

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL

COMMITTEE:	Standards Committee
DATE:	15 December 2021
REPORT TITLE:	Adjudication Panel for Wales Decisions
PURPOSE OF THE REPORT:	To provide information about the matters considered by the Adjudication Panel for Wales to date (published since the last Committee meeting on 16 June 2021)
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1. INTRODUCTION AND BACKGROUND

The Adjudication Panel for Wales (APW) was established by the Local Government Act 2000. It has two statutory functions:-

1. To form case tribunals, or interim case tribunals, to consider reports from the Public Services Ombudsman for Wales (PSOW) following investigations by the PSOW into allegations that a member has failed to comply with their authority's code of conduct; and
2. To consider appeals from members against the decisions of their own authority's standards committee that they have breached the code of conduct (as well as deciding if permission will be given to appeal in the first instance).

This report includes decisions published by the APW during the period since the Standards Committee meeting on the 16 June 2021. 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/003/2020-021/CT– Councillor David Poole – 28 June 2021

2.2 Appeals adjudicated

APW-002-2021-022-AT: Councillor R Mainon – 2 November 2021

3. RECOMMENDATION

To note the content of the case summaries.

Summary of Cases in Tribunal – June 2021 – November 2021

Name	Summary of Facts	Decision Summary	Findings
<p>Councillor David Poole</p> <p>Caerphilly County Borough Council</p> <p>APW/003/2020-021/CT</p>	<p>An allegation that Councillor David Poole had breached the Code of Conduct for Members of Caerphilly County Borough Council when he Breach of paragraphs 6(1)(a), 7(a), 11(1) and 14(1)(a) of the Council's Code of Conduct.</p> <p>The Councillor was, at all times relevant, the leader of Caerphilly County Borough Council. He had been Leader since May 2017, having become a Councillor in May 2004.</p> <p>(i) Used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information that he had received through his position as a Councillor at a meeting on 8 October 2018 (alleged breach of paragraph 7 (a) of the Code) and thereby brought the Authority and his office as a member into disrepute (alleged breach of paragraph 6 (1)(a) of the Code) - (Allegation 1) ;</p> <p>(ii) Failed to disclose a personal interest and/or withdraw from a meeting on 18 February 2019 when a matter in which he had a prejudicial interest was being discussed, namely financial</p>	<p>In relation to Allegation 1, the APW decided that:</p> <ul style="list-style-type: none"> - The Councillor had access to the confidential information referred to at the meeting of 8 October 2018. Although initially stating that he could not remember whether he had access, he accepted that he would have done when he was interviewed as part of the Ombudsman's investigation where he accepted that he would have had access it "without a doubt". However, he denied that there had been anything within it which caused him to purchase the shares; - The Councillor's motivation for purchasing the shares was stated to have been a demonstration of a 'vote of confidence' in the regeneration scheme and IQE's involvement in it. That was the reason given at interview, albeit that he had also accepted that he had hoped to benefit financially. It was the reason repeated more recently in his email of 4 May 2021; - The Tribunal noted the Respondent's experience and was particularly struck by the proximity of the dates of the meeting and the share purchase, 8 and 22 October 2018 respectively. The simple message in the GVA letter was clear; that IQE's share price was likely to have seen an increase following an earlier than predicted achievement of 	<p>Allegation 1</p> <p>Paragraphs 6 (1)(a) and 7 (a); <i>The Ombudsman considered that the facts were 'suggestive' of breaches of both paragraphs of the Code. The Ombudsman believed that the nature of the confidential information which he had access to had led him to buy the shares in IQE. That information contained indications as to the likely value of the shares and he considered that the decision to purchase after sight of the commercially sensitive information demonstrated "extremely poor judgment on his behalf.</i></p> <p>The Tribunal considered that the Respondent's breach of paragraph 7 of the Code was conduct which brought his Authority into disrepute and, in particular, his office as leader.</p> <p>The Ombudsman's Guidance referred to the need for members to be mindful of the fact that the paragraph within the Code applied at all times, not just when carrying out duties as a member. Having concluded that the Respondent had used his capacity to attempt to secure a pecuniary advantage for himself when he bought the shares in IQE relying on the confidential information referred to within paragraph 3.2.2, the Tribunal concluded that he had committed a breach of paragraph 7 (a) .</p>

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	<p>dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code) – (Allegation 2)</p>	<p>profitability. The Respondent could have purchased shares at any point before 22 October to show a 'vote of confidence' in IQE, but only chose to do so once in receipt of that prediction;</p> <ul style="list-style-type: none"> - The Tribunal considered that it was also noteworthy that, within his self-referral, the Respondent had appreciated that the purchase of the shares had been unwise, albeit because he considered that he was conflicted in future discussions regarding IQE, rather than because he ought not to have benefited from the contents of the confidential information that was seen. - Taking all of those matters into account, the Tribunal concluded that: (a) the Respondent had probably sought to benefit from the confidential information that he received in connection with the meeting of 8 October 2018 when he bought the shares. 	<p>Allegation 2</p> <p>Paragraph 11 (1);</p> <p>The Tribunal had some difficulty with this allegation because of the wording of paragraph 10 of the Code. Paragraph 10 (2)(iv) defined a personal interest to include an interest which related to a corporate body which had a place of business or land in the authority's area and in which the interest exceeded the value of £25,000. The Respondent did not meet each of those conjunctive tests in relation to his shareholding in IQE. Paragraph 10 (2)(a)(ix)(bb) related to companies, societies or other bodies "directed to charitable purposes." We could not see that either of those sub-paragraphs or any other within paragraph 10 (2)(a) of the Code clearly defined the Respondent's shareholding as a personal interest. Paragraph 10 (2)(c) was more generic but it extended the definition of personal interests to include something upon which an authority's decision might have affected a member's financial position (sub-paragraph (i)). The Tribunal considered the Respondent's share interest was likely to have been covered by paragraph 10 (2)(c)(i) because any decision in relation to IQE could have affected his financial position as a shareholder. The Tribunal did not see the relevance of paragraph 10 (2)(a)(viii) which had been raised by the Ombudsman. The next question to address was whether the Respondent had attended a meeting at which "that business [was] considered". The</p>

ENCLOSURE 1

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			<p>Respondent considered that it was not; it was only the 'process' or due diligence 'system' by which the investment had been made which was considered on 18 February 2019 and his recent email of 4 May 2021.</p> <p>The Tribunal concluded, however, that the Welsh Audit Office's review of CCR's investments clearly would have encompassed an examination of the £38m grant to IQE. In its broadest sense, IQE was either directly or indirectly 'considered' at the meeting.</p> <p>Paragraph 14 (1)(a);</p> <p>The Tribunal considered that the Respondent held a prejudicial interest paragraph 12 (1) of the Code. He accepted that that was the case, as did the Monitoring Officer. He did not withdraw from the room on 18 February 2019 when item 11 was discussed and was in breach of paragraph 14 (1) of the Code as a result.</p> <p>Sanction:</p> <ul style="list-style-type: none"> - In respect of his breaches of paragraphs 6 and 7 of the Code, a period of five months suspension; - In respect of his breaches of paragraphs 11 and 14 of the Code, a period of two months suspension concurrently. <p><u>Learning points</u></p> <ul style="list-style-type: none"> • The Case Tribunal considered the Ombudsman's Guidance on the Code of Conduct. As part of the consultation on

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<p>Councillor Richard Mainon</p> <p>Denbighshire County Council</p> <p>APW/002/2021/0 22/AT</p>	<p>Following an argument between the councillor's constituent and the complainant in the car park of a local store, the councillor (at the constituent's request) pursued a complaint against the complainant with her employer in respect of the incident. Over the course of some 10 days (11th to 21st December), the councillor:</p> <ul style="list-style-type: none"> • investigated and established the location of the complainant's workplace; • attended that workplace and spoke to 3 other employees about the incident; • visited the local store twice where the incident occurred to establish if there was cctv footage of the incident; • made a complaint to the complainant's employer on 	<p>The councillor appealed on the grounds that:</p> <ul style="list-style-type: none"> • he had not bullied or harassed the complainant; • he had not brought the Council into disrepute; • that he had not taken advantage of his position to cause disadvantage to the complainant; • the sanction was inappropriate, unnecessary and excessive. <p>The appeal was allowed to proceed on limited grounds:</p> <ul style="list-style-type: none"> • that the Standards Committee decision had not separated bullying from harassment; the two are not the same thing. The decision had not set-out how they concluded that there was a course of conduct 	<p>the Ethical Framework the Standards Committee may wish to consider recommending any changes to the Guidance.</p> <ul style="list-style-type: none"> • A training issue to be highlighted after the election in May 2022 • The Standards Committee to remind members to update their Registers of Interests, not just as part of an annual review but as and when those interests change. The legal requirement is within 28 days of any such change. <p>The Tribunal found that the councillor engaged in repeated behaviour by a series of separate and distinct actions over a number of days. Whilst these incidents were distinct, they were individually considered and acted upon but formed part of a nexus of the ongoing pursuit by the councillor of the complaint on behalf of his constituent and against the complainant. To this extent he was engaged in a course of conduct which was properly characterised as repeated behaviour.</p> <p>That Tribunal considered whether the repeated behaviour amounted to harassment, looking at the behaviour objectively but also considering the perspectives of both the complainant, the councillor and other available evidence.</p> <p>Whilst the councillor did not intend to harass the complainant, he visited her workplace</p>

ENCLOSURE 1

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	<p>behalf of his constituent about the incident.</p> <p>The complainant was informed of the complaint by her employer some 3 weeks later. The employer determined it was a private matter and took no further action.</p> <p>The Standards Committee concluded that the councillor:</p> <ul style="list-style-type: none"> • gave the impression that he was acting in his capacity as a councillor – para. 2(d) of the Code; • had breached para. 4(c) in that his actions in visiting the complainant’s workplace amounted to bullying and harassing behaviour; • had breached para. 6(1)(a) by giving the impression that he was acting as a councillor and potentially damaging the reputation of the Council; • had breached para. 7(a) in using his position to cause the complainant a disadvantage by pursuing what was a private matter in favour of his constituent with the complainant’s employer and in his apparent capacity as a councillor. 	<p>or repeated behaviour to constitute harassment;</p> <ul style="list-style-type: none"> • the Standards Committee’s conclusion that the councillor undertook a course of conduct which amounted to harassment could be disputed; • as against sanction. <p>The Appeal Tribunal found, unanimously, that the councillor had harassed the complainant by his actions over the period 11th to 21st December and, therefore, breached para. 4(c) of the Code.</p> <p>The decision of the DCC SC was upheld on appeal to APW and the councillor was suspended for 2 months.</p>	<p>and pursued the complaint. The complaint was factually inaccurate (suggesting that he had seen the cctv footage and that it had it had recorded sound – neither of which were correct). This suggested that the councillor had taken sides from the outset.</p> <p>The councillor had acted in an extreme way and continued to do so when he had no right to do so. He pursued the complainant regardless and repeatedly when he ought not to have done so and should have known not to do so, starting with his objectively unreasonable action of attending her workplace.</p> <p>The complainant was entitled to perceive herself as having been harassed even though the councillor did not intend that. His actions amounted to both bullying and harassment. His behaviour was extreme, unjustified and repeated and he ought to have known this and that it would upset or annoy the complainant. A reasonable person in possession of the same information as the councillor would think it amounted to harassment.</p> <p>The SC sanction was upheld. There were breaches of 4(c) (bullying), 6(1)(a) (disrepute) and 7(a) (use of position to cause disadvantage). Whilst culpability was reckless rather than intentional it was quite high. Whilst he did not intend to bully or harass, his actions had caused upset, embarrassment and worry. The councillor ought to have</p>

ENCLOSURE 1

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	<p>The Standards Committee suspended the councillor for 2 months.</p>		<p>known that pursuing the matter in this way was wrong. The harm caused to the complainant in her private and work life and to the Council were significant. These were serious breaches of the Code and censure was not appropriate.</p> <p>Whilst relatively inexperienced as a councillor, he had used his Council portfolio title to emphasise the weight of his authority.</p> <p>Breaches involving bullying and harassment could ordinarily attract a three-month suspension and the SC's sanction of two months was the least sanction appropriate in the circumstance and would not be interfered with.</p> <p><u>Learning Point</u></p> <ul style="list-style-type: none"> • That harassment requires a course of conduct and repeated acts over a period of time; • The annoyance and distress can be caused to the complainant at a later date and after the repeated behaviour. Here the complainant was not aware of the incidents and the councillor's behaviour until she was made aware of the complaint some three weeks after it had been made.