

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	13.03.2019
REPORT TITLE:	Public Services Ombudsman for Wales Decisions
PURPOSE OF THE REPORT:	To advise the Committee of All Wales decisions published by the Public Services Ombudsman for Wales in his Casebooks for July 2018 and October 2018
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1. INTRODUCTION

The Public Services Ombudsman for Wales (PSOW) publishes a [Casebook of Code of Conduct Complaints](#) once every quarter.

This report summarises the information published by the PSOW in his [Casebook for July 2018](#) (Issue 17) and [Casebook for October 2018](#) (Issue 18). A summary of the cases for Issue 17 is attached at **ENCLOSURE 1** and Issue 18 is attached as **ENCLOSURE 2**.

2. BACKGROUND

The PSOW exercises “first sift” powers under Section 69 of the Local Government Act 2000, which requires him to consider complaints that members of local authorities in Wales may have broken their code of conduct. The PSOW’s jurisdiction includes county councils and town and community councils.

Having received a complaint, the PSOW applies his threshold test to determine whether or not the complaint should be investigated. The threshold test involves the PSOW being satisfied that:-

- There is evidence to suggest that the code of conduct may have been breached; and
- That the matter is sufficiently serious for it to be in the public interest for an investigation to be opened.

When an investigation is opened, the PSOW may reach one of four findings under Section 69 of the Local Government Act 2000 which are:-

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

If (c) or (d) above apply, the PSOW will then submit his report to the local standards committee or to the Adjudication Panel for Wales (APW), and it is for the committee, or a case tribunal of the Panel, to conduct a hearing to consider the evidence and to make the final decision on whether or not the code of conduct has been breached and, if so, whether a penalty should be imposed, and what any penalty should be. Standards committees have statutory authority to issue a suspension against a councillor for a period not exceeding 6 months. Standards Committees have no powers of disqualification and, where there are findings of breach, will try to apply a sanction that is proportionate to the offence. This will often be a censure (public rebuke) or a recommendation of training/undertaking/mediation etc. A case tribunal has authority to suspend for up to 12 months and to disqualify for up to 5 years.

While the APW has the legal status of a tribunal and has always published its decisions (including any appeals against the decisions of standards committees) the PSOW did not publish his reports or findings but recently has introduced the quarterly Case Book which provides a case summary. Anything referred to a standards committee will, of course, be available on that council's website.

3. RECOMMENDATION

The Chair of the Standards Committee will lead a discussion on any matters of interest reported in **ENCLOSURE 1** and **ENCLOSURE 2**.

ENCLOSURE 1 – Issue 17 (July 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
<p>Merthyr Tydfil County Borough Council (201704719)</p>	<p>An employee complained that an elected member of the Council had been present in a staff meeting and had made reference to some members of staff being “dead men walking”. The Complainant said that the Councillor made further comments which led some members of staff to conclude that this phrase referred to him. The Complainant said that this put him in fear for his job.</p> <p>In absence of any formal record of the meeting, the Ombudsman interviewed a selection of those present, as well as the Councillor, the Complainant and his manager. The Ombudsman considered what the Councillor said, his explanation of what he had meant and how his comments had been received.</p>	<p>Paragraphs 4 (b) - respect, 4(c) – bullying behaviour, 6(1)(a) - disrepute, and 7(a) – creating a disadvantage for others</p>	<ul style="list-style-type: none"> • The Ombudsman concluded that there was no evidence that the Councillor had breached the Code. • Despite using the phrase “dead men walking”, the Ombudsman considered that there was no evidence to support the complaint that the comment was specifically directed at the Complainant or that it was intended to be seen as a threat to anybody’s job. 	<ul style="list-style-type: none"> • Members should be mindful of how their comments are perceived by others
<p>Chepstow Town Council (201703539)</p>	<p>A complaint was received that a member of the Chepstow Town Council had participated in discussions about the future ownership and management arrangements for a local public facility at a meeting of the Town</p>	<p>Paragraph 14(1) (a), (c) and (e) – in relation to the limits placed on Councillors in relation to a prejudicial interest</p>	<ul style="list-style-type: none"> • The Ombudsman’s investigation found that it was likely that the Councillor had spoken at the meeting, despite having a prejudicial interest in the item, 	<ul style="list-style-type: none"> • Members need to be confident they understand what they need to do when they declare a prejudicial interest • The outcome shows

ENCLOSURE 1 – Issue 17 (July 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
	Council, despite having declared a prejudicial interest in the matter.		<p>contrary to the requirements of the Code of Conduct.</p> <ul style="list-style-type: none"> • However, despite the fact the evidence suggested that there had been a breach of the Code, the Ombudsman decided that no further action should be taken. • This was because the Councillor did not stand to gain personally from any decision made, the evidence suggested that he had withdrawn from the room for the vote, his preferred option was not agreed by the Council, and the Chair of the Council had indicated that he could speak. The Ombudsman did, however, remind the Councillor of his responsibilities in relation to prejudicial interests 	<p>that the Ombudsman considers the effect of the breach when considering what action to take; a breach of the Code does not automatically mean the Ombudsman will take any further action. However, Members should be careful not to rely on such a case as a defence. Members should ensure they follow the provisions in the Code of Conduct.</p>
Trellech United Community	The Ombudsman received a complaint that a Councillor had	Paragraph 7(a) - creating a	<ul style="list-style-type: none"> • The Ombudsman found 	<ul style="list-style-type: none"> • Members should not

ENCLOSURE 1 – Issue 17 (July 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
<p>Council (201700946)</p>	<p>breached the Code of Conduct for members when the Councillor wrote to an adjudicator of a competition, giving the impression that he was acting as a representative of the Council. The Councillor was attempting to negatively influence the chance of a specific entry winning the competition and thereby creating a disadvantage for a member of the public who would benefit if that entry was successful.</p>	<p>disadvantage for others</p>	<p>that the Councillor, by writing to the adjudicator with information intended to lessen the likelihood of that specific entry winning the competition and by signing off that correspondence as a Councillor, may have breached paragraph 7(a).</p> <ul style="list-style-type: none"> • The Ombudsman noted, however, that the entry subsequently won the competition, so the Councillor’s intervention did not actually cause a disadvantage to the person in question. • The Ombudsman concluded that, on balance, it was not in the public interest to refer the matter to a Standards Committee or Adjudication Panel for Wales and, therefore, no further action should be taken. 	<p>use their official capacity to create a disadvantage for others</p> <ul style="list-style-type: none"> • The outcome shows that the Ombudsman considers the effect of the breach when considering what action to take; a breach of the Code does not automatically mean the Ombudsman will take any further action. However, Members should be careful not to rely on such a case as a defence. Members should ensure they follow the provisions in the Code of Conduct. • The Ombudsman still uses the Public Interest Test

ENCLOSURE 2 – Issue 18 (October 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
Saltney Town Council (201707925)	A complaint that a Councillor had breached the Code of Conduct by participating in, and voting on, a decision to award a grant to a charitable organisation of which she was Chair.	Paragraph 10, 11, 12, 14 – in relation to the disclosure of personal and prejudicial interests	<ul style="list-style-type: none"> • As Chair of the organisation, the Councillor was likely to have a personal and prejudicial interest and the Councillor should not have taken part unless an exemption applied or she had received a dispensation. • The Councillor had recognised this and had considered applying for a dispensation. However, she had been advised by a County Council officer that this was not necessary as an exemption (paragraph 12(2)(a)(ii) of the Code of Conduct) applied and she could therefore participate. • Councillor was therefore acting in good faith on the basis of the advice she had received. • Ombudsman concluded 	<ul style="list-style-type: none"> • There is an exemption in the Code of Conduct at paragraph 12(2)(a)(ii) which applies when the item of business relates to another public body or body exercising functions of a public nature in which the member holds a position of general control or management. • However, as noted in paragraph 12(3), the exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

ENCLOSURE 2 – Issue 18 (October 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
			that the evidence suggested the Councillor had not breached the Code	
Powys County Council (201701865)	A complaint about a Councillor’s behaviour during a shortlisting meeting to discuss the applications for a new Headteacher post.	Paragraph 4 – equality and respect; bullying and harassment; Paragraph 6 - disrepute.	<ul style="list-style-type: none"> No evidence the Councillor had breached the Code of Conduct. No action to be taken. 	
Manorbier Community Council (201708037)	A complaint that a Councillor was verbally abusive and bullying to a member of the public during a Community Council meeting.	Paragraph 4 – respect and consideration; bullying and harassment; Paragraph 6 - disrepute.	<ul style="list-style-type: none"> Five witnesses were interviewed and the consensus was that the Councillor did not say or do anything in the meeting that gave them undue concern. Ombudsman determined there was no evidence to suggest the Councillor had breached the Code. 	
Abertillery and Llanhilleth Community Council (201800122)	A complaint that a Councillor had breached the Code of Conduct by disclosing confidential human resources and financial information.	Paragraph 5 – disclosure of confidential information	<ul style="list-style-type: none"> No evidence to suggest the Councillor had improperly shared any information, and so no evidence of any breach of the Code. 	
Sully and	A complaint that a Councillor had	Paragraphs 4(a)	<ul style="list-style-type: none"> Likely that the Councillor 	<ul style="list-style-type: none"> The Ombudsman

ENCLOSURE 2 – Issue 18 (October 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
<p>Lavernock Community Council (201706912)</p>	<p>sent an email to his fellow councillors which was disrespectful and offensive about another Councillor.</p> <p>The Councillor and other councillors in the Community Council (including the Councillor that was the subject of the email) were interviewed. The Councillor acknowledged that he should not have sent the email and that it was inappropriate. Councillor expressed regret and said he would not act in that way again.</p> <p>Councillor explained, by way of mitigation, that relationships within the Council were currently difficult, he had received a number of critical emails from the councillor concerned and he had not intended copying the email to all members of the Council – this has been done in error when replying to a previous email.</p>	<p>and (b) – equality and respect</p>	<p>had breached the Code but, in view of the mitigating factors, the Councillor’s contrition and his promise not to act in that way again, Ombudsman concluded that it would not be in the public interest to refer the matter to the standards committee.</p> <ul style="list-style-type: none"> • No action taken 	<p>still uses the Public Interest Test</p> <ul style="list-style-type: none"> • Ombudsman considers mitigating factors such as relationships within a Council being difficult • Councillors need to appreciate the weight given by the Ombudsman for acknowledging mistake, expressing regret and agreeing to act differently in the future.
<p>Carmarthenshire County Council (201606614)</p>	<p>A complaint about the behaviour of a former Councillor of Carmarthenshire County Council</p>	<p>Paragraph 6 – (1)(a) disrepute; Paragraph 4 – (b)</p>	<ul style="list-style-type: none"> • As Councillor was not re-elected in the May 2017 election, 	<ul style="list-style-type: none"> • The Ombudsman still uses the Public Interest Test

ENCLOSURE 2 – Issue 18 (October 2018)

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	<p>towards the Council’s Chief Executive and officers of the Council on 2.12.2016.</p>	<p>respect and consideration; Paragraph 7 – (a) abuse of official capacity</p>	<p>Ombudsman considered that the matters were not sufficiently serious for it to be in the public interest to pursue it further.</p> <ul style="list-style-type: none"> No action to be taken in respect of the matters investigated. 	<ul style="list-style-type: none"> Matters involving a former Councillor will be considered differently to a Councillor who is still in elected post. Where the Ombudsman decides that a complaint should be investigated, there are four findings which the Ombudsman can arrive at: <ul style="list-style-type: none"> (a) that there is no evidence that there has been a breach of the authority’s code of conduct; (b) that no action needs to be taken in respect of the matters that were subject to the investigation; (c) that the matter be referred to the authority’s

ENCLOSURE 2 – Issue 18 (October 2018)

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				<p>monitoring officer for consideration by the standards committee;</p> <p>(d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.</p> <ul style="list-style-type: none"> • Where an individual is a member of more than one authority e.g. a county council and a community council / more than one community council, the Ombudsman can utilise option (c) or (d) in relation to the other 'relevant authority', and not the one in which the member committed the breach. For example, had this individual been a

ENCLOSURE 2 – Issue 18 (October 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
				<p>community council member too, even though he was no longer a member of the authority in which the breach occurred (Carmarthenshire County Council), the sanction for the breach of Carmarthenshire County Council's Code of Conduct could have been imposed upon him in his capacity as a member of the community council.</p>
<p>Clyro Community Council (201704165)</p>	<p>A complaint that a Councillor participated in a discussion and voted on a local planning application without declaring an interest; and the Ombudsman also needed to consider if the Councillor had a closed mind when attending two Community Council meetings in September and October 2017.</p>	<p>Paragraphs 10, 11, 12, 14 – in relation to the disclosure of personal and prejudicial interests</p>	<ul style="list-style-type: none"> • No evidence the Councillor had a personal interest in the planning application and it therefore followed that he did not have a prejudicial interest. • Councillor was predisposed and not predetermined when he 	

ENCLOSURE 2 – Issue 18 (October 2018)

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			<p>attended the initial meeting and voted.</p> <ul style="list-style-type: none"> • No sufficient evidence to support a contention that the Councillor was predetermined at the second meeting. • No evidence that a breach of the Code of Conduct had occurred. 	
<p>Llay Community Council (201702478)</p>	<p>A complaint that a Councillor’s behaviour had been disrespectful and that he had disclosed confidential information during a meeting of Llay Community Council. The Councillor had also used his position to confer a disadvantage on a local resident and failed to declare an interest in the matter. The Councillor was deemed to have brought his office of member into disrepute.</p> <p>Information was sought from the Council and interviews were undertaken with witnesses to the meeting and the Councillor himself.</p>	<p>Paragraph 4 – respect. Paragraph 5(a) – disclosure of confidential information. Paragraph 6 - disrepute. Paragraph 7(a) - creating a disadvantage for others.</p>	<ul style="list-style-type: none"> • Councillor had made representation to the Council in this matter on behalf of his constituent. • No evidence Councillor had used his position to secure disadvantage for the member of the public, or that he had an interest in the matter. • Councillor did disclose information during the meeting, but it was not of a confidential nature. • Ombudsman was concerned about the personal comments made by the Councillor 	<ul style="list-style-type: none"> • Councillors should be mindful of the comments they make in public Council meetings, particularly in relation to personal comments / comments made about other individuals.

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			<p>about a member of the public when addressing the Council. The comments did not add any value to the Council's consideration of the matter and were neither appropriate nor necessary.</p>	
<p>Ceredigion County Council (201701091)</p>	<p>Mr X complained that a Councillor had breached the Code of Conduct when the Councillor attended a meeting that a Council officer had advised the Councillor not to attend. Mr X also complained about the Councillor's conduct towards specific persons at the meeting.</p>	<p>Paragraphs 8(a) – having regard to advice provided by a Council officer; 4(b) – showing respect, 4(c) – bullying behaviour and 6(1)(a) – disrepute.</p>	<ul style="list-style-type: none"> • Ombudsman did not find any evidence that the Councillor had been advised not to attend the meeting by a Council officer, or that the manner in which he spoke to most of the meeting attendees exceeded the boundaries of professional conduct. • Ombudsman did find that the Councillor's robust manner had an effect on one individual at the meeting and that the Councillor should have amended his behaviour towards him 	<ul style="list-style-type: none"> • The Ombudsman still uses the Public Interest Test • Councillors need to consider their audience and what sort of behaviour is appropriate in the circumstances

ENCLOSURE 2 – Issue 18 (October 2018)

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			<p>specifically as he had previously met him and described him as 'nervous'. Whilst the Councillor was reminded to modify his behaviour for his audience, the Ombudsman concluded that, on balance, it was not in the public interest to refer the matter to a standards committee or adjudication panel for wales, and, therefore, no further action should be taken.</p>	
<p>Neyland Town Council (201703026)</p>	<p>A complaint that a Councillor may have used his position improperly by trying to stop a project that the Town Council had already agreed to support. It was alleged that the Councillor had a business interest in the matter.</p> <p>Ombudsman obtained relevant information about the matter and interviewed witnesses. Councillor provided his comments on the complaint at the outset of the</p>	<p>Paragraph 6(1)(a) – disrepute. Paragraph 7(a) – use position to gain an advantage. Paragraph 11(1) and Paragraphs 14(1)(a),(c),(d) and (e) - relating to the disclosure of personal and prejudicial interests</p>	<ul style="list-style-type: none"> • Ombudsman concluded there was evidence to suggest that the Councillor may have breached the Code of Conduct and referred the matter for consideration by the Council's Standards Committee. • The Standards Committee concluded that the Councillor had 	<ul style="list-style-type: none"> • By the time the Standards Committee considered the matter, the Councillor was no longer a member of the Town Council.

ENCLOSURE 2 – Issue 18 (October 2018)

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	investigation but did not respond to a request to be interviewed.		<p>breached the Code of Conduct. The Standards Committee decided the Councillor should be censured.</p> <ul style="list-style-type: none"> A copy of the decision of the Standards Committee can be seen in Enclosure 3. 	
Monmouthshire County Council (201604188)	A complaint that a Councillor had sent emails to the complainant, when acting in his capacity as a member of the Council, which the complainant considered comments which failed to show respect and consideration for members of the LGBT community.	Paragraph 4(b) – respect and consideration	<ul style="list-style-type: none"> Ombudsman considered that the comments made were “egregious” and there was no reason to use such language to obtain the information he required about the way the Council used its funds or even to express his view. Ombudsman found that the comments made and the language used may amount to a failure to show respect and consideration for others and that there was evidence to suggest a breach of the Code 	<ul style="list-style-type: none"> Ombudsman discussed this case at the Wales Standards Committee in Aberystwyth in September 2018 and expressed that respect and consideration for others, and comments in relation to equality matters, were considered very seriously.

ENCLOSURE 2 – Issue 18 (October 2018)

Name of Council	Summary of Complaint	Relevant Provision of Code	Decision Summary	Findings
			<ul style="list-style-type: none"> • Ombudsman referred the matter to the Adjudication Panel for Wales for adjudication by tribunal. • The tribunal concluded that the Councillor should be suspended from the Council for a period of two months. • This matter is subject to Agenda item 5 – Adjudication Panel for Wales Decisions. 	

ENCLOSURE 3

MINUTES of a MEETING of the STANDARDS COMMITTEE held in COMMITTEE ROOM 2, COUNTY HALL, HAVERFORDWEST on WEDNESDAY, 5 SEPTEMBER 2018 at 10.00a.m.

Present:

Mr Andre Morgan (Chairman), Ms Suzanne Lewis, Ms Corinna Kershaw, Ms Sian Vaughan and Mr Nick Watt; and Community Councillors Paul Hannon and Ian Wood

Officers in Attendance:

Claire Jones, Monitoring Officer
Rhian Young, Deputy Monitoring Officer
Jenny Captao, Committee Clerk

Also in Attendance:

Sinead Cook, Representative from the Public Services Ombudsman for Wales

Apologies for Absence:

Apologies for absence were received from Councillor Viv Stoddart and Tony Wilcox

9. Declarations of Interest

The Monitoring Officer addressed the Committee and advised that both Councillors Viv Stoddart and Tony Wilcox were not present at the meeting due to the personal and prejudicial interests that they declared at the last meeting in respect of this matter which were as follows:

Councillor Tony Wilcox declared a personal and prejudicial interest in relation to Item 9 by virtue of being in the same political group as a named witness in the investigation.

Councillor Viv Stoddart declared a personal and prejudicial interest in this item of business by virtue of being a friend with a named witness in the investigation and she withdrew from the Meeting.

There were no declarations of interest received by Members at the meeting.

10. Members Code of Conduct - Alleged Breach by Former Councillor B Rothero, Neyland Town Council

The Committee recalled that at its meeting held on 18 June 2018 it had considered a report by the Public Services Ombudsman for Wales (Ombudsman) in respect of the findings of his investigation into allegations that Former Councillor Brian Rothero had failed to observe the Code of Conduct. On 14th August 2017, the Ombudsman received a complaint from Councillor Paul Smith of Neyland Town Council that Councillor Rothero had failed to observe

the Code of Conduct. It was alleged that Former Councillor Rothero had used his position to attempt to derail a Community Hub Project and that the Former Councillor had a prejudicial interest due to the impact of the Hub on his current business and due to a business relationship which had ended acrimoniously.

The Ombudsman's office forwarded to the Monitoring Officer of Pembrokeshire County Council an Investigation Report dated 15th May 2018 which concluded that Former Cllr Rothero's actions were suggestive of breaches of Paragraphs 6(1)(a), 7(a), 11(1), 14(1)(a),(c),(d) and (e) of the Code of Conduct.

The Committee further recalled that it had resolved that there was a case to answer and that Former Councillor Rothero be given the opportunity to make representations to the Committee, either formally or in writing.

The Monitoring Officer addressed the Committee highlighting that she had spoken with former Councillor Rothero the previous day and confirmed that he had elected not to attend the hearing. She also confirmed that he had not submitted the standard questionnaire to the clerk to the Standards Committee; however, he had submitted letters dated 11th June and 10th July 2018 which were contained within the agenda pack for the consideration of the Committee.

The Chairman commenced the proceedings by welcoming Ms Sinead Cook to the Hearing, who was the investigating officer representing the Ombudsman. He then introduced all the Members of the Standards Committee present at the Hearing. He also expressed his disappointment that former Councillor Rothero had not taking the opportunity to attend the hearing or to submit further information.

The Chairman outlined the procedure the Committee would follow in its conduct of the Hearing and drew the Committee's attention to the undisputed and disputed facts detailed in Appendix 1 to the Pre-Hearing Process Summary to be considered by the Committee. He also highlighted a typing error under item 1.7 on page 9 of the report where the year 2017 should have been 2016.

The Committee commenced stage 1 of the Hearing to determine the formal findings of fact.

The Chairman invited Ms Cook to present the Ombudsman Case. She addressed the Committee and advised that they had tried to engage with former Councillor Rothero throughout the process. That had included being invited to interview; to provide a written response; and also provided with the opportunity to comment on the draft investigation report; however, he had chosen not to respond to those requests. He had however submitted a letter which had been taken into account.

It was queried how the Ombudsman's report could conclude that the facts were undisputed if there had not been any engagement from former Councillor Rothero. Ms Cook responded that he had been provided with all the documentation and given an opportunity to respond through written and oral means.

In response to a query if former Councillor Rothero had received the documentation, Ms Cook advised that there was nothing to suggest he had not received the relevant documentation and made reference to former Councillor Rothero suggesting he would submit some written representation; however, he did not end up doing so.

Following an invitation from the Chairman, Ms Cook drew the Committee's attention to the five disputed facts and dealt with each one in turn.

In terms of the first disputed fact (2.1) she referred to appendices M and E from the report and highlighted the issue. She also responded to a query as to whether she believed the word "feud" was too strong and advised the Committee that those were the words used by Councillor Miller; however, in the Ombudsman's report, "acrimonious" had been used. It was also queried whether it was the conclusion of the Ombudsman that the dispute was now settled. Ms Cook advised that they were not able to draw that conclusion, as they were not able to question former Councillor Rothero due to his non engagement in the process.

In terms of the second disputed fact (2.2) Ms Cook drew the Committee's attention to the Neyland Athletic Club being in direct competition and that any upgrade would impact former Councillor Rothero's pub business.

In terms of the third disputed fact (2.3) Ms Cook stated that she accepted the response provided by former Councillor Rothero that the distance between Neyland Athletics Club and the pub/restaurant run by former Councillor Rothero was approximately 300m; however, she stated that the Ombudsman still considered that distance to be close and that some other businesses were equidistant.

Clarification was sought as to whether former Councillor Rothero had ever declared his pub business on his register of interest; and whether an interest should be declared in relation to previous employment if someone was no longer working there. Ms Cook responded that it was on his Register of Interest; that he had been advised to declare an interest by the Neyland Town Clerk; and that whether to continue to declare an interest if he no longer held that interest was dependent on circumstances.

In terms of the fourth disputed fact (2.4) Ms Cook drew the Committee's attention to Appendix K, which referred to correspondence that former Councillor Rothero had sent to Welsh Government. She highlighted that there was nothing to indicate that he was sending the email in a personal capacity and he signed the email as Deputy Mayor of Neyland Town Council.

In terms of the final disputed fact (2.5) Ms Cook reiterated the representations that former Councillor Rothero had made to Welsh Government, which could have caused potential disadvantage for Neyland Town Council, and that it was for the Committee to determine whether they considered that he had a prejudicial interest and whether his actions could have benefited him personally.

Clarification was sought regarding who 'another' referred to in disputed fact 2.5. Ms Cook responded that it was those persons who created the Hub and also the Community Council as they could have been effected financially in terms of legal cost.

Observations were made by the Committee in relation to whether the word 'another', which inferred a person could also include a group or entity; and reference was made to section 7(a) of the Code of Conduct which stated 'person' in terms of disadvantage. Ms Cook advised that with costs incurred it would effect a group of people, with the Ombudsman taking the view that in that case disadvantage had occurred.

It was queried why former Councillor Rothero had used the Neyland Athletic club email after his lease at the club had ended. Ms Cook stated that they were unable to draw any conclusions in respect of that matter due to them not being able to pose questions to former Councillor Rothero.

On clarification sought from the Committee Ms Cook advised the Committee that they did not have a copy of a Register of Interest signed before May 2017.

The Chairman announced that the Committee would retire to consider the disputed facts.

He further announced that Committee Clerk would assist in taking the decision note and that the Monitoring Officer would also provide legal advice if necessary throughout the three stages of the Hearing.

The Committee also agreed to allow the deputy Monitoring Officer to sit in and observe the deliberations of the Committee.

RESOLVED

That the public be excluded from the meeting during consideration of the matter under the terms of Section 100A(4) of the Local Government Act 1972 as it involved the likely disclosure of exempt information as defined in Paragraph 18(c) of Part 4 of Section 12 to the Act.

The Committee then retired to deliberate the disputed facts.

At 11.00 am, the meeting resumed in open session. The Chairman then asked the Monitoring Officer to read out the Committee's decision in respect of the disputed facts as follows:

RESOLVED

- a) There had been a dispute between former Councillor Rothero and Neyland Athletics Club which resulted in financial settlement in September 2016.
- b) The Committee considered that former Councillor Rothero had a personal interest under Paragraphs 10(2)(a) and 10(2)(c) of the Code of Conduct as the business of the Authority in September of 2016 was likely to affect his own pub business, his well-being and financial position and that

this also amounted to a prejudicial interest under Paragraph 12 of the Code.

- c) The Ombudsman's representative had accepted that the distance between Neyland Athletics Club and the pub/restaurant run by former Councillor Rothero was approximately 300m and the Committee noted that this was no longer a disputed fact.
- d) The Committee found that the correspondence was not of a personal nature because the letter sent by former Councillor Rothero to the Welsh Government was written in an official capacity, as it was signed as Deputy Mayor and contained reference to official Council business.
- e) On the balance of probabilities, the Committee agreed that former Councillor Rothero attempted to use his position to create an advantage for himself.

The Hearing then proceeded to stage 2 to determine whether or not a breach of the code had occurred.

The Ombudsman's representative was given an opportunity by the Chairman to address the Committee to present the Ombudsman's case in relation to the suggested breaches of the code. Ms Cook confirmed to the Committee that the alleged breaches of the code were how they were set out in the Ombudsman's report. She made specific reference to the original alleged breaches of Paragraphs 6(1)(a), 11(1), 14(1)(a), (c),(d) and (e) and also referred to Paragraph 14(1)(b) of the Code of Conduct and highlighted the following:

Paragraph 11(1) related to former Councillor Rothero not declaring a personal and prejudicial interest at the meeting 5 September 2016.

Paragraph 14(1)(a) (b),(c),(d) and (e) included not withdrawing from the room when the interest became apparent and made reference to the email former Councillor Rothero had sent to Welsh Government.

Paragraphs 6(1)(a) related to the significant impact on the project if it had lost the financial funding; the effect on public confidence; bringing the office into disrepute; and using the position within the Authority to derail the project.

The Monitoring Officer queried if the Ombudsman's representative had any views in respect of Paragraph 8 of the Code of Conduct or Article 10 of the Human Rights Act 1998.

Ms Cook offered no view in terms of Paragraph 8; however, in relation to Article 10, she advised that although there was a protected right to political expression within the political arena, there could be interference with Article 10 where appropriate.

Observations were made regarding the availability of the Standards Committee dispensation process explained by the Chairman.

Article 10 was queried further regarding whether it offered protection outside the political arena. Ms Cook advised that Article 10 provided greater protection within the political arena.

The Chairman offered Ms Cook an opportunity to provide comment on the correspondence received from former Councillor Rothero. She advised that it was disappointing that he had not attended the Hearing to provide more information.

In respect of whether former Councillor Rothero had breached the Code of Conduct, Ms Cook advised the Committee that former Councillor Rothero had stated that he had joined Neyland Town Council to represent his constituents; however, following the dispute he had chosen to no longer attend meetings to represent his constituents.

The Chairman announced that the Committee would retire to consider the representations of the Ombudsman's representative and decide on the question of whether former Councillor Rothero had failed to follow the Code.

RESOLVED

That the public be excluded from the meeting during consideration of the matter under the terms of Section 100A(4) of the Local Government Act 1972 as it involved the likely disclosure of exempt information as defined in Paragraph 18(c) of Part 4 of Section 12 to the Act.

At 1.00 pm, the meeting resumed in open session. The Chairman read out the Committee's decision as follows:

RESOLVED

In the light of all the facts, the Standards Committee considered that former Councillor Rothero had breached the Code of Conduct in the following respects:-

- a. Paragraph 11(1): Did not orally disclose the existence and nature of his personal and prejudicial business interest as landlord of a local pub/restaurant at a meeting of Neyland Town Council on the 5th September 2016.
- b. Paragraph 14(1)(a): Did not withdraw from the meeting room at which the business was being considered, despite his personal and prejudicial interest.
- c. Paragraph 14(1)(c): Sought to influence a decision about the business in participating in the meeting on the 5th

September 2016 and in writing to the Welsh Government, despite his personal and prejudicial interest.

- d. Paragraph 14(1)(d): Made written representations to the Clerk of Neyland Town Council and to the Welsh Government in relation to the business, despite his personal and prejudicial interest.
- e. Paragraph 14(1)(e): Made oral representations at the meeting of the 5th September 2016, despite his personal and prejudicial interest.
- f. Paragraph 6(1)(a): Conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute.

The Chairman advised that a note of the reasons would be provided in the decision notice.

The Committee then proceeded to Stage 3 of the Hearing to determine whether any sanction should be imposed.

The Chairman invited Ms Cook to make representations and she advised that as Mr Rothero was no longer a member of the council and that the behaviour was considered serious by the Ombudsman, that it was felt in those circumstances that censure should be considered by the Committee.

RESOLVED

That the public be excluded from the meeting during consideration of the matter under the terms of Section 100A(4) of the Local Government Act 1972 as it involved the likely disclosure of exempt information as defined in Paragraph 18(c) of Part 4 of Section 12 to the Act.

At 13.30pm the meeting resumed in open session and the Chairman announced the decision as follows:

Having given the breaches of the code of conduct due consideration the committee concluded,

RESOLVED

That former Councillor Brian Rothero should be censured in relation to those breaches and a decision notice would follow shortly.

Standards Committee: 5.09.2018

**The meeting
ended at 1.35p.m.**