

MUSEUMS LIBRARIES AND ARCHIVES COUNCIL

COMPLAINT BY MR TIM COATES

1. The Complaint and its Investigation

1.1 The complaint

Tim Coates, an independent consultant on library matters, wrote to the Permanent Secretary at DCMS on 11 April to complain about the public and professional conduct of the Chief Executive, Chair and other officers of the MLA. The complaint concerned the way in which the MLA had advised Swindon Borough Council (SBC) about their library service, in particular in a Desk Analysis of a report Mr Coates had written for SBC.

1.2 The process for investigation

The Permanent Secretary at DCMS passed Mr Coates correspondence to the Chair of the MLA, Sir Andrew Motion, and asked him to respond officially to the complaint. Sir Andrew arranged for a panel consisting of two MLA Non-Executive Directors and a suitably experienced independent third party to investigate the complaint and report back to him. The terms of reference of the panel were:

To establish the facts surrounding the complaint and to determine whether MLA:

- Was working within its remit in advising Swindon Borough Council;
- Followed a suitable process in doing so;
- Acted properly, commensurate with the standards expected of public bodies;
- Has lessons to learn for the future.

The members of the panel were:

Glen Lawes, Board Member, MLA, Chair of the Panel;
Dr Helen Forde, Board Member, MLA, member of the Panel;
David Gowan, CMG, retired former member of HM Diplomatic Service.

This is the report produced by the panel, following its investigation.

2. The Panel's Conclusion

2.1 Overall finding

The MLA was acting within its remit in responding to SBC's request for general advice on its library service and specific advice on the quality of other advice it had received. There were failures to meet accepted standards (see section 3.3 below) and some procedural errors.

2.2 Response to specific complaints

In his letter of 11 April to Jonathan Stephens, Mr Coates complained specifically that:

2.1 In preparation of the Desk Analysis the MLA did not discuss with me the Brief that I had been given by the Lead Member and officers of Swindon Council to write The Report, nor the analysis

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I had made in The Report. Nor did they seek the information showing sources of data in The Report.

Finding:

The MLA was not bound to consult Mr Coates in responding to SBC's request for advice on his report. However, it would have been more appropriate for the MLA to have consulted Mr Coates before replying to SBC and to have sought clarification on areas considered to be of concern.

2.2 In writing the Desk Analysis the MLA did not seek sufficiently to explore the budget issues facing Swindon Council and raised in The Report, but rather its authors sought primarily to 'prove his (TC's) views are fundamentally wrong' (which they were unable to do) ... and to 'criticize his evidence and methods and cast serious doubt on the reliability and validity of his analysis' (quotations from the Desk Analysis).

Finding:

It was reasonable for the MLA to provide an analysis for SBC of the report by Mr Coates. Part of the MLA's responsibilities is to offer its own professional advice to local authorities.

Much of the content of the Desk Analysis was valid and useful. However, some parts of the Desk Analysis and the covering e-mail to SBC included language that was inappropriate. (See Finding 2.7 below).

2.3 The MLA failed to discuss with me the Desk Analysis during its preparation or after it had been prepared.

Finding:

It would have been appropriate for the MLA to have consulted Mr Coates before replying to SBC and to have sought clarification on areas considered to be of concern.

2.4 The MLA should not have attempted to make this matter confidential from me.

Finding:

The MLA was not bound to make its commentary immediately available to Mr Coates. However, it should have discussed a disclosure policy with SBC at the time that it agreed to offer advice, and should also have taken into account the likelihood that the commentary would (quite properly) enter the public domain within a short period of time.

(See Recommendations for the Future in paragraph 4.)

2.5 That the MLA have failed to make clear to Swindon Council that they believe the recommendations in my report to the council were correct; and failed to make sufficient effort to make the Council understand that it is important that the recommendations of The Report should be acted upon.

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Finding:

The MLA Desk Analysis did not say that it believed Mr Coates' findings to be correct. The MLA acted rightly in forming its own conclusions in advising SBC. The SBC was responsible for using advice (from all sources) as it felt appropriate.

2.6 The Desk Analysis conducted by the MLA, and entitled 'independent advice' by them, was not properly conducted and its analysis is inappropriate; it is unprofessional and of low standard. The issue of this document by the MLA for use by Swindon and its publication should not have been authorised.

Finding:

The MLA's Desk Analysis was produced within 48 hours of the request from Swindon Borough Council and was an analysis of information, methods and argument. It was not a comprehensive or self-standing study of Swindon's library service and its financing.

Part of the MLA's responsibilities is to offer its own professional advice to local authorities. There were some failures to meet accepted standards and procedural errors in the way advice was offered to SBC in this case. (See the reply to question 2.2 above and the comments in section 3.3 below.)

2.7 In doing all of the above the MLA did not take due and proper care to prevent damage to my reputation as a consultant.

Finding:

The MLA's e-mail of 19 March to SBC (covering the Desk Analysis) described Mr Coates' report as "exceedingly poor". The Panel does not agree with this conclusion or with some inappropriately phrased criticisms of Mr Coates' report in the Desk Analysis. It is nevertheless relevant that the Desk Analysis noted in its opening paragraph, "We should recognise that Mr Coates may well be right in his claims."

The Panel does not have the competence to offer any wider comment in response to this question.

2.8 Since 2 April when this matter came to light, officers of the MLA have not taken appropriate steps to take remedies.

Finding:

The MLA acted appropriately after 2 April by releasing the Desk Analysis to Mr Coates as soon as he requested it. The Chief Executive apologised for not informing him at the time when the report reached SBC. It has set up the present Panel to examine Mr Coates' complaints.

2.9 Ancillary matters

Mr Coates also asked that the enquiry panel should consider among other background evidence an item recorded in the minutes of the MLA Board of 22nd November 2008. This was a

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report of a meeting between The Chair, Chief Executive and Lyn Brown MP to discuss national library policy which was described as “constructive” and that “The same could not always be said for some of the sector’s most vociferous critics, and the MLA was not keen to give a platform to those without a constructive agenda.”

Finding:

This comment was made before the MLA Board was informed of Swindon’s library problems and in a different context. It has no bearing on the complaints above.

3. Background

3.1 What happened?

Description of events	Documents
<p>a. A cabinet paper at Swindon Borough Council (SBC) of 10 December 2008 identified two public libraries as candidates for closure to find budget savings of £55,000 in the next financial year. By mid-December 2008, Shirley Burnham of the ‘Save the Old Town Library Campaign’ was in touch with Tim Coates, a free-lance consultant, seeking help. TC offered to analyse SBC’s library budget to demonstrate to them how they could avoid library closures. On 17 December, this offer was forwarded to SBC and the MLA was informed. MLA issued a press release on 18 December in which Andrew Motion, the chairman ‘warns councils against short-sighted library cuts’. SB then asked AM to ‘throw your considerable intellectual weight behind our efforts’. AM responded on 30 December that ‘decisions about libraries are made by local councils’ ...and... ‘MLA is fully involved in the Libraries Review, which will be looking at questions of sustainability among other things’.</p>	<p>E-mail Shaun Smith (SBC) to Mavis Childs and others, 3 Dec 2008. E-mails TC, SB, AM 16 – 29 Dec. 2008. MLA Press release 18 Dec.</p>
<p>b. On 15 January 2009, Bernie Brannan, Director of Leisure at SBC, declined TC’s offer of help ‘As there is no budget for expenses’. TC reported this to MLA asking if ‘MLA might step in and help?’ MLA did not respond. On 22 January SB made explicit to SBC that TC was prepared to ‘offer his services at no charge to SBC’. This was confirmed by TC to Allyson Jordan, Head of Library Services, on 23 January.</p>	<p>e-mails 4-27 Jan 2009 e-mails, SB, TC, BB and AJ 14 to 27 Jan 2009</p>
<p>c. On 30 January AJ confirmed to TC that council officers and lead members had accepted his offer; this covered a brief for a study to:</p> <p><i>‘ Review the library service in the Borough of Swindon, using publicly available data, and to</i></p>	<p>E-mail Susan Brown to TC, 30 Jan 2009.</p>

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<p><i>make recommendations for consideration by Cabinet that:</i></p> <ul style="list-style-type: none"> • <i>Protect and enhance the integrity of the whole service</i> • <i>Preserve and augment the gains in service provisions, particularly noting increased use of the central library</i> • <i>Deliver the 50 promises as they apply to the library service</i> • <i>Investigate whether the above is best delivered by maintaining or re-provisioning small libraries such as Old Town.'</i> <p>Attached to the brief were documents in the public domain about SBC's libraries and the council's budget for 2008/09. TC followed up by requesting additional data e.g on the costs of individual libraries.</p> <p>Additional items of data were supplied by SBC officers, including, on 12 February, papers that had gone to councillors on the proposed budget for 2009 - 10 (with an accompanying request that the budget should be considered confidential).</p>	<p>e-mails TC, AJ, SB, BB 6 – 12 Feb</p>
<p>d. On 11 February, SBC Cabinet decided on closure or reduced council staffing at four libraries. Roy Clare began to receive regular correspondence from SB outlining her concerns and asking MLA to become involved. Anne Snelgrove, a Swindon MP, also wrote to RC expressing concern about planned closures.</p> <p>On 15 February, TC sent his report to Ed Vaizey MP; and on 18 February copied it to Swindon Councillors Bluh and Martin, and to Bernie Brannan, as a copy set of power point slides. However, no presentation was made. The short covering e-mail stated, <i>'My object in all this is to help where I can to produce a sound strategy and budget and to that end I am available to help'</i>.</p> <p>The report used comparative data on Swindon's and other library services, and details of Swindon's budget and staffing, to make a case that the Council's staffing costs and the overheads allocated to libraries were excessive and that library closure could be avoided by better budgetary management.</p>	<p>E-mail Councillor Stan Pajak >TC, 11 Feb E-mails SB, RC, AS E-mail TC > Councillors and BB of 18 Feb.</p> <p>Power Point presentation</p>
<p>e. On 23 February SBC voted to reject a motion <i>'To not implement the proposed library closures pending a full review as outlined by Tim Coates...and that this review should be focussed</i></p>	<p>SBC Council minutes</p>

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<p><i>on Tim Coates' recommendations ...'</i></p> <p>This did not signal the end of SBC's relationship with TC, and further discussion was envisaged regarding the points in his presentation, which he had not had the opportunity to present.</p>	
<p>f. On 24 February RC and JF met with AJ at Swindon Central Library and with SB and other campaigners at Swindon Town Hall. The MLA issued a press release about Swindon's library plans and noted, <i>'...the government agency has offered its professional advice in discussions with officials of Swindon Council over the past month'</i>.</p> <p>AJ sent JF a copy of TC's report and noted inter alia that <i>'Further discussion will be held with Tim to explore the points he has raised'</i>.</p> <p>Continued correspondence between SB, TC and RC over the following illustrated growing opposition to library closures in Swindon.</p>	<p>MLA Press Release of 24 Feb</p> <p>E-mail SB > JF of 24 Feb</p> <p>e-mails SB,TC,RC</p>
<p>g. On 11 March DCMS contacted SBC on the subject of library closures. On 13 March, the Leader and Deputy Leader at Swindon agreed to postpone closures and implement a three month consultation programme around the libraries concerned.</p>	<p>Email Abigail Smith to AJ of 11 March</p>
<p>h. On 15 March, BB emailed TC expressing concern about the unauthorised public release of a paper on the council budget for 2009-10, and stated, <i>'They are kept confidential so as not to start rumours , raise unnecessary concerns and prevent possible media games, hence why you were asked to keep it confidential'</i>.</p>	<p>e-mail BB>TC 15 March</p>
<p>i. On 16 March AJ approached JF and asked for MLA guidance around the consultation process and the development of a robust library strategy for the borough. She also said <i>'TC's report is being quoted a lot and I think we need to go through it and look at the data he uses and the conclusions he draws. Think that we may need some independent help here.'</i></p> <p>JF informed RC and Sue Wilkinson (MLA Director of Policy, including research) of the request; SW responded <i>'...Let's start by getting [a MLA staffer] to look at it.....it would be faster than getting someone from outside to do it.'</i></p>	<p>e-mails JF,SW of 16 March</p>
<p>j. Late evening on 16 March JF copied TC's report to</p>	<p>e-mails to</p>

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<p>two MLA staffers along with AJ's points on it at mentioned at "f" above and requested comments by the end of the week. He told the staff that :</p> <ul style="list-style-type: none"> • <i>'The Council themselves disagree with most of the report.</i> • <i>I think (that) rather than independent they mean respected or appropriate analysis of the report. I do think that if [the MLA staffer] provides the same sort of robust analysis that he provided last week for the other statement then we are merely taking up the sort of challenging role that a strategic lead agency should be fulfilling.'</i> 	<p>MLA staffers, 16, 17 March</p>
<p>k. On 18 March the MLA Desk Analysis was available to JF who forwarded it to AJ and BB. JF's covering remarks included:</p> <p><i>'As you can see the quality of the report is exceedingly poor and MLA's advice would be that it would not be appropriate for you or members to use it in any key decision making process'</i> <i>'Please treat confidentially, happy for you to use internally, but if you plan to use externally, I would be grateful if you could talk to me first'.</i></p>	<p>E-mail JF>AJ, BB of 18 March covering the MLA Desk Analysis.</p>
<p>l. On 19 March exchange of e-mails as follows:</p> <p>AJ to JF: <i>'I thought you would be interested to see the emails below. The local paper has used a document this morning that was given to Tim Coates and is now in the public domain through Shirley Burnham. This document was given to Tim and was about VFM saving considered by corporate board and the cabinet. This was the option for saving £280k. I have talked to(the borough solicitor) this morning and explained about the MLA analysis of Tim's report.</i></p> <p><i>'What do you think we should do now as the solicitor feels that continuing to work with Tim is an option we should not pursue but we are coming under pressure from Shirley and others to do so. They feel Tim has proposed savings that are deliverable.'</i></p> <p>JF replied <i>'I would suggest that this apparent breach of confidence, coupled with MLA assessment of the research itself, gives the council every right to say that it no longer wish to work with Tim.</i></p> <p><i>'Do I detect a sub text around you wishing to say MLA would support you is such a position were</i></p>	<p>e-mails of 19 March AJ, JF</p>

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<p><i>taken?'</i></p> <p>AJ responded <i>'Yesterday you suggested that we could use the document you sent internally. I would like to know if there is any possibility that we could say the document does not necessarily deliver the savings suggested, backed by MLA. I do not want to put the MLA in a difficult position however, you are probably right in saying there is a subtext around MLA support but I am a realist and know that relationships between Tim and MLA are improving at the moment. Otherwise we are just going down the line of suggested breach of confidence.'</i></p> <p>JF responded orally to AJ that <i>'Such a response from the MLA would be inappropriate'</i>.</p>	<p>JF meeting with the panel, 6 July</p>
<p>m. In the week of 19 March, MLA started to work closely with SBC to develop library consultation. On 27 March, SB emailed RC and SBC to complain about the consultation period. The MLA assisted SBC with a response. AJ and BB began drafting a new library strategy with advice and examples from the MLA.</p>	<p>e-mails SB, RC,AJ, JF of 27 and 30 March</p>
<p>n. On 19 March, TC renewed his request to SBC for a meeting with officials and councillors to discuss his report.</p> <p>On 1 April BB responded to TC, <i>' The independent advice has been shared with Cabinet members and Senior Council Officers and supports the Council view that it is not appropriate to use the report in any key decision making process. We have been asked to keep this report confidential by the authors and we will respect that request. I will pass on your request to them for their consideration.'</i></p> <p>On 2 April TC relayed this to the MLA and asked to know if it was <i>'the authors of this report'</i>.</p> <p>On the same day RC replied attaching a copy of the Desk Analysis and said, <i>' The key point is that our analysis does not say you are wrong, but that your case is poorly argued with no clear links between the data and your conclusions'</i>.</p> <p>In subsequent e-mails RC took responsibility for the actions of MLA as its CEO.</p>	<p>e-mails TC, BB and others, 19 March, 1 April</p> <p>e-mail TC>AM,RC, YE and JH</p> <p>e-mail RC> TC of 2 April</p>
<p>o. On 5 April RC e-mailed TC to say <i>'At the point it was decided to share with Swindon the MLA's</i></p>	<p>e-mail RC>TC of 5</p>

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<p><i>objective analysis of your report it would have been a professional courtesy to have informed you. I am very sorry and apologise unreservedly for the oversight. The omission of that step meant that you were surprised by Swindon's subsequent decision. Nonetheless, as soon as you put the matter to me we released the analysis to you immediately and without dissembling".</i></p>	<p>April</p>
<p>p. There were exchanges variously involving TC, RC, JH, AM and SB between 2 and 11 April in which attempts were made to find a way of settling TC's complaint about MLA's actions in respect of his report to SBC but which ended with TC reiterating an intention to complain formally to the DCMS.</p>	<p>e-mails TC, AM, RC, SB, JH 2-11 April</p>
<p>q. On 11 April TC wrote to Jonathan Stephens, Permanent Secretary at DCMS to complain about the conduct of MLA.</p>	<p>TC's letter of complaint and attachments of 11 April</p>
<p>r. RC replied to SB saying: <i>'The MLA is continuing to work with the local authority on two key aspects of its libraries review, to advise on:</i></p> <ul style="list-style-type: none"> • <i>The proper conduct of the consultation process to take careful account of the opinions and needs of people; and</i> • <i>How best Swindon can provide 'comprehensive and efficient' library services that are sustainable for all communities'</i> 	<p>e-mail RC > SB of 14 April</p>
<p>s. TC offered to meet RC; offer declined in light of complaint.</p>	<p>e-mails</p>
<p>t. On 23 April, Sarah Taylor of DCMS confirmed to AM that it was for the MLA to deal with the complaint by setting up a board committee. GL was subsequently tasked with assembling a complaints panel. On 29th April TC was informed of the terms of reference of the panel as follows:</p> <p><i>'To establish the facts surrounding the complaints and to determine whether the MLA:</i></p> <ul style="list-style-type: none"> • <i>Was working within its remit in advising Swindon Borough Council</i> • <i>Followed a suitable process in doing so</i> • <i>Acted properly, commensurate with standards expected of public bodies</i> • <i>Have lessons to learn for the future.'</i> 	<p>GL's e-mail to TC with TOR of 29 April</p>

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u. On 1 May TC e-mailed GL to accept an invitation to meet the panel on 9 June. On the same date, TC complained to DCMS about the MLA's handling of his complaint but was assured by Jonathan Stephen's office by return that it had <i>'every confidence that the complaint will be properly heard through the process'</i> .	e-mails TC, GL, JS of 1 May
v. TC asked the panel to also consider some additional points and representations: <ul style="list-style-type: none"> • A paragraph in the minutes of the MLA Board on 22 November 2008 (para. 53.029) • TC's evidence to the Culture Select Committee of April 2004 • Correspondence between RC and Mavis Cheek of 3-15 June 2009 • Letter from David Appleforth to consultants ERS of 20 June 2009 • Documents sent to Tim Aker of the Tax Payers' Alliance in response to his Freedom of Information request • E-mails provided by TC to MLA under a note dated 31 May 2009. • A consideration of recent library developments at Hillingdon Borough Council 	<p>Para 53.029 of MLA minutes of 22/11/08.</p> <p>Summary of Committee evidence.</p> <p>E-mails.</p> <p>Letter of 20/06/09</p> <p>E-mails</p> <p>Publicly available information.</p>
w. The Panel meeting was deferred to 29 June to avoid a clash with the Wirral library enquiry which affected TC and others.	e-mail
x. The Panel met TC and held a detailed discussion with him lasting some three hours. The Panel also met JF.	Records of meetings on 29 June and 9 July.
y. The Panel met RC.	Record of meeting on 9 July

3.2 Was the MLA within its remit in advising SBC?

The MLA is sponsored by the DCMS and its remit is set out in bi-annual funding agreements with the department. The current agreement specifies the MLA's purposes as being to:

- Advocate best practice, developing and maintaining a data base of case studies and helping local government and other funding bodies to make the most of their investment in the sector; encouraging the improvement of standards and services for visitors and users.
- Be a source of expertise, advice and knowledge; drawing on best practice and experience across the UK and abroad.

One of the specific Indicators of Progress agreed with DCMS is to:

- Co-operate with local authorities and their partners to increase public library participation (baseline year: 2008/09) as measured by local area indicator NI 9.

These purposes are reflected in the annual business plan, agreed by the Board of the MLA and endorsed by DCMS. Plans for 2008/9 include:

- Improving relationships with local government
- Implementing a 'Library Action Plan'
- ...supporting local government.....to deliver better outcomes....improve the delivery of cultural and sports services to local people.

References:

- i) *Funding Agreement between DCMS and MLA, 2008/09*
- ii) *MLA Business Plan 2009/10*

The Panel was of the view that it was within the remit for the MLA to provide observations to SBC with regard to the best use of its funds to support the library sector.

3.3 Did the MLA act correctly in the way it advised SBC?

- The MLA offered advice to SBC in the month leading up to the meeting on 24th February and made a specific point in its press release of that date about the need for "full engagement with local opinion". SBC agreed on 11th March to postpone closures and consult more widely. The MLA's advice was in accordance with its remit. It was not linked to Mr Coates' report, which at that stage was in SBC's possession but had not yet been referred to the MLA.

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- Once the Mr Coates' report had been referred to the MLA for advice, the MLA was acting correctly and within its remit by offering views on data, methods and arguments used in the report. The MLA was right to do so quickly in the light of public concern about Swindon's library policies.
- Furthermore, the MLA was not acting improperly by offering SBC confidential advice in the context of an informal exchange of views about policy options.
- However, it was not in accordance with accepted standards (for example, as set out in the MLA Staff Handbook), and was also a procedural error, to have agreed to analyse Mr Coates' report without informing him at the time and giving him an opportunity to comment. As argued in paragraph 2.4 above, the MLA should have discussed a disclosure policy with SBC at the time that it agreed to offer advice, and should also have taken into account the likelihood that the commentary would (quite properly) enter the public domain within a short period of time.
- When, on 19 March, SBC asked the MLA to give public endorsement of their rejection of Mr Coates' advice on budgetary management, the MLA did not agree to do so.
- However, the MLA (in a private and informal exchange with SBC of the same date) supported other advice to SBC to decline to use Mr Coates' services. The MLA did this partly over an issue about which it had no *locus standi*, namely in response to an allegation that Mr Coates had misused budgetary information supplied to him by SBC. This was an error on the part of the MLA and not in accordance with accepted standards.

4. MLA Lessons for the future

- 4.1 The MLA should provide its staff with terms of reference for engagement with local authorities or other agencies.
- 4.2 In making a formal analysis of work by a third party, the MLA staff should notify the author of such work and offer him or her an opportunity to respond to particular points of criticism.
- 4.3 The MLA should review its policies on confidentiality and the application of the Freedom of Information Act, and ensure that all members of staff are aware of these policies. It should provide guidance and training for members of staff on this area.

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Initials:

TC	Tim Coates
SBC	Swindon Borough Council
AJ	Allyson Jordan, Head of Libraries, SBC
SBrown	Susan Brown, Libraries and Project Support Officer
SB	Shirley Burnham, campaigner for Old Town Library
BB	Bernie Brannan, Director of Housing and Leisure, SBC
AM	Sir Andrew Motion, Chair of MLA
RC	Roy Clare, CBE, CEO of the MLA
JF	Jon Finch, Director of Engagement West, MLA
JH	John Hicks, Board Member, MLA

The Panel

GL	Glen Lawes, Board Member, MLA, Chair of the Panel
HF	Dr Helen Forde, Board Member, MLA, member of the Panel
DG	David Gowan, CMG, retired former member of HM Diplomatic Service, member of the Panel.

24 July 2009