

Case No: HQ11D04250

Neutral Citation Number: [2013] EWHC 515 (QB)  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/03/2013

**Before :**

**THE HONOURABLE MR JUSTICE TUGENDHAT**

-----  
**Between :**

	<b>JACQUELINE THOMPSON</b>	<b><u>Claimant and Part 20 Defendant</u></b>
	<b>- and -</b>	
	<b>MARK JAMES</b>	<b><u>First Defendant and Part 20 Claimant</u></b>
	<b>CARMARTHENSHIRE COUNTY COUNCIL</b>	<b><u>Second Defendant</u></b>

-----  
**Ms Christina Michalos** (instructed by **Simons Muirhead & Burton**) for the **Claimant**  
**Mr Adam Speker** (instructed by **Slater & Gordon**) for the **Defendant**

Hearing dates: 13, 14, 15, 18, 19, 20 February 2013  
-----

**Judgment** Mr Justice Tugendhat :

1. The Claimant (“Mrs Thompson”) sues Carmarthenshire County Council (“the Council”) and its Chief Executive (“Mr James”) for a libel in a letter which he wrote on 28 July 2011, and which he published to the Councillors, and to the readers of a blog maintained by a Mr Milan under the name “madaxeman”. Mr James alone has counterclaimed (under CPR r20) for libel in respect of five postings which Mrs Thompson has put on the blog she maintains, and which she first put on her blog on 28 February, 22 March, 6 April, 1 June and 14 July 2011. The

words complained of in respect of 6 April have been removed, but the other words complained of have remained there.

2. Mrs Thompson is a 50 year old housewife who looks after the youngest of her four children who is still living at home, and a smallholding in Llanwrda, Carmarthen. She became a community councillor in Llandwra in 2010, and is vice chair of the community council and chair of the Community Association. She stood unsuccessfully for the County Council in 2012, against the incumbent Mr Theophilus.
3. The circumstances out of which this dispute arose include eight planning applications. The first three were made by Mrs Thompson and her husband Mr Kerry Thompson (“Mr Thompson”) for themselves, and they were all approved. They were in 1988 (for a forestry contractor’s dwelling), in 1990 (for a bungalow) and in 2000 (for an agricultural implement shed). The next three were made by Mrs Thompson’s brother-in-law Mr Eddie Thompson, with the assistance of Mrs Thompson, and they were all refused. They were made in March 2004 E/06601 and April 2005 E/09739 (in each case for a forestry/agricultural bungalow), and in December 2005 E/11853 (for a temporary caravan). Eddie Thompson works as an agricultural and forestry contractor. He appealed the refusal in E/09739, but the appeal was dismissed. The seventh application (for a storage shed) was by Mrs and Mr Thompson for themselves. It was made in May 2006 E/13192 and was refused on 11 July 2006. The last application was by Mr Eddie Thompson in October 2007 E/17614. It was for a bungalow. It was refused on 12 February 2008 and an appeal was dismissed on 12 November 2008.
4. The following is a summary of some of the findings of fact that I have made in this case.
5. From 1 March 2006 onwards Mrs Thompson wrote a series of letters accusing the Head of Planning for the Council, Mr Eifion Bowen (“Mr Bowen”), of professional misconduct and corruption. These letters were for the most part co-signed by Mr Thompson and on some occasions also by Eddie Thompson. Mr James warned her as early as 8 March 2006 that the Council was not prepared to accept any form of intimidation or harassment of officers or Councillors. But Mrs Thompson continued to write letters.
6. On 13 October 2006 she accused Mr Bowen and Mr James himself of corruption. Mr James had had no involvement in the planning decisions about which Mrs Thompson complained. All he had done was to write the letter of 8 March. Mrs Thompson published her allegations widely by e-mail, including to the media in Wales as well as to the elected Councillors. On 18 October 2006 Mrs and Mr Thompson sent a letter which they copied to the media. In November 2006 Mr Bowen (but not Mr James) sued Mrs and Mr Thompson for libel in respect of the

letter of 18 October which he complained meant that there were strong grounds to suspect that he had repeatedly acted corruptly regarding planning applications.

7. Mrs and Mr Thompson filed a Defence. Neither in their Defence, nor on any other occasion, has Mrs Thompson sought to prove that any of her allegations of corruption are true. The defence she pleaded was honest comment. The defence of honest comment was struck out by the court. Mrs and Mr Thompson agreed to settle the action on the basis that they made a public retraction and apology in open court, which they did on 15 October 2007. They also agreed to pay £7,500 towards Mr Bowen's costs. Mrs and Mr Thompson are of very modest means, and they have been paying that sum by instalments.
8. However, in an attempt to avoid having to pay the costs, they first asked, through their solicitor, that Mr Bowen should ask the Council to pay his costs (and promised they would keep that confidential). The Council refused to give an indemnity, and Mr Bowen's solicitors so informed Mrs and Mr Thompson. In the summer of 2008 Mrs Thompson came into possession of a copy of a letter from Her Majesty's Court Service ("HMCS") bearing two receipt stamps of the Council, which she referred to as "the stamped document". She and Mr Thompson claimed that this document was proof that the Council had in fact paid Mr Bowen's costs, and so, they alleged, that Mr Bowen and the Council had lied to them. The document proved nothing of the kind. At a hearing in the High Court on 22 September 2008 Flaux J made a finding that the Council had not paid Mr Bowen's costs. Mrs and Mr Thompson did not accept that finding. They continued to claim that the Council and a number of its officers had lied. They added allegations of perjury to the allegations of misconduct and corruption that they had previously made, and they published these widely by e-mail.
9. In March 2009 Mrs Thompson started a blog under the title "Carmarthenshire Planning Problems and more". The letters she wrote before that date, and the postings on her blog, show that she is articulate and literate, and well able to master legal documents and legal procedures. Her blog was nominated in 2010 as a finalist in the Media Wales "Wales Blog Awards" for the Best Community Blog Award, and in 2011 for the Best Political Blog. This suggests that the blog has a significant readership.
10. No one has to give an explanation or justification for maintaining a blog. But two years later, in March 2011 Mrs Thompson chose to explain why she started and maintained her blog. She wrote:

"Initially it was out of a sense of frustration and injustice over both the planning system in Carmarthenshire as well as the circumstances around the libel case and the subsequent changes to the county's constitution".

11. Her postings are all highly critical of the Council. The Council and Mr James do not, of course, suggest that there is anything unlawful about Mrs Thompson maintaining a blog which is critical of the Council. Everyone is entitled to publish to the world opinions that they honestly hold about matters of public interest. Everyone is entitled to state facts which are true. The complaint that Mr James made in letters to Mrs and Mr Thompson is that what Mrs Thompson has written repeatedly includes statements of fact which are false, and for which she has no foundation, namely allegations of corruption, lying and perjury, and misappropriation of public money. The Welsh Audit Office, and others who Mrs Thompson has asked to investigate, have all assured her that the Council did not indemnify Mr Bowen for the costs of his libel action against her. But she has, until the trial, refused to accept that.
12. At the trial she did accept that, but she has not removed from her blog any of the allegations of corruption etc that she has been making for the last seven years. Mr Bowen, Mr James and Mr Thomas all gave evidence and Ms Michalos did not suggest to any of them that they had lied or committed perjury. Mrs Thompson in her evidence said:

“It is not my evidence that I believed they did [ie that the Council funded Mr Bowen’s action]. I don’t know but I’m prepared to give the Council the benefit of the doubt”.
13. In February 2011 matters took a new turn. The Department for Communities and Local Government issued a letter to all Councils in England encouraging them to allow filming of their proceedings. The Council had, until this point, only allowed filming of their proceedings in very limited circumstances. Mrs Thompson asked for permission to film, and she was refused. She decided to film proceedings of the Council using her mobile phone.
14. Up until the start of the trial of this action it appeared that one of the issues that I would have to decide would be whether or not Mrs Thompson was acting lawfully when she filmed the proceedings of the Council. But for reasons explained below, it has become common ground between the parties that I do not have to, and should not, decide that question.
15. The first occasion on which Mrs Thompson filmed proceedings of the Council was on 28 February 2011. She posted the clips on YouTube. No one appears to have noticed that she was doing it at the time. The second occasion was on 31 March 2011, when she was asked to stop. The third occasion was on 13 April 2011. On this occasion a council officer, a Mr Davies, was sent up to the Public Gallery to ask her to stop. What happened next has given rise to one of the few disputes of fact in this case. I have found that when she had left the Public Gallery and gone home Mrs Thompson made an allegation to the police that, while they were to-

gether in the Public Gallery, Mr Davies had assaulted her and attempted to steal her mobile phone. I have found that this allegation was false to her knowledge. It was an attempt to pervert the court because it exposed Mr Davies to the risk of arrest and punishment (Archbold (2011) para 26-3). The reasons for this finding are set out below.

16. The fact that Mrs Thompson made this false allegation of assault had a further consequence. To avoid exposing another Council officer to such a risk, on the next occasion when she was suspected of filming the Council, which was 8 June 2011, the police were called to escort her from the building. However, the police did not just escort her from the building. They formed the belief that she was about to commit a breach of the peace, and they arrested her to prevent that.
17. Mrs Thompson had by this time attracted a lot of interest and support for her filming from the public. So the fact that she was arrested attracted national publicity in the media and on the internet.
18. One of the members of the public who supported Mrs Thompson's stand on filming was a Mr Milan. He maintained a blog under the name "madaxeman". On 21 July 2011 he published an "Open Letter" to Mr James, which was critical of Mr James and of the Council. He urged Mr James to reply to this Open Letter. Mrs Thompson also made a posting on his blog urging Mr James to reply. Mr James did reply. He posted his reply on Mr Milan's blog, and he circulated copies to the 74 elected Councillors. It is this letter which contains the words Mrs Thompson complains of.
19. Mr James wrote, amongst other matters, that

"Mrs Thompson and her family ... have been running a campaign of harassment, intimidation and defamation of Council staff and members for some considerable time... [and that, in respect of the incident on 13 April 2011] ... the Council would have made a formal complaint of a deliberate attempt to 'pervert the course of justice' to the Police by making false statements, but the [Council] officer concerned ... did not want to make a fuss..."
20. On 14 November 2011 Mrs Thompson issued her claim form for libel. Mr James and the Council in their Defence allege that what Mr James had written about Mrs Thompson was true (they also raised other defences). Mr James also counter-claimed, alleging that five of Mrs Thompson's postings in 2011 had defamed him, accusing him of corruption, misuse of Council funds and lying.
21. That is the outline of the case and my findings on Mrs Thompson's claim. The detailed findings of fact that I have made in respect of Mrs Thompson, and the rea-

sons why I have made these findings, are set out under the heading 'Events before 28 July 2011'. The further matters I have to decide, including my findings on Mr James's Part 20 counterclaim, are set out in the sections of the judgment in and after the section headed 'The Words Mrs Thompson Complains Of', starting at para 241 below.

#### EVENTS BEFORE 28 JULY 2011

22. Eddie Thompson's second planning application E/09739, made in April 2005, was dealt with by Mr Bowen. On 31 May 2005 both Mr Thompson and Eddie Thompson visited Mr Bowen to discuss the matter. There is a note of the meeting as follows:

"Mr Thompson believes that his application has not been dealt with fairly. He went on to state that this application (and a previous application – E/6601- which was refused during April 2004) was being decided upon by personality/family name rather than the merits of the application submitted. Mr Thompson stated that he lives several miles away from the shed where he holds his machinery and stock, also stated that he has full support from his community for this planning application (including the local community council).

Two names that came up regularly during that conversation were Kevin Phillips and Mr Thompson's Councillor Tom Theophilus. Mr Thompson also stated that Kevin and Cllr Theophilus were able to make decisions on planning applications on their own.

According to Mr Thompson, he has been speaking to Kevin Phillips on a regular basis; and, according to Mr Thompson, Kevin has already informed him that the current application will be recommended for refusal.

Mr Thompson has also been told by Community Council Members, that Cllr Theophilus made some comments at a recent meeting, which are:

'Mr Thompson's brother, (Mr K E Thompson) should not have been granted planning permission for his house, which had been built and is more than 15 years old;

Mr Thompson would not be granted planning permission on any condition for applications submitted'.

According to Mr Thompson, four members of the Community Council heard the comments made by Cllr Theophilus, of which two are willing to state that this was said.

As an example of another similar application, Mr Thompson produced a copy of application number E/ 09567 that had been granted planning consent within 6 weeks of submission. What both Mr Thompsons' wanted was to meet with Eifion as soon as possible, to be given a clear reason as to why this current application is going to be refused once again".

23. Mrs Thompson became involved in this, as she explains. She acted as a non-professional agent and carried out much research for her brother-in-law prior to his second application. Together they corresponded with the planning department, and Mrs Thompson contacted neighbours and others who all wrote letters supporting the application. These included the local councillor, Mr Theophilus, the Assembly Member, and the Member of Parliament. On 23 June 2005 the application was deferred at a committee meeting for further consideration. Mr Thompson and Eddie Thompson met Mr Rhys Davies, the case officer, to discuss the way forward. Mrs Thompson states that Mr Davies said that he would very much like to recommend approval of the application but it had been taken out of his hands and that he had been made a "scapegoat" (her quotation marks) and had to refuse it. The Thompsons felt that this comment indicated that the application had not been properly dealt with. They asked to speak to Mr Davies' superior, the head of his department, Mr Fearn.
24. They spoke to Mr Fearn at the Council offices, but the meeting did not go well. He asked them to leave. The Thompsons took the view that he was not prepared to address the issue they had raised. They asked the police to be called. Mrs Thompson says that this was so that the police could look into the matter. She states that the Council officers did not wish to call the police and that Eddie and Mr Thompson did not wish to leave until the police had been called. She describes this as a peaceful "sit in" (again her quotation marks). Mrs Thompson was not present. Her account of the incident is, I assume, what her husband and brother-in-law told her. She states that the staff accommodated Eddie and Mr Thompson, and that Mr Fearn ensured that they were supplied with tea and biscuits for the rest of the working day.
25. The Police were eventually called at the end of the day. Mrs Thompson states that they were very fair and understanding and that Eddie and Mr Thompson apologised for putting them to the trouble before leaving the building, as the police asked them to do. Mr Fearn was present.

26. On 15 September 2005 Eddie Thompson's application E/09739 was considered at the Planning Committee and refused. Mrs Thompson submitted on his behalf an appeal to the Welsh Assembly Planning Inspectorate. Meanwhile they asked for a meeting with Mr Bowen as the Head of Planning. Mrs Thompson states that Mr Bowen readily agreed to this.
27. Mrs Thompson attended the meeting together with Eddie and Mr Thompson. She states that Mr Bowen suggested that it would be a good idea for Eddie Thompson to apply for a temporary caravan. Mr Bowen expressed his support for the proposal, and suggested that the Thompsons make an appointment at the Llandeilo Office to ensure the application was proper and complete. He furnished the Thompsons with his mobile phone number in case they had any queries.
28. Mrs Thompson states that this was the first of only two occasions on which she has been to Mr Bowen's office. The second is referred to below. Both meetings she says were civil and professional on both sides.
29. Eddie Thompson duly submitted the application E/11853 for a caravan in Llandeilo on 18 November 2005. Mrs Thompson contacted the Planning Office to enquire about the progress of the matter, and on one occasion she spoke to Mr Bowen himself. He said that he was "minded" (her quotation marks) to refuse the application. She states that Eddie Thompson also spoke to Mr Bowen. Eddie Thompson told her that Mr Bowen had told him that he (Mr Bowen) would "think about it over the weekend" and the conversation ended amicably. The following Monday, Mrs Thompson contacted Mr Bowen again. He said that he was refusing the application.
30. Mr Thompson decided that he wanted to see Mr Bowen to discuss Eddie Thompson's case. But what he decided to do was to go to Mr Bowen's home unannounced. Mrs Thompson was concerned. She was so concerned that she called the police to intercept her husband.
31. The following is taken from the police record dated Tuesday 28 February 2006 starting at 17:48. The record includes "husband is annoyed that the planning office has turned down his planning application again". The police recorded a number of activities over the next twenty minutes, and then a call from Mrs Thompson at 18:17. She rang back to say that her husband had returned home without going to see Mr Bowen.
32. At about half past six the police contacted Mr Bowen at his office and advised him of the situation. They advised him that Mr Thompson had returned home without going to his (Mr Bowen's) house. At 8.30 pm the police visited Mr Thompson at his home address. The note records that the Thompsons were advised to appeal. The end of the meeting is recounted as follows:

“He was still very angry about the planning being refused and stated that he has done everything he can within the law to oppose the decision... but is getting nowhere. He initially continued to say that he will visit [Mr Bowen] at his home but later stated that he would not do this, after the implications of his actions and the likely effect on [there were then about three minutes of the conversation redacted out].”

33. In her witness statement Mrs Thompson states the following as part of her account of this incident:

“It is common practice for constituents to ‘drop in’ on councillors and to discuss issues and Kerry believed the same applied to Mr Bowen. After Kerry left I became concerned that his actions would probably be misunderstood and I called the police to intercept him. In fact, Kerry had changed his mind anyway and had returned home about 10 minutes later without going to Mr Bowen’s home and without meeting the police. Later on that evening the police visited Kerry at home to suggest that actions such as this were inappropriate and to advise him to put any concerns in writing. Nothing actually happened and, if I hadn’t called the police, the Council would never have known that Kerry had set off to see Mr Bowen”.

34. Mr Bowen was not a Councillor. He was not an elected representative at all. He was a Council official. I accept that on occasions constituents may visit elected representatives at their home, but if they do that without a prior appointment, it is not an accepted or common practice. It is a serious error. Mrs Thompson had every reason to call the police that night. In my judgment the description she gives in her witness statement is an attempt to downplay the seriousness of what Mr Thompson set out to do. Her reaction at the time was the right one.

35. On 1<sup>st</sup> March 2006 at 10:31 Mrs Thompson together with Mr Thompson, Eddie and his wife, sent an e-mail signed by all of them. It was addressed to Mr Bowen and to a large number of individuals with addresses at the Carmarthenshire County Council. It read as follows (the emphasis in bold is added):

“To all, re: PLANNING APPLICATIONS EDWARD THOMPSON HAFOD BRIDGE LLANWRDA.

I am writing this email calling for the resignation of Eifion Bowen (Head of Planning) and Councillor Tom Theophilus on the grounds of **professional misconduct and gross incompetence**. Both members have severely gone against the council pro-

to col and made grave mistakes. **Mr Bowen lied** to a planning committee meeting, asked Mr E Thompson if he would consider a caravan on his land, suggested he re-applied, promised him full support then promptly refused it. Mr Bowen also ‘mistakenly’ sent a letter to Mr Adam Price MP confirming that planning permission had been granted in full for a bungalow (how many other mistakes have been made by Mr Bowen). Tom Theophilus spoke out at a local community meeting slandering Mr E Thompson which is against council protocol, therefore he was unable to speak at committee level.

I would like to know if it is legal for local councillors to tip building material and waste on their land as I have proof that Mr Theophilus has done this in the past.

I am also sending a copy of this e-mail to the **Carmarthen Journal**”.

36. At 11:41 the next day Mr Bowen replied as follows:

“I regret that you feel that I have in some way let you down. You will recall that I have met you on a number of occasions to discuss the way forward following the refusal of Planning permission for a dwelling. I did suggest that an application for a caravan would be an alternative as detailed in the Welsh Assembly advice, or alternatively you could have appealed. The difficulty is there are very few applications for forestry workers and the main objection you have is the requirement to prove the need to live at that spot.

During yesterday’s discussion I agreed to raise the issue of being made homeless with the housing Division, this I have done.

I also agreed to take your application to the Planning Committee so your personal circumstances can be highlighted, however, I am now reluctant to do this given your view on my attempts to take matters forward. I will now release this refusal under delegated powers. **I was also extremely concerned last night** when contacted by the police that you were on your way to see me at my home. I was not at home and it did however cause my young daughter some worry, under such circumstances I will be contacting the police today expressing concern”.

37. Mr Bowen sent a copy of that e-mail to a number of Councillors, to Mr James, and, like Mrs Thompson, to the Carmarthen Journal. At 17:46 on the same day, 1 March 2006, Mr James replied to Mr Bowen. He sent copies to Mr Thompson and those to whom Mr Bowen had sent his e-mail. Mr James wrote:

“I will also be speaking direct to the Chief Superintendant of Police in Carmarthenshire about this matter as the Council will not accept threats against its staff or Councillors. We will also be taking legal advice regarding this matter”.

38. On 6 March Eddie Thompson’s application E/11853 for a temporary caravan was refused. On the same day Mrs and Mr Thompson jointly wrote a letter to Mr James as follows:

“I must respond to your email regarding threats towards councillors and council members. I must emphasise that **I have never threatened Eifion Bowen** or his family or ever been to his house. This is a very serious allegation against me. I therefore must point out the fact that Mr Bowen has in fact sent people to my home and threatened my wife with eviction. This happened about 18 years ago whilst she was about 9 months pregnant and with two young children. I did however, find Mr Bowen and complained about the matter in no uncertain terms.

I therefore accuse Mr Bowen of holding a **personal grudge** against myself and my family. He has done so ever since committee overturned his decision for refusal of my planning application for Cae Brwyn [that is the home of Mrs Thompson and her husband]. This is accurate as it has been mentioned numerous times during my brother’s recent applications. We have also been told by members of staff, namely Rhys Davies in corporate planning that they would like to give my brother planning but have been made scapegoats and have had to block the application.

I would like you to take an interest in this matter objectively. Please could you find the time to familiarise yourself with my brothers planning application or arrange for an appointment to speak to us as obviously this matter has to be taken further. We have tried in the past but got nowhere.

I am also sending a copy of a letter from Tom Theophilus which is proof of the inaccuracy and **professional misconduct** that we have put up with for far too long.

I have sent a copy of this letter to the police and asked them to keep it on file for future reference”.

39. On 8 March Mr James replied to Mrs and Mr Thompson as follows:

“I refer to your letter of 6 March 2006 delivered by hand to my office. Whilst I am happy to investigate any complaint you have against any decision, action or inaction by this Council, I am not prepared to accept any form of intimidation or harassment of Officers or Councillors.

The Council takes a very serious view of such incidents and will take any necessary measures with the Police and others to deal with such matters.

The information I have to hand indicated two matters of concern. Firstly, that Messrs EJ Thompson and KE Thompson came to 40 Spilman Street and then 3 Spilman Street on 4th November 2005 and refused to leave the office of the Head of Corporate Property, necessitating the Police to be called to remove you.

Secondly, on Tuesday 28th February the Police received a telephone call from Mrs Thompson warning that Mr K E Thompson was going to Mr Eifion Bowen’s home. I understand from speaking to the Police that they spoke to Mr K E Thompson on Wednesday, 1<sup>st</sup> March about this matter.

Both of these actions are viewed as completely unacceptable and if this pattern continues, the Council will have no option but to take its own legal action and also seek further action from the Police, where appropriate.

May I respectfully suggest that in future, to avoid unnecessary confrontation, you place all your concerns in writing. I am more than happy for such correspondence to be sent to my office where we will deal with it or ensure it is forwarded to the appropriate department for its response.

With regard to the current application, I have looked into the planning history of this site and am aware that two previous applications, reference E/06601 and E/09739 have been refused, on the basis that they did not accord with the relevant planning policies in relation to development in the countryside, and the land was outside of defined village development limits. Moreover, it

was not considered, given the information provided regarding the business, that there was sufficient functional need to reside at the site. I note that your brother has not availed himself of his right to appeal against these decisions.

You also allege that the planning permission for your dwelling, granted against the officer's recommendation by the former Dinefwr Borough Council in 1988, has been the source of a 'personal grudge' against you and your family on the part of Mr Eifion Bowen. There is absolutely no evidence to support this serious accusation. While there is indeed a reference to this decision in the case officer's report for application E/09739, this [is] in the relevant context of justification for the proposed development, and I cannot agree that this is inappropriate.

The permission granted for your home did not set any precedent with respect to any subsequent applications in this immediate locality, as each planning application is considered on its own merits. I note that full planning permission was granted for an agricultural implement shed in January, 2000.

You also state that Mr Bowen 'sent people to my home and threatened my wife with eviction'. I have examined the basis for this comment and have ascertained that what in fact occurred was that the former Dinefwr Borough Council's Planning Enforcement Officer visited the site in 1988 as you had placed a caravan there without planning permission. The officer was merely carrying out his duties, and this inspection led to your submission of a planning application for a dwelling, subsequently approved as referred to above.

Referring to the comments you attribute to Mr Rhys Davies of our Corporate Property Division. It is the professional opinion of our officers in that division that planning consent should not be granted as the relevant Welsh Assembly government guidelines are not met.

The Head of Corporate Property, who is consulted on applications for agricultural forestry workers dwellings, did not in fact support the last application on the basis of Mr Davies' site visit and careful consideration of the merits of the proposal. This is discussed in greater detail in the Case Officer's report, considered by Planning Committee on 15th September, 2005.

As you will be aware from discussions with Mr Bowen, the current application, reference E/11853 for a temporary mobile home has been decided by delegated powers and a decision notice is in the process of being sent to your brother. Having discussed this matter with Mr Bowen, I am satisfied that any advice imparted before this application was submitted was not misleading and would refer to Mr Bowen's own comments on this issue on 1<sup>st</sup> March 2006".

40. On 18 May 2006 Mrs and Mr Thompson submitted their planning application E/13192 for a small multi purpose agricultural shed on their land. This was refused on 11 July 2006. The Thompsons did not challenge this decision. Mrs Thompson states that she was concentrating on presenting Eddie Thompson's appeal in E/09739 at the Planning Enquiry in July 2006. There was a standard pre-enquiry meeting with Mr Bowen in his office, which he describes as an amicable meeting. On 18 August the appeal was dismissed. Mrs Thompson states that at the hearing she was commended on her presentation and professional approach. This is consistent with my impression that Mrs Thompson is a person of intelligence and has an ability to understand legal matters.
41. On 14 September 2006 Mrs and Mr Thompson met with Mr Noakes, senior development officer of the Council. Mrs Thompson states that she and her husband discussed with Mr Noakes other planning applications which had been granted on what Mrs and Mr Thompson considered to be less justification than their own family's applications. In one of these Mrs Thompson states that Mr Noakes said that the applicant had probably lied to the Council, but he could not comment upon the matter. She states that Mr Thompson suggested that perhaps the police should be called and Mr Noakes agreed. The police were called by someone dialling 999. According to the police report, for which the start time is 9:41, the caller said:

"We have a customer Mr Thomson in the office he is refusing to leave, being verbally aggressive, refusing to leave unless officers attend".
42. The record shows that nearly an hour later at 10:35:

"One male left premises of his own free will. He was very unhappy about planning problems with the Council".
43. The next entry at 10:43 states:

"Wanted to make a statement about this but was advised that planning problems are a civil matter which should be addressed through a solicitor".

44. The record says that the “police were called only to escort the male off the premises”.

45. In her witness statement Mrs Thompson refers to a number of examples of planning applications which were successful but for which

‘with my amateur knowledge [there] did not appear to be sufficient justification. ... By this time, Eddie had been refused four times. The different treatment of these apparently similar applications contributed to our confusion and frustration, and our belief that we were being treated differently’.

46. This incident is described in an email sent by Mr Noakes to Mr Bowen and another Council officer. It was sent on 14 September 2006 at 10:38. It reads as follows:

“I have had a visit this morning by Mr Thompson and his wife who refused to leave unless I called the Police. Following lengthy ‘discussion’ that essentially comprised of personal criticism of Eifion and of the planning process I was left with no alternative other than to call the Police who have arrested him for a breach of the peace. Unfortunately, this is exactly what Mr Thompson wanted as his particular aim was to have the opportunity to provide the Police with a statement of what he perceives to be fraud within the Council. The Police officers informed him that being arrested does not necessarily mean that he shall have the opportunity to provide any statement.

The Police enquired whether I wish to make a complaint, but although he was verbally aggressive, the content was not directed at me. It was therefore concluded that as the incident was recorded with an incident number resulting from the 999 call there was no need for any further statement. The issue does highlight the lack of security at our Reception desk...”

47. On 24 September 2006 Mrs and Mr Thompson and Eddie Thompson signed a letter addressed to Mr James. The letter was headed with references to applications E/06601, E/09739 and E/11853. The letter includes the following:

“Further to our correspondence dated 8<sup>th</sup> March 2006 we wish to complain yet again in the strongest possible terms regarding the unfair, unprofessional treatment and decisions to refuse Planning permission at the above site by Carmarthenshire County Council Planning Department.

Apart from previously mentioned matters regarding comments made by the Head of Planning, Mr Eifion Bowen, Asset Management and Councillor T Theophilus over the past three years, which we still maintain had an adverse effect on the above applications, we must now insist that the above applications are re-assessed especially in the light of several successful applications for agricultural dwellings in the area that have come to my notice. I quote three examples:

1. E/095.. ... This application was passed by a delegated decision within 6 weeks of first applying. ... More disturbingly we know that this family and Councillor Theophilus are very well acquainted. ...

Whatever the apparent legitimacy or circumstances of surrounding these applications, the catalogue of comments and 'errors' made by the Planning department towards us, have made us now certain that our applications have been unfairly, unduly and personally blocked. Despite everything we have submitted and argued we have drawn a complete blank from every quarter of the Council. I once again await your reply concerning these urgent matters. If you decline to recommend re-assessment of Planning Application E/0601, E/09739 and E/11853 we shall have no further option than to take further action.

I am sending copies of this letter to Mr Eifion Bowen, Mr J Fearn and Mr G Noakes."

48. On 5 October 2006 Mr James replied to the letter dated 24 September. He referred to his previous letter of 7 March, stating that he did not feel there was anything that he could add to this, save for one matter. On the appeal in relation to application E/09739 he noted that the Planning Authority's decision to refuse planning consent for a dwelling on this site had been investigated independently by the Welsh Assembly Government's Planning Inspector, and that the appeal had been dismissed on 18 August.
49. On 13 October at 11:13 Mr Thompson sent an email signed by himself and Mrs Thompson to a large number of addressees, including the **Carmarthen Journal**, as follows:

"To all interested parties,

We write this email calling for the resignation of Mr Eifion Bowen, Head of Planning... who, along with the collusion of the Chief Executive Mark James and Head of Corporate Property Jonathan Fearn has repeatedly **abused his position**. The entire Planning department, councillors and officers alike need to be

urgently and thoroughly investigated. Eifion Bowen and his colleagues have been granting a catalogue of favours. Despite recent, contentious high profile decisions in Carmarthenshire all criticism has been rubbished. We are **not aggrieved** applicants but concerned residents of the County who are concerned that what initially appeared to be **gross incompetence is, on closer examination, corruption**".

50. At 11:37 on the same day Mrs Thompson forwarded a copy of this email to a large number of addressees, again including the **Carmarthen Journal, and in addition the BBC and ITV**. On the same day at 16:47 Mr James replied to Mrs Thompson and enclosed copies to all the other addressees. He wrote:

"... it is untrue to state that you are not aggrieved applicants. It is the refusal of three planning applications by this authority and the alleged 'personal grudge' which you claim dates back to Mr Bowen's actions as a planning officer for Dindefwr Borough Council in 1988, that are at the heart of this matter and have been the basis of numerous complaints, questioning the integrity of the Council's officers. These accusations have been refuted on numerous occasions previously and the issues raised have been responded to in full and in writing. The last such occasions being 8th March 2006 and 5th October respectively, when I responded to you in full.

You are fully aware of the incidents in November of last year and March of this year when the Police had to be called, firstly to remove Messrs EJ and KE Thompson from our buildings after they refused to leave and on the second occasion when Mr KE Thompson threatened to go round to Mr Bowen's house when his daughter was alone and you rang the Police to warn them. I respectfully asked that any further communications be in writing to me and undertook to investigate your complaint and allegations. This I did in responding in full to you on 8 March. There was no evidence to support any of your contentions and proper procedure had been followed in dealing with your various applications for residential development outside defined limits at Hafod Bridge... . These applications were refused after going through the proper planning process.

The principle of a dwelling on this site was tested further when you lodged an appeal to the Welsh Assembly Government in respect of application E/09739. Significantly, this appeal was dismissed by the independent Planning Inspector on 18 August

2006. You persist with unfounded allegations against the authority and its planning and property officers.

Whilst the Council is always ready to investigate fully any complaints and allegations of impropriety, as we have done in your case, we are not prepared to accept any form of **intimidation and harassment** of our staff, which unfortunately you have resorted to.

It is now of grave concern that serious unfounded allegations have been widely circulated without any supporting evidence whatsoever. I must inform you that this is a very serious matter of defamation and unless you can provide substantive evidence to the Council, we will have no option but to place the matter in hands of our solicitors.

Given the previous threats and actions of intimidation, I have also referred this matter to the Police”.

51. On 18 October 2006 Mrs Thompson and her husband sent a letter which they copied to a large number of other addressees, again including the **Carmarthen Journal, the BBC and a number of other media organisations**. The addresses also included their MP, three Assembly members, the Welsh Assembly Planning Division and the Deputy Prime Minister. It included the following:

“We write this letter calling for the dismissal of Mr Eifion Bowen as Head of Planning at Carmarthenshire County Council. We strongly suspect that Mr Bowen has, with the **collusion of the Chief Executive, Mr Mark James** and Mr Jonathan Fearn, Head of Corporate Property repeatedly acted **improperly** regarding certain planning applications.

Apart from several recent high profile applications where there has been open allegations of **impropriety**, our own experiences with Mr E Bowen, Corporate Property and our local councillor, Mr Theophilus have proved to us that this department is a law unto itself and apparently beyond reproach, officers and councillors alike.

Whilst we appreciate the contentiousness of many planning issues, we are sure that the people of Carmarthenshire would be far better served by a thorough and urgent investigation into corruption within the planning department, the removal of Mr Bowen and the establishment of a fair and democratic system”.

52. The Carmarthen Journal did not publish Mrs and Mr Thompson's allegations. But during the period referred to above the Carmarthen Journal did publish a large number of letters from other people concerning the planning department, many of them very critical. That paper also published a response from Mr James dated 8 November 2006 [C1/71]. The letters referred to a number of developments which had given rise to opposition amongst members of the public. The Editor, Mr Lloyd, had written a critical article on 6 September 2006. These publications were mostly concerned with large local developments, one at Stradey Park and another for a retail outlet, of a kind which commonly attract the attention of large sections of the local community, some of whom would be adversely affected. None of the publications relate to any planning application by Mrs Thompson's family, nor, so far as I can see, to any development that could be considered in any way comparable to what any of the Thompsons had applied for. The decision on Stradey Park was in any event made by the Minister and not by the Council.
53. Nevertheless these articles and letters have been included in the bundle. Mrs Thompson submits that they provide support for the allegations which she and the other members of her family were making against the Councillors and officers at this time. In my judgment they do nothing of the kind.
54. Mrs Thompson was reminded in cross-examination that she had asked Mr James to investigate, and that he had done so, and she was asked on what basis she alleged that he had been colluding in corruption. There was a long pause before she answered. Her answer was:
- “We didn't feel our complaints had been properly looked into. That is the basis for [the e-mail dated 13 October 2006]. In hindsight it is probably a poor choice of words”.
55. On 25 October 2006 the Carmarthen Journal published an article under the heading '£66,000 cost to drive the boss'. The only reference to Mr James is in the last paragraph. Mr James explained in evidence that he has been driven to meetings or functions in the Council's car when the Council leader was going to the same functions or meetings. Otherwise he uses his own car. The article included the following:
- “More than £66,000 of Carmarthen taxpayers' cash has been spent on the county council chairman's chauffeur driven car in the past two years.
- The figure of £66,215.91 takes into account the cost of leasing and insuring the Jaguar XJ8, petrol bills for the 4.2 litre engine, and an average of the driver's salary.

The council has defended the expense, saying the chauffeur-driven Jaguar is practical, efficient, professional and cost effective...

In 2004/5 chairman Gerald Meyler attended 246 functions.

The total cost of the car for that period was around £33,514.45 making the average cost of each engagement £136.24.

In 2005/6 chairman Jim Jones attended 366 functions, but the driver's salary was reduced making the total cost of the car around £32,701.46. Travel bills for each engagement for that period averaged out at £89.35. A list of 25 engagements, between 25 May 2005 and April 2006, included 5 trips to Cardiff and 2 visits to ... Llanelli.

The council leader, **chief executive**, and executive board members are also driven to meetings or functions in the Jaguar XJ8".

56. On 2 November 2006 solicitors for Mr Bowen wrote a letter before action to Mrs Thompson and her husband. Mr Bowen complained that their letter of 18 October was defamatory and the latest instalment in a campaign of **harassment**.
57. On 3 November 2006 Mrs and Mr Thompson wrote to Mr James complaining of his e-mail of 13 October. They said that Mr James had been plainly wrong to state "it is untrue to state that you are not aggrieved applicants". They explained that they had never themselves been refused a planning application for a dwelling. On 8 November Mr James replied that while they had not themselves had planning applications refused for a dwelling, the correspondence demonstrated that they had been actively involved in Eddie Thompson's applications and in the complaints made about the refusal of those applications.
58. On 14 November 2006 Mr Bowen issued a claim form for damages for libel in respect of Mrs and Mr Thompson's letter of 18 October 2006. He complained of the publications to the newspapers and television stations, but he did not complain about the distribution of the e-mail to other people within Welsh and local government. He complained that the letter meant that there were strong grounds to suspect that he had repeatedly acted corruptly regarding planning applications. In support of his claim for aggravated damages Mr Bowen pleaded that the letter was part of a long standing campaign of **harassment** and defamation. He referred to the incident on 28 February 2006, to the e-mail the Thompsons sent on 1 March 2006, and to the protest that they had staged at the Council's offices. He further complained that Mrs and Mr Thompson had replied to his solicitors' letter asserting that the allegations were true.

59. On 2 December 2006 Mrs Thompson and her husband filed their defence. They did not allege in their defence that the allegations that they had made were true.
60. One defence they pleaded was that, insofar as the words complained of meant that Mrs Thompson and her husband strongly suspected improper behaviour and corruption within the planning department, they are fair comment on a matter of public interest. They also refer to the dissatisfaction that some members of the public had expressed in relation to the major developments which were the subject of letters and articles in the local press referred to above. They pleaded that:
- “as we, the Defendants alleged suspicions of corruption *within the Planning Department* [emphasis original] and not towards the Claimant, we believe that his reputation and feelings were unaffected by the letter”.
61. They denied that there had been any campaign of harassment and pleaded that the e-mail of 1 March 2006 was also fair comment on the matter of public interest.
62. The other defence they pleaded appears to be based on an erroneous view of the case of *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534 to which I shall refer in more detail below. They pleaded that the letter complained of related to planning applications and:
- “in the premises the alleged or any defamation reflected upon and was in relation to a matter which was a governmental and/or administrative and/or County Council function in respect of which the Claimant can bring no action”
63. On 13 April 2007 Mrs and Mr Thompson served an amended defence. By this time they were represented by Swaffields Solicitors. However, in the meantime Mrs Thompson had made an offer (at that stage without prejudice), to apologise for and to retract the words used in the letter complained of, and to refrain from publishing the same or similar letters in the future. They also offered to make a nominal contribution of £100 towards costs and damages.
64. On 25 May 2007, following further correspondence, Swaffields wrote to Mr Bowen’s solicitors a letter on containing proposals for settlement. The letter included information relating to what they referred to as “our clients’ financial predicament”, which they supported with documentary material. The purpose of the letter was to seek a settlement in the normal way that parties do seek to settle libel litigation, usually successfully. But the letter went on as follows:

“Council Indemnity

We are aware that your client's employer has a policy against indemnifying an employee in your client's position. In the ordinary way our clients would object strongly to any breach of this policy. However, in these circumstances, our clients would have to consider their position.

We remind you that we have offered a **confidentiality clause** as part of any settlement. We are sure our clients would not break such a clause if in fact in your client's case the Council decided to indemnify your client ex post facto. We think there is a prospect of this happening, based on our knowledge of County Hall. We go further, we respectfully suggest that you have a professional duty to explore all avenues that might lead to this case being resolved. **You should advise your client to apply for an ex post facto indemnity.** Given the involvement of the **Chief Executive** at the inception of this case, such an application might well succeed these exceptional circumstances."

65. In cross-examination Mrs Thompson was asked to explain how she could suggest that the Council should indemnify Mr Bowen in respect of the costs he incurred in bringing his libel action, given her stated position that in the ordinary way she would object strongly to any breach of the Council's policy not to indemnify employees who brought libel actions. She replied that the suggestion that her solicitor made that Mr Bowen should seek an indemnity from the Council was not written on her instructions. She said the idea was suggested by the people representing her. She said that her solicitor believed that Mr Bowen's costs were being paid by the Council. She had also said that in her witness statement: "Based on their personal knowledge and experience of 'Mr James and County Hall', they thought the case had probably been instigated by Mr James". She said she had forgotten about the letter of 25 May 2007 until it was mentioned in correspondence in the course of the present case. She said: 'I think the truth is that our legal advisors were simply trying to find a way through the impasse. The amount of costs in issue, about £9,000 was a massive amount for us'.
66. Mrs Thompson has not called her solicitor as a witness and I have seen nothing in writing from the solicitor. The allegation that her solicitor had written the letter of 27 May without instructions is a very serious allegation to make against a solicitor. It is the duty of solicitors to act on instructions and to ensure that they have instructions before they send letters. Moreover, the solicitor had set out her own beliefs in terms in the letter, and those terms differ from the beliefs which Mrs Thompson attributes to her solicitor. What the solicitor actually wrote was:

"We are sure our clients would not break such a clause if in fact in your client's case the Council decided to indemnify your client

ex post facto. We think there is a prospect of this happening, based on our knowledge of County Hall.”

67. At a hearing after the service of the Amended Defence, the defence of fair comment was struck out by the court.

68. The next document in time is the letter from HMCS dated 31 July 2007 which has figured largely in this litigation, and on the website which Mrs Thompson maintained from 2009 onwards. It bears two stamps. One is a stamp with the date 6 August 2007 over the words “Chief Executive”. The other stamp included the words “Received Resources Department”.

69. Mrs Thompson told the court that she received a copy of this letter sometime before May 2008, but the exact circumstances in which she received it have not been adduced in evidence. She scanned a copy of this document which she obtained sometime after it had originally been written (the precise date is not given in her evidence) and she posted the scan on her website under the following heading:

“2007 Libel Case: Document proving to us that the Head of Planning’s libel case against us was **unlawfully funded** by Carmarthenshire County Council”.

70. The text on Mrs Thompson’s website has remained the same from the day it was put up. It remained on the website throughout the trial, notwithstanding that Mrs Thompson made clear that she no longer maintains that the libel case brought by Mr Bowen was unlawfully funded. She said in cross-examination that in the end the funding was not the issue, and she was prepared to give the Council the benefit of the doubt. Ms Michalos told the Court that, as of now, Mrs Thompson’s only complaint about this document is that the Council has still not explained how it came to be stamped by the Council.

71. The letter is a standard form letter from HMCS under the heading “Bowen v. Thompson”. It is addressed to the solicitors for Mr Bowen and to the solicitors for Mr and Mrs Thompson. The letter is in two parts. The first part reads:

“Take notice that an appointment to fix a date for the trial/application has been made for date 5/9/07 at 3:00.

This listing appointment will be heard in WG08 unless we hear to the contrary, or should a party fail to attend the listing appointment, a trial date will be arranged in their absence.”

72. The second part of the letter reads as follows:

“A copy of the Pre-Trial Checklist (Listing Questionnaire) required pursuant to P 29 of the civil procedure rules [C1/105] will be served on all parties to the action at least 10 weeks prior to the trial date. The Claimants solicitors will be required to pay the £600 trial fee on filing the Pre-Trial Checklist in accordance with Fee 2.2 detailed in the Supreme Court Fees Order.”

73. On 31 August 2007 the solicitors for Mrs and Mr Thompson wrote to Mr Bowen’s solicitor. On this occasion they made clear that it was an open letter not a letter written without prejudice. They repeated that Mrs and Mr Thompson were willing to provide a proper retraction and apology and an undertaking not to repeat the libel complained of. But this time they added the offer that Mr and Mrs Thompson would pay £7500 towards Mr Bowen’s costs. Although they recognised this was less than the sum of £9750 which Mr Bowen was seeking for his costs, they urged him to have regard to a number of considerations which they then set out. The last of them was:

“(6) Your client is in a position to seek exceptional help from his employers as to his costs, since his employers have a publicly stated policy concerning alleged defamation of Council employees, and the Chief Executive involved himself in this action to a marked degree. ...

Finally your client should remember that our clients were and are emotionally and financially hard pressed and that there are limits to their means....

May we turn to case management matters?

Appointment to fix a trial:

As you know an appointment has been made for 3pm on 5 September in the List Office. May we suggest that this appointment should be adjourned or vacated since the parties ought to reach agreement in this case? ”

74. Mr Bowen duly pursued the suggestion that he should seek an indemnity. On 4 September 2007 Mr James wrote him a detailed letter refusing to give the indemnity.
75. Nevertheless the action was settled on 2 October 2007. Mrs and Mr Thompson addressed to Mr Bowen a letter referring to their letter of October 2006 which had been the subject of the libel action. The letter of 2 October 2007 includes the words

“In the letter we untruly allege that Mr Bowen had carried out his duties corruptly. We said that because of Mr Bowen’s improper professional conduct, he should be dismissed.

**We are happy to acknowledge that there is no basis for alleging that Mr Bowen had acted corruptly** and improperly in carrying out his duties.

We apologise to Mr Bowen for writing and sending the letter. We have agreed not to repeat the allegations and to pay his legal costs to the extent of £7500 of bringing libel proceedings against us”.

76. On 15 October 2007 there was read an agreed Statement in Open Court to the same effect. It included the words:

“In that letter the Defendants alleged that Mr Bowen had carried out his duties corruptly and that because of his improbable professional conduct, he should be dismissed.

The Defendants **now accept that the allegations made against Mr Bowen are false, unfounded and should never have published** them. The Defendants are here today to apologise to Mr Bowen and to unequivocally retract the allegations. They have written to all the recipients of the letter to apologise for their conduct and retract the false allegations. They also agree to pay Mr Bowen a substantial sum in the form of legal costs and have agreed to undertake not to repeat the allegations made in the letter.”

77. A lawyer representing Mrs and Mr Thompson told the court that they accepted that the allegations made were untrue and unfounded, apologised, and said they were happy to give the undertaking referred to.
78. On the same day 15 October Mrs Thompson issued a press release. The press release referred to the Statement in Open Court, and correctly summarised the terms of the settlement. Under the heading “Background on Council Officers Bringing Defamation Actions” Mrs and Mr Thompson included six paragraphs of text, numbered 5 to 10. In para 6 they referred to an Executive Board Summary of September 2006 setting out the policy that the Council should not indemnify officers or Councillors in respect of claims made in relation to defamation.
79. In paras 8 to 10 they referred to the Minutes of the Council Standards Committee of 14 September 2007, that is the previous month, and stated as follows:

“8. The Minutes ... at Item 9 record that the officers of Carmarthenshire County Council will consider assisting defamation actions ‘in certain circumstance’ ...

10. Mr Bowen appears to be free to apply to Carmarthenshire County Council to be reimbursed by Carmarthenshire County Council for his legal costs over £7500”.

80. In her witness statement Mrs Thompson stated that she is continuing to pay to Mr Bowen by monthly instalments the £7500 which she and her husband agreed to pay as one of the terms of the settlement. She goes on to state:

“I was **not aggrieved** by the settlement of the libel case as has been argued by the Defendants in this action. We recognised early on that we needed to settle the case and tried to do so offering an apology – before the costs became insupportable. I bear no ill will towards Mr Bowen and have met and spoken to him since the case was settled. For myself, the issues surrounding the planning application and the libel claim have been dealt with years ago – and Mr Bowen was polite to me. I have **no desire whatsoever to seek ‘revenge’**”.

81. On 26 October 2007 Eddie Thompson made an application for planning permission for a bungalow (E/17614). On 12 February 2008 that application was refused by the planning officer under delegated powers.

82. On 13 February 2008 Mrs Thompson and her husband wrote to Mr James complaining that Eddie Thompson had not had a fair hearing of his application at the Planning Committee Meeting on 12 February at which his application had been refused. They stated that “we write **as agents** for the above application”. The letter refers to a planning committee meeting on 8 October 2007 in which Mr Bowen declared an interest arising out of the fact that he had brought a private defamation law suit against Mr and Mrs Thompson. They claimed that, despite this, they had continued to receive correspondence signed by him. They also referred to a planning application from another person which was considered on 31 January 2008. The letter states that “the committee approved the application, one of the reasons given being that the applicants were ‘of impeccable character’”. The letter complains that this is an irrelevant consideration.

83. On 7 March 2008 Mr James replied to that letter of 13 February. He stated that it was relevant for the members of the Planning Committee to know that Mr Bowen had brought an action against Mrs and Mr Thompson. He stated that “whilst all correspondence is on headed notepaper, I can assure you that Mr Bowen has not

dealt with your recent application”. As to the other person’s planning application referred to he wrote:

“Insofar as it is relevant the application was approved contrary to the Head of Planning’s recommendations. The Committee was of the opinion that the development was of a similar size and design to that approved under the previous condition and would be in keeping with the character of the surrounding area. The important point so far as this application is concerned is that the land in question already had the benefit of a valid permission. The Committee had plenary powers in this instance to disagree with the officers views. You are not correct therefore to suggest that the approval was based on any other grounds”.

84. Mr James went on to state that for Eddie Thompson’s recent application, he had not provided all the necessary details required, and that the officer’s report was unambiguous and recommended refusal. However, the members of the Committee nevertheless decided that they wished to view the site, which they did.

85. On 11 March 2008 Mrs Thompson made a request under the Freedom of Information Act 2000 (“FOIA”):

“Please inform me as to whether any, or all of Mr Bowen’s legal costs arising from his case brought against [her and her husband] have been paid or ever will be paid, indemnified or reimbursed at a later date by Carmarthenshire County Council or associated bodies”.

86. On 15 March 2008 Mrs and Mr Thompson wrote to Councillors on the Planning Committee. The letter referred to another planning application by a third party which had been approved on 4 March 2008. Mrs and Mr Thompson thanked two Councillors who had supported their own application which had been refused on 12 February. But the letter went on to say:

“We must arrive at the conclusion that, for whatever reason, there’s an element of **personal animosity** against our family”.

87. The letter then went on to refer to the libel action brought against them by Mr Bowen, to which Mr Bowen had referred at the Planning Committee Meeting of October 2007. The letter included the following:

“4. Mr Bowen has publicly declared that he has financed the action himself. If, as it now appears, he could of been funded by the Council or can be reimbursed by the Council at a later date, it

would mean that we have been misled and conducted the case on the assumption that both sides had limited means.

5. Mr Bowen has had his legal expenses received and processed by Carmarthenshire County Council Resources Department. [underlining original]

6. Carmarthenshire County council policy changed from ‘not funding’ (November 2006 executive board summary ‘Provision of Indemnities to Members and Officers’ Appendix 1 at para D) to ‘funding’ (14 September 2007, days after we settled, minutes of the Standards Committee, Item 9), offering assistance to officers making claims for defamation ‘in certain circumstances’. Which goes against government guidelines which aims to protect free debate. The County Council seems to have empowered itself to possibly engage in expensive litigation, at council tax payers expense, to stifle strong and robust criticism”.

88. On 15 April 2008 Mr Lyn Thomas (“Mr Thomas”) replied on behalf of the Council. He was at that time Head of Administration and Law. He expressed the view that there was no substance in the allegation that the statement read in October 2007 influenced the decision made in February 2008. He disagreed that the sites in question were almost identical. He said that in the case of Eddie Thompson’s application there were no buildings of significance near the site, whereas in the other application the site was located amongst a small group of dwellings. He went on to say:

“(i) Mr Bowen’s legal expenses have certainly not been paid by the Council.

(ii) I do not know which Government Guidelines you were referring to in this context. Quite frankly, the Council has decided that its officers should not be expected to endure criticism which far from being ‘strong and robust’ as you claim, is in fact unsupported by evidence and is malicious and directed and calculated to undermine the personal and professional integrity and honesty of the officers concerned. Such action is not in any way intended to undermine the normal democratic process and accountability of individual officers. However, the Council also has a duty to protect staff from harassment and unwarranted criticism”.

89. On 28 April 2008 Mrs and Mr Thompson wrote a long letter in reply to the letter of 15 April. Expressing their disagreement on all matters they included the following:

“(2) Can we rightly assume ... that the Council, whilst not an actual party to the action, instigated and maintained it and that the Council as a whole feel justified in this action?”

(3) We assert that these issues are very relevant to planning matters. May I remind you that in the interests of transparency and democracy it is not advisable for local government departments to silence critics with the threat of financial ruin.

i) We now have compelling evidence that Council resources were used to instigate and maintain the legal action.

ii) We assume that you would have been aware of the government guidelines referred to, which is the Local Authorities Indemnities for Members and Officers (Wales) Order 2006 [‘the 2006 Order’].

90. The wording of the 2006 Order so far as relevant is:

“6(3) No indemnity may be provided under this Order in relation to the making by a member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him”.

91. Guidance was issued by the Welsh Assembly Government in 2006 on providing indemnities to members and officers of relevant authorities. In relation to the 2006 Order the guidance included the following:

“17. The [2006] Order expressly prohibits relevant authorities from meeting the cost of members and officers taking legal action for slander or libel, either directly or through insurance. The Assembly Government does not believe that individuals should be funded at public expense to bring proceedings against a third party. To do so could stifle legitimate public debate. Nonetheless authorities will be able to provide indemnities to individuals

against the costs of defending such actions (where the action relates to their official functions).

18. The Judgment in *R v. Bedford Borough Council, ex parte Comminos* (2003) indicated that authorities may already have the power in some cases to make a decision to fund libel proceedings brought by its officers and to pay the costs of such an action by virtue of Section 111(1) at the Local Government Act 1992. Any such power is not removed by this Order...

19. Authorities will clearly have to consider their position carefully before using this power and note the reminder given in the case as to the availability of judicial review as a remedy in cases of irrational or otherwise improper decisions. This will include any use of such a power purely to circumvent the basic rule that an authority cannot protect itself by bringing defamation proceedings”.

92. On 8 May 2008 Mrs and Mr Thompson wrote to **all 74 County Councillors, and three newspapers**. They congratulated the newly elected Councillors and asked them to ensure that Council time and resources:

“are not used again to maintain and support private libel lawsuits brought by officers against members of the public either directly or indirectly... we honestly believe that these resources have been used to circumvent the [rule in *Derbyshire County Council v. Times Newspapers*] that a Council cannot sue for libel”.

93. On 9 to 12 May a number of people wrote letters in support of a further application for planning permission by Mr and Mrs Edward Thompson (E/16714). One of those who wrote in support was Councillor Theophilus. After referring to other matters he wrote about Mr Eddie Thompsons’ character and circumstances as follows:

“The applicant was born in one of these cottages at Hafod Villa a name synonymous to the locality. The Thompsons are a hard working family with restricted means fully employed in agriculture and forestry work, but with only moderate wage. Their only hope to achieve one’s ambition to own their own home, is to have their application approved, and thus ensure continuation of this close family to live in an area which means so much to them”.

94. On 16 May 2008 the Information and Data Protection Officer replied to Mrs Thompson's request under the FOIA. While not accepting that the request fell within the scope for the Act he wrote:

“Nonetheless, in the interests of transparency, I can confirm that Mr Bowen has not and will not receive any payment, reimbursement or indemnification in respect of his legal costs.”

95. The Council Agenda 15 May 2008 included as item 8 a report “Proposed Changes to Constitution” (“the Libel Costs Amendment”). In Appendix G Part 3 there were proposals for delegation to officers of authority in relation to defamation proceedings. The proposal was that the Chief Executive should have responsibility to authorise the initiation of legal proceedings arising out of alleged defamatory statements made against Council officers provided that such action is supported by Council's advice.

96. On 21 May 2008 Mr Thomas wrote to Mrs and Mr Thompson in relation to the letter they had sent on 8 May. His letter included the following:

“You intimate in your letter that the Council has provided financial assistance [for Mr Bowen's defamation action]. This is incorrect. The officer concerned took out a private action against you for defaming him...

It is a little misleading for you to have written in this form to County Councillors, given that your solicitors asked if the County Council would meet the legal costs of the officer concerned to avoid you as their clients having to pay their bill. It would appear therefore that you were actually asking the County Council to expend resources to save you having to meet those costs. You now appear to be taking an entirely different line in this letter you have written. Somewhat disingenuously. When the officer approached us about paying his costs we advised him we were unable to do so, and presumably his solicitors would have notified yours of that fact and they in turn you. This is why I find the letter to the County Councillors so surprising. I will be notifying them of the true position...”

97. On 30 May 2008 Mrs and Mr Thompson replied. This time they copied their letter to a larger readership, including **Private Eye**. They gave for the first time a new reason for their insistence that the Council paid Mr Bowen's legal costs:

“Perhaps the court bailiff summed it up when he served the writ: upon asking him what it was, his reply to us was ‘it was something from the Council’...

... the suggestion that Mr Bowen applied for assistance from the Council was based upon our knowledge of County Hall, the involvement of the Chief Executive at the inception of the case and our reasoned assumption that financial assistance was already indirectly available to Mr Bowen, given his lack of concern over the potential high cost risk to himself, amongst other reasons...”

98. On 30 May 2008 Mrs and Mr Thompson wrote to the Wales Audit Office. They referred to the libel action brought against them by Mr Bowen and wrote:

“We believe that the case was instigated and maintained by the council and not by Mr Bowen in a personal capacity as we and the court have been told. ... As libel cases are notoriously expensive we feel that the Audit Commission should investigate the Council’s action in this whole matter.”

99. On 5 June 2008 there was published in the Western Mail an article criticising the Council for its decision to change its constitution so taxpayers money could be spent bringing libel actions. The article included the following:

“The ability, to engage in robust criticism is essential. Sometimes this will involve the production of material that is inaccurate and hurtful. The Carmarthenshire couple who were sued by the County Council’s Director of Planning accepted that allegations that they made were inaccurate and unfounded and made an apology in court. ...”

100. In the issue of the Western Mail dated 12 June 2008 there was published a letter from Mr Thomas in his capacity as Head of Administration and Law of the Council. It was under the heading “No Policy to Fund Defamation Costs”. Mr Thomas wrote that the policy of the Council had not changed. The letter then continued:

“The facts of the matter involving Mr and Mrs Thompson were that the officer who was defamed took a private court action at his own expense against them.

Prior to the matter going to court Mr and Mrs Thompson retracted the statement saying there was no basis for an allegation and agreed to contribute towards costs incurred by the officer. It

was their solicitors' who asked the Council to pay those costs and the Council refused."

101. Under Mr Thomas's letter there was published the following:

"Editors note: we accept the facts as stated by the Council and thank them for clarifying the matter".

102. On 15 July 2008 Mr Thomas wrote a further letter to Mrs and Mr Thompson expressing his disappointment that they still refused to accept the Council's assurances, which he repeated:

"I have already made the Council's position very clear to you, but I repeat that the Council has not provided any financial assistance to Mr Bowen. Your various allegations about the financial involvement of the Council in this matter are simply without any foundation whatsoever".

103. On 15 August 2008 Mrs and Mr Thompson wrote to Mr Thomas as follows:

"1. With regards to the £7500 payable towards Mr Bowen's costs; we shall be unable to meet the agreed deadline to pay this sum due to poor financial circumstances.

2. We suggest that Mr Bowen waives the £7500 which will bring a full and final settlement of the matter. This request is made on the clear understanding that, if accepted, neither he nor any associate bodies will take any other action to enforce or pursue this debt in anyway whatsoever and that we will be released from any liability.

3. If Mr Bowen does not agree to waive the £7500 our family home will be under threat. In that case we shall have no other option than to use the conclusive evidence we had amassed during the last year to challenge the whole issue of costs and to prove the court has been misled by the involvement of Carmarthenshire County Council in this case.

4. If we do not receive a satisfactory reply within 14 days we shall assume that Mr Bowen fully agrees to waive the £7500".

104. On 26 August 2008 Mr Thomas replied. He again stated that there was no substance whatsoever in the suggestion that the court had been misled and he stated that the Council had responded and made its position clear.

105. On 23 September 2008 Mrs and Mrs Thompson made an application in the High Court for a stay of enforcement of the order that they pay Mr Bowen's costs of £7500 within twelve months. The application was heard by Flaux J. The grounds of the application were that Mr Bowen had misled the court and that he had in fact been indemnified by the Council when he claimed that he was funding it privately.
106. Counsel for Mr Bowen in his skeleton argument characterised what the Thomps-  
sons alleged as an 'allegation of perjury' which, he submitted, was totally without  
foundation. In support of the allegation Mrs and Mr Thompson had relied on the  
letter from HMCS with the Council's stamps dated 6 August 2007. Counsel for  
Mr Bowen submitted that that was not even remotely probative of the allegation  
that Mr Bowen had lied, but he went on to say that Mr Bowen had evidence,  
which he would produce to the court if necessary, that money came from his per-  
sonal bank account to pay the legal bills.
107. There is a transcript of the proceedings before Flaux J on 22 September 2008 and a  
transcript of his ex tempore judgment (approved by the Judge).
108. Mr Thompson presented the case for himself and Mrs Thompson. He submitted  
that there was only one way that the letter from the HMCS could have got to the  
Council, and that was by Mr Bowen instructing his solicitors to forward it to the  
Council. Mr Thompson also referred to what had been said when he was served  
with the claim form namely 'Something from the Council'. When the Judge asked  
him how he had received the document he said 'It was in our original paper-  
work... we obtained this document about three months ago'.
109. Counsel for Mr Bowen said he could not explain how the document came to be  
stamped by the Resources Department, but he did refer the Judge to letters from  
Mr Thomas confirming that the Council had not funded Mr Bowen. He also of-  
fered to produce Mr Bowen's bank statements to show that the costs had been paid  
by himself. The two letters from Mr Thomas were the ones dated 21 May and 18  
Sept.
110. The Judge then turned to Mr Thompson and said:
- "Mr Thompson you have heard what has been said and you have  
seen the letters. The reality is – and the Head of Administration  
and Law says in terms – 'no we're not funding'. True it is there is  
no explanation for why they got the letter, but I suspect it is just  
because it is part of the administration, but **it does not demon-  
strate that they were paying for the litigation.** It seems to me  
that there is an explanation given that they did not fund the litiga-  
tion. ... It was not a request for money, was it? It is just a listing.

... 'claimants solicitors be required to pay the £600 trial fee'. Yes. That is all it says. But, there is the trial fee. It is not a request from the claimant's solicitors to the Council ... The court sent it to solicitors... they sent it to the solicitors in the normal way, and it looks as though the solicitors sent it on to the County Council. As you rightly say, that is --- the difficulty is this, Mr Thompson: I understand you are concerned about the letter and there is a mystery. One thing I could do is to adjourn this application until later in the week and order that Mr Thomas, or somebody on behalf of the Council, comes and gives evidence on oath that they did not fund this litigation. But, if I do that, and if I conclude at the end of that exercise that he is telling the truth, you will have an even bigger costs bill to pay than the £7,500 that you have got anyway."

111. In his Judgment the Judge included the following:

"3... The matter upon which most reliance is placed by Mr and Mrs Thompson is a letter from the Court Service to the parties at the time of the arranging of an appointment to fix the date for trial. That is a document dated 31 July 2007 addressed to both parties. It referred in terms, in the normal way, to the fact that the Claimant's solicitors would be required to pay the £600 trial fee on filing the pre-trial checklist. That document appears to have been sent by the Claimant's solicitors ... to Carmarthen-shire County Council. ...

4. Mr Thompson, who presented this application on behalf of himself and his wife, made the point which seemed to me to have considerable force, that it is difficult to see why that document would go to the Resources Department of the Council in circumstances where the County Council was not paying for the litigation – or at least funding the litigation.

5. Notwithstanding the existence of that document, ... counsel who appears on behalf of Mr Bowen is unable to provide an explanation as to why the document had been sent to the County Council and why it had on it the two stamps that I have referred to.

6. I have to say that if that were the only material before the court it seems to me that it would be most satisfactory, and I am not very happy that the County Council do not appear to take the matter sufficiently seriously to have provided a proper ex-

planation through Mr Bowen as to exactly what was going on in that document or why it was that the County Council have received it, let alone why the Resources Department – which, as Mr Thompson rightly points out, is the department which usually funds the costs of matters – should have received the document at all. **However, that is not the only document that is before the court.** For present purposes, **far more important** are two letters emanating from Mr Thomas, Head of Administration and Law at the County Council – one dated 21 May 2008 addressed to Mr and Mrs Thompson, which refers in terms to the issue as to whether or not the Council was funding the litigation... [the Judge then quotes from that letter and the letter of 18 September the previous Thursday to the same effect].

7. In the light of those two categorical statements by the Head of Administration and Law of Carmarthenshire County Council, it seems to me that it would not be appropriate for the court to conclude that Mr Thomas was not telling the truth.

8. I was minded at one point to suggest that a possible way out of what obviously concerns Mr and Mrs Thompson – a concern which I can fully understand - would be that I would require Mr Lyn Thomas to come and actually give evidence before the court later this week on oath to confirm what he says in the text of this letter. However, on reflection, it seemed to me that that would only lead to the incurring of further costs which could not be to the advantage of Mr and Mrs Thompson since, on any view, they would end up picking up the costs bill if the court were to conclude that Mr Thomas was indeed telling the truth.

9. In those circumstances I have concluded that on the balance of probabilities, Mr Thomas, on behalf of the Council is telling the truth and therefore the court should conclude that this litigation was not funded by the county council. The application is therefore dismissed.

112. Mrs and Mr Thompson did not accept the Judge's finding. They pursued the matter in a letter dated 28 September 2008 addressed to **all County Councillors with copies to several newspapers** and their MP. They asked for the Councillors to call for an investigation into why the letter from HMCS had been stamped as it was. The letter went on:

“The High Court Judge in London last Monday, was very concerned as to why and how this document had got there and the

possible serious implications. Carmarthenshire County Council were unable to offer any explanation whatsoever”.

113. This is an incomplete and misleading account of what the Judge had said and decided. Mrs and Mr Thompson did not include in their letter that the Judge had accepted Mr Thomas had told the truth when he said that the Council had not funded Mr Bowen’s action.
114. On 24 October 2008 Mrs and Mr Thompson wrote again to all Councillors with copies to Mr Lyn Thomas, Mr James and numerous other people including “**Media organisations in Wales**”. The letter included the following:
- “... we feel that our last letter did not fully explain the seriousness of what happened at the high court last month.
- On the strength of the document, we went back to court alleging that Mr Bowen had **committed perjury**. As the evidence also related to Carmarthenshire County Council **the allegations also extended to the Chief Executive, Mark James; the Head of Administration and Law, Mr Lyn Thomas** and the Director of Resources.
- The significance and seriousness of the stamped document is that, as the Judge said, it was sent from the Court; to Mr Bowen’s solicitors; then to the Chief Executive, Mark James, then to the Resources Department...”
115. This is again a seriously misleading account of what happened in the High Court, and of what the Judge had said. But what is most notable about this letter is the fact that Mrs and Mr Thompson readily adopted as part of their case the complaint that counsel for Mr Bowen had made that they were alleging **perjury**, even though the Judge had found that the statement of Mr Thomas was the truth.
116. In cross-examination she was reminded that she had accused the Council and its officers of perjury. There was a long pause (one of several in her evidence) before she replied: “In what context?” She was professing not to remember. Then she said that they had not originally used the word “perjury”, but counsel for Mr Bowen had used it, and she and Mr Thompson picked it up. She offered no other explanation, and no justification, for her use of that word.
117. On 3 November 2008 Mr David Lewis, a Council officer, wrote an e-mail to his colleagues within the Council saying that he had looked at Mr Bowen’s pay slips. He said that he found that Mr Bowen had, in effect, only had his basic salary and

other normal payments. He confirmed that no payment was made in the period 1 July to 30 September 2007 to the solicitors for either party or HMCS.

118. On 12 November 2008 Eddie Thompson's appeal was dismissed.
119. On 14 November 2008 Mr Thomas wrote to Mrs and Mr Thompson again, referring to their letters of 28 September and 24 October addressed to all County Councillors, his MP and the media. The letter included the following:

“A number of **Councillors have expressed considerable concern** to the Chief Executive about what they see as a malicious campaign on your part to distort the truth and to try to damage both the Council and its officers...

... Sadly your last two letters indicate that not only have you failed to learn from this experience [Mr Bowen's libel action], but you are now extending your defamatory remarks to other officers of the Council, and arguably are also calling into question yet again the integrity of the officer who took out the defamation action against you. You are again doing so to a wider audience so as to **maximise the harm which you are trying to cause.**

It has been explained to you repeatedly that the Council had no lawful authority to fund Mr Bowen's defamation action against you, and that as a matter of fact it did not do so. You even made it an issue with the court. An assurance was given to the court by Mr Bowen's solicitors that all his costs were paid by him personally (with evidence able to support this if required), and a further assurance by the Council that they had not been paid by them. These assurances have clearly been accepted by the Court.

I do really sympathise with the predicament which you now find yourselves but it is absolutely astonishing you are choosing to further your campaign in this way.... You are now even questioning the decision of the court.

With your correspondence you have enclosed a copy of a court notice dated 31 July 2007... I am passing a copy of this letter to the Audit Commission so they can verify the position should they feel it necessary to do so.

**I should also mention for what it is worth that I have been unable to trace a copy of this notice in the Council files, and Mr Bowen and his solicitors that they have not sent the notice**

**to the Council. The only copy which I have seen is the one provided by you.**

I strongly advise you to refrain from continuing this campaign of defamatory accusations. My colleagues and I have no wish to worsen the predicament in which you already find yourselves, but you are putting yourselves at risk of further legal challenge and it is imperative that you should seek advice from solicitors qualified to advise on the law of defamation not only about your letters and this response, but also about the statements which you are making about the recent court hearing. The allegations which you are making about the officers you have named are pure fantasy, and I am sure that if further legal action should be taken against you, the court would hold that they are damaging not only to the officers concerned, but also to public confidence in the Council as a democratic body”.

120. On 30 January 2009 a charging order was made against Mrs and Mr Thompson’s home in respect of the debt due to Mr Bowen.
121. On 4 February 2009 Mrs and Mr Thompson sent a further request under the FOIA. It included requests for documents relating to the hearing in the High Court on 22 September 2008, other documents relating to the litigation between Mr Bowen and themselves, as well as to documents relating to the constitutional amendments regarding defamation around 15 May 2008. The Information and Data Protection Officer replied that there were no documents held.
122. On 10 March 2009 Mrs and Mr Thompson wrote a three page letter of complaint to Mr James calling for a thorough investigation into what they said was “the Council’s involvement with the legal case between Mr E Bowen and ourselves”. They complained about the letters from Mr Lyn Thomas of 14 November 2008 and other letters that they say were **defamatory of themselves**. They also complained about the constitutional amendments referred to above and to their planning appeal and other planning matters.
123. On 14 March 2009 Mrs Thompson started an online petition and her weblog entitled “Carmarthenshire Planning Problems and More”. The first entry on her blog is dated Saturday 14 March 2009 under the heading “Background” it reads as follows:

“There is something wrong with the planning process in Carmarthenshire. Despite 5 years of applications and appeals and therefore a better understanding of the system, this is still the only conclusion we can reach. We are **not ‘aggrieved applicants’**, in

fact we have been representing other family members in their quest for a home. Over the years we have also looked at the wider picture throughout the county and come to the same conclusion, that personal preference and internal politics are used to consider planning matters far more than planning policy resulting in double standards and inconsistency and prejudice. It is the element of discretion used in these decisions which is open to abuse. Planning policy can then be manipulated to either refuse or approve certain applications. We can of course, substantiate our claim. Watch this space.”

124. On 18 March 2009 Mrs Thompson posted the scanned copy of the letter from HMCS, and gave her account of the libel proceedings and the hearing before Flaux J. On Sunday 22 March she posted an account of the latest planning appeal. On 25 March 2009 she posted a letter which she had written to the **Carmarthen Journal**.

125. On Monday 30 March 2009 her posting included the following under “Public Confidence and Allegations”:

“At the last hearing in London, as we said, the Judge decided ‘on a balance of probabilities’ that senior council officials were telling the truth. To us, our evidence was stronger than theirs. To us, the Judge might just as well as flipped a coin. We could not appeal as we couldn’t take the risk to our family home. If he had found in our favour we would definitely have would of appealed as the whole integrity of the senior executives would have been brought into question.

It is a question of whether the judge believed us or the council. The Council have often called our integrity into question but what about theirs?

It is of note that the only descriptive entries for Carmarthenshire County Council in Wikipedia concern allegations concerning the planning department and the **bribery case** involving the Chief Executive and a property developer. Both widely reported in the local press [and she gives the link]. We have observed the Council’s dealings...”

126. On Wednesday 1 April 2009 she made a posting under the heading “No Energy Saving At This Council”. She included the following, apparently misleadingly adapted from the article set out at para 55 above:

“We noticed more spin from the council, this time its recent ‘award’ from Excellence Wales for ‘tackling climate change’. What a joke... we just hope the Chief Executive still isn’t chauffeured around in that large engined Mercedes (at the cost of £66,000 a year) – surely not!...”

127. Mrs Thompson was unable to explain this posting in cross-examination. I find that Mrs Thompson published the words that Mr James had been chauffeured around at the cost of £66,000 a year knowing that it was false, in order to damage his reputation.
128. There followed numerous postings about planning matters, about the libel case and about the grievances which they had ventilated in correspondence in the past.
129. On 6 April 2009 Mr James replied to the letter of 10 March saying that, subject to a few further explanations that he gave, he was not prepared to investigate any further since such matters were wasting a disproportionate amount of Council time. On the same day Mr Thomas gave a more detailed reply upholding the initial decision on the FOIA request and advising Mrs and Mr Thompson of their right of appeal to the Information Commissioner.
130. On 12 April 2009 Mrs Thompson made a posting under the heading of “Freedom of Disinformation” it included the following:

“We have asked twice, and appealed once for documents etc held by Carmarthenshire County Council through the Freedom of Information Act relating to all aspects of the libel case and the change in the constitution. The council says that they have none... it is very disturbing that senior executives of the council apparently have no knowledge of important legal documents relating to High Court Procedures, involving their Head of Planning, which are flitting from the Chief Executive’s to the Resources Department... and then to deny involvement. Surely they are not **lying** are they?

How many other unlawful requests for public funds are passing through the system unnoticed and unrecorded. Perhaps the District Auditor would like to know. The Council **shredder** must have been working overtime”.

131. On 13 April 2009 Mrs and Mr Thompson wrote again to Mr James. They said that they were disappointed that **no public apology** was forthcoming for the defamatory language referred to in their letter of 10 March.

132. On Thursday 23 April 2009 Mrs Thompson posted the following:

“This brings me onto the subject of **false apologies** and the whole libel circus. What is the value of an apology if it has to be bought and bullied out of someone? It becomes meaningless. Often for libel defendants who try and stand by their statements, this is the only way out. If the claimant is threatening to take the food from their children’s mouths or the roof over their heads then an apology and retraction is the only options and you hope to live to fight another day.

Of course, as you can see from this blog, we meant every word of ours”.

133. Mrs Thompson gave oral evidence in chief to explain this posting. She stated that the apology had been personal to Mr Bowen, and she meant to maintain her right to criticise the Planning Department. She was also cross-examined. She was asked if the apology was truthful, and she said that it was. Mr Speker suggested to her that in fact she was telling her readers that the apology was false, that she was being sarcastic. Mrs Thompson replied that she was being sincere in publishing what she did. She meant her apology. She said that she had not accused Mr Bowen personally.

134. In my judgment the terms of this blog are capable of only one possible interpretation. She was being sarcastic. No reasonable reader could fail to understand that she was indeed retracting her apology to Mr Bowen and repeating the libel. I reject her evidence on this. Her evidence was a deliberate falsehood.

135. On 8 May 2009 Mrs Thompson made a posting under the heading “**Open Letter to Mark James, Chief Executive, Carmarthenshire County Council**” as follows:

“Please can you let us know when you are going to be honest about the presence of the stamped document, relating to the libel case, in your office? Clearly **you have misled the Council, the Assembly, the High Court and 74 County Councillors**. It was **agreed in court**, by the Head of Planning’s barrister that the document was sent to you. We have the transcript to prove this. It is your fault that this so called private law suit brought on by the Head of Planning has brought the integrity of the Chief Executive’s, the Legal and the Resources Departments into question, that the fact is, it has. ...”

136. On 21 June 2009 Mrs Thompson posted the following:

“An open e-mail to Jane Davidson AM ...

... we strongly believe that we have evidence to prove that Carmarthenshire Council Planning Department is **systematically abusing, not only the planning process**, but also their powerful positions. Policy is often being manipulated to suit the applicant...”

137. At about this time Mrs Thompson submitted a complaint to the Ombudsman that Councillor Theophilus had broken the code of conduct.

138. On 1 July 2009 Mrs and Mr Thompson wrote a letter to Mr James making a formal complaint against Mr Bowen for breaching the Council’s code of conduct on the basis that:

“We conclude that the Council are not willing to acknowledge that the Head of Planning’s legal action against ourselves has compromised his position regarding planning matters... as the Head of Planning now has a financial interest in our property it is clear that his involvement with planning enforcement ... is in direct breach of the code”.

139. On 2 July 2009 Mrs and Mr Thompson wrote to the Welsh Audit Office requesting an investigation into the response they had received to their FOIA requests to the Council.

140. On the same day they wrote to the Director of Regeneration and Leisure of the Council stating that:

“... we now refuse to recognise Carmarthenshire as our Local Planning Authority... we inform you that we will be commencing construction of a residential dwelling, at Cae Bryn forthwith. As the Head of Planning, Mr Eifion Bowen now has a financial interest in our property Cae Bryn, we strongly suggest you seek legal advice before responding to this letter.

In the interests of transparency this letter has been placed on our website...”

141. On 13 July 2009 Mr Thomas replied in a detailed letter. He stated that the libel case had no relevance to the way the Council deals with planning applications and advised Mrs Thompson to take legal advice before commencing any building.

142. On 18 July 2009 Mrs Thompson made the following posting:

“Mark James’s achievements – an alternative view”

Mark James, Chief Executive Carmarthenshire County Council has been given an honorary fellowship ...

Mr James’ career has spanned many years, in 1995 he became Chief Executive of Boston Borough Council... his work there saw the Borough become the exemplar of good practice in how to build a stadium, and take all the credit before quietly disappearing before the inevitable audit investigation. Arriving at Carmarthenshire County Council as Chief Executive in 2002 he rapidly got to work on another stadium project, only briefly interrupted by an **awkward bribery trial...**”

143. When it was put to her in cross-examination that she was accusing Mr James of bribery, she said that she was not, and that she gave the links to the BBC articles which set out the facts. She said: “I’m saying there was confusion”. When she was asked what, in that case, was awkward for Mr James, there was a long pause before she answered that the trial was not awkward for Mr James personally. She said no one had taken what she wrote as personal to Mr James.
144. I find that Mrs Thompson published the words that Mr James had been involved in an awkward bribery trial knowing that it was false to suggest that there was anything awkward about the matter for him, and in order to damage his reputation.
145. On 28 July 2009 Mr Thomas wrote a detailed letter to Mrs and Mr Thompson. It included a statement that Mr Bowen had declared an interest in all matters relating to their property and had not had any involvement in his role as Head of Planning. He therefore rejected the complaint that Mr Bowen had acted in breach of The Code of Conduct.
146. On 7 September 2009 the Assessment Officer wrote to Mrs Thompson rejecting her complaint against Councillor Theophilus.
147. On 22 September 2009 Mrs Thompson wrote to the Ombudsman disagreeing with that decision and requesting a review. She wrote another letter on 26 October 2009.
148. On 3 November 2009 Wales Audit Office wrote to Mrs and Mr Thompson a letter which confirmed that the Council was not involved in the case brought against the Thompsons by Mr Bowen and it had not incurred any illegal costs on this matter.
149. On 5 November 2009 Mrs Thompson posted the following:

“I have always suspected that certain senior executive officers of Carmarthenshire County Council were able and willing to manipulate the Freedom of Information department. Now it seems that this possibly extend to the Wales Audit Office too. Basically it now seems that the **Council have lied** through the Freedom of Information and withheld information from the Audit Office.”

150. On 17 December 2009 Mrs Thompson posted the following:

“When we took the Council to court last year on allegations of **perjury** (not my word but the word of the other side’s barrister) the judge didn’t think a Council would lie. Now that we have 100% **proof that they do** we are considering lodging a late Appeal to see if the judge comes to a different ‘balance of probabilities’...it is just a shame we can’t rely on taxpayers’ money to do it”.

151. On 9 April 2010 the Ombudsman rejected Mrs Thompson’s complaint about Councillor Theophilus. He explained his reasons in a detailed six page letter.

152. On 16 April 2010 Mrs Thompson posted the following:

“Finally, after nine months, I received the ombudsman decision over my complaint... There we are then. The county councillor clearly has had plenty more experience than myself dealing with the ombudsman, and once again, I suspect the complicity of Carmarthenshire Council’s legal team has helped ensure that nothing.... Upsets the planning apple cart or should I call it the ‘cash-cow’... this sort of decision makes a mockery not only of the councillors code of conduct but the ombudsman’s ability to regulate the code...”.

153. On 3 June 2010 the Wales Audit Office wrote to Mrs and Mr Thompson in response to their questions as follows:

*Please explain why the document referred to was stamped by two departments, particularly the Resources Department and provides the names of those who stamped it?*

The Council is unable to explain how the document was date stamped in two departments and cannot locate the original document. There is no evidence that the Council has paid the invoice.

*There is no evidence that the Council has reimbursed Mr Bowen.*

Mr Bowen's solicitors have confirmed that they have not received any payment from the Council for legal services or court fees incurred by Mr Bowen.

*Please explain why this document from an apparently private legal case was present in County Hall and why it was sent there by Mr Eifion Bowen's solicitors.*

Mr Bowen's solicitors are clear that they never sent a copy of the document to either the Council or to Mr Bowen. The solicitors sent the document to their Council's chambers' by way of fax. I understand that your Solicitors would also have received the document directly from the Court. ..."

154. The letter goes on over more than two pages repeating that there is no evidence of financial assistance provided to Mr Bowen by the Council.

155. On 19 June 2010 Mrs Thompson made a posting under the heading "More Council Cuts". It included the following:

"Let's hope Carmarthenshire can maintain essential services and not divert spare cash into CV stuffing projects. Which reminds me, I guess a fair few visitors to this blog searching for the Chief Executive – most recently from **the executive recruitment companies** – perhaps he's moving on.

Anyway, **I trust they found this blog of use...**"

156. Asked what a recruitment company might find in her blog that might be of use, Mrs Thompson was unable to explain. I find that this blog supports the finding that I make that Mrs Thompson intended to damage Mr James' reputation with the public at large, including with anyone who might be minded to employ him in the future.

157. On 16 July 2010 she made a posting under the heading "Audit Office and the Council Libel Investigation" that included the following:

"...I have now come to the inescapable conclusion that the six month enquiry went something like this: ...

Audit Office; 'So sorry to bother you, but we've got these two here again asking awkward questions... what shall we tell them this time?'

Council: ‘Tell them the same load of b\*\*\*\*\*s we’ve told everyone else – simple!’... ‘look, if we can convince a High Court Judge and get away with it, I’m sure these two shouldn’t be a problem”.

158. On 25 August 2010 Mrs Thompson posted the following under the heading “Swimming Pool Donations”....:

“I see today’s local newspapers are full of news regarding Minnie Driver and her bid to save Brynamman Lido, this is very commendable and public spirited I wish the people who run the Lido all the success they deserve.

All this talk though of swimming pool donations has reminded me of another incident, in 2006, involving another swimming pool donation. I would like to warn Ms Driver, or the film company that any donations (I believe £2,500 has already been *publicly* pledged) shouldn’t be left in used notes stuffed in a brown envelope on Chief Executive Mark James desk as this can, as you can see here, here, and here cause an *awful* lot of confusion”.

159. The words “here” are hyperlinks to reports of the trial in which Mr James was a prosecution witness.

160. On 8 November 2010 Mrs Thompson sent an e-mail to Mr Thomas and Mr James which included the following:

“I wish to make a formal complaint against the Chief Executive’s Department of Carmarthenshire County Council in that no action has been taken against members of staff who processed a document from a private legal case ... as it was stamped twice I am very concerned that there are persons within these two departments who were prepared to conspire to steal public funds and commit fraud.”...

161. Mr James replied the same day stating that Mrs Thompson had raised this issue before, that the auditors had responded to her, and there was clearly nothing the authorities could do to satisfy her. He also reminded her that it was she, through her solicitors, who asked Mr Bowen’s solicitors to write to the Council asking that the Council meet its costs, so that she Mrs Thompson would not have to pay them. Mr Thomas replied the next day reiterating that the Council had not subsidised any of its officers or its members to bring defamation proceedings to date.

162. On 12 November 2010 Mrs Thompson made a posting under the heading: “Wales Audit Office – More Revelations of Mismanagement”. It is here that there appears the posting of the scanned copy of the letter from HMCS bearing the two date stamps of the Council and the text which is set out above (see para 69 above). The posting included the following:

“It also helps to explain the WAO’s reluctance to pursue any further the collusion amongst certain senior officers of Carmarthen-shire County Council to steal public funds.”

163. On 22 February 2011 Mr Bob Neill MP, the Parliamentary Under Secretary of State for the Department for Communities and Local Government sent a letter to all Council leaders in England (Mr Eric Pickles MP is the Minister responsible for these matters in England: responsibility for these matters is devolved to Wales). It was headed “Access to Meetings” and it included the following:

“As part of the government’s transparency drive I want to highlight the importance of your council giving citizens the opportunity to access and experience their local democracy using modern communication methods... Council meetings have long been open to interested members of the public and recognised journalists and with the growth of online film, social media and hyper-local online news they should equally be open to ‘Citizen Journalists’ and filming by mainstream media. Bloggers, tweeters, residents with their own websites and users of Facebook and YouTube are increasingly a part of the modern world, blurring the lines between professional journalists and the public.

There are recent stories about people being ejected from Council meetings for blogging, tweeting or filming. This potentially is at odds with the fundamentals of democracy and I want to encourage all council’s to take a welcoming approach to those who want to bring local news stories to the wider audience....

I do recognise that there are obligations on whoever is filming or publishing information – be it the council itself or a citizen or mainstream journalist -- under the Data Protection Act 1998. But I do not see these obligations as preventing access for journalism... The Information Commissioner’s Office has told us that:

...

In the context of photographing or filming meetings, whilst genuine concerns about being filmed should not be dismissed, the nature of the activity being filmed – elected representatives

acting in the public sphere – should way heavily against personal objections”.

164. The contents of this circular were summarised on the BBC news the same day. Also on the same day Mrs Thompson sent an email to the Council asking whether the Council would have any objection to members of the public recording committee meetings from the Public Gallery in the County Hall. She wrote:

“... This could be either a sound or video recording which could be used to illustrate the democratic process to residents of the County. I trust the Council has no objection to the use of mobile phones (on ‘silent’ of course) by the public in the Gallery to relay information to other residents through social networking sites... A quick response would be welcome prior to the Council meeting on 28th February.”

165. Mr Thomas replied on 25 February. He wrote:

“While the law requires us to allow public access to meetings, it does not require us to allow recording of proceedings by members of the public and our current practice in that it is not permitted, and this is respected by the media who report our proceedings.

I regret that the same principle would need to be applied to your request.

There are many legal and practical considerations which need to be addressed and resolved before a Council can consider going down the route which you are suggesting. The Council is aware, however, that there is a developing public interest in the use of modern technology at meetings of Councils and other public bodies, and will be reviewing this issue in the light of legislation and government guidance. How that is progressed will be a matter for Council members to decide in the future”.

166. On 28 February 2011 Mrs Thompson made a posting under the heading “Filming in the Chamber... (and the care homes stay open!)”:

“Pleased to see the campaigners trying to save two care homes for the elderly Llanelli score a victory today in Carmarthenshire Council Chambers. I intended to remain for the entire budget debate but due to the late start, flat battery on my phone and severe toothache I called it a day. I spent an interesting couple of hours

though filming photographing and tweeting from the public gallery. Further to my previous posts, whereas it may not be Council policy it is not against the law to record meetings in such a way. This was, as you will see from the quality of the video, an experiment and the examples are given (YouTube links) to make my point. Point made. ...

167. Below that text were four hyperlinks to YouTube where there are posted the video recordings which Mrs Thompson made of the proceedings that day. As she indicates, the quality is poor. It is impossible to hear everything that the speakers are saying.

168. There then followed words which are the first of the words complained of by Mr James. They are set out below under the heading "Counterclaim". The words include "Will he do everything in his power to protect the 'officers club' **slush fund**? You bet he will. (See the column on right in red and here)." This is discussed further under the heading "Part 20 Counterclaim".

169. On the next day, 1 March 2011, a press manager for the Council drew to the attention of Mr James and Mr Thomas that a member of the public had been filming from the public gallery. Mr James replied to the officer, with copies to a number of Councillors:

"It is virtually impossible to stop, given modern technology, so I suggest we don't make a fuss. If we spot it in future we can ask them to stop..."

170. On 14 March 2011 Mrs Thompson made a posting which included the following:

"This blog is two years old today so I thought it was a good time to refresh my mind as to why I started writing it in the first place. **Initially it was out of a sense of frustration and injustice over both the planning system** in Carmarthenshire as well as the circumstances around **the libel case** and the subsequent changes to the county's Constitution. All this has been well covered in this blog and is ongoing. However, in case you need reminding, and in a nutshell; **our valid criticism of the planning department resulted in a libel claim against us, the council unlawfully backed the Head of Planning to bring the claim forward to get round the rule that a governing body cannot sue for libel.** The costs risk to ourselves became so great that we had to eventually had to **abandon our defence** and settle. As a direct result of this action the Council acted unlawfully again and amended the constitution so that libel claims on behalf of officers could be

funded by the taxpayer – enabling the rule to be avoided, this time with the veneer of legality. In addition, further criticism can now be silenced by the ‘libel chill’ that the Chief Executive and Legal Department has created. ... as this blog has progressed I have widened the topics to include other issues which have arisen, or been in the news concerning Carmarthenshire County Council. It also became clear that this local authority lacked a critical voice, either by accident or design...

I have no doubt that if UK libel claims were not so impossible to defend, and Carmarthenshire Council did not have endless amounts of tax payers money at their disposal, **I would repeat my criticism (or the ‘words complained of’) not only about the planning department but this time I would include the Chief Executive’s and the Legal Department as well.** A statement is only libellous if it is untrue and **I am certain that I have never said or written an untruth** about Carmarthenshire County Council.”

171. I recall, as noted above, that in their defence to Mr Bowen’s libel claim Mrs and Mr Thompson did not allege that the words complained of were true. And I had this passage from her blog in mind (amongst other matters) when I concluded, as I said (para 133 above), that Mrs Thompson was not telling the truth to the court when she said that she really did mean every word of her apology.
172. As already stated, during the trial Mrs Thompson accepted what she had said was untrue. She no longer suggested that the Council had funded Mr Bowen or made any unlawful payment in respect of the libel action he brought against her and her husband. However, this and all the other postings, remain on her website at the time this judgment is handed down.
173. On 22 March 2011 Mrs Thompson made the **second of the postings** which is the subject of the counterclaim. It includes a reference to Mr James and the Council having a “slush fund”.
174. On 31 March 2011 Mrs Thompson attended a meeting of the Council Planning Committee. She posted an account of her filming on her blog on the same day, together with links to YouTube where the video recording can be viewed. In the posting she wrote:

“‘Stopped from Filming a Council Public Meeting’ ...

As you will see from the video below (and on You Tube) I was stopped by the Council solicitor. Apparently it is not allowed (al-

though I remember them allowing the BBC to film in the Chamber when Prince Charles' application went in front of the Committee a couple of years back...) anyhow, like my previous attempts I believed I was acting in the public interest, at a public meeting, where elected councillors were doing their public duty... I fail to understand their attitude... I was also asked to give my name and address at the end of the meeting, I am not sure why, anyway I left before the end and didn't oblige..."

175. On 2 April 2011 Mrs Thompson wrote emails to the BBC and ITV Wales telling them what she had done.
176. On 6 April 2011 there was published in the Carmarthenshire Journal an article "Public Pick for Name of New Theatre Not Chosen". The article states that the council had invited members of the public to express a preference from a short list of six names for a new theatre then under construction. The article states that the name that was chosen was not the one which had attracted the most support from the members of the public. The article did not mention Mr James.
177. On the same day Mrs Thompson posted on her blog the **third of the publications complained of in the counterclaim**. The words include a reference to Mr James playing the role of Pinocchio
178. On Friday 13 April 2011 Mrs Thompson again filmed proceedings in the Council. On this occasion it was a full meeting of the council. This is one of the few matters in this case in respect of which there is a significant conflict of evidence.
179. At about 12:35 that day Mr Thompson called the police. He stated that Mrs Thompson had just arrived home. The account that he gave was recorded by the police. Ms Michalos did not put this account to Mr Davies in cross-examination. It is to be noted that Mr Thompson does not appear to have alleged that any unwarranted physical contact had occurred. What the police recorded was in substance the following:

"A male approached her in the gallery saying not to film the meeting on her phone and that Mark James (Chief Exec) had sent him to fetch her phone and get her to leave. He was very aggressive in manner towards her – and she thinks he was one of the Council officers ... she held her phone in her hand – but was not filming – and this male just came upon her and was very intimidating towards her".

180. There is in addition a Crime Report apparently relating to a call from Mrs Thompson five minutes later on 13 April 2011 at 12:40. This does allege physical contact. It reads:
- “The IP was in the public gallery within council chambers when an unknown male approached her; after asking her to refrain from filming the meeting, the male allegedly grabbed her hand in an attempt to seize her mobile phone, causing pain to her hand. No visible injuries were caused. It is not believed to be an attempt to permanently deprive the IP of the phone, merely an attempt to stop her from filming”.
181. The meaning of assault, as it is set out in Archbold (2011) 19-174, is any act by which a person intentionally or recklessly causes another to apprehend immediate unlawful violence. The word “assault” is also frequently used to refer to a battery. A battery is an assault with the added element that the complainant actually sustains unlawful violence. There are a number of common forms of physical contact between people which do not amount to unlawful violence. For present purposes those most likely to be relevant are jostling in crowded places, touching a person for the purpose of engaging their attention. The test is whether the person doing the touching acted within the bounds of what are “generally acceptable standards of conduct”.
182. In her evidence in chief Mrs Thompson said that when she entered the public gallery there were no other people there. She said that when the man (now known to her as Mr Davies) came up to her she was sitting with the phone on the shelf (that is the balcony) using Twitter. She said he put his hand over hers and pulled the phone out of her hands, she tried to resist, and there was quite strong contact between them for a matter of seconds. She stated that he then sat back holding the phone in one hand touching the screen. She could see her daughter’s name on the screen. She took the phone back and put it on the shelf. She said he put his hand on hers and he grabbed the phone.
183. Mrs Thompson stated that when she left the Public Gallery she went straight home and told Mr Thompson. She said that she decided to complain to the police that she had been assaulted, and Mr Thompson called the police. She also spoke to them. She said that she told them what happened, that the police asked her if she meant that there had been a mugging and she replied that it was an assault.
184. The police attended County Hall the next day 14 April and spoke to Mr Martin Davies, the Democratic Services Officer, who identified himself as the person who attended the public gallery the day before. They recorded the account of the incident that he gave. It is substantially in the terms of the evidence that he gave to this court.

185. On that day Mr Davies made a statement in form MG11T. In a statement in that form the maker also signs the following:

“This statement ... is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true”.

186. He stated that at about 10.45 am he was told by Mr Thomas that the Chief Executive wished a member of staff to go to the Public Gallery to ask a member of the public who was filming or recording the meeting to cease or she would be asked to leave the building. The controversial part of the statement is as follows;

“I volunteered for the task and was able to identify the lady concerned straight away as she was leaning over the gallery parapet with her mobile phone faced in front of her.

[The only other people in the gallery were officers from the Planning Division - ... they were seated at the rear of the gallery].

I sat in the seat next to her, the meeting below was still proceeding, and asked her if she would kindly remove her mobile phone from where it was and cease filming or recording the meeting if that is what she was doing. She said she was not filming and sat down but continued to hold the mobile phone, which I could see was switched on, over the parapet and I placed my hand in front of it. I again asked her to stop filming/recording ... and asked her to remove her phone from the parapet which she did and briefly handed me the phone to show me it was not in recording mode. At no point did I attempt to take the phone off her. I advised her that it was the Council’s current practice to prohibit recording or filming during meetings of the Authority, drawing her attention to a sign in front of her to this effect, and that this was accepted by the press. I also stated that if she persisted in trying to record or film the meeting I would have to ask her to leave the meeting and if then, she declined to leave but carried on filming the Chair had the power to adjourn the meeting. Whilst notifying her of these facts I observed she was typing words into a Twitter account. [At some point here the Planning Division staff left the Gallery ...]

After a short period where I believe I had frustrated her attempts to continue filming by otherwise engaging her attention through conversation whilst avoiding confrontation or physical contact she stated that she was leaving. As I escorted her out of the build-

ing she said she could see nothing wrong in filming the meetings whilst I reiterated that it was not permitted in this Authority's meetings. I then returned to... my work. All this took place in about 20 minutes". (square brackets original)

187. The account of which Mrs Thompson posted on her blog on Friday 15 April, and which remains there to this day, is as follows:

“Distressing Incident in the Public Gallery

I feel I ought to mention this. I had hoped to bring you a report on Wednesday's Full meeting of the Carmarthenshire Council... However, I am unable to do so as I had to leave the Public Gallery. After about three quarters of an hour into the meeting, when the members of the public had left the gallery and I was on my own, a man approached me and said that he had been sent by the Chief Executive, (who was in the Chamber below) and asked me to leave. I was very surprised, as I wasn't disrupting the meeting in any way and was quietly observing the proceedings below. I asked why and was told it was because they thought I was 'filming' – I wasn't. I had my phone in my hand to use Twitter if there was anything to tweet but **had not raised the phone to film** at all. The events that followed **led me to make a complaint to the police concerning assault and attempted theft**. I am now preparing to give a full statement. I felt intimidated, distressed and very uncomfortable. It was a disturbing incident in of all places, the Public Gallery of our County Council.

I will report further, if and when matters unfold”.

188. In spite of this clear statement that she had accused Mr Davies of attempted theft, in her Reply (signed by her under a statement of truth) she wrote that she:

“never made any accusation of attempting to steal her telephone or 'her camera'... it was the police who suggested that the man's actions might amount to attempted theft.”

189. On 15 April at 16:11 Mrs Thompson attended Llandovery police station. According to the police record, the police gave her a full update, but she was

“adamant that she deemed herself as being the victim of crime in so much that by the actions of the male as identified above whereupon he allegedly grabs her hand and removes phone from her grasp, thus in her eyes committing the offence of assault...”

190. On 15 April Mrs Thompson made a statement on Form MG11T. The controversial part of the statement is as follows:

“By the time it got to a particular item I was interested in, I realised that every body else had left the public gallery and I was there on my own, which meant that the total time I was in there would have been around 45 mins.

Whilst I was sitting in the public gallery on my own, located right at the front of the public seating area and to the left as you look towards the chamber, I noticed a man coming towards me at some speed, by that I mean he seemed to be in a bit of a rush. I looked at him and he sat down right beside me. Straight away he said ‘I’ve been sent here to ask you to leave’ I said ‘why’ to which he replied words to the effect of ‘we think you’ve been filming’ I replied ‘no I haven’t I am just observing the meeting’. I also said ‘who has sent you?’ to which this man said ‘the Chief Executive’ looking towards the Chief Executive as he said it.

I describe this man as wearing darkish blue coloured shirt possibly a tie and dark sit type trousers. I am certain he was wearing glasses. He was mid to late twenties in age. I have never seen him before. ... this man appeared to become more agitated since I was protesting the fact that I wasn’t doing anything wrong, however he was still insisting that I was recording, so I showed him that I was on Twitter so it was not possible to record and Tweet at the same time. He said that he had a phone like mine and thought that I could, so it was around about then that he went to grab the phone out of my hand. I was feeling quite intimidated by now and I could see he was now getting up on his feet and signalling to the Chief Exec downstairs.

As this man grabbed my phone out of my left hand, it was quite a violent grab which meant he took it and started touching the screen of my phone.

I was horrified and looked and saw that my phone was in his hands and had obviously brought up the text messaging since I saw my daughters name on the screen, at which point I demanded it back, which resulted in me reaching over and taking it off him.

I then laid the phone flat on a large shelf directly in front of me and kept my hand on it since I didn’t want him taking it, but he

put his hand on my hand to pull the phone off the shelf. The phone was still on at the time.

That happened a couple of times, since I kept saying that it wasn't recording. He just got even more agitated in so much that he was getting up and down looking over into the chamber saying I was recording him, all this resulted in me feeling very uncomfortable. The way he was behaving I was sort of quite frightened, I was on my own, the meeting downstairs didn't stop, though there was no reason, I didn't know what they should have done really...

More or less at that point I thought I better go out of the public gallery so I got up and went with this man following me out of County Hall.

I want to make a criminal complaint against this man of assault for violently taking the phone out of my hand and continuing to touch my hand.

Because of him touching my hand I felt distressed, distraught, and suffered pain to my left hand as he grabbed my phone.

I felt minor pain which lasted 10 - 20 seconds. It did not leave a lasting mark and I have not recorded or sought any medical advice/treatment due to the incident within the chamber.

I thought I was alright to drive home on my own. ”

191. Mr Davies was also interviewed under caution on 13 May 2011 and there is a record of that interview in the papers. It does not assist me to resolve the dispute as to what happened on 13 April.
192. On 18 April 2011 a police officer attended at the Council Offices and spoke to a number of those who had witnessed the events in question. They included Mr Thomas, Ms Lovering and Mr Llewellyn, each of whom gave evidence before me.
193. Mr Thomas gave evidence that he kept an eye on the gallery whilst also observing and listening to the meeting. He saw Mr Davies and Mrs Thompson. They seemed to him to be amicable. This continued for a short period of time after which Mrs Thompson got up and walked out of the gallery, accompanied by Mr Davies. He believes that at one point he could see Mrs Thompson holding her phone in front of her and Mr Davies appeared to be holding out his hand in front of the phone. Mr Thomas did not observe any contact between them. He did not see any assault or

any indication such as a gesture or signs of distress or annoyance or argument. Mr Davies and Mrs Thompson appeared to him to have conducted themselves calmly and responsibly and there was no disruption to the meeting.

194. Mr Llewellyn was seated in the gallery. He noticed a lady who he now knows to be Mrs Thompson holding a mobile phone pointed at the proceedings in the chamber. She was seated in front of him with her back directly towards him, but to one side. He could not be sure she was recording, but was suspicious that she was, and signalled to that effect. He states that Mrs Thompson moved away to the left of where he was sitting, but still remained in a position where he could see that she was continuing to hold her phone up and point at the chamber for periods of time. He heard a sound at one point that seemed to him to be the sound of the playback which might have been of the events just filmed. He saw Mr Davies (who he did not know at the time) arrive and speak to Mrs Thompson in a professional calm and measured way. There were no raised voices, and no sign of a problem. Mr Davies sat with Mrs Thompson talking to her in a very calm manner. Shortly afterwards Mr Llewellyn left the public gallery. He was interviewed by a police officer who took notes substantially in accordance with the account given in his evidence to this court.
195. Ms Lovering gave evidence that she arrived in the public gallery at about 10.30 am and sat there with other members of her team. One of three people seated in front of them in the front row was a woman who she later learnt to be Mrs Thompson. She saw Mrs Thompson playing with her mobile phone and angling it towards the chamber on a number of occasions. On one occasion Mrs Thompson played back something on her phone which seemed to repeat the sounds of the chamber, as if it was a recording of the events that had just occurred. She was also leaning over the balcony quite often. Mr Davies (who she did not then know) entered the gallery and leant on the balcony next to Mrs Thompson. He spoke to her in a calm manner. Mrs Thompson then sat back in her seat and Mr Davies sat next to her continuing to talk to her. Ms Lovering could not hear the detail of the conversation, but neither of them were behaving in an aggressive manner, and Ms Lovering did not witness any physical contact between the two of them. She gave an interview to the police on 18 April. The notes of what she said were read back to her and she signed them. They are consistent with the evidence she gave to this court.
196. Mr James gave evidence that during a meeting on 13 April 2011 a Councillor drew his attention to Mrs Thompson in the public gallery. She was leaning over with her phone in a manner of which seemed to Mr James to mean that she was filming. He asked Mr Thomas to ask someone to go up to the public gallery to stop her filming.
197. Mr James observed Mr Davies walking across and sitting down to the left of Mrs Thompson. Mr James saw him begin to talk to her and put his hand up in front of

the phone which she was not putting down. He did not see Mr Davies touch Mrs Thompson. Mrs Thompson lowered her phone and seemed to be texting or typing. Mr James did not see Mr Davies act or react aggressively. Mr Davies sat quietly next to Mrs Thompson. Mr James could clearly see Mr Davies put his hand in front of the phone, but at no time did Mr James see Mr Davies grab the phone. He saw Mrs Thompson get up and leave. She did not seem distressed.

198. When Mr James heard that Mrs Thompson had made a complaint to the police he concluded that the charge she made was false, and that it must be another way in which Mrs Thompson was seeking to continue her campaign against the Council staff, in this case by making false allegations. Mrs Thompson has never made any complaint to the Council or Mr Davies that she was assaulted.
199. Mrs Thompson is clearly wrong in at least two respects in the statement that she made to the police. She was not alone in the public gallery, as she now accepts, at the time when Mr Davies came to speak to her. And Mr Davies is not a young man in his twenties. He was in his early fifties, and, at least at the time of the trial, he could not be mistaken for a man in his twenties.
200. Ms Michalos cross-examined the witnesses. But that cross-examination did nothing to undermine the credibility of their accounts in any material respect. She submits that there is an inconsistency between Mr Davies's witness statement and police interview of 13 May 2011, in both of which he said that Mrs Thompson handed him her phone, and the police record of 14 April 2011, where he does not mention her handing him the phone. These differences do not undermine his evidence, and do not touch on the question whether he assaulted her or not.
201. Mrs Thompson was also unable to give an explanation as to why there appears in her posting dated 15 April 2011 a statement that she complained to the police about both "assault and attempted theft" if she had not in fact complained of attempted theft. That statement is still on her blog (see para 187 above). In her evidence to this court she made clear that she was not alleging that there had been an attempted theft. She said that it was the police that had raised the suggestion of theft. Even if that were true, since she gave evidence that it was not a case of attempted theft, that does nothing to explain why in her blog she said, and continues to say, that that is what she had made a complaint to the police about. She could give no explanation of why she said in her blog that she had complained of attempted theft when in her evidence she was saying that she had not complained of attempted theft.
202. I do not accept Mrs Thompson's evidence. I find that Mrs Thompson did complain to the police of assault (as it is common ground she did). I also find that she did complain of attempted theft, but that the police did not pursue this complaint. This is consistent with the Crime Report of 13 April 2011 at 12:40, if the words "It is

not believed to be an attempt to permanently deprive the IP of her phone” are understood as referring to the belief of the police officer. And that is the natural reading, in my judgment.

203. I take into account that, because the seating in the public gallery has high backs, and the balcony at the front of the public gallery is also high, none of the witnesses sitting behind Mrs Thompson in the public gallery or those looking up at the public gallery from the chamber, could not see much more than the head and shoulders of Mrs Thompson and Mr Davies when they were seated in the public gallery.
204. However, if Mr Davies had assaulted Mrs Thompson, in my judgment, it would probably have been apparent to one of the witnesses who gave evidence to this court that something untoward had occurred. Mrs Thompson is a mature woman with a strong personality. I cannot accept that she would submit to being assaulted in a public place in the manner she describes, without making that known to anyone present at the time. She has repeatedly shown herself to be ready and willing to make allegations against Council officers when she claims to have a grievance, so if she had considered while in the Public Gallery that she had a legitimate ground to complain, I think it probable that she would have complained in the presence of all those in the Chamber.
205. But even if I were wrong about that, I have no hesitation in preferring the evidence of Mr Davies. His evidence was convincingly given, and remained consistent.
206. It is always possible when two people are sitting next to one another in a public place, such as the public gallery of a court, that there will be some brief physical contact between them. Contact of that kind is not assault and no person could in good faith suggest that it was. So I make no finding whether there was any immaterial touching of that kind. Nor do I make any finding as to whether Mrs Thompson was filming or not. I do not need to. But I do find that she was holding the phone in such a way as to lead the witnesses who gave evidence reasonably to suspect that she was filming.
207. **I find that both Mrs Thompson’s complaints, assault and attempted theft, were false and false to her knowledge at the time.** She was attempting to pervert the course of justice when she made her allegations to the police, and when she made her statement.
208. On 19 and 20 April Mrs Thompson’s allegations that she had been assaulted by a Council official in the Council Chamber were the subject of reports in the South Wales Evening Post, the South Wales Guardian and the Carmarthen Journal, all based on her blog.

209. On 12 May 2011 Mr James wrote to Mrs Thompson referring to her e-mail of 23 February and the reply to that e-mail. The letter concluded:

“You are of course welcome to attend Council meetings, but because of the involvement of the Police, I will require an undertaking from you that if you wish to attend you will not attempt to film the meeting. I enclose a form of undertaking... if you are not prepared to give that undertaking, or if you attend meetings and there is a suspicion that you are attempting to film the meeting you will be asked to leave by the Chair and if necessary the Police will be called to remove you from the gallery”.

210. The same day Mrs Thompson posted a scanned copy of the letter and Form of Undertaking on her blog. She included the following text:

“The last paragraph of the letter is bizarre, particularly as he suggests that the Police were involved over the issue of filming, which they weren’t.”

211. In fact Mr James had not suggested that the involvement of the police was on account of the filming. No one had called the Police to the Council Chamber on 13 April. Her reason for stating that it would be necessary to call the police if she filmed in the future was given in the preceding paragraph of Mr James’ letter:

“...the Council will protect its staff against false and malicious allegations and will pursue the matter duly with the police, should this indeed, as we suspect, be the case. The Council has a legal duty to protect its staff and has to take appropriate and reasonable measures in that regard.”

212. On 19 May 2011 Mrs Thompson sent an e-mail to a third party which included the following:

“I just wondered if you could perhaps pass this onto Simon or let him know that the CPS have decided there is insufficient evidence to secure a conviction against the chap who assaulted me in the Public Gallery, in other words the case is dropped. I am not surprised as there were no witnesses – Mr James saw to that by waiting until everyone had left the gallery apart from me...”

213. Later, on 29 July 2011, Mrs Thompson made a posting in which she wrote:

I am also concerned about Mr James’ allegations over my complaint of assault. For someone with a degree in law, he actually appears to have a very poor grasp of such matters, and I would

have thought he would know that the police *investigate* complaints and the CPS are the decision-makers. The Police did investigate, took statements from all sides, sent it all to the CPS and they then decided that there were insufficient witnesses to secure a conviction. If Mr James is so sure that everyone could see nothing happened, then where are their statements to that effect? His allegation that I made false statements is undoubtedly defamatory. ...”

214. The statement that there were no witnesses is false. There were in fact a number of witnesses who were present in the public gallery at the time when Mr James asked that a Council official should go up to the public gallery and speak to Mrs Thompson. At the trial she did not dispute that this was so.

215. On 25 May Mrs Thompson launched a petition online.

216. On 1 June 2011 Mrs Thompson posted the **fourth of the postings which is subject to the counterclaim** in this action. It refers to Mr James and a “slush fund”. It also refers to a local election and to a letter in the Carmarthen Journal of that day about one of the candidates.

“I am looking forward to such coverage next May when I stand for County Council, except my letter may be a little different... !

217. On 8 June 2011 Mrs Thompson wrote an e-mail to one of her supporters as follows:

“I am off to the public gallery this morning with my phone/camera for the full Council meeting – not sure what will happen when I start filming, or even if they will let me in, but going to try to make a stand if my nerve holds! - ...”

218. On 8 June 2011 at 10:21 Mrs Thompson was arrested to prevent a breach of the peace. That is the reason for her arrest given in the police records to which both parties have referred me.

219. She was placed in custody at 12:56 in Llanelli. In a document issued by the police dated 14 June 2011, in response to media queries, the following account is given:

“Police Constables were involved in the arrest of Ms Thompson on 8<sup>th</sup> June 2011 following an incident at a planning meeting in County Hall...

Due to the nature of the incident the officers requested Ms Thompson to desist from recording the proceedings and to leave

the premises. She refused to do this and acted in a manner which led to the officers using common law powers of arrest to prevent any further breach of the peace. This is not defined as an arrestable offence – but carries a common law power of arrest.

In order to comply with the Police and Criminal Evidence Act 1986[sic] all detained people are taken to a designated custody suite where the detention is governed by Code of Practice under the jurisdiction of a Custody Officer who decides upon grounds for detention.

A consideration for the Custody Officer concerns the release of the detained person and whether the behaviour will recommence immediately upon release. An alternative for the release from custody would be for the case to be heard at a Magistrates Court where a Binding Over Order could be made.

As part of this process officers sought assurances from Mrs Thompson that she would not cause a breach of the peace upon her release. She provided a written undertaking to this effect and she was released from police custody just before 2.30 pm that day. There were no suggested charges following the incident.

Mr Green asks ‘do the police realise this is a free expression issue’?

Police would consider the implications of the articles of the Human Rights Act when deciding on which course of action to take.

If Ms Thompson is dissatisfied with her treatment by the Police she can contact our Professional Standards Department who can advise her of her options”.

220. This court has not been told that Ms Thompson has made any complaint about the conduct of the police to any authority competent to investigate such a complaint.

221. The incident attracted a lot of publicity in the media. Referring to one such article, in an e-mail dated 11 June to a supporter Ms Thompson wrote:

“I am truly amazed by all this, the response on twitter has been huge I need to try and keep the momentum going... I bet Mark James is cursing me - again”.

222. On 8 June 2011 Mrs Thompson posted on her blog a photograph of herself with two female police officers under the heading ‘Caerwyn arrested’.
223. The circumstances in which the police came to be called are not in dispute. Mrs Thompson was filming at the time. She has posted on YouTube the video recording she was making immediately before the police arrived in the Public Gallery. A Councillor drew attention to the fact that Mrs Thompson was filming. She said she was not doing anything wrong and was not disrupting the meeting, and would not leave, although she had been requested to do so. The Chair then suspended the meeting.
224. In his witness statement Mr James gives the following account. He states that, when he saw Mrs Thompson filming in the public gallery he did not want to ask a member of staff to go up to the public gallery to speak to her because of the incident on 13 April, when she had made allegations to the police against Martin Davies. He did not want to expose anyone else to a complaint. The Chair asked her to stop filming, but she refused. The meeting was adjourned and the police called. The police were not called because she was filming, but because she refused to stop filming when asked to. When the meeting had been adjourned Mr James left the Council Chamber. He was not there when the police officers arrived. He did not witness what happened when the police were present. He was surprised to hear later that she had been arrested because he had just wanted the police to escort her from the building.
225. Mr Thomas states that the Chair asked Mrs Thompson to stop filming, telling her that if she did not comply she would have to leave the gallery. She continued, and argued with the Chair about his request for her to stop. It was Mr Thomas who was asked to arrange for contact to be made with the police and he asked a member of staff to do that.
226. On 9 June Mrs Thompson wrote to The Guardian newspaper and others seeking publicity for the fact that she had been arrested. She achieved some success. In another e-mail of the same date, written to a supporter, she boasted that she had had over a thousand hits from all over the UK on the two reports in her blog about her arrest. The second posting about her arrest contains a number of links to media reports in the New Statesman, BBC Wales, The Guardian, and a large number of other media and other outlets. She ended the e-mail with the words
- “Mark James is a complete s\*\*t.
227. The minutes of the meeting of 8 June 2011 which were prepared for approval at the subsequent meeting recorded:

“At this point in the proceedings the meeting was adjourned for 15 minutes in order to secure the removal of a disruptive member of the public from the public gallery”.

228. On 1 July, at a meeting of the Business Management Group of the Council, the Group considered the recent media reports about the issue of filming. They agreed that the Council should maintain the status quo and not allow the public to record Council meetings, and explained:

“Particularly as it would have no control over how such recordings were edited or presented, but accepted that, in terms of the modernisation agenda and e-government, the issue of recording and streaming its own meetings should be investigated”.

229. On 28 June 2011 the Council published these Minutes. Mrs Thompson posted a copy of the item in question on her blog. She followed it with the words:

“I had not interrupted proceedings, neither was I disruptive. I really hope this is not signed as a ‘record’.”

230. On 28 June 2011 the police published a press release. It read as follows:

“Police Officers were called to County Hall, Carmarthen at about 10:20 on 8 June 2011. The officers were met by a council official who refused to deal with a lady who was filming the meeting due to historical complaints. The lady was asked to stop filming and leave to which she replied that she was not doing anything wrong and she would neither stop nor leave.

The officers asked the council official whether if the lady stopped filming she would be permitted to remain and were advised in unequivocal terms that she would not be permitted to do so and they wanted her removal from the premises.

The officers were concerned that the matter could escalate due to previous incidents between the two parties and the officers had to seek an appropriate resolution.

Dyfed Powys Police has no remit or opinion as to whether Carmarthenshire Council should impose a prohibition on filming. The officers were not called to enforce the Council’s position on filming. They were called to assist them in the removal of a lady from the premises.

Whilst the Force understands and respects the moral and principled arguments of the individual the action taken remained solely in respect of her refusal to leave Council premises and threat to return; not in respect of her 'personal' beliefs. The officers were faced with a judgement as to how to resolve an escalating situation.

Dyfed Powys Police fully supports the officers who were dealing with an unfolding and acrimonious situation. The officers acted in accordance with their judgment at the time and sought to negotiate with the two parties in order to resolve the situation. The officers acted with complete professionalism and sought to understand and appreciate the respective personal views and beliefs of both parties”.

231. On 5 July 2011 Mrs Thompson e-mailed Councillor Jackson, who had been the Chair of the meeting of 8 June. She asked that the Minutes be re-worded. She wrote that she believed it was the unlawful actions of both the Chair and the Chief Executive which led to the interruption of the proceedings and her subsequent arrest. She said she was not disruptive. She asked for an apology for “such a serious breach of my human rights”.

232. On 11 July 2011 Mrs Thompson posted on her blog that she had received a “courtesy call” from Dyfed Police wanting to know about her plans for any forthcoming Council meetings. She wrote that he had not told her that she would not be able to attend the meetings. She added that:

“I haven’t put in a formal complaint of wrongful arrest yet – that is also ongoing”.

233. On 13 July 2011 Mrs Thompson attended Council. She was refused access unless she signed an undertaking not to film, which she refused to do. She posted her account of this in her blog on 13 July under the heading “Locked out”. She then added the following account of what transpired at the meeting:

“Two Councillors ... put forward an amendment [to the Minutes] to the effect that I had not disrupted the meeting. I have been told that they and two others voted for the amendment but the others voted against. The two Councillors then voted against the main vote to approve the minutes, and according to those who were admitted there were several abstentions but it was passed. The issue of the minutes is therefore still to be addressed.”

234. On the same day 13 July there was a publication by Mr Milan on a blog which he maintains under the name “madaxeman”. He put up a long posting about Mrs Thompson and her arrest on 8 June 2011. It covers over three pages of the printout. It was derived largely from Mrs Thompson’s own blog, and researches which he said he had done into the lawfulness of her action in filming Council proceedings.
235. On 14 July 2011 Mrs Thompson made the **fourth of the postings** of which Mr James complains in his counterclaim. It includes a reference to himself and a “slush fund”.
236. On 21 July 2011 Mr Milan posted another entry on his “madaxeman” blog under the heading “The Daft Story of a #Daft Arrest ... An open letter to Mark James...” It was in response to this posting that the words complained of by Mrs Thompson in this libel action were published. It is necessary to set out the document in full. It reads:

“Dear Mr James,

I write this evening with reference to the expulsion of Jacqui Thompson from the Council Chamber on 8<sup>th</sup> June 2011, as I feel the Council’s conduct in this matter gives rise to a number of concerns. Most notably, I feel this raises questions as to the Council’s supposed accountability to the people, and also to the judgement and integrity of the Council’s members. For a body charged with the representation of the public, these concerns are of course of paramount import, potentially even going so far as to call into question whether the Council in its current form is actually fit for purpose.

Having read the standing orders, I feel the first matter to which we must turn our attention is that of whether or not Mrs. Thompson actually disrupted the meeting. The only primary evidence I have been able to discover pertaining to this question is footage posted to the YouTube website. Indeed I believe this to be the footage that Mrs Thompson recorded using her mobile phone. For your convenience, I’ve included it below: ...

Now, what troubles me is that I cannot hear any sort of disruption being caused by Mrs Thompson – indeed, it seems the meeting was actually disturbed from the floor when someone noticed she was filming. I have to admit of course that I cannot visually see how Mrs. Thompson was acting, but the camera once presented seems steady, and I therefore conclude that she merely pointed

the phone's camera at the chamber and started recording. The only manner in which I can see this conduct might constitute disturbing what was after all supposed to be a public meeting would be if filming, photography or audio recording were actually prohibited by the standing orders – but this doesn't seem to be the case. Perhaps therefore you might be so kind as to explain the reasoning behind your apparent conclusion that it was Mrs Thompson who disrupted the meeting, by simply recording it, as opposed to the chair, who suspended it despite the fact that Mrs. Thompson was in total compliance with the standing orders?

I am aware that you have had previous altercations with Mrs. Thompson, and I know she clearly understood your view of filming, and clearly filmed anyway in defiance of it. However, your view of course is not law. I would remind you that in order to enact a ban on filming etc within the chamber, you would have [to] seek an alteration to the standing orders. The standing orders themselves make clear the course of events that must be followed in this regard. You are not even an elected member of the Council, so I find it hard to understand by what right you feel able to implement an arbitrary, informal ban on filming based on little other than your own personal wishes. Your position Sir, with respect, is to serve the Council - not the other way around.

One begins to wonder what perceived negative consequence of the filming of public meetings the Council is so afraid of. Surely it is in the interests of democracy that the people are able see the Council undertake it's business – and perhaps even engage with it as a result... My understanding is that recorded votes have become increasingly infrequent in recent times, and it is difficult therefore to understand how the electorate are expected to lend their informed support to a incumbent candidate if they have no access to how the member has voted on issues in the past. Filming would, of course, go some way (not all the way mind...) toward addressing that. If the Council were to arrange for the filming themselves, they could also avoid the potential issue of people only releasing edited videos – proper context could be ensured. [no text is omitted from this paragraph; this punctuation is in the original]

Next we come to the issue of honesty and integrity. The minutes for the meeting held on 8<sup>th</sup> June 2011 claim, as discussed, that Mrs. Thompson disrupted the meeting. As discussed above, and

in the absence of any contrary evidence from yourselves, this plainly was not the case. I understand that four Councillor's refused to accept the minutes as a fair and accurate record – but were voted down by the rest of the chamber. I find that absolutely astonishing, and the best reason by a country mile that arrangements should be made to film all your public meetings from now on. Whatever the underlying reason, it seems that the public cannot have faith in the minutes – and that is incredibly serious. It is clear to both myself and most other civic minded people that your Council is well overdue for sweeping reform.

Finally, I note that you have apparently informed Mrs. Thompson that an apology in the light of the Council's conduct is "Out of the question". That Sir, if I may, is an utterly disgraceful decision. Mrs. Thompson broke no law, infringed no regulation (please provide evidence if you wish to contest this) and yet had her liberty curtailed as a direct result of your ridiculous actions. An apology is the least she be offered – I'd give her the keys to the city – maybe even <shock> the keys to the public gallery!

The fact that you feel you can lock the public out of the public gallery unless they agree to your arbitrary restrictions I feel highlights quite well your contempt for the people who elected the Council that, I remind you once again, you do not actually sit on.

Sincerely,

Martin Milan

Ps This being a blog I have a comments facility. Anything you submit will be published in it's entirety, unedited."

237. The main relevance of this posting by Mr Milan is that Ms Michalos relied on it as the basis for a submission that Mr James' reply, which contains the words complained of, includes much that she submits was irrelevant, and thus (she submits) outside the scope of a defence of qualified privilege, and in breach of the Council's duties as a public authority under the Human Rights Act. Mr Milan gave evidence, but he is not a party to the action. He was therefore not challenged on what he said, but was asked about his communications with Mrs Thompson, and other matters which are relevant to the case of Mrs Thompson. I received no submissions as to whether what Mr Milan wrote was justified or not, or good in law or not, and I make no comments on that myself. Such matters are irrelevant to what I have to decide.

238. On the same day, 21 July 2011, Mrs Thompson posted on her own blog a link to Mr Milan's open as follows:

“Questions for Mark James from another Blogger - #DaftArrest

Yet again I am indebted to others for taking the time and interest to directly question the actions of Carmarthenshire County Council on 8 June with regards to the #daftarrest. Please have a look at this open letter to the Chief Executive, Mark James written by blogger @mjmilan. I hope that Mark James has a good read too and has the decency to respond.”

239. On 24 July 2011 Mrs Thompson sent a letter to **all Councillors**. She invited them to look at the video recording which she had filmed on 8 June, which she said showed that it was not herself who interrupted or disrupted the meeting. She claimed that it showed that “it is the unelected Chief Executive who controlled the entire meeting and abused his position”. She asked for an apology. She said she expected Councillors to insist that Mr James seriously considers his position. She asked that she and other members of the public should be allowed to quietly film or record public meetings.
240. On 22 July Mr James prepared a response to Mr Milan's “open letter”, which he circulated in draft to Mr Bowen, Mr Thomas and Ms Williams, the Council's press officer for their comments. Mr Thomas and another official suggested changes which were incorporated into the published version.

#### THE WORDS MRS THOMPSON COMPLAINS OF

241. The words Mrs Thompson complains of were first sent in an email on 28 July timed at 13:02 addressed to Mr Milan. At 13:32 Mr James sent a copy to Councillors with the explanation as follows:

“You may have received a letter from Mrs Jacqui Thompson, furthering her continued campaign against the Council. Members have asked that a response be sent to Mrs Thompson. Please find attached a copy of the response which was sent to a blog site supporting Mrs Thompson. This sets out the Council's position succinctly.”

242. At 13:37 Mr Milan replied to Mr James asking if Mr James would be happy for the response to be published on the blog. He wrote:

“You make a number of claims in your text that I expect Mrs Thompson will likely contest, so am sure you will appreciate why

I want to check... I will hold off on publishing it until the week-end unless I hear from you.”

243. At 13:58 Mr James replied through his personal assistant that Mr James was happy for it to appear on Mr Milan’s blog. Mr Milan uploaded it promptly.

244. At 15:16 Mrs Thompson added her posting to Mr Milan’s blog. She wrote:

“I am pleased that Mr James has had the courtesy to respond. However, I strongly disagree with his comments and allegations and shall respond fully in due course.”

245. Mrs Thompson did not at that stage raise any objection to the continued publication of Mr James’s letter on Mr Milan’s website. In November she did object and asked Mr Milan to remove it, which he did. Mr Milan gave evidence that if she had asked him to remove it on 28 July he would have done so. At 19:31 Mr Milan made his own response and that is not relevant to anything I have to decide.

246. The words Mrs Thompson complains of read as follows (the paragraph numbering is added):

“(1) I am pleased to reply to your request that I respond to your open letter in order to place on record the Council’s position and to clarify some inaccuracies and misconceptions. It is useful to provide a little context before turning to the issue of filming on Council premises.

(2) Mrs Thompson and her family are well known to the Council and their actions have required Police involvement on more than one occasion. They have been running a campaign of harassment, intimidation and defamation of Council staff and members for some considerable time. This is since the Council’s Planning Committee repeatedly turned down their planning applications to develop their land at Cae Brwyn near Llanwrda for housing. I do not intend to go into the detail of those applications or planning law but the decisions are a matter of public record including the dismissal of an appeal by the Thompsons to the Welsh Government in 2008.

(3) The Thompsons have chosen to personalise the matter, targeting officers and members in a continued campaign. They have in the past refused to leave Council buildings and threatened to go around to officers houses, causing the Police to have to be called.

(4) Mrs Thompson of course runs a “blog” site where, I am told, she makes scurrilous, inaccurate and misleading comments about the Council and its staff. She is quite at liberty to do so and, if people choose to believe what is on her site, that is a matter for them.

(5) However, where she defames an individual, that is different. Normally officers try to ignore or “turn the other cheek” to such comments. Given the behaviour of Mrs Thompson, one officer chose not to do so and began legal proceedings for defamation. The Thomps- sons were forced to make a public apology and pay that officer’s costs.

(6) The latest manifestation of the Thompson campaign has been the filming on Council premises of meetings. I am informed that clips are then posted on her site, together with a running commentary of invective by Mrs Thompson.

(7) Mrs Thompson is well aware that, like every other Council in Wales, Carmarthenshire does not permit individuals to film in its buildings. She has been informed of this on numerous occasions in writing, which of course she has chosen to ignore as it does not suit her campaign. On a number of occasions at Planning Committees and at Council meetings, the Chairmen have asked Mrs Thomps- ons to stop filming. She initially, albeit reluctantly desisted.

(8) On 13<sup>th</sup> of April she was again observed filming and an officer went up to the public gallery and asked her to stop, which she did. However, she then made a complaint to the Police that the officer had assaulted her and attempted to steal her camera. There were many who witnessed the event and stated that was untrue. The Police investigated and quickly concluded that there was no case to answer. The Council would have made a formal complaint of a deliberate attempt to “pervert the course of justice” to the Police by making false statements, but the officer concerned, like many others, did not want to make a fuss and the Council respects that.

(9) Turning now to the incident on 8 June. Mrs Thompson was again observed by a Councillor filming from the public gallery and the matter was drawn to the attention of the Chairman. The Chairman asked that she stop, but she began arguing with him and was defying his ruling. He therefore adjourned the meeting and asked that she be removed from the gallery in order that business could proceed.

(10) Given the previous occasion, the Council was concerned to ask a member of staff to approach Mrs Thompson, so the Police were

called. They dealt with the matter. I gather Mrs Thompson remonstrated with them and she was arrested. That of course is a matter entirely for the Police.

(11) Finally, I turn to the matter of filming generally. No Welsh Council permits individuals to just film their meetings. Personally, I am agnostic as to whether the public should be able to film or record Council meetings. However, it is a matter for our elected representatives to determine and their practice at the moment is that it is not permitted. They have taken the view that the practice should not suddenly be abandoned at the behest of one campaigner with an agenda. I suspect Mrs Thompson's actions and intimidation have simply hardened their resolve. They have however, posed the question whether the Council ought to film and video stream its own proceedings online. To this end, they have asked a group of Councillors who are already looking at e-government, generally, to look into what could be involved and report back."

247. In her posting dated 29 July 2011 Mrs Thompson wrote:

"Mark James - on the Road to Self Destruction?"...

As a campaigner for free speech I respect Mr James' right to express his opinion but I am troubled that he has decided to smear my entire family. I can take criticism, I would not write a blog if I couldn't, and I can understand that Mr James is a little peeved at recent criticism directed against his council from other quarters. But this time he has gone a step too far, he has not only made a series of false allegations about me, but has also decided to include my family in his defamatory statement.

248. On 14 November 2011 Mrs Thompson issued her claim form. No other member of her family has sued. Mr James's letter containing the words complained of was removed the next day from Mr Milan's blog.

249. On 23 January 2012, at a meeting of the Executive Board of the Council, the Executive Board considered a report recommending the granting of an indemnity to Mr James to defend these proceedings and unanimously resolved "that the indemnity be granted due to the exceptional circumstances involved".

## THE PLEADINGS

### *The amended Particulars of Claim*

250. Mrs Thompson pleads that the words complained of meant and were understood to mean:
- “4.1 That [she] has conducted and continues to conduct an unlawful and vindictive campaign of harassment, intimidation and defamation against Council staff and Council members, which has included targeting individual staff and Council members.
  - 4.2 That, in pursuit of this campaign, she has flagrantly and repeatedly breached a lawful Council prohibition against filming Council meetings.
  - 4.3 That she committed the crime of attempting to pervert the course of justice by deliberately making false statements to the police about the conduct of a Council officer.”
251. She also makes a claim for aggravated damages. She claims that Mr James intended to discredit and intimidate her.
252. By amendment Mrs Thompson has added a claim under the Human Rights Act s.6 for breach of her rights under Article 8(1) (the right to respect a private life). She pleads that Mr James made the publications complained of in circumstances when he knew or ought to have known that each of the meanings which she attributes to the words complained of was untrue and/or that publication in the manner aforesaid was not necessary in a democratic society within the meaning of Art 8(2). She complains that instead of removing the words complained of he sought to defend and justify them.
253. In so far as this plea includes an allegation that Mr James knew that what he published was untrue, it cannot succeed for the reasons given in my judgments in which I set out the reasons why I struck out the plea of malice, first in respect of the defence of honest comment and secondly in respect of qualified privilege.
254. The Defence and Counterclaim under CPR Part 20 were served on 24 January 2012. There is an issue as to meaning of the five postings by Mrs Thompson. I shall discuss these below. The substantive defences raised by Mr James and the Council are justification (truth), honest opinion and qualified privilege.
255. Mr James and the Council set out meanings of the words of which Mrs Thompson complains, and which they seek to prove to be true, as follows:

- “5.1 [Mrs Thompson] has conducted and continues to conduct a campaign of harassment, intimidation and defamation against staff and members of the Second Defendant;
- 5.2 [Mrs Thompson] uses her blog site to make scurrilous, inaccurate and misleading allegations about the Second Defendant and its staff and members;
- 5.3 [Mrs Thompson] repeatedly disregarded requests from the defendants not to film Council meetings;
- 5.4 [Mrs Thompson] is guilty of making a knowingly false complaint to the Police that she had been assaulted by an officer of the Second Defendant who attempted to steal her mobile phone.”

256. They also plead in the alternative that they will defend as true the meanings attributed to the words complained of by Mrs Thompson herself.

257. They further plead that, if they are comment or opinion, the words complained of were Mr James’s honest opinion on the matter of public interest:

“7.1 The actions of [Mrs Thompson] towards the [Council], its staff and members amount to a personalised campaign of harassment, intimidation and defamation against staff and members of the [Council] and/or

7.2 [Mrs Thompson] posts on her website scurrilous, inaccurate and misleading comments about the second defendant and its staff and members.”

258. The particulars in support of the pleas, of both justification and honest comment, referred to the matters which I have re-counted above, and in respect of which I have now made findings of fact.

259. As to the legal basis for the prohibition on filming the defendants rely on the Local Government Act 1972 section 100A (Admission to meetings of principal councils) as amended which provides as follows:

“(1) A meeting of a principal council shall be open to the public ....

(7) Nothing in this section shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any

proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

(8) This section is without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting.”

260. The basis of the qualified privilege defence relied by Mr James and the Council is set out as follows:

“9.7 In the circumstances the Defendants and each of them

9.7.1 Have a moral and/or social duty and/or it was their legitimate interest to publish the words complained of and readers had a corresponding and legitimate interest in receiving the information; and/or

9.7.2 Were entitled to reply to the attacks levelled at them and did so reasonably and proportionately; and/or

9.7.3 Behaved responsibly in preparing and publishing the words complained of which were in the public interest and therefore had a moral and/or social duty and/or it was their proper and legitimate interest to publish the words complained of to the public at large and the public at large had a corresponding and legitimate interest in receiving the information.

10. Further and/or alternatively ... [Mr James] is in an existing and established relationship with elected members of the [Council]. Each elected member had a common and corresponding interest in knowing what had been written by [Mr James] who also had a legitimate interest and/or legal, moral and social duty to inform them of what he had written. ...”

261. In the Part 20 counterclaim the words complained of are set out below.

262. As to the Part 20 claim, Mrs Thompson pleads that that is unlawful or an abuse of process. Her case is that Mr James was acting in his capacity as Chief Executive of a public authority and that the counterclaim is a breach of the Council’s obligations under s.6 of the Human Rights Act to act in a way which is compatible with the requirements of Article 10 (freedom of expression). Thirdly, she submits that the indemnity granted to Mr James is unlawful.

263. She further pleads the more conventional defences that the words complained of in the Part 20 claim are not defamatory, alternatively that they are honest comment.
264. Mrs Thompson does not claim that the words that Mr James complains of are true in the meanings which Mr James attribute to them, if that is the meaning the court finds them to bear.
265. In the Rejoinder to the Reply and in the amended Reply to the Defence to the Part 20 claim Mr James pleads that Mrs Thompson was motivated by malice, in the sense that she knew that what she wrote was untrue.

## APPLICABLE LAW OF LIBEL

### *Meaning*

266. The definition of defamatory commonly used is that given by Sir Thomas Bingham, MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 286 where he said:

"A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally."

267. But in some cases it may be necessary to consider whether the words complained of satisfy a requirement of seriousness. For this purpose I would repeat the definition I preferred in *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985; [2010] EWHC 1414 (QB):

"the publication of which he complains may be defamatory of him because it [substantially] affects in an adverse manner the attitude of other people towards him, or has a tendency so to do."

268. It is common ground that the test to be applied by the court in determining meaning at trial is to be derived from the guidance given in *Skuse v Granada Television*, summarised most recently by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paragraph 14:

"The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and

should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. ..."

269. Principle (5) in *Jeynes* is derived from *Charleston v News Group Ltd* [1995] 2 AC 65 at p70D-71A where Lord Bridge said:

"There is a long and unbroken line of authority the effect of which is accurately summarised in *Duncan & Neill on Defamation*, 2nd ed. (1983), p. 13, para. 4.11 as follows:

"In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage."

The locus classicus is a passage from the judgment of Alderson B. in *Chalmers v. Payne* (1835) 2 C.M.& R.156, 159, who said:

"But the question here is, whether the matter be slanderous or not, which is a question for the jury; who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiff's character. In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together."

This passage has been so often quoted that it has become almost conventional jargon among libel lawyers to speak of the bane and the antidote. It is often a debatable question which the jury must resolve whether the antidote is effective to neutralise the bane and in determining this question the jury may certainly consider the mode of publication and the relative prominence given to different parts of it. I can well envisage also that questions might arise in some circumstances as to whether different items of published material relating to the same subject matter were sufficiently closely connected as to be regarded as a single publication. "

270. Words must always be interpreted in their context, and blogs or bulletin boards are a context which may give rise to a different interpretation which was explained by Eady J in *Smith v ADVFN Plc* [2008] EWHC 1797 (QB) as follows:

"13. It is necessary to have well in mind the nature of bulletin board communications, which are a relatively recent development. This is central to a proper consideration of all the matters now before the court.

14. This has been explained in the material before me and is, in any event, nowadays a matter of general knowledge. Particular characteristics which I should have in mind are that they are read by relatively few people, most of whom will share an interest in the subject-matter; they are rather like contributions to a casual conversation (the analogy sometimes being drawn with people chatting in a bar) which people simply note before moving on; they are often uninhibited, casual and ill thought out; those who participate know this and expect a certain amount of repartee or "give and take". ..

16. When considered in the context of defamation law, therefore, communications of this kind are much more akin to slanders (this cause of action being nowadays relatively rare) than to the usual, more permanent kind of communications found in libel actions. People do not often take a "thread" and go through it as a whole like a newspaper article. They tend to read the remarks, make their own contributions if they feel inclined, and think no more about it.

17. It is this analogy with slander which led me in my ruling of 12 May to refer to "mere vulgar abuse", which used to be discussed quite often in the heyday of slander actions. It is not so much a defence that is unique to slander as an aspect of interpreting the meaning of words. From the context of casual conversations, one can often tell that a remark is not to be taken literally or seriously and is rather to be construed merely as abuse. That is less common in the case of more permanent written communication, although it is by no means unknown. But in the case of a bulletin board thread it is often obvious to casual observers that people are just saying the first thing that comes into their heads and reacting in the heat of the moment. The remarks are often not intended, or to be taken, as serious. A number of examples will emerge in the course of my judgment."

### *Justification or truth*

271. In relation to the defence of justification or truth, what a defendant has to prove (and the burden is on the defendant) is that the words complained of are substantially true. Further, the Defamation Act 1952 s.5 provides:

“In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”

### *Qualified privilege*

272. There are three types of qualified privilege that are relevant to this case. First, in so far as the publication complained of was to the public at large, Mr James and the Council rely on *Reynolds* privilege (*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127). That is a public interest defence which protects communications to the public at large on matters of genuine public interest and the person making the publication has behaved responsibly (this defence was originally formulated in a case where the defendant was a newspaper, but it applies to anyone, including individuals who are not reporting, but speaking from their own knowledge).

273. Second, they rely on the common law privilege which protects a reply to an attack.

274. Third, in so far as the publication complained of was to the elected Councillors they rely on the common law privilege which protects a communication made where the maker has a duty or interest in making it, and the publishee has a common and corresponding interest in receiving it (*Adam v Ward* [1917] AC 309).

### *Honest comment or opinion*

275. The elements of the defence of honest opinion were authoritatively set out in the judgment of the Supreme Court in *Spiller v Joseph* [2010] UKSC 53; [2011] 1 AC 852 at paras [3], [4], and [105], [108] as follows:

"[3] ... [i] ... First, the comment must be on a matter of public interest. ....

[ii] Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the

distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of *Myerson v. Smith's Weekly* (1923) 24 SR (NSW) 20, 26:

'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment.'

[iii] Third, the comment must be based on facts which are true .... If the facts on which the comment purports to be founded are not proved to be true ..., the defence of fair comment is not available.

[iv] [Next the comment must explicitly or implicitly indicate, at least in general terms, the facts on which it is based].

[v] Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views: see Lord Porter in *Turner v Metro-Goldwyn-Mayer Pictures Ltd* [1950] 1 All ER 449, 461, commenting on an observation of Lord Esher MR in *Merivale v Carson* (1888) 20 QBD 275, 281. It must be germane to the subject-matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism: see Jordan CJ in *Gardiner v Fairfax* (1942) 42 SR (NSW) 171, 174.

These are the outer limits of the defence. The burden of establishing that a comment falls within these limits, and hence within the scope of the defence, lies upon the defendant who wishes to rely upon the defence.

[4] ... A defendant is not entitled to rely on the defence of fair comment if the comment was made maliciously...

“[5] ... A defamatory comment about a person will almost always be based, either expressly or inferentially, on conduct on the part of that person. Judges and commentators have, however, treated a comment that does not identify the conduct on which it is based as if it were a statement of fact. For such a comment the

defence of fair comment does not run. The defendant must justify his comment. To do this he must prove the existence of facts which justify the comment.

[108]. ... If *Cheng* [2001] EMLR 777 is accepted as correctly setting out the test of malice, the scope of malice has been significantly narrowed. The fact that the defendant may have been motivated by spite or ill-will is no longer material. The only issue is whether he believed that his comment was justified. In practice this issue is seldom likely to be explored, for the burden is on the claimant and how can he set about proving that the defendant did not believe what he said? ".

#### DETERMINATION OF MEANING ON THE CLAIM

276. The words complained of, and the meanings attributed to them by the parties, are set out above. In my judgment the words complained of by Mrs Thompson bear the meanings which she attributes to them in paras 4.1 and 4.3 of her Amended Particulars of Claim, namely:

“4.1 That [she] has conducted and continues to conduct an unlawful and vindictive campaign of harassment, intimidation and defamation against Council staff and Council members, which has included targeting individual staff and Council members (“the first meaning”).

and

4.3 That she committed the crime of attempting to pervert the course of justice by deliberately making false statements to the Police about the conduct of a Council officer (“the second meaning”).”

277. I also find that the words she complains of bear a third meaning, namely that on one occasion she breached a lawful prohibition on filming and defied a ruling from the Chair requiring her to stop to the extent that the meeting was adjourned for her to be removed before business could proceed (“the third meaning”).

278. Finally, I find that the words she complains of bear a fourth meaning, namely that on a number of occasions she has breached a lawful Council prohibition against filming Council meetings, but stopped when asked to do so (“the fourth meaning”).

279. I find that these meanings are all statements of fact, and are not opinion, save for the word “vindictive”, which is comment or opinion.

280. The first and second meanings (those in paras 4.1 and 4.3 of the Amended Particulars of claim) are plainly defamatory. But Mr Speker submits that there is no defamatory meaning relating to the filming, or, or that any such meaning is not sufficiently serious to pass the threshold which is required.
281. Ms Michalos submits that it is obvious that an allegation of wilful disregard of a Council prohibition is defamatory.
282. In my judgment the fourth meaning is not defamatory. Whether or not right thinking members of society agree with a protester, they recognise that a degree of civil disobedience is acceptable in a plural and democratic society, and they would not think the worse of a person who is alleged to have protested in the way that is alleged in this meaning.
283. The third meaning is more difficult. But I do not have to reach a decision upon it, and prefer not to do so. This is because on any view, if the defence of justification succeeds in relation to one or other or both of the first two meanings, if this meaning is defamatory and if it is also not proved to be true, it would not materially injure Mrs Thompson's reputation.
284. For the avoidance of doubt I make clear that if I had found that the meaning was that she breached an unlawful prohibition on filming and defied a ruling from the Chair requiring her to stop, to the extent that the meeting was adjourned for her to be removed before business could proceed, then I would have held that meaning was not defamatory. No right thinking member of society should think the worse of someone for standing up to unlawful action by a public authority.

#### TRUTH OR JUSTIFICATION

285. There is no dispute that the two meanings which I have found the words complained of to bear are distinct charges against Mrs Thompson, and the fourth meaning would be distinct, if it were a defamatory meaning. I have already remarked that if the first two meanings are proved to be true, it would not materially injure Mrs Thompson's reputation if I also found that the third meaning was defamatory, but not proved to be true. That is one reason that I do not have to decide whether the ban on filming was lawful or not.
286. There is a further reason why I should not decide whether the ban on filming was lawful or not. The parties have not put before the court all the material that the court ought to have to decide that issue. It is an important issue of public law, of a kind which might best be determined in an application for judicial review of the Council's decision. Filming of public proceedings in Parliament and the Supreme Court (under certain conditions) has been lawful for some time, and the extension to other kinds of proceedings is widely regarded as in principle desirable. But it is

also recognised that where filming is permitted, there may be restrictions that are necessary and proportionate. Some of these considerations are referred to in the letter to English Councils sent by Mr Pickles Department (these considerations include the rights under the Data Protection Act 1998 of individuals filmed). There may need to be some means of exercising legal control of the use to which any film is put.

287. Moreover, Mr James stated that the Council was considering the ban, and there may be issues as to whether a ban for a limited period may be lawful, even if a long term ban might not.
288. I have not heard the evidence that I would expect to be placed before the court if issues such as these are to be fully considered. Unless it was necessary for me to decide the question in the course of this libel action, I would regard it as undesirable that I should decide it. It is a decision that should be decided on proper consideration of all relevant material.
289. I have already found that the Defendants have proved that Mrs Thompson deliberately made false statements to the Police about the conduct of a Council officer, and I find that she committed the offence of attempting to pervert the course of justice. The second meaning has been proved to be true.
290. I therefore turn to consider whether the Defendants have proved that Mrs Thompson had conducted and continued to conduct an unlawful and vindictive campaign of harassment, intimidation and defamation against Council staff and Council members, which has included targeting individual staff and Council members.
291. As both counsel have pointed out, the term ‘harassment’ has a legal meaning, which is defined in the Protection from Harassment Act 1997 (“the 1997 Act”). But the hypothetical reasonable reader of the words Mrs Thompson complains of is not a lawyer. The readers of Mr James’s letter were those who follow Mr Milan’s blog, and the Councillors to whom Mr James circulated the letter. The reasonable Councillor is a person who has more than ordinary experience of public affairs, by reason of his or her office, but is not a lawyer. The reasonable reader of Mr Milan’s blog is in my judgment a person with some interest and knowledge of public affairs, for otherwise he or she would not bother to read Mr James’s long text, but equally not a lawyer.
292. I have no hesitation in finding that a reasonable officer in the positions of Mr Bowen and Mr James would feel distressed and intimidated (as in fact they did) at being the subject of persistent allegations of misconduct, corruption, lying, perjury, misuse of public funds, in circumstances where those allegations were made without reference to any, or any credible, evidence. Mr Bowen was shocked when he read what Mrs Thompson had been saying about his lying and committing perjury

in denying that he had paid for his libel action without an indemnity from the Council. This is not a case of a serious allegation being made with supporting evidence. The only purported evidence that Mrs Thompson has ever referred to is the HMCS letter of 31 July 2007, and for reasons explained by Flaux J, and as confirmed by the Welsh Audit Office and the Council officers who wrote to Mrs Thompson, that document is not evidence supporting any of the foregoing allegations.

293. A reasonable officer in the position of Mr Davies would, I find, feel distressed and intimidated (as in fact he did) at being the subject of a fabricated allegations of assault and attempted theft.
294. I find that Mrs Thompson was conducting a campaign against Mr Bowen and Mr James, and for that matter against Mr Thomas who repeatedly wrote to Mrs Thompson to say that the Council had not paid out money in respect of Mr Bowen's libel action. She alleged that all of these were lying and that Mr Thomas was one of those who committed perjury, in that it was his letter which Flaux J found to be a true statement.
295. I find that Mrs Thompson's campaign was vindictive. It was in revenge for the refusal of those planning applications, whether of Eddie Thompson or of herself and Mr Thompson, about which Mrs Thompson wrote so many letters and made so many postings on her blog. There is no plausible explanation for her campaign other than revenge.
296. Ms Michalos submitted that:
- “The issue for the Court is whether this is a genuine and good faith blog that contributes to public debate about local politics and Council issue or whether it is an ongoing act of harassment, intimidation or defamation”.
297. Having regard to that submission, I make clear that what I have found to be the vindictive campaign is not that she wrote a blog which was uniformly critical of the Councillors and officers of the Council (Mr James expressly accepted her right to do that in para (4) of the words Mrs Thompson complains of). What I have found to be the vindictive campaign is that she included in her blog the specific allegations of corruption etc that I have referred to. It is no answer to an allegation of harassment by specific writings posted on a blog that many or most of the other matters posted on the blog are not harassment. So, in *Thomas v News Group* [2001] EWCA Civ 1233; [2002] EMLR 78 it would have been no answer to Ms Thomas's complaint of harassment against News Group Newspapers Ltd that *The Sun* was a national newspaper, and that the great majority of what it published did not relate to, or harass, Ms Thomas.

298. The dichotomy suggested by Ms Michalos is a false one. The blog could be both a contribution to public debate in respect of some of its content, and an ongoing act of harassment etc in relation to other parts of its content. I am only concerned with whether or not it includes the latter, as I find it does.
299. I also find that the campaign was a campaign of libel (that is defamation which is unlawful). Mrs Thompson did not, when sued by Mr Bowen, attempt to prove that the allegation of corruption she made against him was true. She has never attempted to prove in court that Mr Bowen was corrupt. A defamatory publication for which there is no defence is unlawful. She accepts that she cannot prove that. She accepted during the trial that the HMCS letter bearing the Council's stamps does not prove that the Council made any payment in respect of Mr Bowen's libel action, and does not prove that he or Mr James, or anyone else lied or committed perjury.
300. Mrs Thompson submits that certain matters in Mr James' letter are not true. She submits it is not true (as stated in para (2) of the letter) that "Mrs Thompson and her family are well known to the Council and their actions have required Police involvement on more than one occasion". She submits that none of the actions of her family in which the police were involved in 2005 and 28 February 2006 (as described above) amounted to harassment, and that even if they did amount to harassment, she was not a party to them: on the contrary, it was she who called the police on 28 February 2006.
301. As to Mrs Thompson's involvement in those matters, I accept that she was not involved in the actions to which Mr James objected. But my finding that she has been engaged in a vindictive campaign of harassment is not affected by this. The statement that she was involved in the matters cannot affect her reputation, having regard to what I have found she was involved in.
302. It is not relevant to this action whether or not what Mr James wrote was true in so far as what he wrote was about members of the Thompson family other than Mrs Thompson. This is because none of them have sued for libel. So I make no finding that the incidents when Mrs Thompson called the police and the 2005 sit-in by the two Mr Thompson amounted to harassment by either Mr Thompson or Eddie Thompson. But I recall that all the letters which Mrs Thompson wrote alleging corruption were also signed by Mr Thompson, and some by Eddie Thompson. So nothing in this judgment should be taken as a finding by me that either Mr Thompson or Eddie Thompson was not party to a campaign of harassment.
303. Mrs Thompson also submits that paras (6) to (10) of Mr James' letter is also untrue ("The latest manifestation of the Thompson campaign has been the filming on Council premises of meetings..."). She does not dispute the filming. She submits

that the filming was not part of a campaign of harassment, but a protest she was entitled to make.

304. I would accept that, if all that Mr James had alleged was that she filmed in breach of a Council ban, and that on one occasion she defied a ruling by the Chair, who adjourned the meeting, then it would not be true to say that that conduct was a manifestation of a campaign of harassment, intimidation or defamation of Council staff or members. But that is not all that Mr James alleged. He also alleged that on one of the occasions on which she filmed and was asked to stop she made a false statement to the police alleging that the officer who asked her to stop filming in an attempt to pervert the course of justice. In my judgment the combination of the filming and the attempt to pervert the course of justice by making a false complaint against the Council officer, Mr Davies, were part of her campaign of harassment, intimidation and defamation. I recall that the allegation of assault and attempted theft remain accessible to the public on her blog to this day (notwithstanding that she admits that there was no attempted theft).
305. So it is not the filming which I find to be part of her campaign of harassment and intimidation: what I find to be part of her campaign is her making the false allegation of assault and attempted theft against Mr Davies when he asked her to stop filming.
306. Ms Michalos submitted that, although the hypothetical reader would not be a lawyer, I should be guided by the approach under the 1997 Act. She gave two reasons. First, the word harassment in the 1997 Act is interpreted as it is generally understood. Second, harassment must not be given an interpretation which is inconsistent with the right to freedom of expression See *Thomas v News Group Newspaper Ltd* paras [30] and [52].
307. I accept these submissions. The right to freedom of expression is the same for everyone, and that includes bloggers, as well as professional journalists and news publishers. The law is the same for everyone. But what is significant for the purposes of the law of freedom of expression is, not the profession or status of the person making the publication, but the nature and content of the publication: *Commissioner of Police of the Metropolis v Times Newspapers Ltd* [2011] EWHC 2705 (QB) at paras [127] to [133]. Nevertheless, I find that her campaign was targeted against Mr James, Mr Bowen and other Council officers and that it was unlawful under the Protection from Harassment Act 1997. It was a course of conduct which she ought to have known, and did know, involved harassment.
308. Freedom of expression is not freedom to state matters which the speaker knows to be false and by which she intends to injure another person. That has always been the common law, and it is expressed in Art 10(2) (“the rights of others”). That should be so obvious as not to need stating. But Mrs Thompson’s case has

throughout been presented on the basis that, in making her unsupported allegations of corruption, perjury and the like, she was exercising her right to freedom of expression.

309. Ms Michalos submits that Mrs Thompson had a genuine and reasonable perception that the planning department was not dealing with her case fairly. I do not accept that her perception was reasonable, but even if it were true that she had a genuine and reasonable perception of unfairness, that would not justify her making allegations of corruption.
310. She also submitted that there was no evidence that anyone felt intimidated. That was in her skeleton argument. However, Mr Bowen had himself complained of harassment in his letter before action on 2 November 2006, and he gave evidence of his distress at the trial. At the trial Mr James gave evidence of Councillors and officers of the Council expressing their distress to him. That was one reason why he wrote the letter of 28 July 2011.
311. Although Mrs Thompson has persistently claimed she was not aggrieved (eg on 13 October 2006), I find that she did genuinely feel aggrieved by the unfavourable planning decisions, when she considered they should have been granted. But I do not accept that she genuinely believed the allegations she made against Mr Bowen that he was guilty of gross incompetence and lying, which she started to make on 1 March 2006, that he held a personal grudge (6 March 2006), abused his position and was corrupt (13 October 2006), and had committed perjury (24 October 2008).
312. Ms Michalos also relied on the words of Flaux J on 22 September 2008 (“the point which seemed to me to have considerable force”) as justifying Mrs Thompson in her belief that the Council had funded Mr Bowen’s action. I accept that those words provide some help to Mrs Thompson, but only for the period between when she first received that document and 22 September 2008. The first reference to the HMCS letter of 31 July 2007 was, as I understand it, in Mrs Thompson’s letter of 28 April 2008 (“the compelling evidence that Council resources were used to instigate and maintain the legal action”). The first explicit reference to the HMCS letter was in the application which came to be heard on 22 September 2008, when Mr Thompson told the judge that he had received the document “about three months ago”. But on that occasion Flaux J made other statements that undermined Mrs Thompson’s case. He said of the letter: “it does not demonstrate that [the Council] were paying for the litigation”, and he found as a fact that the Council was not paying for it.
313. Ms Michalos submitted that the words of Flaux J which were helpful to her (taken in isolation from his findings which were against her), together with the remarks of the bailiff, and support she had from one Councillor, “are enough for a reasonable

person to remain of the view that there was something highly suspicious about the existence of the stamped document and the Council's inability to explain it".

314. However, grounds for being suspicious do not advance Mrs Thompson's case. If all she had alleged was that the HMCS letter was a ground for suspicion that may have been a different matter. What she alleged was that it was conclusive proof of lying and, after she rejected the finding of Flaux J to the contrary, of perjury.
315. For the avoidance of doubt I add that I have not been asked to consider whether what Mrs Thompson did was unlawful on any other legal basis. Pressure put upon a litigant to deter him from pursuing a legal right, or to punish him for having pursued a legal right, can be a contempt of court. It has not been suggested in this action that Mrs Thompson's campaign was unlawful on that basis.

#### QUALIFIED PRIVILEGE and HUMAN RIGHTS ACT 1998 s.6 and Art 8

316. The Defendants rely on three heads of qualified privilege referred to above.
317. Since I have found the defence of justification or truth to have been proved, it follows that the Defendants do not need a defence of qualified privilege. But the submission as to the HRA is not only relied on to defeat the defence of qualified privilege. Mrs Thompson included it by amendment in her Particulars of Claim as a freestanding and alternative cause of action.
318. The submissions that Mr James acted in breach of the HRA s.6 and Art 8, and that there is no defence of qualified privilege are linked. It is the alleged breach of the HRA which Ms Michalos submits precludes there being the duty necessary for a defence of qualified privilege (*Clift v Slough Borough Council* [2011] 1 WLR 1774).
319. The gist of Ms Michalos's submission is that as a public authority the Council should only publish information about individuals for the purposes of, and to the extent necessary and proportionate for, the performance of its public duties, and subject to the rights of individuals, as guaranteed by Art 8. This is not controversial.
320. Art 8 (Right to respect for private and family life) provides:
- "1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ..., public safety ..., for the prevention of disorder or crime, for the

protection of health or morals, or for the protection of the rights and freedoms of others. "

321. However, in my judgment Mrs Thompson's Art 8 rights were not interfered with unlawfully on the occasion when Mr James wrote the words complained of. She herself had entered the arena of public debate when she published her complaints about the Planning Department and other officers of the Council to the public at large, and when she informed the public that she would stand for election. Mr James wrote about the public behaviour of Mrs Thompson, not about matters affecting only her private life. It is true that the allegations against her made by Mr James are very serious, and impugned her reputation, but for reasons given below, there was no unlawful interference with her private life.
322. Next Ms Michalos invites the court to look closely at the Open Letter posted by Mr Milan, and to take the contents of that letter, in particular the questions Mr Milan asked about the ban on filming, as defining the limits of any permissible response to it.
323. In my judgment this is the first fallacy in the argument. What the Defendants were entitled to do, in accordance with the HRA, cannot be determined by any agenda set by Mr Milan. It must be determined having regard to all the circumstances of the case. The circumstances included, as Mr James had been informed, that Mrs Thompson's blog included the allegations that she had complained to the police of assault and attempted theft.
324. But even if Ms Michalos were right in her submission up to this point, it would not assist her. The Open Letter of Mr Milan, and the posting by Mrs Thompson, are both under the heading "Daft Arrest". Mr Milan's Open Letter complained that Mrs Thompson "broke no law ... and yet had her liberty curtailed as a direct result of your actions".
325. In my judgment the Council and Mr James had a sufficient interest in explaining why the police had been called, and in defending the actions of the Council, its Members and officers which had been publicly called into question. In *Alexander v Arts Council of Wales* (unreported 20<sup>th</sup> July 2000, but cited, unchallenged, in the claimant's appeal on another issue in that case at [\[2001\] 1 WLR 1840](#), paragraph [17]) Eady J held that a representative of the Arts Council of Wales had been protected by qualified privilege in making statements at a press conference held to explain the Council's refusal of a particular application for arts funding, and after the Council's decision had been attacked in the press by the applicant. See also *Clift* at para [33].
326. Mr James did that in para (10) of the words Mrs Thompson complains of. It was because there had been a "previous occasion" when, as he explained in para (8),

she had made a false allegation against a Council officer, and because that previous occasion was itself part of a campaign of harassment, intimidation and defamation against officers of the Council. It was that history which explained why the police had been called: “Given the previous occasion the Council was concerned to ask a member of staff to approach Mrs Thompson”.

327. In my judgment the Council was pursuing a legitimate aim in explaining to the public at large actions which had been publicly called into question. Mr James did that, and in my judgment what he did was no more than was necessary and proportionate. He published his response no more widely than Mrs Thompson had herself published her own false version of events. Mrs Thompson had conducted her campaign of harassment etc as publicly as she could, at first copying her letters and e-mails to the press and numerous other people and, after she had started her blog, publishing her unfounded allegations to the world at large.
328. On a very similar basis Ms Michalos also submitted that the defence of qualified privilege should fail because Mr James had included irrelevant material in the letter of which Mrs Thompson complains. I reject that submission for the same reason. Nothing that Mr James said about Mrs Thompson in his letter was irrelevant. Further, as explained in *Horrocks v Lowe* [1975] AC 135, the allegedly irrelevant matters could not defeat the plea of qualified privilege absent a plea of malice. And I struck out the plea of malice for reasons set out in a judgment which I am handing down at the same time as this judgment.
329. Ms Michalos also submitted that Mr James did not act responsibly, and did not give Mrs Thompson an opportunity to comment on what he was about to publish. But what Mr James wrote, namely that she had been conducting a campaign of harassment etc, was what Mr James had been putting to her for years, without eliciting any credible explanation from Mrs Thompson. Nor was he in the position of a reporter or journalist writing about information communicated to him by others. He had direct knowledge of what he was writing about. And Mr James consulted two appropriately qualified colleagues whose suggestions were incorporated into his draft. I reject these criticisms of Mr James.
330. Further I accept the evidence of Mr James that he was under pressure from Councillors to respond to the attacks from Mrs Thompson and, ultimately, others including Mr Milan.
331. For these reasons I would conclude that, if the Defendants had not proved the truth of the words complained of, they would have had a good defence of qualified privilege on each of the bases advanced. And there has been no breach of the HRA s.6 on the part of the Defendants.

## PART 20 COUNTERCLAIM

332. There are five publications by Mrs Thompson about which Mr James complains. Four are very similar in that they all contain the words “slush fund”, and the fifth (the third in order of time) is quite different, where the most objectionable word is “Pinocchio”. Mrs Thompson’s first point in her Defence to these Part 20 claims is that they are an abuse of the process of the court. I address that submission below.
333. It is to be noted that Mr James does not claim damages for harassment, and his claims in libel are limited to these five publications. He does not make claims on any of the other allegations of corruption, perjury or lying.
334. In the case of all five postings Mrs Thompson accepts that they refer to Mr James. And it is not in dispute that the question whether or not a Council can or should give an indemnity to a Member or officer in respect of libel litigation is a matter of public interest. Further, the figures given by Mrs Thompson for the number of hits on each of her blogs have not been disputed by Mr James.

*(1) 28 February 2011*

335. On 28 February 2011 Mrs Thompson made a posting which includes the first of the publications upon which Mr James counterclaims against her for libel. She posted the following:
- “News on how other front line services will fair in this afternoon’s debate will soon emerge. I wonder if the Chief Executive will resign and save us all a few quid? Doubtful – he still has many ‘visions’ to fulfil. Will he do everything in his power to protect the ‘officers club’ slush fund? You bet he will. (See the column on right in red and here).”
336. Mr James attributes to this posting the meaning that he was determined to remain in post to ensure that the corrupt scheme he operated for the benefit of himself and other Council employees could continue. This is a natural and ordinary meaning, but in the alternative he pleads a true innuendo. In support of that he pleads that “slush fund” would be understood as slang for money used for illegal, illegitimate or corrupt purposes. He pleads a similar alternative true innuendo meaning in respect of each of the postings including the words “slush fund”.
337. As to the extent of publication, Mrs Thompson pleads that there were a total of 207 hits on this part of the blog, which she submits is likely to include hits from the parties and their legal representatives.
338. She refers in her pleading to the column of the blog on the right of this text (and to the right of each of the other postings of which Mr James complains), and to which the text above refers. It reads as follows:

“Mark James and the Council Slush Fund. Carmarthenshire County Council Chief Executive, Head of Law and Head of Resources now have delegated powers to commence and fund (with taxpayers’ money) libel proceedings against the public and the press on behalf of themselves and other officers. The Council, as a governing body has now enabled itself to bring and fund illegal libel actions under the cloak of a private claimant. This is the only Council in the UK to have granted themselves these powers. This is unlawful open to abuse, a threat to free speech and a grave misuse of taxpayers’ money. See many posts on this blog”.

339. She submits that the term “slush fund” (both here and in the three other postings Mr James complains of which contain this phrase) would thus be understood in a special sense. Mrs Thompson submits that the special sense is by reference to the Libel Costs Amendment of 15 May 2008, which she submits is contrary to the Indemnities for Members and Officers (Wales) 2006 Order, and to public policy. She denies that the words “slush fund” mean that money was used for illegal, illegitimate or corrupt purposes in any other sense.

340. She also pleads a defence of honest comment. The meaning she seeks to defend as honest comment is:

“while it remained to be seen how the budget debate would impact on public services, she felt sure that [Mr James] would do everything he could to ensure that the [Council]’s controversial amendment to its constitution, allowing it to use public money to fund libel claims by its officers and [Mr James] (what is dubbed in this pleading the Libel Costs Amendment), was not affected”.

341. CPR PD53 para 2.6 requires a defendant to a claim for libel to specify any defamatory meaning which she seeks to defend as honest comment. Mr Speker submits that Mrs Thompson has not pleaded, in respect of any of the four postings referring to a slush fund, a meaning which is defamatory and which she seeks to defend as honest comment. I agree. But the court is not bound to adopt the meanings advanced by either party, and must decide the case on the facts as it finds them.

342. Mrs Thompson pleads “Particulars of Facts to Support Honest Comment”. These facts included articles and letters published in the press, and the Welsh Assembly Government’s Final Guidance on “Providing indemnities to members and officers of relevant local authorities”. She quotes from that, including the extract it contains from the judgment of Sullivan J in *R (Comninos) v Bedford Borough Council* [2003] EWHC 121 (Admin).

343. Mr James pleads, correctly, that these facts include nothing referring to himself.

344. Mr James, in his Reply to the Defence to the Part 20 counterclaim, pleads that those words complained of which include the term “slush fund” are statements of fact, and that if they are comment, then Mrs Thompson knew that they were false. She knew that there was no fund in existence which required protection, or which could be topped up or dipped into. Further she knew that the Libel Costs Amendment was lawful, because Mr Thomas had so informed her by letter dated 9 November 2010 in which he set out the advice received on the basis of Sullivan J’s decision in *Comminos*. Further, she was motivated by the dominant improper motive to injure Mr James.
345. In my judgment the posting of 28 February means that Mr James would do everything in his power to preserve the power of the Council to grant indemnities to officers and members in respect of libel actions, and that this is a corrupt and unlawful use of public funds.
346. In my judgment that is comment or opinion. It is a statement about what Mr James may do in the future. In so far as it is characterised as corrupt and unlawful, that is also a reference to the Side Bar, in particular to the words “unlawful open to abuse, a threat to free speech and a grave misuse of taxpayers’ money”. To characterise the scheme as corrupt on that basis is an exaggerated use of language, but in my judgment it is not outside the degree of exaggeration that may be used to express opinions on political topics.
347. The difficulty for Mrs Thompson is in identifying in the facts set out in her Defence, or in the Side Bar, any conduct of Mr James which supports the comment in so far as it relates to him personally, rather than to the Council that adopted the amendment to the constitution.
348. In my judgment the only fact that could be understood as supporting the comment that Mr James would act corruptly (that is, do everything he could to ensure that the Council’s controversial amendment to its constitution was not affected) is the supposed fact which she had been publishing on her blog for sometime, namely that Mr James had been corrupt on earlier occasions: see the publications (all of which remain accessible on her blog to this day) on 13 March and 18 July 2009 (his alleged involvement in the “awkward bribery case”), 1 April 2009 (his alleged misuse of Council funds on a luxury car for himself), and 12 April, 8 May and 18 July 2009 (his lies and perjury in denying that the Council had indemnified Mr Bowen).
349. But Mrs Thompson has not pleaded or sought to prove any such fact, and cannot rely on it. So I conclude that there is no factual basis for the comment in so far as it relates to Mr James. The defence of honest comment fails at this point.

350. If (contrary to my view) the defence of honest comment does not fail as I have held, then the question arises as to whether the comment was honest, that is whether she believed what she was posting on her blog.
351. In law a defence of honest comment can be defeated by a plea of malice, but malice in this context means a lack of belief in the opinion or comment expressed. So how can Mr James set about proving that Mrs Thompson did not believe what she said? He can do so in two ways. First, he can point to her previous inconsistent conduct: the fact that it was Mrs Thompson who (through her solicitors, on 25 May and again on 31 August 2007) asked Mr Bowen to apply to the Council for an indemnity, which she would keep confidential, in the hope that if he did so she would not have to pay the £7,500 which she has been ordered to pay in respect of his costs. Second, he can rely on the campaign of defamation which I have held that Mrs Thompson had been engaged in, and the reference in the posting of 28 February to his resigning, as proving a motive for her to express an opinion which she did not in fact hold.
352. In her evidence in chief Mrs Thompson explained why she adopted the words “slush fund”. She said that she had been criticising the Council for adopting the amendment to its Constitution authorising it to grant indemnities in respect of libel proceedings involving its officers. But she realised that she was not getting her message through. She said:
- “So I used slush fund so people would understand about the libel costs amendment”.
353. This explanation does nothing to show that she had an honest belief in what she was posting. On the contrary, it suggests that she adopted sensational language to attract attention without regard to whether or not it truly represented her own beliefs.
354. Mrs Thompson has clearly displayed inconsistency in asking Mr Bowen to apply for an indemnity while claiming to believe that it would be wrong for the Council to grant such an indemnity. When a person claims to believe something, but acts inconsistently with that belief, there are three possibilities. First, the person’s true beliefs may be in accordance with the act, and the claimed belief be a dissimulation (this is hypocrisy). Secondly, the person’s true beliefs may be as claimed, and the act may be a failure to live up to the standards which the person believes to be right (this is not hypocrisy, but human weakness). Thirdly, the person may hold no beliefs, or beliefs which are inconsistent with both their act and their declared belief (this too is hypocrisy).
355. If the burden of proving her honest belief lay on Mrs Thompson I would hold that she has failed to discharge it. She has demonstrated such dishonesty in her cam-

paign of harassment, including her baseless allegations of corruption and her attempt to pervert the course of justice, that I cannot accept anything she says which is not supported by evidence other than her own words.

356. However, the burden of proof rests on Mr James. I do find that he has proved that the dominant motive of Mrs Thompson in publishing this posting (and the other postings he complains of) was to injure him. There is no other motive she could plausibly have had in referring specifically to Mr James in expressing views on these matters.
357. So the question is: on the balance of probabilities, did Mrs Thompson believe that Mr James would do everything he could to ensure that the Council's controversial amendment to its constitution, allowing it to use public money to fund libel claims by its officers and himself (what is dubbed in this pleading the Libel Costs Amendment), was not affected, and if so did she believe that giving such indemnities would be an abuse of Council funds?
358. I am unable to make a finding one way or the other as to whether she believed that for the Council to give such indemnities would be an abuse of public funds.
359. However, I do find that Mrs Thompson had no belief that Mr James would do everything he could to ensure that the Council's controversial amendment to its constitution, allowing it to use public money to fund libel claims by its officers and himself was not affected. Her state of mind was, in my judgment, one of complete indifference as to what Mr James would or would not do in this regard. Her only concern was to blacken Mr James' name by attributing to him a role in preserving the constitutional amendment in question. It follows that her defence of honest comment would fail at this point, if it had not already failed.

*(2) 22 March 2011*

360. On 22 March 2011 Mrs Thompson made the second of the postings which is the subject of the counterclaim. It includes the following:
- “I also hear a rumour that Carmarthenshire Council are going to be asked to take a 10% pay cut. It wouldn't surprise me. Isn't it lucky that Mark James and his cronies have the foresight to finance various deals (this for example), just *before* all this budget nonsense came along and, of course, the Council has to keep its slush fund nicely topped up...”
361. Mr James attributes to this posting the meaning that he was unlawfully and corruptly using public money for the benefit of himself and his cronies.

362. Mrs Thompson admits 132 hits on this part of the blog (including hits from the parties and their legal representatives).
363. She repeats her case on meaning, by reference to the Side Bar. She submits that the case that this posting accused Mr James of acting unlawfully or corruptly, or used public money for himself and his cronies, is unsustainable.
364. I find that this posting bears the meaning attributed to it by Mr James: the Side Bar explicitly states that the amendment to the constitution was “unlawful open to abuse, a threat to free speech and a grave misuse of taxpayers’ money”.
365. Further, as Mr Speker submits, it is an allegation of fact, not comment. And no defence is pleaded on the footing that the statement is one of fact.
366. In the alternative she submits that the words are honest comment, meaning that Mr James and allies on the Council appeared to have prioritised investing Council funds in prestige projects like the development of the Parc Y Scarlets stadium, and ensuring the Council would fund libel claims by its officers and Mr James ahead of staff pay.
367. As facts relied on in support of that comment, Mrs Thompson first pleads that she had heard a rumour that the Council’s staff were going to be asked to take a pay cut. This is obviously a defective plea. A plea of honest comment must be based on facts which are proved to be true (or statements of fact made on a privileged occasion). The defence could not succeed on the basis of a rumour, even if, contrary to my view, the posting were a comment. I also accept Mr James’s evidence that it had never been suggested that there should be a pay cut of 10%, or at all. This suggestion was totally untrue.
368. Next Mrs Thompson relies on press and other reports that do not refer to Mr James, but do refer to various projects and possible cuts in expenditure or short-falls in receipts. Again this is obviously a defective plea. There is no plea that Mr James had “financed” anything. And it is clear from her own description in the Side Bar that the Libel Costs Amendment did not involve the setting up of any fund at all, still less any fund which could be said to be funded in priority to any other use of Council funds.
369. In any event, the defence of honest comment would fail in respect of this posting for the same reasons as the defence failed in respect of the February posting. There is no fact on which could be based the alleged opinion or comment (if it were such) that Mr James appeared to have prioritised using Council money to fund libel claims by its officers and members ahead of staff pay.

*(4) 1 June 2011*

370. On 1 June 2011 Mrs Thompson posted the fourth of the postings which is subject to the Part 20 counterclaim in this action. The words she posted included:
- “One more thing, several people have left comments on recent posts which I have been unable to put on. You know who you are and I agree wholeheartedly with what you all say about the Chief Executive, Mark James – the trouble is I wouldn’t want him to use your money by dipping into the exclusive slush fund – you could then say goodbye to another day centre and probably a couple of small primary schools too. ...”
371. Mr James attributes to this posting the meaning that he is guilty of illegally misusing public money for his own corrupt purposes which could be spent on schools.
372. Mrs Thompson admits 214 hits on this part of the blog (including hits from the parties and their legal representatives).
373. The meaning she seeks to defend as honest comment is that Mr James “might make use of the Council’s controversial amendment to its constitution, which allowed it to use public money to fund libel claims by its officers and [Mr James]”.
374. As Mr Speker submits, this is not a defamatory meaning. So if that is what the words mean, then Mrs Thompson needs no defence of honest comment. But if the words do bear a defamatory meaning, a defence based on this meaning cannot succeed.
375. In my judgment this posting means that if Mrs Thompson were to publish the material that had been sent to her, then Mr James might sue her for libel, and do so with the benefit of the indemnity from the Council pursuant to the amendment to the constitution, and if he did, then he would be party to an unlawful use of Council funds.
376. This meaning is an expression of opinion about the future, not a statement of fact. And in so far as the meaning is that it would be unlawful, that too is an expression of opinion.
377. For reasons given above, I accept that the opinion that the indemnity would (if given to Mr James) be unlawful is one that an honest person could hold, and in this case I am unable to decide whether or not it is an opinion that Mrs Thompson truly did hold.
378. That leaves the question whether there was any factual foundation for the opinion that Mr James might sue her for libel, and do so with the benefit of the indemnity from the Council pursuant to the amendment to the constitution. In my judgment there is a factual foundation for that, which is expressed in the posting and the Side

Bar. The posting refers to material about Mr James which Mrs Thompson has not posted because (she implies) it was defamatory of him, and to the fact that, as an officer of the Council, he would be entitled to apply for an indemnity under the amendment to the Constitution.

379. This is not how Mrs Thompson has pleaded her defence to the Part 20 counterclaim, but it would not be just for me to decide this part of the case against her for that reason.
380. Accordingly, in respect of this posting the Part 20 counterclaim fails because the defence of honest comment succeeds.

*(5) 14 July 2011*

381. On 14 July 2011 Ms Thompson posted the fifth of the postings which is subject to the Part 20 counterclaim in this action. The words she posted included:
- “Perhaps as I am a Community Councillor, I could ask the Council if I could dip into Mr James’ slush fund and request that they instigate libel proceedings – isn’t that what they amended the constitution for?”
382. Mr James attributes to this posting the meaning that he is guilty of corruptly misusing public money.
383. Mrs Thompson admits 355 hits on this part of the blog (including hits from the parties and their legal representatives).
384. The meaning which Mrs Thompson seeks to defend as honest comment is that, because she is a community councillor, maybe it would be possible for her to ask the Council to make use of its controversial amendment to its constitution, which allows it to use public funds to fund libel claims by officers and [Mr James] to bring a libel claim on her behalf.
385. In my judgment this posting does not bear the meaning attributed to it by Mr James. It is a statement of fact that there are public funds which Mr James was in a position to authorise to be spent on libel proceedings, together with the comment that such authorisation would be unlawful.
386. While it is literally untrue that there was a fund, that inaccuracy is immaterial: there were public funds available to be spent on libel litigation. Mr James as Chief Executive was a person empowered to give, or participate in the giving, of an authorisation. An honest person could hold the view that such authorisation would be unlawful. I am unable to decide whether or not Mrs Thompson actually held that view.

387. It follows that the defence of honest comment succeeds in respect of this posting and Mr James' counterclaim fails.

*(3) 6 April 2011*

388. On 6 April 2011 Mrs Thompson posted on her blog the third of the publications complained of in the Part 20 counterclaim. The words are different from the other four postings Mr James complains of. They are as follows:

“Council PR Stunt Backfires”

... typically the Council is back peddling and trying to avoid the clear conclusion that they have completely ignored public opinion and there own consultation although why we should be surprised at that I don't know. Its all a bit worrying, lets hope that the Chief Executive Mark James takes his role of returning officer (for which he is paid a fat fee) a little more seriously during important elections – and gives an accurate result, not just the one that the Council prefers!

Perhaps we should be grateful the Council didn't go for 'the Mark James' or ... although on the subject of Council pantomime, ... I am sure Mr James would make a splendid Abanazer ... or would that be Pinocchio”.

389. Mr James attributes to this posting the meaning that he is a liar who, when acting as Returning Officer for a large fee during elections, cannot be trusted not to cheat and lie in order to produce the result most favoured by the Council. Alternatively he pleads a true innuendo.

390. Mrs Thompson admits 192 hits on this part of the blog (including hits from the parties and their legal representatives). She removed the words Mr James complains of at a date which she cannot recall, but which was before the Part 20 counterclaim was made. That is not in dispute.

391. Mrs Thompson submits that these words are not defamatory. She submits that they are obviously humorous words.

392. Alternatively she seeks to defend as honest comment the meaning that there was a risk that Mr James, as Returning Officer, might not declare as elected the person who received the most votes but some other person. That is not how she pleads it, but it is what I understand is the gist of what she would seek to defend as honest comment.

393. The facts on the basis of which she seeks to base the comment are that, as stated in the posting, the Council had decided to give a name to a new theatre which was not the name for which most votes had been cast in the course of a public consultation on the question, and Mr James was the person who would act as Returning Officer at any election.
394. There is no dispute that what a Returning Officer might do is a matter of public interest, nor that Mr James was expected to be the Returning Officer at forthcoming election. I recall that Mrs Thompson stated in her blog that she would be standing for election to the Council against Mr Theophilus.
395. The hypothetical reader would know that Pinocchio was a fictional character known to be an habitual liar. In my judgment this posting did bear the meaning that there was a risk that Mr James, as Returning Officer, might not declare as elected the person who received the most votes, but some other person.
396. If this posting stood alone, I would hold that these words were mockery or satire, and would not be understood by a reasonable reader as an allegation to be taken seriously. On that basis they would not be defamatory for the purposes of the law of libel. However, the posting does not stand alone. It is part of a series of allegations all questioning Mr James' honesty and integrity in terms which a reasonable reader would be bound to take seriously. In that context the allegation in this posting would in my judgment be taken seriously by a reasonable reader, and is defamatory.
397. I find that the meaning is a comment about what Mr James might do in the future. But it is a comment for which there is no factual basis at all. There is nothing in the posting or anywhere else suggesting that the decision to give the theatre a name which was not the name for which most people voted was a decision for which Mr James was responsible. Nor is there any other factual basis on which Mrs Thompson could possibly rely.
398. Further, in my judgment she did not honestly believe that Mr James, as Returning Officer, might not declare as elected the person who received the most votes, and not some other person.
399. Mr James' claim in respect of this posting therefore succeeds.
400. It follows that the Part 20 claim succeeds in part, subject to the issue of abuse of process.

#### *Abuse of Process*

401. Mrs Thompson submits that the words Mr James complains of concern Mr James solely in his capacity as Chief Executive of a public authority and that:

“while [he is] not debarred from bringing libel proceedings... civil servants acting in their official capacity ... [are required to]... show ‘a greater degree of tolerance’ to public scrutiny and criticism.”

402. This is a reference to the *Derbyshire County Council* case. I accept the principle that those in public office must show a greater degree of tolerance to public scrutiny and criticism.
403. Ms Michalos also relies on the fact that Mr James has received an indemnity from the Council in respect of his legal costs. She submits that the use of public funds in that way is a breach of Article 10 (freedom of expression). Further, she submits that the Part 20 counterclaim is not a genuine complaint, but retaliation for Mrs Thompson’s action against him.
404. In my judgment there can be no basis for an abuse argument in reliance on the *Derbyshire County Council* case. That is for reasons which are fully set out in my judgment in *McLaughlin v London Borough of Lambeth* [2011] EMLR 8 p.150; [2010] EWHC 2726 (QB) at paras [30]-[49]. The House of Lords in *Derbyshire* made clear that individuals could sue. This argument was hopeless when pleaded in the Defence to the claim of Mr Bowen, and it is equally hopeless in this action.
405. The decision of the House of Lords is binding on me. But in my judgment there is nothing in the suggestion that it is contrary to Art 10 that a member or between officer of a local authority should be able to sue for libel. On the contrary, there would be a serious gap in the law if members and officers of a local authority (and others who work in or for other public authorities) could not sue for libel.
406. Mrs Thompson’s campaign of harassment and libel is the most recent of a number of cases which have recently come before the courts. Many such campaigns are not aimed at officials of public authorities, but some are. In Mrs Thompson’s case the motive is revenge. In other cases the motive is financial gain, or an obsession for which there is no obvious explanation. These campaigns are commonly conducted on the internet. Other such cases include *Cooper v Turrell* [2011] EWHC 3269 (QB) and *ZAM v CFW* [2011] EWHC 476 (QB) (the targets were prominent businessmen, and the motive apparently revenge); *The Law Society v Kordowski* [2011] EWHC 3185 (QB) (the targets were solicitors, sometimes those solicitors who had successfully acted for clients in litigation which the publisher lost); *Cruddas v Adams* [2013] EWHC 145 (QB) (the target was a prominent figure in politics); *London Borough of Lambeth v Pead* [2013] EWHC 212 (QB) (the target was officials of a local authority and the motive apparently revenge).
407. There is nothing new about such campaigns of vilification: they have existed throughout history where one or more persons have wished to demonise another.

But the internet has made them easier for individuals to conduct. In the nineteenth century campaigns of vilification were so commonly used in election campaigns that Parliament enacted in 1895 what has now become the Representation of the People Act 1983 s.106. That section makes a person guilty of an illegal practice if, before or during an election, for the purpose of affecting the return of any candidate at the election, he makes or publishes "any false statement of fact in relation to the candidate's personal character or conduct", unless the person can show that he had reasonable grounds for believing and did believe the statement to be true (see Hansard 1 May 1895, where examples are given).

408. In recent years the court's approach to defamation has evolved. The court considers "the balance to be struck between public interest and private right": *Lait v Evening Standard Ltd* [2011] EWCA Civ 859; [2011] 1 WLR 2973 para [43].
409. There is, of course, always a risk that a libel action may chill public discussion of matters of public interest. Mrs Thompson and Ms Michalos have repeatedly stressed the importance of this risk, as have many judges, including the House of Lords in *Derbyshire*. I share that concern. One of the reasons is that, without freedom of expression, the public may not discover the truth about matters of public concern, which include the actions of public officials: *R v Secretary of State for the Home Department ex parte Simms* [2000] AC 115, 126E-G. But where a person maliciously spreads false and defamatory allegations about individuals holding public offices, a libel action may be the best means of establishing the truth and preventing repetition.
410. As Lord Nicholls stated in *Reynolds v Times Newspapers Ltd* [\[2001\] 2 AC 127](#) at p200 (and repeated in *Bonnick v Morris* [\[2003\] 1 AC 300](#) at para [23], in a passage quoted in *Lait*), reputation is not just a matter of private or individual right:
- "Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good".
411. If those who work in or for public authorities could not defend themselves against the dissemination of falsehoods, the public would be the losers. This is the public policy underlying the provision in the Representation of the People Act.

412. The dangers from the malicious spreading of falsehood have also been stressed by the most distinguished commentators. See also *Kordowski* para [177] where I cited the following from a leading contemporary philosopher:

“As Baroness O’Neill said (The Financial Times 20 November 2011):

“Both false and unreliable reporting, and reporting that misrepresents its aims and its evidence, can silence, confuse or marginalise important issues or voices, can promote manufactured or manipulated 'news', and can make it hard or impossible for audiences to judge what they read, hear and view. Failure to maintain standards for adequate communication, including adequate standards for truth claims, can have heavy costs.”

413. Further, there is also no foundation for the argument that the Part 20 claim is an abuse because it is advanced for a collateral purpose, namely to intimidate Mrs Thompson. The burden of proving that a claim is brought for a collateral purpose is a high one, and is not satisfied in this case.

414. Finally, the abuse argument based on the grant of an indemnity by the Council to Mr James is also without foundation. As discussed in the *Comminos* and *McLaughlin* cases, there are procedures by which the grant of an indemnity by a Council to an employee in respect of the costs of litigation can be challenged. The fact that Mr James has received such an indemnity cannot make his Part 20 counterclaim an abuse. In any event, whether or not the grant of the indemnity was open to legal challenge would require investigation of the reasons for it which have not been adduced in evidence by Mrs Thompson.

### *Damages*

415. The allegations in the postings dated 28 February 2011, 22 March and 6 April 2011 are serious, but they were made to a small number of publishees.

416. Moreover, although Mr James made clear that he did not read the blog until the proceedings started, other than extracts which individual Councillors or officers brought to his attention, I find that he was, as he said, horrified by what he read when he did read the postings.

417. There is an aggravating factor. It is that the dominant motive of Mrs Thompson was to injure Mr James. This is illustrated by the fact that (on 19 June 2010) she gloated over the prospect of executive recruitment companies reading her allegations against Mr James.

418. In addition, the cross-examination of Mr James was of a kind to aggravate the damages. The first topic put to him was that there might be something awkward for Mr James in the fact that he had been a prosecution witness in a bribery trial.
419. On the other hand, Mrs Thompson has not aggravated the damages by pleading or attempting to prove the truth of her allegations.
420. The strongest point in favour of Mrs Thompson is the fact that the publications on which Mr James has succeeded were to a small number of readers of her blog.
421. I shall make one award of damages in respect of all the publications on which Mr James has succeeded. I assess the damages at £25,000, of which £5000 represents aggravated damages.

## CONCLUSION

422. For these reasons the claim fails in its entirety. The Part 20 counterclaim succeeds in respect of the postings dated 28 February 2011, 22 March and 6 April 2011, but fails in respect of the postings dated 1 June and 14 July 2011. There will be judgment for damages in the sum £25,000. I shall hear counsel as to whether there should also be an injunction, and as to any other order that may be requested.
423. Since Mrs Thompson has attracted national publicity as a result of her arrest by the police on 8 June 2011, I draw attention to the following, all of which is explained in more detail in the judgment above (and which should be read in the light of the whole judgment, and not taken as inconsistent with any of it):
- i) I have found that Mrs Thompson was engaged in an unlawful campaign of harassment, defamation and intimidation targeted against Mr James and other Council officers;
  - ii) This campaign was conducted through letters and e-mails which Mrs Thompson circulated to large numbers of addressees and the media, starting in March 2006, and by her blog started in 2009, and continuing thereafter;
  - iii) What I have found to be the campaign of harassment does not, and I emphasise not, include the occasions in and between February and June 2011 when she was also conducting a protest against the ban on filming the Council's proceedings with her mobile phone, subject to one exception;
  - iv) The one exception is the occasion when on and after 13 April 2011, after she left the Council chamber, Mrs Thompson falsely accused Mr Davies of assaulting her and attempting to steal her phone;

- v) Mrs Thompson has not complained to the Council that she was assaulted on 13 April 2011, nor, so far as I have been told, has she made a complaint to the police that she was wrongly arrested on 8 June 2011 (they arrested her to prevent a breach of the peace);
- vi) The parties have asked that I make no ruling on whether the Council's ban on filming was lawful or not: I have not made a ruling on that, and there was not the material before me to enable me to make a ruling on that question;
- vii) A summary of the findings of fact that I have made is at paras 5 to 21 above.