

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	13 September 2017
REPORT TITLE:	Adjudication Panel for Wales Decisions
PURPOSE OF THE REPORT:	To provide information about the matters considered by the Adjudication Panel for Wales since 8th March 2017
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1. INTRODUCTION AND BACKGROUND

The Adjudication Panel for Wales (APW) was established by the Local Government Act 2000. It has two statutory functions:-

1. To form case tribunals, or interim case tribunals, to consider reports from the Public Services Ombudsman for Wales (PSOW) following investigations by the PSOW into allegations that a member has failed to comply with their authority's code of conduct; and
2. To consider appeals from members against the decisions of their own authority's standards committee that they have breached the code of conduct (as well as deciding if permission will be given to appeal in the first instance).

This report includes decisions made and published by the APW during the period since the last meeting of the Standards Committee on the 8th March 2017. It is intended as a factual summary of the matters decided by the APW. There are two reported cases for the relevant period and they are currently available on the [APW website](#)

2. SUMMARY OF THE RELEVANT CASES

A summary of the relevant cases is to be found at **ENCLOSURE 1**. The cases are

2.1 Decisions made

14/3/2017- Cardiff City Council – APW/002/2016-017/CT

2.2 Appeals adjudicated

17/03/2017 – Powys County Council – APW/003/2016-017/AT

3. RECOMMENDATION

To note the content of the case summaries.

Crynodeb o'r Tribiwnlysoedd Achosion – Mawrth 2017 – Awst 2017
Summary of Cases in Tribunal – March 2017 – August 2017

Name	Summary of Facts	Relevant Provision/s of Code	Decision Summary	Findings
<p>Cllr Neil McEvoy, Cardiff City Council</p>	<p>An allegation that Councillor McEvoy had breached the Cardiff City Council's Code of Conduct when, following a court hearing in which the Councillor represented his elector, the Councillor said to the council officer/in the presence of the council officer: "I can't wait until May 2017 when the restructure of the Council happens".</p> <p>The Councillor admitted the comment, and the circumstances, but denied that the comment was made as a threat to the officer's job and that it constituted a breach/breaches of the Code.</p>	<ol style="list-style-type: none"> 1. Failure to show respect and consideration 2. Bullying and harassment 3. Bringing the Council/role of Councillor into disrepute 	<p>The Panel found the following breaches:-</p> <ol style="list-style-type: none"> 1. Failure to show respect and consideration. The Panel concluded that the comment was directed towards the officer and was intended, and did have the effect of, making the officer fear for her job. 2. The comment constituted bullying. The Panel concluded that a single event can represent bullying but that it did not amount to harassment as there was no repetition. 3. The comment did not bring the role of Councillor or the Council into disrepute. This was not because of the comment, but because of the context. Although the comment was made in front of witnesses, it was not made in a public forum 	<p>Learning points for elected members</p> <ul style="list-style-type: none"> • On its facts, this was a simple case, and may have been capable of early resolution by apology/mediation. • There were a number of aggravating features, however, which complicated matters significantly. The Decision indicates that the Councillor was uncooperative with the PSOW's investigation, and made a number of allegations against others, claiming that the complaint was politically motivated, and was part of a wider conspiracy against him. He claimed that the PSOW, and his Director of Investigations, were biased owing to political connections, and that the Panel itself was biased as a result of the nature of its appointments

ENCLOSURE 1

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			<p>Suspension of 1 month</p>	<p>process.</p> <ul style="list-style-type: none"> • The Panel was clearly unimpressed by the lack of evidence to support these allegations against others and the Councillor's lack of insight into the inappropriate nature of his own conduct. <p>Learning points for the Standards Committee</p> <ul style="list-style-type: none"> - Many complaints arise from alleged failure to show respect and consideration / bullying and harassment / disrepute - The Panel relied on the findings in the case of <u>Heesom v Public Service Ombudsman for Wales</u> [2014] EWHC 1504 (Admin). Paragraph 4.3.3 of the Panel's decision and 5.3.3 are useful. The Panel said: "The panel considered Cllr McEvoy's right to freedom of expression did not outweigh the officer's right not to be subject to unwarranted comments or the public

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				<p>interest in council officers being able to carry out their duties". The comment did not constitute political expression and the officer was a middle ranking council official and not a senior officer. These two factors were particularly relevant to the finding of breach, as was the impact on the officer. Although the Panel in any event concluded that the intention of the Councillor was to intimidate the officer as it had no other meaning. Imbalance of power (i.e. seniority), <u>political</u> freedom of expression and the public interest in officers being able to carry out their public role and responsibilities were all factors that had to be weighed in the balance on the specific facts of a case.</p>

Crynodeb o'r Achosion yn y Tribiwnlysoedd Apêl – Mawrth 2017 – Medi 2017
Summary of Cases in Appeal Tribunal – March 2017 – September 2017

Name	Summary of Facts	Relevant Provision of Code	Decision Summary	Findings
Cllr Gary Price Powys County Council	<p>Cllr Price was a member of the Council's Grievance Appeal Panel, along with two other members.</p> <p>Following three previous adjournments, in the absence of the appellant, the Panel decided to proceed and dismissed the appeal. Cllr Price had agreed to proceed in the absence of the appellant and was part of the unanimous decision to reject the appeal.</p> <p>However, following the hearing he wrote to the appellant criticising the fact that the Panel had proceeded and alleging that it had pre-judged the issues.</p>	<ul style="list-style-type: none"> • Failure to show respect and consideration to the two other elected members on the Panel; and also to the employee / appellant who was off work with work related stress • Bringing the Council and the role of Councillor into disrepute 	<ul style="list-style-type: none"> • The Appeal Tribunal upheld the findings and decision of the Standards Committee, namely, that the Councillor's conduct following the hearing constituted a failure to show respect and consideration to his fellow elected members on the Panel, and to the employee. He did so by writing the letter to the appellant undermining the process to which he had been a party. • The Panel concluded that, by sending the letter, which was shared by the appellant's Solicitor with the other members of the Panel, that the Councillor brought the Council and the role of Councillor into disrepute. • However, the Appeal Tribunal considered that the suspension of five 	<p>Learning points for elected members</p> <ul style="list-style-type: none"> • To take particular care when dealing with quasi judicial matters and particularly where the rights and interests of individuals are at stake and where the potential outcome could have been far more significant i.e. litigation. • The situation could have been avoided if the Councillor had taken either legal advice, or HR advice, on the content of his letter before it had been sent. • While the Councillor did express his remorse, and did cooperate with the investigation, his apologies to his fellow members came late in the day but, nonetheless, was largely the reason for which the Appeal Tribunal recommended to the Standards Committee that the sanction be reduced from five

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			<p>months, which had been applied by the Standards Committee, was too harsh and they remitted the matter back to the Standards Committee with a recommendation that they reconsider the sanction and suspend Councillor Price for three months instead of the original five months</p>	<p>months to three months.</p> <ul style="list-style-type: none"> • It is unlikely that, having sent the letter, that the Councillor could have fully retrieved the situation. It is likely to have resulted in a complaint / adverse finding / sanction. Nevertheless, apologising to the other members of the Panel and expressing remorse at an earlier stage may well have resulted in a shorter suspension. <p>Learning points for the Standards Committee</p> <ul style="list-style-type: none"> • This was an unusual set of circumstances and it may be difficult to extrapolate much from this case. • However, the analysis undertaken by the Appeal Tribunal in relation to Article 10 of the ECHR is useful, even though the Tribunal concluded that this was not political free speech (in fairness to the Councillor he does not seem to have argued this point in any event)

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				<p>and therefore the decision in <u>Calver v The Adjudication Panel for Wales v Public Services Ombudsman for Wales</u> did not apply.</p> <ul style="list-style-type: none"> • The Decision is also helpful in the way it analyses aggravating and mitigating features and could be a useful model for a future case (process not substance). • The one “anomaly” seems to be the issue of disrepute. Other cases, and the Ombudsman’s Guidance, indicate that disrepute is about broader publication. Compare this, for example, with the <u>McEvoy case</u> above, where the Councillor made his comment in the presence of three witnesses but it did not constitute disrepute. In the present case, the Councillor concerned wrote a letter to the employee, who then copied it to the other two members of the Panel. It had the potential for wider publication within the context of litigation, but that never

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				<p>happened. It is therefore difficult to reconcile these decisions, insofar as how Standards Committees should interpret disrepute. For the avoidance of doubt, disrepute caused as a result of a complaint under the Code and referral to Standards Committee etc is not relevant as it is ex post facto of course.</p>