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B

YN Y MATER O ATGYFEIRIAD GAN YR OMBWDSMON GWASANAETHAU  
CYHOEDDUS YNG NGHYMRU I'R PWYLLGOR SAFONAU CYNGOR SIR YNYS MÔN  
YN UNOL AG ADRAN 69 DEDDF LLYWODRAETH LEOL 2000.

CWYNION A WNAED YN ERBYN Y CYNGHORYDD CYMUNED JOHN FOULKES O  
GYNGOR CYMUNED PENMYNYDD A STAR.

### Y BWNDEL DOGFENNAU

7 MAWRTH 2013  
10AM

#### **DOGFENNAU**

1.	Adroddiad yr Ombwdsmon dyddiedig 24 Hydref 2012	1 – 18
2.	Atodiad 1 Copïau o'r cwynion a dderbyniwyd	19 – 28
	Atodiad 2 Copi o Gôd Ymddygiad Cyngor Cymuned Penmynydd a Star	29 – 34
	Atodiad 3 Copi o'r Côd Ymddygiad	35 – 42
	Atodiad 4 Ymrwymiad y Cynghorydd Foulkes i gadw at y Côd Ymddygiad	43 - 44
	Atodiad 5 Llythyr i'r Cynghorydd Foulkes yn dweud wrtho am yr ymchwiliad i'r gwyn.	45 - 48
	Atodiad 6 Datganiad gan y Cynghorydd A. Holmes.	49 – 56
	Atodiad 7 Datganiad gan y Cynghorydd L. Gibson	57 – 62
	Atodiad 8 Datganiad gan y Cynghorydd A Owen	63 – 66
	Atodiad 9 Datganiad gan y Cynghorydd H. Roberts	67 – 70
	Atodiad 10 Datganiad gan y Cynghorydd Eric Jones (cynrychiolydd y Cyngor Sir) (Cymraeg gyda chyfieithiad Saesneg).	71 – 78



Atodiad 11	79 – 82
Cofnodion y cyfarfod o'r Cyngor Cymuned a gynhaliwyd ar 5 Hydref 2011 (gyda'r rhan berthnasol wedi'i chyfieithu i'r Saesneg)	
Atodiad 12	83 – 84
Copi o ddatganiad o ddiddordeb personol gan y Cynghorydd Foulkes ar 5 Hydref 2011.	
Atodiad 13	85 – 88
Cofnodion y cyfarfod o'r Cyngor Cymuned ar 7 Rhagfyr 2011.	
Atodiad 14	89 – 92
Nodiadau'r clerc o gyfarfod 7 Rhagfyr 2011 (Saesneg a Chymraeg)	
Atodiad 15	93 – 108
Datganiad gan y Cynghorydd Foulkes.	
Atodiad 16	109 – 112
Nodyn presenoldeb gan Gyfreithiwr y Cyngor Sir.	
Atodiad 17	113 – 118
Rhannau o restr o benderfyniadau cynllunio wnaed gan Gyngor Sir Ynys Môn yn yr wythnos yn cychwyn 25 Gorffennaf 2011.	
Atodiad 18	119 – 120
Rhannau o restr o geisiadau cynllunio a dderbyniwyd gan Gyngor Sir Ynys Môn yn yr wythnos yn cychwyn 14 Mai 2012.	
Atodiad 19	121 – 124
Nodyn gan Cynghorydd Cynllunio Annibynnol	
Atodiad 20	125 – 132
Rhannau o Gyfarwyddyd yr Ombwdsmon ar y Côt Ymddygiad i Aelodau Awdurdodau Lleol yng Nghymru.	
3.	Holiaduron Cyn-wrandawriad wedi'u cwblhau gan y Cynghorydd Foulkes.
4.	Datganiad Tyst, Rheolwr Datblygu Cynllunio'r Cyngor dyddiedig 4 Chwefror 2013.
Atodiadau 1	152 – 159
Copi o gais cynllunio 41C124 yn Ty Fry	

Atodiadau 2 Copi o gais cynllunio 41C66E yn Marchynys	160 – 167
Atodiadau 3 Copi o gais cynllunio 41C110B yn Tyn Buarth	168 – 176
Atodiadau 4 Cynllun lleoliad graddfa 1:50 000 ar gyfer y tri safle	177
Atodiadau 5 Map OS graddfa 1:25 000 o'r topograffi.	179
5. Gweithdrefn y Cyngor ar gyfer Gwrandawiadau Safonau Lleol	180 – 218
6. Cyfnewid e-byst.	219
E-bost gan yr Ombwdsmon i Glerc Cyngor Cymuned Penmynydd a Star 10 Rhagfyr 2012	221
E-bost gan Glerc Cyngor Cymuned Penmynydd a Star i'r Ombwdsmon dyddiedig 19 Mawrth 2012.	222 – 223
E-bost gan Glerc Cyngor Cymuned Penmynydd a Star i'r Ombwdsmon dyddiedig 3 Ionawr 2013 ynghyd â phapurau:	224
Rheoliadau Sefydlog – Cyngor Cymuned Penmynydd a Star (dyddiedig 04.04.2005)	225 – 240
Datganiad o Dderbyn Swydd dyddiedig 28 Gorffennaf 2004	241
Ymrwymiad y Cynghorydd John Foulkes i gadw at y Côd 7 Mai 2008.	242
Cofnodion Cyngor Cymuned Penmynydd a Star 4 Awst 2010	243 – 246
Datganiad o Ddiddordeb gan y Cynghorydd John Foulkes 5 Hydref 2011.	247
Cofnodion Cyngor Cymuned Penmynydd a Star 5 Hydref 2011.	249 – 252

IN THE MATTER OF A REFERRAL BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES TO THE ISLE OF ANGLESEY COUNTY COUNCIL'S STANDARDS COMMITTEE PURSUANT TO SECTION 69 OF THE LOCAL GOVERNMENT ACT 2000

COMPLAINTS MADE AGAINST COMMUNITY COUNCILLOR JOHN FOULKES OF THE PENMYNYDD AND STAR COMMUNITY COUNCIL

**BUNDLE OF DOCUMENTS**

7 MARCH 2013  
10AM

**DOCUMENTS**

1.	PSOW's Report dated 24 October 2012	1 – 18
2.	Appendix 1 Copies of complaints received	19 – 28
	Appendix 2 Copy of Penmynydd and Star Community Council Code of Conduct	29 – 34
	Appendix 3 Copy of the Model Code of Conduct	35 – 42
	Appendix 4 Councillor Foulkes' undertaking to observe the Code of Conduct	43 – 44
	Appendix 5 Letter to Councillor Foulkes informing him of the complaint investigation	45 – 48
	Appendix 6 Statement from Councillor A Holmes	49 – 56
	Appendix 7 Statement from Councillor L Gibson	57 – 62
	Appendix 8 Statement from Councillor A Owen	63 – 66
	Appendix 9 Statement from Councillor H Roberts	67 – 70
	Appendix 10 Statement from Councillor Eric Jones (County Council representative) (Welsh with an English translation)	71 – 78



Appendix 11	79 – 82
Minutes of Community Council meeting of 5 October 2011 (with relevant extract translated into English)	
Appendix 12	83 – 84
Copy of Councillor Foulkes' declaration of personal interest of 5 October 2011	
Appendix 13	85 – 88
Minutes of Community Council meeting of 7 December 2011	
Appendix 14	89 – 92
Clerks' notes from 7 December 2011 meeting (English and Welsh)	
Appendix 15	93 – 108
Statement from Councillor Foulkes	
Appendix 16	109 – 112
Attendance note from County Council's Solicitor	
Appendix 17	113 – 118
Extracts from list of planning decisions of Isle of Anglesey County Council week beginning 25 July 2011	
Appendix 18	119 – 120
Extract from list of planning applications received by Isle of Anglesey County Council week beginning 14 May 2012	
Appendix 19	121 – 124
Independent Planning Adviser's note	
Appendix 20	125 – 132
Extracts from the Ombudsman's Guidance on the Code of Conduct for members of Local Authorities in Wales	
3. Completed Pre-hearing Questionnaires completed by Councillor Foulkes	133 – 142
4. Witness Statement of the Council's Planning Development Manager dated 4 <sup>th</sup> February 2013	143 – 151
Appendices 1	152 – 159
Copy of planning application 41C124 at Ty Fry	
Appendices 2	160 – 167
Copy of planning application 41C66E at Marchynys	
Appendices 3	168 – 176
Copy of planning application 41C110B at Tyn Buarth	



Appendices 4	177
1:50 000 scale location plan for all 3 sites	
Appendices 5	179
1:25 000 scale OS map of topography	
5. Council's Procedure for Local Standards Hearings	180 – 218
6. Exchange of emails:	219
Email from the PSOW to the Clerk to Penmynydd and Star Community Council 10 December 2012	221
Email from the Clerk to Penmynydd and Star Community Council to the PSOW dated 19 March 2012	222 – 223
Email from the Clerk to Penmynydd and Star Community Council to the PSOW dated 3 January 2013 together with enclosures:	224
Standing Orders – Penmynydd and Star Community Council (dated 04.04.2005)	225 – 240
Declaration of Acceptance of Office dated 28 July 2004	241
Undertaking of Councillor John Foulkes to abide by the Code 7 May 2008	242
Minutes of Penmynydd and Star Community Council 4 August 2010	243 – 246
Councillor John Foulkes' Declaration of Interest 5 October 2011	247
Minutes of Penmynydd and Star Community Council 5 October 2011	249 – 252



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The investigation of a complaint against Councillor John Foulkes of  
Penmynydd and Star Community Council

A report by the Public Services Ombudsman for Wales

Case: 201102860  
201102856  
201102868  
201102913  
201103060  
201103282



## **Contents**

Introduction	1
Summary	2
The complaints	3
Legal background	3
My investigation	3
My guidance on the code of conduct	5
Events leading to the complaint	5
What Councillor Foulkes said	7
Advice from an independent planning adviser	8
Disputed facts	9
Analysis of conflicting evidence	9
Conclusions	12
Finding	14
Appendices:	1 - 20

**Introduction**

Report by the Public Services Ombudsman for Wales on the investigation of a complaint made against Councillor John Foulkes of Penmynydd and Star Community Council, of a breach of the Council's statutory code of conduct for members.

This report is issued under section 69 of the Local Government Act 2000.

## **Summary**

It was alleged that Councillor Foulkes had breached the Code of Conduct ("the Code") in that he failed to declare a personal and prejudicial interest at a meeting of Penmynydd and Star Community Council when the matter of whether to support an application for a wind turbine in the local area was considered. Councillor Foulkes took part in the discussions and voted on the matter, his vote being influential in the Community Council's decision not to object to the application. Councillor Foulkes had previously submitted screening applications for similar wind turbines on his own land in the area and has since submitted a full planning application for a similar turbine.

On the basis of the allegations, the Ombudsman started an investigation to consider whether Councillor Foulkes may have breached the Code by failing to declare a personal and prejudicial interest.

Evidence was obtained from the Community Council, from the County Council's solicitor and from those present at the meeting when the wind turbine application was discussed. Councillor Foulkes also gave his written responses to the allegations.

The Ombudsman concluded that the evidence suggested that Councillor Foulkes had a personal interest by virtue of paragraph 10(1) of the Code and that the failure to declare this may constitute a breach of paragraph 11(1) of the Code. He also concluded that this interest could also be regarded as prejudicial in nature and therefore Councillor Foulkes may also have been in breach of paragraph 14(1)(a) of the Code by voting on the matter.

The Ombudsman decided that the report on this investigation should be referred to the Monitoring Officer of the Isle of Anglesey County Council for consideration by the Council's Standards Committee.



### **The complaint(s)**

1. Between December and January, I received six complaints from members of the public that Councillor John Foulkes had failed to observe the Code of Conduct for members ("the Code") of Penmynydd and Star Community Council. It was alleged that Councillor Foulkes had failed to declare an interest in a matter on which he had voted at a Community Council meeting of 5 December 2011. Copies of the complaints are attached at Appendix 1.

### **Legal background**

2. As required by Part III of the Local Government Act 2000 (the Act), the Penmynydd and Star Community Council has adopted a code of conduct for members which incorporates the provisions of a model code contained in an order made by the Welsh Ministers. A copy of the Community Council's Code of Conduct is at Appendix 2. A copy of the Model Code of Conduct is at Appendix 3. Council members are required to sign an undertaking that, in performing their functions, they will observe the Council's Code of Conduct. Councillor Foulkes gave such an undertaking on 28/07/04. A copy of that declaration is attached at Appendix 4.

3. Section 69 of the Act provides the authority for my investigation and the production of this report.

### **My investigation**

4. Having decided that it was appropriate to investigate whether Councillor Foulkes had failed to comply with the Code of Conduct, I considered the following provisions:

"10. – (1) you must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

(2) You must regard yourself as having a personal interest in any business of your authority if –

(c) a decision upon it might reasonably be regarded as affecting –



(i) your well-being or financial position, or that of a person with whom you live or any person with whom you have a close personal association;

to a greater extent than the majority of ... council tax payers, rate payers or inhabitants of the authority's area."

11. – (1) 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.

12. – (1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

13. – (1) Subject to sub-paragraphs (2), (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 –

(a) withdraw from the room , chamber or place where a meeting considering the business is being held-

i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

...

(c) not seek to influence a decision about that business,

...”

5. Councillor Foulkes was accordingly informed of my intended investigation. A copy of this letter is at Appendix 5.

6. During my investigation I have obtained copies of minutes and other documents from the Community Council. I have also obtained a copy of the note made by the County Council's solicitor of his telephone conversation with Councillor Foulkes before the Community Council meeting of 7 December 2011. Statements were obtained from the other councillors present at the meeting and the County Council's representative at the meeting. Copies of all statements and documents referred to in this report are attached as appendices.

7. I have put the evidence found by my investigation to Councillor Foulkes, enabling him to review that evidence before responding to the questions which I put to him. His responses, which will be summarised later in this report, are set out in full at Appendix 15.

8. I have given Councillor Foulkes the opportunity to comment on a draft of this report which included my provisional views and finding.

### **My guidance on the Code of Conduct**

9. I originally issued guidance for members of local authorities in Wales on the model code of conduct in April 2010 (“my guidance”). I have included at Appendix 20 extracts of the guidance which are relevant to this complaint. (On 17 September 2012, a revised edition of the guidance was put up on the website.)

### **Events leading to the complaint**

10. Councillor Foulkes is an elected member of Penmynydd and Star Community Council. In July 2011, he submitted three applications for a planning screening opinion<sup>1</sup> to site wind turbines on his own land. Two of these applications were for a single turbine on each of two sites in the

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<sup>1</sup> A screening opinion is where, prior to making a formal planning application, planning applicants can apply for an opinion on whether a potential development should be subject to an Environmental Impact Assessment.



local area- Marchynys, Penmynydd and Ty'n Buarth, Penmynydd. A third planning screening application was made for a single wind turbine on another site owned by him at Llangaffo. Since the events in question, Councillor Foulkes has submitted a full planning application to erect a wind turbine on the Marchynys site. The list of these applications is set out at Appendices 17 and 18.

11. At a meeting of Penmynydd and Star Community Council on 5 October, item 3 on the agenda related to wind turbines. It was noted in the minutes that Councillor Foulkes had declared a personal interest in relation to the item about wind turbines. On the form [see Appendix 12], he stated that "I have made applications for wind turbines" and "I have applications pending and intend leaving the room if they are discussed". However, no specific discussion on wind turbines took place as no full wind turbine planning applications had yet been received by the Council. The minutes noted that once an application had been received, a public meeting would be held [Appendix 11].

12. The next meeting of the Community Council took place on 7 December 2011. It was preceded by a public meeting to discuss a wind turbine application which had been received for a site at Ty Fry. A large number of members of the public turned up to this meeting. At the Community Council meeting which followed the public meeting, the wind turbine application at Ty Fry was discussed and a vote was taken as to whether the Community Council should object to the application. The minutes note that there were no declarations of interest and the Community Council Chairman stated that he specifically asked Councillor Foulkes whether he wished to declare an interest. No declaration of interest was made. There were five community councillors present and a representative from the County Council. Councillor Foulkes, along with the other four community councillors discussed whether the Community Council should object to the wind turbine application and voted on it. Councillor Foulkes proposed the vote not to object to the wind turbine application and it was determined that no objection should be made by three votes to two [Appendices 13 and 14].



13. The previous afternoon (6 December 2011) Councillor Foulkes had telephoned the Council's solicitor to request advice as to whether it was in order for him to participate in the Community Council's discussion and vote about the wind turbine application at Ty Fry, given his own wind turbine application. The Council's solicitor stated that he discussed the matter with Councillor Foulkes. He referred him to the Code of Conduct and in particular to paragraphs 10(2)(a) and 10(2)(c). He also drew Councillor Foulkes's attention to paragraph 12 of the Code. The Council's solicitor suggested that if the Ty Fry application were approved then it would be more likely that Councillor Foulkes's application would be approved. However, he stated that it was a matter for Councillor Foulkes to decide as to whether he had an interest and should take part in the discussion and vote or not. The solicitor's note is in full at Appendix 16.

#### **What Councillor Foulkes said**

14. Councillor Foulkes stated that he had declared an interest (that he had made a screening application for a wind turbine) at the Community Council meeting of 5 October because there was going to be a general discussion on wind turbines at that meeting.

15. He confirmed that, at the following Community Council meeting of 7 December 2011, he attended and voted on the Ty Fry wind turbine application. He explained that, in this instance, he did not consider that he had a personal interest in discussing and voting on the Ty Fry application as it was out of sight of his application site and it was not related to his own application.

16. Councillor Foulkes confirmed that he recalled the discussion with the Council's solicitor the evening before the Community Council meeting. He said that he had discussed two occasions when he had taken part in Community Council discussions about a house renovation and a planning application when he himself had a similar application pending for property renovation or development. In Councillor Foulkes's recollection of the conversation, the solicitor's view was that the wind turbine applications were 'more unique', but that it was Councillor Foulkes's decision as to whether he had an interest to declare.



17. Councillor Foulkes stated that he proposed the vote not to object to the wind farm application because he knew the exact location of the proposed site and in his view it would have a minimal effect on the surrounding properties and area. In considering the application, he said that he also took into account that Anglesey Council has declared itself an energy island, generally in favour of renewable electricity production. He also cited planning policy giving a presumption in favour of renewable energy. Councillor Foulkes stated that he did not accept that if planning permission were granted for the Ty Fry site, it would enhance his chances of having a wind turbine application approved. His view was that he had not breached paragraph 11 of the code. He did not consider that the issue of prejudicial interest was relevant as a member of the public who knew the sites would know that they were definitely not neighbouring and therefore would not conclude that he had a prejudicial interest.

#### **Advice from an independent planning adviser**

18. I have taken advice from an independent planning adviser, who is an experienced former planning inspector. I asked him to consider whether the success of a planning application for a wind turbine in the locality could be regarded as setting a precedent for, and thereby potentially influencing, future turbine applications in the area. He set out the Court's approach<sup>2</sup> on precedent in planning cases. Specifically, the Court ruled that it was important when considering a single planning application to ask what the consequences in the locality would be and what side effects would flow if permission were granted. To consider whether a precedent would be established in planning terms, there must be evidence (rather than mere assertion) to indicate that, if planning permission were granted, it would make it more difficult to refuse other applications for similar development which may have damaging effects.

19. In a second case<sup>3</sup>, the judge stated that there must be evidence of the likelihood of a precedent effect. A clear example that was given was "sporadic development in the countryside". The adviser stated that setting a precedent is therefore a material consideration in determining planning applications. However, there would have to be evidence in

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<sup>2</sup> Collis Radio Ltd v SSE [1975] JPL 221

<sup>3</sup> Poundstretcher v SSE [1988] 3 PLR 69



each case that there could be a proliferation of similar applications that would be difficult to refuse if the application in question was allowed.

20. In the specific circumstances of this case, the planning adviser noted that the proposed sites at Ty Fry and Marchynys are both in rural locations with a scatter of dwellings near to the application site. The turbines are of similar size. The applications share similar features from a planning point of view. The effect of the wind turbine on the appearance of the countryside and the proximity of dwellings to the turbine are likely to be material considerations in assessing the merits of the applications. The Community Council's support or opposition to the wind turbine application at Ty Fry would be incorporated in the local planning authority's assessment of the development. The effect of a precedent is always tempered by other planning factors that are particular to each site, but precedent would be a consideration that weighed in favour of, or towards refusal of, any wind turbine application. The adviser noted the strong similarity between the two sites and, in his view, the Community Council's support for one would have some bearing on the prospects for the other. The adviser's note is set out in full at Appendix 19.

### **Disputed facts**

- a) Did Councillor Foulkes have a personal interest in agenda item 5 (wind turbine application at Ty Fry) at the 7 December 2011 meeting?
- b) If so, should Councillor Foulkes have been aware of that interest and declared it during the meeting?
- c) Did Councillor Foulkes have a prejudicial interest in agenda item 5 (wind turbine application at Ty Fry) at the 7 December 2011 meeting?
- d) If so, should Councillor Foulkes have remained in the meeting and participated in the vote on this item?

### **Analysis of evidence**

21. Did Councillor Foulkes have a personal interest in agenda item 5 (the Ty Fry application)?



Councillor Foulkes had submitted three screening applications for wind turbines on his land. Two of these were in the vicinity of the proposed site which was being discussed. Councillor Foulkes disputes that he had a personal interest in the wind turbine application under discussion because it was not related to his application, it was not visible from the site of his application and it did not involve the same energy company. Councillor Foulkes stated that, whilst he has an interest in wind energy in relation to his own applications, he had no personal interest in the Ty Fry application.

I am mindful of the content of the Council's solicitor's note of his conversation with Councillor Foulkes. I note that the issue of precedent was suggested by the Council's solicitor in that "if this application was approved then it was more likely that his application would be approved and therefore it was a matter for him to decide to consider whether he in fact should take part in the matter or not. I used the analogy of two applications for a new bungalow in a green field. If one was approved then the second was more likely to be approved."

I have also considered the advice given by the independent planning adviser. He has cited case law showing that precedent development is a material planning consideration and has particular relevance in respect of sporadic developments in the countryside. Single wind turbine applications in rural locations would fall into this category of applications. The actual distance or visibility from the application site are not the most important factors, rather the similarity of the nature of the proposed development and the application sites in question.

I am satisfied in this case that the similarity in the size of the proposed wind turbines and the application sites is sufficient to point to the possibility of the Ty Fry application creating a precedent, which would advantage any future similar applications for wind turbines in the area. The wording of the Code is that a councillor should regard himself as having a personal interest in any business if a decision upon it might reasonably be regarded as affecting his wellbeing or financial position, to a greater extent than the majority of other inhabitants of the Community Council's area. I am satisfied that a decision on the Ty Fry application



could be regarded as such, and therefore that Councillor Foulkes did have a personal interest in the decision on this matter.

22. Should Councillor Foulkes have been aware of the interest and declared it during the meeting?

I have taken account of the fact that Councillor Foulkes contacted the Council's solicitor for advice on this issue. It is clear that Councillor Foulkes was sufficiently concerned that he might have a personal interest that he sought further advice. Whilst it is always the responsibility of each individual councillor to consider whether he/she may have a personal and prejudicial interest, the advice given by the solicitor to Councillor Foulkes did indicate the potential advantage to subsequent similar applications, if the Ty Fry one were approved. I also note that the Council's solicitor specifically drew paragraphs 10, 11 and 12 of the Model Code to Councillor Foulkes's attention during the conversation. I am satisfied that Councillor Foulkes had sufficient information available to him, following this conversation, to enable him to conclude he had a personal interest in this matter. I am also satisfied that he had sufficient opportunity during the meeting to declare his interest.

23. Did Councillor Foulkes have a prejudicial interest in agenda item 5 (the Ty Fry application)?

A personal interest will also be prejudicial where the matter does not fall within one of the exempt categories of business and where an informed independent observer would conclude that the interest would influence a member's vote or decision.

When considering allegations of this nature I have to consider whether a reasonable member of the public with knowledge of all the relevant facts would think that a member's judgment of the public interest might be prejudiced. The public perception of the decision is the key element here; it does not matter whether the member's decision was actually swayed in any way.

The Ty Fry application under discussion does not fall within one of the exempt categories of business set out in the Code. In view of Councillor Foulkes's own submission of three screening applications for wind turbines on his own land, I am satisfied that an independent member of the public would perceive a conflict of interest between Councillor Foulkes's own planning applications for wind turbines and his ability to objectively judge the public interest on a similar application in the local area. I take the view therefore that Councillor Foulkes's interest in this matter is also a prejudicial one.

24. Should Councillor Foulkes have remained at the meeting?

Where a councillor has a prejudicial interest, the Code requires him to withdraw from the meeting room and not seek to make any oral representations or influence a decision about that business. Councillor Foulkes remained at the meeting, made a significant contribution to the discussion and proposed the vote against making an objection to the Ty Fry application. Given that the vote not to object was passed by three to two, Councillor Foulkes's participation and vote had a considerable influence on the outcome. Given that Councillor Foulkes's interest in this matter could be deemed to be prejudicial, I believe that he should have withdrawn from the meeting and should not have participated in the vote.

### **Conclusions**

25. The evidence from my investigation is that Councillor Foulkes took an active role in the Community Council meeting of 7 December 2011. The Community Council's decision not to object to the Ty Fry wind turbine application was directly attributable to his involvement.

26. The elements of the Code covering personal and prejudicial interests are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests and not in the interests of members of authorities or their close personal associates.

27. The Code requires members to consider in all matters whether they have a personal interest and if so whether it should be declared. It



is clear that in contacting the Council's solicitor Councillor Foulkes considered that he might be regarded as having an interest in relation to the Ty Fry application. From the evidence I have seen, I am satisfied that Councillor Foulkes was made sufficiently aware of circumstances when planning precedent may convey an advantage. I accept that he would not have been aware of the specific legal points about precedent as outlined above by the planning adviser, but the evidence indicates that he was made aware of the content of the relevant parts of the Code and the potential advantage of precedent to his own application. I am satisfied that the information given to Councillor Foulkes by the Council's solicitor was sufficient to have led Councillor Foulkes to the conclusion that, by virtue of his own wind turbine application, a decision on the Ty Fry wind turbine application might reasonably be regarded as affecting his own well-being or financial position more than that of others in the area, giving rise to a personal interest under paragraph 10(2)(c)(i). It therefore follows that Councillor Foulkes's failure to orally disclose that interest at the meeting may have amounted to a breach of paragraph 11(1) of the Code.

28. The test relating to prejudicial interests is not whether Councillor Foulkes thought that he would take the decision impartially; from the evidence that he has given I have no doubt that he considered that he was taking a reasoned view. However, the test is much wider than that and relates to public confidence in decisions that are taken on its behalf. The wording of the Code reflects this. It is extremely important that the public has confidence in the decisions taken by its elected members. This is all the more so where there are strongly held views (either for or against) on the issues in question.

29. I am satisfied that Councillor Foulkes's personal interest in a wind turbine application could be perceived by an independent member of the public as so significant as to influence his judgment of the public interest on this matter. I therefore consider this personal interest to also be of a prejudicial nature under paragraph 12(1) of the Code. Councillor Foulkes remained at the meeting and played an influential part in the discussion and voting. It follows that I consider that Councillor Foulkes may also have been in breach of paragraph 14(1)(a) of the Code.



30. In considering this complaint, I have taken into account that Councillor Foulkes is a Community Councillor, rather than a County Councillor. He was therefore acting as a consultee rather than the primary decision maker on the Ty Fry application. Nevertheless, the Community Council's decision to support the Ty Fry application still had a bearing on the prospects for Councillor Foulkes's own application given their similarity. In addition, I note that Councillor Foulkes has stated that he has not had any training on the Code and perhaps it may be of benefit for Councillor Foulkes to be offered such training.

### **Finding**

31. My finding under section 69 of the Local Government Act 2000 is that my report on this investigation should be referred to the Monitoring Officer of Isle of Anglesey County Council, for consideration by the Council's Standards Committee.

Peter Tyndall  
Ombudsman

24 October 2012

DOGFEN / DOCUMENT  
2

000019





# Appendix

# 1

**A complaint form has been submitted on the Ombudsman website. The following information was submitted:**

**Your details**

Your Name in Full Mr Nicholas Moore

Full Address Ty Coch Talwrn Anglesey  
LL75 7DR

Email nicmoore8@googlemail.com

Telephone 01248722883

**Name of the public body you are complaining about**

Penmynydd and Star Community Council

**Name of the member(s) you consider to have broken the code of conduct**

**Explain how the individual(s) have broken the code of conduct**

In relation to the Community Council meeting on the 7 December 2011 at Penmynydd community Hall. Public meeting to discuss a proposed wind turbine at Ty Fry Rhoscefnhir. Chaired by Mr Leon Gibson followed by a vote by the community council. Mr John Foulkes voted in favor of the wind turbine yet did not declare an interest in this application, Mr Foulkes has submitted 3 screening applications for wind turbines himself. Mr Foulkes was rude to the public and said that there were only 4 people in the hall from the community and that the rest were outsiders. On a hand vote there were over 100 people from the immediate community. Mr Huw Roberts and Mr Alun Owen voted only after being asked to by Mr Foulkes, They briefly discussed why they should vote in favor of the turbine and agreed to do so as the applicant muck spreads their fields. There were over 200 people at the meeting and 95% were against the turbine and expressed their views clearly. The 3 who voted for the turbine did so for personal gain and not the wishes of their community.

**Do you have any documents to support your complaint?**

**Please tick appropriate box below:**

☒ No

**I understand and accept that my identity and the details of my complaint will be passed on to the member who I am making a complaint against and that they may become public knowledge. I confirm that I am prepared to give spoken evidence in public in support of my complaint to the authority's Standards Committee, or any case tribunal which may be appointed to consider any report which the Ombudsman may issue if he decides to investigate my complaint.**

30 Dec 2011 09:20:59

000022

**A complaint form has been submitted on the Ombudsman website. The following information was submitted:**

**Your details**

Your Name in Full      Mrs Nikki Gillard  
Full Address      Pant Mawr Penmynydd LLANFAIRPWLLGWYNGYLL  
                         LL61 6PG  
Email                nikkigillard@googlemail.com  
Telephone

**Name of the public body you are complaining about**

Penmynydd and Star Community Council

**Name of the member(s) you consider to have broken the code of conduct**

John Foulkes

**Explain how the individual(s) have broken the code of conduct**

I attended the public meeting held prior to Penmynydd Community Council Meeting on 7/12/11 at which planning application 41C124-industrial sized wind turbine at Ty Fry, Rhoscefnhir was considered. I am appalled that Mr John Foulkes remained in the room and then voted in a matter in which he has a prejudicial interest. In a previous Community Council meeting he, himself had declared his own personal interest and refrained from participating in a discussion on wind turbines. Yet on Wednesday, when the Community Council were deciding on their recommendations to the County Council, he had no such qualms and his voting reflected his own personal interest rather than that of the community. I believe strongly that Mr Foulkes' actions were in breach of Constitution 5.1 Moral code of conduct. He has a personal interest in the approval of planning applications for wind turbines in the local area since he also has submitted applications for such developments on his own land. He did not (that I am aware) disclose his interest. He did not withdraw from the room. He actively participated in the discussion and encouraged Community Council members to vote on the matter rather than abstain.

**Do you have any documents to support your complaint?**  
**Please tick appropriate box below:**

Yes

**I understand and accept that my identity and the details of my complaint will be passed on to the member who I am making a complaint against and that they may become public knowledge. I confirm that I am prepared to give spoken evidence in public in support of my complaint to the authority's Standards Committee, or any case tribunal which may be appointed to consider any report which the Ombudsman may issue if he decides to investigate my complaint.**



**A complaint form has been submitted on the Ombudsman website. The following information was submitted:**

**Your details**

Your Name in Full Mr Mark Gillard

Full Address Pant Mawr Penmynydd LLANFAIRPWLLGWYNGYLL  
LL61 6PG

Email markgillard@talktalk.net

Telephone

**Name of the public body you are complaining about**

Penmynydd and Star Community Council

**Name of the member(s) you consider to have broken the code of conduct**

**Explain how the individual(s) have broken the code of conduct**

In the Community Council meeting for the village of Penmynydd (Anglesey) on 7th December 2011, Community Councillor Mr. John Foukes joined in the discussion relating to the Planning Application for a 71m high wind turbine at Ty Fry, Rhoscefnhir; he also voted on the decision whether or not to recommend it, in which he supported the application. He has a vested interest in the outcome of this planning application (and others like it) since he himself has applications in the pipeline for similar installations locally. He should not have voted; he should not even have joined in the debate. The vote was 3 in favour, 2 against - if he had not voted, I understand that Penmynydd Community Council's response to the County Council on the Ty Fry turbine application would have been against it (since the Chairman voted against and his casting vote would have swayed the decision in-line with the majority, local, public opinion). Such large-scale wind turbines are inappropriate for the this rural community and I believe Mr Foulkes was acting in his own (financial) interests. I was present at both the Public and Community Council meetings that evening, and am a resident of Penmynydd village.

**Do you have any documents to support your complaint? Please tick appropriate box below:**

No

**I understand and accept that my identity and the details of my complaint will be passed on to the member who I am making a complaint against and that they may become public knowledge. I confirm that I am prepared to give spoken evidence in public in support of my complaint to the authority's Standards Committee, or any case tribunal which may be appointed to consider any report which the Ombudsman may issue if he decides to investigate my complaint.**

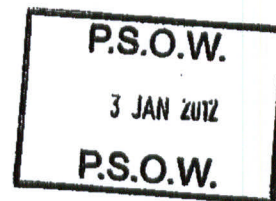
29 Dec 2011 15:07:11

000024

**A complaint form has been submitted on the Ombudsman website. The following information was submitted:**

**Your details**

Your Name in Full Dr. Alex Gordon-Clark  
Full Address Minffordd Penmynydd LLANFAIRPWLLGWYNGYLL  
LL61 6PG  
Email alexgc@doctors.org.uk  
Telephone



**Name of the public body you are complaining about**

Penmynydd and Star Community Council

**Name of the member(s) you consider to have broken the code of conduct**

**Explain how the individual(s) have broken the code of conduct**

This complaint relates to the failure of the applicant to declare a conflict of interest when considering a wind turbine planning application, and to influence the council to make a decision in his favour. Mr Foulkes also has an application pending and the passing of the one under consideration would establish a precedent which would favour his own application since there are no industrial-sized turbines in the area at present. During the meeting Mr Foulkes remained quiet as there was a considerable public presence, but when it seemed the Council would vote against the application, he intervened, at which point the two members who had initially abstained changed their minds and voted with him in favour of the applications. The vote was passed 3 to 2 in favour. This was following a Public Meeting where the overwhelming majority of local residents voiced their objection to the application. Mr Foulkes is in breach of Paragraph 90 of the Council's Standing Orders. His actions during the meeting, constituted an abuse of his position, and contributed to a failure of the Council to represent the Community's views.

**Do you have any documents to support your complaint? Please tick appropriate box below:**

No

**I understand and accept that my identity and the details of my complaint will be passed on to the member who I am making a complaint against and that they may become public knowledge. I confirm that I am prepared to give spoken evidence in public in support of my complaint to the authority's Standards Committee, or any case tribunal which may be appointed to consider any report which the Ombudsman may issue if he decides to investigate my complaint.**

4 Jan 2012 12:29:42

000025



12 JAN 2012

## Code of conduct complaint form

Please use black ink if possible and fill in your name in BLOCK CAPITALS.

### A Your details

Your name in full OWAIN D. EVANS OMBUDSMAN OF ANGLESEY AGAINST WIND TURBINES

Address and postcode TY GWYN, PENMYNYDD, LLANDAIR FGS.  
LL61 5BX.

E-mail oawt@hotmail.co.uk

Daytime contact number 01848 722 333

Mobile number

### B Who are you complaining about?

Name of the member (or members) you consider has (have) broken the code of conduct

COUNCILLOR JENN FOLKES.

Name of their authority

PENMYNYDD COMMUNITY COUNCIL - ANGLESEY

### C How do you think they have broken the code of conduct?

Please tell us what evidence you have for claiming that the member has broken the code of conduct (you can get copies of the code from the authority). Give as much detail as possible and continue on a separate sheet if you need to. Please attach copies of any relevant correspondence, documents and so on.

SEE ATTACHED DOCUMENTATION.

COMMUNITY COUNCIL MINUTES. 7<sup>th</sup> DECEMBER 2011  
COMMUNITY COUNCIL MINUTES. 5<sup>th</sup> OCTOBER 2011  
NOTES PREPARED BY ANGLESEY AGAINST WIND TURBINES.

Continue over the page

000026



30 JAN 2012

PSOW

## Code of conduct complaint form

Please use black ink if possible and fill in your name in BLOCK CAPITALS.

### A Your details

Your name in full **PAUL ANTHONY CORNEILL** **HELEN MARGARET TAYLOR**

Address and postcode **LLECHWEDD FARM RHOSCEFNHIR**

**PENTRAETH** **ANGLESEY**

**LL75 8YR**

E-mail **pcorneill@btinternet.com**

Daytime contact number **01248 450930** Mobile number

### Who are you complaining about?

Name of the member (or members) you consider has (have) broken the code of conduct

**JOHN FOULKES**

Name of their authority

**YNYS MÔN COUNTY COUNCIL**

### C How do you think they have broken the code of conduct?

Please tell us what evidence you have for claiming that the member has broken the code of conduct (you can get copies of the code from the authority). Give as much detail as possible and continue on a separate sheet if you need to. Please attach copies of any relevant correspondence, documents and so on.

**Public Meeting, Hen Ysgol Penrhynydd 07.12.11**  
**Voting procedure at Community Council meeting following**  
**the above meeting to consider planning application**  
**No. 41C124**

**An unprecedented number of people attended the public meeting**  
**(over 300) all of whom were against the application ~~of~~**  
**with the exception of about 3 including the applicant and**  
**his son.**

**Following the Community Council's debate at their**  
**meeting which followed the decision of the Committee**  
**was to approve the application.**

**A member of the Committee, John Foulkes of Harchynys**  
**Penrhynydd, has made an application 41C66C/SCR re. siting**  
**of a wind turbine (see attached letter from Meirion Jones)**  
**John Foulkes did not declare an interest and did vote**  
**for the application.**

Continue over the page

000027



# Appendix

## 2



# **STANDING ORDERS - PENMYNYDD AND STAR COMMUNITY COUNCIL**

## **MEMBERS' AND OFFICERS' CODES OF CONDUCT**

73. Councillors shall conduct themselves in accordance with the prescribed principles governing their conduct, as referred to in Section 49(2) of the Local Government Act 2000 and the Conduct of Members (Principles)(Wales) Order 2001, namely, selflessness, honesty, integrity and propriety, duty to uphold the law, stewardship, objectivity in decision-making, equality and respect, openness, accountability and leadership.
74. Councillors shall, in conducting the business of the Council, undertaking the role of member thereof to which they were elected or appointed, and acting as a representative of the Council, observe and adhere to its Code of Conduct adopted in accordance with the requirements of Section 51 of the 2000 Act, incorporating any model Code issued by the National Assembly for Wales under Section 50(2) thereof.
75. Where a Councillor acts as a representative of the Council on another body, that member shall, when acting in that capacity, comply with the Code unless it conflicts with any legal obligations arising as a consequence of service on that body.
76. Councillors shall carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others. They must not do anything which compromises, or which is likely to compromise, the impartiality of the authority's employees.
77. Councillors shall not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so, and shall not prevent any person from gaining access to information to which that person is entitled by law.
78. Councillors shall not in their official capacity, or otherwise, commit a criminal offence or cause one to be committed or behave in a manner which could be reasonably regarded as bringing the office of Councillor or the Council into disrepute and shall report to the Local Commissioner for Local Administration in Wales and to the appropriate Monitoring Officer (viz. the officer appointed as such by the County within whose area the Council is situated) any conduct by another member of the Council which they believe involves, or is likely to involve, a failure to comply with the Code but, in relation to this requirement, must not make vexatious or malicious complaints against other persons. They shall also report any conduct by another person which they believe involves, or is likely to involve, criminal behaviour.
79. A Councillor (other than a member who is the subject of an investigation by the Monitoring Officer) shall comply with any requirement made by the Monitoring Officer in connection with an investigation.
80. Councillors shall not, in their official capacity, or otherwise, use their position improperly to confer on or secure for any person, and in particular their family, friends or those with whom they have a close personal association, an advantage or disadvantage or to secure an advantage for themselves. They shall, when (corporately) using or authorising the use by another Councillor of the resources of the Council, do so prudently and in accordance with the law and the Council's requirements and they shall ensure that the resources of the Council are not used improperly for their own private purposes, their family, friends and persons with whom they have a close personal association.
81. Councillors, when reaching decisions, shall do so on the basis of the merits of the circumstances involved and in the public interest, having regard to any relevant advice



## **STANDING ORDERS - PENMYNYDD AND STAR COMMUNITY COUNCIL**

provided by the Council's officers, in particular its Responsible Financial Officer, the Monitoring Officer and its legal officer who should be consulted when there is any doubt as to the Council's power to act, or as to whether the action proposed lies within the policy framework agreed by the Council where the legal consequences of action or failure to act by the Council might have important repercussions; and shall give reasons for decisions in accordance with the Council's requirements.

82. Councillors shall observe the law and the Council's rules governing the claiming of expenses and allowances in connection with their duties as Councillors and shall avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by the Council), material benefits or services for themselves or any person with whom the Councillor is living that would, or might reasonably appear to, place him/her under an improper obligation.
83. Councillors shall, in all matters, consider whether they have a personal interest, and whether the Code requires them to disclose that interest.
84. A Councillor has a personal interest in a matter if he/she anticipates that a decision upon it might reasonably be regarded as likely to benefit or disadvantage: -
- (a) the Councillor, one of his/her family or a friend, or any person with whom he/she has a close personal association, or
  - (b) a body which employs those persons, or for which those persons have any degree of ownership, control or management to a greater extent than other council tax payers, ratepayers or inhabitants of the Council's area.
85. Councillors shall regard themselves as having a personal interest in a matter to the extent that it relates to: -
- (a) another relevant authority of which they are a member;
  - (b) a body in which they hold a position of general control or management; or
  - (c) a body to which they have been appointed or nominated by the Council as a representative.
86. Councillors shall also regard themselves as having a personal interest in a matter to the extent that it relates to: -
- (a) any full-time, part-time or intermittent employment, office, trade or profession carried on by them for profit or gain;
  - (b) any person who employs or has appointed them, any firm in which they are a partner, or any company of which they are a remunerated director;
  - (c) any person, other than a relevant authority (i.e. a County Council, County Borough Council, Fire Authority or a National Park Authority), who has made a payment to them in respect of their election or any expenses incurred in carrying out their duties;
  - (d) any corporate body which has a place of business or land in the Council's area, where the Councillor has a beneficial interest in a class of securities of that body which exceeds £25,000 in value (based upon original cost) or one hundredth of the total issued share capital of that body (whichever is the lower);
  - (e) any contract for goods, services or works made between the Council and the Councillor, a firm in which the Councillor is a partner, a company of which the Councillor is a director, or a body falling within those referred to in (d) above;
  - (f) any land in which the Councillor or a member of the Councillor's family has a beneficial interest and which is in the area of the Council;
  - (g) any land of which the landlord is the Council and the tenant is a firm in which the Councillor is a partner, a company of which the Councillor is a director, or a body falling within (d) above;



## **STANDING ORDERS - PENMYNYDD AND STAR COMMUNITY COUNCIL**

- (h) any land in the Council's area in which the Councillor has a licence (alone or jointly with others) to occupy for a month or longer; and
  - (i) any visit outside the United Kingdom for which the Council has paid or will pay.
87. Councillors shall additionally regard themselves as having a personal interest in a matter to the extent that it relates to any membership, or position of general control or management which they have in any organisation. Such organisations include any: -
- (a) private club or society, such as the Freemasons, a recreational club, working men's club, or private investment club;
  - (b) organisation whose principal purpose includes influencing public opinion or policy such as a lobby group;
  - (c) trade union(s) or professional association;
  - (d) company, industrial and provident society or other organisation which has charitable objects.
- Councillors may, however, regard themselves as not having a personal interest in a matter to the extent that it relates to the functions of the Council in respect of an allowance or payment made under Sections 173 to 176 of the Local Government Act 1972 (Attendance, financial loss, travelling and subsistence allowances and allowances for attending conferences and meetings).
88. A Councillor who has a personal interest in a matter specified in Standing Order 85 above and who attends a meeting of the Council, or a Committee or Sub-Committee thereof, at which the matter is discussed, shall disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. In such a case that Councillor may speak but shall not vote on the matter unless granted a dispensation by the relevant Standards Committee (of the County Council within whose area the Community is situated).
89. A Councillor who has a personal interest in a matter specified in Standing Orders 86 and 87 above and who attends a meeting of the Council, or a Committee or Sub-Committee thereof, at which the matter is discussed, shall disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. In such a case, that Councillor shall withdraw from consideration of the matter unless granted a dispensation by the relevant Standards Committee (of the County Council within whose area the Community) is situated which shall not consider granting a dispensation unless the Councillor has previously notified the Monitoring Officer of that interest, in accordance with the terms of Standing Order 91 below, together with relevant details.
90. A Councillor who has a personal interest in a matter which is not specified in Standing Orders 85, 86, or 87 above (but including those referred to in Standing Order 84 above) and who attends a meeting of the Council, or a Committee or Sub-Committee thereof, at which the matter is discussed, shall disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the Councillor's ability to act purely on the merits of the case and in the public interest if that Councillor were to take part in the discussion of that matter, the Councillor shall also withdraw from consideration of the matter at that meeting unless granted a dispensation by the relevant Standards Committee (of the County Council within whose area the Community is situated) which shall not consider granting a dispensation unless the Councillor has previously notified the Monitoring Officer of that interest, in accordance with the terms of Standing Order 91 below, together with relevant details.



## **STANDING ORDERS - PENMYNYDD AND STAR COMMUNITY COUNCIL**

91. **Councillors shall register any disclosed interests in the Register of Interests established and maintained by the appropriate Monitoring Officer. They shall exercise personal responsibility in deciding whether they have a personal interest such that they should disclose it, seeking advice thereon from the Monitoring Officer and having regard to any advice from the Standards Committee. Councillors shall notify the Monitoring Officer of any change to the interests registered within one month of their occurrence.**
92. **Other than any gift accepted by a Councillor on behalf of the Council, a Councillor shall notify the Monitoring Officer of the existence and nature of any gifts, hospitality, material benefits or advantage received by the Councillor, or to the Councillor's knowledge any person with whom the Councillor is living, from any company, organisation or person and relating to or arising out of their position as a Councillor, where the value of the item or benefit exceeds the amount of £5.00.**
93. **Employees of the Council are expected to observe the terms of the relevant Code of Conduct issued by the National Assembly for Wales under Section 82(2) of the Local Government Act 2000 and the Code of Conduct (Qualifying Local Government Employees)(Wales) Order 2001. This includes that the public is entitled to expect the highest standards of conduct from the Council's employees, their role being to serve the Council in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they shall act with integrity, honesty, impartiality and objectivity.**
94. **Such employees serve the whole of the Council and are accountable to, and owe a duty to the Council. They shall act in accordance with the principles set out in the Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.**
95. **The Council's employees shall follow every lawfully expressed policy of the Council and shall not allow their own personal or political opinions to interfere with their work.**
96. **Mutual respect between employees and Councillors is essential to good local government, and working relationships should be kept on a professional basis. Employees should deal with the public, Councillors and any other employees sympathetically, efficiently, and without bias.**
97. **Employees shall comply with policies relating to equality issues, as agreed by the Council, in addition to the requirements of the law.**
98. **Employees shall ensure that they use public funds entrusted to them in a responsible and lawful manner, and shall not utilise property, vehicles or other facilities of the Council for personal use unless authorised to do so.**
99. **Whilst employees' private lives are their own concern, they shall not allow their private interests to conflict with their public duty. They shall not misuse their official position or information acquired in the course of their employment to further their private interests, or the interests of others. In particular, they shall comply with: -**
  - (a) **any rules of the Council on the registration and declaration by employees of financial and non-financial interests,**
  - (b) **any rules of the Council on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from relationship with the Council. Employees shall not accept benefits from a third party unless authorised to do so by the Council.**



## **STANDING ORDERS - PENMYNYDD AND STAR COMMUNITY COUNCIL**

100. In the event that an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the employees' Code, the employee should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with any confidential reporting procedure of the Council, or any other procedure designed for this purpose.
101. Openness in the dissemination of information and decision-making should be the norm in relevant authorities. However, certain information may be confidential or sensitive and, therefore, not appropriate for a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a Community Councillor, employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in the Code shall be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.
102. Employees involved in the recruitment and appointment of staff shall ensure that appointments are made on the basis of merit. In order to avoid any possible accusation of bias, employees shall not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related, or with whom they have a close personal relationship outside work.
103. Where a Monitoring Officer is undertaking an investigation in accordance with Regulations made under Section 73(1) of the Local Government Act 2000, an employee shall comply with any requirement made by the Monitoring Officer in connection with such an investigation.

### **WELSH LANGUAGE SCHEMES AND USE OF WELSH LANGUAGE**

104. Councillors, Officers and any other employees, shall adhere to the requirements of any Welsh Language Scheme or revised Scheme made by the Council under the Welsh Language Act 1993 and approved by the Welsh Language Board.
105. The Council shall conduct the business at its meetings in the Welsh language.

### **HUMAN RIGHTS**

106. So far as it is possible, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the rights and fundamental freedoms referred to in the European Convention on Human Rights set out in the Human Rights Act 1998 and it is, therefore, generally unlawful for a public authority to act in a way which is incompatible with a Convention right. This Council shall, therefore, have regard to human rights principles when making decisions affecting people's rights.

### **VARIATION, REVOCATION AND SUSPENSION OF STANDING ORDERS**

107. Subject to statutory requirements, any one or more of these Standing Orders, excepting those printed in **bold** typeface, may be suspended by resolution of the Council, in relation to any specific item of business, subject to the vote thereon being carried by at least two-thirds of the members present and voting on the motion. A Committee or Sub-Committee thereof may similarly by resolution suspend any one or more of these Standing Orders in relation to any specific item of business in respect of which it exercises properly delegated functional powers, subject as aforesaid. Suspension shall only be for the duration of the meeting at which the resolution is passed.

# Appendix

## 3



## SCHEDULE

### THE MODEL CODE OF CONDUCT

#### PART 1 INTERPRETATION

1.—(1) In this code —

“co-opted member” (“*aelod cyfetholedig*”), in relation to a relevant authority, means a person who is not a member of the authority but who —

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee;

“meeting” (“*cyfarfod*”) means any meeting —

- (a) of the relevant authority,
- (b) of any executive or board of the relevant authority,
- (c) of any committee, sub-committee, joint committee or joint sub-committee of the relevant authority or of any such committee, sub-committee, joint committee or joint sub-committee of any executive or board of the authority, or
- (d) where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990(1),

and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

“member” (“*aelod*”) includes, unless the context requires otherwise, a co-opted member;

“relevant authority” (“*awdurdod perthnasol*”) means—

- (a) a county council,
- (b) a county borough council,
- (c) a community council,
- (d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(2) or a scheme to which section 4 of that Act applies,
- (e) a National Park authority established under section 63 of the Environment Act 1995(3);

“you” (“*chi*”) means you as a member or co-opted member of a relevant authority; and

“your authority” (“*eich awdurdod*”) means the relevant authority of which you are a member or co-opted member.

(2) In relation to a community council, references to an authority’s monitoring officer and an authority’s standards committee are to be read, respectively, as references to the monitoring officer and the standards committee of the county or county borough council which has functions in relation to the community

(1) S.I. 1990/1553 as amended by S.I. 1991/1389; S.I. 1993/1339; S.I. 1998/1918; and S.I. 1999/500.

(2) 2004 c.21.

(3) 1995 c.25.



council for which it is responsible under section 56(2) of the Local Government Act 2000.

## PART 2

### GENERAL PROVISIONS

2.—(1) Save where paragraph 3(a) applies, you must observe this code of conduct —

- (a) whenever you conduct the business, or are present at a meeting, of your authority;
- (b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;
- (c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

(2) You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.

3. Where you are elected, appointed or nominated by your authority to serve —

- (a) on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or
- (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

4. You must —

- (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) show respect and consideration for others;
- (c) not use bullying behaviour or harass any person; and
- (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

5. You must not —

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

6.—(1) You must —

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which



for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty);

- (c) report to the Public Services Ombudsman for Wales and to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
- (d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.

(2) 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.

**7. You must not —**

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority —
  - (i) imprudently;
  - (ii) in breach of your 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 you have been elected or appointed;
  - (v) improperly for political purposes; or
  - (vi) improperly for private purposes.

**8. You must —**

- (a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by —
  - (i) the authority's head of paid service;
  - (ii) the authority's chief finance officer;
  - (iii) the authority's monitoring officer;
  - (iv) the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

**9. You must —**

- (a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
- (b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.



## PART 3 INTERESTS

### *Personal Interests*

10.—(1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

(2) You must regard yourself as having a personal interest in any business of your authority if —

(a) it relates to, or is likely to affect —

- (i) any employment or business carried on by you;
- (ii) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
- (iii) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
- (iv) any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
- (v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- (vi) any land in which you have a beneficial interest and which is in the area of your authority;
- (vii) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
- (viii) any body to which you have been elected, appointed or nominated by your authority;
- (ix) any —
  - (aa) public authority or body exercising functions of a public nature;
  - (bb) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (cc) body whose principal purposes include the influence of public opinion or policy;
  - (dd) trade union or professional association; or
  - (ee) private club, society or association operating within your authority's area, in which you have membership or hold a position of general control or management;

(x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

(b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division; or

(c) a decision upon it might reasonably be regarded as affecting —

- (i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;
- (ii) any employment or business carried on by persons as described in 10(2)(c)(i);
- (iii) any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;
- (iv) any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a



- class of securities exceeding the nominal value of £5,000; or
- (v) any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management,
- to a greater extent than the majority of—
- (aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

#### *Disclosure of Personal Interests*

11.—(1) 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.

(2) Where you have a personal interest in any business of your authority and you make —

- (a) 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; or
- (b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

(3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.

(4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer from time to time but, as a minimum containing —

- (a) details of the personal interest;
- (b) details of the business to which the personal interest relates; and
- (c) your signature.

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.

(6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.

(7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

#### *Prejudicial Interests*

12.—(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business



where that business—

(a) relates to —

- (i) another relevant authority of which you are also a member;
- (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- (iii) a body to which you have been elected, appointed or nominated by your authority;
- (iv) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
- (v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to —

- (i) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
  - (ii) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;
  - (iii) the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;
  - (iv) the functions of your authority in respect of an allowance or payment made under sections 22(5), 24(4) and 173 to 176 of the Local Government Act 1972, an allowance or pension under section 18 of the Local Government and Housing Act 1989 or an allowance or payment under section 100 of the Local Government Act 2000;
- (c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(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.



*Overview and Scrutiny Committees*

13. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, board, committee, sub-committee, joint-committee or joint sub-committee mentioned in sub-paragraph (a) and you were present when that decision was made or action was taken.

*Participation in Relation to Disclosed Interests*

14.—(1) Subject to sub-paragraphs (2), (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 —

- (a) withdraw from the room, chamber or place where a meeting considering the business is being held—
  - (i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or
  - (ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;
- (b) not exercise executive or board functions in relation to that business;
- (c) not seek to influence a decision about that business;
- (d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and
- (e) 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.

(2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if —

- (a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or
- (b) you have the benefit of a dispensation provided that you —
  - (i) state at the meeting that you are relying on the dispensation; and
  - (ii) before or immediately after the close of the meeting give written notification to your authority containing —
    - (aa) details of the prejudicial interest;
    - (bb) details of the business to which the prejudicial interest relates;
    - (cc) details of, and the date on which, the dispensation was granted; and
    - (dd) your signature.

(4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

# Appendix

# 4