

<b>CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	<b>Standards Committee</b>
<b>DATE:</b>	<b>16 June 2021</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 (published since the last Committee meeting on 15 December 2020)</b>
<b>REPORT BY:</b>	<b>Mared Wyn Yaxley Solicitor – Corporate Governance <a href="mailto:mwyics@ynysmon.gov.uk">mwyics@ynysmon.gov.uk</a></b>
<b>LINK OFFICER:</b>	<b>Lynn Ball Director of Function (Council Business)/Monitoring Officer <a href="mailto:lbxics@ynysmon.gov.uk">lbxics@ynysmon.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 meeting on the 15<sup>th</sup> December 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

[APW/002/2020-021/CT: Councillor Philip Baguley](#) – 16 December 2020

**2.2 Appeals adjudicated**

None reported during this period.

**3. RECOMMENDATION**

To note the content of the case summaries.

**Summary of Cases in Tribunal – December 2020 – June 2021**

Name	Summary of Facts	Decision Summary	Findings
<p>Councillor Philip Baguley (former)</p> <p>Sully and Lavernock Community Council</p> <p>APW/002/2020-021/CT</p>	<p>An allegation that Councillor Baguley had breached the Code of Conduct for Members of Sully and Lavernock Community Council when he posted three public Facebook messages on 10th January, 9th March and 11th March 2019, which it was alleged could reasonably be regarded as bringing the Councillor's office or authority into disrepute and thereby breached Paragraph 6(1) of the Code (Allegation 1).</p> <p>The messages are repeated in the Decision summary and include strong opinions on three high profile UK politicians [labour party] and swear words.</p> <p>During the course of the Public Services Ombudsman for Wales (PSOW)'s investigation, the Ombudsman extended the investigation to include Allegation 2. This allegation related to the Councillor allegedly failing to supply information and evidence in respect of the privacy status of the relevant posts, in non-compliance with requests of the Ombudsman in connection with an investigation conducted in accordance with his statutory powers and thereby breached Paragraph 6(2) of the</p>	<p>In relation to <b>Allegation 1</b>, the APW decided that:</p> <ul style="list-style-type: none"> <li>- The Councillor was acting in a private capacity when he posted the three public Facebook messages in question.</li> <li>- That although the Facebook posts were written in the context of sharing political views on Facebook, the comments complained of went far beyond what could reasonably be considered to be political expression. It was however straightforward to separate the political debate from the comments which were the subject of Allegation 1. The comments were inflammatory and an expression of views which were extreme, threatening in nature and promoted violence towards individuals. The comments could not be dignified by the description of political expression.</li> <li>- That even if the Respondent was not aware of the privacy status of his posts at the time of posting, despite the visible icon of a globe which showed that it was public, the Respondent was at the very least, reckless to that fact and the Tribunal found that on the balance of probabilities the Respondent was aware of their public status. He was well versed in the use of social media and sent regular and frequent posts and was reckless as to</li> </ul>	<p><b>Allegation 1</b></p> <p>Paragraph 2(1)(d) of the Code states; "... <i>You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.</i>"</p> <p>Paragraph 6(1)(a) of the Code states; "<i>You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.</i>"</p> <p>The three Facebook posts had been found by the Case Tribunal to be so extreme and egregious that, despite the fact that freedom of expression was a fundamental human right, there were necessary limits. The APW considered that the posts went well beyond what could be reasonably tolerated in a democratic society and, on that basis, it was necessary for the public interest in proper standards of conduct by Members of local authorities to be upheld by a finding that the Respondent had breached Paragraph 6(1)(a) of the Code, in order to safeguard public safety and the reputation and rights of others.</p> <p><b>Allegation 2</b></p> <p>Paragraph 6(2) states; "<i>You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.</i>"</p>

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	Code. (Allegation 2)	<p>the consequences. In one of his posts not related to the Allegation, he had stated; "I will get another Facebook ban for saying it...". His responses to the written interview questions demonstrated that the Respondent had little concern for whether his page was public or private.</p> <ul style="list-style-type: none"> <li>- The Case Tribunal considered that high profile politicians, by entering public life, lay themselves open to close scrutiny and indeed mockery and sarcasm. They were expected to possess thick skins and display a greater degree of tolerance than ordinary citizens, however such tolerance should not have to extend to personal, inflammatory and egregious comments which comprised of threats or inciting extreme violence and death from other politicians, albeit acting in their private capacity, including at a Community Councillor level. The comments were personal, disturbing and gratuitous verbal attacks, not political expression.</li> </ul> <p>In relation to <b>Allegation 2</b>, the APW decided that –</p> <ul style="list-style-type: none"> <li>- The Councillor had failed to comply with the Ombudsman's requests for information with regard to the change in his privacy settings. The Panel found that on the balance of probability, the Respondent's initial response that Facebook had confirmed that the</li> </ul>	<p>The Case Tribunal had reached the finding of fact that the Respondent had deliberately avoided answering the Ombudsman's reasonable requests in his Investigating Officer's efforts to complete the investigation in accordance with the Ombudsman's statutory powers. It inevitably followed that the APW considered there had therefore been a breach of Paragraph 6(2) of the Code.</p> <p><b>Sanction:</b> The Member was disqualified for 15 months.</p> <p><b><u>Learning points for elected members</u></b></p> <ul style="list-style-type: none"> <li>• Comments made on Social Media, even in a private capacity, can be subject to the Code of Conduct. There is guidance on the use of social media by Members (produced by the WLGA) available <a href="#">here</a>.</li> <li>• The Case Tribunal considered the Ombudsman's Guidance on the Code of Conduct. This Guidance has recently been updated and is the subject of a separate agenda item (item 11).</li> <li>• Paragraph 6(2) of the Code of Conduct details a requirement for members to comply with any request of the authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers. Failing to do this can result in a</li> </ul>

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		<p>settings had been private since 2013 was not a candid response and was written to attempt to minimise the nature and impact of the Facebook posts.</p> <ul style="list-style-type: none"> <li>- The Case Tribunal considered that the Respondent's subsequent responses contained a variety of excuses and no evidence or detail was forthcoming as to any relevant discussion with Facebook to confirm that the Respondent's Facebook posts had been private since 2013.</li> </ul> <p>There was reference to a discussion with Facebook but the Respondent said that he had "got nowhere" in that instance.</p> <p>He then stated that he did not know how to check any change of settings that took place in 2013, although he was clearly an experienced user of Facebook and the Tribunal did not consider that this was an entirely candid response.</p> <p>Further to guidance supplied by the Ombudsman's Investigator, the Respondent failed to reply.</p> <p>Finally, in reply to written interview questions, the Respondent provided a further explanation, stating that his settings had been "strangely changed" to public by a third party.</p> <ul style="list-style-type: none"> <li>- In conclusion the Panel considered that the Respondent had deliberately avoided providing information and full and frank responses to the reasonable</li> </ul>	<p>breach of the Code and/or a more rigorous sanction.</p> <p><b><u>Learning points for the Standards Committee</u></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>

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		requests of the Ombudsman's Investigating Officer in completing the investigation.	
<p>Councillor Kevin O'Neill</p> <p>Merthyr Tydfil County Borough Council</p> <p>APW/001/2020-021/CT</p>	<p>The allegations were that Councillor O'Neill (the Leader of Merthyr Tydfil County Borough Council) had breached the Council's Code of Conduct in August 2018 in relation to a personal and prejudicial interest, and in his treatment of the former Chief Executive of the Relevant Authority at a meeting on 5th March 2019, contrary to paragraphs 4(b), 6(1)(a), 11(1), 11(2)(a), 14(1)(a), 14(1) (c), 14(1)(d) and 14(1)(e) of the Code.</p> <p><b>Allegation 1</b> Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15th August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.</p> <p><b>Allegation 2</b> Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was</p>	<p>The APW decided that, in relation to:</p> <p><b>Allegation 1 -</b> The Respondent had a personal and prejudicial interest in a matter affecting St David's, Luther Lane, Merthyr Tydfil, a property neighbouring his home which was purchased by a private organisation with the intention of housing children from troubled backgrounds in a community setting. The Respondent failed to declare a prejudicial interest. The Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority's code of conduct in this regard.</p> <p><b>Allegation 2 -</b> On the basis of the findings of fact and that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane, the tribunal unanimously found the allegation proven and there was a failure to comply with the authority's Code of Conduct. The case tribunal agrees with the Ombudsman's argument (as put forward in the papers) that in the absence of a dispensation from the standards committee, that the Respondent should not have been present at any meeting where the prejudicial interest was under consideration at all.</p>	<p>Breaches of the following paragraphs in the Code of Conduct were considered:</p> <p>4(b) – <i>You must show respect and consideration for others;</i></p> <p>6(1)(a) – <i>You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;</i></p> <p>11(1) - <i>Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent;</i></p> <p>11(2)(a) - <i>Where you have a personal interest in any business of your authority and you make written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;</i></p> <p>14(1)(c) - <i>Subject to sub-paragraphs (2), (2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee not seek to influence a decision about that business;</i></p> <p>14(1)(d) - <i>Subject to sub-paragraphs (2),</i></p>

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	<p>in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15th August 2018.</p> <p><b>Allegation 3</b> Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15th August 2018.</p> <p><b>Allegation 4</b> That the Respondent's email to the Director of Social Services on 16th August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the email sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.</p> <p><b>Allegation 5</b> Whether the Respondent's actions in speaking at the meeting of the 15th August 2018 and sending written correspondence to an officer</p>	<p><b>Allegation 3 -</b> The Case Tribunal unanimously found that the allegation was proved and that there had been a failure to comply with the Code as follows; Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority, states that a member must "not seek to influence a decision about that business". By making the comments and being involved in a meeting about a property next door to his home in which he had a prejudicial interest, and as Leader of the Council, the case tribunal were satisfied that the Respondent was seeking to influence a decision about that business.</p> <p><b>Allegation 4 -</b> The Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority's Code of conduct. The Case Tribunal unanimously found that the Respondent had a prejudicial interest in the property at Luther Lane and sent an email to the Director of Social Services on 16th August 2018 in breach of paragraphs 14(1) (c) and (d) of the Code. (attempting to influence a decision and making oral representations in relation to a matter where the member has a prejudicial interest).</p> <p><b>Allegation 5 -</b></p>	<p>(2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and 14(1)(e) - Subject to sub-paragraphs (2), (2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.</p> <p><b>Sanction:</b> The Case Tribunal considered all the facts of the case and in particular the number and nature of the breaches, the Ombudsman's submissions and the Respondent's submission in mitigation. It also considered the sanctions guidance issued by the President under section 75(10) of the Local Government Act 2000 ("the Guidance").</p> <p>The Case tribunal determined that for the breaches of the Code proved and found in this case, that the starting point would be suspension for nine months. However, having taken into account the mitigating and aggravating factors, and in particular the</p>

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	<p>in the form of an e mail to the Director of Social Services on 16th August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.</p> <p><b>Allegation 6</b> Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5th March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.</p>	<p>The Case Tribunal unanimously found that the Respondent's conduct in speaking at the inter-agency meeting on 15th August 2018 and sending the email to the Director of Social Services on 16th August 2018 in relation to business of the authority in which he had a prejudicial interest amounts to a breach of Paragraph 6(1)(a) of the Code. <i>"6.-(1) You must - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute"</i></p> <p><b>Allegation 6</b> The case tribunal unanimously find that the Respondent's conduct towards the former Chief Executive of the Authority at the meeting of 5th March 2019 breached paragraph 4(b) of the Code which states that a member must <i>"(b) show respect and consideration for others"</i></p>	<p>Respondent's exemplary character witness, long record of public service, and relative inexperience as a Councillor and Leader, the Case Tribunal concluded by unanimous decision to reduce the suspension. The Member was suspended for seven months.</p> <p>The Case Tribunal also made the following recommendation to Merthyr Tydfil County Borough Council; That the Monitoring Officer or their delegate provide further training to the Respondent on the Code of Conduct, the meaning of 'prejudicial interests' and the approach to be taken to, and the status of, the advice of the Monitoring Officer. Such training to be undertaken within one month of the Respondent returning to his post following the service of his suspension.</p> <p><b><u>Learning points for elected members</u></b></p> <ul style="list-style-type: none"> <li>• The Case Tribunal considered the Ombudsman's Guidance on the Code of Conduct. This Guidance has recently been updated and is the subject of a separate agenda item (item 11).</li> <li>• Attending training on the Code of 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>



# ENCLOSURE 1

Name	Summary of Facts	Decision Summary	Findings
			<ul style="list-style-type: none"> <li>• Members are advised to ask for the Monitoring Officer's advice in relation to personal and prejudicial interests. Members need to consider such advice and have a good reason why they do not follow the same.</li> <li>• A member with an interest such as the one illustrated by this case could still express their view/concern, but in a personal capacity and not in their role as an elected member. This would include having to use their own personal email address (not @ynysmon.gov.uk); not using Council IT equipment (use their own personal devices); using the same avenues of access available to members of the public, whilst ensuring they declare their interest in any conversation/correspondence, even when it seems repetitious to do so. A briefing note for members on implementing their rights as individuals is available on this <a href="#">link</a>.</li> </ul> <p><b><u>Learning points for the Standards Committee</u></b></p> <p>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.</p>