

STANDARDS COMMITTEE

Minutes of the meeting held on 19 February 2016

PRESENT: **Independent Members**

Mrs. Denise Harris Edwards
Mr. Islwyn Jones
Mr. Leslie Lord
Mrs. Dilys Shaw
Mr. Michael Wilson

Representing Town and Community Councils

John Roberts (In respect of Items 1 & 2 only)

Representing the County Council

Councillor Trefor Lloyd Hughes

IN ATTENDANCE: Monitoring Officer,
Committee Officer (MEH).

ALSO PRESENT: Councillor Peter Rogers

APOLOGIES: Councillor Dafydd Rhys Thomas

1 ELECTION OF CHAIR

Mr. Michael Wilson was re-elected Chair from among the Independent Members.

2 ELECTION OF VICE-CHAIR

Mr. Islwyn Jones was re-elected Vice-Chair from the Independent Members.

3 DECLARATION OF INTEREST

No declaration of interest received.

4 LOCAL GOVERNMENT ACT 2000 - APPEAL AGAINST THE DECISION OF THE STANDARDS COMMITTEE

Submitted – the report of the Monitoring Officer and Enclosures.

The Chair stated that this is an appeal review following a referral back to the Standards Committee from the Appeal Tribunal of the Adjudication Panel for Wales regarding the matter of Councillor Peter Rogers' breaches of the Code of Conduct and the Tribunal's recommendation that the suspension be increased from one to three months. The Chair emphasised that this is not a rehearing of evidence that was presented to the Standards Committee on 19 December, 2014, nor to the subsequent Appeal Tribunal held on 10 and 11 September, 2015.

The Chair further stated that the Standards Committee will determine the level of suspension to be imposed on Councillor Rogers as a result of his breaches of the Council's Code of Conduct, being either a period of suspension of one month or three months. The Chair stated that the Standards Committee will hear any additional evidence on sanction, since the Appeal, either written, or orally, from the Public Services Ombudsman for Wales and Councillor Rogers. The Committee received the Appeal Tribunal's Report on 18th December, 2015 together with written submissions by Councillor Rogers; the Public Services Ombudsman for Wales has responded that they have nothing to add.

The Chair outlined the procedure of the meeting and noted that the Committee will adjourn to a closed session to consider its decision and the Monitoring Officer will only be called if any specific advice is requested. Any such advice given will be shared with Councillor Rogers.

The Monitoring Officer was invited by the Chair to present her report to the Committee. Councillor Rogers requested an adjournment because the Monitoring Officer has been disqualified from advising the Standards Committee in this matter; with an external Solicitor used at previous hearings.

The Monitoring Officer explained that the Standards Committee had decided that owing to Councillor Rogers' statement to the Public Services Ombudsman for Wales, with regard to the legal section of the Council, of which she is the Head of Service, it would not be appropriate for her to participate in issues of evidence at the Standards Committee's hearing held on 19 December, 2014. The hearing before the Adjudication Panel, on 10 and 11 September, 2015 was a re-hearing of all the evidence. These are now closed issues as the Standards Committee has no power to reconsider the findings of facts. In the circumstances the Monitoring Officer considered that she is no longer precluded from advising the Standards Committee on the process at this meeting.

The Committee retired to private session to discuss the matter.

Members of the Standards Committee returned from private session and the Chair announced that the members of the Standards Committee had come to a unanimous decision that the Monitoring Officer is to stay at the meeting to advise.

The Chair invited to Monitoring Officer to present her report.

The Monitoring Officer outlined her report to the meeting and stated that the Standards Committee had a full hearing and applied a sanction at its meeting on 19 December 2014. The Committee concluded that Councillor Rogers had breached the Code of Conduct in failing to declare a personal interest by virtue of a long standing friendship with a prospective purchaser of the land as described within the report. As a consequence of the breach, the Standards Committee issued a one month suspension to Councillor Rogers.

Thereafter, Councillor Rogers appealed the decision of the Standards Committee to the Adjudication Panel for Wales on the 19th January, 2015. The Appeal Hearing took place on the 10th and 11th September, 2015 which was a full rehearing of the facts and evidence together with sanction. The Appeal Tribunal made findings of facts and also concluded that three different categories of breaches of the Code of Conduct had occurred. The full details are included within the Adjudication Panel for Wales' report dated 1st December, 2015 which was included within the documentation to the Standards Committee.

In summary, the Appeal Tribunal found that Councillor Rogers had improperly used his position as a Councillor and their findings are at paragraph 5.3.3 of the Tribunal Decision.

Secondly, the Appeal Tribunal found that Councillor Rogers had failed to declare a personal interest on 12 occasions when he had dealings with Officers in connection with the disposal of the land – relevant paragraphs within the Tribunal Decision are 5.3.9, 5.3.11 and 5.3.13. Additionally the Appeal Tribunal concluded that in seeking to influence the transaction at various points, Councillor Rogers also created a prejudicial interest and these are outlined in paragraph 5.3.16 of the Tribunal Decision.

As a consequence of these findings, the Appeal Tribunal concluded that the suspension of one month, as imposed by the Standards Committee, should be increased to a period of three months suspension. In reaching that decision the Appeal Tribunal gave due regard to a number of aggravating features which they listed in paragraph 6.3.4 of their Decision. As a consequence, the Appeal Tribunal referred the matter of suspension back to the Standards Committee so the Committee may decide to accept the recommendation of the Adjudication Panel and impose a sanction of three months, or under the Regulations (enclosed within the documentation to the meeting at enclosure 6), the Standards Committee has a discretion not to follow the recommendation of the Appeal Tribunal but, instead, to reject the recommendation of the Appeal Tribunal and confirm their original decision of a suspension of one month.

The Monitoring Officer further stated that whatever the decision the Standards Committee reaches it has to be based on the findings of facts and breach as reached by the Appeal Tribunal and the Standards Committee is unable to rely on its original findings. The suspension will become effective as from midnight. There is no further right of appeal within the statutory process except by way of judicial review to the High Court.

The Chair stated that the Public Services Ombudsman for Wales has not forwarded any further submission and were not in attendance. He stated that Councillor Rogers has submitted correspondence received on 20 January, 2016.

The Chair invited Councillor Rogers to address the meeting.

Councillor Rogers stated that the issue he has regarding the whole matter, is the length of time this has taken. Seven complaints about him came in at the same time which the Ombudsman has dismissed. The Adjudication Panel for Wales should consider the length of time it has taken from the initial appeal submitted in January 2015 until the Appeal Tribunal in September 2015. He referred to the guidelines of the Adjudication Panel for Wales regarding timescale for hearings following appeals. He was not allowed to call witnesses. Councillor Rogers stated that one department within the County Council was not responding to his emails during the period of waiting for the Adjudication Panel for Wales to set a date for the Tribunal. He considered that he has sustained punishment inflicted upon him already which he has served constantly during this period. The Standards Committee have postponed or cancelled meetings due to the delay of the Adjudication Panel for Wales not submitting their final report on the matter to the County Council.

He noted that he was heartened that the submission he has submitted to the Standards Committee has not been challenged by the Public Services Ombudsman for Wales. Councillor Rogers stated that the Adjudication Panel for Wales delayed submitting the Decision Record until December 2015 which they were aware that the Standards Committee was awaiting the Decision. He noted that he wrote to the Monitoring Officer following receipt of the Decision Report expressing that he considered that the Adjudication Panel for Wales were out of time and breaching their own rules in finalising the report. He considered that he had served his penalty and the whole matter be put away. He said that the Monitoring Officer responded by return stating that she would forward Councillor Rogers' correspondence to the Adjudication Panel for Wales and they should respond to him personally. He stated that he did not have a response to his letter from the Adjudication

Panel for Wales. Councillor Rogers further stated that his family and he had suffered with regard to this matter; allegations of dishonesty are a terrible thing to be accused of.

Councillor Rogers referred to the full County Council held on the 9th December, 2015 when the Wales Audit Office presented their Corporate Assessment Report to the Council. He stated that he raised the issue of his appeal, which can be seen on the webcast of the meeting. Councillor Rogers stated that he had written to the Auditor General regarding this matter. The Wales Audit Office representatives at the meeting were apologetic and said that they would look into the matter; no response was received for them.

Councillor Rogers asked the Standards Committee to consider the damage this matter has had on his credibility.

The Chair invited Members of the Standards Committee the opportunity to ask any questions for clarification on the issue of sanction only to Councillor Rogers.

The Chair referred to Councillor Rogers' written submission to the Standards Committee with regard to *'it is probable with the benefit of hindsight, that I should have accepted the committee's decision and not have proceeded to appeal it.'* The Chair stated that it was Councillor Rogers' decision to appeal the decision of the Standards Committee of a suspension of one month. This would inevitably extend the timetable, albeit acknowledging Councillor Rogers' right to appeal. He wrote to the Public Services Ombudsman for Wales in 2013 and then they publish their report in 2014. The Standards Committee at its meeting held on 11 September, 2014 decided to proceed to conduct a hearing with regard to the allegations of the breach of the Code of Conduct. The full hearing took place on the 19 December, 2014 and a decision was made to suspend Councillor Rogers for a period of one month. Councillor Rogers decided to appeal the decision and that appeal took from January to September 2015. The Chair emphasised that the delay was not attributed to the Standards Committee.

Councillor Rogers responded that he apologised that if he gave the impression that he held any blame against the Standards Committee for any delay. When he wrote to the Monitoring Officer following receipt of the final Decision Report by the Adjudication Panel for Wales (APW) in December, she forwarded his correspondence immediately to the APW; he considered that this implied that APW were to blame for the delay and not the Standards Committee.

The Chair asked whether Councillor Rogers will accept that as a consequence of Councillor Rogers appealing against the decision of the Standards Committee to suspend him for one month, further delay caused by the appeal was an inevitable result of the decision to appeal?

Councillor Rogers responded that the Adjudication Panel for Wales did not do what they were supposed to do and that is why there was such a delay. The Standards Committee have set dates to hear his appeal and having to cancel on two occasions.

The Chair invited Councillor Rogers to make any final closing comments to the Standards Committee.

Councillor Rogers said that the Monitoring Officer has pointed out that the Standards Committee is restricted to considering sanction only. The same restriction applies to himself. In a fair minded and law abiding society, the sanction applied relates to the severity of the alleged offence. Where there are failings found, as the case is today, the findings are based on the accuracy and correctness of the evidence put forward.

Any evidence placed in front of any tribunal/hearing is within the common rule of justice.

1. Well established rules can cause serious consequences when factually incorrect or misleading evidence can possibly be preventing the course of public justice and preventing justice in common law

2. Another consequence of such actions is when a court or Tribunal is placing undue weight in such a manner when considering appropriate sanction

Councillor Rogers said that he is not making any direct allegation at today's meeting or making any attempt to bring undue pressure on the Standards Committee. He has declared in his written submission and he has received a fair hearing by the Standards Committee of which they have clearly understood his frustration which has led him before the Standards Committee. He thanked the Standards Committee for their understanding with regard to the matter. He said that he considered that he did not solicit any pecuniary advantage. Councillor Rogers stated that he was concerned about the Adjudication Panel for Wales' ability to find otherwise although their report is contradictory on that point. All Councillor Rogers is requesting is that when the Standards Committee is determining an appropriate sanction that they do so in the same manner as they did in December 2014. A possible perversion of justice is a matter he intends to follow elsewhere.

The Standards Committee adjourned to closed session to consider its decision.

The Committee determined as follows :-

- (1) Having considered the Report of the Monitoring Officer, together with its enclosures including further written submissions from Councillor Rogers, and having heard from Councillor Rogers on the issue of mitigation, the Standards Committee endorses the recommendation of the Tribunal of the Adjudication Panel for Wales, in its report of 1st December 2015; namely, to suspend Councillor Peter Rogers from being a member of the Isle of Anglesey County Council for a period of 3 months.**
- (2) This suspension begins on the 20th February 2016 and ceases after the 19th May 2016.**
- (3) At this stage in the proceedings there is no right of appeal against the decision of the Standards Committee except to the High Court by way of judicial review.**
- (4) The Standards Committee's reasons for endorsing the recommendation of the Tribunal include those given in paragraph 6.3 of the Tribunal's report;**
- (5) The Standards Committee also took into account the factors listed in paragraphs 6 to 13 below.**
- (6) The findings of fact and breach originally made by the Standards Committee, to which Councillor Rogers still refers in his mitigation, are no longer relevant. They have been replaced by those of the Tribunal and they are the last word on the subject. On this point, Councillor Rogers' comments have been disregarded.**
- (7) Councillor Rogers needs to be reminded again that the responsibility under the Code, for declaring interests, and other aspects of compliance with the Code, rests with Councillors themselves. The Committee is concerned that Councillor Rogers continues to try and deflect that personal responsibility.**

- (8) The Standards Committee was concerned about paragraph 4.3.8 of the Tribunal's report which indicated that Councillor Rogers accepted that he understood the requirements of the Code but, nevertheless, appears to have decided not to apply it on repeated occasions. The Committee consider this to be an aggravating feature.
- (9) The Standards Committee noted Enclosure 9 to the Monitoring Officer's report.
- (10) The mitigation from Councillor Rogers suggests that he is still under the impression that his only breach of the Code was a failure to declare his friendship and family relationship with the prospective purchaser. Clearly, this is not the case. Councillor Rogers is advised to review paragraph 5.3 of the Tribunal's report, and in particular paragraph 5.3.3, which found that Councillor Rogers had improperly used his position as a Councillor to confer an advantage for his friend and, at paragraph 5.3.16, the Tribunal also found that Councillor Rogers created a prejudicial interest by seeking to influence the transaction. Councillor Rogers also failed to declare his personal interest on 12 occasions. This was not a single event and the breaches are more serious than Councillor Rogers seems to appreciate.
- (11) While Councillor Rogers' acknowledgement concerning his failure to declare the personal interest is welcomed, it is now so long after the event, and following a significant amount of time and costs expended on this issue, by the Council, the Ombudsman, the Standards Committee and the Adjudication Panel for Wales, that it is not possible for the Standards Committee to attribute any value to this admission at this stage. The Standards Committee also noted that Councillor Rogers (see paragraph 6.3.4 of the Tribunal report of the 1st December 2015) acknowledged the breach and apologised to the Standards Committee at the original hearing but, then, appealed its decision on findings of fact and breach, as well as sanction, and also retracted his apology. The Standards Committee found this to be disingenuous.
- (12) The Standards Committee has taken into account Councillor Rogers' concerns about the duration of this process, given that the Standards Committee conducted its original hearing in December 2014. However, while the Committee acknowledges that Councillor Rogers was entirely within his rights to appeal against the decision of the Standards Committee, Councillor Rogers must acknowledge that doing so would inevitably extend the process, as would his three requests for adjournments.

The Standards Committee is of the view that the duration of the process has not had any prejudicial effect on Councillor Rogers' ability to raise points in mitigation, and that no statutory timescales or deadlines have been missed.

- (13) Councillor Rogers raised concerns about the representation of his electorate during the period of any suspension. Having discussed this, the Standards Committee came to the view that this submission should be disregarded for the following reasons:-
- The statutory conduct regime provides the power of suspension, thereby recognising the potential consequences for the electorate.
 - Councillor Rogers brought the suspension on himself as a result of breaching the Code and therefore brought that suspension on his electorate as well. It is not the process which is at fault.

- This is a multi-member ward and the other Councillor representing that ward will have to lead on representing the community during the period of suspension.

**MR. MICHAEL WILSON
CHAIR**