

<b>CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>15 December 2020</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 March 2020 – December 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 Director 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 11<sup>th</sup> March 2020. 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

None

## **2.2 Appeals adjudicated**

[APW/002/2019-020/AT: Councillor Neil McEvoy - 22 June 2020](#)

### **3. RECOMMENDATION**

To note the content of the case summary/ies.

**Summary of Cases in Tribunal – March 2020: December 2020**

Name	Summary of Facts	Decision Summary	Findings
<p>Councillor Neil McEvoy</p> <p>Cardiff County Council</p> <p>APW/002/2019-020/AT</p> <p>[He is also Member of the Senedd Cymru for South Wales Central, a constituency that covers the area he represents as a Councillor.]</p>	<p><b>The complaint considered by PSOW:</b></p> <p>By letter dated 7th June 2019, the Monitoring Officer for Cardiff Council received a referral from the Public Service Ombudsman for Wales (“The PSOW” or “Ombudsman”) in relation to misconduct allegations made against Cllr McEvoy.</p> <p>The Ombudsman’s referral followed an investigation carried out in relation to a complaint submitted to the Ombudsman by the director of a private care home contracted to provide services to the Council. The complaint alleged that Cllr McEvoy’s conduct on 29th April 2018, and on 11th May 2018, towards three employees of the private care home, and his involvement in the case of a child in its care (referred to as Child X) had been inappropriate, intimidating and bullying, in breach of the Members’ Code of Conduct.</p> <p>Having considered the complaint, the Ombudsman decided to investigate whether Cllr McEvoy</p>	<p>An Appeal Tribunal considered an appeal by Cllr Neil McEvoy against the decision of Cardiff County Council Standards Committee on 14<sup>th</sup> January 2020 that he had breached the Cardiff County Council Code of Conduct and should be suspended as a Councillor for four months. The Appeal Tribunal only considered the sanction imposed, based on the findings of the Standards Committee about facts and breach alone.</p> <p>In reaching its decision in relation to the sanction imposed, the APW Appeal Tribunal had two choices:</p> <p>(a) To endorse any penalty imposed, or</p> <p>(b) refer the matter back to the Standards Committee with a recommendation that a different penalty be imposed.</p> <p>The Appeal Tribunal determined its adjudication by way of written representations on 22<sup>nd</sup> June 2020 at a meeting held remotely.</p> <p>The Tribunal explained that it attaches little weight to decisions taken by other panels or Committees on different facts in relation to different people, preferring</p>	<p><b>Learning points for elected members</b></p> <ul style="list-style-type: none"> <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. Members are advised, if they have not already done so to undertake the online training available on <a href="#">**this link**</a>.</li> </ul> <p><b>Learning points for the Standards Committee</b></p> <ul style="list-style-type: none"> <li>Though not a requirement, it is good practice to follow the APW’s Sanctions Guidance when considering sanction and for the decision record to confirm the same.</li> </ul>

Name	Summary of Facts	Decision Summary	Findings
	<p>had failed to comply with those provisions of the Code of Conduct requiring him:</p> <ul style="list-style-type: none"> <li>- To show respect and consideration for other;</li> <li>- Not to use bullying behaviour or harass any person; and</li> <li>- Not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.</li> </ul> <p>The Ombudsman concluded that there was evidence to suggest that Cllr McEvoy's conduct may have amounted to a breach of the Members' Code of Conduct.</p> <p><b>The incidents subject to the complaint:</b></p> <p><u>Incident 1</u> - On 29th April 2018 a telephone call was made by Cllr McEvoy to a residential children's care home and the telephone call was answered by "Witness 2". Cllr McEvoy introduced himself as Assembly Member and Corporate Parent and said he wanted to visit a resident, Child X, at the care home that day. Witness 2 said that Cllr McEvoy could not visit Child X because he was not named on the child's care plan, and she advised</p>	<p>instead to apply the 'Sanctions Guidance' in conjunction with directly relevant material and the operation of its collective judgment. This approach accords with best practice in other areas of law where sanctions guidance or guidelines have largely overtaken the citation of previous decisions. The Tribunal prefers to assess the facts of the case against the 'Sanctions Guidance' and come to a view as to any available range; and as appropriate, the Appellant's position within the available range.</p> <p>The Tribunal followed the <a href="#">Sanctions Guidance of the APW</a>.</p> <p>This details the five step process followed by a case and appeal tribunals in determining sanction:</p> <ul style="list-style-type: none"> <li>- assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)</li> <li>- identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)</li> <li>- consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)</li> <li>- consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms</li> </ul>	

Name	Summary of Facts	Decision Summary	Findings
	<p>Cllr McEvoy to arrange a visit through a social worker. Cllr McEvoy said that he would be attending that day and that he would be bringing a colleague with him. Witness 2 maintained that Cllr McEvoy was not authorised to visit Child X. Cllr McEvoy said that he would be raising the matter at the Welsh Assembly. Witness 2 said that if Cllr McEvoy attended at the care home without authorisation, she would have to call the police, because of her duty to safeguard the residents of the home. Cllr McEvoy asked Witness 2 to speak with her Director and get back to him within a deadline that day. Witness 2 called Cllr McEvoy back and repeated her previous advice. Cllr McEvoy did not attend at the care home that day.</p> <p><u>Incident 2 -</u> On 11th May 2018, Cllr McEvoy attended the head office of the care home with the father of Child X with the aim of attending a scheduled therapy meeting for X. Cllr McEvoy was invited to attend the therapy meeting by the Father, but he did not personally receive confirmation from the Council agreeing to his attendance at the meeting. Cllr McEvoy and the</p>	<p>of fulfilling the purposes of the sanctions; (para.43)</p> <p>- confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)</p> <p>An appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.</p> <p>The Tribunal unanimously confirmed the decision on sanction taken at first instance. This was considered a serious case that merited a sanction at the top of the identified, appropriate range. The Appeal Tribunal therefore found that Cllr McEvoy's suspension from office for four months was justified, proportionate and appropriate in all the circumstances, given the findings of the Standards Committee about facts and breach alone.</p>	

Name	Summary of Facts	Decision Summary	Findings
	<p>father were met shortly after entering the building by “Witness 4”. Cllr McEvoy and the father had two interactions with Witness 4. Cllr McEvoy and the father subsequently had an interaction with “Witness 3”. Witness 3 passed on a message to the father and Cllr McEvoy telling them that the therapy meeting had been cancelled by a (referred to as “the”) social worker. Part of the interaction with Witness 3 was covertly recorded by the father under the instructions of Cllr McEvoy. During this recorded interaction, Cllr McEvoy was on the telephone to the Council’s former Assistant Director of Social Services. Cllr McEvoy said to the Assistant Director that he wished to make a complaint about Witness 3 and gave a description of him, which included the term ‘slightly overweight’. Cllr McEvoy left the building with father.</p> <p><b>Background of the case leading up to Appeal:</b> A Hearings Panel (sub-Committee of the Standards and Ethics Committee) was convened between 6th and 14th January 2020 at City Hall, Cardiff to consider the allegations in relation</p>		

Name	Summary of Facts	Decision Summary	Findings
	<p>to Cllr McEvoy.</p> <p>On 14th January, given its findings of fact, the Committee decided that:</p> <p>a. In respect of the incident on 29th April 2018, Cllr McEvoy failed to show respect and consideration for Witness 2 [breach of paragraph 4(b) of the Code]; he had used bullying behaviour and harassment towards Witness 2 [breach of paragraph 4(c) of the Code] and had brought Cardiff Council into disrepute [breach of paragraph 6(1)(a) of the Code.], and that</p> <p>b. In respect of the incident on 11th May 2018, Cllr McEvoy had brought Cardiff Council into disrepute and thus breached paragraph 6(1)(a) of the Code of Conduct.</p> <p>The Committee then further decided that having regard to the number of aggravating circumstances, as well as the mitigation, Cllr McEvoy would be suspended as a Councillor for four months.</p> <p><b>Allowing the appeal:</b> In her decision dated 5th March 2020, the President of the APW gave permission to appeal in the</p>		

Name	Summary of Facts	Decision Summary	Findings
	<p>following terms:  <i>“While the Appellant framed his objection to the sanction imposed primarily in terms that it was disproportionate due to discrimination, he did also comment that it was harsh in light of the findings made by the standards Committee. I cannot say in all the circumstances that there is no reasonable prospect of success for this ground of appeal, given an Appeal Tribunal considering the findings made by the standards Committee on both facts and breach of the Code may conclude that the sanction is disproportionate. I also note that there is no evidence as to whether the standards Committee took into account any sanctions guidance when reaching its decision, though it appears to have considered relevant factors and the use of such guidance is not mandatory. I make the decision to allow an appeal on this point, notwithstanding the fact that the Appellant refused to make any submission to the standards Committee on the issue of sanction. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be</i></p>		



Name	Summary of Facts	Decision Summary	Findings
	<p><i>reconsidered by the standards Committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. It therefore will be considered by an Appeal Tribunal in due course, but its consideration will be based on the findings of the standards Committee about facts and breach alone."</i></p>		