

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	14 June 2023
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 14 December 2022)
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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 14 December 2022. 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 cases are at **ENCLOSURE 1**.

2.1 Decisions made

APW/011/2021-022/CT: Former Councillor Sheila Jenkins : 17 March 2023

2.2 Appeals adjudicated

APW/012/2022-023-AT: Councillor Paul Rogers : 15 February 2023

3. RECOMMENDATION

To note the content of the case summaries

Summary of Cases before the Adjudication Panel for Wales – December 2022 to May 2023

Name	Summary of Facts	Decision Summary	Findings
<p>1.</p> <p>Councillor Paul Rogers</p> <p>Wrexham County Borough Council – Brymbo Community Council</p> <p>APW/012/20 22-023-AT</p>	<p>Following a decision by the Standards Committee of Wrexham County Borough Council (“the Standards Committee”) that the Appellant breached the Code of Conduct of the Relevant Authority on 12 January 2023, and the Notice of Decision emailed to the Appellant on 17 January 2023, the Appellant made an application for permission to appeal under Regulation 10(8) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001.</p> <p>The President of the Adjudication Panel for Wales (“APW”) deemed the application to have been made out of time.</p>	<p>The Appellant’s appeal was received by the APW on 14 February 2023, outside of the 21 day period in which applications for permission to appeal must be received. The application was sent by post. The deadline by when the application had to be received by the APW was 7 February 2023, 21 days from the notification by the Standards Committee on 17 January 2023; it is not sufficient to post the application within that period. While the letter enclosing the application is dated 6 February 2023, the requirement of Regulation 10(2) is that the notice must be given to the APW within the 21 day period. There is no deemed service provision within the Regulations, nor any ability to grant an extension to the 21-day period.</p> <p>In addition, the Registrar for the APW informed the Appellant in response to his email on 6 February 2023 that the application could be submitted electronically; it was the choice of the Appellant not to do so.</p> <p>The Deputy Monitoring Officer advised the Appellant that the deadline was 9 February 2023; the President asked the Registrar to ask the Monitoring Officer to provide further information as to when and how the notification of the decision of the Standards Committee was sent to the Appellant. The notification was dated 17 January 2023 and marked as sent by email only. Evidence was immediately provided that the notification was sent to the Appellant on 17 January 2023. Emails are regarded as received on the date that they are sent; the time to appeal ran from 17 January 2023.</p> <p>The APW’s President decided that an Appeal Tribunal would not be convened to consider the Appellant’s appeal as it was considered to have been made out of time.</p>	<p><u>Learning Points:</u></p> <ul style="list-style-type: none"> ➔ Members are able to appeal against the decision of the Standards Committee by submitting their appeal to the Adjudication Panel for Wales within 21 days of receipt of the Standards Committee’s decision. Such appeal can be sent in the post or electronically. Where electronic notification is given (by the Appellant or the APW), the notification period begins immediately. ➔ Members must be mindful of the strict time limits and that there are no exceptions. ➔ The details of the 12.01.2023 Standards Committee Hearing can be seen here.
<p>2.</p> <p>Former Councillor Sheila Jenkins</p> <p>St Harmon Community</p>	<p>By letter dated 29 November 2022, the Ombudsman made a referral to the APW and submitted a Report in relation to allegations made against the Respondent, these allegations being as follows.</p>	<p><u>Paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.</u></p> <p>Paragraph 11(1) of the Code of Conduct states that; ‘<i>Where a member has a personal interest in any business of their authority and they attend a meeting at which that business is considered, they must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.</i>’</p> <p>Paragraph 14(1)(a) of the Code of Conduct states that; ‘<i>Subject to sub-paragraphs</i></p>	<p><u>Case Tribunal’s determination as to Sanction.</u></p> <p>The Case Tribunal considered all the facts and evidence. It also had regard to <u>the Adjudication Panel for Wales current Sanctions Guidance.</u></p>

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Council APW/011/20 21-022/CT	<p>- That the Respondent failed to declare personal and prejudicial interests at two Council meetings, despite being aware that she had such interests, and remained in the meeting room and addressed Council on both occasions. The PSOW considered that the Respondent's actions were therefore suggestive of breach of paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct for Members ('the Code').</p> <p>- That the Respondent used emotive terms in addressing Council and took part in votes at both meetings and in doing so, the Respondent's conduct could reasonably be perceived as being capable of influencing the decision of the Council. The PSOW also alleged that presence alone at those meetings was capable of influencing the Council's decision-making and that the conduct could also be perceived as attempting to secure an advantage</p>	<p><i>(2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority's standards committee withdraw from the room, chamber or place where a meeting considering the business is being held —</i></p> <p><i>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</i></p> <p><i>ii. in any other case, whenever it becomes apparent that that business is being considered at that meeting.'</i></p> <p>Paragraph 14(1)(e) of the Code of Conduct states that; '<i>Subject to sub-paragraphs (2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority's standards committee, not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.</i></p> <p><u>Case Tribunal's determination as to alleged breach of paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.</u></p> <p>In considering this matter, the Case Tribunal considered the relevant provisions of the Code which explain the nature of personal and prejudicial interests and had regard to the PSOW Guidance for Members of Community and Town Councils.</p> <p>Whilst the business of the meeting of 1 April 2021 appeared to deal with the narrow issue of the factual accuracy or otherwise of the draft Audit Wales report, the business did also partly relate to the former Chairman. The Case Tribunal considered that whilst the draft report dealt with wide-ranging governance and financial concerns applicable to the Council as a whole, it did also specifically refer to three individuals, one of whom was the Respondent's husband. The Respondent's husband had declared a personal and prejudicial interest and had left the meeting accordingly.</p> <p>The Case Tribunal concluded that the Respondent had a personal interest in the business of the meeting of 1 April 2021, as the Council's decision might reasonably be regarded as affecting her husband's well-being. The Case Tribunal also considered this interest to be a prejudicial interest as it was clearly so</p>	<p>Regardless of any difficult background issues, the Case Tribunal considered that the breach was serious in certain respects, particularly in relation to the question of voting on whether to refer her husband to the PSOW. As such, it considered that the case was one which would normally attract disqualification or suspension for a significant number of months. In the circumstances, and in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a period of disqualification.</p> <p><i>Aggravating factors</i></p> <p>The Case Tribunal went on to consider any aggravating factors in this case. It concluded that the following factors applied and that the Respondent: -</p> <ul style="list-style-type: none"> - was engaged in deliberate conduct and use of office/a position of trust to attempt to avoid a disadvantage for her husband; - had breached the Code at two meetings and the Respondent's behaviour had therefore been repeated. - had chosen not to attend training on the Code; - had engaged in conduct with little or no concern for the Code; - had ignored advice given by

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	<p>for another person by taking part. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraphs 7(a) and 14(1)(c) of the Code.</p> <p>- That the Respondent's conduct at the meetings and subsequent press coverage may have brought the Respondent's Council and/or her office as a member into disrepute. The PSOW also alleged that knowingly disregarding the Code of Conduct showed lack of regard for the ethical standards regime in Wales which may affect public confidence in local democracy. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraph 6(1)(a) of the Code.</p> <p>The matter referred to an Audit Wales Report regarding the Council. The Respondent's husband was the Chair at the time the report had been prepared. The report included reference to the</p>	<p>significant that it was likely to prejudice the Respondent's judgment of the public interest. It noted from the evidence that the Respondent failed to declare any interests, remained in the meeting and addressed the meeting.</p> <p>As to the meeting of 3 November 2021, the Case Tribunal considered that the Respondent had a clear personal interest, as one of the recommendations in the Audit Wales report directly affected the Respondent's husband. One of the recommendations made by Audit Wales was to consider whether matters raised in its report should be referred to the PSOW, as potential breaches of the Code. The Council duly decided to report the former Chairman to the PSOW. The Case Tribunal also considered that the personal interest was one which a member of the public would reasonably regard as being so significant that it was likely to prejudice the Respondent's judgment of the public interest.</p> <p>The Case Tribunal also noted a further undisputed material fact that, not only did a decision of 3 November 2021 directly affect a person with whom the Respondent had a close personal relationship, but a second decision also directly affected herself. Again, the Respondent remained in the meeting, did not declare her clear personal and prejudicial interests in this respect and did not withdraw from the meeting once an additional proposal was made that the Respondent be reported to the PSOW</p> <p>The Case Tribunal noted that the Respondent spoke but abstained in the vote on the 1 April 2021 and abstained in the vote relating to the proposal to refer herself to the PSOW in the meeting of 3 November 2021. Nevertheless, the Case Tribunal considered that the business of the meetings could reasonably be regarded as affecting the well-being of both the Respondent and her husband, as a referral to the PSOW would have been a matter of concern, embarrassment and discomfort to both. The Case Tribunal found that as the Respondent had not withdrawn from either meeting and had also made oral representations at the meetings and had not received dispensation to do so, the Respondent was in clear breach of the Code.</p> <p>The Case Tribunal considered that the Respondent's answers during her interview indicated that she had not fully appreciated the requirements of the Code. She had equated declaring a personal interest with a requirement to leave the meeting, which was not the case. In addition, as to prejudicial interests, her answer during her interview indicated that she had not fully appreciated the meaning of this paragraph.</p>	<p>the Clerk regarding the Code at both meetings even though the Respondent accepted that the Clerk wanted her to declare an interest, and she had also chosen not to attend any Code training.</p> <p><i>Mitigating Factors</i> The Case Tribunal also considered mitigating factors in this case. It concluded that the following factors applied, that the Respondent: -</p> <ul style="list-style-type: none"> - had a relatively short period of service and inexperience in the role; - had a previous record of good service; - had co-operated with the investigation officer. <p>In addition to these mitigating factors highlighted from the Sanctions Guidance, the Case Tribunal considered the Respondent's responses during PSOW interview had been honest and straightforward. The Case Tribunal accepted the Respondent's evidence of her serious health condition in the absence of medical evidence and gave credit to the fact that the Respondent had not sought to use her health condition to excuse any failure to adhere to the Code, nor did she seek to blame others for this failure.</p>

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	<p>Respondent's husband. The Respondent attended and took part in meetings when the report was being discussed. The Respondent did not declare any personal or prejudicial interest.</p>	<p>Finally, the Case Tribunal noted that this was not a case where the Respondent was attempting to hide the fact that she was related to the former Chairman. Nevertheless, the Case Tribunal noted that the Respondent accepted that she was aware that she was acting in breach of the Code's provisions.</p> <p>The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.</p> <p><u>Paragraphs 7(a) and 14(1)(c) of the Code of Conduct.</u></p> <p>Paragraph 7(a) of the Code of Conduct states that; '<i>Members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person, a disadvantage.</i></p> <p>Paragraph 14(1)(c) of the Code of Conduct states that; "<i>...where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee – not seek to influence a decision about that business</i>".</p> <p><u>Case Tribunal's determination as to alleged breach of paragraphs 7(a) and 14(1)(c) of the Code of Conduct.</u></p> <p>In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code.</p> <p>The Case Tribunal considered that in the light of its finding on the Disputed Material Fact above, the Respondent had intended to influence proceedings and decisions of the Council. As to Paragraph 7(a) of the Code, the Case Tribunal considered that the wording of the Paragraph required a degree of intent or knowledge that the member's actions could influence others. In the light of its finding on the Disputed Material Fact and the evidence, the Case Tribunal was satisfied that the Respondent's failure to declare interests, her participation in meetings and particularly her voting on her husband's position, were all actions designed to try to prevent him being reported to the PSOW. It considered that her actions in the meeting of 3 November 2021 were either a conscious or subconscious attempt to use her position to avoid a disadvantage for her husband.</p> <p>As to the comments which the PSOW alleged were suggestive of a breach of paragraph 7(a) of the Code, these were quoted in the press as "The way [Audit</p>	<p>The Case Tribunal also noted the Respondent's position that there were entrenched views within the Relevant Authority and that she had been seeking to put forward an alternative view. Nevertheless, the Case Tribunal noted that there were other members who could have put forward an alternative view and that there were procedures in place which could have enabled her to speak, to include the procedure in Paragraph 14(2) of the Code as well as the right to apply to the Relevant Authority's Standards Committee</p> <p>In view of the Respondent's resignation the day after the meeting of November 2021, the sanction of suspension was clearly not a sanction available. As to former members, Paragraph 47 of the Guidance states '<i>In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...</i>'</p> <p>The Case Tribunal accepted that</p>

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		<p>Wales] have personally gone for the chairman with their hands around his neck is disgusting. He has been made a scapegoat". The Minutes recorded it in slightly different terms that the Respondent had said as follows "Audit Wales had it in for the chairman from the start and had been hanging around his neck, which is disgusting." There was no clear evidence to confirm whether the press had been present at the meeting of 3 November 2022 or whether the Respondent's comments had been passed on to the press. The Case Tribunal was satisfied however that the Minutes provided an official record of the meeting and that on the balance of probabilities, the Respondent made the comment recorded in the Minutes.</p> <p>Whilst the Respondent was adamant that she did not intend to, and did not think she could change anyone's mind she clearly spoke in emotive terms in support of her husband and voted to avoid his referral. She said that her intention was only to defend her husband in the face of what she considered to be entrenched views. Whilst in this particular case, the Case Tribunal considered it unlikely that the Respondent's presence influenced others, her contribution to the debate could conceivably have persuaded others to temper their views. By voting on the issue, the Case Tribunal considered that this could have influenced and changed the outcome of the vote.</p> <p>It was noted that the Relevant Authority provided an opportunity for members of the public to speak on issues at Council meetings. There is no available evidence to indicate whether the Respondent was advised or sought advice in this regard. Nevertheless, the Respondent could therefore have spoken in any event by virtue of Paragraph 14(2) of the Code and then left the meeting. However, by acting in the role of Member and in particular by using her right to vote, the Case Tribunal considered that she had attempted to use her position improperly to avoid a disadvantage to her husband.</p> <p>The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 7(a) and 14(1)(c) of the Code of Conduct.</p> <p><u>Paragraph 6(1)(a) of the Code of Conduct</u></p> <p>Paragraph 6(1)(a) of the Code of Conduct states that '<i>You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute</i>'.</p> <p>Case Tribunal's determination as to alleged breach of paragraph 6(1)(a) of the</p>	<p>the Respondent had no intention of returning to member duties, nevertheless the Case Tribunal noted that sanctions had other overarching purposes. They not only provided a disciplinary response to an individual member's breach of the Code, but they were also to deter future misconduct by others and promote a culture of compliance across authorities generally. It considered there to be a requirement to reinforce the importance of the Code as well as the principles of selflessness, propriety and objectivity in decision-making.</p> <p>In the circumstances, the Case Tribunal considered whether 'No Action' or 'Disqualification' as detailed in the Sanctions Guidance was an appropriate outcome.</p> <p>In view of the Respondent's prompt resignation following the events of 3 November 2021, her candid responses during interview and her accepted ill-health, this was a finely balanced decision. The Case Tribunal also considered Article 10 in the context of imposing sanctions. Being mindful of the public interest however and the need to uphold the law, ethics and morals and to protect the rights of others in a democratic society, the Case</p>

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		<p><u>Code of Conduct.</u></p> <p>In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct.</p> <p>The Case Tribunal considered that the Guidance provided a list of case examples where a breach of paragraph 6(1)(a) had been found to have occurred. The Case Tribunal considered that these examples were not comparable to the behaviour of the Respondent in this case. The Case Tribunal was nevertheless mindful that behaviour at a public meeting could, in some cases, amount to behaviour capable of breaching paragraph 6(1)(a) of the Code of Conduct.</p> <p>As to the press report submitted in evidence, the Case Tribunal considered that this arose in the context of <i>'an Audit Wales report which criticised the council for inadequacies in governance, financial management and internal control arrangements.'</i> The headline however referred specifically to the Respondent's husband as the Chairman during the period upon which the Audit Wales report had focused, being the 2018-2019 financial year. The press report went on to say that Councillors had also agreed to refer the Respondent to the Ombudsman 'but she has since resigned from the authority.' It went on to state that the Respondent had been reported for attending two council meetings when the audit report was discussed, and she should have declared a personal and prejudicial interest. The Respondent's comments were also reported.</p> <p>The Case Tribunal considered that the Respondent's actions had arisen in a situation where it is likely that the Relevant Authority had already been brought into disrepute in the light of the critical Audit Wales Report. It was a 64-page document which focused in detail on governance, and financial management and internal control failures of the Council as a whole, whilst also referencing the role of three individuals connected to that Authority, including the former Chairman of the Council. Nevertheless, the Case Tribunal considered that the deliberate conduct of the Respondent on its own, in particular at the meeting of 3 November 2021 was also capable of bringing the Relevant Authority and the role of member into disrepute.</p> <p>It considered that members of the public should be able to expect their elected members not to participate in proceedings and particularly not to vote on matters which directly affect their spouses, friends or close personal associates. They would be expected to be acting solely in the public interest and not to benefit their own interests or those of people close to them. Doing otherwise, and deliberately</p>	<p>Tribunal was satisfied that a finding of 'No Action' would not be appropriate in this case. There was an expectation that members would act with integrity, act in accordance with the trust that the public placed in them, lead by example, and promote public confidence by acting in the public and not private interest. The Respondent had not done so.</p> <p>In all the circumstances therefore and bearing in mind the Respondent's disregard of the Code and absence of regret for her actions, as well as the wider purpose of sanctions as outlined in the Guidance, it considered that the sanction of disqualification was appropriate. It considered that this was necessary to underline the importance of the Code and the need for members to reflect upon its purpose when undertaking to abide by the Code on taking office. It considered that disqualification for a period was a proportionate and necessary sanction in this case.</p> <p>The Case Tribunal therefore found by unanimous decision that the Respondent should be disqualified for 12 months from being or becoming a member of the Relevant Authority or any other relevant authority within the meaning of the Local</p>

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		<p>so, would inevitably attract adverse publicity and local press interest and ultimately reduce trust in the role of member.</p> <p>In conclusion, the Case Tribunal considered that the Respondent had deliberately disregarded the requirements of the Code of Conduct by failing to declare a personal and prejudicial interest at both meetings and continuing to participate in them.</p> <p>It considered that voting on the issue of referral of her husband to the PSOW was a serious breach of the Code. The press also reported the nature of the breach. Whilst it considered that the predominant reasons for press attention of the Relevant Authority was due to the actions of the Council as a whole and of named individuals in the Audit Wales report, the Respondent's disregard of the Code requirements could also reasonably be regarded as bringing the Authority and office into disrepute. The Respondent made it clear that she would have acted in the same way again as her "husband came first."</p> <p>As for the comments made by the Respondent and recorded in the minutes of the meeting of 3 November 2021, the Case Tribunal considered that whilst they were somewhat emotive, they were not egregious in the context of ordinary political debate. It did not consider that these comments in themselves constituted a breach of the Code and noted that the comments were likely to have been made in the heat of the moment.</p> <p>The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct.</p>	<p>Government Act 2000.</p> <p><u>Learning Points:</u></p> <ul style="list-style-type: none"> ➔ Members are encouraged to obtain advice from the Clerk. ➔ Members are encouraged to undertake training on the Code of Conduct so as to understand the provisions in relation to the disclosure of personal and prejudicial interests. ➔ The sanction imposed in this case is disqualification for one year – disqualification considered the most serious of sanctions. The maximum disqualification possibly imposed by the APW is five years. ➔ The APW considered the <u>Sanctions Guidance</u> when considering which sanction to impose.