

**IN THE MATTER OF PEMBROKESHIRE COUNTY COUNCIL
("PCC")**

AND "MR X"

BRIEF TO ADVISE TO LEADING COUNSEL

BACKGROUND

- At the local government elections on 4th May, 2017, Mr X a Conservative party candidate was elected to the County Council for one of the Pembroke Town electoral divisions. He was also elected as a Town Councillor and is now also Mayor of Pembroke.
- Mr X has not yet signed his PCC declaration of acceptance of office and undertaking to abide by the Welsh model code of conduct which is prescribed by the Local Elections (Declaration of Acceptance of Office) and Welsh Forms (Wales) Order 2004. He has therefore not undertaken any duties as a councillor, has not attended Council induction training or the AGM and has not been included in the calculations for political balance purposes.
- Following the election, a formal disclosure was made to the Chief Executive, Monitoring Officer and other key Chief Officers of PCC and more recently to the Leader of the PCC Conservative Group and the new Council Leader of PCC.
- The disclosure was in relation to an on-going police investigation into allegations against Mr X of rape and sexual assault made approximately one year ago by [REDACTED] [REDACTED] are now [REDACTED] and the alleged offences took place [REDACTED] [REDACTED]
- The formal disclosures were made following a number of "Part 4" strategy review meetings over the past year which have been held under the relevant local safeguarding procedures and the All Wales Child Protection Procedures 2008.
- Mr X had been unable to attend the induction session for newly elected members on 8th May, 2017, where the majority of County Councillors signed their

declarations/undertakings, due to work commitments. A second signing session was arranged, however Mr X was then asked to delay signing as a Part 4 meeting had been scheduled. He acceded to this request.

- The Part 4 meeting took place on the 12th May, 2017 and recommended, amongst other matters, that;- “your Declaration of Acceptance of Office and undertaking to abide by the code as a County Councillor is postponed for a further two weeks”. Mr X complied, albeit somewhat reluctantly. A further meeting took place on the 31st May, 2017 and recommended further postponement until 19th June, 2017 which is the date of the next Part 4 meeting. Mr X has not challenged this, although the Conservative Group Leader has sought clarification from the Monitoring Officer as to the effect of the recommendation and he has sought advice from a Conservative party officer in Cardiff who has suggested that PCC is predetermining the issue by postponing declaration.
- The matter is currently with the CPS and a decision upon whether to charge Mr X is expected shortly, pending a further interview of one of the alleged victims by the police. This interview has been delayed as [REDACTED]
[REDACTED]
- It appears that Mr X is under the impression that the Chief Executive and/or the Monitoring Officer is preventing him from signing his declaration/undertaking before the Chief Executive, the “Proper Officer” for these purposes, (or indeed by other methods specified in Section 83 of the Local Government Act 1972), although the formal letters to Mr X from the Part 4 process make it clear that this is a recommendation only.
- Although Mr X does have two months from the date of election in which to sign his declaration/undertaking before the seat becomes vacant, pressure is now mounting from Councillors, the press and on social media, to receive information as to why Mr X has not signed his declaration/undertaking.
- If Mr X was charged but nevertheless signed his declaration/undertaking, in the Monitoring Officer’s experience, the Public Services Ombudsman for Wales would not commence an investigation into an alleged breach of the Code of Conduct by Mr X eg. an allegation of bringing the office of Councillor or the Council into disrepute, until after the outcome of any successful prosecution by the police. There is provision in Section 72(3) for the Ombudsman to produce an interim report in circumstances including “where the prima facie evidence is such that it appears...that the subject... failed to comply with the code...”, which may in turn lead to temporary suspension, although this provision remains untested in Wales.

Leading Counsel is now asked to advise as follows:-

1. If the police do charge Mr X by 3rd July, 2017, are the Chief Executive/Monitoring Officer obliged to approach Mr X to make it absolutely clear that he has a right to sign his declaration/undertaking before the Proper Officer? If not, is it nevertheless advisable to do so?
 2. If the answer to Q1 is "no" on both counts, the period of two months elapses and the CPS/police decide that there should be "no further action", is the Council open to legal challenge for Mr X's loss of reputation etc?
 3. If the police do charge Mr X by 3rd July, 2017 and Mr X nevertheless insists upon signing his declaration/undertaking, regardless of the Part 4 recommendation, is there any action which the Council should take to prevent him from doing so?
 4. If the answer to Q3 is no, Leading Counsel is asked advise whether there is anything else which should be done to minimise safeguarding risks/concerns, and indeed to minimise reputational damage to the Council, apart from seeking agreement from Mr X not to attend homes, schools, events, charitable functions etc?
 5. Again, if the answer to Q3 is no, would it be advisable for the Chief Executive/Monitoring Officer or Leader of the Council to nevertheless register a complaint with the Ombudsman, whilst accepting that unless the Ombudsman concluded that police charges formed prima facie evidence of a breach of the Code, this would be held in abeyance pending the conclusion of a prosecution.
 6. Leading Counsel is asked to advise generally in this matter.
- Should Leading Counsel require any further information he should not hesitate to contact Claire N J on [REDACTED]

**PEMBROKESHIRE COUNTY COUNCIL
("PCC")**

"Mr X"

OPINION

INTRODUCTION

1. Mr X faces allegations of very serious criminal conduct. He has not however at this stage been convicted of anything. Perhaps he never will be. He is for most purposes deemed to be innocent unless and until he is proved and found guilty. I do not understand him to have admitted his guilt. He may even protest his innocence.

2. He is no more and no less than the subject of ongoing police investigation. He has however not yet even been charged.

3. At the Elections on 4 May 2017 he was elected as a Member of PCC. This was of course not an action of PCC. It was an act of the electorate in his electoral division. For as long as he does not act as a Member of PCC his

electorate is in effect at least partially disenfranchised. Any issue as to his nomination or election would have been a matter for an Election Petition. He was qualified for election and holding office as a Member of PCC: Section 79 of the Local Government Act 1972 (“LGA 1972”).

4. Mr X has two months within which to sign his acceptance of office and undertaking to abide by the Model Member Code of Conduct (“the Code”) set out in the Schedule to the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, as amended. If he does not do so then his seat will become vacant.

5. The two month period will expire on 3 July 2017. By then he may have been charged, or he may have been notified that he is not to be charged, or the decision whether or not to charge him may still not have been made.

6. If he is charged, then proceedings may take a considerable time, and potentially be subject to appeal. If he is ultimately “convicted”, then obviously consequences will follow, including disqualification pursuant to Section 80(1)(d) of LGA 1972. That however is not the present or imminent situation. Disqualification action arises only upon conviction. See also Section 86 of LGA 1972.

7. Nor does the Code bite at this stage. Mr X was not acting in his official capacity as a Member by being elected as such. He may be acting in his official capacity by signing his declaration of office in accordance with Section 83 of LGA 1972 and the Order thereunder and undertaking to abide by the Code. However, by virtue of being validly elected he is entitled to do that. The Code will be applicable if and when he is convicted.

8. Moreover, he is not conducting himself in a manner which could reasonably be regarded as bringing his office or PCC into disrepute by being suspected of criminal offences, however serious. Upon conviction the situation would be very different, but that is not now, and may never be, the position. There must be no predetermination, or surrender to pressure.

9. However, the alleged offences are of child abuse. PCC has safeguarding responsibilities, including pursuant to the Social Services and Well-being (Wales) Act 2014 and in accordance with the All Wales Child Protection Procedures 2008. These responsibilities do not confer power to require an Elected Member not to sign his acceptance of office and/or not to participate as a Member.

ADVICE SOUGHT

10. I am asked five specific questions and to advise generally. I address the questions in the order in which they are raised in my Instructions.

FIRST QUESTION

11. The first question is on the basis that the police have made a decision by 3 July 2017 and that the decision is to charge Mr X. I am asked whether it is necessary or advisable for Mr X to be informed that he has a right to sign his declaration/undertaking before the period for doing so expires.

12. My answer is: "Yes"; it is necessary.

13. He has been recommended at least twice not to do so, albeit when the position was not as time critical as it is now becoming. PCC cannot abstain from advising him and doing so correctly.

SECOND QUESTION

14. On the basis of my answer to the first question, the second question does not arise.

15. In any event, I do not see a liability on the part of PCC. It is for Mr X to decide whether he allows the two month period to elapse without signing his declaration/undertaking. It is for him to obtain and rely upon his own advice. Indeed it appears that he has done/is doing so.

16. However, PCC might incur liability if it gave information bearing on why Mr X may not have signed his declaration/undertaking.

THIRD QUESTION

17. If the police do charge Mr X by 3 July 2017, and he nevertheless insists upon signing his declaration/undertaking, I am asked whether there is any action PCC should take to prevent him from doing so.

18. My answer is: "No".

19. His political group can advise him that he should not do so.

FOURTH QUESTION

20. I am asked whether there is anything that PCC should do.

21. My answer is that PCC should take action to address, and to be seen to be addressing, safeguarding concerns. Beyond that, I doubt that PCC's reputation is an admissible consideration. Mr X achieving and accepting membership of PCC is not a matter for PCC. Police procedures are not a matter for PCC. Guilt or innocence is ultimately a matter for the Courts and is not currently established.

22. I agree that safeguarding actions that PCC can, and should, take are such as seeking agreement from Mr X not to attend homes, schools, events, charitable functions, etc.

FIFTH QUESTION

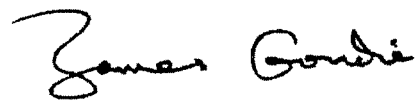
23. I am asked whether it would be advisable for a complaint to be lodged with the Public Services Ombudsman for Wales ("the Ombudsman") pursuant to Sections 68-74 inclusive of the Local Government Act 2000.

24. My answer is: "No".
25. There are currently no grounds for complaint.
26. Nor will there be grounds if and when there are police charges, but no conviction of anything, and no indication that a guilty plea will be tendered.
27. Moreover, the Ombudsman would be open to challenge in the unlikely event that he concluded that police charges formed "prima facie evidence" (if "evidence" at all) of a breach of the Code; and absent a lawful conclusion to that effect there is no basis for interim suspension.
28. Nor could a complaint lawfully be held in abeyance by the Ombudsman. If there were grounds for complaint, then the complaint should be dealt with. If there would be grounds for complaint later, ie upon the conclusion of a prosecution, if that conclusion were to be adverse to Mr X, then the complaint should be later, if and when grounds for it have arisen.

GENERALLY

29. I have nothing further to add to the above, but will be happy to discuss any aspect.

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A handwritten signature in black ink that reads "James Goudie". The signature is written in a cursive, slightly stylized font.

JAMES GOUDIE QC
8 June 2017