

Introduction

1. The Ministerial Code of the Welsh Government provides guidance to Ministers concerning their behaviour during and after their time in office. It provides in its opening paragraph for the accountability of Ministers. The provision is as follows:-

Accountability

- i) Ministers have a duty to the Assembly to account, and be held to account, for the policies, decisions and actions of their departments and agencies;*
- ii) It is of paramount importance that Ministers give accurate and truthful information to the Assembly, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead the Assembly will be expected to offer their resignation to the First Minister;*
- iii) Ministers should be as open as possible with the Assembly and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000.*

2. Paragraph 1.4 of the Code provides as follows:-

Where he or she deems it appropriate, the First Minister may refer matters to an independent adviser on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. In particular, the First Minister may also refer matters concerning himself to an Independent Adviser. The findings of the Independent Adviser will be published.

3. I have been appointed pursuant to paragraph 1.4 of the Code to provide advice to the First Minister on whether he breached the Ministerial Code by misleading the National Assembly for Wales in relation to answers he gave to questions on 11 November 2014 and 14 November 2017.

4. A number of witnesses raised with me what they considered the inappropriateness of a report being sought by the First Minister concerning his own alleged misconduct. These objections overlook the requirement in the Code that the findings be published which means that the advice is not merely addressed to the First Minister but must also be made available to the public.

Terms of Reference

5. The terms of reference on which I was asked to advise were contained in a letter to me from the First Minister dated 5 December 2017 which stated that I had been engaged to advise the First Minister on the allegation that he breached the Ministerial Code in relation to answers he gave to questions in the National Assembly for Wales on 11 November 2014 and 14 November 2017.

6. The terms of reference do not include whether answers given by the First Minister on dates other than 11 November 2014 and 14 November 2017 breached the Ministerial Code, although where answers given on such other dates are relevant to the terms of reference upon which I am instructed, I have taken account of those answers.

7. The terms of reference do not include the question of whether any bullying ever took place or (as has been alleged) whether there was a bullying culture at Ty Hywel, where Welsh Government Ministers and special and specialist policy advisers have their offices on the fifth floor.

Executive Summary of findings

8. I found no evidence that prior to 11 November 2014, any reports or allegations of bullying by special or specialist policy advisers had been made to the First Minister.

9. I heard evidence that three Ministers in Autumn 2014 – Leighton Andrews, Lesley Griffiths and Carl Sargeant - were concerned about aspects of the behaviour of a politically appointed special/specialist adviser.

10. Ms Lesley Griffiths, told me that she had never raised a complaint with the First Minister in relation to this.

11. The late Mr Sargeant is known to have had a discussion over a drink with the First Minister in October 2014, but it was the First Minister's evidence that no concerns of bullying were raised with him at this meeting. There is no evidence of complaints being raised by Mr Sargeant at any other time with the First Minister.

12. Mr Leighton Andrews gave evidence that he made a complaint about the conduct of the same adviser. The earliest evidence of any complaint by Mr Andrews to the First Minister about this was at a meeting between Mr Leighton Andrews and the First Minister on 19 November 2014. There is no evidence that the matter complained of on that date was described as bullying and the allegation was strongly disputed by the adviser. I found that even if the allegation were substantiated, it is doubtful that it could properly be described as bullying.

13. I found no evidence that any of the special or specialist policy advisers who left their employment in or before 2014 made any complaint of bullying to the First Minister or the Permanent Secretary to the Welsh Government at the time.

14. There is no evidence that at the time of answering the first questions on 11 November 2014 the First Minister had been made aware of any allegations or reports of bullying. Consequently the answers given by the First Minister at that time were truthful and did not mislead the Assembly.

15. There were allegations made subsequently that there had been a "toxic atmosphere" or "bullying culture" in the Ministerial floor of Ty Hywel in 2014. I did not find convincing evidence that this was the case.

16. I heard no complaints of continuing bullying in Ty Hywel and the allegations which I have referred to elsewhere in this paragraph 16 related to a time in the past before 2016. Therefore I do not consider the First Minister to have misled the Assembly when he said on 14 November 2017 that all issues had been dealt with.

17. Consequently, my conclusion is that, since the answers given by the First Minister on 11 November 2014 and 14 November 2017 were accurate and truthful, and not misleading, the First Minister did not breach the Ministerial Code.

Investigation

18. The investigation was based on a perusal of documents and a series of interviews with witnesses. A dedicated email account which was independent of other Welsh Government systems was set up specifically for this investigation, in order that information could be received securely and safely by me from any individuals wishing to submit evidence to the investigation. The existence and detail of that email account was made public on 15 December 2017 through an announcement from the Office of the Permanent Secretary to the Welsh Government. Anyone with material relevant to the terms of reference was asked to contact me using the dedicated email account and the announcement confirmed that material related to the process would be stored independently of other Welsh Government internal systems. A further announcement made on 25 January 2018 requested that anyone who had not yet come forward but who had relevant evidence to give to me should contact me using the dedicated email account by no later than 31 January 2018. In addition to those witnesses who came forward of their own volition I invited a number of other persons whom I believed might be able to assist with the enquiry to give evidence. All views expressed in this report are my own.

19. I was provided with a Secretariat to be responsible to me and work exclusively on this investigation throughout its duration. It was at all times made clear to me that I would be provided with any resources necessary to conduct the investigation and I was satisfied with the arrangements which were made to enable me to perform my functions and with the efficiency and promptness with which any requests for assistance were met.

20. The investigation was conducted without powers to compel any person to give evidence or to provide relevant documentation nor had I any power to take evidence on oath. The interviews were held in private. As I had no powers of compulsion I was prepared to agree to respect confidentiality where this was sought. However, I made it clear that in relation to matters which were contested I could not take account of matters impinging on the rights of others unless I had permission to put questions to those other people and where necessary to reveal the source of information.

21. I conducted interviews with 23 witnesses, comprising persons who volunteered to give evidence, as well as others who did not approach me but

whom I identified as possibly having relevant information. The overwhelming majority of witnesses whom I identified as potentially relevant were willing to meet me to give evidence. All but two of the persons whom I contacted either gave evidence or informed me that they did not believe they had any relevant evidence to offer. In one case a potential witness who had initially agreed to give evidence failed to respond to further communications from me. In the other case, an individual who was no longer employed by Welsh Government submitted written evidence to me. That individual said he was unwilling to meet me on premises owned by the Welsh Government. I offered to travel some considerable distance to meet with that witness in a venue which was more convenient to that person's home location and which was not a Welsh Government building, but my offer was declined. One interview was conducted by telephone.

22. In writing the report I have identified the elected figures who gave evidence by name on the basis that they have chosen a career in public life in which public scrutiny is an accepted part of the process. In the case of others, including civil servants and special and specialist policy advisers, I have not named them in the report. In part this is because these witnesses have not chosen a career in the public eye, and partly because to anonymise only the small number who had expressly requested anonymity would, paradoxically, tend to identify them.

23. The appropriateness of my taking evidence in Welsh Government offices was raised with me by two members of the National Assembly. It was suggested to me that some witnesses could have been unwilling to meet me there and that I should have conducted interviews on more neutral ground. Apart from the person referred to in paragraph 21 who declined to be interviewed and the two Assembly Members nobody else raised this issue with me and I have no reason to believe it was an inhibiting factor in other potential witnesses' decisions whether to give evidence.

24. I was provided with or given sight of a significant amount of documentary evidence during this investigation by relevant witnesses, including witness statements provided by a number of witnesses for my consideration. I was also supplied with copies of some contemporaneous documents. I have also been provided with copies of relevant Written Assembly Questions tabled during November 2014, and November and December 2017, together with copies of the answers provided to those questions.

25. All interviews with witnesses (except in the case of one witness who was unwilling to be recorded) were audio recorded in order to enable me to check that an accurate account was given of evidence when writing this report.

Findings resulting from the investigation: Assembly Questions posed to the First Minister on 11 November 2014

26. The First Minister was asked in a written Assembly question (please refer to Annex 1) on 11 November 2014 whether he had ever received any reports or been made aware of any allegations of bullying by special and/or specialist advisers at any time in the past three years and if so, when and what action if any, was taken. There is a certain ambiguity in the question. It is unclear whether it refers to allegations made by special advisers or to allegations of bullying by special advisers, and I have assumed it might refer to either. However, the question did not ask whether the First Minister had received reports from or been made aware of allegations of bullying by others working at Ty Hywel. Two other questions were asked of the First Minister on the same occasion and these are discussed in paragraphs 56-59 below.

27. The answer given by the First Minister to this question was as follows:- “No allegations have been made”.

Bullying

28. The question posed to the First Minister on 11 November 2014 therefore centred on whether he had personally received reports or been made aware of allegations of bullying.

29. I understand that there is no statutory definition of bullying in the law of Wales and England. ACAS, the Advisory, Conciliation and Arbitration Service which provides information and advice on all aspects of workplace relations and employment law in the United Kingdom, defines “workplace bullying” as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the person being bullied”. The ACAS website lists among possible examples of bullying the following:- spreading malicious rumours or insulting someone, exclusion or victimisation, unfair treatment, and deliberately undermining a competent worker by constant criticism.

30. In 2014, there were approximately ten special advisers in post for all or part of the 2014/2015 financial year, whose role was primarily focused on the provision of policy and political advice to the First Minister and other Ministers. Special advisers are appointed through a political process by the First Minister on short-term contracts, and are mainly persons who have been politically active. While they are assigned to work with particular Ministers all remain accountable to the First Minister. In addition, there were a number of specialist policy advisers in 2014, whose role focused on supplementing policy expertise within Government in particular sectors or fields.

Evidence that the First Minister received reports or was made aware of allegations of bullying before the reply to the first question in the National Assembly

31. The evidence presented to me by witnesses that reports or allegations of bullying by special advisers and/or specialist advisers had been made to the First Minister prior to 11 November 2014 is summarised in the following paragraphs.

Complaints by Ministers

32. It was suggested to me that between September and November 2014, three Ministers had raised issues or concerns with the First Minister about the conduct of an adviser.

33. One of the Ministers who was alleged to have raised concerns was Ms Lesley Griffiths, Cabinet Secretary for Energy, Planning and Rural Affairs. A former Labour Cabinet Minister, Mr Leighton Andrews, had asserted that Ms Griffiths had raised concerns with the First Minister during September and November 2014. When I interviewed Ms Griffiths, her own evidence was that she did feel bullied at times by the way in which she said a particular special adviser sometimes operated. Her concerns related principally to what she saw as a denial of access to the First Minister and to feeling undermined in her work such through the questioning of her diary commitments. Ms Griffiths gave evidence that whilst she may have mentioned to the First Minister informally on occasions her frustrations in her dealings with that adviser, she was clear that she had not raised any complaint that she was being bullied with the First Minister. These issues are discussed further below.

34. It was suggested by Mr Andrews that the late Mr Carl Sargeant, former Cabinet Secretary for Communities and Children, had raised issues or concerns with the First Minister about the conduct of the same special adviser. At this point I have to raise a note of caution. Tragically, Mr Sargeant is no longer able to speak for himself and in relation to many matters we have only the hearsay evidence of others as to what Mr Sargeant might have thought, said or believed. In many cases conversations are recollected three years later and may be viewed through the prism of hindsight. It is impossible to test many aspects of such evidence. Having expressed that note of caution, the evidence put forward to me to support the view that Mr Sargeant had raised concerns with the First Minister was essentially that;

- a. Mr Sargeant had met the First Minister for an informal discussion over a drink in a public house on 14 October 2014, at which only the two of them were present. Mr Andrews gave evidence that he and Mr Sargeant had spoken over the telephone following this drink, and that Mr Andrews had made a brief note of this conversation in his diary. Mr Andrews' evidence was that a text message exchange had taken place between himself and Mr Sargeant, where the latter had sent a message saying the conversation with the First Minister was 'tricky' and that 'he [the First Minister] don't get it'. The First Minister confirmed that he had met Mr Sargeant in or about October 2014. The First Minister's evidence was that Mr Sargeant had not raised any allegations of any nature during this meeting, and certainly that allegations of bullying had not been raised.
- b. Mr Sargeant had asked Mr Darren Millar, who was an Assembly Member from an opposing political party, the Welsh Conservatives, to table the questions put to the First Minister on 11 November 2014 which are the focus of this investigation. Mr Millar gave evidence that despite their political differences he was on good terms with Mr Sargeant who lived in the same neighbourhood while in Cardiff. He confirmed that Mr Sargeant had asked him to table a set of questions (although Mr Millar confirmed he had re-drafted the questions to make their scope slightly broader), but that Mr Sargeant had not confided to him the nature or details of any alleged reports or allegations of bullying. Mr Millar confirmed that he did not have any further conversations with Mr Sargeant about the questions posed following this episode.

c. A close personal friend of Carl Sargeant who was not an Assembly Member also gave evidence of having discussed the draft questions with Mr Sargeant before they were asked. It seems likely that this discussion took place before Mr Millar became involved. This friend's evidence was that while Mr Sargeant indicated to him that he felt a sense of unhappiness and that he felt he himself was being undermined, his focus in having the questions asked was not on his own experiences but because he believed that special advisers who had left the office had been bullied. None of this evidence, however, establishes that the late Mr Sargeant had raised these matters with the First Minister. With regard to Mr Sargeant's reaction to the answer to the Assembly Question the friend informed me that Mr Sargeant was disappointed with it. This witness was aware of the meeting between Mr Sargeant and the First Minister but was not aware of what had been said at it other than that Mr Sargeant had felt "more reassured" after it. He believed that meeting had probably taken place after the Assembly question but was unsure about this. Either he is wrong about the date, assuming the evidence of the First Minister, who believed the conversation took place in October, and of Mr Andrews, who kept a diary, is to be preferred. There is no suggestion that there was more than one meeting over a drink between the First Minister and Mr Sargeant around that time.

35. Mr Andrews informed me that he had raised an issue with a different special adviser in October 2014 and that that adviser reported this issue to the First Minister. The issue in question concerning an alleged wrongful statement is referred to in more detail at paragraphs 36-42 below. Mr Andrews produced a text message exchange which he suggested confirmed that a conversation had taken place to this effect. The special adviser in question did not agree with Mr Andrews' version of events and said that he had not raised any concerns with the First Minister on behalf of Mr Andrews nor had he been asked to or agreed to do so. The First Minister also confirmed that no such concerns had been raised with him by that special adviser on behalf of Mr Andrews and so it would appear that, even if Mr Andrews had mentioned any issues to that special adviser, these were not relayed to the First Minister. Mr Andrews did not provide evidence that he had dealt directly with the First Minister in relation to any complaint at this point.

36. Mr Andrews' evidence was that he first discussed an allegation of misconduct on the part of a special adviser with the First Minister on 19 November 2014, 8 days after the question on 11 November 2014 had been answered by the First Minister.

37. Mr Andrews said that when he met the First Minister on 19 November 2014, he told the First Minister that he considered that his senior special adviser had breached the code of conduct for special advisers. Mr Andrews said that the basis for this assertion was that the senior special adviser had told him that Mr Sargeant and the special adviser then assigned to work with him had ignored legal advice on the Gender-Based Violence, Domestic Abuse and Sexual Violence Bill (subsequently to be enacted as the Violence against Women, Domestic Violence and Sexual Violence (Wales) Act 2015) and had made promises to women's organisations that they knew could not be kept. Mr Andrews said that this information concerning Mr Sargeant and the special adviser assigned to work with him was not true. When interviewed the then senior special adviser strenuously denied ever having made the comments in question.

38. Mr Andrews says that at the meeting with the First Minister on 11 November the First Minister had said he would ask a civil servant who was then Head of his Delivery Unit (this was the unit responsible for overseeing and ensuring the timely delivery of the Government's programme, including legislation) to launch an investigation into this allegation.

39. Mr Andrews says he was aware at the time of other examples of bullying and in his evidence to me referred to various other matters. Despite this he did not claim to have raised with the First Minister at the meeting on 19 November any incident of alleged bullying other than the statement referred to above concerning the gender-based violence legislation. This is despite his evidence that he went to the meeting bearing a letter setting out his complaints. The letter was apparently carefully composed since he informed me that he had redrafted it to tone it down. He told me that instead of handing over the letter he asked the First Minister if he wanted anything in writing to which the First Minister replied that he did not. Mr Andrews failure to hand over that letter is difficult to understand in the light of his present claim that the First Minister had misled the Assembly just one week before that meeting.

40. The First Minister recalls Mr Andrews raising the issue concerning the statement about the gender based violence bill at the meeting on 19 November but does not recall it being categorised as an issue of bullying. Mr Andrews cannot be certain whether he referred to it as a bullying issue or not. The First Minister denies that he agreed to set up an investigation by a civil servant into the allegation. As already mentioned above the then senior special adviser strenuously denies the allegation which is not supported by any other witness. Since the Bill in question was no longer part of Mr Sargeant's portfolio (he had previously been the Minister responsible for that issue) and had not been for some time it is difficult to see why she should have made such an allegation against him at that particular time.

41. Even if the remarks attributed to her by Mr Andrews had been made by the senior special adviser, it is not obvious to me how they would have amounted to bullying. Applying the guidance from ACAS, I do not see how such a comment would be demonstrative of a pattern of offensive, intimidating, malicious or insulting behaviour, or to be an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the person being bullied. In any event it does not appear to me to be all that remarkable that a Minister should be unwilling to accept legal advice on a politically sensitive matter without questioning its basis. It would surely not be unheard of for a second opinion to be sought in relation to a complex piece of legislation or that there might not be different interpretations of legal advice or further questions to be raised.

42. It may be a matter of surprise to some that a dispute over the title of a Bill could engender such strong feelings. However, the title of a Bill can be a contentious political issue. A central function of a special adviser is to resolve any difference of opinion between the various actors, including Ministers and political advisers, in order to achieve an outcome for which all Ministers would be prepared to take collective cabinet responsibility. I was told that it was usual for special advisers to be involved in the legislative process. The head of the First Minister's Delivery Unit at the time, who was responsible for overseeing the progression of all bills into legislation, recalled that the title of the Gender Based Violence, Domestic Abuse and Sexual Violence Bill was something which a number of persons felt strongly about. However, her evidence was that she had not been asked to undertake any investigation in relation to the allegation made by Mr Andrews.

43. The First Minister's evidence was that Mr Andrews and the senior special adviser both contributed to Government and that it was for him to manage the working relationship between them. He was aware of tensions between individuals and it was part of his task to manage such problems. However, the First Minister was clear that no allegations of bullying had been raised with him by Mr Andrews then or at any time.

44. Both the Head of Cabinet Secretariat, and the then Permanent Secretary, Sir Derek Jones also confirmed that no allegations of bullying had been made to them. I am informed that a search for any written material including emails relevant to the terms of reference was undertaken and that no complaints to the First Minister were found.

45. A witness whose responsibilities involved liaison between the Welsh Labour Party and the national party in Westminster asserted that he had raised concerns about bullying with the First Minister between 2013 and 2015. The First Minister strongly disputed this. It was clear that the witness had no direct knowledge of bullying although he was then and remains a friend of some of those who have alleged in more recent times that bullying had taken place.

Other forms of perceived bullying

46. A small but significant number of witnesses alleged that other types of what was perceived as bullying took place in Ty Hywel in the period prior to the Assembly question asked on 11 November 2014. These included three Ministers, Ms.Griffiths and Mr Andrews (whose evidence has already been discussed), as well as the late Mr Sargeant who allegedly confided his views to a number of witnesses. One further Minister was alleged by Mr Andrews to have made a complaint but I have not heard any evidence to support this and the Minister concerned did not provide any evidence to the investigation. A former special adviser, who declined to give evidence to me, has also made claims of bullying on an Internet blog.

47. A much larger number of witnesses, also including then Ministers and special advisers, either did not believe that bullying took place or stated that they had noticed nothing amiss and were surprised at the claims. Of course, it is often the case that persons who are not themselves bullied are unaware of allegations of bullying. However, in my view the nature of the alleged bullying, consisting mainly of allegations by some in relation to access to the First Minister, approval

of expenditure for travel, the monitoring of diaries and the making of comments intended to undermine others, could not all have been carried out without others noticing, especially in the close confines of the fifth floor of Ty Hywel. Aside from the small number of friends or associates of the late Mr Sargeant who have stated that he confided his unhappiness and his belief that he was being undermined, the near universal reaction of other witnesses to the suggestion that Mr Sargeant was being bullied was one of shock and surprise, as is instanced, for example by the reaction to revelations in the speech made by Mr. Darren Millar in the Assembly in which he revealed the background to the asking of the question on 11 November 2014. While I am not enquiring into the substance of any such allegations or making any finding as to whether the late Mr Sargeant was bullied, this general lack of observation of any bullying taking place by others lends credibility to the First Minister's own evidence of not having been made aware of the existence of bullying.

48. It is important to note also that no witnesses made any allegations of any involvement in bullying or less favourable treatment by the First Minister himself nor did any witnesses claim to have informed the First Minister of any claims of bullying before the Assembly question on 11 November 2014. The issues I did hear about from a small number of witnesses fell into the following broad categories.

Access to the First Minister

49. Most witnesses I met described no difficulties in obtaining access to the First Minister when needed, and stated that the usual process would be to make an appointment to see him through his diary secretary or, if the matter was particularly urgent, to attend his office in person without an appointment. A very small number of witnesses considered that gaining access to the First Minister had been more difficult than they would have liked on occasions, and they considered this was because of his senior special adviser. I found no evidence that access to the First Minister had been restricted in any inappropriate way. On the contrary, I found that all Ministers and special advisers were provided with a card with contact details for the First Minister, including his personal mobile and home telephone numbers. Each Minister had a diary secretary, who could have liaised with the First Minister's diary secretary to make an appointment for them to see him. Alternatively, Ministers were free to simply contact the First Minister's private secretary. I am not satisfied that the First Minister's senior special adviser was in control of his diary to such an extent that she could improperly limit or

prevent access or that there was any undue power exercised by her in controlling access to the First Minister. None of the witnesses who gave evidence gave specific examples of any inappropriate denial of access.

50. The Ministerial floor of Ty Hywel is quite small. Desks are situated tightly together, including the desks of special advisers. All Ministers, including the First Minister, would usually have been at Ty Hywel at least on Tuesdays and Wednesdays each week when they attended plenary sessions of the Assembly together. I am informed that other meetings also usually took place on these days such as cabinet meetings or political meetings. This would inevitably have created opportunities for any Ministers who thought their access to the First Minister was being unreasonably blocked by an official to raise the matter with him directly and arrange a time to meet. The First Minister himself recalls no such concerns being raised with him and no witnesses informed me of having raised any such concerns with him.

51. I note that those who considered their access to the First Minister had not been as unfettered as they would have liked were all strong supporters of his election campaign to become party leader in 2009 and probably became used to having very free access to him during that campaign. The overwhelming majority of witnesses that I met did not recall particular problems with access to the First Minister although it was conceded by all, including the First Minister himself, that he did not have an 'open door' policy.

Favouritism and Inconsistent treatment

52. The overwhelming majority of witnesses I met rejected any allegation that there was any favouritism shown to some Ministers by the senior special adviser and I found no evidence that any such allegation had been made in or before 2014 to the First Minister. The handful of witnesses who gave examples in relation to this issue described alleged incidents such as restrictions on their ability to travel to a business meeting elsewhere or on whether their special adviser could accompany them. I do not think that such control on expenditure or on access to meetings was inappropriate and no one presented any compelling evidence to me of favouritism or inconsistent treatment. There was no evidence, for example, that the senior special adviser determined who was selected to travel to conferences. The final say on these issues rested with the First Minister.

Deliberate Personal Undermining

53. The existence of deliberate personal undermining by making derogatory remarks was also alleged by a small number of people. Such a practice can be wholly invidious and almost impossible to prove or disprove. These allegations were, however, lacking in specific detail of what was supposed to have been said. The senior special advisor was adamant that she did not engage in such a practice. So far as Ministers were concerned the point was made that if this occurred it did not achieve its purpose since the persons who believed themselves to be victims of it were retained in cabinet and in at least one case given more senior posts. I did not find any convincing evidence to support the view that this was a widespread or systematic practice carried out or condoned by either the First Minister or his special advisers.

54. The fifth floor of Ty Hywel was not just an ordinary workplace but a political environment, containing both civil servant employees and Ministers who held their positions at the democratic will of the electorate. Many of the Ministers were used to expressing views in robust terms which might not be acceptable for an employer towards an employee in the average workplace. The distinction between bullying and robust debate over a difference of opinion on issues or decisions which are politically controversial can be a fine one.

55. No evidence was presented to me which substantiated the suggestion that there was deliberate personal undermining taking place by the Senior Special Adviser. No specific example was cited to me except the case already discussed where Mr Andrews claimed that an untrue remark about Mr Sargeant had been made to him. Allegations which were made were general in nature and not accompanied by specific examples and essentially amounted to no more than suspicion. No specific evidence was produced of personal undermining which amounted to bullying and which the First Minister could have been aware of in reports or allegations made to him in or before 2014.

Special Advisers and Specialist Policy Advisers

56. It was confirmed in the answers to the second and third questions given on 11 November 2014 that three special advisers and three specialist policy advisers had left their employment over the preceding three years. One departure occurred in 2013 and five in 2014. No exit interviews were held on their departure nor are such interviews the practice to this day. I found no evidence

that any of these individuals had raised concerns with the First Minister upon leaving employment although one person who departed has since publicly made allegations of bullying. Unfortunately where people are unwilling to make a timely complaint it is very difficult to test the truth or accuracy of allegations which are made subsequently. Where allegations are untested and in the absence of complaint are incapable of being tested and are then subsequently reported this can be very unfair to the alleged perpetrator who may be denied the opportunity to make an adequate defence.

57. The ostensible reasons for leaving these posts were varied. In the normal course of events these are not long term jobs. They are not publicly advertised and are filled through a political process, usually by party activists. Persons who fill them gain knowledge and insight into the world of politics and often move on to a career in public or political office themselves or make use of the experience gained to work in the private sector or for civil society organisations.

58. One special adviser who left in 2014 took up another prestigious position, whereas others left upon the expiry of their fixed term appointment. The First Minister is clear that none of them reported bullying to him on leaving and I have no reason to doubt that that his account is true.

59. One of the former special advisers who left in 2014, and has declined to participate in this investigation, has since made allegations to the media that there was a toxic environment at the top of the Welsh Government and that the behaviour of some was pure poison. However, I have had sight of a text message exchange between the First Minister and that former special adviser where the First Minister told that special adviser that he would be deeply sorry to see him go and asked that he tell the First Minister if anything had made him unhappy. The special adviser replied that it was 'just time to look at other things in [his] advancing years'. This text message exchange was consistent with the evidence given by the First Minister at our meeting, when he advised me that this special adviser had not raised any allegations of bullying with him during his employment or upon its termination.

Questions put to the First Minister on 14 November 2017

60. The full text of the relevant exchange in the Assembly between the First Minister and the Leader of the Opposition is set out at Annex 2.

61. It has been claimed that the replies given to the questions on 11 November 2014 and 14 November 2017 are contradictory. If there had been no complaints, how could they have been dealt with? I put this question to the First Minister. He explained that he had not had complaints about bullying made to him but that what he meant was that issues which arose from time to time involving disagreements between Ministers and other matters involving disputes or difficulties which required his decision- the normal matters of government- were dealt with as and when they arose. The First Minister described any issues he dealt with during 2014 as being disagreements between Ministers, which could inevitably arise from individuals who were committed to their job and had strong views on various issues, as opposed to being issues of bullying.

62. I found no evidence to suggest that bullying is currently a problem in Ty Hwyl. The allegations which were made all related to a period between in or about 2014 and early 2016 but did not cover the present time or the recent past.

Procedures in place to deal with allegations of bullying

63. There are procedures in place to deal with situations where an individual wishes to raise an allegation of bullying. If a civil servant makes a complaint of bullying by a special adviser or special policy adviser, that complaint would be dealt with under the relevant procedure in place at the Welsh Government; the Dignity at Work policy or the Grievance Policy. The model contract for special advisers states that any grievances must be brought to the attention of the First Minister and the Permanent Secretary in writing. I understand that minor cases of bullying can be resolved through a grievance procedure.

64. If an individual who is not a civil servant, for example, a Minister, made a complaint of bullying by a special adviser or special policy adviser, the matter would normally be referred to the Permanent Secretary or a senior civil servant nominated in her place to investigate the matter.

65. It may be worth considering whether it may be beneficial to provide for the possibility of complaints being addressed in the first instance to persons less exalted than the Permanent Secretary or the First Minister, where an individual wishes to first raise concerns on a more informal basis. It will not always be appropriate for concerns to be raised informally in the first instance, and there will be occasions where it is right to invoke a formal process from the outset.

However, an informal process can help to encourage early resolution of more minor concerns and prevent any escalation.

Conclusion

66. My conclusion is that the answers given by the First Minister on 11 November 2014 and 14 November 2017 to the questions tabled during Welsh Assembly questions were accurate and truthful and not misleading, and did not breach the Ministerial Code.

Written Assembly Questions tabled on 4 November 2014 for answer on 11 November 2014

To ask the First Minister

Darren Millar (Clwyd West): Has the First Minister ever received any reports or been made aware of any allegations of bullying by special and/or specialist advisers at any time in the past three years and, if so, when and what action, if any, was taken? (WAQ67963)

Answer received 11 November 2014

The First Minister of Wales (Carwyn Jones): No allegations have been made.

Darren Millar (Clwyd West): Will the First Minister advise as to how many individuals have ceased being employed as special and/or specialist advisers in each of the past three years, including the date their employment ceased and the reason for their departure? (WAQ67965)

Answer received 11 November 2014

The First Minister of Wales (Carwyn Jones): In the last three years three Special Advisers have left the Welsh Government employment, in each case due to resignation. Over the same period three Specialist Policy Advisers have left, one due to resignation and two on expiration of their contracts. The dates of these departures were 08/03/2013, 21/01/2014, 14/03/2014, 23/04/2014, 25/07/2014 and 15/09/2014.

Annex 2

Questions Without Notice from the Party Leaders

Cwestiynau nawr gan arweinwyr y pleidiau. Arweinydd yr wrthblaid, Andrew R.T. Davies. 142

Questions now from the party leaders. The leader of the opposition, Andrew R.T. Davies.

Leader of the Opposition

Thank you, Presiding Officer. First Minister, recently, we've had allegations put by a former cabinet Minister and by a senior special adviser that, in the last Assembly Government that you were First Minister to, there was bullying, mind games, favouritism, deliberate personal undermining, and that that culture was allowed to flourish unchecked. Also, the special adviser cited the behaviour as being 'pure poison'. Could I ask you to comment on those allegations, First Minister, as, if they are correct, then that is no way to run a Government, is it? 143

Diolch i chi, Llywydd. Prif Weinidog, yn ddiweddar, rydym ni wedi clywed honiadau gan gyn-Weinidog cabinet a chan uwch-gynghorydd arbennig bod, yn y Llywodraeth Cynulliad diwethaf yr oeddech chi'n Brif Weinidog arni, bwlio, gemau meddwl, ffafriaeth, tansellio personol bwriadol, ac y caniatwyd i'r diwylliant hwnnw ffynnu heb gael ei atal. Hefyd, dywedodd y cynghorydd arbennig bod yr ymddygiad yn 'wenwyn pur'. A gaf i ofyn i chi wneud sylwadau ar yr honiadau hynny, Prif Weinidog, oherwydd, os ydyn nhw'n wir, yna nid dyna'r ffordd i redeg Llywodraeth, nage?

First Minister of Wales

Well, first of all, can I say that I've heard the allegations of bullying by Leighton Andrews? I've listened to what he has to say. I heard what Steve Jones had to say, and what I will say is this: if people wish to come forward to me and explain things to me about their experience, then I'm more than willing for that to happen and they can contact me either through my office or through the Permanent Secretary. 144

Wel, yn gyntaf oll, a gaf i ddweud fy mod i wedi clywed yr honiadau o fwlio gan Leighton Andrews? Rwyf wedi gwranddo ar yr hyn sydd ganddo i'w ddweud. Clywais yr hyn yr oedd gan Steve Jones i'w ddweud, a dywedaf hyn: os yw pobl yn dymuno dod ataf i ac esbonio pethau i mi am eu profiad, yna rwy'n fwy na pharod i hynny ddigwydd a gallant gysylltu â mi naill ai drwy fy swyddfa neu drwy'r Ysgrifennydd Parhaol.

Leader of the Opposition

First Minister, the allegations are levelled very much at your office, and the allegations, or the people making the allegations, state quite clearly that they raised these allegations with you on numerous occasions and just gave up. They just gave up; they believed that they weren't being taken seriously and these issues were not being addressed. Indeed, in an Assembly written question to my colleague Darren Millar, who asked a question back in October/November 2014, you actually responded to him by saying that no allegations had been made. How can people have confidence that if they do choose to raise these serious concerns with you that they will be taken seriously? And in the absence of them having that confidence, would you commit to referring these allegations for investigation by an independent third party so that we can fully understand whether they are serious allegations that stack up, with action required, or that they have no substance and can be discarded? 145

Prif Weinidog, mae'r honiadau wedi eu cyfeirio'n bendant at eich swyddfa chi, ac mae'r honiadau, neu'r bobl sy'n gwneud yr honiadau, yn datgan yn gwbl eglur eu bod wedi codi'r honiadau hyn gyda chi ar sawl achlysur cyn rhoi'r ffidil yn y to. Fe roesant y ffidil yn y to ; roedden nhw'n credu nad oeddent yn cael eu cymryd o

ddifrif ac nad oedd y materion hyn yn cael sylw. Yn wir, mewn cwestiwn ysgrifenedig yn y Cynulliad i'm cyd-Aelod, Darren Millar, a ofynnodd gwestiwn yn ôl ym mis Hydref/Tachwedd 2014, fe wnaethoch ymateb iddo trwy ddweud nad oedd unrhyw honiadau wedi eu gwneud. Sut gall pobl fod yn ffyddiog y byddant yn cael eu cymryd o ddifrif os byddant yn dewis codi'r pryderon difrifol hyn gyda chi ? Ac os nad yw'r ffydd hwnnw ganddynt, a wnewch chi ymrwymo i atgyfeirio'r honiadau hyn ar gyfer ymchwiliad gan drydydd parti annibynnol fel y gallwn ddeall yn llawn pa un a ydyn nhw'n honiadau difrifol sy'n dal dŵr, gyda champau gweithredu gofynnol, neu nad oes unrhyw sylwedd iddynt ac y gellir eu rhoi o'r neilltu?

First Minister of Wales

I think it's hugely important that, where people have concerns, they're able to express those concerns through a confidential process. I don't think doing it in the public domain is the way to do these things, and I invite people to come forward with any concerns that they might have and contact my office or contact the Permanent Secretary so that I can make an assessment of what was said to be happening at that time. 146

Rwy'n credu ei bod hi'n hynod bwysig, pan fydd gan bobl bryderon, eu bod nhw'n gallu mynegi'r pryderon hynny trwy broses gyfrinachol. Nid wyf i'n credu mai yn y parth cyhoeddus y dylid gwneud y pethau hyn, ac rwy'n gwahodd pobl i ddod ymlaen gydag unrhyw bryderon y gallai fod ganddynt a chysylltu â'm swyddfa i neu gysylltu â'r Ysgrifennydd Parhaol fel y gallaf wneud asesiad o'r hyn y dywedwyd oedd yn digwydd bryd hynny.

[Andrew RT Davies AM](#) 14:09:37

Is it fair to say, though, First Minister, that these allegations were raised with you at the time? Because both individuals—senior individuals within the Government—are categorical in their allegations that they were raised on numerous occasions with you, not just on one-off occasions, but they were raised on numerous occasions with you, and indeed that they were levelled at your office, they were. They weren't levelled at the wider Government structure—they were levelled at the office of the First Minister. So, can you confirm that, unlike the answer you gave Darren Millar back in 2014, these allegations were raised with you and that you did investigate them at that time? And, as I said, if they do stack up, will you commit to referring them to an independent person so that they can be looked into and, actually, these actions addressed? 147

Mae'n deg dweud, fodd bynnag, Prif Weinidog, y codwyd yr honiadau hyn gyda chi ar y pryd? Oherwydd mae'r ddau unigolyn—unigolion uwch o fewn y Llywodraeth—yn bendant yn eu honiadau eu bod wedi cael eu codi ar sawl achlysur gyda chi, nid dim ond ar achlysuron unigol, ond fe'u codwyd sawl tro gyda chi, ac yn wir eu bod wedi cael eu gwneud yn erbyn eich swyddfa, do. Nid oeddent yn cael eu gwneud yn erbyn strwythur ehangach y Llywodraeth—roedden nhw'n cael eu gwneud yn erbyn Swyddfa'r Prif Weinidog. Felly, a allwch chi gadarnhau, yn wahanol i'r ateb a roesoch i Darren Millar yn ôl yn 2014, y codwyd yr honiadau hyn gyda chi a'ch bod chi wedi ymchwilio iddynt ar y pryd? Ac, fel y dywedais, os oes rhinwedd iddynt, a wnewch chi ymrwymo i'w hatgyfeirio i unigolyn annibynnol fel y gellir ymchwilio iddynt, ac mewn gwirionedd, rhoi sylw i'r gweithredoedd hyn?

First Minister of Wales

What I can say is that any issues that were brought to my attention at that time were dealt with. That's the answer that was given—and that answer is correct—back in 2014. If, however, there are other issues that people want to bring forward, then they are welcome to do so. But he asked me a direct question: were any issues raised with me dealt with? The answer to that is: yes, they were dealt with.148

Yr hyn y gallaf ei ddweud yw yr ymdriniwyd ag unrhyw faterion y tynnwyd fy sylw atynt bryd hynny. Dyna'r ateb a roddwyd—ac mae'r ateb hwnnw'n gywir—yn ôl yn 2014. Os, fodd bynnag, oes materion eraill y mae pobl eisiau eu codi, yna mae croeso iddyn nhw wneud hynny. Ond gofynnodd gwestiwn uniongyrchol i mi: a ymdriniwyd ag unrhyw faterion a godwyd gyda mi? Yr ateb i hynny yw: do ymdriniwyd â nhw.