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Sunday, 12 August 2018

Motive and opportunity - How was the CEO of Carmarthenshire County Council allowed to embark on a private vendetta using public money?

Government at all levels can wield power by funding policies, changing laws and prosecuting opponents. Governments, even local Unitary Authorities can essentially have bottomless pockets when it comes to legal matters. This was certainly the case in the libel action defence and counter claim fully funded by Carmarthenshire County Council against Mrs Jacqui Thompson. Mrs Thompson had been critical of Carmarthenshire County Council Eventually the Chief Executive, Mr Mark James, inexplicably made an inaccurate and quite vicious comment on the Madaxeman Blog, "on behalf of the Authority" but not apparently approved by the Leader of Council prior to the action.

Mrs Thompson decided to sue the Council and Mr James for libel. The County Council decided to defend both themselves and the CEO in court, All of the planning for this legal action was made by Senior Council Officers and Senior Elected Councillors, in Camera, in secret, so that the public and the ordinary councillors were not informed.

Eventually the Wales Audit Office ruled that financing the Counter Claim by Council Chief Executive Officer Mark James was unlawful. The exempt documents show that the council allegedly had contacted the WAO before their decision meeting to fund Mr James in January 2012. The Executive Board Councillors were seemingly never given at reply from The WAO. Why not?

There was good reason for secrecy and subterfuge. Had the other county councillors and the public known the full details then there may have been enough protest to stop the huge spend of public money the Executive were planning in order to maintain the reputation of the Chief Officer, Mr Mark James .

Also, the Senior Officers and Executive Councillors knew that the case would not be a straightforward libel action and counterclaim. It was vital that Mrs Thompson and her legal team would not know that a completely different legal angle, a non violent harassment by blogging, would be the essence of the case, This meant that Mrs Thompson's defence would only find this out in court, probably have insufficient time to prepare a full rebuttal on this new issue and the County Council would triumph in punishing an irritating local resident who would surely be destroyed not only in reputation but by severe financial sanction.

This reason for secrecy is explained under "Implications" on page 5 of the minutes of this Agenda Report Item. Did any of the Exec Board read this? It was common practice that Exempt Documents were carefully collected from the meetings as you left and given out as close to meeting dates as possible. When I was a Councillor I used to sneakily photocopy those presented to me in full council, for my own protection, and hand in the

originals, but did the Exec Board? I doubt it. No wonder they can't remember exactly what they agreed to.

Mrs Thompson, if she lost, clearly would not be very likely to afford to pay back the Council's Costs or the full damages to Mr James. The executive board minutes show that the need for absolute secrecy was important and the reputation of the chief officer was to be their primary concern

It would be an example to all residents of Carmarthenshire County Council and especially protect the chief executive, Mark James from further criticism. Bloggers would have to self-censor carefully or have the County Council on their backs!

A great plan, but there were several possible obstacles. Could the senior county councillors be persuaded that they could actually do this? Was the reputation of the County Council Chief Executive so important that they had to do this? Unfortunately the members of the executive board appear hand picked for compliancy and total trust in the clever senior officers. Subsequently several have told me privately that they realise now that they were manipulated and one present on that day has even admitted that they no longer have any regard for the CEO. Mr James attended the whole of the meeting which gave him the funds to fight his case. The Wales Audit Office condemns this as wholly improper,

The decision to spend over a quarter of a million pounds of public money on the libel cases was taken in this closed meeting on the 23rd of January 2012. Council officers significantly outnumbered the elected members.

The main mover appears to be Head of Legal and Administration Linda Rees Jones at that time CCC's "Acting Head of Law and Administration" and also "Acting Monitoring Officer". Her legal report explains the crisis the Executive Board must address and the way that she believes local government law can be interpreted to allow the legal actions to be funded totally by the taxpayers of Carmarthenshire. Subsequently she had the good fortune to obtain the permanent position in those posts.

THE GRANTING OF AN INDEMNITY TO THE HEAD OF PAID SERVICE.

REASONS:

(1) If an indemnity is not granted the Head of Paid Service would be personally liable for legal costs associated with those court proceedings

(2) The Authority owes its employees a duty of care and an indemnity to the Head of Paid Service in the circumstances of this case is proportionate and reasonable.

So, the main reasons are that the CEO is not to be allowed to fight his own battles, despite perhaps recklessly commenting on a blog. Linda Rees Jones advises that paying the fees in this case is actually part of the duty of care the senior Councillors owe to their Chief Officer, the head of paid service, Mark James.

But oops! Mr James wants to make a libel counter claim and that isn't allowed, surely??

Linda goes on to explain that the County Council is only indemnified to fight a libel action themselves, not a counter claim by a senior officer. The solicitors for both Mrs Thompson and CCC were on the point of agreeing a modest settlement of the libel claim. However, if this was accepted it would imply that Mr Mark James was perhaps at fault, having made a possibly defamatory statement about the Thompson Family on the Madaxeman Blog.

Linda has discovered a "catch all" clause - section 111 of the Local Government Act of 1972 which allows Authorities to do "anything" (whether or not involving expenditure...) which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions".

She also states that CCC had been advised back in 2008 that giving an indemnity to an officer was potentially lawful, but that it should only be exercised in **exceptional circumstances**.

Integrity and Reputation, states Ms Rees Jones, are Essential for Mr James to command respect, enable him to lead and undertake his duties. The Executive Board were asked to decide whether this was to be regarded as "exceptional circumstances" and they apparently agreed. Defending the good name of the Chief Officer was to be regarded as a vital function of the County Council

The executive board members I have spoken to claim they were given the impression that the threat of the counter claim would make the whole embarrassing matter "go away" as Mrs Thompson would surely back down. If so, why the secrecy and the admission that a leading libel lawyer had already planned a new tack to ensure success?

Did they really agree to this without even being able to retain their copies of Ms. Rees Jones' report? Were they given these documents on the day only or were they really given time to read, digest and even get a second opinion? It seems not.

There are 2 other parts of the report which stand out.

(h)It is unclear whether the other party has the financial means to meet any order for damages and/or costs that may be made.

So there was clear doubt that Mrs Thompson could pay any legal costs awarded against her and the secrecy meant that she had no idea that the new tactic to use her blog as evidence of a harassment campaign which would probably invalidate the insurance she had taken out,

(i) The Head of Paid Service has confirmed that he is not motivated by a wish to benefit financially and that accordingly should his action be successful any damages awarded to him will be paid over to the authority and will not be kept by him.

Subsequently Mr James decided to take all the damages for himself, declined to accept regular affordable repayments and tried to force the sale of the Thompson's family home so he could get all of the money at once and make the family "intentionally homeless".

The WAO report shows an email between Mr James and MS Rees Jones confirming the statement above prior to the meeting. Was the change of heart pure malice or had he not, in his mind, made this promise, or was Ms Rees Jones mistaken? Maybe his financial circumstances had changed and he really needed the money?

Had Mr James not decided to pursue Mrs Thompson for his damages and left the matter to the County Council there would have been no court cases to force the sale of her home to recover her half of the capital in the bungalow after paying off the mortgage, while making the whole family homeless. Yes, he was awarded the damages and he had, by the documents now available to the public, promised them to the Council. He has not given the instalments he has collected to the Council.

How is the reputation of this man regarded now? The people of Carmarthenshire have paid out thousands, ostensibly to protect his integrity and reputation, which the document says are "essential in order for him to command respect, be able to lead and undertake his duties". However, he has gone back on a promise to donate any damages back to the County Council who generously fully funded the case he took out to obtain them - at least £40,000.

He was present during the entire meeting where this report to fund his libel counter claim was presented and discussed. He had the opportunity to challenge Ms Rees Jones as to this undertaking, and make clear to the

Councillors that it was not a binding promise by him. Surely as he was there, apparently in agreement on the report, the Councillors must have been convinced that he truly was going to donate any damages directly to the Council ?

Subsequently he has used the issue to persecute Mrs Thompson and has greatly increased the amount she now owes him, perfectly legally. He has put maximum interest on her debt and has forced her to engage in extra expensive court appearances rather than negotiate repayments out of court, then add his lawyers fees to her debt.

Mr James claims he had to make the statement on the Madaxeman Blog as he was invited to do so. I invite Mr James to explain why this apparently inaccurate statement, paragraph (i), was presented to the executive board? Did you change your mind, Mark , or was Linda mistaken in her description of your position?

I am waiting for your response,

. Siân Caiach

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