



WALES AUDIT OFFICE
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Auditor General for Wales

Report in the Public Interest – Inadequacies in Procurement, Governance and Financial Management – **Buckley Town Council**

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Mae'r ddogfen hon hefyd ar gael yn Gymraeg. This document is also available in Welsh.

The person who delivered the work was Deryck Evans under the supervision of Anthony Barrett.

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Acting under delegated arrangements and on behalf of the Auditor General for Wales, I have issued this report under section 22 of the Public Audit (Wales) Act 2004, to draw the public's attention to long standing deficiencies in procurement arrangements and governance at Buckley Town Council.

This report sets out these deficiencies and concludes that Buckley Town Council has failed to establish proper arrangements to secure economy, efficiency and effectiveness in its use of resources and since 2005 has incurred expenditure totalling almost £270,000 that I consider to be unlawful.

The Council must consider the report and the recommendations made, in accordance with section 25 of the Public Audit (Wales) Act 2004.

The Auditor General intends to issue a qualified audit report on the Council's 2017-18 Annual Return.

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Summary report

Introduction

Purpose of this document

- 1 This report summarises my conclusions arising from my audit of Buckley Town Council's (the Council) accounts for the 2017-18 financial year. In the course of the audit, I identified significant deficiencies in procurement arrangements and governance in relation to the Council's expenditure on cleaning contracts and the engagement of the town centre manager.
- 2 This report is issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004 (the Act). I have issued this report to draw the public's attention to these failures in governance arrangements and inadequacies in financial management and internal control at the Council. I believe it is important that the public has a full and proper awareness of the events concerning the Council.
- 3 I also consider it appropriate to give the Council an opportunity to demonstrate the steps it has already taken to improve arrangements and to ensure that the risk of such failures recurring is reduced to a minimum. There are lessons to be learnt not just by the Council, but by all community councils in Wales.

Buckley Town Council

- 4 The Council serves the town and community of Buckley in North Wales. It has a range of powers conferred on it by law and typically raises around £300,000 income via its precept each year.
- 5 The County Council collects the precept through additional council tax charged to the Council's residents. The Council derives its funding from the public purse and its members are elected by local residents. The Council is, therefore, accountable to the local electorate.
- 6 The Council employs Mr M Wright to undertake the joint role of Clerk and Responsible Financial Officer (referred to as the Clerk in the remainder of this report).
- 7 In 2017-18, it made payments totalling over £37,000 for services provided under three service contracts. The contracts relate to services for:
 - Cleaning of town council offices
 - Cleaning of public conveniences
 - Town centre manager

My audit work

- 8 My audit work on town and community councils normally focusses on an annual return completed by each council and submitted to auditors working on my behalf.

The annual return contains the annual accounting statements that the council is required by law to prepare and an annual governance statement which sets out how the council has managed its financial affairs.

- 9 Audit work is designed to ensure that I am able to conclude on whether or not:
- the accounts have been properly prepared; and
 - the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.
- 10 Additional audit work is undertaken when matters come to my attention during the audit.
- 11 In July 2018, I received information that the Council had failed to comply with its own Standing Orders and Financial Regulations when entering into contracts.
- 12 To get a full understanding of how the Council procures services, I have reviewed the award of contracts for cleaning and for the services of the town centre manager.
- 13 My audit findings show long-standing inadequacies in governance, financial management and internal control at the Council, specifically in relation to procurement, and these are summarised below.

Key findings

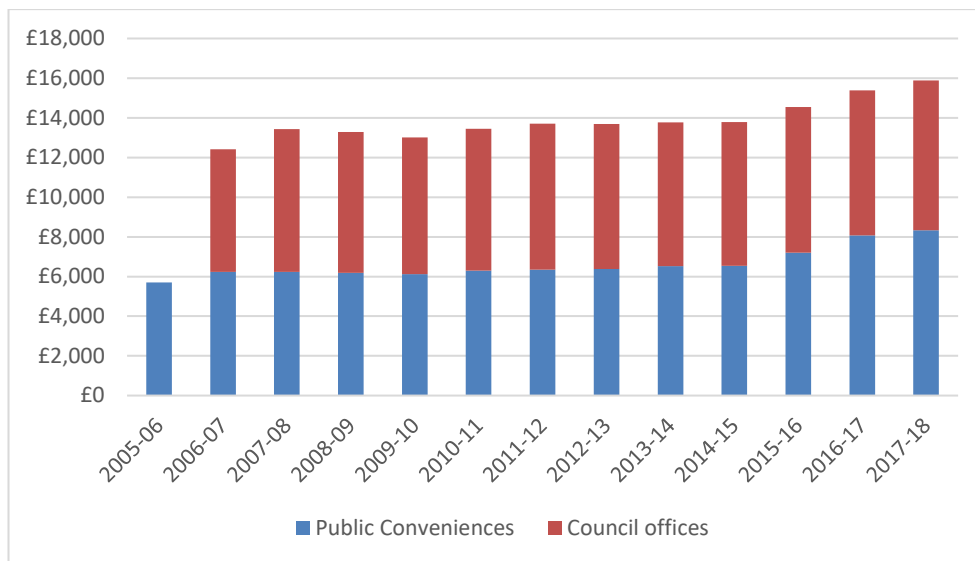
In my view, the Council has incurred unlawful expenditure totalling £153,898 on two cleaning contracts since 2005

Since 2005, the Council has spent over £172,000 under two cleaning contracts that were initially let in 2005 and 2006 with expenditure in 2017-18 totalling £15,875

In 2017-18, the Council spent £15,878 related to two cleaning contracts for cleaning of public conveniences and for cleaning of the Council's offices. The contracts commenced in 2005 and 2006 respectively. Exhibit 1: annual payments for cleaning contracts

In 2017-18 the Council spent over £15,000 in total for two cleaning contracts. The annual spend on the contracts has increased by 28%¹ since the contracts were first let.

¹ The initial contract specified that the toilets would be cleaned for six days per week. In 2015, the Council extended the contract to seven days per week at an additional annual cost of over £1,000 per annum (see paragraph 19).



Source: Buckley Town Council data

- 14 The contract for cleaning of public services was let in 2005. Up to 31 March 2018, the Council had spent a total of £86,186 on this contract.
- 15 In 2006, the Council let a further contract for cleaning its offices. Cumulatively, the Council has incurred expenditure totalling £85,875 under this contract.

Each of the two contracts were initially let for a one-year period although both contracts allow for the contracts to be extended for up to three years

- 16 The contract for cleaning the public conveniences (contract 1) was initially let in December 2004 with a commencement date of 1 April 2005 and an end date of 31 March 2006. The initial contract value was £5,300 per annum.
- 17 The contract terms state:
 '12. This contract shall commence on 1 April 2005 and shall be reviewable on the anniversary of its inception. Following the first anniversary it shall be allowable for the contract to be reviewed for a period greater than one year, but in any event the contract shall not be extended beyond a three-year reviewable term.'
- 18 In November 2015, the Council extended the public conveniences' opening hours leading to an increase in the contract value of £450 in 2015-16. The annual equivalent impact of this decision was an additional cost of over £1,000 per annum.
- 19 The office cleaning contract (contract 2) was let in March 2006 with a commencement date of 1 June 2006 and an end date of 31 March 2007. The initial contract value was £120 per week.
- 20 The contract terms include:
 '11. This contract shall commence on 1 June 2006 and shall be reviewable as at 31 March 2007. Following the first review of the contract it shall be allowable for

the contract to be renewed for a period greater than one year, but in any event the contract shall not be extended beyond a three-year reviewable term.'

The Council did not comply with its own standing orders in letting the office cleaning contract and extending the public conveniences cleaning contract and consequently, in my opinion, up to 31 March 2018 the Council has incurred unlawful expenditure under these contracts totalling £153,898

- 21 The Council's Standing Orders generally require that 'Where it is intended to enter into a contract exceeding £5,000.00 in value... for the supply of goods or services, on the execution of such, tenders shall be invited from, wherever practicable, three approved firms. Approved firms shall be defined, where appropriate, as firms on the Flintshire County Council approved list of tenderers.'
- 22 The award of contract 1 followed a competitive quotation process as required by the Council's standing orders.
- 23 The Council did not follow a competitive process when letting contract 2. Instead, it relied on an exemption in its standing orders which states:
'30 (a) (iv) In certain circumstances it will be permissible, by resolution of the Council for the supply of works, goods and/or services, the value of which is likely to exceed £5,000.00, for the contract to be let without competitive tendering. The circumstances will be as follows:- ...
(4) Where the contract is of an identical or sufficiently similar nature to another contract that had been let by competitive tendering in the last 12 months, the successful contractor may be appointed...
Whenever consideration is given to the exclusions listed as 1 – 6 above, the contract should not be let until approval by Council resolution is obtained and the Clerk shall provide such evidence as the Council require to substantiate the use of such exclusions.'
- 24 Contract 2 was let to the same company that won the public conveniences contract without going through a procurement process. The Clerk explained to my audit team that this was due to a lack of interest in the public conveniences contract and because the contract was identical to contract 1. The Clerk negotiated the terms of the contract directly with the company on the basis that the contract was for the same services as the earlier contract.
- 25 The Council's minutes record that the Clerk reported the outcome of his negotiations to the Finance and economic Development Committee on 25 April 2006. The minutes state that "the Clerk be thanked for the work in preparing the contract ensuring a seamless transition and that the contract be received and noted." There is no evidence in the Council's minutes that it agreed to this course of action prior to the negotiations carried out by the Clerk.
- 26 In my opinion, because it did not follow its own standing orders, the Council has incurred unlawful expenditure on this contract totalling £85,875. The argument put

forward by the Clerk for relying on the exemption in the Council's Standing Orders, is without merit:

- although both contracts used a similar proforma contract, they were to provide cleaning services in different locations and for different specifications. Therefore, they were not identical contracts.
- the Clerk did not carry out any form of market testing prior to letting contract 2 and therefore lacked evidence to support the assertion that there was a lack of interest in contract 2. In fact, the fact that two external bids were received for contract 1 suggests there may have been some interest in such contracts.

- 27 Furthermore, no consideration was given to alternative delivery models eg letting the contracts in lots including a combined lot.
- 28 Despite the fact that both contracts were initially let for a maximum three-year term, they have each been extended annually and have been running for over 12 years without further tendering.
- 29 Since the expiry of the initial contract periods, the Clerk has reviewed both contracts annually. This includes the Clerk agreeing a percentage increase in costs with the contractor. However, there is no evidence in the Council's minutes that the Council has approved this approach.
- 30 I believe that both contracts should have been re-let after the initial three-year period with the Council applying its standing orders each time the contracts were re-let. Consequently, in my opinion, in addition to the unlawful expenditure on contract 1, the public conveniences cleaning contract, the Council has incurred a further £68,023 of unlawful expenditure on contract 2, the office cleaning contract.

The Council's failure to comply with its standing orders and to let the cleaning contracts on a competitive basis demonstrates that the Council does not have in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources

- 31 Since contract 1 was first let, there has been no further market testing to provide objective assurance that the Council receives value for money for the two contracts.
- 32 No consideration has been given to alternative options for delivery, eg by combining the contracts to attract potential contractors.
- 33 The Council acknowledges that it has not followed the requirements of its own Standing Orders but contends that it has achieved value for money in relation to these contracts. The Clerk has provided an analysis of contract payments since inception of the two contracts to evidence that the increases in the contract values have not kept pace with inflation. However, I consider that this does not in itself provide evidence that the Council has proper arrangements in place to secure economy, efficiency and effectiveness in its use of resources.

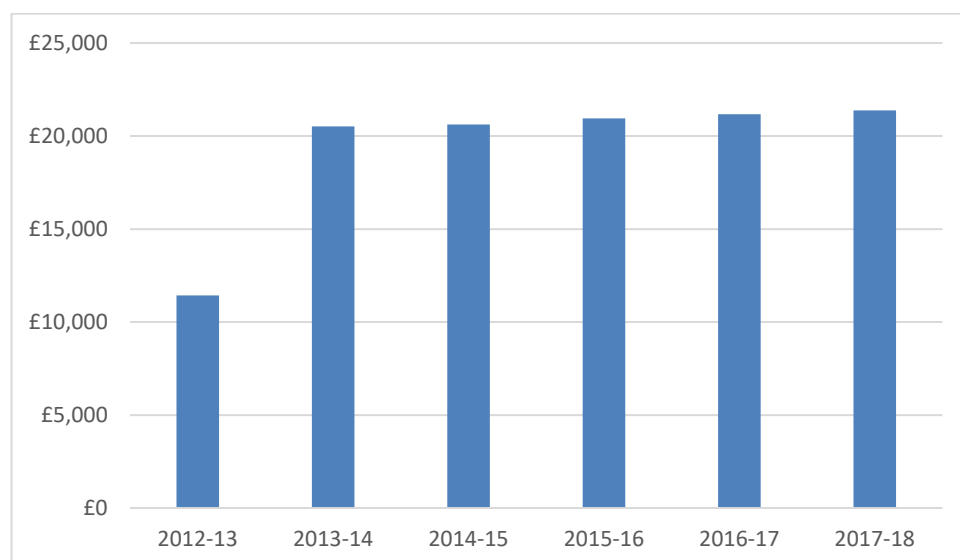
In my view, the Council has incurred unlawful expenditure totalling £116,064 on the appointment of its Town Centre Manager

Since 2012, the Council has spent over £116,000 under a contract for services for a Town Centre Manager

34 In 2012-13, the Council let a service contract for a Town Centre Manager and has subsequently spent £116,064 under this contract for services.

Exhibit 2: annual payments for the Town Centre Manager post

Since 2013-14, the Council has spent over £20,000 per year under the Town Centre Manager service contract



Source: Buckley Town Council data

35 The contract for the Town Centre Manager was let in September 2012. Previously, the position was filled by an employee. £11,434 spent in 2012-13 is the full cost for the financial year including salary and related costs together with the costs incurred under the contract signed in September 2012. The cost of the Town Centre Manager role increased in subsequent years due to an increase in the hours allocated for the role.

In July 2012, the Council advertised a job vacancy for the role of town centre manager and appointed to the role in October 2012

36 In July 2012, the Council's 'Establishment Sub Committee' approved the advertising of the Town Centre Manager & Technical Officer role following the

departure of the previous incumbent. The vacancy was advertised at the same salary and working hours as for the previous incumbent.

- 37 Interviews were held in September 2012 and the successful candidate, Mr A White, was appointed in October 2012. The minutes of the Establishment Sub Committee record that Mr White was to be offered the post at the salary indicated in the job advertisement.

Notwithstanding that the Council had advertised an employment vacancy and had approved the appointment of a member of staff, it offered Mr White a contract for services thereby breaching its own standing orders for the award of contracts

- 38 I understand that on being offered the post for the Town Centre Manager and Technical Officer role, the successful candidate (Mr White) expressed a preference for providing services on a contract basis rather than becoming an employee.
- 39 On this basis Mr White, trading as White Events, was offered a contract for services with an annual contract value of £12,180 excluding VAT. In a written submission, the Council has emphasised that the contract value (exc VAT) was equal to the salary offered for the advertised vacancy. This contract was signed by the Chair of the Finance and Economic Development Committee, on behalf of the Council, on 21 September 2012.
- 40 I have been informed that there was no report to the Council setting out this change. The minutes of Establishment Sub-committee meeting of 10 January 2013 refers to a report by the Clerk. The minutes state 'The Sub Committee received and considered a report from the Clerk, with enclosures in respect of the Town Centre Manager... The Clerk's report indicated that the Town Centre Manager... was, after discussions, appointed as a Contractor to the Council.'
- 41 In my view, the Council acted unlawfully in awarding a contract for services as it did not follow its own Standing Orders which require that for contracts with a contract value over £5,000, the Council should seek to obtain a minimum of three tenders. The Council did not follow such a process but instead relied on applications received in response to an advertised job vacancy.

In January 2013, the Council provided the Town Centre Manager with an amended contract and increased the contracted hours from 15 to 25 hours per week increasing the annual cost of the contract from £12,180 to £20,300 thus substantively amending the specification from that originally advertised

- 42 The September 2012 contract contained the following provisions:
- the annual contract value was £12,180 plus VAT. This equates to the £12,180 salary as stated in the job advertisement.
 - income tax and national insurance were to be the responsibility of White Events.

- the annual contract value would be reviewed annually and linked to increases in 'Local Government National payscales'.
 - following a satisfactory review after six months the contract would be extended indefinitely ie with no termination date.
 - a five week paid holiday entitlement was included with additional paid leave between Christmas and New Year's day and for all bank holidays.
 - training costs would be met by the Council.
- 43 The Clerk has stated that due to the terms of the contract, the Council's internal auditor expressed the view in late 2012, that the contract was, in substance, a contract of employment and not a contract for services.
- 44 I concur with this view as the contract contained terms that are consistent with terms usually found in an employment contract rather than a contract for services:
- the appointment of White Events was to fulfil a post within the Council;
 - the contract specification referred to the job description for the post;
 - the contract contained a probationary period, following which the contract would be extended indefinitely;
 - the Council specified the place of work;
 - the value of the contract was to be uplifted in line with increases in the local government national pay scales with additional hours worked recompensed by time off in lieu;
 - the contract contained provision for holiday pay and sickness absence; and
 - disciplinary procedures would apply as if Mr White were an employee.
- 45 Consequently, in January 2013, the Establishment Sub-Committee was asked to consider an alternative service contract for White Events and an amended contract was put in place. The minutes record that 'The Clerk therefore presented a revised Contract which clearly laid out the Contractor/Client relationship.' The amended contract sought to remove or modify the clauses that are most characteristic of employment rather than service contracts.
- 46 The Council contends that this was a new contract that was presented and not an amended contract. However, this is not borne out by the Council's minutes. It also states that the Establishment Sub Committee was 'also asked to decide whether or not it wished to continue with the Contractor/Client relationship or to require the Town Centre Manager to become an employee of the Council.'
- 47 At the same time, the Council reviewed the hours required to be provided by White Events and increased these from 15 hours per week to 25 hours per week. Furthermore, the probationary period clause was removed and the contract given an indefinite time period.
- 48 Although the original advertisement for the job vacancy stated that "there is a potential that from 1 April 2013, the hours will be reviewed with the possibility of an increase", the advertisement does not give any indication of the potential scale of the increase. I consider that the two thirds increase in contracted hours and the

amendment to an open-ended contract means that the contract signed in January 2013 is substantially a different contract to that implied from the original vacancy advertised and the terms of the contract originally proposed. Consequently, in my view, if this were a new service contract, the Council should have run a procurement process in April 2013.

By offering a contract for services rather than a contract of employment and subsequently making a significant change to the terms of the contract without complying with the Council's Standing Orders, the Council has incurred unlawful expenditure totalling £116,064

- 49 In my view, the Council's expenditure in relation to the post of Town Centre Manager is unlawful for the following reasons:
- the position was advertised as a job vacancy and the Council initially made the appointment on this basis.
 - notwithstanding the Council drafting of the Contract as a service contract, the terms could be seen to be creating a case of false self-employment, which could be seen to be used to avoid creating employment rights and avoid payment of National Insurance and income tax.
 - the Council did not follow a proper procurement process for a contract for services. If the Council had decided to award a contract for services, it should have complied with its Standing Orders.
 - the contract that was awarded in January 2013 was significantly different to that originally advertised with a 67% increase in the hours required and the subsequent increase in cost.
 - the contract awarded in April 2013 is substantially different to that originally offered in September 2012 and the Council should have followed a procurement process in accordance with its Standing Orders in April 2013.
 - it is unreasonable for the Council to award a service contract with an indeterminate contract period.
- 50 The minutes of the 10 January 2013 meeting record that the committee resolved that "the revised contract between White Events and Buckley Town Council be accepted as the basis of engaging the Town Centre Manager and Technical Officer and that the contract be signed by both parties accordingly." The Council has stated that revised contract was intended to clarify and confirm the Client/Contractor relationship.
- 51 Notwithstanding that the contract has been amended and the Council had resolved to accept the amended contract as a basis of engaging White Services, it is my view that it remains likely that this is in substance a contract of employment rather than a contract for services.

I propose to issue a qualified audit opinion on the 2017-18 accounts

52 Based on the above matters I propose to issue a qualified audit opinion on the 2017-18 accounts. My proposed audit opinion is set out in [Appendix 1](#).

Recommendations and next steps

Recommendations

53 My recommendations to the Council are set out below.

Exhibit 3: recommendations

I am making five recommendations for improvement to the Council

Recommendations	
Standing orders	
R1	The Council should review its Standing Orders to remove any inconsistencies and ensure that they are consistent with good practice.
Cleaning contracts	
R2	The Council should undertake a new procurement exercise for the cleaning contracts.
Town Centre Manager	
R3	The Council should review the role of the Town Centre Manager and determine whether or not this is an employment position or a service contract.
Town Centre Manager	
R4	If the Council concludes that the role should be fulfilled via a service contract then the Council should ensure that the contract is subject to an appropriate procurement process in accordance with Standing Orders.
Town Centre Manager	
R5	If the Council concludes that the role requires a contract of employment, the Council should ensure that an appropriate contract of employment is provided and proper arrangements are made for other matters such as PAYE.

Action taken by the Council

54 It is important that the Council learns from these findings and addresses the deficiencies I have identified.

- 55 In a written submission, the Council acknowledges that it has not followed its standing orders in relation to the cleaning contracts and the appointment of the town centre manager. It notes that this was an act of omission/ administrative oversight rather than a deliberate action. It contends that it has "in all probability... achieved and secured value for money over the periods of the contracts." The Council has informed me that it has already taken some steps to improve its arrangements including:
- Extending the two cleaning contracts to the end of the 2019-20 financial year with a further procurement process to be completed by March 2020 and new or revised contracts to then be let for a period to be approved by the Finance and Economic Development Committee;
 - Reviewing the role of the Town Centre Manager and is making arrangements to put an amended contract out to tender in accordance with its standing orders; and
 - Making arrangements to review and amend its standing orders to ensure they are consistent with good practice, including specifying that the timeframes for contracts must be clearly identified together with when reviews are required.

Next steps

- 56 Section 25 of the 2004 Act now requires the Council to consider the report or recommendations at a full Council meeting within one month of the date of issue of the report. At the meeting, the Council will need to decide:
- whether the report requires it to take any action;
 - whether the recommendations in the report are to be accepted; and
 - what action (if any) to take in response to the report and recommendations.
- 57 The Council will then need to prepare a written response and agree the wording of that response with me before publishing its response.



Anthony Barrett
Assistant Auditor General
November 2019

Appendix 1

Proposed audit opinion

Auditor General for Wales' audit certificate and report

I am required by law to satisfy myself that:

- the council's accounts are prepared in accordance with the Accounts and Audit (Wales) Regulations 2014;
- the accounts comply with all other statutory provisions applicable to the accounts;
- proper practices have been observed in compiling the accounts; and
- that the council has made proper arrangements for securing economy efficiency and effectiveness in its use of resources.

On the basis of my review carried out in accordance with the Auditor General's Code of Audit Practice, no matters have come to my attention to give cause for concern that the council's accounts are not prepared in accordance with the Accounts and Audit (Wales) Regulations 2014 and that proper practices have not been observed in compiling the accounts.

In its Annual Governance Statement, the Council states that it has taken steps to ensure that there are no matters of actual or potential non-compliance with laws, regulations and codes of practice. In my opinion, this assertion is not correct.

- The Council has incurred expenditure of £15,870 related to two contracts for cleaning services. I consider these contracts to be unlawful as the Council has failed to comply with its standing orders when extending these contracts.
- The Council has incurred expenditure of £21,376 in relation to a service contract for a town centre manager. The Council did not comply with its standing orders when letting this contract and therefore I consider the expenditure to be unlawful.
- In extending each of these contracts for an indefinite period of time, the Council has not made proper arrangements to secure the economy, efficiency and effectiveness in its use of resources.

Wales Audit Office
24 Cathedral Road
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: info@audit.wales

Website: www.audit.wales

Swyddfa Archwilio Cymru
24 Heol y Gadeirlan
Caerdydd CF11 9LJ

Ffôn: 029 2032 0500

Ffacs: 029 2032 0600

Ffôn testun: 029 2032 0660

E-bost: post@archwilio.cymru

Gwefan: www.archwilio.cymru