

<b>CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>13 March 2019</b>
<b>REPORT TITLE:</b>	<b>Adjudication Panel for Wales Decisions</b>
<b>PURPOSE OF THE REPORT:</b>	<b>To provide information about the matters considered by the Adjudication Panel for Wales to date (publishing period September 2018 – March 2019)</b>
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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 published by the APW during the period since the Standards Committee on the 12<sup>th</sup> September 2018. It is intended as a factual summary of the matters decided by the APW. The reported cases for the relevant period are currently available on the [APW website](#)

## 2. SUMMARY OF THE RELEVANT CASES

A summary of the relevant case/s is/are at **ENCLOSURE 1**.

### 2.1 Decisions made

19.07.2018 – Former County Councillor at Monmouthshire County Council [current Councillor at Mathern Community Council] – APW/003/2017-018/CT

**2.2 Appeals adjudicated**

None

**3. RECOMMENDATION**

To note the content of the case summary/ies.

**Crynodeb o'r Tribiwnlysoedd Achosion – Ebrill 2018 – Mawrth 2019**  
**Summary of Cases in Tribunal – April 2018 - March 2019**

Name	Summary of Facts	Decision Summary	Findings
<p>Former County Councillor (currently Community Councillor) Graham Down</p> <p>Monmouthshire County Council (currently Mathern Community Council)</p>	<p>An allegation that Councillor Down had breached Monmouthshire County Council's Code of Conduct by failing to show respect and consideration for others by sending emails to the Chief Executive of Monmouthshire County Council containing homophobic statements in alleged breach of Paragraph 4(b) of the Code.</p> <p><i>[This matter has been discussed in Enclosure 2 of Agenda Item 6 – Public Services Ombudsman for Wales decisions.]</i></p>	<p>The Panel found the following breach under Paragraph 4(b) - Failure to show respect and consideration:</p> <p>(i) The Panel concluded that 2 of the comments made by the Councillor to the Chief Executive by way of emails did not show respect and consideration for a section of society with protected characteristics under the Equality Act 2010.</p> <p>(ii) Another comment was deemed by the Panel to demonstrate an extreme homophobic view which was wholly incompatible with the Code of Conduct and its underpinning principles of public conduct in Wales.</p> <p>(iii) Another 3 comments considered were deemed disrespectful / pejorative by the Panel. However, the Panel accepted that in the light of enhanced protection for political expression that these comments, despite being likely to be offensive to some, did not</p>	<p><b>Learning points for elected members</b></p> <ul style="list-style-type: none"> <li>• To understand that communications from Council email address to an officer of the Council is considered to be communications made in role as Councillor and so the Code of Conduct applies.</li> <li>• Recognising a mistake and showing remorse and insight acts in a Councillor's favour when the APW considers sanction.</li> <li>• Attending training for Conduct will assist members to improve understanding and act as a mitigating factor before the APW.</li> <li>• As Councillor Down had not stood for re-election as a County Councillor, the sanction imposed could not relate to the County Council. However, he had become a Community Councillor for Mathern Community Council and under section 79 of the Local Government Act 2000, the legislation allows the Case Tribunal to suspend the Councillor from a different Authority to that in which the conduct occurred. Hence, the Councillor's suspension from a Community</li> </ul>

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		<p>justify the restriction of the Councillor's right to freedom of expression so as to justify a finding of a breach of the Code.</p> <p><b><u>Sanction</u></b>  <b>The Case Tribunal considered that, due to mitigating factors such as</b>  <b>(a) the breach arose from a genuinely and strongly held view;</b>  <b>(b) the Councillor had a previous record of good service;</b>  <b>and the aggravating features such as</b>  <b>(a) non-attendance at training for Conduct;</b>  <b>(b) a repeat pattern of behaviour;</b>  <b>(c) lack of remorse or insight,</b>  <b>the Councillor should be suspended from acting as a member of Mathern Community Council for a period of two months, or, if shorter, the remainder of his term of office.</b></p> <p><b>The Panel considered that a short period of suspension would be proportionate and two months was considered to be the minimum sanction necessary, bearing in mind that many Town and Community Councils do not hold any formal Council meetings during August.</b></p>	<p>Council for breaching the Code in his role as a County Councillor.</p> <p><b>Learning points for the Standards Committee</b></p> <ul style="list-style-type: none"> <li>- The Panel considered paragraph 4(b) of the Code of Conduct: "You must show respect and consideration for others".</li> </ul> <p>The Panel also considered that the Code is underpinned by certain principles and paragraph 2(2) of the Code states that: "You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales".</p> <p>The relevant principle is: "Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others".</p> <p>The Panel was satisfied that the emails were sent by the Councillor in his official capacity and the Councillor was willing to repeat the comments made in the emails more widely and</p>

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			<p>ultimately publicly and thus paragraph 4(b) was engaged.</p> <ul style="list-style-type: none"> <li>- The Panel also considered that the Code should be carefully considered in the light of the Articles of the European Convention on Human Rights.</li> </ul> <p>Article 8(1) as embodied in the Human Rights Act 1998 states: “Everyone has the right to respect for his private and family life”</p> <p>Article 9(1) refers to the “right to freedom of thought, conscience and religion” subject to the limitation in 9(2).</p> <p>Within his emails the Councillor had referred to be being a Christian and quoted from the Old Testament. The Tribunal accepted on a wide reading that Article 9(1) was engaged.</p> <p>Article 10(1) refers to the “right to freedom of expression” subject to the limitation in 10(2).</p> <p>The Panel was satisfied that all relevant email comments attracted full and enhanced protection afforded to politicians expressing their political</p>

# ENCLOSURE 1

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			<p>views as they were all made in the context of public administration. The Councillor's comments were considered to be political expression in its widest sense.</p> <ul style="list-style-type: none"> <li>- With the 3 comments made in emails which were deemed to be in breach of the Code, the Panel considered that a finding of a breach was "necessary in a democratic society...for the protection of the rights and interests of others", in accordance with the Welsh Principles.</li> <li>- The Panel considered the cases of Calver, <u>Sanders v Kingston</u> No(1) [2005] EWHC 1145 and Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).</li> <li>- The Panel considered the Equality Act 2010</li> </ul>