paragraph 37

232. She visited Mrs B and Mr R and was able to see White Farm from the upstairs windows. It was evident that they were very frightened of their neighbours, and she became concerned about their wellbeing. Mr R had informed her that Traffic Commissioners investigating White Farm had been threatened by Mr T.

233. Following two further telephone conversations with Officer F on 24th March and 21st April 2005, she attended a meeting with him and Mr R at the Council offices. She gained the impression that everyone, including Council officers, were terrified of Mr T. She believed that Mr R would have produced photographs of White Farm during the meeting (including those sent to her by the investigator) but could not be certain after this interval of time. She confirmed having seen the photographs before, and in her view, they indicated that lorry related uses involving more than 2 lorries were taking place on the site. Some of the photographs showed 3 or 4 of Mr and Mrs T's branded lorries. In her view, and based on her experience there was very little agricultural activity at White Farm. It was primarily being used for horses and lorries.

234. She confirmed she had seen the video footage shot by Mrs B and Mr R, but could not be certain that it was offered to Officer F at the meeting. She is sure, however, that the Officer would have been aware of the footage. She believed that her information about the operating centre referred to by the Council would have been mentioned at the meeting, but could not recall if Mr R had said he had visited it.

The Council's Evidence

235. In its comments on the complaint, the Council said it had investigated Mrs B's complaints received over time and provided responses and explanations as to why formal enforcement action was not pursued. In view of complaints by Mrs B, it was not possible for one officer to have conduct of all matters, and different officers were involved. The Council also said that the Inspector, in his decision dated 25th November 2010 was wrong in referring to the uses he observed as being "unlawful", as a use does not become unlawful until enforcement action is taken.

Planning Officer A

236. Planning Officer A is the Council's Minerals and Waste Planning Officer. He was the author of the letter to Mrs B dated on 15th February 2007 (about the parking of the removal lorry and the large board) which was signed by the Head of Planning Services. He said he probably wrote the letter in the absence of the former Planning Enforcement Manager, and that the letter was a re- communication of the Council's position in these matters to Mrs B. He did not think he had made the decisions referred to in the letter himself.

237. He did not believe he had ever met Mrs B and there had not been an occasion when she refused him access to her property. He did not recall any involvement in White Farm issues during 2008 to 2010, although he may have signed correspondence in the absence of the relevant manager. He visited White Farm in August 2011 following a complaint that quarried material from White Farm was being exported off the holding. He said he spoke to a site manager who had provided an explanation for the HGVs on the site and there was an ongoing enforcement matter which the Head of Planning Services was looking at.

Planning Officer B

238. Planning Officer B was involved in the applications relating to the development of the three sheds at White Farm. He said his concern was to assess the agricultural justification for the First and Second Sheds, and did not, therefore, see the need to assess the extent of haulage activity. However, had he seen say 10 lorries or clear evidence of something over and above the generally accepted level of the parking of one or 2 vehicles in connection with the haulage business, he would have alerted his enforcement colleagues.

239. He said he has never seen horses stabled in the First Shed on his visits since 2004. He does not recall seeing horses in the shed during the site visit with the Planning Inspector in October 2010, but horses may have been there. He has always been confident that the shed was used for the storage of feed or hay in connection with the grazing of horses on the land. He said that when he assessed the proposal for the Second Shed, the primary uses on the site were, as stated in the report,

equine and the lorry business, although there was some agriculture in connection with grazing and the production of hay. He said he has been consistent in saying that the lorry base was a use on the unit, and in relation to whether it was a primary or secondary use, that he has consistently seen 1 or 2 lorries parked at the unit over the years. The storage of fodder, which is an agricultural activity, has also been consistent.

240. He said the former dutch barn had a pit, and was capable of being used for the repair and serving of HGVs. Mr T had a vintage lorry which appeared to be his pride and joy. It was not unusual for a farm to have a pit or other facilities for the servicing or repair of farm vehicles or vehicles used in connection with the farm. The dutch barn may have been rather small for some of his larger lorries. He understood that Mr T had 3 other operating centres and a contract for the maintenance of his lorries elsewhere.

241. Planning Officer B explained that the assessment of development proposed in a GPDO notification is based on a factual evaluation of whether it complies with the limitations specified in the GPDO, and does not include an assessment of its impact on the amenities of neighbouring occupiers.

242. He said when the GPDO notification in respect of the Second Shed was received (December 2007), a material consideration was the advice from the Estates Officer in his email dated 28th September 2006 to the effect that he supported the shed proposed in the earlier planning application provided it was specifically designed for the accommodation of cattle. He was satisfied, therefore, that agricultural justification had been proved. The proposal was supported by the Council's Property Services Section, and potentially the earlier planning application could have been approved.

243. He said that when the planning application for the Third Shed (which replaced the dutch barn) was considered, the Second Shed was being used for the storage of hay and the horse lorry. He saw no signs of heavy vehicle maintenance at that point.

244. He said he was not aware at the time of the public inquiry in October 2010 that White Farm had been licensed as an operating centre for 3 HGVs since December 2005. He said it was difficult to say how an application for haulage use at White Farm involving 4 or 5 lorries would be determined. White Farm is not an ideal location for a haulage operation, but there are other examples of sites in the area used for haulage purposes, including a similar site nearby involving 15 or 20 lorries. Were planning permission to be granted, it would be subject to conditions.

Officer C

245. Officer C was an Estates Surveyor in the Corporate Property Section of the Council's Resources Department. His duties included providing advice on planning applications involving development on agricultural land and he did so in relation to the proposed cow shed at White Farm in September 2006. He said that during his visit, he inspected the First Shed and this was being used to house machinery, fertilizer and straw. He said he was informed it was also used for the storage of hay at times. He said he supported the proposal on the basis of the applicant's proposal to build up the herd of cattle. It was necessary for the building to be specifically designed to accommodate cattle in order to ensure adequate ventilation, as young cattle can be prone to pneumonia. Older cattle may also have respiratory problems caused by poor quality hay or silage if there is insufficient air circulation. It was also beneficial for cattle sheds to be designed to include provision for the testing, dosing and injecting of cattle in safe circumstances for the workers concerned and/or a good system of loading/unloading the cattle for transportation. A shed of a general storage design such as the First Shed would not be adequate. He would not have supported the application if no cattle were proposed, as without cattle there would be no need, and there were sufficient general storage buildings available to the applicants.

246. He said he had no more involvement and was not aware that the planning application was refused. He would not have supported the proposed hay and implement store which was allowed under the GPDO,

as there were sufficient such buildings serving the needs of the holding. He also said there was insufficient functional need if, by the time of the GPDO notification (December 2007), the applicants had not demonstrated an intention to develop the herd beyond 4. He said it might be possible for the First Shed to be adapted for the accommodation of cattle provided the ventilation was sound.

247. He said he could not recall, during his visit to White Farm in September 2006, seeing any transportation vehicles or anything indicating a haulage business, and there were no notes on his file to indicate the same. He recalled mention being made during his site visit to the effect that one of the applicants worked off site.

Planning Officer D

248. Planning Officer D was a planning enforcement officer and was involved in complaints about White Farm between April 2002 and 2005. He did not recall the log of vehicle movements and activity recorded by the previous occupier of Mrs B's property at the end of 2001. He visited White Farm in April 2002 but did not see any evidence of lorry movements which had been suggested by the complainants.

249. He said he was "taken off the case" in 2005 because of allegations by Mrs B that he was getting "close" to the occupier of White Farm. He said the allegation was totally unfounded. He had nothing in common with Mr T and his only contact was in connection with the planning enforcement issues and another occasion when he witnessed Mr T being violent towards someone and he intervened to physically restrain him. He would like an apology from Mrs B.

250. He said his visits to White Farm in 2005 were unannounced. During his visits he did not observe the number of vehicles parked on the site as depicted in the photographs taken by Mrs B in 2005 and shown to him at interview.

251. He said he investigated the alleged operation of a haulage business from White Farm. There was a small portacabin, which had a computer, printer and fax machine. There were framed photographs of

horses and carriages on the walls. He formed the opinion that the portacabin had a dual use, as Mrs T's hobby room, and also to direct the lorries from one location to another. Faxes about haulage related work would be received and Mrs T would contact the drivers of the lorries and direct them from one job to another. In his view, the operation had no detrimental effect on the local amenity, as lorries were only being directed from the farm, and were not calling at the farm.

252. He said he was not aware of the investigation by the Traffic Commissioners in early 2005 or that Mr T was verbally abusive towards Traffic Inspectors, but was not surprised. Officers were aware that Mr T had a "short fuse" and could present as intimidating. Mrs B could also be intimidating in a different way.

253. He said the Council received circulars periodically from the Traffic Commissioners in which new applications for operator's licences and variations were published. If Mrs T had applied for a variation to add White Farm to her haulage company's operator's licence the Council would have advised her that she needed planning permission to park lorries, and the Council would have looked at the planning issues. He was not aware that White Farm was added to Mrs T's licence as an operating centre for 2 more HGVs in December 2005 bringing the total to 3 HGVs. In his view, this would have rung alarm bells.

254. He said that when he referred to "clear, unambiguous proof (including photographs) if possible" in his letter dated 3rd March 2005 to Mrs B, he meant dated photographs showing parked lorries, possibly vehicle registration plates, although he acknowledged this could be difficult. It was Mrs B's decision to shoot video film of the lorry movements into and out of White Farm. The only footage he saw was in the current affairs television programme in 2005.

255. He said he never visited Mr and Mrs T's other licensed operating centre in the area. He drove past White Farm on a few occasions between 2002 and 2005 whilst on other enforcement work, but did not observe any significant changes of use of the land or farm yard area or

any increase in HGV lorry parking or servicing which gave him cause for concern.

256. He said he never saw inside the removals lorry which was parked by Mrs B's boundary in March 2005 and Mr T never explained why he put it there. He did not believe it served an agricultural purpose at the time, but it would be quite easy to use it for agricultural purposes such as the storage of hay, and that as it is a moveable object, it would be difficult to enforce against. He tried to diffuse the situation by writing to Mr T to ask him to remove the lorry. He also said that the former Planning Enforcement Manager went beyond the call of duty to try and resolve matters when he visited both parties in April 2005 and tried to mediate. However, it had become apparent that there did not appear to be the will on the part of either Mrs B or the occupiers of White Farm to resolve matters.

Planning Officer E

257. Planning Officer E undertook planning enforcement work until 2008. He said that when a complaint of alleged breach of planning control is received, officers carry out a number of "back office" checks about the site to check whether there is a relevant site history, whether other complaints have been received or whether there are other enforcement issues which may be relevant. Site visits are recorded by photographs or written notes.

258. He became involved in complaints about White Farm towards the end of 2005, and his involvement in relation to matters such as the lorry which had been parked close to Mrs B's boundary and the large "privacy" board and the pig enclosure was directed by either the former Planning Enforcement Manager or the Head of Planning Services. This was because Mrs B had written to a number of different Council officers as well as to the Police and the Fire Service. The only time he met Mrs B was in relation to the appeal relating to another part of White Farm in 2010. She has never refused him access.

259. He said he did not visit Mrs B's property in relation to either the privacy board or the lorry, and said he was able to form an assessment

of the impact of the privacy board from the White Farm side of the boundary. Mrs B had fitted a CCTV camera on the wall of her property by her window, and the board shielded White Farm from the camera. He recalled seeing the pigs in the pen on the White Farm side of the boundary and was aware that the pigs had been given the same names as Mrs B and Mr R. He had spoken to Mr T at the time and his view was that both parties were displaying childish behaviour. He believed that if the board required planning permission, it would be refused, and that it may now be immune from enforcement action.

260. He acknowledged, in relation to Welsh Government guidance contained in Tan 9, that in theory, the key issue would be the impact on the residential amenities of a neighbouring property which merited protection in the public interest, irrespective of the conduct of the parties. In this case, matters had become very personal between Mrs B and Mr T and there were other things taking place at the time, such as the works to Mrs B's access way and her action in recording video footage of vehicles coming and going from White Farm. The question of whether to take enforcement action was discussed, but the Head of Planning Services made the decision that it was not expedient to take enforcement action.

261. Planning Officer E said he observed the lorry from a point near the White Farm buildings, and recalled seeing bales inside it in October 2005 when one of the rear doors was open. He said Council officers asked Mr and Mrs T if there was any chance of moving it, but they said "no". The lorry question did not go away and Mrs B raised it again over the years. He said he discussed the planning status of the lorry with the former Planning Enforcement Manager and the Head of Planning Services but they concluded there was no breach of planning control.

262. He said he made a number of site visits to White Farm over the years with either the Planning Enforcement Manager or the Head of Planning Services in connection with the use of the sheds on White Farm. He observed a variety of agricultural equipment in the First Shed, such as a tractor, flail mower, agricultural sprayer tractor attachment and a chain harrow. He said he did not see horses stabled in the First Shed

prior to December 2008 (when Mrs T died), but saw some animal feed being stored and some portable animal pens stacked against the wall of the shed and some erected as animal enclosures in the shed. He has seen horses being stabled in the shed on the last 2 or 3 occasions he visited during early 2010.

263. He said that the Council's position was that the parking of 2 HGVs at White Farm was acceptable. He did not believe he was aware that Mrs T applied in 2005 to add White Farm to the haulage company's licence as an operating centre for 2 vehicles. Although the licensing of a site as an operating centre does not obviate the need for planning permission, the matter was being dealt with by the Head of Planning Services and the former Planning Enforcement Manager. In his view, the history of complaints, including those by Mrs B and the authorisation of White Farm as an operating centre for 3 HGVs could have indicated that a change of use was taking place.

264. He said he was not present at the meeting with Mr R and the Surveyor on 3rd May 2005. He did not recall seeing the photographs shown to him at interview (being photographs which Mrs B said she had taken during 2005). He had not seen on his visits to White Farm as many commercial haulage vehicles as are depicted in the photographs, but his visits were made during the week and the photographs may have been taken at a weekend. He also understood that Mr T bought and sold vehicles on a regular basis. He said that if he had seen these photographs he would have asked if a fair point was being made by Mrs B in terms of a possible breach of planning control at White Farm, and made further enquiries, for example, by means of a PCN to establish the facts, even if the lorry parking was limited to weekends. However, the Head of Planning Services and the former Planning Enforcement Manager came to a different conclusion on the question of what activities were taking place on the holding, whether haulage/equine or agricultural.

265. He said he did not see any video footage shot by Mrs B in 2005, but saw footage of lorry movements on the current affairs television programme in 2005. He viewed the further footage provided by Mrs B in

2010. He was not saying that footage was doctored, but had concerns about the footage in terms of the actual numbers of lorry movements, and believed it may have been edited to show an obvious amount of traffic. He was also concerned that it depicted a flat bed lorry entering and leaving White Farm loaded with scrap cars, and he believed that Mr T was capable of driving vehicles backwards and forwards into White Farm just to inflame the situation. In his view, the footage, even though it was only a snapshot of activity taken over a few days, indicated the possibility that a material change of use to haulage may be taking place, and, given the history, should be pursued further. He discussed his concerns with the Head of Planning Services who concluded that the footage did not indicate a breach of planning control.

266. He said that although the disturbance /noise log submitted by Mrs B in January 2006 contained information about specific types of noise and activity, officers were assuming that White Farm was a working farm and that some of the activity recorded in the log could be attributed to that. The presence of agricultural equipment was a factor in the officers' assessment that it was a working farm. Although planning permission was refused for the First shed on the grounds of insufficient agricultural activity, White Farm could still be a working farm even with a low level of agricultural activity.

267. Planning Officer E said that it was his intention to respond to Mrs B on the outcome of the review of planning issues at White Farm referred to in his letter dated 16th August 2006. However, a full response was not sent to her until November 2007 when the "final statement" was sent to her by the Director of Regeneration and Leisure. He said there was a "host" of issues being considered during that time and communication between all parties, including the Council had broken down even though the Council had tried to mediate. He could have prepared a response, but ultimately, the Head of Planning and the Director were managing the Council's responses to these issues.

268. He took the photographs during the visit to White Farm in September 2006. He agreed with the Senior Development Control Officer's assessment that there was very little traditional agricultural

activity. He did not see inside the former dutch barn on this occasion, but saw inside it subsequently. He saw tools and machinery for the maintenance of large vehicles in the barn, and although he has never seen HGVs being serviced at White Farm, gained the impression that Mr T had the equipment needed to carry out some servicing and maintenance on such vehicles. The heavy duty compressor depicted in one of the photographs could, in addition to powering a jackhammer, possibly be used for general works to HGVs such as cleaning and shot blasting.

Officer F

269. Officer F was the Planning Enforcement Manager prior to leaving the Council's employment on 31st March 2008. He was the line manager for the enforcement officers, and had plenary powers under the Council's scheme of delegated authority to make decisions on whether enforcement action was expedient in individual cases. His line manager was the Head of Planning Services.

270. He said that enforcement is a difficult part of the planning process because of the constraints of the legislation and the difficulty of obtaining accurate information relating to potential breaches of planning control. Although he allowed officers the freedom to visit sites and make assessments, he would involve himself in more difficult cases and made decisions when the "buck stopped" with him. He believed that the Ombudsman's investigation should not have been instigated given the passage of time as it would not be possible to make definitive decisions on what did or did not occur over such a prolonged period of time. The matter had already been considered by the Ombudsman's office on two earlier occasions, and the decision based on an opinion given by the Planning Inspector in 2010 was "ludicrous", as the Inspector's comments referred only to a state of affairs which existed at the time of his site visit and did not suggest that any possible breach was of long standing. He also said that any evidence provided by the Complainants was unreliable as Mrs B had been "caught" attempting to influence noise nuisance readings which would have led to legal action against her neighbours. Furthermore, the Council, when clear evidence of a breach of planning control existed took immediate action and there are no

grounds to suggest that it would not have taken action when appropriate. He also said he viewed the Ombudsman's investigation as an investigation of his own personal competence.

271. He said that by the time Mrs B first complained to the Council about haulage related uses at White Farm, she was already in dispute with Mr and Mrs T. Mrs B and Mr R had moved to the area from England and the access to their property was owned by Mr and Mrs T. Occasionally Mr and Mrs T moved horses from the fields on one side of the access to the other. Mrs B had reported animal welfare concerns to an animal charity in relation to the movement of horses from one side of the access way to another. He understood that Mr and Mrs T then made alterations to the access way to address these concerns. He said that once a dispute has developed, common sense "goes out the window", and this was the context in which the Council became involved in complaints about haulage related uses taking place at White Farm. He said that Mrs T appeared to have a clear understanding of the planning position, and he did not believe that prior to her untimely death in December 2008, she would have allowed the haulage business to have developed to the extent that it was unauthorised in planning terms.

272. He said he could not recall earlier complaints made by the former occupiers of Mrs B's property, and did not recall seeing a log of HGV related activity completed at the end of 2001. He said the log (shown to him by the investigator) indicated an issue which he expected would have been followed up, but it was difficult to comment after such a prolonged period of time, and the decision that it was not expedient to take enforcement action may have been made verbally at the time. Nor did he recall whether he was aware that the former occupiers had complained of being threatened by Mr T after they complained.

273. He recalled the Council's letter sent in January 2005 to the office of the local MP who had passed on a complaint by Mrs B. White Farm was a small holding and it was to be expected that heavy vehicles or lorries might frequent the holding for some reason or another. Mr T ran a haulage business and it was not considered unreasonable for him to have one or two lorries parked up at the Farm overnight. He did not

believe that Mr T crossed that threshold. He did not recall whether White Farm was, at that time, licensed by VOSA as an operating base for one vehicle, but recalled that the operating centre for the haulage company's lorries was elsewhere.

274. He said he did not recall being contacted by Mrs B's surveyor. He recalled attending a meeting with Mr R and another person at the Council's offices, but could not say if the other person was their surveyor.

275. He said he visited White Farm unannounced on a number of occasions during 2005. He believed he visited with Planning Officer D and the Head of Planning Services, and inspected the buildings. The large new shed which had been permitted on appeal, had been erected. There were a number of vehicles, mostly of a farming nature, vehicle parts and some agricultural implements. He said that evidence of the significant parking of lorries over a sustained period would have tipped the balance indicating that a change of use had occurred. Had he seen such evidence he would have taken action. However, he never saw anything at White Farm which tipped the balance. In planning law there is a significant difference between lorry use/parking at a site taking place either occasionally or for a short period of time (which is referred to in planning and environmental health investigations as an "intermittent breach"), and the prolonged actionable usage of the site for such purposes. He attempted mediation between Mrs B and the neighbouring occupiers in order to get some resolution and recalled writing to both parties on 3rd June 2005.

276. He said he did not recall being shown photographs during the meeting with Mr R and their Surveyor. He said (on being shown the photographs taken by Mrs B in 2005) it was not possible to say how long the lorries shown in the photographs had been there, and they could have been there for just one day. He said he did not recall seeing the lorry backs shown in the photographs. The photographs showed the vehicle which Mr T had been using for quarrying, which was not unusual on an agricultural holding. Mrs T had said she wanted to improve the property because it was her home.

277. He said that as Mr and Mrs T had accused Council officers of harassment, he drove past the site on one occasion outside working hours, as it was possible to see the site from the road without upsetting anyone. However, he did not see anything untoward. Had he observed an obvious breach of planning control which was clear and unambiguous, he would have authorised enforcement action.

278. He said he could not recall if he was offered video footage of HGV activity at the meeting with Mr R and their Surveyor. Had he been offered it, he would have said that it did not prove anything, in the sense that it would not, in itself, justify enforcement action as it was only a snap shot of what was happening on one particular occasion, and did not indicate activity over a period of time. This was why complainants were asked to complete nuisance logs. If this established a pattern of unauthorised activity, then there would not have been a problem in arranging for officers to undertake additional out of hours surveillance on an occasional basis. He said he had, in other cases when necessary, undertaken enforcement investigations at weekends and during the evening.

279. He said he did not recall their Surveyor saying she had made enquiries of the owners of the Mr and Mrs T's licensed operating centre and established that it was not being used by their commercial HGVs. He said he was sure that the Council had made enquiries of VOSA. In his view, VOSA should not grant an operating licence in respect of a site until planning permission had been granted. He said that had the Council been informed that Mr and Mrs T's haulage vehicles were not being parked at the licensed operating centre but apparently at White Farm, the Council would have investigated. He said that even if Mr and Mrs T had been tempted to park more lorries at White Farm, they would have realised that the game was up once the Council became involved. He said he thought that Planning Officer D had visited the licensed operating centre and that Mr and Mrs T's lorries were there at that time, but the fact that Mr and Mrs T's lorries were not there did not mean that they were at White Farm.

280. He said that Mrs B was a “complete nutcase” and that one had to take everything she said with a pinch of salt, and that the Ombudsman’s investigation was a waste of public money. He again referred to the fact that the Council had caught her deliberately trying to falsify noise nuisance readings. He said Mrs B’s schedule of noise disturbance completed in January 2005 did not indicate evidence of haulage operations at White Farm. It referred to jackhammer noise. Quarrying on an agricultural unit for agricultural purposes is permitted development. The schedule did not specify the types of lorries at the Farm or what they were doing. A JCB vehicle or dumper truck moving around did not make it a haulage yard. Mr T might have been moving materials or fodder, such as manure or silage around the site. The revving of engines could be anything. Mr T was entitled to maintain lorries if used for agricultural purposes as ancillary to the enjoyment of the holding.

281. He said that the disturbance log submitted in January 2006 was also concerned mostly with noise. However, vehicle movements did not necessarily mean that the site was a haulage yard, just as the playing of loud music does not necessarily mean that a disco is being operated. White Farm was a small holding, and vehicles moving about and some noisy activities are not unusual in a farm operation. Mrs B had a “twee” or romanticised idea of the countryside as being about sky larks and primroses. However, it is a working environment. He said officers did look at her concerns, and he remembered asking if they were satisfied that no unauthorised activity was taking place. He recalled his email of 14th April 2005, and asked Planning Officer D to look again at the activities taking place at White Farm. Council officers were trying to chart a very difficult course within the law between 2 neighbours who were not getting on. Mrs B claimed the Council had clear evidence on which to take action, but in his view it didn’t. However, the Council took action when it had evidence on which to do so, for example, in relation to the unauthorised development on the other land at White Farm. He said there are no grounds to suggest that the Council did not undertake adequate investigations, essentially by visiting the site and independently witnessing relevant activity rather than take the word of

Mrs B/Mr R and their paid representatives, or would not have taken action where appropriate.

282. He recalled seeing the current affairs television programme featuring Mrs B and White Farm in 2005. He said no assessment was made of the footage of lorry movements depicted in the programme. He said that had the level of activity alleged in the programme been taking place, then the Council would have expected to have seen some other evidence of it. He said he had no comment to make on the claim in the Council's letter to the Welsh Assembly Government's Planning Division that the footage was "doctored". He said a "one off" tape of video footage would not have formed the basis of enforcement action, but could have been used as background information. However, officers never saw anything similar on their visits. He said that the Council's position, as stated in January 2005 was that the parking of up to 2 HGVs on the holding was acceptable, as it was necessary to have a cut-off point.

283. He said that he was not aware that Mr T had been aggressive and abusive towards the Traffic Commissioner's Inspectors, but believed he had been convicted of GBH. He said he had never been intimidated personally by Mr T and that Mrs T was a calming influence. Her letters were cogent and rational. He said he could not recall if he was aware that Mrs T had applied to add White Farm to the haulage company's operating licence. But even if she did, this would not have granted planning permission for the use of White Farm as a lorry park. The Traffic Commissioners did not require evidence of whether planning permission was needed. The fact that Mrs T had permission from the Traffic Commissioners/VOSA did not mean that planning permission was not required if they decided to park additional HGVs there. However, Council officers never saw evidence that Mr T was actually parking 3 HGVs at the Farm even though it was an operating centre for 3 HGVs.

284. He said the Council had considered whether the haulage business was being operated from White Farm, given that the Farm was the registered address of the haulage company, that it was, apparently, a

licensed operating centre for 3 vehicles, and given that (according to Planning Officer D) lorry drivers were being directed by telephone from the Farm from one location to another. However, the question was whether there was an impact on amenity and whether it constituted a change of use. Someone using a telephone to operate a business did not constitute a change of use. The Council had accepted that White Farm was the "registered office" for the business, where paperwork was done, but this did not amount to a change of use in planning terms. It would have been a different situation if the lorries were frequently coming to the premises, but nothing would have given officers greater relief than to have taken enforcement action if it could have done so, in order to get Mrs B "off their backs". He considered it was a credit to the integrity of officers that they were not intimidated by the threats and pressures imposed by Mrs B/Mr R into taking action where it was not considered appropriate. He said he could not recall the planning report of September 2006 which referred to the primary uses on the site as being equine and the lorry base. He believed it was an incorrect comment based on a "snapshot" assessment of the planning officer and went beyond what the officer was in a position to say. However, it was typical of Mrs B/Mr R to try and pit one officer against another, often where one officer may make an innocent statement, not appreciating the full facts of the case, and where the matters are not directly related to their involvement.

285. He said the Council was looking all the time for unequivocal evidence of its own that a change of use had occurred, and officers had visited the site. He would have been surprised if the alleged haulage activities at the Farm had not been discussed with VOSA, perhaps informally. Lorries parked up at the Farm at weekends, would have been seen by officers when they drove past out of hours, and would not have been missed. He did not consider that obtaining authorisation under RIPA for covert surveillance would have been appropriate for monitoring lorry movements. He did not consider that any weight should be attached to any statement under oath by Mr T to the 2010 planning inquiry that he had been using the farm for 10 years as a base for 5 or 6 lorries. The late Mrs T had been the site operator and would have had a clearer idea of what had been going on.

286. He said his only concern in relation to the removals lorry parked by Mrs B's boundary was whether it required planning permission. It was referred to in his "mediation letter". He said he thought Mr T put the lorry there because they were being filmed (by Mrs B), and it blocked their view. However, if it was being used for storage in conjunction with the existing use of the holding, then planning permission was not required. He believed officers would have seen inside the lorry at some stage, and when Mrs T was alive, she would have made sure it was being used for storage. He said the Council would have preferred the lorry not to have been parked in that position. But the whole White Farm issues were taking up far too much officer time. He asked why Mrs B started arguing with someone who owned her access way, and said it appeared from anecdotal evidence that she had bullied and harassed people throughout her life.

287. He said he was aware that the large board had been erected on the boundary adjacent to Mrs B's property, but by this time, the Head of Planning had become involved in White Farm issues. The only reason why it needed planning permission was because it exceeded 2m in height and if it was considered to be a means of enclosure, which he considered was an interpretation open to challenge. It was a technical breach of planning control, but it was a privacy board and the presence of the CCTV camera on Mrs B's property was relevant. In relation to the question of whether it was expedient to take action, both sides were taking a "pop" at each other, and it was not in the public interest to get involved in a neighbour dispute. That was a view the Head of Planning was entitled to take as a professional planner.

288. He said he met Mrs B and Mr R on several occasions in 2005, but meetings became counterproductive because Mrs B appeared what he considered to be unstable and would burst out crying. He said he had always tried to do the right thing, but because he did not agree with Mrs B, she burst out crying. She never refused him access, but he decided that further meetings would not be helpful. He understood that she had made official complaints against approximately 27 of the 34 police officers who had attended at her property, although he could not

remember the precise numbers. He wondered if these were the actions of a stable person.

289. He said he was not involved personally in the decision to apply the persistent complainant's policy to Mrs B and Mr R, but he might have been asked for his views. If he was asked, he would have said that she was taking up such an inordinate amount of officer time that it was considered necessary to break the cycle. However, officers would take action if there was fresh evidence of a change of use taking place. He said he could not remember if the former complaints officer had any direct contact with Mrs B or Mr R.

290. He said he was antagonistic about the Ombudsman's investigation, given his two earlier investigations which had not found a case to answer. He said the investigation was a waste of Council officer time and resources which could be better spent. He said his objectivity as a planning officer was not compromised by the manner and content of Mrs B's communications. Enforcement was the aspect of planning administration which caused the most aggravation and litigation. It required the law to be interpreted "on the hoof", and could be dangerous. However, he said he was extremely principled and would never desist from taking action on the basis of some other ulterior motive, for example, because an officer was being intimidated. In such cases, if enforcement action was justified, it might be appropriate, to use process servers, as he has in other cases. He was always looking for some evidence which tipped the balance and indicated a change of use at White Farm, but never saw it. However, he authorised enforcement action on the other part of White Farm. He took the job on knowing he would have to deal with difficult people, and would never have allowed any negative feelings about Mrs B to have impacted on his professional judgement on whether to take enforcement action. He said he recalled his email dated 12th November 2007, the content of which was consistent with his earlier statement that nothing would have been easier than to have taken enforcement action just to get Mrs B off his back. However, in the absence of any unequivocal evidence, such action would have been unprofessional. Mrs B was punishing officers for having the audacity to argue with her and not do her bidding, and

continued to do so by getting the Ombudsman to investigate her complaint. However, the Council did take action in relation to unauthorised development on the other part of White Farm where clear evidence of a breach existed. He said he was aware that Mrs B/Mr R had made several complaints about activities at White Farm to a national animal charity and to the CCW, but to his knowledge these complaints were investigated by these independent bodies but grounds for taking action were never identified.

291. In relation to the summary of Mrs B's complaint, he said he never accepted that the main use on White Farm in 2004 and 2005 was haulage. He said Mrs B was the main perpetrator of the breakdown in relations with her neighbour, and the neighbour dispute is the main cause of any impact on her amenity. He did not accept what Mrs B said about the cattery business, and said that the claimed inability to develop the business was due to legal difficulties connected with the private right of way over the neighbouring property in that she might not have the legal right to use the access way for a business. She nevertheless blamed the Council for problems with the access way which it had not caused. In relation to the claimed diminution in the value of her property, he said this flowed from the dispute with the neighbours and, in relation to the claimed stress, that Mrs B should "join the club". Everybody has been stressed in their dealings with Mrs B. She had been convicted of assaulting Mrs T. She also harassed and intimidated officers of the Council if she did not get her way. It would only take a few people like Mrs B to render the whole enforcement system ineffectual.

292. In his comments on the draft report Officer F said he considered the references to his involvement to be biased and lacking in any evidential basis. He said that he and Officer L acted with integrity in not being intimidated by Mrs B, and refuted the suggestion that his and Officer L's professionalism was inappropriately influenced by their "dislike" of Mrs B. He said "she is sly, devious and a bully, but that would not have impacted on my evaluation of the planning situation of the site, nor would it have influenced any other of the officers involved". He also commented that the draft report contained conclusions which challenged decisions made by officers instead of looking at whether the

decisions were appropriately arrived at. He referred to the investigation as a "worthless process". Officer F's comments are reproduced in full at Appendix 3.

Officer G

293. Officer G was the Council's Public Health Services Manager. He said most investigations of complaints of alleged statutory nuisance are conducted overtly. Letters are sent to both parties, namely the complainant to say that their complaint will be investigated, and to the alleged perpetrator saying that there has been a complaint which will be monitored. In some cases, environmental health officers are deployed out of hours if this is necessary, for example, to supplement evidenced gathered by noise equipment.

294. He said that video footage shot by a complainant submitted in support of a nuisance complaint (such as the footage provided by Mrs B in relation to the pigs kept by her boundary) would be considered. The next step would be to check the validity and reliability of the footage. It may not necessarily be relied on as evidence (although legal advice would be sought), but it would be looked at to see if it indicated some evidence of a possible nuisance which the environmental health officers would follow up in accordance with their written procedures. He said that the Council's Environmental Health Service has not obtained RIPA authorisation to undertake covert CCTV surveillance, but such surveillance may be relevant in the investigation, for example, of alleged fly tipping.

295. He said that environmental health officers established that White Farm was a licensed operating centre for 3 HGVs in August 2007 by contacting VOSA. These enquiries indicated that 2 operators were licensed to operate from White Farm, namely Mr T and Mrs T. He did not know if the Planning Enforcement Officers were aware of this.

296. He said Environmental Health were not directly involved in the decision to apply the PCP to Mrs B. At that time, officers were pursuing enquiries into alleged dog barking and cockerel nuisance, and contact with Mrs B was at an appropriate level. There was further contact in

2008 regarding complaints about stray dogs, rat infestation and dog barking. He was asked to prepare a schedule of complaints before attending a meeting in March 2009 to review the use of the PCP. It was agreed at the review meeting that contact between the Council and Mrs B should be via the Director of Regeneration and Leisure. However, the Director was happy for the Environmental Health Officers to continue to deal with Mrs B directly in relation to a complaint made in February 2009 about noise from dog barking and the removal of rubble. Mrs B was asked to complete a nuisance log, but she did not do so, and the file was subsequently closed. He said that when Environmental Health was asked to prepare the schedule of complaints, he was aware of the history. Mrs B was demanding. That is not by itself unusual, but the dispute between her and her neighbours was unpleasant. He attended the review meeting in September 2009, but this time, the case on the complaint about dog barking and rubble removal noise had been closed, and he did not recall contributing much to the meeting. He did not attend the review meetings in May 2010 or February 2011, having asked earlier whether he needed to be present. He had other commitments, and his apologies should have been recorded in the minutes. He had nothing to add and understood the outcome of the meetings to be that contact would continue to be limited via the Director. He said he has not had any direct contact with either Mrs B or her partner.

Officer H

297. Officer H was the nominated Departmental Representative for the purposes of the Council's PCP at the time it was applied to Mrs B and Mr R. He said his role was to ensure that the Complaints Officer had followed the proper procedures in relation to the PCP. In the case of Mrs B and Mr R, matters had also been dealt with by the Head of Planning, and it was decided that the Director of Regeneration and Leisure would be the single point of contact for the Complainants. He said he recalled a long discussion with the Complaints Officer at the time of the referral, and had "sight of any notes the Complaints Officer would have kept of any telephone calls, discussions or meetings with the Complainants, as the Complaints Officer would have kept records of such contact". He said he had also discussed the matter with the Head of Planning because applying the PCP in a particular case was a major

step to take. The matter had also been discussed with the Head of Planning and the Director at departmental meetings.

298. He said that the claim in the referral form that over 30 letters had been received from the Complainants may, in addition to the schedule of correspondence prepared by the Planning Department, have included other correspondence with the Environmental Health Department, which the Complaints Officer would have been aware of. In relation to the claim that the Complainants had refused to allow either the Enforcement Officer or the Enforcement Manager into their property, he said that if an attempt had been made to visit the Complainants and access had been refused, that is a refusal. He said he imagined that the Complaints Officer would have informed the Complainants that consideration was being given to applying the PCP, but he cannot be sure that they were warned. Even if this was not done, however, the decision was still in line with the Policy as things had got to a stage where Officers could not reason with the Complainants. He understood that meetings were being refused at that time. He said that Step 2 of the PCP was guidance and not mandatory, and that the revised Policy now incorporates new procedures which require a written warning to be sent.

299. He said that if he had any doubts about the evidence or whether there had been a warning, he would have challenged the Complaints Officer. At that time the Complaints Officer was receiving a lot of communication from Mrs B which Officer H said had included verbal abuse. He was also comfortable with what he had been told by the Head of Planning.

300. He said he was surprised that Mrs B and Mrs R were not specifically informed in August 2007 that the PCP had been applied to them, and assumed that the decision would have been notified to them by the Complaints Officer. It was not a requirement of the PCP that the outcome of review meetings should be notified to complainants (although it is a requirement of the revised policy). It was felt in Mrs B's and Mr R's case that such notification would not help as any letters which were sent seemed to antagonise the situation. This was so when they were notified of their removal from the register of persistent

complainants. The Council received lots of letters from Mrs B in which she was very critical of the Council and revisited old issues which the Council felt had been resolved within the regulations and rules it worked to.

301. He said that at no time was Mrs B refused access to the Authority, and in fact had she had direct access to a Director which was very rare. He said he was asked to look at Mrs B's complaint to the Chief Executive about the Director's alleged failure to respond to her complaints regarding "new issues". He said it was accepted that the Council had not responded, and that the Director said he sent a letter of apology for not responding within the appropriate timescales. However he did not consider she had raised new issues and the Director felt he had already responded. He did not recall whether there had been a response to her letters of the 11th and 16th June 2009 to the Director.

Officer I

302. Officer I was the Principal Executive Officer to the Council's Chief Executive from late 2007 to September 2009 prior to being seconded to a local health board. She returned to the Council in January 2011 and is involved in the Council's work in implementing a new complaints policy in line with recent Welsh Government guidance.

303. She said the PCP had already been applied to Mrs B and Mr R by the time she became involved. The Director of Regeneration and Leisure was the designated single point of contact for communications with Mrs B and Mr R. Her role was to liaise and coordinate the Council's responses as Mrs B's complaints extended from planning matters to other Council departments. She also dealt with Mrs B's correspondence to the Chief Executive. This included preparing responses.

304. She said that the Chief Executive's letter dated 29th January 2008 to Mrs B and Mr R was sent as a result of what had been agreed at the review meeting on 24th January 2008. The purpose of the letter was to inform Mrs B and Mr R that all correspondence to all staff and Councillors must be sent in writing to the Director. She believed that the

decision to extend the PCP to their communications with councillors may have been discussed with the Council's legal officer (Officer K).

305. She said she was involved in coordinating and convening subsequent review meetings. The Director's letter dated 5th March 2009 to Mrs B and Mr R was prepared after the review meeting held on that date. Mrs B had been told to write to the Director because she had been communicating in a number of different ways, including by emails to different officers across the Authority. It was necessary, therefore, for the Council to manage that communication and its responses to it. The decision was to ask Mrs B to communicate by letter to the Director. Hard copy letters addressed to the Director would ensure the correspondence came to the Director's attention, and was the means by which the Authority ensured that her correspondence was looked at and replied to. There was never any intention to block email access to Councillors and, therefore, the legality of access to Councillors was not discussed or seen as an issue. When she became aware that the Council's action was affecting Mrs B's right to contact councillors, she asked the Council's IT Department to address the matter, and assumed that the measures taken were successful. She was on secondment when the blanket restriction on Mrs B's email address was lifted in April 2010. She believed the reference to the restriction being "unintentionally" placed on emails from her address in the Chief Executive's letter dated 24th April 2010 was a reference to her correspondence with the IT Department in July 2009 when attempts were made to allow emails from her address to her local councillor. This was reflected in the final paragraph of the Chief Executive's letter which stated that it was not the Council's intention to prevent her from having contact with any elected member.

306. Officer I said she was not aware of any reason why a copy of the PCP was not sent to Mrs B when she first requested it. However, Mrs B had made a number of requests in a short space of time, and it may, therefore, have taken a while to prepare a response. She said that the interval between the first request (in Mrs B's letter of 1st April 2009) and the date when the Policy was sent (28th April) was outside the Council's

published guidance for responding to correspondence, but this was not intentional.

307. She said she never spoke directly to Mrs B, although she received a couple of emails. She said she had observed the upsetting impact of some of Mrs B's correspondence on officers. When Mr T's wife died, officers felt that any involvement at that time should respect the need for sensitivity.

Officer J

308. Officer J was a senior solicitor in the Council's Legal Services and undertook regulatory litigation work, including work relating to statutory nuisance and anti social behaviour.

309. He attended at, and took notes of the meeting on 10th August 2005 with the Head of Planning, the former Anti Social Behaviour Coordinator and a Police Inspector. His recollection was that the comment "frivolous/possibly malicious complaints" was made by the Police Officer, rather than by either the Head of Planning or the Anti-Social Behaviour Coordinator, but cannot be 100% certain after this length of time. He would not have recorded the words if they had not been said. He said it was concluded that no action could be taken against Mr and Mrs T.

310 He said he was involved in the prosecution of Mrs T for breaching the abatement notice in respect of cockerel noise. The prosecution had been accompanied by an application for a criminal anti-social behaviour order which was all encompassing and included other acts of harassment which had been alleged at the time. However, the barrister who had been retained to represent the Council advised that such an application might not succeed, and it was explained to Mrs B and Mr R that the application would be limited to the cockerel aspect. However, the Court decided that this was not necessary.

311. He said he cannot add anything in relation to the email dated 5th June 2008 from the new Anti-Social Behaviour Coordinator (which referred to "malicious complaints" by Mrs B and Mr R). The email was concerned with the outcome of the cockerel noise prosecution and he

assumed the comment was a reference to the comments made at the earlier meeting in August 2005, as that was the only time he recalled that consideration had been given to making a “stand alone” application for an anti-social behaviour order.

Officer K

312. Officer K is a senior solicitor and his responsibilities included advising the Council on planning matters. He said he first became involved in January 2008 when 2 members, Councillor 2 and Councillor 3 had expressed concern about Mrs B’s and/or Mr R’s communications with them. There had been an exchange of emails between Councillor 2 and the former Monitoring Officer. He had also spoken to Councillor 3 directly.

313. He said at no time was anything done which would block Mrs B from dealing with the Council. Officers had tried to manage the process, because in addition to contacting officers, Mrs B had raised concerns with Assembly Members, and via 3 sets of solicitors’ firms. She did not challenge the legality of the Council’s actions on the grounds that its actions were “Wednesbury” unreasonable. In his view, this was an indication that the Council had a definitive policy which had been fairly applied in her case.

314. He said it was arguable whether Mrs B and Mr R should have been given a warning as mentioned in Step 2 of the Council’s policy. The completed referral form also asked whether there had been a meeting/arbitration with the customer to resolve concerns. However, this part of Step 2 is not mandatory, but recommended as good practice. He suggested that the decision to instigate the Policy without taking that step may have been made in the particular circumstances of the case, because of the level of concern. However, by the time of his involvement, the Policy had been in place for some 6 months and he was unable to provide further comments. When asked if he would have expected any reasons for departing from the practice advised in Step 2 to be recorded, he said that the guidance was a separate document to the checklist in the referral form which was completed by the Officer concerned. He said, as a matter of conjecture, that the officer having

fully completed the form may have believed he had complied with all aspects of the policy correctly.

315. He was unable to comment on whether the letter dated 17th August 2007 from the Director of Regeneration and Leisure to Mrs B and Mr R contained an adequate notification that the Policy had been applied in their case, as this predated his involvement. He did not believe that the PCP, as it was then drafted, specifically required that a complainant be expressly told that the Policy had been applied. However, the current version of the policy has been amended to incorporate best practice in this regard. He said he was not aware of any complaint by Mrs B and Mr R that they were not told that the Policy had been applied or that they could have appealed against the use of the Policy. They had taken legal advice, and it was open to them to have challenged these matters at the time.

316. He said it was implicit in the terms of the Policy that it included communications with Members of the Council. The Council wanted to be careful so that the right balance was struck in how the Policy was applied in relation to Members because electors have the general democratic right to approach their elected member, and Members must be able to acknowledge that a certain amount of "hassle" accompanies the role. However, Councillor 2 was not the member for the ward in which Mrs B and Mr R lived, and he, therefore, supported the former Monitoring Officer's advice that the use of the Policy in the case of communications with Members was justified in the circumstances. In any case the effect of the decision to impose the Policy was not to deny access to elected members. Although the Chief Executive's letter dated 29th January 2008 referred to "Councillors", this had to be seen in the context as it specifically referred to Councillor 2. Had any Member been contacted by Mrs B directly, the correspondence and/or complaint would have needed to have been referred to the Director to deal with in accordance with the Policy. However, there was an issue which arose later, which was concerned with a technical IT matter. Once it was discovered that a block was placed on all emails from Mrs B's email address, he advised that this could be unreasonable, because the effect of such a block was potentially to deny access to Members by email.

317. He was present at the review meeting on 5th March 2009 but did not recall what was meant by the reference in the minutes to Mrs B's and Mr R's human rights and the decision not to notify them of the outcome of the meeting. They already knew of their status under the Policy, and he suspected that there had been a lot of further correspondence from them, and that to notify them again of their status may have exacerbated the situation. Although the language used in the minutes is somewhat unusual, he does not believe it was done for any ulterior motive or to deny them their human rights.

318. He said he corresponded with Mrs B's and Mr R's solicitors in September 2009. The information contained in his letter dated 17th September 2009, including the reference to the letter dated 10th June 2009 from the Director of Regeneration and Planning was provided by the Planning Department, and he must have seen the letter. He said the letter could have been clearer, but in essence, it did confirm that the enforcement team were taking action. He said this might have been the letter referred to by the Chief Executive in his response to Mrs B dated 15th March 2010 (regarding the Director's alleged failure to reply to her correspondence), but he is not certain.

319. He confirmed that his letter to Mrs B and Mr R dated 22nd December 2009 was a response to Mrs B's earlier letter dated 25th November 2009 to the Chief Executive (in which she had sought details of the Councillors who had complained about them). He said that the references in the Director's earlier correspondence dated 27th February and 15th April 2008 to "a number of councillors" and "several members" were possibly overstated, as only 2 members had expressed concerns, and this particular issue was subsequently addressed in his correspondence to Mrs B. However, the reference in the Director's letters to the nature and content of the contact between Mrs B and Mr R and the councillors was not overstated.

320. He viewed the DVDs of footage received from Mrs B and Mr R in early 2010. This was followed by an investigation regarding lorry movements into and out of White Farm and a possible change of use to

a lorry park or haulage related/tipping uses. There had been a history of concerns about the reliability of DVD footage. There was also a history of hostility between the neighbours, and Officers wondered whether it was another "tit for tat" between them, and could not, therefore rule out the possibility that the footage was doctored. Although the footage was timed and dated, its reliability needed to be verified, but he was unable to comment further as was not involved after that point. He accepted that at face value, the footage raised a concern about land uses on the site, and it was confirmed at the meeting that the matter would be taken forward by the Planning Department.

321. He was present at the meeting on 4th May 2010 which reviewed Mrs B's and Mr R's status under the PCP. He said he was informed that there was an Operator's Licence in place which allowed the dismantling of scrap cars. He said this was referred to as a matter of fact and he was not in a position to dispute this nor was he requested to advise further. His role was to make sure the meeting was being run properly and to advise on planning issues. The Head of Planning and the Director of Regeneration and Leisure were present and could have asked for clarification had they felt this was needed.

322. He said he was not involved in the correspondence relating to Mrs B's complaints to the Chief Executive in January and February 2010.

323. In relation to the Scheme of Delegation, he explained that all the Council's planning powers are delegated either to the Council's Planning Committee or the Head of Planning Services. He expressed the view that paragraphs 1.6 and 1.13 of the Scheme of Delegation allowed for consultation with the Chair or Vice Chair of the Planning Committee on a power delegated to the Head of Planning, but these provisions did not allow the Planning Committee to "call in" for determination a matter which had been delegated to officers.

<u>Officer L (Head of Planning)</u>

324. Officer L said his responsibilities included development management, planning enforcement, planning policy, conservation, minerals and building control. The day to day operation of these matters was in the hands of individual case work officers under the supervision

of more senior managers. Until March 2008, officers with casework responsibility in enforcement cases reported to the former Enforcement Manager. Since that time, there are now three smaller teams which deal with both development management and enforcement on an area basis. He does not normally get involved in individual cases, unless, for example, a complaint has been made against the case officer. Ultimately, he is responsible for judgements on technical matters which are based on his qualifications, training and experience.

325. He said he first became involved in complaints about White Farm in 2005, and he met Mrs B and Mr R (with a councillor who was representing the local Assembly Member) at their home in July 2005. He could not recall whether he was aware at that time of earlier complaints about HGV related uses at White Farm in 2001, but subsequently became aware of them. Whether the log completed by the former occupiers of Mrs B's property at the end of 2001 showed a pattern of HGV activity or not, he could only assume there was insufficient evidence to take the matter forward as a formal issue. In any event, lorries are also controlled by the Traffic Commissioners and VOSA which could lead to duplication of control on such activities. He said Mr T's evidence to the planning inquiry in October 2010 (about his use of the Farm as a base for 5/6 lorries over 10 years) was not the response he had given earlier to the Planning Department about the extent of his HGV usage at the Farm, although most of the Planning Department's dealings had been with Mrs T until she passed away in December 2008.

326. In terms of haulage related uses on the site, what the Council has to look at is first, whether it constitutes development, and if so, whether it is permitted, and if not, whether planning enforcement is warranted. This approach reflects Welsh Government Guidance in TAN 9 and within that process is a range of considerations to be taken into account, and a number of points where a judgement call has to be made.

327. He confirmed that the Council's position regarding HGV uses on the Farm in 2005 was as stated in the Council's letter dated 24th January 2005 to the MP's office, namely that the parking of up to 2 commercial lorries and minor mechanical/electrical repairs being undertaken on an

occasional basis by Mr T was acceptable. If the farm was being used for haulage and haulage related uses, he would have expected to have seen heavy maintenance equipment, such as compressors, large stocks of oil, and other vehicle parts such as filters. His visit to White Farm on 12th July 2005 provided a snap shot of the activity on the site on that occasion, and in his view, there was no evidence of an HGV maintenance business or lorry business.

328. There was a dutch barn which had an inspection pit, which is not uncommon on farms. There was a vintage lorry in the barn being renovated. However, he did not see large specialist equipment in the barn on his visit. The lorry with the lifting gear was used to load hay bales. He was not sure that the dutch barn was large enough to maintain the tipper wagons, for example, when the hydraulic tipper mechanism was fully extended.

329. There have always been agricultural implements at the farm, and Mr and Mrs T used the Farm for the production of hay.

330. He said that the Council had not been satisfied that there was sufficient agricultural justification for the First Shed, but this was allowed on appeal in February 2005. The Planning Inspector took a different view and Mrs T had convinced the Inspector of their intentions to build up a herd of cattle. By September 2006 (when the planning application in respect of the Second Shed was being considered), the herd had not been built up, and the application was refused. He assumed that the reference in the report on the application to the main uses on the site being equine and lorry uses was a reference to the description of the lorry based activity contained in the letter dated 24th January 2005 to the MP. There was an element of lorry activity consistent with 2 of Mr and Mrs T's commercial lorries, and it was not considered that the level of agricultural activity justified a second agricultural building. He said that quite a few businesses which are advertised in Yellow Pages are operated from home, and the fact that Mr and Mrs T's drivers were being directed from the Farm did not necessarily mean that a full blown haulage maintenance and repair business was being carried out on the site. If Mr T had been observed using compressors to remove tyres or

change the brakes on the HGVs, that would have been clear evidence of haulage related activity taking place amounting to a change of use. But when officers visited, lorries were present, but there was not much evidence of even small scale maintenance, and the enforcement officer had established that maintenance on the lorries was being undertaken elsewhere.

331. In relation to the Council's statement to Mrs B that clear, unambiguous proof was required including photographs if possible, and her response that she was frightened to produce the evidence she had, he said that there had been a major falling out between Mr and Mrs T and Mrs B. Mr T is not the easiest person to deal with, and the former occupiers of Mrs B's property had also experienced problems. However, if there was a concern in terms of physical threats to the person, the proper channel was the Police and his understanding was that the Police had been extensively involved in the situation, and that Mrs B was pursuing an action against the Police. He said it was not the planning authority's role to get involved in situations involving breaches of the peace or personal threats, as these were matters for the Police. From a planning standpoint, a limited amount of lorry activity was acceptable, but there was not sufficient evidence to amount to a change of use.

332. He said that one of the main issues in relation to lorry activity was noise. There had been a complaint about dog barking noise which was investigated by the Environment Health Officers, and the same approach could have been taken in respect of lorry related noise. If there was a point in time when the level of lorries routinely visiting the site in order to be maintained increased to say 10 or 15 lorries, that would be a material change of use. The next step would be negotiations and discussion with the occupiers on whether planning permission was required, and if so, whether it should be permitted subject to conditions. One consideration would be the effect on amenity, part of which is the noise element. The production of photographs may show lorries, but photographs do not of themselves indicate evidence of noise in terms of the public interest. If Mrs B's concern was lorries visiting the site and there was evidence of noise associated with maintenance, that may be evidence of impact on amenity.

333. He said he did not recall having seen Mrs B's photographs (which she said had been taken in 2005) produced by the investigator. He said he never saw activity at the site on the scale depicted in the photographs. If he had, he would have been concerned, as the activity shown in the photographs required an explanation. If the level of activity depicted in the photographs had been observed by the Inspector (who had determined the appeal in relation to the First Shed in February 2005) and by him on his own visit and subsequent site visits, then it would have been necessary to have pursued matters with Mr T, and any excessive noise, for example, from power hosing activities, would have been picked up through the monitoring carried out by the Environment Health Officers.

334. He said he did not look at the video footage taken by Mrs B in 2005 which was referred to in his notes of the meeting.
He (and Planning Officer E) had become involved at that time because Mrs B had submitted a complaint to the Ombudsman which included complaints that Planning Officer D and the former Enforcement Manager (Officer F) had not acted in a professional manner. Up to that point, a judgement had been made that there had been insufficient evidence to indicate that a material change of use had occurred. He decided, therefore, not to look at matters which were being considered by the Ombudsman, but to establish a new base line from which to consider any current or new issues. From that point on, he said any new complaints were investigated.

335. He said there were difficulties in testing evidence which comprised video footage, and authorisation under RIPA has never been sought or obtained in planning enforcement cases. Local authorities have been criticised for the over use of surveillance under RIPA. Photographs provide a snap shot of the activity on the site at a certain point in time, but to show that a material change of use has occurred, there had to be evidence of a sustained pattern of usage, and if there was a change of use, then the impact on local amenity and highways would have to be considered. The amenity considerations would include the effect of noise e.g. from compressors and power washers. If Mrs B's concern

was the impact on her amenity caused by HGV maintenance noise, or if the video footage had indicated any noisy activity, he would have expected some noise to have been detected on the occasions in 2006, 2007 and 2008 when the Environmental Health Officers had used monitoring equipment to investigate complaints about noise from dog barking, quarrying and cockerel noise. However, no such noise was detected, let alone noise amounting to a statutory nuisance. He is not aware that Mrs B submitted complaints specifically about noise from HGV maintenance activities.

336. He said that the only footage he saw of HGV activity was in the current affairs television programme broadcast in 2005. He said this showed vehicles with headlights activated being driven, but did not indicate sufficient evidence to show a large number of lorries entering and leaving the site or that a HGV maintenance depot had been established on the Farm. He said he stood by his statement (in his letter dated 13th May 2008 to the Planning Division of the Welsh Assembly Government) that the video evidence was an unreliable source of evidence. In addition Mrs B's reliability as a witness was questionable in the light of her attempts to influence the investigation into dog barking noise. However, on subsequent visits to White Farm to look at other complaints, officers were alert to anything which might have indicated sustained levels of increased haulage related activity which might have indicated a material change of use.

337. He said he viewed the video footage produced by Mrs B in 2010. This prompted a further investigation which included an unannounced site inspection when he took photographs. However, he saw nothing more than what he had seen in the past. There were no signs of lorry maintenance, stocks of hydraulic oil or brakes and other parts. There was a lorry in the building which replaced the dutch barn, but nothing in his view which evidenced a material change of use to a depot.

338. He said his email dated 16th August 2010 headed "Improvement Assessment" referred to a meeting with officials at the Welsh Audit Office. The reference in that email to evidence being "doctored" related to the Environmental Health Officer's concerns that Mrs B had provoked

her neighbours' dogs into barking when evidence was being gathered, and not to the DVD video footage. He does not accept that he misled the Welsh Audit Office by omitting to mention that an abatement notice had subsequently been served in respect of dog barking noise, as he was not aware of it.

339. He said he did not recall briefing Councillor 1 in advance of the television programme broadcast in 2006. However, the Councillor's statement on the programme seemed to reflect the Council's position that the parking of 2 commercial HGVs at White Farm was the threshold. At that time, the Authority's view was that 2 HGVs was sufficient, and although Councillor 1 said a planning application would be required in respect of 3 vehicles, it was a matter of fact and degree, and it would have been necessary to establish whether planning permission was required and whether there was a sufficient movement along a continuum to indicate a material change of use.

340. After the 2010 appeal (in respect of the other site at White Farm), the Council established, on enquiries of VOSA, that White Farm was a licensed operating centre for 2 commercial haulage vehicles subject to environmental conditions. In October 2011, the Council established that the Farm was a licensed operating centre for a total of 3 HGVs. He said he was not aware that the Farm had been licensed as an operating centre for 3 vehicles since December 2005. Had the Council been aware of this, the Council could either have invited a planning application in respect of the use of White Farm for the parking of 3 HGVs, or in the absence of a planning application considered whether enforcement action was required. Such a planning application would have been assessed in the usual way, and having regard to guidance in Tan 9 in terms of whether the impact on the amenity was significant. If the Council had been aware that the Farm was licensed for 3 HGVs subject to environmental conditions, there may not have been any purpose in inviting a planning application which might, if granted, been subject to conditions which replicated those imposed by the Traffic Commissioners. He said that the authorisation of a site as an Operating Centre does not obviate the need for planning permission, but planning

authorities are advised not to duplicate other controls when imposing conditions on the grant of planning permissions.

341. He said the Council receives a publication from the Traffic Commissioners containing details of applications for licence variations. He does not recall if he was aware of Mrs T's application in 2005 to add White Farm as an operating centre for 2 more vehicles, and said that it would have been open to the Council to have made representations to the Traffic Commissioners. However, there were not strong links between the Council and the Traffic Commissioners. The evidence from 2005 to the present time had not indicated that the level of activity associated with the maintenance of lorries had resulted in a material change of use. In the case of the parking of 3 HGVs, it was still necessary to look at the consequences and whether there was any resultant harm. Mrs B was complaining about more than 3 lorries. He queried what purpose would have been served by inviting a planning application given that environmental conditions had already been attached by the Traffic Commissioners.

342. He said he did not recall that any assessment was made of the disturbance/noise log submitted by Mrs B in January 2006. However, by this time, there had been an inquiry by the Traffic Commissioners and an operating centre licence issued subject to environmental conditions.

343. He said he was present at a meeting with the Anti-Social Behaviour Coordinator, in August 2005. He confirmed that as stated in the note of the meeting, a long list of complaints about activities at White Farm was discussed. He does not recall making the statement about "frivolous/possibly malicious complaints" as recorded in the note. His contribution to the meeting related to the role of the Planning Department in looking at complaints which had been received, and in relation to consents which had been granted including the consent for the First Shed granted on appeal.

344. He said that a review of the alleged unauthorised activity was undertaken in September 2006. At this time the Council was considering the application in respect of the Second Shed and

considered that it was appropriate to undertake a comprehensive review. It was a long time before the outcome was notified to Mrs B in November 2007 when he provided a “final statement” of the Council’s position on planning enforcement cases. However, by this time, the PCP had been applied in Mrs B’s case, and he believed that a number of issues had also been raised in the intervening period.

345. In relation to Mrs B’s complaints of intimidation and other information about Mr T’s threatening and aggressive behaviour, he said that Mr T was a difficult person to deal with. However matters of intimidation were essentially a matter for the Police. If, nevertheless, the Council had used, for example, camera surveillance to gather evidence, this might have shown that White Farm was used as a lorry depot over a period of time since 2005, but he was entitled to park 3 HGVs, and if VOSA had tachograph evidence of more vehicles being parked at the Farm, that could have been vetted by them (VOSA). In relation to concerns about the use of powered machinery, there was no evidence of such activity seen during the course of a number of visits. In terms of whether planning permission was required, the Council would consider the effect on amenity, but lorries entering and leaving White Farm to the extent claimed by Mrs B did not indicate a material change of use.

346. He said that recent Welsh Government guidance (TAN 9) would be relevant in determining any planning application for use of White Farm as a haulage yard. It would have to be considered in the context of the diversification of the rural economy and such an application may be granted subject to conditions. He said that Mr T’s recent planning applications for the mixed equine and agricultural use of the sheds (and for laying tracks on other land at White Farm) have been approved by the Council.

347. He said the Council’s decision to allow the Second Shed under the GPDO was not perverse. One shed had already been permitted on appeal, and the proposal in respect of the Second Shed was submitted first as a planning application (which was refused), and then under the GPDO procedure. At the time of the earlier planning application advice was obtained from the Council’s Estates Officers on the viability of the

unit as a whole to accommodate a further shed. The Estates officer advised that further stock was being acquired and said he would wish to see the shed designed specifically for cattle. This advice tipped the scales when the proposed Second Shed was subsequently notified under the GPDO procedure. The Inspector, who allowed the appeal in respect of the First Shed, had also heard about plans from the appellant for bringing cattle on to the holding, even though this was not mentioned in the appeal decision. What was proposed in the GPDO notification was not dissimilar in design to the First Shed which had been approved. By this time, the farm had expanded in terms of the production of hay, and Mrs T had convinced the Estates Officer of their intention to build up the herd. They already had the First Shed which could be used for cattle, and the shed notified under the GPDO could be used for general storage. He said that the GPDO procedure enabled the impact of the scale and mass of a proposed building to be assessed if details of the proposals are requested. Even if, as in this case, details were not requested, there would still have been an assessment of the impact of the proposed shed.

348. He said that Mr T had erected the large board on the fence adjacent to Mrs B's property because Mrs B had mounted a CCTV camera on her house which was directed onto the neighbouring property. He said that planning permission was required for both the large board and the CCTV camera at the height at which it had been erected. In his view, the conduct of the parties in deciding whether it was expedient to take action was relevant. He said he could not justify the use of public resources on 2 items of unauthorised development in this case. This could have involved inviting both parties to submit planning applications, and if these were refused, possibly defending appeals in respect of both. He said the Council has to be proportionate and prudent in its use of resources. He said the large board is immune from enforcement action.

349. In relation to the large removal lorry parked close to Mrs B's boundary, he said that are lots of cases where caravans are used for the storage of animal feed. The status of the lorry could be reviewed, but

even if the Council concluded that it was not being used for the storage of hay, it would be open to Mr T to place a few bales of hay in it.

350. He said a planning application may have been required in relation to the shed which replaced the former dutch barn, because this had a vehicle inspection pit in it, and was being used to refurbish a vintage lorry, and the view may have been taken that it was not required solely for agricultural purposes, and could not, therefore, be dealt with under the GPDO procedure. He said he was not aware that the building adjacent to the former dutch barn had a pit (in addition to the pit in the dutch barn). He said he did not recall seeing a second pit. His understanding, from his inspection in January 2010 was that the pit was still there, although the dutch barn had been replaced. He said he did not consider that the replacement building was big enough to facilitate maintenance of the tipper wagons when extended to their full height.

351. He said his letter dated 2nd April 2007 to the Assembly Member referred to there being a vendetta between 2 parties. He did not, in the letter, accuse Mrs B of making a vendetta. He said the term is used to describe a situation where an unpleasant dispute had developed between two parties, both of whom will use whatever means they can to get the other party investigated. In 34 years experience as a planning officer he has not come across as many complaints from a single individual as from Mrs B. She had also complained about the Police and Fire Authority and against the Council's public protection officers. Equally, Mr T is a difficult individual. He has a temper, and whilst Mr T has never physically threatened him or his staff, he has an aggressive attitude, and intended to invade one's personal space. In addition, both parties have been involved in court cases for assault. In his letter, he explained that the Council could not get drawn into a long running dispute between 2 parties. However, the Council had not refused to look at issues which had been raised by each party. He said that planning enforcement was not the best process for mediation, and the development of a more formal mediation service may help in situations of this nature.

352. In relation to the use of the PCP in Mrs B's and Mr R's case, he said he thought the reference to "numerous site meetings … since 2005" in the Referral Form related to site meetings at White Farm rather than meetings with Mrs B. He said the purpose of his own visit to Mrs B in July 2005 (which was mentioned in the referral form) was to investigate her complaint about the attitude of the enforcement officer (Planning Officer D). He did not know whether Mrs B refused access to the former Enforcement Manager (Officer F), but he may have informed Planning Officer D and Officer F that they were "off the case" and they would not, therefore, have sought access subsequently.

353. In relation to the claims in the Referral Form documentation regarding the number of letters that had been received from Mrs B since April 2005, or the date of notification from the Ombudsman regarding their complaint in July 2005, he said he thought there were more than 30 letters. But even if it was closer to 18 letters, it was over a period of 2 years, and in his view, the correspondence was excessive and justified the use of the policy. He said he did not recall whether the former Complaints Officer had direct contact with Mrs B, and was unable to comment on whether a warning was given to Mrs B prior to the Policy being implemented. He said it was rare to use the Policy, but the Council did not decline to look at new issues raised by Mrs B.

354. He said he recalled Councillor 2 approaching him about telephone calls she had received from Mr R, and concerns that he might visit her home which was nearby. He said he advised her to contact the Council's Head of Legal, and she did so.

355. He claimed Mrs B's letter dated 11th June 2009 to the Director of Regeneration & Leisure was concerned with use of material from the quarry at White Farm to lay tracks elsewhere on the holding. The issue of excavating material from the quarry in the farm yard had been looked at previously and Mrs B had been advised that material from the yard at White Farm could be used for the purpose of laying tracks for agricultural purposes. However, unauthorised development had taken place on the other land at White Farm and the Council was taking

enforcement action. This is what was referred to in the Director's earlier letter of 10th June 2009.

356. He said that his own objectivity and that of his officers was not compromised by the tone or manner or extent of Mrs B's communications. He said he has had dealings with difficult people before and has been prepared to defend his integrity. This has included bringing court proceedings against an individual in one case. All his staff were qualified planning officers or had extensive experience in planning enforcement work. Planning enforcement work required a great of patience, and officers had to deal with all sorts of people, including those who could be aggressive or emotional. Mrs B accused officers of misrepresenting the situation, but officers had to balance the different perspectives of 2 parties and as Head of Service, he had to make decisions on where the public interest lay and the resources available.

357. In relation to Officer F's email of 12th November 2007, he said it was not uncommon for officers to express frustration, but that did not affect their professional judgement. He said that Officer F had acted professionally throughout the 20 years he had known him. He might have found the case stressful and "sounded off", but at the end of the day, as his line manager, he would not have allowed an inappropriate attitude to have coloured decisions about whether enforcement action was expedient or necessary.

358. He said Mrs B verbally attacked him personally at a public meeting. She appeared to be under the impression that Officers' responses to her communications had become personalised, but he had refuted this. He said the whole range of conflict between Mrs B and Mr and Mrs T reflected certain issues which could go well beyond what a reasonable person might undertake, including the "use" of the Police and Fire Authority to pursue their respective claims.

359. He said that he did not consider that the Council had done anything wrong in relation to planning enforcement. Complaints when received were dealt with in accordance with the relevant process and investigated, and explanations were provided of the Authority's position.

Officers dealing with the complaints were also changed to accommodate Mrs B's concerns. He did not consider that the Council did anything which it should not have done. It looked at everything in a logical manner, on its planning merits, and considered whether it was reasonable to take action. Nor did he consider that the Council had failed to do something it should have done. The fact that it took enforcement action against Mr T in relation to the other land at White Farm proved that the Council had not "sided" with him as Mrs B might have believed, but was prepared to take robust action to deal with unauthorised development.

The Director of Regeneration and Leisure

360. He said he was briefed on the reasons for applying the PCP in Mrs B and Mr R's case. The decision was concerned more with the effective use of resources than the attitude of Mrs B. One of the reasons why he was nominated to be their single point of contact was that he had not had any prior direct involvement with them.

361. He said there was no reason why the PCP was not specifically referred to in his letter dated 17th August 2007. If Mrs B and Mr R were not warned that the Policy might be invoked if they did not modify their behaviour, that was an oversight. There was no attempt to hide anything. He referred to the Policy in his letter of 27th February 2008 to Mrs B and Mr R. By that time, someone may have mentioned the existence of the Policy to them. However, it was not his intention to mislead but to achieve a better conduit between the Council and the Complainants for dealing with the issues they had raised. One of the key issues was the need to move on from old complaints and he said he would investigate new complaints. There was no particular reason why Mrs B did not receive a copy of the Policy when she first requested it. It was the Council's intention to conduct regular reviews of their status under the Policy even if there were delays on occasions.

362. In relation to the application of the Policy to Mrs B's and Mr R's communication with Councillors, he was under the impression that more than 2 councillors had been involved but Councillor 2 had been sufficiently worried to take it up. In addition to raising her concerns with

the Legal Department she had also spoken to him personally. Although Mrs B had questioned the lawfulness of being denied access to Councillors, his concern was to protect Members from undue pressure, and if contact became a problem and caused stress to Councillors, then the issue was to protect the Councillors rather than to prevent access to all Members. He said he believed the decision (taken at the review meeting in March 2009) to block their email address was a mistake. The recording of the decision in the minutes is unfortunate, and the aim was to prevent emails being sent all over the organisation. He believed that the use of the PCP was the correct course to take, and the Council had tried to apply it in the spirit of what the Policy was intended to achieve.

363. He said that in responding to Mrs B's correspondence, he would have taken the advice given by the Planning Officers. This included his correspondence in January 2009 in which he referred to the purposes for which the sheds at White Farm were being used. He has never visited the site and was not aware of any photographs showing horses in the First Shed. He was relying on the Head of Planning to inform him of the planning situation in responding to their questions about what agricultural activity was taking place on the holding. There were grey areas.

364. He said he did not recollect Mrs B's letters of 11th and 16th June 2009 but agreed (on looking at the copies provided by the investigating officer which were enclosed with a letter to him from Mrs B's solicitors) that they related to development on the neighbouring yard, as opposed to the other land at White Farm where the Council subsequently took enforcement action. He was unable to say whether Mrs B received a specific response to that correspondence. Correspondence from Mrs B's solicitors was dealt with by the Council's senior solicitor.

365. He said he did not view the DVD footage submitted by Mrs B in February 2010. He saw the Inspector's decision relating to the other site but had not studied it in detail.

<u>Councillor 1</u>

366. Councillor 1 was the Executive Board Member for Regeneration, Leisure and Tourism. His portfolio included the Council's planning functions.

367. He confirmed that his comments during the current affairs television programme broadcast in 2006 reflected his understanding of what he had been told by Officers about the legal planning position in relation to White Farm. He understood that planning permission might be needed to use a site as a haulage yard as well as a licence issued by the Traffic Commissioners. He was not aware, that at the time he appeared on the programme, White Farm had been licensed as an operating centre for 3 HGVs. He believed the relevant issue to be whether White Farm was capable of catering for 3 HGVs and he would have expected officers to have considered whether it was appropriate to have made representations to the Traffic Commissioners.

368 As Executive Board Member, he said he had no concerns about the way in which the Authority dealt with Mrs B's complaints over the years, and that Offices had acted on the evidence presented to them.

Councillor 2

369. Councillor 2 said (in answer to written questions prepared by the investigating officer) she did not believe that she had said anything untrue in her email dated 16th January 2008. She merely explained why she was requesting advice. She was not Mrs B's and Mr R's ward member, but lived fairly close to them, and they had contacted her as a neighbour. She considered their conduct by repeatedly telephoning her, including 11 calls on one day, and by trying to put words into her mouth, for example, "wouldn't you say that …?" and when she disagreed, "why not, tell me why not", was threatening and amounted to harassment. She said she had never met Mrs B and Mr R, but had been given to understand that they had behaved in a threatening manner. She said the person who told her this was afraid, and that as the information had been offered in confidence, she was unable to provide further information. She said that she had cause for concern if Mrs B and Mr R treated others the way in which they had treated her. The only question she asked the Head of Planning Services was how she should respond

to all these calls. His advice was to contact the Legal Department for advice. She therefore, sent the email message to the former Monitoring Officer who was the Head of the Department during that period. This was the only time she had asked for advice. She said that Mrs B and Mr R have caused her to suffer further anguish and lack of sleep by pursuing her again at this time through the Ombudsman.

Councillor 3

370. Councillor 3 is the Member for the ward in which Mrs B and her neighbours live. He was elected to the Council in June 2004 and was not aware of any earlier concerns about the use of White Farm for a lorry business. He visited Mrs B and her partner after he received a phone call from them to discuss their concerns. He alerted the Planning Department to their concerns and believed the Officers were already aware of them. His recollection is that enforcement officers visited White Farm. He visited Mrs B and Mr R on a number of occasions. Their broad concern was that White Farm was being used as a haulage yard and not as a farm or agricultural unit, and that buildings approved for agricultural purposes were not being used for agricultural purposes. He said it was difficult to see from Mrs B's house what was taking place at White Farm. The only opportunity to see into the yard is on the approach to Mrs B's property from the top of the access way. On the occasions he visited Mrs B and her partner, the yard was always clean and tidy. He did not personally see many lorries, and the yard was empty. He did not recall Mrs B showing him the photographs produced by my investigator. Mrs B did not show him any video footage of lorry movements shot in 2005 but he saw the current affairs television programme which showed footage of lorry movements.

371. He recalled seeing the container type lorry parked close to Mrs B's boundary and the large board on the boundary fence. Planning is a technical matter and he accepted the Officers' stance regarding the relevant planning policy and law in relation to these matters.

372. He said Mrs B contacted him about the agricultural notification in respect of the Second Shed. She had wanted the matter to be dealt with by the Planning Committee. However, it was an agricultural

determination which had to be dealt with within 28 days under delegated powers. His understanding was that unless the Planning Officer felt it merited consideration by the Planning Committee, then it had to be dealt with under delegated powers, and as it had to be dealt with within 28 days, there was not much time to put it before the Planning Committee. In addition, technical matters were for the Planning Officers to deal with.

373. He requested a site visit by the Planning Committee in respect of the Third Shed because of the planning history. He felt it would be helpful for the Members to see the site. The application was then approved.

374. He said he was not aware of the decision in July 2007 to apply the Persistent Complainants Policy to Mrs B but she made him aware of it some time later. He was aware that Mrs B and her partner had contacted other councillors. He subsequently became aware that the PCP was applied to communications between Mrs B and councillors. He said he informed an officer in the relevant department that he had no objection to Mrs B contacting him, and he did not ask for the Policy to be extended to restrict communication with him. When he received communications from Mrs B, typically by email, he forwarded them to the Director of Regeneration and Leisure.

375. He did not think that the Council turned a blind eye to haulage operations which might have been taking place at White Farm. As the local member, this has been a difficult case. He passed on Mrs B's concerns and her correspondence to officers, and was satisfied that the officers looked at her concerns.

The Council's comments on the draft report

376. The Council did not accept that because it had insisted on a planning application for the proposed cattle shed in August 2006, a planning application should similarly have been required in respect of the Second Shed. It said circumstances had changed and that Mr T was entitled to take advantage of his permitted development rights for the Second Shed which he proposed using for the storage of hay and machinery. The Council maintained that Mrs B's CCTV camera required

planning permission, and that it had exercised its discretion properly when it decided not to take enforcement action in respect of the large board. It said that the Ombudsman's Planning Adviser had the benefit of hindsight, where as the planning officers advised on the basis of the evidence available to them at the time, that its officers had been consistent in maintaining that they did not find evidence of breach, and had acted objectively despite the challenging nature of Mrs B's correspondence. In this connection, the Council drew attention to the tone and content of Mrs B's correspondence, with particular reference to her email dated 14th February 2011 (paragraph 177 refers). It said that its Persistent Complainant's Policy mirrored similar policies of other Authorities and had been developed after reviewing best practice in other Authorities, and in relation to the absence of an appeal mechanism, that its status was merely that of an internal working document. Although the Council had unfortunately restricted Mrs B and Mr R's email access to their local member for a period, this had not been its intention and that it had taken measures to remedy the "inadvertent side-effect", and that it was unfair in the circumstances for the Chief Executive to be described as "dishonest".

Mr X, retired planning inspector

377. Mr X said he worked for the Planning Inspectorate as a Planning Inspector prior to his retirement in March 2011. He conducted a public inquiry into appeals concerning White Farm on 2nd September and 14th October 2010. The appeals were concerned with land at White Farm in respect of which the Council had refused planning permission for the retention of a hard standing for the parking and storage of agricultural vehicles and implements, and had issued an enforcement notice. The Appellant, Mr T, was represented by a planning consultant, who also gave evidence. The Council was represented by a planning officer (Planning Officer B) who, together with the Council's enforcement officer, gave evidence. Mrs B was among those who also attended the inquiry. A transport consultant also gave evidence on behalf of the Appellant at the adjourned hearing about the Operator's Licences issued in respect of White Farm. The local councillor also gave evidence. Mr X said that he took notes during the inquiry and was able to refer to these during the interview.

378. He said that the appeal site was some distance away from the main farm buildings on the holding which included 2 large warehouse type buildings. He explained that one of the main purposes at the inquiry was to see why the Appellant needed such a large area of hard standing (4,500 sq m) for storage when he already had two very large warehouse type buildings built with planning permission for agricultural use and had created a large yard out of the quarry near the farm buildings. It was part of his brief to examine the need for the hard standing referred to in the enforcement notice as well as its acceptability in the countryside. He said that the Council's Planning Officer, in answer to his question about paragraph 3.1 of his written statement (in which he said there was no relevant planning history affecting the appeal site) agreed that it was necessary to look at the planning history of the whole unit including the farm buildings. However, in his closing submissions on behalf of the Council, the Planning Officer appeared to revert to his original stance, when he said that 1 or 2 haulage vehicles was acceptable on the farm as a whole but that the appeal site was secondary to that, and that the enforcement action was limited to the area of the alleged breach. It was as if the Officer wanted to divide the farm into portions and consider the uses on each portion separately, instead of looking at the farm as a single unit. In his (Mr X's) view, the correct approach was to look at the farm as a single unit, as he needed to know whether the large area of hard standing on the appeal site, with its skips and vehicle body shells could be justified in terms of the whole farm as an agricultural unit rather than operations specifically being carried out on any one part.

379. He said that Mr T claimed, in his evidence, to have cattle on the holding, but none were evident during the site inspection, only horses in one of the large sheds and in the stables on the holding. He said he was not concerned to establish whether Mr T was farming, merely to establish why the farmyard could not be used for the uses proposed on the appeal site, and he was not, therefore, directly concerned with the presence or otherwise of cattle on the holding. Nevertheless, there was some farming activity, namely the production and baling of fodder. The use of land for the grazing of horses and the production of fodder for

horses may be agricultural, but neither the breeding or showing of horses nor the erection of buildings for stabling horses which are kept for leisure or showing purposes is agricultural.

380. He said that the claim by the Appellant's planning consultant that the Farm was not being used as a commercial haulage yard was not entirely borne out by the evidence. The holding was licensed as an operating centre for haulage vehicles, the Appellant had haulage lorries parked on the holding, and he admitted he had cut up scrap on the appeal site. Although the Appellant was trying to claim, in relation to the enforcement notice, that these activities were part of an agricultural operation, the matter had to be looked at on the basis of the whole holding. The Appellant had lorries, the capability, and had scrap on the site. The planning consultant, in response to a question about the planning status of the haulage business on the farm, said the haulage business was not connected to the appeal site, which was agricultural.

381. Mr T's evidence was that he was trying to improve the farm, and that he needed the hard standing for this purpose. The site was marshy and he had dug drainage ditches. He had also obtained an exemption from the Environment Agency which enabled him to tip inert waste material which he used to level the site and make tracks for access in order to maintain and improve the land for haylage and fodder. Mr T said he needed the hard standing to store fodder, as the sheds were used for horses. He also said that that he used the horses for showing and driving.

382. Mr T also said in evidence that the Operating Centre for his haulage company was at White Farm, but his other recycling business was based in a neighbouring county. He stated openly that he was operating the haulage company from the Farm, and appeared to believe this was in order. He did not mention the number of vehicles operated from the Farm in his evidence in chief, but when questioned by the Council's Planning Officer said 6 or 7 vehicles at the Farm and 3 other operating centres. The transport consultant who gave evidence on his behalf referred to operator licences issued in respect of White Farm for 5 vehicles and 1 under another licence with 7 trailers some of which were

at another operating centre. The consultant then produced documentary evidence of VOSA operator licences which showed that White Farm was an operational base for 6 lorries and five trailers owned by two different haulage companies. Copies were made for the inquiry. He also said that the operating centre had been registered on the Farm for at least 10 years and that there was nothing untoward for a farm to have haulage vehicles. In response to questions by the Council's Planning Officer, the transport consultant said that the operator licences related to 5 vehicles of varying sizes up to 44 tons, and that there could be 5 vehicles parked at the Farm. The consultant also said that the Appellant's haulage companies were named in each licence, and that planning permission was not required, merely the consent of the landowner. The transport consultant was cross examined by Mrs B who was concerned that the operator licences which had been produced did not match the information she had obtained from the VOSA website. He replied that the website may not be up to date and that she may not have been consulted on the addition of further vehicles to the licence in respect of White Farm because it was an existing operating centre.

383. Mr X said he understood the Council's position to be that if the Appellant ran a haulage business elsewhere, then it was acceptable for him to drive a lorry home and park it at the Farm, and that the parking of one or two lorries was acceptable. He said he asked the Council's Planning Officer about the nature of the haulage use at the farm, and according to his notes, the Planning Officer replied that the Local Planning Authority would allow one or two vehicles to be on the land. He said he recalled probing him a little further to find out whether he thought that such a change of use would need planning permission, but did not record the answer. He said he had raised it as a relevant issue with the Planning Officer because he expected to reach a different conclusion about the uses made of the farmyard and buildings when writing his decision on the enforcement appeal, namely whether haulage use was different to farming, and therefore needed planning permission. It was his impression that the Local Planning Authority did not "allow" the parking of HGVs, they simply turned a blind eye to what was going on without proper investigation of the haulage use, but would be concerned if more than one or two vehicles were involved. However, in his view,

the parking of one or two commercial haulage vehicles, which regularly left the Farm at 7 am as claimed by witnesses and returned after dark is sufficient to indicate a material change of use to haulage purposes. He believed that the Council should have taken account of the operator licences issued in respect of the Farm, given that these were issued to the Appellant's haulage companies, rather than to any farming related business, such as the production and transportation of hay for profit. In any event, the parking of one or two vehicles was debateable as the evidence during the inquiry indicated the vehicle numbers to be between 5 and 7, and he had counted 10 during his site inspection, but he did not know whether all these vehicles were on the same operator licences. He does not recall suggesting to the Council that it "led [Mr T] to believe that he can do as he likes".

384. He said that Mrs B was very concerned about the uses to which the sheds were being put. She was also concerned about the quarry behind the sheds, and he understood that there had been some quarrying activity. The Appellant explained during the site visit that he was removing rock from around the perimeter of the quarry to flatten the base to make a yard.

385. He said that one of the sheds was open sided and he could see an area fenced off with hurdles, which was being used for horses. There was also some hay for the horses. The rest of the shed was being used for haulage type uses. This included lorries parked in the shed. These were mainly commercial vehicles most of which had the livery of the Appellant's haulage company. There was also an oil tanker on a raised ramp in the yard which the Appellant explained was used to fuel his lorries. Other vehicles were parked outside in the yard. He cannot recall seeing inside the other shed. However, neither the Appellant nor the Council disputed the claims by the residents regarding the uses to which the sheds were being put, and appeared to accept that the sheds were not being used for agricultural purposes. He said that there was another area of hard standing between the sheds and the paddock adjacent to Mrs B's property on which other vehicles were parked. These included a fire tender (which had been moved from the appeal site) and a couple of vans. He also saw lots of lorry tyres and other

items which could be seen in any haulage yard. He said no one challenged his description of the yard and his assessment of the use of the yard and buildings as a licensed haulage depot, and for the storage of related items and as a HGV maintenance area combined with the keeping of horses as set out in paragraphs 24 to 27 of his decision on the appeals. He said he saw very little general farming activity.

386. He visited the main farm complex at the end of the inquiry, when he was accompanied by the Appellant, the Appellant's consultant and the Council's enforcement officer. He (accompanied by the Appellant's planning consultant and the enforcement officer) then visited Mrs B and Mr R at their request, as they had wanted him to see the large lorry parked by their boundary and the location where the pigs had been kept. However, he did not consider that these were relevant to the appeals. But he noted the point on their driveway from which they had filmed lorry movements in and out of White Farm. The appeal site was not visible from their property.

387. Mr X said he had adjourned the inquiry so that the DVDs which had been referred to by Mrs B could be viewed by the principal parties and himself. He said it included the current affairs television programme and showed lorry movements which dated back several years. He does not recall if it included any footage of lorry movements to and from White Farm shot during 2010 prior to the inquiry. He did not attach a great deal of weight to the footage as it appeared to be historical, and he was interested in establishing the current situation on the Farm. At the resumed hearing, Mrs B made some submissions about the footage but accepted that none of the footage related to the appeal site. The Council, beyond commenting that "it's part of [White Farm]" (which he took to mean that the activities depicted by the footage was part of general farm activity), did not make any other comments about the video footage itself.

388. He said that during the inquiry it was necessary to remind Mrs B to confine her submissions to matters which were relevant to the appeals. Both the Appellant's planning consultant and the Council's planning officer had advised him before the start of the inquiry that the Appellant

was volatile and likely to fly off the handle. He said he had observed the Appellant getting agitated from time to time, and had, therefore, intervened to calm things down. It was also drawn to his attention that the Appellant was staring at witnesses in a menacing manner. The Inspector said he could not see this for himself, as the Appellant was facing away from him towards the witness, but in view of what had been said, he asked the Appellant to keep facing towards the front.

Professional advice

389. My Planning Adviser is Jim Griffiths, MA (Arch), M.Sc, MRTPI. He is a retired planning inspector with 20 years experience of dealing with planning appeals. He also has experience of working as a planning officer for a local planning authority.

390. My Planning Adviser said that the Council was wrong to allow the development of the Second Shed under the GPDO procedure, and should have requested that it be the subject of a planning application. However, in view of the size of White Farm (42.5 hectares) he considered it likely on balance that planning permission would have been granted for the shed, if not by the Council, then on appeal. He referred to Welsh Government guidance in PPW 2002 and advised that the conduct of the parties should have little bearing on whether enforcement action should have been taken in respect of the large board, that enforcement action would have been justified, and that the presence of the board is likely to have an adverse impact on the living conditions of the occupiers of Mrs B's property, (although this may be reduced by the existence of another window in the room concerned). He also advised that although the Council appeared to have recognised that a material change of use had taken place between 2004 and 2006 at White Farm to a mixed use of agriculture, equine and haulage business, it failed to invite Mr and Mrs T to submit a planning application. However, harm to the living conditions of the occupiers of Mrs B's property caused by the largely unregulated haulage activities on White Farm is likely to be limited, having regard to the fact that modern agricultural activities, which could include machinery and engine noise, can be carried out at White Farm at all times without restriction.

391. Finally he advised that the Council's decision not to take enforcement action in respect of the parked lorry was, in the circumstances, a reasonable one.

392. The complete text of the advice appears at Appendix 2 of this report.

Analysis and conclusions

393. Mrs B has complained to the Council about unauthorised activities taking place at White Farm since 2004, and there had been similar complaints dating from 2001. The investigation has, therefore, been extensive and involved a review of events over that time. Having considered all the information very carefully, I see the main issues as whether the Council:

- acted reasonably in allowing the development of the Second Shed under the GPDO;
- reasonably investigated and considered Mrs B's complaints about the haulage and equine related activities, the placing of the large lorry and the large board adjacent to her boundary;
- accused Mrs B of making "unfounded and malicious" complaints, of pursuing a vendetta and of falsifying evidence;
- acted reasonably in applying its PCP to her and Mr R;
- responded to her further complaints in 2009 and 2010 in a reasonable way.

394. I shall deal with each in turn.

<u>The development of the Second Shed</u>

395. Having refused planning consent in September 2006 for a cattle shed on the grounds of insufficient agricultural justification, the Council then in January 2008 allowed essentially the same building under the GPDO procedure. This time however, it was described as a hay and implement shed. The Council said that a deciding factor was the advice given by the Estates Surveyor in relation to the earlier application, which established the agricultural justification for the shed, and which, had it been received sooner, might have resulted in the cattle shed proposal being approved. However, the Estates Surveyor's advice was specific to

the proposed cattle shed, and “not of a general storage design such as the [First Shed]”. He was not consulted on the GPDO notification, and at interview, said he would not have supported the proposal, particularly if the cattle numbers had not increased. By the time of the GPDO notification in December 2007, the cattle numbers were down to 3, and by September 2008, the remaining cattle had been removed from the holding.

396. As my Planning Adviser has pointed out, permitted development rights are only available if the proposed building is reasonably necessary for agriculture. The Council had long had reservations about the agricultural need for large sheds on the holding. Even though its decision on the First Shed was overturned on appeal, those reservations continued until it received the Estates Surveyor’s advice in relation to the cattle shed proposal. However, the cattle numbers had decreased, and it is clear from the Surveyor’s advice that he did not support a general storage proposal. I am not persuaded, therefore, that it was appropriate to rely on the Estate Surveyor’s advice which was specifically related to a cattle shed to house an increasing herd. My Planning Adviser said that the appropriate course would have been to have requested further details by means of a planning application. This would have enabled a fuller and more transparent assessment to have been made of the proposal, including the need for a further large shed on agricultural grounds and its impact on the locality and neighbouring occupiers, such as Mrs B and Mr R.

397. Accordingly I find that the process by which the Second Shed was allowed was flawed. Whilst noting the Council’s comments, my decision is not based on the fact that the Council had earlier insisted on the submission of a planning application in respect of the proposed cattle shed, but on the reasons outlined in paragraph 395 above. Unlike GPDO notifications, a planning application in respect of the Second Shed proposal would have been publicised, and Mrs B and Mr R were denied the opportunity of requesting, via their local member, that the application be determined by the Planning Committee. That is an injustice to them. I therefore uphold this complaint. However, and whilst noting the evidence of the Estates Surveyor, and the Council’s earlier

concerns about the justification for the shed, I have also been advised that in view of the size of the holding, such an application might have been granted, if not by the Council, then on appeal.

398. Whilst noting Mrs B's concerns about the Third Shed, I do not see a problem with the way in which the application for this building was dealt with. It replaced an existing structure, other material factors were considered, including the uses to which the First and Second Sheds were being put, and I consider that the Council's decision was one which in the circumstances, it was entitled to reach.

Mrs B's complaints about haulage and equine uses, the lorry and the large board

399. Mrs B's first formal complaint appears to have been submitted on her behalf by the local MP at the end of 2004. The evidence indicates that the Planning Enforcement Officer attended a meeting with the MP's caseworker, made an unannounced visit to White Farm, and, on 24th January 2005, responded to the MP's office on the outcome of his investigation, essentially that there was no evidence to suggest that lorry repairs were taking place, and that Mr and Mrs T's haulage vehicles were being serviced and maintained at another location. He also said that it was acceptable to park up to 2 HGVs and for a lorry to receive minor mechanical/electrical attention undertaken by Mr T on an occasional basis. In relation to equine related development, his letter said that planning permission was not required for the "horse walker" but should have been obtained in respect of the ménage, but as its impact on the amenity was not significant, no further action was considered necessary.

400. A check had been made of the site history in May 2004 in order to respond to concerns/queries raised by the local community council. Planning Officer D visited White Farm in April 2002 and saw nothing untoward. However, he was taken off the case in 2005 following a complaint by Mrs B, and it is not apparent that officers who then became involved were aware of the log of vehicle movements recorded at the end of 2001 – which indicated a pattern of haulage related activity

involving between 1 and 5 HGVs being washed down and serviced at White Farm at weekends.

401. The Council was alerted to further information by Mrs B's surveyor. She referred the former Planning Enforcement Manager to the haulage company's website, and by telephone on 24th March 2005, of the outcome of her own enquiries to the effect that Mr and Mrs T were only occasionally parking a lorry at their licensed operating centre in the locality. Mrs B also said she had "clear unambiguous evidence" to support her claims, and would present it at the appropriate time. This included photographs taken during the early part of 2005 which depicted haulage related activity at White Farm. It also included video footage of lorry movements out of White Farm. The former Planning Enforcement Manager said he did not recall being shown the photographs or offered the video footage at the meeting with Mr R on 3rd May 2005. Mr R's Surveyor who was present, believed Mr R, who came to the meeting armed with photographs and papers, would have produced the photographs and made the Council aware of the footage and she recalled having seen the photographs prior to being sent copies by the investigating officer. Mr R had also referred to them in his letter dated 1st November 2005 to the Council and invited the Council again to view them. On balance, therefore, I am inclined to think that this evidence was shown/offered at the meeting. In any event, it was offered to the Head of Planning at his meeting on 12th July 2005, but he declined to view it, as by that time a complaint had been submitted to the Ombudsman, and he had decided not to look at past investigations by enforcement officers.

402. None of the planning officers interviewed said they had seen the photographs or the footage. However, Planning Officers D and E said the photographs depicted more than they had seen on their visits, and the Head of Planning said the photographs depicted activity which required an explanation. Moreover, the footage, as subsequently shown on the current affairs programme, depicted between 1 and 4 HGVs departing from White Farm prior to 7 am on a number of days in February and March 2005.

403. It is unfortunate that relations between the Council and Mrs B deteriorated to the extent that they did. Whilst I have noted Mrs B's comments about the Council's attempt to mediate between her and her neighbours, I am not persuaded that it was unreasonable. It also reflected guidance given in TAN 9. Nor was its invitation to Mrs B and Mr R to complete further logs of noise/disturbance in respect of White Farm unreasonable.

404. However, there were other signs that the Council missed or chose to ignore. The Planning Inspector's report relating to the First Shed referred to the presence of 2 commercial tipper wagons and 2 earth moving machines on the holding. The Council appeared to have been aware in the early days that White Farm was a licensed operating centre for one HGV, but it was not until October 2011 that its planning officers became aware that this had been increased to 3 in December 2005 even though it received details of applications and variations from the Traffic Commissioners. Councillor 1 was not aware of the position when he appeared on the current affairs television programme in 2006, and explained (based on advice he said he had received from officers) that the parking of 2 lorries did not constitute a business, but planning permission should be applied for if 3 were involved. However, officers in the Public Protection Department had established that White Farm was a licensed operating centre for 3 HGVs in August 2007 (paragraph 114 refers). The grant of an operator's licence does not obviate the need for planning permission. The former Planning Enforcement Manager said he thought that Planning Officer D had visited Mr and Mrs T's other licensed operating centre in the locality. However, no such visit was made, and given the information provided by Mrs B's surveyor, it would have been reasonable for such a visit to have been made.

405. I accept that the photographs and video footage, by themselves, would not be sufficient, for example, to sustain enforcement action. However, they should have been seen as part of an information gathering exercise. The fact that a complaint had been made to my predecessor did not prevent the Council from taking appropriate action in relation to any matters complained of (paragraph 31 of Appendix 1 refers). Moreover, there was a history of complaints from 2001, Mrs B

had complained of intimidation by Mr and Mrs T because she had made complaints to the Council, the Council was aware of problems experienced by the former owner of her property and that Mr T was capable of aggressive and abusive behaviour. I recognise that the Council cannot involve itself in disputes between neighbours. However, there were planning issues involved, and I think it would have been reasonable in all the circumstances for the Council to have considered the photographs and footage as part of an information gathering exercise. Had these measures been taken, the Council could then have considered whether a material change of use was taking place, and if so, whether it was expedient to take action. In this connection, I have noted the concerns expressed by Officers D and E (at paragraphs 253 and 263) that the use of White Farm as a licensed operating centre for 3 HGVs might have indicated that a change of use was taking place. Bearing in mind the problems of intimidation complained of by Mrs B and Mr R, the Council could have considered whether additional surveillance was necessary, and/or invited Mr and Mrs T to submit a planning application. I recognise that the Council would not wish to duplicate the controls imposed by the Traffic Commissioners. However, the environmental conditions imposed in December 2005 related to 2 vehicles only. I also recognise that Council officers may not have seen evidence on their visits of specialist servicing/repairs of HGVs. However, these factors do not, in my view, obviate the need to have considered whether, in the circumstances, enforcement action was necessary or a planning application should have been invited. A planning application would have enabled other matters to be considered, such as the use of the land for the operation of the haulage business, the parking of additional non agricultural HGVs and associated maintenance such as cleaning and power washing, as well as the impact on the visual amenity of the locality, the Council's policies, and the adequacy of the access and local highway network.

406. Subsequently, the Council appeared to have acknowledged in 2006 (at the time of the planning application in respect of the proposed cattle shed) that equine and haulage related uses were the primary uses of the site. The Council said it undertook a review of the planning issues at that time. However, it was not until November 2007, and after further

correspondence from Mrs B in which she had pursued her complaints with particular reference to the use of White Farm as an operating centre for HGVs, that she was notified of the outcome of that review. She was informed that no change of use of the First Shed to the commercial operations of the haulage business had taken place. But on 28th February 2008, the Director of Regeneration and Leisure informed her that previous site inspections had "proven claims that the [First Shed] was not being used for agricultural purposes", a statement which was confirmed by the Head of Planning at interview. If this statement was correct, then the Council should have considered whether a breach of the agricultural condition relating to the First Shed had occurred. That said, this statement is at odds with the Director's later letter dated 15th January 2009 which appears to say the opposite (paragraph 33 refers). The Council's position does not appear to be clear.

407. Although Mrs B pursued her complaints about equine and haulage related uses in 2008, 2009 and 2010, by that time the PCP had been imposed and she was advised that only new issues would be looked at. In February 2010, the Council reviewed new video footage submitted by Mrs B. The summary prepared by officers showed in the order of 111 HGV movements over 11 days between 4th and 28th January 2010. The numbers of lorry movements varied between 1 and 36 per day. Photographs taken by Officer L depicted agricultural implements stored outside one of the sheds, horses inside a shed, 10 HGVs (one of which appeared to be a livestock transporting lorry), a milk float or similar, discarded vehicle parts, tyres, lorry container backs, shipping containers and skips. Officer L also said at interview that there was a further lorry in the Third Shed (paragraph 337). However, Mrs B was informed by the Chief Executive in his letter dated 15th March 2010 that there was no evidence of car scrapping or haulage operation. Nor did the Chief Executive's letter refer to equine activity at White Farm. The Head of Planning also claimed at the PCP review meeting in May that "nothing new was indicated" by his site inspection and that the video footage had been wound forward in order to show lorries coming in and out of the farm in succession. For the reasons explained below (in relation to Mrs B's claim that she was accused of falsifying the video evidence) I do not see that the Council's scepticism was justified. In the circumstances, I

do not consider the response contained in the Chief Executive's letter to be convincing.

408. In relation to the equine related activity, it was only after the Inspector's decision on the 2010 appeal was issued that the Council tackled Mr T on the question of equine use, leading eventually to the grant of planning permission for mixed use of the sheds for agricultural, equine and vehicle storage.

409. I also find the Head of Planning's comment at interview, that lorries entering and leaving White Farm to the extent claimed by Mrs B did not indicate a material change of use, difficult to reconcile with the Council's consistently stated position from 2001 that the parking of 2 HGVs was acceptable, but that the parking of 4 lorries was a different matter. Mrs B had reported occasions over the years when between 5 and 10 lorries were entering and leaving or parked at the site supported by photographs and video footage. Lorry movements of the extent claimed by Mrs B could indicate the use of the site as a lorry depot where lorries were parked when not in use. Moreover, the Council appeared reluctant to accept Mr T's admission at the public inquiry in 2010 that he had been operating 5 lorries from White Farm for 10 years. Whilst this may not have tallied with what he (or the late Mrs T) had told Officers earlier, it was evidence given on oath, and I do not see why it should not have been accorded due weight.

410. I recognise that Mrs B's communications had become difficult to manage. However, there is also evidence to indicate that Officers lost patience with Mrs B, giving the appearance that as a result, their objectivity may have been impaired. This is evident from the emails of the former Planning Enforcement Manager dated 29th April and 26th May 2005 (paragraphs 17 and 67 above), and his comments when interviewed. Furthermore, comments made to Assembly officials in May 2008 to the effect that the clip on the 2005 television programme showed the same lorry giving the impression of a constant movement of lorries, and to the PCP review meeting in May 2010 (to the effect that the later footage had been wound forward "over a large period" to show lorries coming in and out of the farm in succession) also, in my view,

point to a lack of objectivity, given that the footage concerned showed timed and dated vehicle movements. In making this point, I recognise the concerns of the Head of Planning and the former Planning Enforcement Manager about Mrs B's interference with the evidence gathering process in relation to the initial dog barking complaint. But this did not prevent the Environment Health Officers from undertaking a further noise monitoring exercise, which led to the service of an abatement notice. In reaching this conclusion, I have noted the Council's further claim that it had acted objectively and consistently, and its concerns about the uncompromising nature of Mrs B's comments in her email dated 14th February 2011. However, and whilst not condoning her action in writing in this way, they were made after the PCP was disapplied to her and after she had received the Inspector's report in respect of the other site when she may have felt vindicated in some of her claims. In any event, I am not persuaded that her comments at this stage are relevant to the apparent lack of objectivity displayed by the Council in 2005, 2008 and 2010, and as mentioned earlier, by Officer F in his comments both at interview and on the draft report, given that he had left the Council by the time Mrs B's comments were made. I have also noted Mrs B's concerns that derogatory comments made about her by officers are a slur on her character. It is an unfortunate feature of this case that uncomplimentary statements were made on all sides. However, and as mentioned earlier, my role is limited to considering the extent to which recorded comments made by serving and former Officers gave rise to the appearance of a lack of objectivity on the part of the Council.

411. However, and having regard also to the specialist advice I have received, I am not persuaded that the Council's stance in relation to the large removal lorry parked by Mrs B's boundary was wrong. It was a moveable structure and, whatever Mr T's motives for parking it so close to Mrs B's cottage, it was capable of being used for agricultural storage, and there is some evidence that it was so used (see paragraph 261). The Council tried to persuade Mr and Mrs T to move it, but I do not see that its decision not to take any further enforcement action to be unreasonable in the circumstances.

412. Turning now to the large board, the Council's position is that it, and the CCTV camera mounted on Mrs B's property, were unauthorised in planning terms, and that due to the ongoing disagreement between Mrs B and her neighbour, it was not in the public interest to request planning applications in respect of either development. Officer L said the conduct of the parties was relevant in deciding whether it was expedient to take action. PPW 2002[9] said that the planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. That advice remains unchanged. TAN 9[10] on enforcement says that the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. I think it is debateable whether planning permission was specifically required for the siting of the CCTV camera in this case, given the location of the pig pen adjacent to Mrs B's boundary and the pig faeces incident and I am reinforced in that view by my Planning Adviser. I think that in the circumstances the placing of the CCTV camera could, arguably, have been justified on security grounds. My Planning Adviser also said that the conduct of the parties should have little bearing on the question of whether enforcement action should be taken, and that enforcement action would have been justified. I recognise that the Council has discretion, and what Officer L said about the use of resources. Nevertheless, and based on the guidance referred to earlier and the advice of my Planning Adviser, I do not consider that the conduct of the parties is a relevant planning and land use consideration. In the case of the board, the relevant consideration was the impact of the board on the existing use of land and buildings meriting protection in the public interest, namely Mrs B's property, irrespective of her conduct or that of her neighbours. There was no assessment of the board from Mrs B's property. I have noted the Council's further comments, but I have been unable to reconcile those comments with the planning guidance mentioned above. In the circumstances, I do not consider that

[9] See Appendix 1 paragraph 13

[10] See Appendix 1 – paragraph 17

the Council approached the exercise of its discretion correctly. As a consequence, the board, which is located 2 metres from Mrs B's bedroom window and obscures light to it, is now immune from enforcement action.

413. Accordingly, I find that the failures identified above, namely the Council's failure to look at the photographs and the video footage, the failure to make enquiries in respect of the other licensed operating centre, the failure to liaise with the Traffic Commissioners or be aware of the application to increase the number of HGVs at White Farm, the failure to consider whether a planning application should be invited after White Farm became a licensed operating centre for 3 HGVs, its apparent lack of objectivity in relation to Mrs B's subsequent concerns including the failure to notify her of the outcome of its review of the planning issues at White Farm in September 2006, its apparently ambiguous position in relation to the uses to which the sheds were being put, and her further complaint in 2010 amounts to maladministration. I also find that the Council's failure to take enforcement action in respect of the large board amounts to maladministration. Whilst noting the Council's comment that officers did not have the benefit of hindsight, this does not, in my view, excuse the failures to address Mrs B's complaints in the light of the information which was available, or which the Council ought to have been aware of, at the time.

414. As pointed out by my Planning Adviser, the limited farming activity at White Farm does not mean that it was no longer agricultural land. However, as a consequence of the failures mentioned above, the opportunity for assessing the impact of any change of use on Mrs B's and Mr R's amenities, perhaps in the context of a planning application, was not taken, and that is an injustice to them. However, and bearing in mind the advice I have received, it seems likely that a planning application for change of use to agricultural, equine and haulage related uses would have been granted, but subject to conditions aimed at reducing the impact of such uses on local amenities. In addition to restrictions on hours of operation, numbers of vehicles and vehicle maintenance activity, such conditions could restrict, for example, any scrap, waste or recycling operations from taking place. In the meantime,

it is not surprising that Mrs B and Mr R felt that their concerns were not being taken seriously.

415. I have considered Mrs B's comments to the effect that the dispute with Mr and Mrs T about the right of way and ensuing difficulties could have been avoided had the Council taken more robust action in 2004. However, I am not in a position to determine with any certainty that the dispute would not have occurred had the Council taken such action. In my view, the possibility that Mr and Mrs T would not have acted as they did cannot be ruled out, and there was a need for Mrs B and Mr R to resolve the problems about the access way by means of legal action against their neighbours. However, I consider that the Council's failures identified above may have added to their distress.

416. I therefore uphold this complaint, with the exception of the complaint about the siting of the removal lorry by the boundary.

Whether the Council accused Mrs B of making "malicious/possibly unfounded complaints", pursuing a "vendetta" and "falsifying evidence"

417. The "malicious/possibly unfounded" complaints comment appeared in the note of a meeting in August 2005 attended by Officer L, Officer J, a police officer and the former Anti-Social Behaviour Coordinator (paragraph 77). Officer L said he did not recall making the comment, and Officer J (who noted the comment) believed it was made by the Police officer. Whilst I am satisfied that the comment was made, I do not consider the evidence points to it having been made by either Officer L or the former Anti-Social Behaviour Coordinator. Whilst noting that the comment was made in the context of a note about complaints to the police, it is not possible to conclude with certainty who made the comment. I do not, therefore uphold this part of the complaint.

418. There was a further reference to "malicious" complaints made by Mrs B and Mr R in an email to Officer J on 5th June 2008 following the conviction of Mrs T in respect of cockerel noise nuisance (paragraph 113). The evidence indicates that this related to the earlier comment made during the meeting in August 2005 rather than, for example, a gratuitous comment by the author. I can understand that Mrs B and Mr

R were aggrieved by the comment. However, and whilst it might have been unwise, I do not consider, given the context in which it was made, that it points to maladministration by the Council.

419. Mrs B claimed that Officer L accused her of conducting a vendetta against her neighbours in his letter dated 2nd April 2007 (paragraph 102) above. In the letter, Officer L stated that he could not use resources "into what has developed into a vendetta..." He denied at interview that this was an accusation specifically against Mrs B, but was used in the context of an unpleasant dispute between 2 parties, both of whom will use whatever means they can to get the other party investigated. No parties are specifically referred to in the statement, and whilst noting Mrs B's further comments, the statement in the letter does not in my view point unequivocally to the interpretation claimed by Mrs B. I do not, therefore, uphold this part of her complaint.

420. The claim of "falsifying evidence" relates to Officer L's comments in his letter dated 13th May 2008 to the Assembly official to the effect that the clip on the 2005 television programme showed the same lorry giving the impression of a constant movement of lorries (paragraph 71). It also relates to his comment to the PCP review meeting in May 2010 when he is recorded as saying that recently submitted footage had been wound forward "over a large period" to show lorries coming in and out of the farm in succession (paragraph 170), and to his comments at a meeting with officials of the Welsh Audit Office in August 2010, at which in relation to the DVD evidence, he expressed doubts about the credibility of Mrs B and Mr R as witnesses as they had "doctored" dog barking evidence. He also said that the continuity in the DVD was suspect with lorries departing at high frequency (paragraph 171 above).

421. The footage shot by Mrs B in 2005 and in 2010 included timed and dated footage of lorry movements as described in this report (paragraphs 70 and 160). Mrs B said that the footage was filmed on a CCTV camera which laid the information down on the hard drive of her computer and could not be meddled with. The Council has not provided any other evidence to substantiate its concerns, other than, as mentioned above, Mrs B's interference with the evidence gathering

exercise in the dog barking complaint. I am not persuaded, therefore, that the reported comments, insofar as they related to the DVD footage, were justified, and for the reasons explained earlier, they gave rise to the appearance of a lack of objectivity on the part of Officers. As a consequence, not only were the comments upsetting to Mrs B and Mr R, but there is the possibility that the Council failed to approach the footage with an open mind, which in my view amounts to maladministration and injustice.

422. I therefore uphold this part of the complaint.

Whether the Council acted reasonably when it applied its PCP to Mrs B and Mr R

423. It is unfortunate that the file of the former Complaints Officer who completed the original referral of Mrs B's and Mr R's case for consideration under the PCP was not available to the investigation. Only copies of relevant documents were inspected, and I must make my findings on the basis of the evidence to hand.

424. The stated aim of the Council's policy[11] was to deal fairly, honestly and properly with persistent complainants whilst ensuring other service users, officers or the Council as a whole did not suffer any detriment. A further aim was to provide a means for such complainants to be dealt with in a fair and consistent way by all departments of the Council. Decisions to apply the Policy in individual cases needed to be supported by evidence, and Step 2 said it was good practice to make clear to a complainant regarded as unreasonably persistent or vexatious the ways in which his/her behaviour was unacceptable, and the likely consequences of refusal to amend them, before taking action under the Policy.

425. In this case, the evidence suggests that the case for invoking the PCP may have been overstated in terms of the number of letters received, and the claim that Mrs B and Mr R had refused access to enforcement officers. The referral form referred to over 30 letters

[11] See Appendix 1 – paragraph 34

received from Mrs B since July 2005, whereas the schedule of letters prepared by the Planning Department at that time recorded that 14 had been received since July 2005 (paragraph 126). There was only one occasion, namely on 31st March 2005 when Planning Officer D called on Mrs B, but she said she was on her way out. The note records what appears to have been a short exchange in which the Officer was asked to call on another occasion (paragraph 56), and he visited again in April. Neither Planning Officer D nor the other Planning Officers interviewed said they had been refused access by Mrs B.

426. Even if, however, the use of the Policy was justified, there is no satisfactory evidence to indicate that Mrs B and Mr R were given a warning as advised by Step 2, or that there were sound reasons for departing from this advice. Mr and Mrs B said they were not given a warning. The referral form stated, by means of a ticked box that there had been "a meeting with the customer to discuss the particular concerns", but the only meeting referred to was the meeting with the Head of Planning some 2 years earlier, on 12th July 2005.

427. Step 5 of the Policy required that action taken to direct communication with a named officer or to restrict contact should be clearly and promptly communicated to the persistent complainant with reasons where appropriate. Although the Council has confirmed that the Policy was based on guidance issued by my predecessor[12], there was no requirement that a complainant be told they could appeal against a decision to restrict contact. The Council's letter dated 17th August 2007 to Mrs B and Mr R contained a brief reference to earlier complaints and informed them that further planning related correspondence be sent direct to the Director of Regeneration and Leisure, who would deal with it accordingly. They were not informed they could appeal against this decision. It was not until they received the Director's further letter dated 28th February 2008 that Mrs B and Mr R became aware that the PCP had been applied to them. At that stage Mrs B had claimed that the Council was "trying to silence" her and that it was her "democratic right" to contact whomsoever she wished at the Council regarding matters

[12] See paragraph 33 of Appendix 1

which affected her property. Had the Council informed them they could have appealed, it is likely that it would have provided more information about the reasons for the decision and the PCP itself. Moreover, there was a failure to provide them with a copy of the Policy promptly when they requested it in April 2009. I recognise that Mrs B and Mr R were taking legal advice at the time, and could have challenged the action. However, this does not excuse the Council's failures.

428. The PCP required that reviews of a complainant's status be held every 6 months. However, reviews at those frequencies were not held in this case. There was no review on the date set for the first review (1st November 2007). The evidence about the review on 24th January 2008 is conflicting, and comprises an unsigned "case review by Departmental Representative" document. Officer I said there was a meeting, but could not recall who attended. However, Mrs B was subsequently notified by the Council's Information and Data Protection Officer that a formal meeting was not convened. Unlike subsequent reviews, there were no meeting notes. However, the case review document referred to the concerns of Councillor 2 which prompted the Chief Executive's letter to Mrs B and Mr R on 29th January 2008. It appears, on balance, therefore that a review of some kind was held. Further reviews were held on 22nd August 2008, 5th March 2009, 30th September 2009, 4th May 2010, and finally on 28th January 2011, when the PCP was disapplied in Mrs B's and Mr R's case.

429. In the email dated 16th January, which featured in the January 2008 review, Councillor 2 said she had heard that Mr R had been "threatening to neighbours". Councillor 2 was not the ward member, but was a neighbour, had received a number of calls from Mr R which she had found threatening and amounted to harassment, and had asked the Head of Planning how she should respond. He advised her to contact the Legal Department and she did so, explaining why she was asking for advice. At interview, the Director explained also the need to provide support to Members if contact was causing stress. In the circumstances, and given the context in which the email was sent, namely that the PCP be extended to include communications with Members, I am not

persuaded that the reference to Mr R in this way points to maladministration by the Council.

430. However, there seems to have been no reason for the Council to have overstated its reasons for extending the PCP to members when it referred to a "number of councillors" and "several members " (in the Director's letters dated 27th February and 15th April 2008 respectively, see paragraphs 139 and 141above). It is not surprising that Mrs B was prompted to pursue the claim further, and it was not until March 2010 that she was informed (by Officer K) that the concerns had related to only 2 members, namely Councillor 2 and one other member (paragraph 157 refers).

431. The Council's Policy at the time did not specifically require that the outcome of reviews be notified to those affected. The Council's decision not to notify the outcome of the reviews in March and September 2009 to Mrs B and Mr R appeared to be informed by concerns that they would raise human rights issues. I accept that there may be circumstances where such action is justified. However, when looked at in the context of the other failures mentioned earlier, I am not persuaded that the reasons given for the decisions not to notify them of the outcome of the reviews in this case were appropriate.

432. At the review on 5th March 2009, Officers decided that "due to the quantity and nature of the emails, measures will also be taken to block their email address" (paragraph 146 above). The decision was communicated to Mrs B and Mr R on the same day by the Director when he said "emails and telephone calls in relation to complaints will no longer be accepted by the authority". At interview, Officer 1 said that the intention was to block email access to officers and that there was never any intention to block access to Councillors. However this was not made clear in the minutes, or the action that was taken, or in the subsequent notification to Mrs B and Mr R. Moreover, when it became apparent in July 2009 that the restriction was affecting Mrs B's right to contact councillors, no checks were apparently made to ensure that the measures taken to enable such access were effective. Nor was the opportunity taken to notify Mrs B at that stage, that the restriction on

emails was not intended to prevent her from emailing councillors. As a consequence, the restriction remained in place until April 2010, when it was raised again by a senior Assembly official. Although the Council has said that the restriction on her email access to elected members was unintentional, this was not apparent from the documentation which Mrs B saw. Under these circumstances, I can understand why Mrs B felt that the Council was being dishonest in saying that the block had been an oversight.

433. In the circumstances, given the stated aim of the policy to deal fairly, honestly and properly with persistent complaints as mentioned earlier, I find the failure to notify Mrs B and Mr R of its intention to take action under the Policy, its failure to communicate the decision to them adequately, its failure to inform them that they could appeal and to furnish them promptly with a copy of the Policy, and its failure to notify them of the outcome of reviews and its action in blocking email access to their elected ward member amounts to maladministration. As a consequence, they suffered the injustice of being deprived of the opportunity of challenging the decision, being denied access to their elected representative, and obliged to write and post letters to the Council. They were also made to feel more vulnerable.

434. I therefore uphold this complaint

Whether the Council's responses to Mrs B's further complaints in 2009 and 2010 were reasonable

435. After the PCP was implemented the Council informed Mrs B and Mr R, that it would consider and investigate any new complaints, and that correspondence should be addressed to the Director, who would ensure that it was dealt with. See for example, the Director's letter dated 27th February 2008 (paragraph 139).

436. On 11th and 16th June 2009 Mrs B wrote to the Director about "further industrial work" being carried on at White Farm adjacent to the sheds. She said she received no reply, and further copies were sent to the Council by the Assembly Member. The Council, in its reply to the Assembly Member dated 11th August 2009 said it had replied to Mrs B's

letters on 17th June 2009. No copy of that letter was produced, but on seeing the draft report, the Council produced a letter dated 18th June 2009. However, this merely stated that the contents of her letters had been referred to the Planning Department and acted upon where appropriate. Mrs B eventually complained to the Chief Executive about the Director's failure to respond to her correspondence, and in his reply dated 15th March 2010, the Chief Executive said a response had been provided, but did not give particulars. At interview, the Director said he did not recollect Mrs B's letters of 11th and 16th June 2009, and agreed that they were concerned with development on the yard at White Farm adjacent to her property, rather than the other land at White Farm which was the subject of enforcement action. He was unable to say whether Mrs B received a specific response to her correspondence. By contrast, Officer L said her letters related to the other land, and that she received a response on 10th June 2009 (paragraph 355 refers).

437. In my view, Mrs B's letters dated 11th and 16th June 2009 related to further development taking place at White Farm adjacent to her property, and I am not persuaded that the Council's letter dated 18th June 2009 was an adequate response in that it did not say what action was being taken in respect of that development, or alternatively, explain why no action was considered necessary. Furthermore, the failure was not recognised and addressed when she subsequently complained to the Chief Executive. At interview, the Director said the purpose of managing communications from Mrs B and Mr R through him was to achieve a better conduit between the Council and the Complainants for dealing with the issues they had raised. However, this aim was not achieved. I find the failure to respond substantively to Mrs B's correspondence, and the further failure to deal with it adequately when she subsequently complained to the Chief Executive amounts to maladministration. As a consequence Mrs B suffered the injustice of being denied a proper consideration of the issues she had raised.

438. I therefore uphold this part of the complaint.

Recommendations

439. I recommend that the Council should take the action specified in paragraphs 440 – 447 below to remedy the injustice and address the shortcomings identified in this report. In making my recommendations, I have had regard to the advice of my Planning Adviser to the effect that the Second Shed was likely to have been granted planning permission had it been the subject of a planning application, and that the impact of the largely unregulated haulage related uses at White Farm is in the circumstances, likely to be limited.

440. I recommend that within three months of the date of this report, the Council should carefully address the enforcement issues arising from the haulage related uses at White Farm referred to in this report to determine the options for taking action (if any), and to notify me of the outcome.

441. The Council has informed me that enforcement matters are not within the terms of reference of the Council's Planning Committee, but are delegated to officers under the Council's scheme of delegation. In the circumstances, and in view of my concerns that the handling of Mrs B's complaints about unauthorised development at White Farm under the Council's scheme of delegation to officers gave rise to an apparent lack of objectivity, I recommend that the Council should, within three months of the date of this report, ensure that the concerns identified in this report are brought to the attention of Members, and to send me details of the Members' consideration of those concerns.

442. I further recommend that the Council should within six months of the date of this report, reflect on whether its constitution needs to be amended so that its Planning Committee can consider or call in enforcement cases in appropriate circumstances, and to notify me of the outcome of its deliberations.

443. The Council should within 3 months of the date of this report, pay the sum of £2,500 as redress to Mrs B and Mr R for the injustice

identified in this report and in respect of their time and trouble in pursuing their complaints with the Council and then with me.

444. The Council should use its best endeavours to persuade Mr T to remove the large board which is now immune from enforcement action. If however, the Council is unable to persuade Mr T to remove the large board within 6 months of the date of this report, it should pay an additional sum of £1,000 to Mrs B and Mr R to reflect the long term impact of the board on their amenities.

445. The Council should, within 3 months of the date of this report, make a fulsome apology to Mrs B and Mr R for the failures and shortcomings identified in this report.

446. The Council should also, within 3 months of the date of this report:

- conduct a review of its planning/enforcement procedures for dealing with complaints to avoid a repetition of the shortcomings identified in this report;

- review its procedures for liaising with Traffic Commissioners/VOSA in appropriate cases.

447. Although the Council has adopted a revised PCP which appears to address some of the shortcomings identified in the policy referred to in the complaint, I recommend that the Council within 3 months of the date of this report should ensure, by means of appropriate awareness training, that its procedures are actually followed, and that undertakings to look at new complaints are fulfilled. In the meantime, the Council's action in implementing a complaints procedure which complies with the Model Concerns and Complaints Policy issued by the Welsh Government in July 2011 is to be welcomed, and I see no need for a specific recommendation in that regard.

448. The Council, having seen a draft of this report, has agreed to implement the recommendations within the timescales stated above.

These timescales are the permitted periods for the purpose of Section Section 21 of the Public Services Ombudsman (Wales) Act 2005.

Peter Tyndall
Ombudsman

5 July 2012

Relevant Legislation, Guidance, Policies and Procedures

The need for planning permission

1. Planning permission is normally required from the local planning authority, in this case, the Council, to develop or make a material change in the use of land[13]. However, the use of land for agricultural purposes, does not involve development[14]. The courts have held that some temporary structures used for agriculture are not buildings in planning terms but are a use of land and so outside the general scope of planning control[15]. Agriculture includes the grazing of horses, but not the breeding and keeping of horses otherwise than for their use in the farming of land[16].

2. A material change in the use of land (including land used for agricultural purposes) may occur where an ancillary use which is ordinarily incidental to the primary use of the site becomes a separate use in its own right, or if the site has a dual use. In borderline cases, the courts have accepted that it is proper to assess materiality in planning terms, having regard to the possible effect of the change on local amenities.

3. "Permitted development rights" as specified in the Town & Country Planning (General Permitted Development) Order 1995 ("the GPDO") are granted for a range of agricultural buildings and operations subject to certain limitations regarding size, height and proximity to roads and aerodromes[17]. These rights include the erection of buildings below a certain size provided the building is not to be used for the accommodation of livestock within 400m of a neighbouring dwelling house. Agricultural permitted development rights also include quarrying or mineral extraction provided the quarried or extracted material is not

[13] Part III Town & Country Planning Act 1990

[14] Sec 55(2)(e) Town & Country Planning Act 1990

[15] Wealden District Council –v- Secretary of State for the Environment [1988] JPL 268 CA

[16] Belmont Farm Ltd –v- Minister of Housing & Local Government (1962) 13 P &CR 417

[17] Part 6 Class A of the GPDO

moved off the unit. However, proposals to construct a new building or carry out excavations must first be notified to the Council for a determination as to whether its prior approval of certain details of the development is required. The Council, on receipt of such a notice, may either determine that prior approval is not required, or notify the applicant within 28 days that further details are required, in which event, the Council may require the submission of a planning application. Guidance on the prior notification procedure issued by the former Welsh Assembly Government in TAN 6 "Agricultural and Rural Development" (issued in June 2000) advised (in paragraph B4 of Annex B) that provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Only in cases where the authority considers that a specific proposal is likely to have a significant impact on its surroundings would the Welsh Government consider it necessary for the authority to require the formal submission of details for approval. (Similar advice appears in a revised TAN 6 issued in July 2010).

4. Permitted development rights are also available for the erection or alteration of a gate, fence, wall or other means of enclosure provided the height of the gate, fence, wall or means of enclosure does not exceed 1m where adjacent to a public highway used by vehicular traffic, and 2 m elsewhere[18].

5. The installation on a building (including a dwelling) of a closed circuit television camera to be used for security purposes is permitted under the GPDO provided it is higher than 2.5 m above ground level[19].

6. Planning applications are required to be publicised or notified to neighbouring occupiers. In dealing with applications involving development on agricultural land, the Council said it sometimes obtained advice from its Corporate Property officers on the viability of the unit to accommodate the proposed development.

[18] Part 2 Class A of the GPDO

[19] Part 33 Class A of the GPDO

7. Prior notifications under the GPDO are not subject to such publicity requirements, but the Council, nevertheless, consults the local ward member and the local community council.

8. Planning permission may be granted subject to conditions. Advice on the use of conditions issued by the former Welsh Office in 1985[20] said that conditions should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. It said that conditions which duplicated the effect of other controls would normally be unnecessary.

9. A person whose planning application has been refused by the Council may appeal to the Planning Inspectorate of the Welsh Government.

Unauthorised development

10. Development which is undertaken without planning permission is generally unlawful (though not in itself an offence). The Council may take enforcement action where it appears that there has been a breach of planning control and that it is expedient to do so, having regarding to the provision of the development plan and to any other material considerations[21]. The carrying out of unauthorised building operations is immune from enforcement action 4 years after the development is substantially completed. In the case of development comprising a material change of use, the limitation period is 10 years[22].

11. Enforcement action may consist of the issue of an enforcement notice specifying the breach of planning control in question and the steps required to remedy the breach. Where it appears that a breach of planning control has occurred, the Council may serve a planning contravention notice ("PCN") on the owner or occupier of the land. The PCN requires the owner or occupier to furnish information about his interest in the land and about operations or activities being carried out or taking place on the land, or the use of the land. It is an offence for any

[20] Welsh Officer Circular 35/95

[21] Sec 172 Town & Country Planning Act 1990

[22] Sec 171B Town & Country Planning Act 1990

person on whom a PCN has been served not to comply with any requirement.

Planning guidance issued by the Welsh Government

12. At the time of the events leading to the complaint, guidance was contained in Planning Policy Wales 2002 (which was replaced in February 2011), and TAN 9.

13. Planning Policy Wales 2002 ("PPW 2002") said that the role of the planning system is to regulate the development and use of land in the public interest. Paragraph 4.1.7 said:

> "The planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. The courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such consideration should be based on general principles, reflecting the wider public interest (for example a standard of 'good neighbourliness') rather than the concerns of the individual".

14. PPW 2002 stated further (at paragraph 7.6.8) that agricultural permitted development rights are granted to meet farming needs and not for purposes of diversification, and that such rights should not be abused, for example, to circumvent normal planning policies on new building in the open countryside. It said that new farm buildings should be sited on land which is in use for agriculture for the purposes of a trade or business and must be reasonably necessary for the purposes of agriculture. The courts have held that the test is whether the building is reasonably necessary for, and if so, is it designed for, the purposes of the activities which might reasonably be conducted on the unit in question.[23]

[23] Clarke v Secretary of State for the Environment [1992] 42 EG 100

15. PPW 2002 also contained guidance on the enforcement of planning control. It stated that enforcement action needs to be effective and timely, that local planning authorities should look at all means available to them to achieve the desired outcome, and that in some cases, mediation may be an agreed way forward.

16. PPW 2011 contains similar advice.

17. TAN 9 on the enforcement of planning control points out (at paragraph 5) that enforcement action is discretionary and should be used as a last resort and only when it is expedient. However, this should not be taken as condoning the wilful breach of planning controls. It also points out that powers are available to local planning authorities to bring unauthorised development under planning control and it is for them to decide which power, or combination of powers to use. It continues (at paragraph 6):

> " … the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should be commensurate with the breach of planning control to which it relates; it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be remedy the effects of the breach of planning control, not to punish the person(s) carrying out the breach. Nor should enforcement action be taken simply to regularise development for which permission had not been sought, but which is otherwise acceptable … The initial aim should be to explore, in discussion with the owner or occupier of the land, what steps, if any could be taken to reduce any adverse effects on public amenity to an acceptable level".

18. TAN 9 states further (at paragraph 12) that where a local planning authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions it should invite the

owner or occupier of the land to submit an application for planning permission.

19. TAN 9 also contains advice on the organisation of planning enforcement control. It says that authorities should ensure that there is a close and cooperative working relationship between the Planning and Legal Departments and other departments, such as building control and environmental health.

The Council's arrangements for determining planning applications and prior determinations

20. The Council's constitution authorises its Director of Regeneration and Leisure and its Head of Planning to determine planning applications (except where there are objections based on material considerations or whether the local member has asked that the application be considered by the Council's Planning Committee). The scheme of delegation to the Head of Planning also includes the determination of prior notifications of permitted developments under the GPDO and the investigation of alleged unauthorised development and the commencement of any appropriate enforcement action. The scheme states (at paragraph 1.6) that it remains open nevertheless to the Executive Board or any appropriate Committee of the Council to take decisions on any matter falling within the delegated power of an officer provided that the matter is within the Committee's terms of reference. The scheme further provides (at paragraph 1.13) that it shall always be open to an officer to consult an Executive Board Member, a Committee, or its Chair or Vice-chair before the exercise of the delegated powers.

The Council's relevant planning policies

21. The Council's planning policies are contained in the Carmarthenshire Unitary Development Plan 2006 which replaced earlier policies.

22. Policies GDC3 and E8 say that development in the countryside should not normally be permitted except in certain circumstances. These include development which is reasonably necessary for the

purposes of agriculture or in connection with an appropriate farm diversification scheme provided the proposal is of an appropriate scale and compatible with the prime agricultural purpose of the existing working farm, does not lead to levels of traffic generation which is unacceptable in terms of local access conditions, highway network capacity or otherwise detracts from environmental quality, and will not have an adverse impact on the character, setting and appearance of the farm and surrounding countryside.

Sites of Special Scientific Interest ("SSSI")

23. White Farm is located in an SSSI which has been notified by the Countryside Council for Wales ("CCW") under Part II of the Wildlife and Countryside Act 1981 (as amended) because it contains wildlife, geological or landform features which are considered to be of special importance. The owners of land in a SSSI must, in addition to obtaining any planning consents from the Council, obtain consent from the CCW before carrying out any operations, such as quarrying, likely to damage the special interest of an SSSI.

Licensing of Heavy Goods Vehicles ("HGVs")

24. The licensing and registration of HGVs is regulated by the Traffic Commissioners[24]. A person who uses an HGV above a certain weight to carry goods in connection with any trade or business must have an operator's licence issued by the relevant area Traffic Commissioner. The processing of applications for operator's licences is delegated to VOSA.

25. An applicant for an operator's licence must demonstrate that he is of good repute, owns or has access to an operating centre for keeping his vehicles when they are not in use, and has sufficient arrangements and financial resources for maintaining his vehicles. Guidance issued by VOSA in October 2009 states that an applicant must ensure that the proposed operating centre meets the requirements of planning law. It states that authorisation under an operator's licence does not convey any approval for an operating centre under planning law.

[24] Under the Goods Vehicle (Licensing of Operators)Act 1995

26. An applicant for an operator's licence must advertise the application in a local newspaper so that persons owning or occupying buildings or land in the vicinity of the proposed operating centre have an opportunity to make objections. Additional publicity is given by the Traffic Commissioner by means of the publication "Applications and Decisions" which is posted on the Government's "business link" website and emailed to subscribers. The Council has informed me that it subscribed to the publication.

27. Objections to the grant of an operator's licence are usually heard by the relevant Traffic Commissioner at a public enquiry when the application may be refused or granted with or without conditions. Anyone can complain about the suitability of an operating centre after it has been specified in an operator's licence and the Traffic Commissioner may review the operating centre named in a licence every five years.

28. A licensed operator who wishes to add an operating centre to his licence must apply for a variation. The application must be advertised and publicised in the same way as an application for a new licence, and in the event of any objections or representations, may be granted following a public enquiry.

<u>The Council's duty in respect of noise nuisance</u>

29. Where the Council is satisfied that a statutory nuisance, such as a noise nuisance, has occurred, it must serve an abatement notice requiring that the nuisance cease or be abated within a set timescale[25]. The Council may bring a prosecution against a person who fails to comply with an abatement notice which has taken effect.

30. The Council may obtain authorisation to undertake covert surveillance in connection with enforcement action[26].

[25] Part III of the Environmental Protection Act 1990

[26] Regulation of Investigatory Powers Act 2000

31. The conduct of an investigation by me does not affect any power or duty of the Council to take further action with respect to any matter under investigation[27]

The Council's Persistent Complainants Policy ("PCP")

32. In September 2006 my predecessor issued guidance to local authorities on complaints handling which remains extant. It suggested the Ombudsman's own policy as a possible model for authorities wishing to adopt a suitable policy for dealing with unacceptable actions by complainants.[28] The Ombudsman's policy states that a complainant would always be told what action is being taken to manage actions considered to be unacceptable and why. Complainants are also told in writing why a decision has been made to restrict future contact, the restricted contact arrangements, and if relevant, the length of time that such restrictions will be maintained. The Ombudsman's policy states that a complainant may appeal against a decision to restrict contact.

33. In March 2007, the Council adopted a PCP which referred to the need to address difficulties in the management of complaints caused by the behaviour of some individuals. Officer K confirmed that it was based on the Ombudsman's policy regarding persistent complainants.

34. The stated aim of the Council's policy was "to deal fairly, honestly and properly with persistent complaints whilst ensuring other service users, officers, or the Council as a whole does not suffer any detriment. To provide a means for such complainants to be dealt with in a fair and consistent way by all departments of the Authority".

35. The Council's policy contained a referral process that required evidence to be provided to support a decision to implement the policy in a particular case. It stated that prior to commencing the referral process, the Departmental Complaints Officer should ensure that the complainant had been provided with all appropriate information about the Council's complaints procedure, and that alternative methods of managing the complainant had been considered but were not considered to be

[27] Sec 13(6) of the Public Services Ombudsman (Wales) Act 2005

[28] The Ombudsman's policy is published on the PSOW website

appropriate. The referral process was the means by which the Departmental Complaints Officer submitted a particular case to the Departmental Representative who decided whether the policy should be applied, and if so, the action to be taken in the management of the complainant. This could include directing contact from the complainant to a named Officer, and restricting contact. "Step 2" of the referral process stated: "It is good practice to make clear to a complainant regarded as unreasonably persistent or vexatious the ways in which his/her behaviour is unacceptable, and the likely consequences of refusal to amend them, before taking action under the Policy." "Step 5" stated that action taken to direct communication to a named officer or to restrict contact should be "clearly and promptly communicated to the persistent complainant with reasons where appropriate". The policy said that decisions to treat someone as a persistent complainant should be formally reviewed every six months to ensure that the measures adopted continued to be appropriate or necessary. There was no specific requirement that the outcome of reviews be notified to the complainants.

36. The referral process included a referral form for completion by the Complaints Officer. This required information on whether the complainant had exhausted the relevant complaints procedure and complained to the Ombudsman. It also asked whether there had been "a meeting with the customer to discuss the particular concerns", and if so, to provide details. It contained provision for the review date to be specified. Neither the referral form nor the policy document said that a persistent complainant could appeal against a decision to restrict contact.

37. The Council's policy also contained provision to protect staff from threatening or harassing behaviour. This included completing an incident form ADOR1.

38. The Council's adopted a revised policy in November 2010. This provides for the decision to designate a complainant's conduct as unreasonable to be taken by the relevant Head of Service in conjunction with the Council's Corporate Complaints Officer. The revised policy requires a warning letter to be sent to the complainant prior to applying

the policy, and for the complainant, when notified of the decision to apply the policy, to be advised of the procedure for appealing, given a copy of the policy and to be notified of the outcome of reviews.

39. At the time of the events referred to in the Complaint, the relevant Departmental Representative was Officer H. The Complaints Officer passed away shortly before Mrs B submitted her complaint to me.

40. In July 2011 the Welsh Government issued advice on complaints procedures entitled "Model Concerns and Complaints Policy for adoption by Public Services Providers in Wales". It includes advice on the adoption by providers of an "unacceptable actions by complainants" policy, and suggests that providers without such a policy may wish to consider the Ombudsman's policy as a basis for their own procedures. In its comments on the draft report, the Council said its revised complaints procedure has been in line with the Model Concerns and Complaints Policy since April 2011.

Specialist Planning Advice

My Planning Adviser advised as follows:

"The Ombudsman has asked for my views on aspects of a complaint relating to the Local Planning Authority's handling of activities and new buildings and structures erected on a 107 acre (43 has) agricultural unit. I have based my appraisal on the draft report of the parties' cases and documents, photographs and plans extracted from the file and three DVDs.

The Second Shed

1. The erection of an agricultural building is subject to the prior notification provisions in Part 6 of Schedule 2 to the GPDO 1995. The permitted development rights in Part 6 only apply to building operations 'reasonably necessary for the purposes of agriculture within that unit'. The Courts have held (*Clarke v SSE [1992] 42 EG 100*) that the test is whether the building is reasonably necessary for, and if so, is it designed for, the purposes of the activities which might reasonably be conducted on the unit in question. The prior notification provisions allow the Local Planning Authority 28 days in which to consider this question and other factors and determine whether the prior approval of the authority will be required for the siting, design and external appearance of the building. If the authority has reservations about the need for the building or the details of the siting, design or appearance, it can refuse the application. The 'need' test is essentially a matter of fact and degree based on the size of the agricultural unit, any existing buildings and the present and intended agricultural activities on the unit.

2. The First Shed was subject to the prior notification procedure and the Council determined that planning approval was required. The planning application for an implement shed and hay store (the First Shed) was refused because there was insufficient justification for the building. The decision was overturned on appeal and conditional planning permission was granted in 2005.

3. In 2006, a conventional planning application was made for the Second Shed to house the existing stock of cattle. The application was refused because there was insufficient agricultural justification for the building. The same development to house hay and implements was subject to a prior notification procedure a year later in December 2007. The short note that deems the Second Shed to be acceptable mentions

only siting considerations and surprisingly does not address agricultural need or justification matters.

4. The case officer's explanation of the decision cites the advice from the Estates Officer who had written in support of the 2006 application for a cattle shed. The Estates Officer advised that he would insist that the 2006 application building was 'a specific one to accommodate cattle and not of a general storage design'. The 2007 prior notification application was not for a cattle shed; it was for a building to house hay and implements, a function that had already been addressed in the appeal that allowed the First Shed.

5. This seems to me to be a mistake by the Council in the processing of the prior notification application for the Second Shed. Had the officer studied the planning history of the application site and observed that there was already a shed for hay and implements and had been aware that the agricultural justification was in question on this agricultural unit, he would probably have concluded that a planning application for this development was justified. After all, an application for the First Shed was deemed necessary in 2005. For these reasons, I believe that the Council made a flawed assessment of the prior notification application for the Second Shed.

The Large Board and CCTV

6. In February 2007, a letter from the Council considered the unlawful erection of the screen and decided that it was not in the public interest to pursue enforcement action. It has now become immune from enforcement action due to the passage of more than four years since it was erected.

7. From the photographs, I can see that the board has been erected close to a bedroom window and blocks the forward outlook from this window. Views past the board are possible obliquely to each side of the board. It appears to me to be an alien structure and looks out of place in this rural location. Given its adverse impact on the outlook from the adjacent bedroom and its incongruous appearance, I consider that enforcement action was justified in 2007. The conduct of the parties should have little bearing on the question of whether enforcement action should be taken. PPW at 3.1.7 states that "*The Courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties*". Residential amenity and the appearance of the countryside are, in my view, both matters of public interest.

8. The photographs dated 2005 appear to show a small CCTV camera fixed to the side reveal of the bedroom window. If this was the location of a security camera, its installation would have been development permitted by Class A of Part 33 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

Haulage Uses

9. In my view, the Operator's Licence does not duplicate the purpose of a planning permission. It may have some common features, such as hours of working, but the decisions on the use and development of land are also concerned with residential amenity, highway safety and so on which lie outside the terms of an Operator's Licence.

10. The licensing and registration of HGVs is regulated by the Traffic Commissioners but there appears to be little co-ordination between the Council and the Commissioners when considering the location of haulage business and the operation centres of such businesses. In this case, closer liaison between the statutory bodies would have assisted the Council in deciding when a material change in the uses at White Farm took place

11. The lawful use of the land and buildings at White Farm until 2010 was agriculture. There is a principle in land use planning that recognises that main land uses (e.g. industry) may have a number of ancillary uses (office, canteen, parking) on the same site. On a farm, there are usually ancillary uses such as parked vehicles, trailers, workshops, fuel storage and so on. The principle use remains agriculture unless one or more of the ancillary uses increases to become a main use in its own right. When that occurs, there has been a material change in the use of the land to a mixed use of 2 or more main activities for which planning permission is required.

12. From the evidence in the report, it appears that at some time between 2001 and 2010, the haulage activity at White Farm increased from an ancillary element of the lawful agricultural use of the land to an additional main use of the land. The limited farming activity at White Farm does not mean that it is no longer agricultural land any more than an empty house or shop ceases to be a residential or retail land use. The planning authority's task in this case was to judge from the evidence when the material change of use from agriculture to two or more uses occurred and, following that, take appropriate enforcement action to regularise the activities at White Farm.

13. The site inspections by the Council during this period are reported and the view was reached that the haulage activity remained an ancillary activity at White Farm. This is at odds with the sequence of comments in official documents between 2004 and 2006. The First Shed report (18.8.04) notes that 'the unit is used as a base for two lorries'. Community Councillors commented (28.7.04) 'a transport and farming business are operating from these premises'. The Inspector for the First Shed appeal (31.1.05) records that there were 'two earth moving machines and 2 commercial tipper wagons were parked on the holding'. The Second Shed report (29.9.06) actually states that the equine activity and the 'use of the site as a lorry base' are 'primary uses of the site'. These remarks signal to me that there was recognition that a material change of use was taking place between 2004 and 2006 at White Farm to a mixed use of agriculture, equine activities and a haulage business.

14. The advice in TAN 9, paragraph 12, is that '*where a local planning authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions, it should invite the owner or occupier of the land to submit a planning application*'. Although it appears that the Council had wind of an unauthorised material change of use at White Farm between 2004 and 2006, no invitation to submit a planning application was made. The representations made by the Complainants during this period taken together with the planning officers own comments in documents and evidence from the Traffic Commissioners would surely have led to an early conclusion that some activities were unauthorised at White Farm. As the Inspector who dealt with the appeals in 2010 pointed out, the movement of just a few lorries, on a regular basis, to and from the farm would have signalled to a planning officer that this was more than an ancillary agricultural activity.

15. For these reasons, I consider that the Council were dilatory in handling the unauthorised activities at White Farm. '*The fact that enforcement action is discretionary and used only when it is expedient, should not be taken as condoning the wilful breach of planning controls'* (TAN 9: Paragraph 5). I accept that detecting a change in the ancillary uses that are commonly found on farms is a difficult exercise for planners with busy workloads. However, in a rural area, there should be sufficient experience and expertise in the planning department to detect a breach or set in motion an investigation to pin down such unauthorised changes within a reasonable timescale.

The Parked Lorry

16. Treating the lorry as a wheeled store for agricultural fodder or materials is deemed an agricultural use of the land. No change of use of the field has occurred and so there is no breach of planning control to enforce.

17. Treating the lorry as the parking of a vehicle in a field might be deemed to be a parking use of the land that requires express planning permission. The alleged breach of planning control would be that there had been a material change in the use of the field from agriculture to use for agriculture and parking purposes. I have some doubts about whether this approach would stand up to the scrutiny of an appeal or a Magistrates Court.

18. For these reasons, the Council's decision not to take enforcement action against the parked lorry was, on balance, a reasonable one.

Residential Amenities

19. From the photographs, I have already commented that the large board has an adverse impact on the living conditions in the adjacent house. I believe that there is a second window in the bedroom with the blocked window and its presence reduces that adverse impact to a degree. In my view, the parked lorry is stationed so close to the house that it too reduces the residential amenities of the house.

20. I have found the Council's handling of the prior notification process that led to the erection of the Second Shed to be flawed. The shed itself is part of a group of buildings set at a higher level than the Complainant's house. In my view, a holding of this size (43 hectares) would probably have a range of buildings of a similar scale in this location. Given that modern buildings can be expected as part of the modern farming landscape and the distance of the group from the Complainant's house, I do not consider that the presence of the Second Shed materially harms the living conditions for occupiers of this house.

21. The unregulated haulage activities have probably had some impact on the living conditions in the Complainant's house. The early and late movement of heavy lorries would cause some harm to the residential amenity. However, one should have in mind that modern agricultural activities that can be carried out at White Farm without restriction would include machinery and engine noises at all times. For this reason, I consider that the unregulated haulage use caused limited harm to the living conditions for occupiers of this house."

My Adviser further advised (in relation to whether planning permission is likely to have been granted had an application been submitted in respect of the Second Shed), that it was difficult to give a firm answer, but he considered it likely that planning permission would have been granted, or if refused by the Council, by an Inspector on appeal. He said that a main consideration would have been the size of the holding (43 hectares).

[end]

Appendix 3

Comments on the draft report by the former Planning Enforcement Manager (Officer F)

"Re: Ombudsman's investigation of complaint by [Mrs B] against Carmarthenshire County Council
I refer to your letter dated 4.10.11 concerning the above.

Initially it was my intention not to waste my time in replying, as the contents of the report merely confirmed my belief that it was your clear intention to find for this woman so that she might finally disappear from your radar. It is gratifying to note that you did not disappoint me in that regard. However, the statement made in your penultimate paragraph to the effect that non-reply would somehow mean 'contentment' with the manner in which the evidence has been presented is totally unacceptable to me.

I consider the contents of your report in relation to my involvement in this very long running and difficult case to be biased and lacking in any evidential basis. You insult my professionalism, and that of [the Head of Planning, Officer L] in stating that our 'dislike' of this woman would influence the manner with which we would have dealt with her many and varied complaints over the years. I resent such a suggestion, for which you have no basis in fact. If I had ever seen evidence that confirmed that a haulage yard or depot was operating at [White Farn], I would have taken the necessary action. As I explained at our meeting, it would have been advantageous for me to do so. As neither I, nor I understand [Officer L] ever obtained clear evidence that such an operation was in being, which would have merited action from a **planning legislative point of view,** we acted with integrity in not being intimidated by this woman, who would seek to move heaven and earth to get her way. She is sly, devious and a bully, but that would not have impacted on my evaluation of the planning situation of the site, nor would it have influenced any other of the officers involved. You have no grounds to make such disparaging statements.

In relation to your conclusions/recommendations, I have absolutely no doubt that you have exceeded your remit, and have for some reason strayed into the field of being a planning expert. On the basis of rather vague evidence from an anonymous so-called planning advisor, you have reached conclusions which challenge the planning decisions made by professional officers, rather than comment on whether those decisions were appropriately arrived at. Of course, your organisation is something of a loose cannon in that regard, as I have wondered on more than one occasion who exactly is the 'ombudsman's ombudsman'. You appear just to be a self righteous part of the blame culture.

It is my fervent hope that Carmarthenshire County Council seeks Counsel's advice in order to vigorously challenge your recommendations in this matter. In allowing such a vicious, vindictive woman to be seen to be supported in her campaign to get her way at any cost, you do public service a great disservice. However, it may be tempted (sic) just to accept and pay the money, just to get closure. It would be cheaper and less stressful in the end. To quote a World War I analogy, it may be better just to go along with the views of the donkeys sitting comfortably in the chateau, who all conveniently have 20/20 hindsight, so that that (sic) the lions can get on with doing a real job, dodging the bombs and machine gun bullets in the front line, where decision making is much difficult, but ultimately more rewarding. If you make a mistake, so be it, but at least you tried. The only people who never make mistakes are people who don't do anything. Perhaps the Ombudsman's Office falls into that category.

My only satisfaction in this sorry affair is that my initial belligerence resulted in my acquiring nearly £200 from you for my involvement, so it will not only be [Mrs B] who comes out smiling. It is strange to me that you did not draw this financial provision to my attention when you attempted to get me take part in this worthless process for nothing. A case of maladministration by omission perhaps? Who cares?

As you are aware, I did not want to get involved in this matter from the outset. I have absolutely no interest in your final conclusions so would be grateful if you would refrain from contacting me again.

Yours sincerely”

Cyngor Sir Gâr Carmarthenshire County Council

Mark James CBE, LLM, DPA
Prif Weithredwr
Neuadd y Sir, Caerfyrddin, Sir Gaerfyrddin, SA31 1JP.

Chief Executive
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Eich cyf / Your ref:

Fy nghyf / My ref:

Dyddiad / Date:

P-04 -510
28th January 2014

Mr William Powell AM
Chair
Petitions Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear William,

Petitions Committee re. Breckman

Thank you for your letter dated the 6th December putting me on notice of a 63 signature petition calling upon the National Assembly to urge the Welsh Government to establish a public inquiry into the Council's handling of the Breckman complaint.

Needless to say I would urge the Petitions Committee not to involve itself in this matter. As you will know, planning is an emotive subject and as a planning authority we often get caught up in the middle of neighbour disputes.

We do not know who the main petitioner is, and we do not know the basis on which he asks for the Petitions Committee to involve itself in the matter, other than he talks of maladministration on our part. In that respect, whilst the Public Services Ombudsman for Wales did make some findings of maladministration against the Council he did not consider it necessary to issue a Public Interest Report, choosing instead the much softer option of a non-public s. 21 report. The main issues in the case are reported in the Ombudsman's Casebook for October 2012, and to assist your understanding of the issues I reproduce the Casebook entry here:

"The Ombudsman's Casebook October 2012
July 2012 – Unauthorised Development – Carmarthenshire County Council

Mrs. B complained that the Council failed to take enforcement action in respect of the use of the neighbouring farm for haulage and equine related activities and the erection of a large board and the placing of a removal lorry adjacent to their boundary. Mrs. B also claimed that its decision to allow the development of an agricultural shed was perverse. Finally Mrs. B complained that the Council was unreasonable when it applied its Persistent Complaints Policy

to her and her partner and was aggrieved about the way in which her partner was referred to in an internal e-mail.

Mrs. B's complaint was partially upheld. The Ombudsman concluded that there has been a failure to take account of photographic and video evidence provided by Mrs. B, information provided by their surveyor, and information from the Traffic Commissioners about the licensing of the neighbouring farm as a heavy goods vehicle operating centre. He also concluded that the Council's decision in respect of the large board was inappropriately influenced more by the dispute between Mrs. B and the neighbouring occupiers than material planning considerations, and that the Council had shown a lack of objectivity in relation to her concerns. However, the Council's decision in respect of the removal lorry was one it was entitled to take. But the process by which it allowed the agricultural storage shed was flawed in that the Council had held reservations about the agricultural need for large sheds on the holding and had relied on advice which related to an earlier cattle shed proposal and which opposed a general storage shed. The Ombudsman also concluded that the Council failed to comply with its own procedures when it applied its Persistent Complaints Policy to Mrs. B and her partner, and failed to respond adequately to her further complaints in which she raised new issues. However, the Ombudsman did not conclude that the reference to Mr. R in an internal e-mail pointed to maladministration.

The Ombudsman recommended that the Council should address the enforcement issues arising from the haulage-related uses at the neighbouring farm, and should also ensure that the concerns identified in the report are brought to the attention of its members. The Ombudsman also recommended that the Council should give consideration to adopting a mechanism whereby enforcement matters could be considered or called in by its' Planning Committee in appropriate cases. The Ombudsman further recommended that the Council use its best endeavours to persuade the neighbouring occupier to remove the large board which is now immune from enforcement action, pay £2500 to Mrs. B and a further £1000 if the Council is unable to secure the removal of the board within 6 months. Finally the Ombudsman recommended the Council review its planning and enforcement procedures, including its procedures for liaising with the Traffic Commissioners in appropriate cases, and to ensure that its revised Persistent Complainants Policy was actually complied with by providing appropriate awareness training".

The Ombudsman took 13 months to investigate this complaint from notification to us to issuing of his report stage, and in the course of his investigation he interviewed the complainants, 12 officers (including a Director, 2 Heads of Service, 2 lawyers), an ex-employee and 3 members but interestingly, not the neighbour. As I mentioned earlier, after that in-depth investigation (in the course of which he was advised by a consultant planner), the Ombudsman did not consider it necessary to issue a full blown Public Interest Report, so it seems odd in those circumstances that the Welsh Government should be invited to conduct a public inquiry. Hopefully, having read the Casebook entry yourself, you will agree that there is nothing involved in this case which warrants the cost of a public inquiry.

The Ombudsman had in fact declined to investigate complaints in relation to this matter twice in the past – once in 2005 when he notified the Council that he was not going to investigate as the complainant had not provided evidence and he did not investigate speculative assertions; and again in 2009 when he said that he had no jurisdiction to question the merits of a decision (in this case a decision that it was not appropriate to take enforcement action) in the absence of some shortcomings in the way it was reached. I must read the 2009 decision by the

Ombudsman not to investigate the complaint as meaning that he had no evidence before him that the Council had taken its' decision not to take enforcement action in an inappropriate way. It was therefore disappointing to note that when a complaint was made for a third time in 2011 the Ombudsman disregarded his Office's previous conclusions and decided that an investigation should be undertaken, and that it should be backdated to events from 2004 onwards. This placed us at quite a disadvantage, not least because the Council's Planning Enforcement Officer had retired in the meantime, although we are pleased to say that he did agree to be interviewed by the Ombudsman.

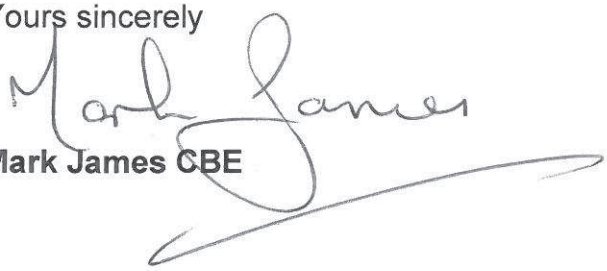
I can assure you that this Council has taken this matter very seriously, including taking Counsel's Advice at the draft stage of the Ombudsman's Report (as a result of which we secured some concessions from the Ombudsman). We also reported the Ombudsman's "concerns" (as referred to in his Casebook) to a joint meeting of the Council's Executive Board, the Chair of the Planning Committee and the Chair of the Environment Scrutiny Committee. The Ombudsman made 8 recommendations in his s. 21 Report, all of which have been implemented by the Council. These ranged from determining the options for taking action against the neighbour (if any), to making a modest payment to the complainants along with an apology, to reviewing our Persistent Complainants Policy & Procedure.

Unfortunately, as a result of the Council succeeding in implementing one of the Ombudsman's recommendations (which was to "use (our) best endeavours" to persuade the neighbour to remove a board from his land) matters between the neighbours have deteriorated even further (if that was possible) in that the board has been replaced by something much larger which is outside of our planning control (or indeed, any other legal powers). The Council is actively involved in a multi-agency dialogue (with, amongst others, the Police, the Police Commissioner personally, the A.M.) aimed at trying to resolve the matter amicably. The Council also continues to monitor activity at the neighbour's property.

As a general indication of our Planning Service's performance it is pleasing to note that there has only been one Ombudsman's report issued against the Service in the past 3 years, and that was the one relating to the subject matter of this petition, and as I said, that was a matter which the Ombudsman did not deem to be serious enough to warrant a public interest report. Whilst we appreciate that this case has received much media coverage over the years we would make the point that much of the coverage has focussed on the conduct of the neighbours between themselves and matters not relating to the Council's remit.

I sincerely hope that the Petitions Committee will not endorse this petition and put the Council to the expense of having to go to a public inquiry to defend its actions in one planning case, particularly in light of the fact that the complainant could always have resorted to legal proceedings had she thought that she had a strong basis for her complaint and our current performance in terms of complaints to the Ombudsman on planning matters show no general cause for concern.

Yours sincerely



Mark James CBE

By virtue of paragraph(s) ix of Standing Order 17.42

Document is Restricted

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P-04-472 Make the MTAN law

Petition wording:
We call upon the National Assembly for Wales to urge the Welsh Government to make the MTAN Guidance Notes, notably those relating to a 500 metre buffer zone around open cast workings, mandatory in planning law for Wales.

Additional information:
On 20th January 2009, Jane Davidson, the Minister for the Environment, introduced newly published Coal Minerals Technical Advice guidance Notes (MTAN) for Wales, and stated: ".. the Coal MTAN will fulfil the pledges (in 2008) to introduce Health Impact Assessments for coal applications, together with buffer zones, and with an emphasis on working closely with local communities. It reaffirms the commitment (in 2008) to a 500m buffer zone." In 2009 the Welsh Government did not have the power to make its planning guidelines law. It does now.

Petition raised by: Dr John Cox

Date petition first considered by Committee: 16 April 2013

Number of signatures: 680. Associated petition collected 330 signatures.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref SF/CS/260/14

William Powell AM
Chair
Petitions Committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

committeebusiness@wales.gsi.gov.uk

29th January 2014

Dear William,

I have agreed to attend the Petitions Committee on 18 February to provide oral evidence in relation to the petition submitted by Dr John Cox on MTAN 2 Coal.

In this regard, please find enclosed an evidence paper to be made available to Members and other parties prior to my appearance. For the purposes of transparency, I should draw your attention to previous correspondence and say that it is not open to me to discuss with the Committee any specific planning applications because of my decision making role. I have also outlined that the focus of the Planning Bill is on delivery structures and decision making rather than on policy issues. I will of course be interested to hear the Committee's views on MTAN 2 Coal.

Yours sincerely,

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Bae Caerdydd • Cardiff Bay
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English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
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National Assembly for Wales Petitions Committee
Request for oral evidence from Minister for Housing and Regeneration
February 2014

Submission from the Minister for Housing and Regeneration

INTRODUCTION

1. This paper explains the basis for the buffer zone policy in MTAN 2 Coal and related matters.

2. The paper covers the following areas:

   - The characteristics of the planning system
   - The background to buffer zone approach
   - Exceptional Circumstances (paragraph 49 MTAN 2)
   - The role of the Local Development Plan
   - The position of Welsh Ministers on the terms of the petition

CHARACTERISTICS OF THE PLANNING SYSTEM

3. A central tenet of the British planning system is the statutory role of the development plan, which characterises the 'plan-led' process. When taking a decision on an individual application the planning authority should make a determination in accordance with the relevant Development Plan, unless material conditions indicate otherwise. National planning policy and technical advice notes can be a material consideration in relation to a particular case and regard must be had to national planning policy and technical advice notes in the preparation of development plans.

4. Another important characteristic of the British planning system is the discretion given to decision-makers to make judgements in the face of unique and complex circumstances and in the context of local democracy. This is deliberate and provides for flexibility and adaptability to different and changing situations. It both enables, and allows for, the right planning solution to be sought and obtained in any given circumstance.

NATIONAL PLANNING POLICY

5. Planning Policy Wales (PPW) and Minerals Planning Policy Wales (MPPW) set out national planning policy and reflect the Welsh Government's commitment to sustainable development. In particular, MPPW identifies the essential role that local planning authorities play in ensuring a proper balance between the prudent use of mineral resources, amenity and the environment, and provides the policy framework for them to fulfil that role. It sets out clearly how development plans should address the critical issues that inevitably

arise when we plan to meet the needs of society for minerals, including coal. An extract from MPPW outlining the policy position on coal is contained in the annex to this paper.

6. Technical Advice Notes explain how national planning policy should be delivered. Mineral Technical Advice Note 2 Coal (MTAN2) provides comprehensive advice in support of MPPW for opencast and deep-mine coal development. MTAN 2 delivered the commitments of the previous 'One Wales' Programme of Government with respect to buffer zones, health impact assessment and public involvement. The buffer zone policy in MTAN 2 states that surface coal developments will not generally be acceptable within 500m of settlements (and within protected areas), but contains certain exceptions.

7. National planning policy and technical advice notes are not prescriptive documents but are among the 'material considerations' to which a planning authority should have regard when making a decision. Although the planning authority is not bound by national policies, it should observe them and only depart from them if there are clear planning reasons for doing so. In this discretionary system, the planning authority gives material considerations the weight it thinks fit in coming to a decision.

BACKGROUND TO THE POLICY IN MTAN 2

8. MTAN 2 was developed in association with a technical advisory group, which included representatives of coalfields communities and environmental groups, and was informed by independent research. The buffer zone approach was subject to robust scrutiny during the development of the MTAN, including two public consultation exercises.

9. Many South Wales valley communities developed to support the coal industry and the closeness of communities to the coal resource has an influence on how the resource can be used. On the basis of all available evidence it was clear that MTAN2 had to be sufficiently flexible to respond to a changing financial and employment background, but at the same time robust enough to protect communities and the environment.

EXCEPTIONAL CIRCUMSTANCES

10. The factors which may constitute exceptional circumstances are outlined in the MTAN in a section entitled '*Exceptional Circumstances*' (paragraph 49, p 10). An exception is not about allowing unacceptable impacts on communities as any impact must always be acceptable. The exceptions are there to identify where coal extraction can lead to genuine and clear benefits for the community and the environment.

THE ROLE OF LOCAL DEVELOPMENT PLANS

11. The Local Development Plan (LDP) process is the key way of ensuring the MTAN 2 buffer zone policy is implemented. The MTAN provides a comprehensive framework in which future coal working, and the legacy of past working, can be addressed as part of the LDP process and in doing so provide greater certainty for communities about coal working. Participating in the LDP process is also a key way in which local communities can influence the setting of the strategy for the sustainable management of coal resources in their area.

THE WELSH GOVERNMENT POSITION ON THE TERMS OF THE PETITION

12. The planning system must balance different interests in reaching a sustainable solution. In this regard, legislation cannot address every conceivable circumstance and the discretion given to decision-makers to reflect different and changing situations is a key strength of the system. Without this solutions may not come forward with the net result that investment could be directed elsewhere and with it any prospect of securing community benefits.

13. The draft Planning Bill does not contain planning policy. Planning policy will continue to be set out in Planning Policy Wales, Minerals Planning Policy Wales and technical advice notes. Planning policy needs to be flexible and capable of timely amendment in response to changing circumstances rather than included in primary legislation. Making planning guidance part of an act of the Assembly would mean that an amending act of the Assembly would be required every single time the planning guidance was changed. This is not a sensible approach.

14. It follows that it is not possible or appropriate for MTAN 2 to be made law. The factors which need to be considered are complex and being able to obtain the right solution in the right place requires an approach whereby the unique circumstances facing any particular locality can be fully considered. For this reason, a policy based approach is a more appropriate, and effective, mechanism than legislation for securing buffer zones.

Annex: Extracts from National Planning Policy

MTAN 2 Coal

Exceptional circumstances (paragraph 49, p10)

49. Exceptionally, having considered the evidence put forward with a surface or underground coal working application, coal working may be permitted within 500m of settlements. Factors to be considered include:

- *where coal working provides the most effective solution to prevent risks to health and safety arising from previous mineral working;*
- *to remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most sustainable option;*
- *where topography, natural features such as woodland, or existing development, would significantly and demonstrably mitigate impacts;*
- *where major roads or railways lie between the settlement and the proposed operational area and coal working would not result in appreciable cumulative and in-combination effects;*
- *where the surface expression of underground working does not include the significant handling or storage of the mineral or waste;*
- *when the proposal is of overriding significance for regeneration, employment and economy in the local area; or*
- *where extraction would be in advance of other, permanent, development which cannot reasonably be located elsewhere.*

50. Where such exceptions justify surface working within 500m of a settlement, the area of working should be restricted to the area reasonably necessary for remediation. The MPA should seek the best balance between the scale, working-method and the timing of individual phases, the opportunities for early restoration and aftercare, and hours of working. Strong evidence of the necessity for remediation, including the evaluation of options, is required to justify working within 200 m of a settlement, and the social and environmental impacts on the affected settlement must be carefully weighed.

51. There are occasions where the site boundary of an existing or proposed site is drawn widely to encompass conservation areas for wetland or tree planting, or where a rail access forms a part of the site. If it can be clearly demonstrated that such areas will generate only insignificant impacts, the MPA may wish to consider defining an operational boundary which excludes such non-operational areas. Such a boundary must be set out in the supporting evidence for any proposed site and identified clearly in any planning permission. Any subsequent application to alter the use of land outside the operational boundary would not meet the criteria for a minor extension.

Minerals Planning Policy Wales

Buffer Zones (paragraph 40, p18)

40. There is often conflict between mineral workings and other land uses as a result of the environmental impact of noise and dust from mineral extraction and processing, and vibration from blasting operations. Buffer zones have been used by mineral planning authorities for some time to provide areas of protection around permitted and proposed mineral workings where new development which would be sensitive to adverse impact, including residential areas, hospitals, schools, should be resisted. Within the buffer zone, there should be no new mineral extraction or new sensitive development, except where the site of the new development in relation to the mineral operation would be located within or on the far side of an existing built up area which already encroaches into the buffer zone. Other development, including industry, offices and some ancillary development related to the mineral working, which are less sensitive to impact from mineral operations, may be acceptable within the buffer zone. The maximum extent of the buffer zone would depend on a number of factors: the size, type and location of workings; the topography of the surrounding area; existing and anticipated levels of noise and dust; current and predicted vibration from blasting operations and availability of mitigation measures. Buffer zones will of necessity vary in size depending on the mineral being extracted and the nature of the operation, but must be clearly defined and indicated in Unitary Development Plans. This will ensure that there is unequivocal guidance on the proximity of mineral operations to sensitive land uses, and that the potential impact of existing and future mineral workings is recognised and planned for in the area around the mineral operations. Further guidance on the factors that should be taken into account when defining buffer zones for particular minerals will be provided in Technical Advice Notes.

Coal (paragraphs 61-62, p25)

61. The objective of the Government's central energy policy is to ensure a secure, diverse and sustainable supply of energy at competitive prices. This objective takes in the Government's concern for the environment, health and safety and a fair deal for all consumers, as well as its commitment to all aspects of sustainable development. While UK coal is available and the generators continue to choose it, UK coal contributes to energy diversity and supply. Opencast coal is generally more flexible and cheaper to produce than deep-mined coal, but there are important environmental and amenity issues involved, and these require very careful consideration. Early consultation should take place with planning authorities and other bodies including the Coal Authority regarding proposed operations to extract coal. Any disturbance of coal will require a licence or other permission from the Coal Authority, in addition to planning permission.

62. Proposals for opencast or deep-mine development or colliery spoil disposal will be expected to meet the following requirements otherwise they should not be approved:

- *The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage;*

- *If this cannot be achieved, it should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission;6*
- *In National Parks and Areas of Outstanding Natural Beauty (AONBs), proposals must also meet the additional tests set out in paragraph 21 above;*
- *within or likely to affect Sites of Special Scientific Interest (SSSIs), National Nature Reserves (NNRs), Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar Sites must meet the additional tests set out in paragraphs 23 and 25 above;*
- *Land will be restored to a high standard and to a beneficial and suitable after-use.*

P-04-472 Make the MTAN Law – Correspondence from the Petitioner to the Clerking Team, 10.02.2014

Evidence session on the 'Make the MTAN Law' Petition
Tuesday 18 February 2014

This submission is from the lead petitioner, Dr John Cox, after having read the written submission provided by the Minister for Housing and Regeneration prior to his oral submission, currently scheduled for 18th February 2014.

1 The Minister's submission seems to have been written without reading the evidence presented by the petitioners in May 2013. As lead petitioner, I would prefer the Minister to first read and see our evidence before he appears before the committee – even if this necessitates yet another postponement. To assist the Minister, I include cross-references to the transcript paragraphs §180-227.

2 In any event, I believe it is appropriate to repeat several points made 9 months ago - to which we have had no response. Although the Minister outlines how planning is meant to proceed, he has not addressed any of the problems we have experienced. *(Note: as in May, we do not seek to influence any current or previous Planning Application. What we do seek is that the Minister reviews how the process is operating in practice and what may be done to ensure that all participants in the planning process are singing from the same hymn sheet.)*

3 As will be clear from reading our actual evidence, we did <u>not</u> advocate a rigid incorporation of the MTAN2 into law (notably see §194, 195, 209). Although many of us fail to see why this is considered so unthinkable, the lead petitioners argued that our difficulties are because MTAN2 policy guidelines have been misinterpreted and there seems to be no mechanism to ensure that Planning Inspectors do not wilfully misinterpret the well-considered objectives of the MTAN2 policy guidelines.

4 In answer to written questions, the First Minister unequivocally stated that the MTAN2 Guidelines are "there to be obeyed" (by Local Authorities). This led Torfaen County Borough Council to reject the Varteg Hill application - by virtue of its gross violation of the MTAN Policy Guidelines (by a factor calculated to exceed 1000 – a calculation not challenged either by the Inspector or by the Applicant at the Appeal). Faced with this reality, the Applicant argued instead at the Appeal that the Guidelines should be ignored (by the Inspector – not the Local Authority) as they were "only guidelines". The Inspector, in a withering remark concurred, saying that the MTAN policy guidelines were "merely the aspirations of politicians, not law".

5 As we argued before the committee in May, this must lead to a situation where Council after Council will reject coal opencasting applications that clearly violate the MTAN2 policy guidelines whilst Planning Inspector after Planning Inspector could uphold Appeals - at

enormous cost to the public purse and prolonged worry for those living nearby. The only beneficiaries of this situation are the legal profession.

6 It may be argued that a Planning Inspector is a neutral arbitrator giving an impartial professional opinion on a matter with which he has extensive expertise. We dealt with both points in our evidence (for example, §212) and I will do so again now.

7 On the latter point, it is simply not true that any presumed technical expertise of a Planning Inspector is a critical factor. Like a Judge in a Criminal Court, he or she has to come to his or her decision based on the actual evidence that was presented by genuine recognised experts at the Appeal. This process was severely flawed during the Varteg Hill Appeal because the Planning Inspector made no distinction between genuine professional "experts" and those who were simply there and paid to make statements to support the Applicant.

8 I anticipate there will be concern at my suggesting that a Planning Inspector might not be neutral. I make this statement (in respect to Varteg Hill) not from my displeasure at his conclusions but from the prejudicial manner of presentation. As is normal for such Reports, he listed all the submissions received and included many paragraphs explaining his assessments. In view of the many pages devoted to this, readers may be expected to assume that the Planning Inspector thoroughly evaluated all the submitted objections before he reached his opinion. But he did not.

9 What is striking about this Inspector's report is that he deals with all but one of the objections raised at the Appeal – the sole omission being a presentation made about the interpretation of the MTAN2 Guidelines - previously to Torfaen and latterly at the Appeal hearings. Not one of its contentions was queried at the Appeal by either the Applicant or by the Inspector and not one argument appears in the Report to the Minister even to mention that a submission on this central issue had been made!

10 To further mislead the Minister (as must have been the intention), the Report refers to *"coaling"* being 200 metres from the nearest settlement rather than – as is specified in the MTAN2 Guidelines - the *"works boundary"* being 60 metres from the nearest settlement. This is not a matter of semantics – the size of the bund for this application was to be 20m high and would have involved 3 months of earthmoving to shift 750,000 CuMs and the same again to remove. What the Inspector has chosen to ignore in his report is any mention of *the major disruption* – focussing instead on the *relatively minor* disruption of the coaling after the quarry had been created.

11 This key issue for the Planning Authorities bears repeating. If the precedent is set that the coaling boundary (as opposed to the operational boundary) is used as the point of reference for measuring

the 200/500 metres, this devalues the protection the MTAN was claimed by the then Minister to provide. The operational activities other than coaling can be as (and for Varteg Hill would have been more) disruptive than the actual coal winning activity. The Inspector spectacularly misinterpreted the MTAN in this respect (even Counsel for the Applicant disagreed with him when he revealed this to be his interpretation of the MTAN during the Appeal hearings).

12 So, on this specific issue, the Planning Inspector reinterpreted the MTAN in full knowledge that it was not the intention of the Guidelines adopted by the National Assembly and Welsh Government. He goes so far as, in Paragraph 308 to move the goalposts "to ensure coal working no nearer than 200 metres from the nearest houses" – a spectacular rewriting of the criteria announced when the MTAN was published.

13 In respect to noise, the Applicant had to admit that even with all the proposed mitigation measures, the level of noise experienced in homes in Pembroke Terrace would exceed acceptable levels for residential properties. What the Applicant argued was that, because they did not have front gardens, they should not be considered as residential and should be treated as if the side of an urban throughway. Here also the Inspector does not mention this issue, simply stating his opinion that the noise levels were acceptable – ignoring the class-prejudice inherent in such a contention (§192).

14 The key issue for us (and Torfaen Council) is that the criteria laid down in the MTAN2 Policy Guidelines should be taken seriously and that all participants in the planning process, <u>including the Planning Inspectors</u>, agree the same interpretation as emerged from the planning consultation spanning 10 years. I submit that no individual - whatever their experience and position – has or should be given authority to rewrite the well-considered conclusions of a ten-year democratic consultation process.

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