

<b>CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>11 March 2020</b>
<b>REPORT TITLE:</b>	<b>Decisions by the Adjudication Panel for Wales</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 2019 – February 2020)</b>
<b>REPORT BY:</b>	<b>Mared Wyn Yaxley Solicitor – Corporate Governance <a href="mailto:mwycs@ynysmon.gov.uk">mwycs@ynysmon.gov.uk</a></b>
<b>LINK OFFICER:</b>	<b>Lynn Ball Head of Function (Council Business)/Monitoring Officer <a href="mailto:lbxcs@anglesey.gov.uk">lbxcs@anglesey.gov.uk</a> 01248 752586</b>

## 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 17<sup>th</sup> September 2019. 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**

19.11.2019 - Councillor Edwin Roderick of Powys County Council and Brecon Beacons National Park Authority [APW/002/2018-019/CT]

27, 28 and 29.01.2020 – Councillor Aaron Shotton of Flintshire County Council [APW/001/2019-020/CT]

## **2.2 Appeals adjudicated**

None

## **3. RECOMMENDATION**

To note the content of the case summary/ies.

**Summary of Cases in Tribunal – September 2019 – February 2020**

Name	Summary of Facts	Decision Summary	Findings
<p>Councillor Edwin Roderick of Powys County Council and Brecon Beacons National Park Authority</p> <p>Hearing date – 19.11.2019</p>	<p>An allegation that Councillor Roderick had breached the Codes of Conduct of Powys County Council ('the Council') and Brecon Beacons National Park Authority ('the Authority') by:</p> <p>(i) Slapping the bottom of a female Councillor before a meeting of the Authority (alleged breaches of paragraphs 4 (b) and 6 (1)(a) of the Code);</p> <p>and</p> <p>(ii) Threatening to divulge information about the Councillor if she pursued the complaint (alleged breaches of paragraphs 4 (b), 6 (1)(a) and 7 (a) of the Code).</p> <p>The circumstances of the first complaint were that, shortly before the start of a meeting of the Authority on 8 December 2017, Councillor Roderick allegedly slapped the complainant's bottom as councillors were gathering at the start of the meeting. The complainant lodged a complaint on 5 January 2018.</p> <p>The second complaint arose from two conversations which Councillor Roderick subsequently had with Ms</p>	<p>The Tribunal considered that <u>suspension</u> was the most applicable sanction. The conduct was too serious for no action to be taken and there was no particular aspect of the Councillor's conduct that made a partial suspension appropriate.</p> <p>In relation to the first breach, in assessing the seriousness of the breach and its consequence, the tribunal considered that the Respondent's conduct had degraded and humiliated the complainant and considered wholly unacceptable in any public arena. The Councillor had denied the gravity and nature of the incident until recently, thereby potentially extending the period of upset to the complainant. It was claimed that the delay in conceding was attributable to the fact that the Councillor did not have a good understanding of the code of conduct (albeit the Councillor had received training on the Authority's code of conduct and signed an undertaking in relation to the Authority and the Council's Code). The Tribunal also took into account that it had been a one-off incident and that the Councillor had accepted that his actions had not been appropriate and/or intended as disrespectful with hindsight and that he offered to apologise. The Tribunal bore in mind that the Councillor was not familiar with the heightened level of formality and the ethos of committee</p>	<p>The relevant parts of the Code of Conduct are as follows:</p> <ul style="list-style-type: none"> <li>• Paragraph 4 (b); <i>"You must- (b) show respect and consideration for others;"</i></li> <li>• Paragraph 6 (1) (a); <i>"(1) You must – (a) Not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;"</i></li> <li>• Paragraph 7 (a); <i>"You must not – (a) In your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;"</i></li> </ul> <p>In reaching its decision and determining the appropriate sanction to impose, the Case Tribunal considered all of the facts of the case and the Respondent's submissions in mitigation. The Tribunal applied the <a href="#">Guidance issued by the President under s.75(10) of the Local Government Act 2000</a>, it considered the Nolan Committee's Principles for Public Life from which the National Assembly for Wales' core principles were derived.</p> <p>Councillor Roderick's Biography page on</p>

Name	Summary of Facts	Decision Summary	Findings
	<p>Doel, the then Chairman of the Authority, and Ms Foxley, the then Monitoring Officer. During the first conversation on 15 January 2018, Councillor Roderick indicated that he had information about the complainant's behaviour which her husband would have been interested in. Ms Doel understood that he was threatening the disclosure of the information if the complaint was pursued. During the second conversation on 23 January, it was alleged that Councillor Roderick said that he would make public something that the complainant would not have liked and that he would "<i>hang her out to dry</i>". Ms Doel's complaint was dated 4 April 2018.</p> <p>Councillor Roderick, in the first instance denied both allegations. However, by way of further representations made by his solicitor in a letter to the Tribunal, Councillor Roderick confirmed he would "not seek to contest the facts as presented to the Tribunal and accepts that he has breached the code in relation to the two complaints that the panel will be considering".</p> <p>In light of the Councillor's admission</p>	<p>environment and he had accepted he had made an error of judgement but that no malice was intended..</p> <p>In relation to the second complaint, the Case Tribunal considered that "the threats that the Respondent made could have been described as akin to blackmail. It was not clear to the Tribunal on what basis the Respondent had denied breaches of the Code, despite admitting the thrust of the allegations in relation to the complaint." The Tribunal was concerned that the Councillor's conduct had been repeated on two occasions and there had been an attempt to use his position for gain. The Tribunal also bore in mind that the Councillor had accepted that he had not expressed himself as thoughtfully as he would have liked and thus showed insight; he had admitted an inadvertent breach of paragraph 4 (b) of the Code at an early stage.</p> <p>In more general terms, the Tribunal considered that the Councillor had a strong set of character references and the conduct subject to the complaint appeared to be out of character. The Tribunal expressed that the Councillor's level of dedication to his community was impressive. It was noted that the Councillor had no prior record of misconduct with the Ombudsman.</p>	<p>Powys County Council confirms the suspension commenced on 20 November 2019 and will end on 20 March, 2020.</p> <p><a href="https://powys.moderngov.co.uk/mqUserInfo.aspx?UID=550">https://powys.moderngov.co.uk/mqUserInfo.aspx?UID=550</a></p>

Name	Summary of Facts	Decision Summary	Findings
	<p>of facts and guilt as included in his solicitor's letter to the Tribunal, the tribunal unanimously decided that the Councillor had breached paragraphs 4 (b), 6 (1)(a) and 7 (a) of the Code.</p>	<p>The Tribunal concluded by unanimous decision that <b>Councillor Roderick should be suspended from acting as a member of the authorities for a period of 4 months.</b></p> <p>The Tribunal also recommended that Councillor Roderick should receive further training in relation to the code of conduct.</p> <p>The decision itself can be seen on this link -  <a href="https://adjudicationpanel.gov.wales/apw0022018-019ct-cllr-edwin-roderick">https://adjudicationpanel.gov.wales/apw0022018-019ct-cllr-edwin-roderick</a></p>	
<p>Councillor Aaron Shotton of Flintshire County Council</p> <p>Hearing date – 27, 28 and 29.01.2020</p>	<p>An allegation that Councillor Shotton had breached the Code of Conduct of Flintshire County Council by failing to comply with Paragraphs 6(1)(a), 7(a) and 7(b) of the Code of Conduct in relation to certain events connected to interactions with his Personal Assistant ("PA") in 2012 and also in 2016 and 2017.</p> <p>The three allegations were that:</p> <p>1. Councillor Shotton, in his official capacity or otherwise, used or attempted to use his position improperly to confer on or secure for himself or his PA, an advantage</p>	<p>The Case Tribunal found the following <b>undisputed</b> material facts</p> <ul style="list-style-type: none"> <li>• The Respondent is a Councillor and the former Leader at Flintshire County Council ("the Council"). He was first elected to the Council in 1999 and was Leader of the Council from 2012 until his resignation in April 2019.</li> <li>• The personal assistant ("PA") was seconded to the role of PA to the Leader and Deputy Leader on 28 May 2012. The PA was interviewed for the permanent role of PA on 29 November 2012 and was duly appointed to the role. The Respondent was due to take part in the interview however did not attend</li> </ul>	<p>The relevant parts of the Code of Conduct are as follows:</p> <ul style="list-style-type: none"> <li>• Paragraph 6 (1) (a);  <i>"(1) You must –</i>  <i>(b) Not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;"</i></li> <li>• Paragraph 7 (a);  <i>"You must not –</i>  <i>(a) In your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;"</i></li> <li>• Paragraph 7 (b);  <i>"You must not –</i></li> </ul>

Name	Summary of Facts	Decision Summary	Findings
	<p>or create or avoid for himself or his PA a disadvantage by providing an opportunity to view questions before her interview for the permanent role of PA and also whether he thereby conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.</p> <p>2. Councillor Shotton used, or authorised his PA to use the resources of the authority (hire of vehicles):-            (i) imprudently;            (ii) in breach of the authority's requirements;            (iii) unlawfully;            (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which he had been elected or appointed;            (v) improperly for political purposes; or            (vi) improperly for private purposes.            and also whether he thereby conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.</p>	<p>in the end.</p> <ul style="list-style-type: none"> <li>• The Respondent received training on the Council's Code of Conduct for Members in 2013 and signed an undertaking to observe the Code.</li> <li>• The Respondent conducted an inappropriate close personal relationship with the PA which involved hotel meetings and 'sexting' between January 2016 and May 2017.</li> <li>• The Respondent used hire cars paid for by the County Council on 27 and 28 February 2016, 11 to 13 April 2016 and 21 and 22 May 2016 which included personal purposes in relation to the hotel meetings.</li> </ul> <p>The Case Tribunal found the following in respect of the <b>disputed</b> material facts:</p> <ul style="list-style-type: none"> <li>• The Respondent did use his position improperly to confer an advantage on the PA by providing an opportunity to view questions before her interview.</li> <li>• The Respondent was not aware nor could he have been expected to be aware that he was using hire vehicles for private purposes at the Council's cost.</li> <li>• The Respondent sent and encouraged the PA to send inappropriate messages, to include messages of a sexual nature, during office hours.</li> </ul>	<p>(b) use, or authorise others to use, the resources of your authority –</p> <ul style="list-style-type: none"> <li>(i) imprudently;</li> <li>(ii) in breach of your authority's requirements;</li> <li>(iii) unlawfully;</li> <li>(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;</li> <li>(v) improperly for political purposes; or</li> <li>(vi) improperly for private purposes”.</li> </ul> <p>In reaching its decision and determining the appropriate sanction to impose, the Case Tribunal also considered Article 8 of the ECHR, which states as follows:-            “1. Everyone has the right to respect for his private and family life, his home and his correspondence.            2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.</p>

Name	Summary of Facts	Decision Summary	Findings
	<p>3. Councillor Shotton conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute by sending and/or encouraging his PA to send inappropriate messages, to include messages of a sexual nature, during office hours.</p> <p>The three allegations arose as a result of the discovery by the PA's husband of a series of "WhatsApp" messages and a subsequent complaint to the Chief Executive of the Relevant Authority and an investigation leading to disciplinary proceedings involving the PA.</p> <p>Full details of the facts are included in the Decision which has been published, albeit details in relation to the third allegation are limited on the basis the majority of information in relation to this allegation was considered in private session and the information is not available in the public domain.</p>	<ul style="list-style-type: none"> <li>Insofar as there was any difference in accounts, Disputed Fact 2.4 in relation to the precise extent of any relationship required no formal finding and therefore did not impact on the assessment of credibility of either the Respondent or the PA.</li> </ul> <p>The decision itself is very detailed and can be seen on this link - <a href="https://adjudicationpanel.gov.wales/sites/default/files/2020-02/apw-decision-cllr-aaron-shotton.pdf">https://adjudicationpanel.gov.wales/sites/default/files/2020-02/apw-decision-cllr-aaron-shotton.pdf</a></p> <p>The Tribunal considered that <u>suspension</u> was the most applicable sanction.</p> <p>The conduct found in relation to Allegations 1 and 3 were "serious", with Allegation 3 being "particularly egregious, both comprising of the type of behaviour that would normally attract lengthy suspension or disqualification, particularly in the light of a Leader's vital role in improving a Council's culture and building its good reputation."</p> <p>As well as the factual context of each proven Allegation, the Case Tribunal took account of the aggravating factors which also included long experience, seniority and position of responsibility, deliberate conduct and abuse and exploitation of a position of trust. It also</p>	<p>In reaching its decision about sanction, the Panel considered all of the facts of the case and the Respondent's submissions in mitigation. The Tribunal applied the <a href="#">Guidance issued by the President under s.75(10) of the Local Government Act 2000</a>.</p> <p>Councillor Shotton's Biography page on Flintshire County Council confirms the suspension will end on 29 April, 2020 - <a href="http://committeemeetings.flintshire.gov.uk/mg/UserInfo.aspx?UID=174&amp;LLL=0">http://committeemeetings.flintshire.gov.uk/mg/UserInfo.aspx?UID=174&amp;LLL=0</a></p>

Name	Summary of Facts	Decision Summary	Findings
		<p>consisted of deliberate or reckless conduct with little or no concern for the Code.</p> <p>In terms of mitigating factors however, the Case Tribunal accepted that the Respondent had a previous record of good service over a long period of time and was a deeply committed politician who worked hard for his community and his Authority. With regard to Allegation 3, the Respondent had recognised his failure to abide by the Code, he had also shown deep remorse for the misconduct and its consequences, he was contrite and had apologised early in the investigation and throughout to all those affected, he had co-operated throughout the investigation and co-operated with the Adjudication Panel for Wales and finally, he had voluntarily resigned his position as Leader together with the relevant senior responsibility allowance. The Case Tribunal also accepted that the Respondent, as well as others, had already suffered a form of punishment through public humiliation and adverse publicity over a considerable period of time and the Case Tribunal was satisfied that the behaviour would never be repeated.</p> <p>The Case Tribunal concluded by unanimous decision that <b>Councillor</b></p>	

Name	Summary of Facts	Decision Summary	Findings
		<p><b>Shotton should be suspended from acting as a member of the authorities for a period of 3 months.</b></p> <p>The Case Tribunal considered that this relatively short suspension of three months properly reflected all of the relevant mitigating and aggravating factors and the facts of the case. It considered that a period of three months' suspension was proportionate in all the circumstances and was the minimum sanction necessary to uphold the Code of Conduct. It noted that even if the Case Tribunal had considered that the Respondent had been acting in his private capacity in relation to sending and encouraging his PA to send inappropriate messages during office hours, it would nevertheless have considered that a short suspension of this nature would have been appropriate and proportionate having regard to Article 8 of the ECHR.</p>	