



## **STANDARDS COMMITTEE**

**9.30 AM - TUESDAY, 31 JANUARY 2023**

**TEAMS/ HYBRID AT COUNCIL CHAMBER - PORT TALBOT CIVIC CENTRE**

**ALL MOBILE TELEPHONES TO BE SWITCHED TO SILENT FOR THE DURATION OF THE MEETING**

### **PART 1**

1. Appointment of Chair
2. Chair's Announcements
3. Declarations of Interest
4. Appointment of Vice Chair
5. Minutes of Previous Meeting (*Pages 5 - 8*)
6. Group Leader Invitation (*Pages 9 - 16*)  
Councillor Alun Llewelyn  
Councillor Rob Jones
7. Employee Code of Conduct (*Pages 17 - 46*)
8. Whistleblowing Arrangements (*Pages 47 - 68*)
9. Adjudication Panel Decisions (*Pages 69 - 126*)
10. Standards Committee Forward Work Programme (*Pages 127 - 128*)

11. Urgent Items

Any urgent items at the discretion of the Chairperson pursuant to Section 100B(4)(b) of the Local Government Act 1972

**K.Jones**  
**Chief Executive**

**Civic Centre**  
**Port Talbot**

**23 January 2023**

## Committee Membership:

**Chairperson:** TBC

**Vice  
Chairperson:** TBC

**Independent  
Members:** L.Fleet, T.Ward, C.Edwards and D.Lewis

**NPTCBC  
Members:** W.Carpenter and S.Thomas

**Community  
Committee  
Member:** C.Edwards

## Substitutes

**NPTCBC  
Substitutes:** A.Lodwig and S.Grimshaw

**Community  
Committee  
Substitute:** D.Lewis

- Notes: (a) The Quorum for the Standards Committee is at least three Members including the Chairperson (or in absence Vice Chairperson). At least half the Members present (including the Chair) must be Independent Members. (e.g. if only two Independent Members attend, there must **only** be two other Members of the Committee present.)*
- (b) In view of the above, can all Members please inform the Monitoring Officer/Democratic Services Officer as soon as possible, if there is a problem with attendance.*

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## STANDARDS COMMITTEE

(Teams/ hybrid at Council Chamber - Port Talbot Civic Centre)

**Members Present:**

**25 October 2022**

**Chairperson:** C.L.Jones

**Vice Chairperson:**

**Independent Members:** L.Fleet and T.Ward

**NPTCBC Members:** **Councillors** W.Carpenter and S.Thomas

**Community Committee Members:** **Councillor** C.Edwards

**Officers In Attendance:** C.Griffiths and N.Jones

**Invitee:** **Councillor** S.K.Hunt (Leader of NPT Council)

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1. **CHAIR'S ANNOUNCEMENTS**

Cliff Jones, welcomed all to the meeting, and thanked everyone for their help and friendship during his time as Chair, as this would be his last meeting as Chair of the Standards Committee.

2. **DECLARATIONS OF INTEREST**

None were received.

3. **MINUTES OF PREVIOUS MEETING**

The minutes of the meeting of 13 July 2022, were agreed as an accurate record.

4. **GROUP LEADER INVITATION**

Members discussed code of conduct related matters with the Group Leader of the Independent Democratic Group, Councillor Steve Hunt (Leader of Council).

**RESOLVED:** That the attendance of the Group Leader of the Independent Democratic Group, to ensure that the legal obligations under the Local Government and Elections (Wales) Act 2021, were fulfilled, be noted.

5. **STANDARDS FORUM**

The Standards Committee discussed and supported the establishment of a national forum for standards matters, as well as the terms of reference of the forum.

**RESOLVED:** That the report be noted.

6. **TOWN COUNCIL TRAINING**

Members discussed the results of the recently circulated Code of Conduct questionnaire, to Town and Community Councils.

**RESOLVED:** That the report be noted.

7. **LOCAL RESOLUTION PROCEDURE**

Members considered the Neath Port Talbot County Borough Council Local Resolution Procedure, and whether any amendments may be required.

**RESOLVED:** That the report be noted and the Local Resolution Procedure be endorsed as drafted.

8. **MEMBER OFFICER PROTOCOL**

Committee Members discussed the Protocol on Member and Officer Relations (a copy of which was contained within the circulated report).

**RESOLVED:** That the Protocol on Member/Officer Relations, as attached at Appendix 1 to the circulated report, be endorsed.

9. **OMBUDSMAN ANNUAL REPORT**

Members discussed the content of the Public Service Ombudsman Annual Report for Neath Port Talbot County Borough Council for 2022/2023, as enclosed at Appendix 1 to the circulated report, and the steps that officers would continue to embark on as part of general improvement work.

**RESOLVED:** That the report be noted.

10. **FORWARD WORK PROGRAMME**

The Standards Committee Forward Work Programme was noted.

11. **URGENT ITEMS**

There were none.

**CHAIRPERSON**

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Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **STANDARDS COMMITTEE**

### **REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR CRAIG GRIFFITHS**

**31 January 2023**

#### **Matter for Decision**

**Wards Affected:** All Wards

#### **Invitation to Group Leaders of Neath Port Talbot County Borough Council to attend Standards Committee**

#### **Purpose of the Report:**

1. To discharge the legal obligation on Standards Committees to ensure leaders of political groups take steps to promote and maintain high standards of conduct by members of their groups.

#### **Background:**

##### New Duty on Group Leaders

2. As indicated in previous reports, the Local Government and Elections (Wales) Act 2021 addresses some new obligations for Standards Committees. The Act imposes specific duties on political leaders to promote and maintain standards of conduct

within members of their group, and to cooperate with the Standards Committee in the exercise of its functions. This requires leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups.

3. The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.
4. Reasonable steps the group leader *may* undertake include:
  - a. demonstrating personal commitment to and attending relevant development or training around equalities and standards;
  - b. encouraging group members to attend relevant development or training around equalities and standards;
  - c. ensuring nominees to a committee have received the recommended training for that committee;
  - d. promoting civility and respect within group communications and meetings and in formal council meetings;
  - e. promoting informal resolution procedures in the council, and working with the standards committee and monitoring officers to achieve local resolution;
  - f. promoting a culture within the group which supports high standards of conduct and integrity;
  - g. attend a meeting of the council's standards committee if requested to discuss Code of Conduct issues;
  - h. work to implement any recommendations from the Standards Committee about improving standards;

- i. work together with other Group Leaders, within reason, to collectively support high standards of conduct within the council.
5. The purpose of the new duties is to build on and support a culture which is proactive, acts on and does not tolerate inappropriate behaviour.
6. A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code.
7. A political group's internal disciplinary procedures remain a matter for that group or any associated political party's own rules on discipline. However, it is expected that the group leader will take reasonable steps to promote and maintain high standards of conduct by members within group communications and meetings as well as their 'public' conduct outside of the group setting.
8. The provision imposes an additional function on the Standards committee to monitor political leaders' compliance, and to advise, train or arranging to train leaders of political groups about matters relating to the above duties. It is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee.
9. Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group Leaders should also report compliance with their duty to the standards

committee. This can take the form of a short letter or report at a frequency agreed by the political Group Leaders in the council and its standards committee. Group Leaders should also report any serious concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.

### Role of Standards Committee

- 10.** The functions of the Standards Committee are now extended to include monitoring compliance by leaders of political groups with the new duty imposed on them to promote and maintain high standards of conduct by members of their group. A council's political Group Leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee to demonstrate how compliance with the duty is achieved. The standards committee should then consider each report and provide feedback to the Group Leaders. A standards committee must also provide advice and training, or arrange to train Group Leaders on the new duty. At the start of each administration this should take place within six months of the election and be reviewed at least annually. It should be noted that such training for Group Leaders took place on the 8<sup>th</sup> and 9<sup>th</sup> June 2022
- 11.** The standards committee chair may wish to meet with Group Leaders periodically to review behaviour.
- 12.** Accordingly, the Monitoring Officer would suggest that members of the Standards Committee discharge their new duties by providing a series of set questions to Group Leaders to ask them to provide information for the Standards Committee and that the Standards Committee invite the respective five Group Leaders in Neath Port Talbot Council to attend a

Standards Committee during the 2022-2023 year to provide the Standards Committee with the opportunity to discuss code of conduct matters with them and how such approaches are considered within their political groups.

13. At its meeting in July 2022, Standards Committee agreed to invite one or two Group Leaders to each meeting of the Standards Committee over the coming year.
14. Questions (previously agreed by members) have been provided in advance to Group Leaders to afford the opportunity to consider the issues that the Standards Committee would like to raise.
15. The questions are set out set out below:
  - (a) *Could you please introduce yourself and explain how long you have been a group leader?*
  - (b) *How appropriate do you believe the Code of Conduct is??*
  - (c) *What steps do you take to promote high standards of conduct within your political group?*
  - (d) *What do you understand the role of the Standards Committee to be?*
  - (e) *Is there any work you feel the Standards Committee should be undertaking over the next year to help you with your role as group leader?*
  - (f) *How can the Standards Committee become more active in promoting ethical conduct among Councillors / Co-opted Members?*
  - (g) *The Ombudsman, Adjudication Panel for Wales and the High Court has taken a view on politicians (and in some cases senior officers) having a “thick skin” and on political banter being part of the political landscape. What are your own views and how would you as a Political Group Leader/Committee Chair ensure that the line is not crossed.*

- (h) What are your views on the Authority's Code of Conduct training? How do you rate its effectiveness? How could it be improved so as to raise the ethical standards of Councillors / Co-opted Members?*
- (i) Training for Councillors / Co-opted Members is vitally important. How can the Standards Committee tackle those that do not see training as important?*
- (j) The Authority's Local Resolution Process (LRP)(Cllr v Cllr) is capable of being used by Councillors. In the event of a dispute will you be encouraging your party to use the process? Do you consider the lack of referrals to the LRP demonstrates that councillors are behaving within the Code?*

**16.** The attendee at today's meeting is Cllr Alun Llewelyn, Deputy Leader of the Council and Leader of the Plaid Cymru Group and Cllr Rob Jones, Leader of the Labour Party Group

**Financial Impacts:**

**17.** No implications.

**Integrated Impact Assessment:**

**18.** An Integrated Impact Assessment is not required for this report.

**Valleys Communities Impacts:**

**19.** No implications

**Workforce Impacts:**

**20.** No implications

**Legal Impacts:**

21. There are no legal impacts associated with this report.

**Consultation:**

22. There is no requirement for external consultation on this item

**Recommendations:**

23. That Members discuss code of conduct related matters with the Group Leader of the Independent Democratic Group and to fulfil the legal obligations under the Local Government and Elections (Wales) Act 2021.

**Appendices:**

24. None

**List of Background Papers:**

25. None

**Officer Contact:**

Mr Craig Griffiths  
Head of Legal and Democratic Services  
Telephone 01639 763767  
Email: c.griffiths2@npt.gov.uk

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Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## STANDARDS COMMITTEE

### REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR CRAIG GRIFFITHS

31 January 2023

#### **Matter for Information**

**Wards Affected:** All Wards

#### **Member Officer Protocol**

#### **Purpose of the Report:**

1. To consider the Neath Port Talbot County Borough Council Employee Code of Conduct

#### **Background:**

2. Neath Port Talbot County Borough Council Members have adopted an Employee Code of Conduct (a copy of which is enclosed at Appendix 1 of this Report).
3. The public is entitled to expect the highest standards of conduct from all employees. The role of such employees is to serve their employing Council in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.
4. Local government employees are public sector employees who deliver vital services in the community. A code of conduct for employees reflects the local government's standards of behaviour and integrity to all employees and the community they serve. Effective codes that are well communicated and

effectively implemented contribute to building and sustaining a culture of integrity and create a transparent and accountable framework within which employees can operate.

5. The Code of Conduct applies to all those working for the Council (excluding teaching staff), including those on permanent, temporary or part-time contracts, job sharers, and employees on non-standard terms of employment. Relevant parts of the code should be included in the specifications for consultants and contractors, and drawn to the attention of voluntary workers on Council projects. Some employees may already have specific requirements relating to conduct included in their contracts or standard conditions of employment. Where contract conditions and requirements of individual contracts are more specific, due to the nature of the work, they will override the provisions of this code.
6. This code is based on, and consistent with, the following seven principles which were originally set out by the Nolan Committee on Standards in Public Life.
  - (a) Selflessness  
Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits.
  - (b) Integrity  
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
  - (c) Objectivity  
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
  - (d) Accountability  
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - (e) Openness  
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - (f) Honesty  
Holders of public office have a duty to declare any private interests

relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) Leadership

Holders of public office should promote and support these principles by leadership and example.

7. The protocol covers a number of different areas

(a) Confidentiality and disclosure of information

(b) Political Neutrality

(c) Declarations of Interest

(d) Relationships with the public and elected members

(e) Corruption

(f) Use of Financial Resources

(g) Gifts, Hospitality and Inducements

(h) Personal interests and involvements in outside organisations

(i) Additional employment

(j) Recruitment

(k) Conduct

(l) Consequences for non-compliance

8. The adoption of the Employee Code of Conduct is within the purview of the Council's Personnel Committee. However, the Standards Committee within their terms of reference are able to examine any Code(s) of Conduct for Employees of the Council and to make recommendations as may be considered appropriate.

**Financial Impacts:**

9. No implications.

**Integrated Impact Assessment:**

10. An Integrated Impact Assessment is not required for this report.

**Valleys Communities Impacts:**

11. No implications

**Workforce Impacts:**

12. No implications

**Legal Impacts:**

13. There are no legal impacts associated with this report.

**Consultation:**

14. There is no requirement for external consultation on this item

**Recommendations:**

15. That Members consider the Employee Code of Conduct identifying whether any amendments should be proposed to the Council's Personnel Committee

**Appendices:**

16. Appendix 1 – Employee Code of Conduct

**List of Background Papers:**

17. None

**Officer Contact:**

Mr Craig Griffiths  
Head of Legal and Democratic Services  
Telephone 01639 763767  
Email: c.griffiths2@npt.gov.uk



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

# Côd Ymddygiad i Weithwyr

## Employee Code of Conduct

*Os hoffech dderbyn gohebiaeth mewn perthynas â'ch cyflogaeth yn Gymraeg,  
cysylltwch â'ch Swyddog AD dynodedig.*

**Côd Ymddygiad i Weithwyr**

**Employee Code of Conduct**

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[www.npt.gov.uk](http://www.npt.gov.uk)

## **1. Introductions and Definitions**

- 1.1 The National Assembly for Wales made Order 2001/2280 The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001 in exercise of the powers conferred upon it by sections 82(2) and 105(1) of the Local Government Act 2000[1]. This order came into force on 28th July 2001. This Order applies to Neath Port Talbot County Borough Council (“the Council”).
- 1.2 The public is entitled to expect the highest standards of conduct from all employees. The role of such employees is to serve their employing Council in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.
- 1.3 Employees are accountable to, and owe a duty to the Council. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.
- 1.4 For the avoidance of doubt this Code of Conduct does not apply to Teachers within the meaning of Section 82(2) of the Local Government Act 2000 but applies to all other employees of the Council

## **2. Confidentiality and Disclosure of Information**

- 2.1 Openness in the dissemination of information and decision-making should be the norm in the Council. 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 Councillor, Council employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions.
- 2.2 The law requires that certain types of information must be made available to Councillors, auditors, Government departments, service users, and the public, in certain circumstances.
- 2.3 All employees must familiarise themselves regarding which information the Council is able to be open about, and is not able to be open about, and act accordingly.
- 2.4 Any information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Council

should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required as required by the law.

- 2.5 Letters written to or by employees in their position as representatives of the Council are the property of the Council.

### **3. Political Neutrality**

- 3.1 Employees serve the Council as a whole. It follows that they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.
- 3.2 Some employees may be requested to advise political groups. If this is the case, they must do so in a manner which does not compromise their political neutrality as employees.
- 3.3 All employees, must follow every lawfully expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.
- 3.4 Where employees are in politically restricted posts they must comply with any statutory restrictions on their political activities. Please refer to [\(Link Political Restrictions\)](#) for further information
- 3.5 All other employees must also consider whether they should undertake political activities outside these restrictions which may create a conflict of interest.

### **4. Declarations**

- 4.1 You are required to make declarations in respect of Gifts and Hospitality, Interests and Additional Employment/Work, as part of your contract of employment.

- 4.2 For declarations:

For gifts and hospitality,

You must use the form in **Appendix A where you are a:**

- Director/Head of Service – declarations should be made immediately when an instance arises. Should there be no instances to declare through the year, a nil return should be provided annually, at year end.
- Accountable Manager - declarations should be made immediately when an instance arises. Should there be no instances to declare through the year, a nil return should be provide annually, at year end.
- All other employees – declarations should be made as and when any instances arise of interest

You must use the form in **Appendix B** where you are a:

- Director/Head of Service – declarations should be made annually at year end and a new declaration made immediately should your circumstances change
- Accountable Manager – declarations should be made annually at year end and a new declaration made immediately should your circumstances change

*For secondary employment **Appendix C** shall be utilised in the following circumstances:*

- Directors/Heads of Service – declarations should be made immediately when an instance arises. Should there be no instances to declare through the year, a nil return should be provide annually, at year end.
- Accountable Managers - declarations should be made immediately when an instance arises. Should there be no instances to declare through the year, a nil return should be provide annually, at year end.
- All other employees – declarations should be made as and when any instances arise of additional employment/work.
- Any declaration must be made as soon as is reasonably possible. In some instances this will mean declaring prior to or at the commencement of your employment.



- In other instances you will need to make a declaration during your employment, or when you change roles within the Council.
- 4.3 Please refer to **Appendix D**, which outlines the process for making declarations, and also the monitoring process of these declarations.
- 4.4 Employees will need to declare the above with their Head of Service or Accountable Manager. Further details are outlined later in this procedure.
- 4.5 When a Head of Service needs to make a declaration, then the declaration must be made to their Corporate Director, or other Director in their absence, and any relevant authorisation obtained.
- 4.6 When a Director needs to declare something, then this must be made to the Chief Executive, or the Director of Finance and Corporate Services in his/her absence, and any relevant authorisation obtained.
- 4.7 When the Chief Executive needs to declare something, then this must be made to the Director of Finance and Corporate Services, or in his/her absence the Monitoring Officer, and any relevant authorisation obtained.
- 4.8 If an Employee occupies a Politically Restricted Role (whether Specified or Sensitive (Please refer [\(Link Political Restrictions\)](#) for further information)) then gifts or hospitality from Councillors should not be accepted unless sanctioned by the appropriate Head of Service.

## **5.0 Relationships**

- 5.1 Employees should deal with the public, Councillors and other employees sympathetically, efficiently, and without bias. Further guidance regarding the nature of relationships can be found in **Appendix E**. Employees should act all times in accordance with the requirements of the Equality Act 2010.

- 5.2 Where the Monitoring Officer is undertaking an investigation in accordance with regulations made under section 73(1) of the Local Government Act 2000(9) an Employee must comply with any requirement made by that Monitoring Officer in connection with such an investigation

## **6. Corruption**

- 6.1 Employees must be aware that it will be deemed, under the Bribery Act 2010, to be a criminal offence to offer, promise or give a bribe. It will also be an offence to request, agree to receive, or accept a bribe. This will constitute gross misconduct and place the employee at risk of criminal sanctions as well as disciplinary proceedings.

## **7. Use of Financial Resources and Other Resources**

- 7.1 Employees must exercise due probity and responsibility in accordance with the Council's Financial Regulations, Contract Procedure Rules and Accounting Instructions & Guidelines in the use of public resources.
- 7.2 They must ensure value for money at all times and seek to avoid legal challenge to the Council. Employees must ensure expenditure is authorised appropriately and obtain proof of spending in accordance with the Council's policies.
- 7.3 Resources must be used in accordance with Council requirements and not for any personal benefit or the interests of any political party or group
- 7.4 This will apply, for example, to the use of transport, secretarial assistance, stationary, equipment and information.

## **8. Gifts, Hospitality and Financial Inducements**

- 8.1 On no account shall an employee accept any financial payment or other inducement from any person, body or organisation, e.g. contractors, developers, consultants etc. unless authorised by the Council. Section 117 of the Local Government Act 1972 makes it an offence for an employee of Neath Port Talbot Council to accept any fee, gift, loan or reward whatsoever, other than his or her proper remuneration.

- 8.2 Employees must refuse any gift or hospitality offered to them or to them for Immediate Relatives. There may be exceptions for gifts which are of negligible value and are usually given to a wide range of people, e.g. pens, diaries, calendars etc. Any more substantial gift should be returned officially with a suitable letter unless specifically sanctioned by an appropriate Head of Service.
- 8.3 If an Employee occupies a Politically Restricted Role (whether Specified or Sensitive (Please refer [\(Link Political Restrictions\)](#) for further information)) then gifts or hospitality from Councillors should not be accepted unless sanctioned by an appropriate Head of Service
- 8.4 All gifts offered (*except those of negligible value as indicated above*), whether accepted or refused, must be recorded within the Directorate and signed by the appropriate Head of Service. If in doubt seek advice from your manager.
- 8.5 Normally, visits to exhibitions, demonstrations, inspection of equipment, conferences, business meals, social functions etc. by employees in connection with their official duties will be at the Council's expense to avoid jeopardising the integrity of subsequent purchasing decisions. In some instances, however, it may be to the benefit of the Council to accept the hospitality of outside agencies, organisations, or individuals, where representation serves the Council's interest. This will be a decision for the appropriate Head of Service to make – **authorisation must be sought in advance**. If it is decided to accept the invitation, the reason for the meeting and the form the hospitality takes must be declared. If in doubt seek advice from your manager.
- 8.6 When accepting or receiving authorised hospitality, employees and managers should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality.
- 8.7 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where attendance has been authorised in advance and where the Council is satisfied that any purchasing decisions are not compromised.

- 8.8 If any employee is in any doubt over the offer of financial inducement, gifts or hospitality, they should refer the matter to their Manager.
- 8.9 The onus is on employees to declare offers of gifts and hospitality (see *Section 4*). If in doubt seek advice from your Manager.
- 8.10 The issue of gifts from service users is covered in **Appendix E**.

## **9. Personal and Other Interests/Involvements**

- 9.1 Interests or involvement which could conflict with the interests of the Council could be either financial and/or non-financial for example:
- Partnership in a business.
  - Work done for any person or organisation other than as an employee of the Council.
  - Serving as a member of a group, committee, or board which may work in conflict with the Council.
  - Applications submitted by relatives or friends for consideration by the Council, i.e. tendering for work.
  - School Governor within the Neath Port Talbot locality.
- 9.2 If any employee has a personal interest in any matter which arises at any meeting where the employee is reporting or advising (*or might be called upon to advise, or otherwise be able to influence*) any Councillor(s) of the Council, or any third party, the employee must declare the interest, and take no part in the consideration or determination of the matter. Any such declaration made at an official meeting will be recorded in the minutes. If appropriate, arrangements should be made for another employee to attend and report and/or advise on the matter. An example would be involvement in a meeting regarding a school, which their son or daughter attends.
- 9.3 If an officer has a personal interest which could conflict with the interest of the Council, then they may only remain in the meeting and participate in the proceedings, if the person presiding at the

meeting (*having taken advice from the Monitoring Officer*) is satisfied that to do so would be in the interest of the Council or local people.

## **10 Additional Employment/Work and Voluntary Work**

### Additional Employment

- 10.1 For all additional employment or private work, both outside of the work done as an employee of the Council and including additional contracts within the Council, employees must obtain the written permission of the Council. **Appendix C** can be used to make a relevant declaration.
- 10.2 Employees should be clear about their contractual obligations to the Council and must not undertake additional employment, or involvement, which may conflict with or detract from the interests of the Council.
- 10.3 Where an employee is appointed as a Director of a company or a board or committee member of any other organisation, where the appointment or invitation to serve arises out of employment with the Council, then these must also be declared. These Directors must also declare any conflicts of interest, as and when these arise.
- 10.4 Employees need to be aware that any information they have gained in the form of intellectual property, copyright or work in any form which they have carried out or created and which has arisen from them undertaking their duties as an employee of the Council belongs to the Council and, therefore, cannot be sold or lent to any other person or organisation without the written permission of the appropriate Head of Service, in consultation with the Monitoring Officer.
- 10.5 If an employee is absent from their substantive role due to sickness then it is not ordinarily expected that the employee will be well enough to work in a second job. This is unless they provide a fit note and the nature of the illness does not impact on their capability to carry out the duties of their second post with the Council.
- 10.6 If it is found that the employee has worked in a second job whilst absent from the Council due to sickness then it may be considered gross misconduct and result in disciplinary action.
- 10.7 Employees with more than one post with the Council who are absent from one post may only remain working in the other post(s) if they

provide a fit note and the nature of the illness does not impact on their capability to carry out the duties of their other post.

- 10.8 If the employee considers that the nature of his/her sickness is such that s/he cannot work in one job, but can work in the second job (maybe because of differing physical demands) then the employee must contact their manager(s) to discuss this **before** proceeding to work in the second job.
- 10.9 The Council will not allow the employee to carry out work in a second job if it considers that doing so will impede the recovery time from the sickness, and hence delay the return to work in this organisation. Secondary employment includes running your own business, voluntary work, undertaking an official role (e.g. Justice of the Peace or Election duties) or receiving a profit from the pursuance of a hobby.
- 10.10 Employees must notify their manager that they have reported sick in their other position. In these circumstances, managers must seek advice from Human Resources.

#### Voluntary Work

- 10.11 Where an Employee undertakes voluntary work which results in day to day contact with children or vulnerable adults then notification must be given to their manager (no consent of the Council will be necessary)

### **11 Recruitment and Selection of Staff and other Associated Employment Matters**

- 11.1 The Council's Recruitment and Selection Code of Practice, and other relevant policies, must be applied when recruiting to any vacant post. This will ensure appointments are made on merit and the most appropriate person is recruited.
- 11.2 In order to avoid any possible accusation, or appearance of bias employees must not be involved in any selection process where they are related to an applicant or, have a close personal relationship outside work with the applicant.
- 11.3 Similarly, employees must not be involved in any decisions on discipline, grievance, promotion, or pay for any employee who is an immediate relative, partner, friend or person in respect of whom the

employee's involvement could reasonably be perceived to be prejudicial or biased.

## **12. Declaration of Criminal Offences**

12.1 All employees must declare any criminal offence for which they have been charged or prosecuted to their Head of Service, that is either reportable to their professional body or standards body, or which could either:-

- bring the Council into disrepute, or
- result in them being unable to undertake the role for which they are employed (e.g. a driving ban), or
- may result in a prison sentence

12.2 Upon receipt of this information, the Head of Service will review the impact of this information upon the contract of employment with a view to giving consideration as to what support, if appropriate or necessary, might be provided to the employee and whether the declaration requires further investigation to establish if there is a potential disciplinary issue. Where an issue may be potentially gross misconduct, a risk assessment must be undertaken to establish whether the employee should be suspended.

**12.3 *Failure to declare or accurately declare relevant offences will result in disciplinary action***

## **13. Conduct Outside of Work**

13.1 All employees must ensure that their actions outside of work do not bring the Council into disrepute and do not impact upon their ability, be it perceived or otherwise, to undertake their role.

13.2 Inappropriate conduct outside of work, which is either illegal, improper, or unethical, will therefore breach the Employee Code of Conduct. Examples of such conduct may include the following, which is not meant to be a definitive list:-

- Inappropriate use of social networking sites in terms of relationships or comments.
- Drugs related offences.

- Giving inappropriate medical treatment to a child or protected adult
- Matters of a publicly sensitive and/or inappropriate nature, including abuse (physical, emotional, neglect or sexual), threats or violence.
- Hate crimes
- Theft and fraud

Such conduct could result in disciplinary action being taken.

## **14 Separation of Roles During Tendering**

- 14.1 Employees involved in the tendering and procurement process and dealing with contractors must be clear on the separation of both client and contractor roles within the Council.
- 14.2 Some employees may have both a client and contractor responsibility and must be aware of the need for accountability and openness at all times.
- 14.3 Employees who are privy to confidential information on tenders or costs for either internal or external contracts must not disclose that information to any unauthorised party or organisation.
- 14.4 Further information confirming the requirements of employees, can be located in  
[http://intranet.neathporttalbot.gov.uk/PDF/procurement\\_contracts\\_Procedure\\_Rules.pdf](http://intranet.neathporttalbot.gov.uk/PDF/procurement_contracts_Procedure_Rules.pdf)

## **15. Sponsorship**

- 15.1 Where an outside organisation intends, or wishes, to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic rules concerning acceptance of gifts or hospitality apply. Particular care must be taken by employees when dealing with contractors or potential contractors.
- 15.2 Where the Council wishes to sponsor an event or service neither an employee nor any partner, spouse or close relative must benefit from such sponsorship in a direct way without there being full disclosure to the appropriate Head of Service of any such interest.



15.3 Similarly, when the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest involved.

15.4 Should any employee, his or her partner, spouse or close relative(s) benefit from this sponsorship, this must be declared on the form.

**16. Failure to Comply with the Code of Conduct for Local Government Employees**

16.1 Any contravention of this Code of Conduct could result (or be taken into account) in disciplinary proceedings.

16.2 Should there be a need to undertake an investigation into an employee's standard of behaviour it will be necessary to examine the Registers, attached in Appendix 'A', 'B' and 'C', and any evidence obtained from these sources may, together with any other information, be used to assist with the investigation.

16.3 In some instances, declarations or failure to declare, may need to be reported to the police

**17. Application of the Code of Conduct**

17.1 The Code embodies general standards of conduct for all employees of the Council. It is recognised, however, that arrangements will need to be made in Directorates to address specific circumstances encountered by employees.

17.2 The Register of declarations will be maintained by the secretary of each Director or the Chief Executive.

**18. Review**

18.1 This Code of Conduct will be reviewed every 3 years by the Head of Human Resources and Head of Legal Services

# Declaration/Authorisation of Acceptance of Gifts/Hospitality

Human Resources

## APPENDIX A

Declaration/Authorisation of Acceptance of Gifts/Hospitality	
Name (please print)	
Employee Number	
Directorate	
Section 1 - Declaration	
Details of gift(s)/hospitality/invitation(s) offered. Date of hospitality must be included within the details.	
Estimated value (if possible) of gift(s)/hospitality/invitation(s)	
Name and address of person/organisation making the offer	
Their relationship with the Council	
Offer accepted or gift/hospitality received Yes/No (delete as appropriate)	
I declare that the information given above is correct to the best of my knowledge and belief	
Signed	Date

<b>Section 2 - Authorisation</b>			
<b>Manager Comments</b>			
<b>Name (please print)</b>			
<b>Signed</b>		<b>Date</b>	

Please return to your Director's Secretary

# Register of Business, Financial, Private, Personal and Other Interests/Involvements

Human Resources



## APPENDIX B

**(To be completed by all employees where there needs to be a declaration, as outlined in this policy or there is a perceived/potential conflict of interest.**

**Please refer to 9.2 of the Procedure.)**

Register of Business, Financial, Private, Personal and Other Interests/Involvements	
Name (please print)	
Directorate	
Employee Number	
Section 1 – Declaration	
I hereby declare the following interests that may be relevant to or be likely to affect my employment with Neath Port Talbot County Borough Council. Please outline nature of the potential conflict of interest in the relevant box.	
1. Business  Name and address and nature of additional business interests.	
2. Consultancy	

<p><b>Name and address of Partnership, Company, firm or other body or individual on behalf of whom consultancy is undertaken and nature of the consultancy, with an indication of frequency or volume of such work.</b></p>	
<p><b>3. Directorships</b></p> <p><b>Name and address and nature of business of each Company or other body of which you are a Director, with an indication of whether it is in a paid or unpaid capacity.</b></p>	
<p><b>4. Partnerships</b></p> <p><b>Name and address and nature of business of each firm with which you are a partner.</b></p>	
<p><b>5. Interests in Land Within the Borough</b></p> <p><b>Address or description of land or property within the County Borough of Neath Port Talbot in which you have an interest, the nature of the interest and the use to which the land is put i.e. if you own a property in the Neath Port Talbot area it should be identified here.</b></p> <p><b>Please note:</b></p> <p><b>(a) Interests as a freeholder or leaseholder for a lease of 12 months or more should be declared (For the avoidance of doubt this includes any property to which you</b></p>	

<p>are the legal owner whether individually or jointly);</p> <p>(b) Interests as an option holder or prospective purchaser should be declared;</p> <p>(c) Interests by which you are directly concerned in seeking planning permission or some other consent or decision of the Council should be declared;</p> <p>(d) You need not declare interests in land or property outside the Borough.</p>	
<p><b>6. Retainers</b></p> <p>Name and address of any organisation to whom you are engaged on a retainer basis and the nature of the retainer.</p>	
<p><b>7. Memberships/Associations</b></p> <p>List any organisation (including voluntary bodies) with which you have membership/ association, e.g. clubs and societies.</p>	
<p><b>8. Relationships</b></p> <p>Outline any potential relationships issues where there may be a conflict of interest.</p>	
<p><b>9. Further Information/Any Other Declaration</b></p> <p>Please give any further information you may wish to record about your business, financial or personal interests.</p>	

<b>If in doubt as to whether there is a potential conflict of interest, then please speak to your Manager in the first instance.</b>			
<b>Employee Declaration</b>			
I declare that the above information is correct to the best of my knowledge and belief.			
<b>Signed</b>		<b>Date</b>	
<b>Section 2 - Acknowledgement</b>			
<b>Manager Comments</b>			
<b>Name (please print)</b>			
<b>Signed</b>		<b>Date</b>	

**Please return to your Director's Secretary and continue on a separate sheet if necessary**

# Additional Employment/Work

(A separate form must be used for each employment)

Human Resources



## APPENDIX C

Details of Additional Employment/Work (outside your employment with the Council)

Additional Employment/Work Form	
Employer	
Nature/Type of Business	
Number of Hours Worked (per week)	
Other Relevant Information	Do you envisage a conflict of interests between this employment/outside practice and your employment with the Council? YES/NO (please delete as applicable) If YES – please outline below
Section 1 – Declaration	
Please Print Name	
Contact Number	



<b>Service Department</b>			
<b>Job Title</b>			
<b>Payroll Number</b>			
<b>Signed</b>		<b>Date</b>	
<b>Section 2 - Authorisation</b>			
<b>Manager Comments</b>			
<b>Please Print Name</b>			
<b>Signed</b>		<b>Date</b>	

If the total amount of work (in this Council and Outside Employment) you undertake exceeds 48 hours per week, please refer to the Working Time Regulations 1998 <http://www.legislation.gov.uk/uksi/1998/1833/contents/made> and notify your manager.

Please return to your Director's Secretary

## Declarations of Officer's Interest – Monitoring

### **Authorisation and Maintenance**

- ❖ Chief Executive to have his/hers authorised by the DOFCS/Monitoring Officer. CEX secretary to maintain the file.
- ❖ Directors to have theirs authorised by the CEX. Their secretaries to maintain the files.
- ❖ HOS to have theirs authorised by the Directors. Directors' secretaries to maintain their files.
- ❖ Accountable managers to have theirs authorised by HOS. Directors' secretaries to maintain their files.
- ❖ All other staff to have theirs authorised by their Head of Service or accountable manager. Directors' secretaries to maintain their files.

### **Frequency of declarations**

- ❖ **Directors/HOS** – Declarations should be made immediately when an instance arises and annually for any nil returns.
- ❖ **Accountable Managers** – Declarations should be made immediately when an instance arises and annually for any nil returns.
- ❖ **All Other Staff** – Must provide declarations as and when any instances arise.

### **Code of Conduct**

- ❖ The Code to be made prominent and easily accessible on the intranet.
- ❖ Regular reminders to be flashed up on the screen.

### **Monitoring by Internal Audit**

- ❖ Check all Directors/HOS files on an annual basis.
- ❖ Check all accountable manager files on an annual basis.
- ❖ Check a sample of all other staff files on an annual basis.

<b>NATURE OF RELATIONSHIPS</b>
--------------------------------

**Councillors**

1. The purpose of this Protocol is to guide Elected Councillors and employees of the Council in their relations with one another in such a way as to ensure the smooth running of the Council. Given the variety and complexity of such relations, this Protocol Does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances. Both Elected Councillors and employees are involved in public service. However, their respective roles are quite different:
  - ❖ Elected Councillors are responsible to the electorate;
  - ❖ Employees are responsible to the Chief Executive as Head of the Paid Service, and to their respective Corporate Directors.

Individual Elected Councillors are not permitted to give instructions to employees unless specifically authorised to do so by the Council, or by a Committee, or by the Executive.

An employee's job, where it is part of his/her duties, is to provide appropriate advice to elected Councillors with impartiality. Such advice must be given in an equitable manner, irrespective of the political nature of the elected Councillor concerned. At the heart of the this Protocol, is the importance of mutual respect. Councillor/Employee relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Councillor and Employees should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party

Where an employee feels that s/he has not been properly treated with respect and courtesy by an elected Councillor s/he should raise the matter with his/her Head of Service, Corporate Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the Councillor concerned. In these

circumstances the Head of Service, Corporate Director or Chief Executive will take appropriate action either by approaching the individual Councillor and/or group leader or by referring the matter to the Monitoring Officer.

A Councillor should not raise matters relating to the conduct or capability of an employee in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Employee has no means of responding to such criticisms in public. If a Councillor feels s/he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Employee, and fails to resolve it through direct discussion with the Employee s/he should raise the matter with the respective Head of Service. The Head of Service will then look into the facts and report back to the Councillor. If the Councillor continues to feel concern, the s/he should report the facts to the Corporate Director who heads the Directorate concerned, or if, after doing so, is still dissatisfied should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an Employee in respect of a complaint, will be in accordance with provisions of the Council's Disciplinary Rules and Procedures.

This Protocol is a local extension of the Members' and Employees' Codes of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes

2. Mutual respect between employees and Councillors is essential to good local government and working relationships must be kept on a professional basis. Close personal familiarity between employees and individual Councillors can damage this relationship and prove embarrassing to other employees and Councillors.
3. Many employees necessarily acquire information during the course of their employment that has not yet been made public and is, therefore, still confidential. It is a betrayal of trust to disclose such information and you must never disclose or use confidential information for your own personal advantage or for someone known to you, or if to the discredit of the Council, or anyone else.

4. Where an employee has a grievance about a matter relating to his/her employment, this should be pursued through the agreed grievance procedure with trade union involvement as necessary - a direct approach to elected Councillors, which interferes with a formal process, is not permitted, and may result in disciplinary action.
5. In addition to the general principles detailed above, the following guidelines have been compiled with the purpose of establishing what does, and what does not, constitute acceptable behaviour:

#### **Employees may**

- ❖ Give advice to elected Councillors, where such a requirement is part of their job, on professional and/or operational matters which are within the jurisdiction of their area of responsibility. Employee advice must not extend beyond providing information and advice in relation to matters of Council business. Employees must not be involved in advising on matters of political party business. The observance of this distinction will be assisted if Employees are not present at meetings or parts of meetings, when matters of party business are to be discussed;
- ❖ Respond to individual complaints or queries from elected Councillors and give relevant factual information relating to services with which they are concerned.

#### **Employees must not**

- ❖ Let their personal or private interest influence their working relationships with elected Councillors;
- ❖ Act in any way which may result in suspicions of improper conduct arising.

#### **Local Communities and Service Users**

6. Employees should always remember their responsibilities to the communities they serve and to ensure courteous, efficient and

impartial service delivery to all groups and individuals within these communities as defined by the policies of the Council.

### **Contractors**

7. All relationships of a business or private nature with external contractors, or potential contractors, must be made known by employees to their Head of Service. Orders and contracts must be awarded on merit and in accordance with the Council's Contract Procedure Rules, and no special favours should be shown to businesses run by, for example, friends, partners or relations in the tendering process. No part of any community within the County Borough should be discriminated against.
8. Employees who engage or supervise contractors, or have any other official relationship with contractors, and have previously had or currently have a relationship in a private or domestic capacity with contractors, must declare such a relationship to their Head of Service.

### **Service Users**

9. Employees who are in close contact with service users both in the community and residential settings may find themselves placed in invidious situations for a number of reasons. Where such circumstances arise, employees must not:
  - (a) Accept presents in money or goods for themselves or members of their family;
  - (b) Accept loans of money or goods to themselves or members of their family;
  - (c) Enter into financial arrangements with the service user, e.g. by buying goods from the service user, or selling goods/services; similar restrictions also apply to the employee's family;
  - (d) Assist with the preparation of a Will, or Deeds of Gift.

Adherence to these measures will assist employees to minimise any risk of accusation that undue influence has been exercised by an employee over a service user.



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **Neath Port Talbot County Borough Council**

### **STANDARDS COMMITTEE**

**31 January 2023**

**Report of the Chief Finance Officer – Huw Jones**

**Matter for Information**

**Wards Affected: ALL**

### **Whistleblowing Arrangements.**

#### **1. Purpose of Report**

1.1 The purpose of this report is to provide the Committee with details of the Council's whistleblowing arrangements and to provide a summary of the number of referrals received and investigated by Internal Audit during the last 5 financial years.

#### **2. Executive Summary**

2.1 The Council has had a Whistleblowing Policy (copy attached as appendix 1 to this report) in place for a number of years. It was last updated in April 2022.

2.2 Whistleblowing arrangements are well embedded across all Council services and the policy is readily available to staff on the Council's Intranet site.

2.3 The Whistleblowing Policy forms an important part of the Council's overall governance arrangements.

### **3. Background**

- 3.1 Whistleblowing is used to describe situations where an employee provides information to their employer or a regulator which has come to their attention through work.
- 3.2 Whistleblowing is therefore making a disclosure in the public interest and occurs where an employee raises a concern about danger or illegality that affects others. Examples of concerns which could be reported include:
- Unlawful conduct
  - Disclosures which relate to miscarriages of justice
  - Health & Safety risks
  - Damage to the environment
  - The unauthorised use of public funds
  - Possible fraud, bribery, corruption or malpractice
  - Abuse of service users
  - Unethical conduct
- 3.3 The Public Interest Disclosure Act 1998 protects a worker who reports concerns about where they work if they genuinely believe that their concerns are true.

### **4. Number of concerns raised and investigated 2018 to date**

4.1	2018/19	9
	2019/20	4
	2020/21	9
	2021/22	11
	2022/23	4 (to date)

### **5. Actions taken and outcomes**

- 5.1 All Whistleblowing allegations received are reported to the Governance & Audit Committee
- 5.2 All allegations received were assessed, whether made anonymously or not and investigated by either the Audit Manager or the Senior Auditor.



- 5.3 Where the Whistleblower made themselves known they were kept abreast of the investigation progress.
- 5.4 Formal reports were issued where appropriate in line with normal Internal Audit protocols i.e. copied to the Chief Executive, the responsible Corporate Director and Head of Service, Chief Finance Officer in his role as Section 151 Officer and Audit Wales our external auditors. Where an allegation could be disproved quickly e.g. where it related to the Whistleblower perceiving acceptable conduct to be inappropriate a report would not be issued. These instances, tend to relate to the use of Authority vehicles or equipment or staff not being in work when the Whistleblower assumes they should be.
- 5.5 When appropriate disciplinary action was taken in line with the Authority's Disciplinary Policy and Processes.
- 5.6 Where the investigation highlighted any internal control weaknesses recommendations were made within the report to strengthen the controls operating.

## **6. Conclusion**

- 6.1 Whistleblowing is well embedded within the Council which is evidenced by the number and range of disclosures made.
- 6.2 None of the allegations received to date have been deemed to be malicious.

## **7. Appendices**

Appendix 1 – Whistleblowing Policy.

## **8. Financial Impacts**

None.

## **9. Integrated Impact Assessment**

There is no requirement to undertaken an Integrated Impact Assessment as this report is for information purposes.

**10. Valley Communities Impacts**

No impact

**11. Workforce Impacts**

No impact

**12. Legal Impacts**

No impact

**13. Risk Management Impacts**

There is no requirement for external consultation on this item

**14. Consultations**

There is no requirement for external consultation on this item.

**15. Recommendation**

That members note the contents of this report.

**Officer Contact**

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Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

# Whistleblowing Policy

## Polisi Chwythu'r Chwiban.

**Whistleblowing Policy**  
**Polisi Chwythu'r Chwiban.**

*Os hoffech dderbyn gohebiaeth mewn perthynas â'ch cyflogaeth yn Gymraeg, [cysylltwch â'ch Swyddog AD dynodedig.](#)*

<b>Version</b>	<b>Date</b>	<b>Action</b>
1	31 <sup>st</sup> August 2015	New Document
2	19 April 2018	Review and Amendment
3	1 <sup>st</sup> January 2020	Review and Amendment
4	11 <sup>th</sup> April 2022	Review and Amendment
5	11 <sup>th</sup> April 2025	To be reviewed

## 1. Introduction

The purpose of this policy is to encourage workers to disclose any malpractice or misconduct (whistleblowing) of which they become aware and importantly to provide protection for workers who report allegations of such malpractice or misconduct.

The whistleblowing policy is designed to ensure that all allegations of malpractice or misconduct are thoroughly investigated and suitable action taken where necessary.

The policy is intended to encourage and enable workers to raise serious concerns within the Council, rather than overlooking a problem or 'blowing the whistle' outside.

## 2. Definitions

**Whistleblowing** is used to describe situations when an employee or a worker provides certain types of information, usually to the employer or a regulator, which has come to their attention through work. Whistleblowing is therefore 'making a disclosure in the public interest' and occurs when a worker raises a concern about danger or illegality that affects others, for example, members of the public.

Examples of the concerns which could be reported include:-

- Conduct which is an offence or a breach of law
- Disclosures related to miscarriages of justice
- Health and safety risks, including risks to the public as well as other employees
- Damage to the environment
- The unauthorised use of public funds
- Possible fraud, bribery, corruption or malpractice
- Sexual or physical abuse of clients, or
- Criminal offences as defined by the Bribery Act 2010
- Other unethical conduct

Any serious concerns that you have about any aspects of service provision or the conduct of Officers or Members of the Council or others acting on behalf of the Council can be reported via the Whistleblowing Policy.

This may be about something that:

- (a) makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to;
- (b) is against the Council's Constitution and policies;
- (c) falls below established standards of practice;
- (d) amounts to improper conduct.

The Public Interest Disclosure Act 1998 (PIDA) protects a worker who reports concerns about where they work, if that worker genuinely believes their concerns are true. See Appendix A.

- When someone blows the whistle, they are raising a concern about danger or illegality that affects others (e.g. customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern - they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice. He or she is a messenger raising a concern so that others can address it.
- This is very different from a **complaint**. When someone complains, they are saying that they have personally been poorly treated. This poor treatment could involve a breach of their individual employment rights or bullying and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and, for this reason, is expected to be able to prove their case.
- For these reasons, it is not in anyone's interests if the Council's whistleblowing policy is used to pursue a personal grievance. The Council has a **Grievance Procedure** and this will be more appropriate for making a complaint.
- People who use services, their relatives or representatives or others can make complaints about a service, using the **Corporate Comments, Compliment and Complaints Policy**. This is not whistleblowing.

### 3. General Principles

3.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it is expected that workers that we deal with, who have serious concerns about any aspect of the Council's work will come forward and voice those concerns.

3.2 Any whistleblowing worker is protected against adverse employment actions (discharge, demotion, suspension, harassment, or other forms of discrimination) for raising allegations of business misconduct. **A worker is protected even if the allegations prove to be incorrect or unsubstantiated.** Workers who participate or assist in an investigation will also be protected.

3.3 The Council is committed to equality of opportunity in employment and is determined that unlawful discrimination or harassment, will not be accepted at the workplace. All employees should be aware that offences which constitute discriminatory behaviour will be regarded as potentially serious disciplinary matters.



- 3.4 All persons residing, visiting or working within the County Borough, whether service user, employee or worker, have the right to be treated with fairness and dignity.
- 3.5 If requested by the whistleblower, all reasonable steps will be taken to protect the anonymity of the whistleblower. However, under certain circumstances, to assist with the investigation, or subsequent actions to the investigation, the individual's identity may need to be revealed.
- 3.6 Any act of retaliation or victimisation against the whistleblower will result in disciplinary action, up to and including termination of employment.
- 3.7 The malicious use of the whistleblowing policy will result in disciplinary action against the whistleblowing complainant, up to and including termination of employment.

#### **4. Those covered by this Policy**

This Policy applies to all employees of the County Borough Council, including those employees employed by schools operating under fully delegated personnel powers.

This policy also applies to all contractors working for the Council on Council premises, for example, agency staff, builders and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example care homes.

#### **5. Accessibility**

A copy of this Policy will be made available on the Intranet.

#### **6. Links with Other Policies**

6.1 The Code of Conduct outlines the standards of behaviour expected of Council employees. Where employees are covered by their own professional codes of conduct, it is a requirement for them to adhere to these too.

6.2 This policy is separate from the Complaints Policy and other statutory reporting procedures adhered to in some directorates.

6.3 Where employees abuse the Whistleblowing Policy, they will be subject to appropriate action under the Disciplinary Policy. Equally, those employees who victimise whistleblowers, or commit an offence linked with the act(s) reported via whistleblowing, will be subject to disciplinary action.

6.4 Bullying and harassment – The Council will not tolerate any harassment or victimisation, and will take appropriate action to protect employees when they raise a concern under this policy. Should an employee feel that s/he is being bullied or harassed by an employee of the Council, then they should refer to the Dignity at Work Policy.

6.5 The Equality Duty requires the Council to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out duties. Employees are required to comply with policies relating to equality issues, and familiarise themselves and adhere to the Equality of Opportunity in Employment Policy and Equality of Opportunity in Service Delivery Policy.

6.6 Grievance – where a concern is not sufficiently serious nor of major concern, then the Grievance Policy should be used to address the matter, if informal channels have been explored.

## **7. Timescales**

Actions set out in this policy should be completed in as short a time scale as is reasonably possible. Timescales should be adhered to unless there are compelling reasons not to do so. If it is not possible to operate within these timescales, the parties involved must be informed and Responsible Officer, in conjunction with Human Resources, will decide whether an extension is appropriate.

## **8. Record Keeping**

A central record shall be maintained by Internal Audit of all whistle-blowing concerns raised.

Data processed through a scheme that promotes anonymous whistle-blowing should be deleted or archived within two months of conclusion of the investigation unless it has led to disciplinary or legal proceedings.

All managers and professional advisors involved in the whistle blowing process must be fully capable of discharging their duties, and should take responsibility for ensuring that they are appropriately trained in order to perform their role satisfactorily.

## **9. Roles and Responsibilities**

### **9.1 Employee**

- Employees have a contractual obligation to conduct their work in an honest and loyal manner, and adhere to the disciplinary rules of the

Council.

- Employees must familiarise themselves with and abide by the Code of Conduct. Failure to comply could result in disciplinary action.
- It is essential that employees bring any improper conduct to the attention of their line manager, if appropriate, who will then inform Internal Audit. Failure to do so could in itself be a disciplinary matter. For example failure to report a child or adult protection issue.

## **9.2 Line Manager**

- Line managers are responsible for making employees aware of the Council's standards of behaviour, enforcing rules, and ensuring breaches are tackled promptly, reasonably and fairly.
- Managers must also ensure that they encourage employees to report any concerns directly to them and then forward the concerns to Internal Audit for investigation
- Managers must not, under any circumstances, ask an individual to obtain further information covertly, from another person, without following this procedure. Failure to do so may infringe Human Rights and render the Council liable to legal action.

## **9.3 Human Resources**

- HR should ensure the provision of robust employment advice and support where appropriate.

## **9.4 Head of Service**

- Heads of Service should ensure that the Policy is adhered to and any resulting outcomes are consistent.
- They must ensure that investigations are completed in a timely and professional manner, that suspensions are sanctioned after appropriate risk assessments, and are for reasonable periods, and that any disciplinary hearings occur promptly following the conclusion of any investigation.
- They must nominate an appropriate Investigating Officer if the investigation is not to be undertaken by Internal Audit.
- They must ensure that when any witnesses are requested, that they are

notified when they should attend any investigatory meeting or hearing, and that they are afforded the time to attend.

- They must review the outcome of the investigation, or nominate an appropriate deputy to do so, and confirm whether the recommendations of the report should be actioned, and if so, ensure that they are.

#### **9.5 Trade Union/Workplace Representative**

- Representatives must behave in a professional manner, and follow due process, raising any concerns regarding the management of the process with the relevant Head of Service.

#### **9.6 Role of Investigating Officer (when not Internal Audit)**

- To investigate the whistleblowing complaint, establish if there is a case to answer and make appropriate conclusions and recommendations.
- The Investigating Officer is appointed by the Head of Service. The Investigating Officer should receive and review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, and whether there should be a disciplinary hearing.

#### **9.7 Internal Audit Service**

- Internal Audit is charged with the responsibility for being the usual means of investigating suspected fraud, corruption malpractice and bribery. For further information please refer to the appropriate Code of Conduct. Employees of the Internal Audit Section have experience in investigating such matters, and the Audit Manager and staff will always be receptive to discussing concerns raised by employees or by the general public.
- If the concerns are of a very specialist malpractice nature, the investigation may have to be carried out by persons other than Internal Audit. Internal Audit will request an appropriate nomination from the relevant Head of Service.
- Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.
- Internal Audit will maintain a log of all reported Whistleblowing cases and provide a restricted update to the Audit and Governance Committees.

- The Audit Manager will lead any investigation raised via the Whistleblowing Policy, and recommend whether corrective action is required and, where there is a case to answer, whether there should be a disciplinary hearing.

#### **9.8 Head of Legal and Democratic Services/Monitoring Officer**

- The Head of Legal and Democratic Services fulfils the role of Monitoring Officer and reports to Standards Committee on Whistleblowing. The Audit Manager updates the Monitoring Officer in relation to disclosures and investigations. Confidentiality is maintained at all times.
- If there is conflict between the provisions of the Whistleblowing Policy and any other relevant policy or procedure, the Monitoring Officer's will determine which will prevail.

### **10. Process for Reporting Whistleblowing Concerns**

It is usually recommended that a worker raise concerns openly within the Council, but it is also recognised that sometimes this is not possible.

- 10.2 In the first instance an employee or worker should consider discussing the matter with their line manager, or another member of their management team. Managers should deal quickly and effectively with concerns about their service. However, where this proves unsuccessful the matter maybe dealt with more formally (see 10.3-10.5).
- 10.3 If the complainant is not directly employed by the service in question they might also want to discuss their concerns with their own line manager so that they can consider what action to take. For example, a Social Worker may have concerns about a school they visit and report these to their line manager in the Social Services. These disclosures are also protected.
- 10.4 Where a worker lacks confidence that management may deal with the matter appropriately or feels that management maybe involved or associated with the issue of concern, **Internal Audit can be contacted on 01639 763628**. It is always preferred that the whistleblower identifies themselves when they contact Internal Audit as this enables the investigation to proceed more effectively if however the whistblower does not wish to disclose their identity an investigation will still be undertaken based on the information disclosed.

This telephone number is staffed by the Council's Internal Audit Service. Internal Audit will either investigate the concern directly or forward the concern to a more appropriate Service within the Council. This could include:-

- Health & Safety
- Adult Protection Co-ordinator for vulnerable adults' cases.
- PO Placement Review & Child Protection Co-Ordinator for child cases

10.4 An employee or worker can also contact a **Prescribed Body**, as outlined below. Should a worker wish to make a whistle-blowing disclosure outside the Council, care should be taken not to disclose confidential information. Advice on rights and responsibilities may possibly be gained from the party the complaint is taken to.

10.4.1 A 'prescribed body' is one which is identified under PIDA as able to receive concerns about organisations. Most regulators are prescribed bodies.

10.4.2 An employee or worker can raise concerns with a prescribed body, or any other such body, if it is relevant to that body. Such disclosures are protected under PIDA law, where the whistleblower meets the criteria for disclosure. They must also reasonably believe that the matter is substantially true and relevant to the regulator. Examples of prescribed bodies are:

- The Public Services Ombudsman for Wales
- HMRC
- Financial Services Authority
- Health and Safety Executive
- The Information Commissioner
- Regulator of Social Housing
- Care Inspectorate Wales
- Pensions Regulator
- Food Safety Agency
- Audit Wales
- Qualifications Wales

10.5 **Independent advice** may be sought before raising a concern, by contacting a trade union or professional regulatory body, or referring to guidance issued by them. Free, confidential advice can be obtained from independent whistle-blowing charity Protect (formerly Public Concern at Work):

**Protect**  
**The Green House**  
**244 – 254 Cambridge Heath Road**  
**London**  
**E2 9DA**

📧: <https://protect-advice.org.uk/contact-protect-advice-line/>

☎: 020 3117 2520

🌐: <https://protect-advice.org.uk>

## **11. Process for dealing with whistleblowing concerns**

11.1 All whistleblowing concerns must be forwarded to Internal Audit, if not directly by the whistleblower, then by the recipient.

11.2 Internal Audit will then either investigate the complaint directly, or when not fraud related, will ask a Head of Service to nominate a suitable professional to investigate and, where appropriate, may:

- Refer the matter to the police
- Refer the matter to the external auditor
- Engage in the subject of an independent inquiry

11.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

11.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

11.5 Within 14 calendar days of a concern being raised with them, Internal Audit will write to the whistleblower if the identity of the whistleblower is known:

- acknowledging that the concern has been received
- indicating how the Council proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- advising whether any initial enquiries have been made
- supplying information on staff support mechanisms, and
- advising whether further investigations will take place and if not, why not.

11.6 The amount of contact between the officers considering the issues and the

whistleblower, will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from the whistleblower.

- 11.7 Where any meeting is arranged, the whistleblower can be accompanied by a trade union or professional association representative or a work colleague.
- 11.8 The Council will take steps to minimise any difficulties which a whistleblower may experience as a result of raising a concern. For instance, if s/he is required to give evidence in criminal or disciplinary proceedings the Council will arrange for him/her to receive advice about the procedure.
- 11.9 The Internal Audit Service, or nominated officer, will produce a report on the findings of the investigation. The format of the report will not always be the same as each case is unique, but will frequently set out:
- How the investigation arose
  - Who the suspects are
  - Their position within the Authority and their responsibilities
  - How the investigation was undertaken
  - The facts and evidence which were identified
  - Summary of findings and recommendations, both regarding the fraud, malpractice, corruption or bribery and any additional work required on the system weaknesses during the investigation.
- 11.10 The Council accepts that whistleblowers need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, the Council will inform whistleblowers of the outcome of any investigation.
- 11.11 All reports must be presented to the Head of Service. They will (or nominate someone to do so) review the findings of the investigation and recommend whether the matter needs to be reported to a regulator, whether corrective action is required and recommend, where there is a case to answer, whether there should be a disciplinary hearing. Where disciplinary action is required, please refer to the Disciplinary Policy. Please note that all employees involved in the whistleblowing process will be required to support the disciplinary process as necessary.

Internal Audit will ensure that the whistleblower is kept up-to-date with the handling of their disclosure, with any support or advice as necessary from HR.

Please refer to flowchart in Appendix B for a summary of the process.

## **12. Protection for Whistleblowing**

Under PIDA, the law says that a worker is protected from the risk of losing their position or suffering any form of retribution as a result, provided that:



- The information is a protected disclosure
- It is made in the public interest
- The worker reasonably believes that information, and any allegations contained in it, are substantially true
- The worker is not acting for personal gain
- Making the disclosure does not involve the worker committing a criminal offence

For a worker's disclosure to be protected by PIDA, it must be a 'protected disclosure'. The worker must:

- Make sure the information is of a 'qualifying' nature (see Appendix A)
- Make a disclosure of information that, in the reasonable belief of the worker making the disclosure, is made in the public interest
- Reasonably believe that the information is substantially true
- Reasonably believe that they are making the disclosure to the right 'specified person'

Please see Appendix A for further information about making disclosures under PIDA.

Should a worker believe they have incurred any detriment (as per examples in 1.2), then if appropriate s/he should inform their line manager (or more senior manager if the detriment is caused by the line manager). Where the worker feels unable to report the detriment in their own management structure, then it should be reported to the Head of Human Resources or the Audit Manager.

### **13. Untrue Allegations**

Should an allegation be made frivolously, maliciously or for personal gain, disciplinary action may be taken against the individual concerned.

### **14. Review**

This policy will be reviewed every three years by the Head of People and Organisational Development, the Head of Legal and Democratic Services and Audit Manager.

### The Public Interest Disclosure Act 1998 (as amended 2013)

The Public Interest Disclosure Act 1998 (PIDA) offers protection to workers from any detriment from their employer that arises from the worker making a **'protected disclosure'**.

To qualify as a 'protected disclosure' the disclosure must satisfy a number of requirements under PIDA:

1. The worker must have made a **'qualifying disclosure'**. This is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more of the following:
  - (a) That a criminal offence has been committed, is being committed, or is likely to be committed
  - (b) That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject
  - (c) That a miscarriage of justice has occurred, is occurring, or is likely to occur
  - (d) That the health and safety of any individual has been, is being, or is likely to be endangered
  - (e) That the environment has been, is being, or is likely to be damaged
  - (f) That information tending to show any matter falling within any of the preceding paragraphs has been, or is likely to be deliberately concealed

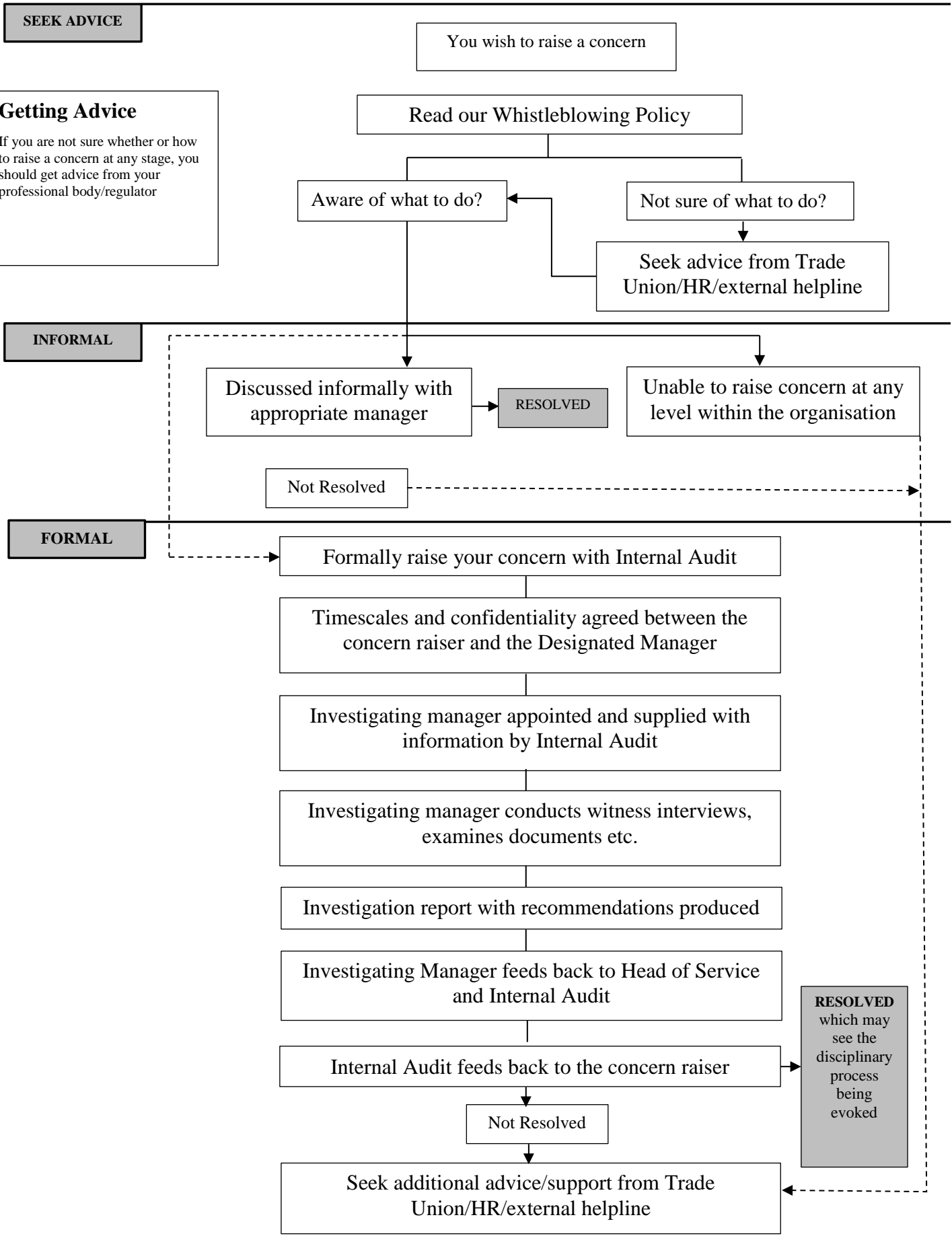
A disclosure of information is not a qualifying disclosure if the person making it commits a criminal offence in doing so.

The qualifying disclosure must be made in **the public interest**.

3. The worker must make the qualifying disclosure to one of a number of **'specified persons'** set out in PIDA, which include:
  - (a) The worker's **employer** or, if they reasonably believe that the failure relates solely or mainly to (i) the conduct of a person other than their employer or (ii) any other matter for which a person other than their employer has legal responsibility, **to that other person**
  - (b) A **'prescribed person'**, which includes CQC. However, the worker must reasonably believe that the information disclosed and any allegation contained

in it is substantially true. The worker must also reasonably believe that the relevant failure being disclosed falls within any description of matters for which CQC is a prescribed person.

Where the above requirements are satisfied, a worker who has made a protected disclosure is protected under PIDA from dismissal or any other detriment arising from making that disclosure. Detriment can include detriment suffered from a previous employer where, for example, the employer refused to give a reference because the worker has made a protected disclosure. A worker who suffers dismissal or detriment may bring a claim for compensation (which is unlimited) in the Employment Tribunal. The term 'worker' includes employees, contractors or self-employed people.



## NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

### STANDARDS COMMITTEE

31 January 2023

#### REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR C GRIFFITHS

##### **Matter for Information**

**Wards Affected:** All

##### **Recent decision of the Adjudication Panel for Wales relating to Members Code of Conduct Breaches**

##### **Purpose of the Report**

1. To draw to Members attention to recent decisions of the Adjudication Panel for Wales as the subject matter of this reports falls within the remit of the Standards Committee.

##### **Background**

2. The Adjudication Panel for Wales (APW) deals with the more serious code of conduct breach cases referred directly to it by the Public Services Ombudsman for Wales (PSOW) and any appeals made from decisions by local Standards Committees. Attached are 3 recent decisions by the APW for the committee to consider.
3. These are cases relating to:
  - Former Councillor Paul Dowson
  - Former Councillor Caryl Vaughan
  - Former Councillor Gordon Lewis
4. The Committee will note that in all 3 cases the individual in question was no longer a serving councillor but that the APW still imposed periods of disqualification ranging from 1-3 years. The reason for bringing it to Members attention today is that it provides some useful guidance with some practical

examples on how the Adjudication Panel for Wales feels the Members Code of Conduct maybe breached and the possible consequences this might have.

### **Financial Impact**

5. There are no financial impacts associated with this Report.

### **Integrated Impact Assessment**

6. There are no impacts associated with this Report

### **Workforce Impacts**

7. There are no workforce impacts associated with this Report

### **Legal Impacts**

8. The ethical framework of Members is as derived from the Local Government Act 2000 and the Members Code of Conduct is as set out in the Constitution of Neath Port Talbot County Borough Council (“the Council”) as created by the Conduct of Members (Model Code of Conduct) (Wales) Order 2001.

### **Consultation**

9. There is no requirement under the Constitution for external consultation on this item.

### **Recommendations**

10. That Members note the report of the Adjudication Panel for Wales regarding compliance with the Members Code of Conduct.

### **Appendices**

11. Appendix 1 – Decision of the Adjudication Panel for Wales

### **List of Background Papers**

12. The Constitution of Neath Port Talbot County Borough Council incorporating the Members Code of Conduct.

**Officer Contact**

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**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/009/2021-22/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE  
CODE OF CONDUCT**

**RESPONDENT:** Former Councillor Caryl Vaughan

**RELEVANT AUTHORITY(IES):** Llansantffraed Community Council

(Principal authority – Ceredigion County Council)

**1. INTRODUCTION**

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
- 1.2 As former Cllr Vaughan did not respond to the Public Services Ombudsman for Wales' ("the Ombudsman") reference, the Tribunal determined its adjudication by way of written representations and the evidence available to it at a meeting on 24 June 2022 by virtual means as it considered it to be in the interests of justice to do so.
- 1.3 When the term "the Ombudsman" is used, it is a reference to either the previous Ombudsman (Mr Nick Bennett) or the current Ombudsman (Ms Michelle Morris) or their staff. During the course of this matter, the officeholder changed but it did not affect any substantive issue to be considered by the Tribunal. It does though explain the mixed use of "*he*" and "*she*" when referring to the Ombudsman in this decision.

**2. PRELIMINARY DOCUMENTS**

**2.1 Reference from the Public Services Ombudsman for Wales**

- 2.1.1 In a letter dated 7 March 2022, the Adjudication Panel for Wales ("APW") received a referral from the Ombudsman in relation to allegations made against former Cllr Vaughan. The allegations were that former Cllr Vaughan had breached Ceredigion County Council's Code of Conduct paragraph 6(1)(a), applicable to the relevant authority's members and co-opted members, by committing a criminal offence and her surrounding actions while holding the office of Councillor, and allegedly being responsible for the generation of

adverse publicity. The Ombudsman's position is that these actions breach the Code of Conduct and brought both the office of Councillor and Llansantffraed Community Council into disrepute.

- 2.1.2 The Case Tribunal declined to consider if paragraph 6(1)(b) of the Code of Conduct has been breached as initially indicated by the President following her review of the reference. The Case Tribunal unanimously concluded that as the provision referred to reporting the possible criminal conduct of "*another member*", if this provision was meant to deal with self-reporting, it should state this unambiguously.
- 2.1.3 The background to the reference is that former Cllr Vaughan signed her declaration of acceptance of office as a member of Llansantffraed Community Council on 7 May 2019. Three days later, on 10 May 2019, she was involved in an incident with the Council's Contractor (a private individual who will be referred to as "the Contractor"), in which she drove her car at speed on private land at the Contractor while he was undertaking his duties for the Council. Former Cllr Vaughan was acting in her private capacity at the time of the incident. Her car struck two minors during the incident; at least one suffered bodily harm. The evidence suggests the Contractor and the minors were distressed by what had occurred.
- 2.1.4 Police investigated the incident between Former Cllr Vaughan and the Contractor. She continued in her role as a Councillor after the incident and after pleading guilty to the offence. Former Cllr Vaughan was charged with causing bodily harm by wanton and furious driving contrary to Section 35 of the Offences against the Person Act 1861. Former Cllr Vaughan pleaded guilty to the offence on 14 October 2020. She was sentenced on 9 December 2020 to a suspended sentence of 10 weeks' imprisonment, and her driving licence was endorsed with 8 penalty points; she was also required to pay a victim surcharge of £128. The sentence fell short of automatic disqualification from the office of councillor (Section 80A of the Local Government Act 1972 says that a sentence of three months or more disqualifies a person from the office of councillor).
- 2.1.5 Former Cllr Vaughan's sentencing attracted local media interest. She continued in her role as a Councillor after her sentencing. Former Cllr Vaughan resigned from the Council on 22 December 2020 after adverse media reports about the incident and her conviction. Former Cllr Vaughan sought advice from the Clerk, and did not report her own conduct to the Monitoring Officer or the Ombudsman. The other councillors also did not report her possible criminal offence to the Ombudsman, following advice from the Clerk which made no reference to the requirement to do so under paragraph 6(1)(b) of the Code.

## **2.2 The Councillor's Written Response to the Reference**

- 2.2.1 Former Cllr Vaughan did not respond to the reference. The only response received from her was to the Ombudsman in an email dated 18 November 2021, refusing to attend an interview:

*"I wish not to attend the interview as its a busy time for me with work commitments and unable to find time that would be adequate for the interview. I would like to draw a line underneath it all and move forward. I joined the parish council to have a young voice representing the village and after discussing with the clerk and other people was better to resign to avoid the interviews as for me would feel more pressure and would not be worth the worrying and stress."*

- 2.2.2 The Tribunal gave former Cllr Vaughan a further opportunity to make any submissions she wished to make to it by 23 May 2022; she failed to do so.

## **2.3 The Ombudsman's Written Representations**

- 2.3.1 In a letter dated 4 May 2022, the Ombudsman made further submissions. She referred the Tribunal to the report produced by her predecessor in relation to the facts and whether there was a breach of the Code of Conduct.
- 2.3.2 The additional submissions were regarding the action to be taken if a breach of the Code was found. The Ombudsman said that former Cllr Vaughan's alleged misconduct was serious and affected minors. She accepted that at the time of the offence, former Cllr Vaughan had only been a councillor for three days, but highlighted her failure to realise the seriousness and consequences of her actions, her failure to co-operate with the Ombudsman's investigation, the lack of remorse and reflection, and the media interest generated by her offence. The Ombudsman submitted that the appropriate sanction was disqualification, saying that such a sanction would be fair, proportionate and in the public interest to maintain confidence in local democracy.

## **3. FINDINGS OF FACT**

- 3.1 The Case Tribunal found the following **undisputed** material facts:
- 3.1.1 The matters outlined in paragraphs 2.1.3 to 2.1.5 were all undisputed and are found as facts.
- 3.2 There were no **disputed** material facts.

## **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

## **4.1 The Respondent's Submissions**

4.1.1 Former Cllr Vaughan made no submissions.

## **4.2 The Ombudsman's Submissions**

4.2.1 It was contended by the Ombudsman that former Cllr Vaughan did not resign after the event, and did not self-refer her actions for him to consider. It was pointed out that it was not until there was adverse local publicity, sometime after she was sentenced, that former Cllr Vaughan resigned her post; the Ombudsman submitted that this indicated a lack of recognition of the seriousness of her actions and the impact her behaviour and conviction might have on the reputation of her office and the Council. He said it raised also concerns about former Cllr Vaughan's fitness to hold public office.

4.2.2 The Ombudsman noted that the Clerk said that he did not advise former Cllr Vaughan whether she should make a self-referral to my office, but he did advise the Council as a whole that self-referral was an option. The Ombudsman accepted that this unclear advice from the Clerk could be seen as a mitigating factor. However, he remained of the view that given the nature of the criminal offence involving the Contractor, the impact upon the minors hurt in the incident, and the publicity surrounding the incident which refers to the Council indicated that former Cllr Vaughan's actions may have brought her office and the Council into disrepute. The Ombudsman submitted that a reference was necessary and in the public interest as currently former Cllr Vaughan could stand for re-election or be co-opted onto a relevant authority.

## **4.3 Case Tribunal's Decision**

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Llansantffraed Community Council's code of conduct as follows:

4.3.2 Paragraph 6(1)(a) of the Code of Conduct states that "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*".

4.3.3 The Case Tribunal found that former Cllr Vaughan's actions brought the office of councillor into disrepute, but not the Council itself. It considered it relevant at this point to make findings about the involvement of the Clerk to the Council and the nature of the adverse publicity in order to make its determination on this issue.

4.3.4 The Clerk to the Council, Mr Denfer Morgan, in the witness statement provided to the Ombudsman's investigation officer on 26 August 2021, said that he recalled mentioning the Ombudsman's complaints procedure to former Cllr Vaughan in case a complaint was made to the

Ombudsman after the incident that gave rise to the offence of which she was convicted. Mr Morgan said that he did not indicate to former Cllr Vaughan that he would make a reference to the Ombudsman (and he did not). Mr Morgan confirmed that some councillors had asked him about the complaints procedure, and he told them about it by email on or around 8 July 2020 and 15 December 2020. In his email to those members, the Tribunal noted that Mr Morgan failed to tell them about the requirements of paragraph 6(1)(b) of the Code and referred to a case where the accused councillor did not plead guilty and was found not guilty by a court.

- 4.3.5 Mr Morgan in his statement said that the advice he gave former Cllr Vaughan when her criminal case first went to court was not to refer the matter to the Ombudsman; he accepted that this advice was influenced by difficulties with the Contractor's contract with the Council. Mr Morgan explained that he and former Cllr Vaughan had discussed the options of self-referral, the possibility of a complaint and standing down from the office of councillor. Mr Morgan admitted that he told former Cllr Vaughan in a further discussion after her conviction in December 2020 that she would probably be found to have broken the Code of Conduct, so there was no reason for her to go through the Ombudsman's procedures and she should resign. Mr Morgan added that if former Cllr Vaughan had self-referred to the Ombudsman, or if a complaint was made against her and she remained in post as a Councillor, then taking part in an investigation would have been a strain on her.
- 4.3.6 It is evident that Mr Morgan did not inform the members of the Council of their obligation to report the possible criminal conduct of another member under paragraph 6(1)(b) of the Code, even after former Cllr Vaughan pleaded guilty. This omission is wholly unexplained, but it is not the responsibility of former Cllr Vaughan to give such advice. It is further the finding of the Tribunal that Mr Morgan and former Cllr Vaughan were aware that her criminal conduct was likely to be a breach of the Code by December 2020. Given that former Cllr Vaughan pleaded guilty in October 2020, the Tribunal finds that it is likely that former Cllr Vaughan knew much earlier, or should have known, that questions about the effect of her behaviour on whether she had breached the Code of Conduct arose. There is no evidence when Mr Morgan knew of the guilty plea, but his statement says he knew that she intended to plead guilty when the first court date was arranged.
- 4.3.7 Former Cllr Vaughan was not responsible for the advice given to her or the other councillors by Mr Morgan. However, the duty to comply with the Code cannot be delegated to another, including the clerk, by members. The advice given goes some way in the Tribunal's view to explaining why former Cllr Vaughan continued to serve in office and no reference or complaint was made to the Ombudsman at an earlier stage by either her or members of the Council.

- 4.3.8 The Tribunal turned to the alleged adverse publicity. The adverse press coverage disclosed consisted of four articles or letters to the press. One article was in Wales Online on 9 December 2020 headlined “*Farmer lost control of 4x4 moments after furious and 'pathetic' squabble about hedge*”. There was no reference to the Council or that former Cllr Vaughan was a serving councillor in this article. There was a video within the article showing how former Cllr Vaughan had driven. A letter from the parent of one of the minors involved was published in the Cambrian News, entitled “*18 months of hell for my family*” on 16 December 2020. This from the outset mentioned the office held by former Cllr Vaughan and the Council of which she was part, and that the Ombudsman would be receiving a complaint (though the letter writer did not make such a complaint). The third and fourth articles were also published on 16 December 2020 in Cambrian News and TruckerWorld. The article in the Cambrian News did not mention the Council or that former Cllr Vaughan was a serving Councillor. The Tribunal was told that there was an article in Aberystwyth Today on 16 December 2020, but a copy was not available and its contents are unknown.
- 4.3.9 The Tribunal observed from the emails of the Clerk that first contact by the media with the Council appeared to be on or around 8 July 2020. The Council was at that point aware of the likely public interest in the action of former Cllr Vaughan, and the email shows that she was made aware of the interest by the Clerk at that time.
- 4.3.10 The Tribunal found that it was not accurate to say that the adverse publicity regarding former Cllr Vaughan’s criminal act referred to her office as councillor or the Council. The only reference in the articles to the Council was to the Contractor working on its behalf. The only item that made any reference to the office of councillor or the actions of the Council was the letter from a family involved. The publicity generally did not bring the Council into disrepute; what left the Council vulnerable to criticism was its lack of action about former Cllr Vaughan and her continued presence as a councillor. The Code required the members to report the matter to the Ombudsman; the Clerk to the Council did not give the members this advice. Former Cllr Vaughan is not responsible for these failures or the negative publicity in the letter about the Council.
- 4.3.11 The Tribunal therefore focussed its attention on the criminal conduct of former Cllr Vaughan and her continued service on the Council after pleading guilty (and beforehand when she knew what she had done). The Tribunal reminded itself that paragraph 6(1)(a) expressly applies to conduct undertaken in a personal capacity. The case of Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) could not be directly translated into the legal position in Wales where the legislation and the mandatory provisions of the Code sets out in the relevant Welsh Regulations had, by clear wording, spelt out that Paragraph 6(1)(a) extended to a member’s conduct “*at all times and in any capacity*” under paragraph 2(1)(d).

- 4.3.12 The Tribunal considered that the act of driving a car by a councillor at a council Contractor and causing bodily harm to minors as a result, no less than a criminal act, in its own right brought the office held by that councillor into disrepute. The extent of the press coverage and whether it told readers of the office held by former Cllr Vaughan was to an extent irrelevant. What former Cllr Vaughan did was extraordinary and wholly inconsistent with the standard of behaviour for officeholders required by the Code and expected by the public. The public in particular was likely to view such unjustified and dangerous conduct as unacceptable, especially when it was directed at a council contractor undertaking work for the council of which former Cllr Vaughan was a councillor.
- 4.3.13 The Tribunal also considered that former Cllr Vaughan's decision to continue serving as a councillor after committing a criminal act of this nature and after pleading guilty to a serious criminal offence to be conduct bringing the office of councillor into disrepute. It ignored the Nolan principles and the wider Welsh public service principles. It was obvious from the evidence that former Cllr Vaughan only resigned, not because she felt any remorse or shame, but in order to avoid an investigation by the Ombudsman. The evidence of the Clerk demonstrated this. The likely view by the public of such conduct would be that former Cllr Vaughan had no regard or respect for the principles of public service, including integrity, openness, and leadership.

## **5. SUBMISSIONS ON ACTION TO BE TAKEN**

### **5.1 The Respondent's Submissions**

- 5.1.1 Former Cllr Vaughan made no submissions.

### **5.2 The Ombudsman's submissions**

- 5.2.1 The Ombudsman's submissions are recorded in paragraph 2.3 above.

### **5.3 Case Tribunal's Decision**

- 5.3.1 The Case Tribunal considered all the facts of the case and in particular the seriousness of the breach of the Code of Conduct and former Cllr Vaughan's persistent failure to engage with either the Ombudsman or the APW.
- 5.3.2 The Case Tribunal concluded by unanimous decision that former Cllr Vaughan should be disqualified for 12 months from being or becoming a member of Llansantffraed Community Council or of any other relevant authority within the meaning of the Local Government Act 2000.
- 5.3.3 The Registrar confirmed to the Case Tribunal that the Monitoring Officer had written to say that there were no previous findings of a breach of the Code of Conduct by former Cllr Vaughan.

- 5.3.4 The Sanctions Guidance of the APW issued by the President came into effect from 1 September 2018. It remains in force and was considered by the Case Tribunal. It followed the five-step process set out in paragraph 33 of the Guidance. The Guidance reminded the Tribunal that it should apply the underlying principles of fairness, public interest, proportionality, consistency, equality and impartiality, and respect human rights.
- 5.3.5 The Tribunal first considered the seriousness of the breach and any consequences for individuals and/or the Council. Former Cllr Vaughan had committed a criminal offence, very shortly after becoming a councillor, and two minors had been hurt, though fortunately not significantly. In addition, the evidence shows that of greater impact was the emotional and traumatic consequences on a long-term basis. Their emotional balance, sleeping, and school attendance had been affected, and at least one had to visit a medical practitioner as a result. Flashbacks and nightmares have resulted from the offence. The Contractor himself was distressed, particularly about the effect on the minors involved and the potential consequences of former Cllr Vaughan's actions (that someone could have died). The actions of driving the car had been directed at a Contractor for the Council of which former Cllr Vaughan was a councillor at the time while he was undertaking work for the Council.
- 5.3.6 The Tribunal found that the breach of the Code through the actions of former Cllr Vaughan was particularly serious. It was fortunate that only minor bodily harm and trauma resulted; the Contractor or the minors could have been killed or suffered more serious injuries. The seriousness of former Cllr Vaughan's actions were compounded by her inability to see what she had done was wrong as shown by her statement to the police following the incident that *"no-one will make a complaint against me...my conduct is perfectly lawful"*. Former Cllr Vaughan continued in office after she pleaded guilty, which indicated a lack of insight and undermined the respect for the office in which she served, a potentially serious consequence for local democracy.
- 5.3.7 The Tribunal then considered the broad type of sanction that it considered most likely to be appropriate having regard to the breach. It bore in mind that as former Cllr Vaughan had resigned from her office, its options were limited to no action or disqualification; if former Cllr Vaughan was still in office, suspension would have been an option. The Tribunal noted that the sentence imposed on her was close to the level resulting in automatic disqualification. It also bore in mind the provision in paragraph 44 of the Sanctions Guidance:

*"If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*



- 5.3.8 The Tribunal considered that the seriousness of the breach and former Cllr Vaughan's conduct was such that it rendered her entirely unfit for public office. It was satisfied that in broad terms, the appropriate sanction was likely to be disqualification.
- 5.3.9 The Tribunal turned to consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration. It has already noted that former Cllr Vaughan had only been in office for three days before she committed the criminal offence; it was unlikely that she had received any training regarding the Code of Conduct in such a short time. However, overall she had been in office for approximately 18 months, which would have given her an opportunity to attend such training.
- 5.3.10 The Tribunal also reminded itself of the advice given by the Clerk to the Council. Councillors are encouraged to seek the advice of the Clerk, who is meant to either advise or signpost councillors to the information they require, though this does not mean a councillor can delegate their own responsibility to comply with the Code to the clerk. However, in the view of the Tribunal, once former Cllr Vaughan decided to plead guilty to the offence and officially accept her culpability, it was for her to consider her position and whether she should self-refer to the Ombudsman. The conviction and the sentence did not result in her resignation. The Clerk's advice to resign was very late in the day and only after adverse publicity was generated about former Cllr Vaughan herself. The focus of that advice was about what was best for former Cllr Vaughan, not for the Council or the need to maintain confidence in local democracy. Mr Morgan failed to address the impact on the office of councillor and the council itself of a councillor who had been convicted of an offence continuing to serve without making a referral to the Ombudsman.
- 5.3.11 Former Cllr Vaughan's decision to remain in office without making a referral to the Ombudsman was in part explained by the advice she received from the Clerk, but her responsibility was not wholly expunged by this. The Tribunal considered the advice given by the Clerk to be a mitigating factor for former Cllr Vaughan but the failure to reflect for herself on her conduct and the lack of insight into her criminal act and the likely impact on the office of councillor and Council was viewed as an aggravating factor. Her conduct underlying the criminal conviction was in the view of the Tribunal "*deliberate or reckless conduct with little or no concern for the Code*" (paragraph 42 subsection x Aggravating factors, Sanction Guidance).
- 5.3.12 It was also an aggravating factor that former Cllr Vaughan resigned in the view of the Tribunal not because she had brought the office of councillor into disrepute or had behaved in a thoroughly reprehensible way towards the Contractor, but to avoid the Ombudsman's investigation (as shown by the Clerk's evidence). In addition, no apology to the Contractor or the minors has been given as far as the

Tribunal is aware, and former Cllr Vaughan chose not to co-operate with either the Ombudsman's investigation or these proceedings. The Tribunal concluded that former Cllr Vaughan's behaviour as a whole demonstrated no insight into or manifestation of the Nolan principles, despite her signed declaration that she would "*duly and faithfully fulfil the duties of it according to the best of my judgement and ability*" and comply with the Code.

5.3.13 The Tribunal considered any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of sanctions. It considered that no further adjustment was required and the appropriate sanction remained disqualification.

5.3.14 The Tribunal turned to consider the length of the disqualification period. It concluded unanimously that a period of 12 months was appropriate. It bore in mind other decisions of the APW where councillors had been disqualified, the seriousness of former Cllr Vaughan's breach and the need to maintain public confidence in local democracy. The Tribunal observed that cases where the period of disqualification exceeded 12 months tended to involve significant or extensive bullying and harassment or egregious conduct such as standing for election when already disqualified. It also bore in mind the events underlying the criminal conduct and the advice given to former Cllr Vaughan by the Clerk. If former Cllr Vaughan had remained in office but shown real remorse and insight, it was possible a sanction of suspension for 12 months would have been imposed. Taking all these matters into account, the Tribunal resolved on a 12-month disqualification period.

5.3.15 The Tribunal, having considered the above, confirms that its decision regarding the action to be taken is that former Cllr Vaughan is disqualified from holding public office in a relevant authority for a period of 12 months from 24 June 2022.

5.4 The relevant authority and the Standards Committee of the Principal Authority are notified accordingly.

5.5 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

## **6. CASE TRIBUNAL RECOMMENDATIONS**

6.1 The Case Tribunal makes the following recommendation(s) to the authority:

6.1.1 That all current councillors of Llansantffraed Community Council attend training on the Code of Conduct within a period of three months from today (to be provided by the Monitoring Officer, her delegate, One Voice Wales or any other appropriate provider) to ensure that they understand these provisions, including paragraph 6(1)(b);

6.1.2 That Llansantffraed Community Council considers requiring the attendance at such training by the Clerk to the Council.

Signed: C Sharp

Date: 27 June 2022

Tribunal Judge C Sharp  
Chairperson of the Case Tribunal

Dr G Jones  
Panel Member

Mr D Morris  
Panel Member

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**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/0010/2021-022/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

**RESPONDENT:** Former Councillor Gordon Lewis

**RELEVANT AUTHORITY:** Pencoed Town Council

## **1. INTRODUCTION**

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales ('APW') considered a reference in respect of the above Respondent, which had been made by the Public Services Ombudsman for Wales ('the Ombudsman').
- 1.2 On 23<sup>rd</sup> March 2022, the Tribunal Registrar wrote to the Respondent in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, requiring a written acknowledgement to indicate whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.
- 1.3 On 9<sup>th</sup> May 2022, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for the parties to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application in this respect.
- 1.4 The Case Tribunal exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 10<sup>th</sup> June 2022 and was conducted by means of remote attendance technology.

## **2. ALLEGATION**

- 2.1 By letter dated 17<sup>th</sup> March 2022, the Ombudsman made a referral to the APW and submitted his Report in relation to an Allegation made against the Respondent.

- 2.2 The Allegation was that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct for Members ('The Code') of Pencoed Town Council.
- 2.3 Paragraph 6(1)(a) states that a Member; - *'must not conduct [himself] in a manner which could reasonably be regarded as bringing [his] office or authority into disrepute.'*
- 2.4 The evidence was contained in the Tribunal Bundle which comprised of the Ombudsman's Report and linked correspondence.
- 2.5 The detail of the Allegation was summarised by the Ombudsman in his Report as follows. It was alleged that the Respondent had misled the Town Council as to his eligibility to be a Councillor and that his dishonesty, both when signing the declaration of acceptance of office and during the 1 year and 8 months that he acted as a Councillor, was a serious abuse of office. The Report stated that this went against the principles that underpin the Code. The Report went on to say that the Respondent did not engage with the investigation and did not give any explanation for his actions or show any remorse. The Ombudsman considered that the Respondent's actions were suggestive of a breach of paragraph 6(1)(a) of the Code.

### **3 PRELIMINARY LEGAL ISSUE**

- 3.1 The Listing Directions dated 9<sup>th</sup> May 2022 identified a preliminary legal issue which the Case Tribunal had to determine as follows: -

*'The Respondent and PSOW are invited to provide written submissions on the following question, which will be considered by the Case Tribunal as a preliminary issue. The question for consideration is whether an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members...'*

- 3.2 The Respondent did not provide any submissions in response to this Listing Direction. The Ombudsman provided the following response by letter dated 30<sup>th</sup> May 2022: - *'The PSOW submits that an individual who is disqualified for being a member by reason of the provisions set out in Section 80 of the LGA 1972, and who nevertheless holds office as a member, is subject to the Code of Conduct for Members.*

*In support of this view is Section 82(1) of the Local Government Act 1972, which states that "the acts and proceedings of any person elected to an office under this Act ... and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified". Also the decision in Islington LBC v Camp (1999) WL 33285549 (citing Bishop v Deakin (1936) Ch. 409) supports the position that a councillor who is disqualified who, nevertheless, holds office is validly appointed in that office as a member of the relevant authority and is effective in office as a member of the relevant authority. In view of this, we submit that a member who held a position as a member of the Council, whose membership of a council was valid and effective whilst acting as a*

*member, is subject to the Code of Conduct and the provisions and duties set out under Part III of the LGA 2000.'*

## **Legislation**

3.3 The Case Tribunal firstly considered the legislative background. The relevant statutory provisions referenced in connection with this case and the caselaw cited by the Ombudsman are as follows: -

### Local Government Act 1972

Section 80 - Disqualifications for election and holding office as member of a local authority.

*'... a person shall be disqualified for being elected or being a member of a local authority if he –*

*...(d) has within five years before the day of election or since his election been convicted...of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine...'*

Section 82 - Validity of acts done by unqualified persons.

*... 'The acts and proceedings of any person elected to an office under this Act...and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.'*

Section 86 – Declaration by a local authority of a vacancy in office in certain circumstances.

*... 'Where a member of a local authority -(a) ceases to be qualified to be a member of the authority, or (b) becomes disqualified for being a member of the authority.... the authority shall, except in any case in which a declaration has been made by the High Court under this part of this Act, forthwith declare his office to be vacant'.*

Section 92 – Proceedings for disqualification

*... '(1) Proceedings against any person on the ground that he acted or claims to be entitled to act as a member of a local authority while disqualified for so acting within the meaning of this section may be instituted...in the High Court or a magistrates' court if that person so acted...but proceedings...shall not be instituted... after the expiration of more than six months from the date on which he so acted.'*

*(2) ...the High Court may - (i)...declare that the office in which the defendant has acted is vacant; (ii) grant an injunction restraining the defendant from so acting; (iii) order that the defendant shall forfeit...such sum as the court think fit, not exceeding £50 for each occasion on which he so acted while disqualified...'*

## **Caselaw**

3.4 The Case Tribunal carefully considered the caselaw to which the Ombudsman referred. The caselaw does not deal directly with the question of whether an individual disqualified for being a Member, yet acting as a Member, is nevertheless subject to the Code of Conduct for Members. It deals however with connected issue of the legal mechanisms which might be in place to deal with the situation where a disqualified person is elected to office. The caselaw does therefore provide some indication of the way in which the courts would view this particular set of circumstances.

### **Islington LBC v Camp (1999)**

3.5 The question arose as to whether, under the relevant provisions of the Local Government Act 1972, an individual was disqualified for being a member of a council by reason of her employment which was linked to the council and whether the council was entitled to declare the office to be vacant and trigger procedures for a by-election to fill the vacancy. These were different Section 80 grounds to those involving the Respondent.

3.6 There were discussions around election petitions, section 86 declarations (as above) and section 92 proceedings (as above) as means of resolving disqualification issues. The Judge stated that he would be greatly troubled by the idea that, where a disqualifying state of affairs existed at the time of a person's election as a councillor and continued thereafter, there could be no form of challenge to that person continuing to act as a councillor if no election petition had been brought within the short period available for such challenge.

3.7 The Judge acknowledged however that election rules did not provide a complete safeguard. He noted that a dishonest declaration might lead to a criminal conviction giving rise to a separate ground for disqualification, however that would provide only a limited safeguard, since a disqualifying circumstance might well exist even though a candidate made a declaration in good faith to the contrary effect. Ultimately in this case, it was found that there was no remaining legal mechanism which allowed the office of Member to be declared vacant.

### **Bishop v Deakin [1936] Ch 409**

3.8 This was an action to obtain a declaration that the defendant, who was acting as an elected councillor, was disqualified from acting, so that her office was deemed vacant. The same grounds for disqualification as for the Respondent were in play, albeit under predecessor provisions. The case dealt with the connected question of whether a relevant conviction and sentence prior to election disqualified a person for being a member [the Tribunal's emphasis] of a local authority, as well as from being disqualified for being elected.

3.9 The parties agreed that the election itself could only have been called into question by election petition and that opportunity had passed. The judge applied a 'disjunctive' construction to the particular provision. That is, conviction within five years *before* the date of election disqualified the individual only for election.



Conviction *after* election disqualified the individual for continuance in office only; so that a pre-election conviction was not a ground of disqualification for continuance in office [the Tribunal's emphasis].

3.10 It was therefore held that the defendant in this case, notwithstanding her disqualification for election, was not disqualified from acting as a member [the Tribunal's emphasis] of the local authority. The Judge stated that, even assuming he was wrong on this issue, he didn't consider that the declaration proceedings had been instituted within the necessary timescale.

### **Rex v Beer [1903] 2 K.B 693**

3.11 This case is referenced in the cases above and related to an individual who was disqualified for bankruptcy pre-election. A type of warrant was issued to remove the individual from holding the office of councillor in order for the office to be declared vacant. The conclusion Lord Alverstone C.J reached in the case was that this warrant remedy could still be relied upon.

3.12 Channell J stated; *"It is settled law that, if an office is full in fact, there cannot be a writ of mandamus to hold a [fresh] election on the ground of disqualification of the holder, at any rate not if the office is such that a writ of quo warranto would lie in respect of it, in which case it would be necessary to make use of that mode of procedure in order to get the holder out of the office before applying for a mandamus to hold a fresh election, and therefore we discharged the rule for mandamus, for whether Mr Beer is qualified to hold the office of councillor or not, he is the holder de facto."* [the Tribunal's emphasis].

### **The Case Tribunal's decision on the Legal issue**

3.13 The settled case-law therefore recognises that disqualification under Section 80(1)(d) does not automatically lead to the removal of the status of 'Member'. Indeed, it recognises that an individual continues to act in that role de facto, unless a further step is taken to formalise that disqualification, for example by election petition or resignation. Due to the apparent disjunctive application of Section 80(1)(d) of the Local Government Act 1972, in cases such as the present one, in relation to a relevant conviction and sentence pre-election, the legislative remedies to prevent an elected, although disqualified Member from continuing to act, are very limited.

3.14 The Code definition of 'Member' does not further the debate. as it simply states; *'includes, unless the context requires otherwise, a co-opted member.'* The Case Tribunal has therefore applied the standard ordinary meaning of the word, being an individual who has been elected to be Member of the Relevant Authority and acts de facto in that capacity.

3.15 The Ombudsman submitted that Section 82 of the Local Government Act 1972 was also relevant. The Case Tribunal did not consider that Section 82 was determinative in this debate however. The fact that the actions of a disqualified Member are deemed to be valid and effective, does not in itself alter the status of the individual. The Case Tribunal nevertheless considered that this meant that a

disqualified individual's declaration of acceptance of office and undertaking to abide by the Code were in themselves capable of being valid and effective actions.

3.16 In summary, the Case Tribunal was satisfied that although the Respondent was disqualified from being elected to office under Section 80(1)(d), he nevertheless acted as a Member and there needed to be an intervening step to enable the 'de facto' position to be altered. In other words, prior to resignation, unless an election petition, or action under Sections 86 or 92 of the Local Government Act 1972 were available and had been pursued and successfully concluded, the de facto status as Member would remain.

3.17 In conclusion, the Case Tribunal determined that an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members when continuing to act. The Respondent was elected as a Member and remained a Member within the ordinary meaning of the Code until the date of his resignation, despite his disqualification for being elected (but not necessarily from acting as Member as per the caselaw above.)

3.18 Accordingly, the Case Tribunal found that the Respondent was subject to the Code from the date of his election to the date of his resignation.

#### **4. FINDINGS OF FACT**

4.1 The Case Tribunal noted the following Undisputed Material Facts which were referenced in the Ombudsman's Report dated 17 March 2022.

4.2 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Facts.

4.3 There being no further representations made as to these Undisputed Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Material Facts on the balance of probabilities: -

4.3.1 The Respondent was convicted of three criminal offences in July 2015. He received a suspended prison sentence exceeding three months, without the option for a fine.

4.3.2 In November 2018, the Respondent was disqualified from being elected to the Town Council due to his criminal conviction.

4.3.3 The Respondent stood for election to the role of Member at Pencoed Town Council during November 2018.

4.3.4 The Respondent submitted a Nomination Pack that was accepted by the Returning Officer as a valid nomination on 19 November 2018. In doing so, he falsely claimed to be eligible to stand for election to the role of Member at Pencoed Town Council.

- 4.3.5 The Respondent was duly elected as Member of Pencoed Town Council and signed a Declaration of Acceptance of Office on 29 November 2018. In doing so, Pencoed Town Council was misled into believing he was eligible to do so.
- 4.3.6 The Respondent remained as Member for 1 year and 8 months, undertaking Council business, when he was not eligible for election.
- 4.3.7 An article was published in a national newspaper on 25 July 2020, which referenced the Respondent's criminal conviction.
- 4.3.8 Pencoed Town Council was not aware of the Respondent's criminal conviction until it appeared in a press article in July 2020.
- 4.3.9 The Respondent resigned from his role as Member on 31 July 2020.
- 4.3.10 A complaint was made to the Police that the Respondent had failed to declare a criminal conviction when standing for election. The Police did not take further action due to insufficient evidence as the consent to nomination paper had been destroyed by the Elections Service.
- 4.4. There are no Disputed Facts.

## **5. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE.**

- 5.1 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with the Relevant Authority's Code.
- 5.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle as well as the Material Facts. It noted the Ombudsman's description of the following sequence of events; -
  - 5.2.1 On 16<sup>th</sup> July 2015, the Respondent was convicted of affray and two counts of common assault. He was sentenced to a total of 16 months imprisonment, suspended for 24 months.
  - 5.2.2 The Respondent stood for election to the role of Town Councillor at the Pencoed Town Council in November 2018. For his nomination to be valid, the Respondent was required to sign a Nomination Paper, which included the following declaration: *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000"*.
  - 5.2.3 The Nomination Paper explained that candidates must not sign the form if they were disqualified from standing and asked candidates to consent that they had

read the Electoral Commission's Guidance on standing for election, as well as the relevant legislation.

- 5.2.4 Part 1 of the Electoral Commission's Guidance set out the criteria that would render a member disqualified from standing for election. In line with paragraph 80(1)(d) of the 1972 Act, it said: *"You cannot be a candidate if at the time of your nomination and on polling day you have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day"*.
- 5.2.5 The Respondent's Nomination Paper was accepted by the Returning Officer as a valid nomination on 19<sup>th</sup> November 2020. He was elected, unopposed, to the Town Council and signed a Declaration of Acceptance of Office on 29<sup>th</sup> November 2020, in which he undertook to abide by the Code.
- 5.2.6 On 25<sup>th</sup> July 2020 an article was published in the Daily Mirror, detailing the Respondent criminal conviction. The Police received a complaint but concluded that, as the Respondent's completed nomination form had been destroyed by Electoral Services, it could not as a consequence be confirmed that a crime had been committed, therefore no further action was taken.
- 5.2.7 On 31<sup>st</sup> July 2020 the Respondent resigned from the role of Member of Pencoed Town Council and stated that his resignation was to take immediate effect.

### **The Ombudsman's report submissions**

- 5.3 The Ombudsman stated that in order for the Respondent to be able to stand for election, he had to sign the relevant declaration. On the balance of probabilities, the Ombudsman considered that the Respondent had completed that declaration. In going on to also sign the Declaration of Acceptance of Office, he considered that the Respondent had misled the Town Council as to his eligibility to be a Member.
- 5.4 The Ombudsman considered that the Respondent's dishonesty, both when signing the Declaration of Acceptance of Office and during the 1 year and 8 months that he was serving as Member, was a serious abuse of office which went against the principles that underpin the Code of Conduct. He said that, as the Respondent had not engaged with the investigation, he had not given any explanation for his actions or shown any remorse.

### **The Case Tribunal's decision as to whether there was any failure to comply with the Code**

- 5.5 The Case Tribunal noted that the position was absolutely clear that the Respondent was disqualified for being a Member of Pencoed Town Council. It agreed that, on the balance of probabilities, as he had taken up office, he had signed the relevant election document to consent to his nomination. This was regardless of whether the remainder of the documentation had been completed on his behalf by a political group or the persons so nominating him. The Case

Tribunal noted that the relevant form included the following wording directly above the space for the candidate's signature; *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000 (copies of which are printed overleaf)"*. It also noted that a full copy of Section 80 appeared on the next page of the election pack.

- 5.6 The Case Tribunal noted that the Electoral Commission booklet entitled *'Guidance for Candidates'* also included very clear guidance as to the circumstances in which individuals were disqualified for being elected. The Case Tribunal considered that, on the balance of probabilities, the Respondent had received a copy of this publication. The Guidance also provided clear instructions as follows; - *'The full range of disqualifications is complex and if you are in any doubt about whether you are disqualified, you must do everything you can to check that you are not disqualified before submitting your nomination papers. You must be sure that you are not disqualified as you will be asked to sign one of the required nomination papers to confirm that you are not disqualified. It is a criminal offence to make a false statement on your nomination papers as to your qualification for being elected, so if you are in any doubt, you should contact your employer, consult the legislation or, if necessary, take your own independent legal advice. The Returning Officer will not be able to confirm whether or not you are disqualified.'*
- 5.7 The Case Tribunal also noted that the Declaration of Acceptance of Office which the Respondent signed on 29<sup>th</sup> November 2020 included an undertaking to be guided by the Code in the performance of his functions in the office of Member.
- 5.8 Finally, the Case Tribunal were satisfied that the evidence showed that the Respondent had continued to act in the role of Member for the period 1 year and 8 months until his resignation in July 2020, despite being disqualified for being elected.
- 5.9 The Case Tribunal noted that the misleading *'Consent to Nomination form'* was signed before the Respondent became a Member and became subject to the Code. In view of the caselaw outlined above, the Case Tribunal also appreciated that although the Respondent was disqualified for being elected, he was not necessarily disqualified for being a Member, since his conviction and sentence occurred pre-election.
- 5.10 Despite the above, the Case Tribunal was nevertheless satisfied that the Respondent had been elected on a false premise and likewise that the signature of his Declaration of Acceptance of Office form, his undertaking to abide by the Code and his continuation in office also took place on the same false premise. It considered that the instructions and warnings in the Consent to Nomination form and Guidance to Candidates were so clear, that it was inconceivable that the Respondent was unaware of the fact that he was disqualified from being elected. It considered that his actions were either deliberate or were the result of extreme recklessness and that this deliberate or reckless behaviour continued throughout

his period of office. He either knew that the information he'd provided was false and misleading or was reckless as to that fact.

5.11 The Case Tribunal was satisfied in all the circumstances, that although other public law measures may not have been available to prevent a disqualified Member from acting or to bring the Respondent's de facto status as Member to an end, the Code was nevertheless binding upon the Respondent and he was not absolved from the usual remedies for breach of it. He signed his Declaration of Acceptance of Office and continued to act as Member for a considerable length of time following his election despite being disqualified for being elected. The Case Tribunal considered this to be conduct which could reasonably be regarded as bringing both the Respondent's Office and his Authority into disrepute.

5.12 The Case Tribunal also considered the matter in the light of the Nolan principles which underpinned the Code. It was satisfied that there was an expectation that local authority Members would act with integrity, act in accordance with the trust that the public placed in them, lead by example and act to promote public confidence in their role and in their Authority. The fact that the Respondent was disqualified from being elected and yet continued to act as Member went to the heart of public trust in democracy and undermined the Code and standards regime. The Respondent continued to deal with his constituents and act on a false premise and this constituted a clear breach of paragraph 6(1)(a) of the Code.

5.13 The Case Tribunal noted that the Respondent's conviction and sentence had been highlighted in the national press in July 2020. The conviction and sentence themselves were not a matter before the Case Tribunal, however it appears that this press reporting had uncovered the fact that the Respondent was disqualified for election. As the Respondent had been elected and had continued to act for 1 year and 8 months on a false premise, this would without doubt have attracted significant media and public attention and disquiet, which would inevitably bring both the office of Member and his Authority into disrepute.

5.14 On the basis of the Material Facts and evidence therefore, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Paragraph 6(1)(a) of the Code. It considered that he had conducted himself in a manner which could reasonably be regarded as bringing his office and Pencoed Town Council into disrepute.

## **6. FINDINGS IN RELATION TO SANCTION**

6.1 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceedings was reached.

6.2 No submissions were made by or on behalf of the Respondent. The Ombudsman wrote in his letter dated 30<sup>th</sup> May 2022 as follows; *"The purpose of the sanctions regime is to provide a disciplinary response to an individual member's breach of the Code, place misconduct and sanction on public record, deter future misconduct on the part of others and foster public confidence in local democracy."*

*If the Case Tribunal finds a breach of the disrepute provision of the Code, the breach involving deliberate deception and dishonesty would amount to a serious breach of the Code and one which requires a significant disciplinary response to deter repetition and to safeguard confidence in public democracy. If proven, the circumstances of this case meet the Case Tribunal's Guidance for the most severe form of sanction of 'disqualification'.*

*The PSOW submits that the Respondent's conduct by acting as a councillor in the full knowledge that he was disqualified from doing so calls into question the Respondent's fitness for public office and is serious disreputable conduct. The Respondent's failure to engage with the investigation and adjudication process is also an aggravating factor.*

*The overriding public interest is such that, if proven, the Respondent's conduct suggests that the member is entirely unfit for public office and the PSOW respectfully submits that the Case Tribunal may consider disqualification to be the most appropriate form of sanction."*

6.3 The Case Tribunal considered all the facts and evidence. It also had regard to the Adjudication Panel for Wales current Sanctions Guidance. In particular it noted the public interest considerations as follows in paragraph 44; - *"The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact on terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*

6.4 The Clerk to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

6.5 The Case Tribunal considered that the breach was serious in nature as the conduct could reasonably be regarded as conduct which would seriously undermine the public's faith in the Code and the standards regime. As such, it considered that disqualification was an appropriate sanction.

6.6 It noted that the Member had been in office for a lengthy period of time and significant decisions were likely to have been made by the Authority during that period. The Respondent was likely to have participated and voted in such matters and to have received sensitive information in the role of Member, despite being disqualified from being elected. Section 80(1)(d) was in place for a reason, so that an individual would be disqualified for a substantial amount of time if s/he had been convicted and sentenced of certain offences. By nevertheless signing his Declaration of Acceptance of Officer and acting as a Member for 1 year and 8 months, the Case Tribunal considered this to be a matter which merited a significant period of disqualification under the standards regime.

6.7 The Case Tribunal recognised that the Code and standards regime was about upholding standards in public life and an individual being elected to be a Member without legitimacy and continuing to act thereafter seriously undermined democracy and could raise questions about the legitimacy and standing of all local authority Members. The Case Tribunal also noted that this may have denied a legitimate candidate who would otherwise have stood for election.

6.8 In the circumstances, in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a lengthy period of disqualification. It considered that such disqualification would uphold the deterrent effect so that individuals standing for election did so with solemnity, care and integrity.

### **Mitigating factors**

6.9 As the Respondent hadn't engaged with either the Ombudsman or the Adjudication Panel for Wales, it was unclear what, if any, mitigating factors he might wish the Case Tribunal to consider. The Case Tribunal nevertheless considered whether there were any relevant factors as indicated by the Sanctions Guidance. It noted that the Respondent had displayed a degree of recognition of the seriousness of the matter in view of his prompt resignation following press reporting, however there was no evidence of any real insight shown or evidence of any accompanying apology. It also noted the lack of checks and balances in the system which meant the issue was not identified at the outset.

### **Aggravating factors**

6.10 The Case Tribunal considered that the conduct which led to this train of events was either deliberate or reckless. It also noted that there would have been an element of personal gain or political gain in achieving the status of Member. The status was also enjoyed for a lengthy period of time. The Case Tribunal was satisfied that this involved an abuse of a position of trust. It was noted that, as well as the election form, the Declaration of Acceptance of Office and undertaking to abide by the Code were solemn documents that should have been completed with honesty, integrity and extreme care. The election form had an official statement which needed to be read and signed by the Respondent and which would clearly have consequences. Finally, there was no evidence that the Respondent had co-operated or engaged in any way with the Ombudsman's investigation nor indeed with this Tribunal process. The Case Tribunal considered that all of the above were aggravating factors.

6.11 In conclusion, the Case Tribunal considered that it needed to impose a lengthy period of disqualification to reflect the seriousness of the issue and to recognise that they considered that the Respondent was currently unfit to fulfil the office of Member. It considered that he would have caused significant difficulties and embarrassment for his Authority and made a mockery of the standards regime through his actions.

6.12 The Case Tribunal had regard to sanctions imposed in previous cases and to the principle that the sanction imposed should be the minimum necessary to



uphold high standards of conduct in public life and maintain confidence in local democracy. The nature and extent of the breach and the level of culpability of the Respondent in this case, together with the potential consequences of the breach upon democracy, placed this breach amongst one of the more serious cases. The disqualification needed to provide sufficient time for the Respondent to reflect on his conduct before contemplating re-entering local politics.

6.13 As the sanction was a penalty prescribed by law, the Case Tribunal considered that disqualification needed to be of a length which was proportionate in all the circumstances, bearing in mind the public interest and the need to uphold law and justice and to protect the reputation and rights of others in a democratic society.

6.14 The Case Tribunal also considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards regime. It concluded by **unanimous** decision that Former Councillor Lewis should be **disqualified for 24 months** from being or becoming a member of Pencoed Town Council or any other relevant authority within the meaning of the Local Government Act 2000.

6.15 Pencoed Town Council and its Standards Committee are notified accordingly.

6.16 The Respondent has the right to seek the permission of the High Court to appeal the above decision. Any person considering an appeal is advised to take independent legal advice about how to appeal.

Signed C Jones Date 17 June 2022  
Chairperson of the Case Tribunal

S McRobie  
Panel Member

S Hurds  
Panel Member

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**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REF. NO. APW/008/2021/022/CT**

**RE: REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT**

**Respondent:**

Former Councillor Paul Dowson

**Relevant authorities concerned:**

Pembrokeshire County Council

**Representation and attendance:**

Respondent: Did not attend and was not represented.

PSOW: Ms K Shaw, counsel (with Mr L McAndrew, PSOW investigator);  
Mr J. Harries, Interim Deputy Monitoring Officer

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
2. A hearing was held by the Case Tribunal on 22<sup>nd</sup> August 2022 at 0930, remotely via Cloud Video Platform. The hearing was open to the public.

**PRELIMINARY DOCUMENTS**

**Reference from the Public Service Ombudsman for Wales**

3. In a letter dated 8<sup>th</sup> February 2022, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”, “PSOW”) in relation to allegations made in three complaints against now former Councillor Paul Dowson.
4. In summary, the allegations were that former Councillor Dowson had breached paragraphs 4 (c) and 6 (1)(a) of the Code of Conduct for members of Pembrokeshire County Council. The alleged failures under consideration were set out in paragraphs 112 to 140 of the Ombudsman’s report.

- 4.1 The first complaint, initiated by a member of the public called Mr Marc Davies, alleged that the Respondent repeatedly made statements that were untrue about a fellow Member of Pembrokeshire County Council (“the Council”), Councillor Joshua Beynon; and about Mr Marc Davies himself.
- 4.1.1 In 2020, the Respondent was alleged to have falsely and publicly accused Councillor Beynon of sharing a pornographic video of an underaged girl. It was further alleged that to make such a false allegation without checking that it was true brought the Respondent’s office and/or his Authority into disrepute. When the Respondent repeated and insinuated those false allegations, he bullied Councillor Beynon. This bullying is aggravated because the Respondent lied when he said that he was only repeating something Councillor Beynon had told him.
- 4.1.2 Between September 2020 and February 2021, the Respondent was alleged to have falsely and publicly accused Mr Marc Davies of being an ex-offender, something which again, was factually untrue. Mr Marc Davies challenged the Respondent in September 2020 and told him he was wrong. Nonetheless, the Respondent repeated the allegations against Mr Marc Davies between September 2020 and February 2021, when he apologised for them and accepted that they were untrue. To repeatedly say such things against Mr Marc Davies without taking reasonable steps to confirm that the information he was sharing was accurate after being told that it was not, amounts to harassment and brought the Respondent’s office as a Member and/or his Authority into disrepute.
- 4.2 The second complaint, initiated by a member of the public Mrs Elaine Wyatt, alleged that on and after 17<sup>th</sup> January 2021, the Respondent misinformed people when he posted online that the Welsh Government’s Relationships and Sex Education (“RSE”) curriculum aims to teach 3-year-old children about masturbation; and to teach 13-year-old boys and girls about anal sex. He repeated this misinformation in an email to a fellow Member of the Council when he also said that lesson plans for 11-year-olds and upwards contained reference to bondage, anal sex, facial ejaculation and more. There was no basis for these statements about the curriculum and in saying that there was, the Respondent wilfully and dishonestly misinformed people to outrage them. By doing so, he has brought his office and/or his Authority into disrepute.
- 4.3 The third complaint, initiated by a member of the public Mr Timothy Brentnall, alleged that on 12<sup>th</sup> April 2021, the Respondent engaged in a heated conversation on Facebook with Mr. Brentnall, who at the time was using the name “Timothy Stjohn”. At one point in the conversation, the Respondent replied to Mr Brentnall “what a t\*\*ser. I heard you are on the

register but it's not been proven so I'm not spreading it around. Better man than you".

- 4.3.1 It is alleged that the Respondent was thereby falsely and maliciously suggesting that Mr Brentnall was subject to registration because he was a sex offender.
- 4.3.2 It is further alleged that screenshot evidence the Respondent provided to the PSOW's investigation in respect of this third complaint was a fabricated exhibit and therefore amounted to a deliberate attempt to mislead the investigation. Both the initial post and the attempt to mislead the investigation taken separately and together, brought the Respondent's office as a Member and his Authority into disrepute.

### **The former Councillor's Written Response to the Reference**

- 5. Former Councillor Dowson responded in the following terms:
  - 5.1.1 Regarding Councillor Beynon, former Councillor Dowson said that he did not suggest that the Councillor had shared images of a child. He said that the person depicted was 17 and not under 17. This was something that Councillor Beynon had told former Councillor Dowson in person, as had the girl's family. He conceded the possibility of making an error in relation to the girl's age, but denied he acted deliberately and said that in any event, everything he said, wrote or published concerning Councillor Beynon amounted to political expression, was in the public interest, and therefore protected by his Convention right to Freedom of Expression.
  - 5.1.2 Regarding Mr Marc Davies, former Councillor Dowson said that Marc Davies deliberately misled several people into believing that he was a near namesake, Mark Davies, who had been to prison. Former Councillor Dowson said that he apologised for what he had previously said when he became aware that they were different people. He said that he apologised to show good faith, but it was only later that he discovered that Mr Marc Davies had deceived him "by impersonating the other Mark".
- 5.2 Regarding the second complaint, former Councillor Dowson said that what he said about the Welsh Government's Relationships and Sex Education Curriculum was true. Former Councillor Dowson accepted that he erred when he typed "0-3 yr olds" instead of "3-6 year olds", which he accepted was wrong, albeit a genuine mistake.
- 5.3 Regarding the third complaint, former Councillor Dowson said that he did not suggest that anyone was on a sex offenders register, nor did he seek

to imply the same. His original comment in fact read "...I heard you are on the Antifa register but it's not been proven so I'm not spreading it around." Former Councillor Dowson said that "from day 1" he referred to the "local Antifa register", said by him to be part of "Antifa Watch". The screenshot that he relied upon which contains the word "Antifa" had been sent to him.

### **LISTING DIRECTIONS**

6. In a listing direction dated 17<sup>th</sup> June 2022, the Case Tribunal summarised the allegations substantially in the manner set out above, together with the undisputed facts and the disputed facts. The Case Tribunal directed that it would convene for the final hearing at Court 5 at the Haverfordwest County Court and Family Court Hearing Centre; that Mr Marc Davies, Councillor Joshua Beynon and Mr Timothy Brentnall were to give live evidence at the final hearing; and summarised the process and hearing timetable.
- 6.1 The Case Tribunal also gave the following directions relating to documents.

*The Tribunal notes that the bundle served to date contains 2261 pages, a number which vastly exceeds the number of pages directly relevant to the deal with the issues in this case.*

*No party may rely on any further witness, document or other form of evidence unless they seek permission from the Tribunal to rely on that evidence and the Tribunal grants permission to do so.*

*By Friday 1st July 2022, the Respondent must specifically identify in writing, to both the Tribunal and the PSOW, those passages in the documents already served which prove that his statements about the content of the RSE curriculum are true.*

*By Friday 15th July 2022, both parties are to prepare and submit an agreed, core hearing bundle of exhibits directly relevant to the issues of fact identified above, that either a) prove or b) rebut the allegations made in this case.*

*If the parties cannot agree a core hearing bundle of exhibits, by Friday 29th July 2022 each party is to file and serve a separate, core hearing bundle of directly relevant exhibits.*

7. By email dated 2<sup>nd</sup> July 2022 former Councillor Dowson formally informed the Case Tribunal that he had chosen not to participate in any manner with the scheduled hearing, citing a lack of confidence in the fairness of the process and the Case Tribunal. On 12<sup>th</sup> July 2022, the Registrar to the Adjudication Panel for Wales emailed former Councillor Dowson to reassure him that the Case Tribunal would be heard in public; that the Adjudication Panel for Wales acts independently of all other public authorities and parties; and that the proceedings would continue in his absence. By email dated 14<sup>th</sup> July 2022, former Councillor Dowson confirmed that he maintained his stated position. From that point, former Councillor Dowson has been absent from proceedings and has not been represented.
8. On 15<sup>th</sup> August 2022, the listing directions were varied to the extent that the Case Tribunal would proceed by Cloud Video Platform.
9. On 18<sup>th</sup> August 2022, the listing directions were amplified to permit that witnesses could attend from their own home or office (in each case, from a private room).

## **THE HEARING**

### **Applications made during the hearing.**

10. On behalf of the PSOW, Ms Shaw made a preliminary submission to exclude from the hearing a participant identified on screen only as “iPad”, on the grounds that the presence of such an unidentified person could affect those giving evidence. The Chair invited “iPad” to identify themselves. “iPad” did not do so. The Tribunal therefore rose to consider further directions. By the time the Tribunal reconvened, “IPad” was no longer online. It was therefore not necessary to take that matter further.
- 10.1 The Tribunal was also informed at the start that Mr Marc Davies had attended a different location to that stated in the latest listing direction and could not access the hearing to give evidence. The Chair noted that Mr Davies’ evidence did not relate to any disputed fact; and that his attendance had been requested when former Councillor Dowson participated in the proceedings, to give former Councillor Dowson the opportunity to ask such questions as he thought fit. In former Councillor Dowson’s absence, the Chair directed that the Tribunal could proceed without hearing live evidence from Mr Marc Davies.

### **The hearing.**

11. The Chair gave standard remote hearing directions to all present, and summarised the allegations, as set out in the first Listing Direction.
12. The following undisputed facts were identified.
  - 12.1 The Respondent was elected as a County Councillor on 8<sup>th</sup> May 2017 and undertook to abide by the Council's Code of Conduct.
  - 12.2 The Respondent attended Code of Conduct training. He did not attend training on social media use.
  - 12.3 In his capacity as a Councillor, the Respondent alleged in material posted online that Councillor Beynon, when 18 years old, had shared a pornographic video of a girl.
  - 12.4 Councillor Beynon did not share a pornographic video of a girl when he was 18 years old. Intimate, but not explicit, photographs of the girl and her partner (both of whom were 18 years old) were shared in a Facebook Messenger group created by Councillor Beynon whilst he was a school pupil. No further action was taken by the police at the request of the girl.
  - 12.5 The Respondent alleged on social media and in emails to the PSOW that Mr Marc Davies was an ex-offender who had been imprisoned for violent crime and for breaching parole.
  - 12.6 Mr Marc Davies has no offences listed on his DBS certificate dated April 2019.
  - 12.7 The Respondent published a Facebook post stating that 0–3-year-olds “will” be taught about masturbation and that the new RSE curriculum “includes teaching 13-year-old boys and girls about anal sex”.
  - 12.8 In an email to a fellow Councillor, the Respondent said that RSE lesson plans teach 3-year-olds about masturbation and 11-year-olds and upwards about bondage, anal sex and facial ejaculation.
13. The following disputed facts were identified.
  - 13.1 Did the Respondent say that Councillor Beynon shared a pornographic video of a girl aged either: 17; or under the age of 17?



- 13.2 Did Councillor Beynon tell the Respondent that, when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17?
- 13.3 Were the Respondent's statements about the content of the RSE curriculum true?
- 13.4 Did the Respondent post on Facebook that he "heard" that Mr Brentnall was "on the register"; or "on the Antifa register"?
- 13.5 If the Respondent posted "on the register" and not "on the Antifa register", was he referring to registration as a sex offender?
- 13.6 If the Respondent posted "on the register" and not "on the Antifa register", did he deliberately attempt to mislead the PSOW's investigation by providing a fabricated exhibit?
14. On behalf of the Public Services Ombudsman for Wales, Ms Shaw formally presented the investigation report.
15. The Case Tribunal then heard oral evidence from:
  - 15.1 Witness 1: Councillor Joshua Beynon.
  - 15.2 Witness 2: Mr Timothy Brentnall
16. The Case Tribunal then heard submissions on behalf of the PSOW.

#### **Findings of fact and the reasons for them**

17. The Case Tribunal reminded itself of the burden and standard of proof. The balance of probabilities applies, and the burden of proof lies upon the PSOW to prove the allegations which form the subject of these proceedings. The balance of probabilities is a single unvarying standard.
18. The Case Tribunal considered all written and documentary evidence presented together with the oral evidence called, limiting itself to that evidence.
19. The Case Tribunal made factual findings which are based on an interpretation of events that has previously been disclosed to former Councillor Dowson and in respect of which he has been provided with adequate opportunity to investigate, call evidence and make submissions.

20. The Case Tribunal based its factual findings on inferences drawn from documentary evidence and known or probable facts, using oral evidence to subject the documentary records to critical scrutiny and to consider each witness's personality and motivation. The Case Tribunal assessed the evidence in the round.
21. The Case Tribunal did not assess any witness's credibility exclusively on their demeanour when giving evidence. Each witness's veracity was tested by reference to the objective facts proved independently of their testimony, by reference to the documents in the case.
22. The Case Tribunal made a rounded assessment of each witness's reliability, rather than approaching their reliability in respect of each allegation in isolation from the others.
23. Where, as here, more than one allegation is pleaded in relation to the same Respondent, the Case Tribunal considered the facts of each allegation individually and separately, also considering the evidence as a whole.
24. The first complaint: in relation to Mr Marc Davies.
  - 24.1 On 18<sup>th</sup> September 2020, Mr Marc Davies sent an email to former Councillor Dowson asking the Respondent "...why you're happy to host comment on your Facebook page accusing another councillor of using child pornography". Mr Marc Davies said that he believed the accusations to be false. "I have seen you hint at accusations previously on several occasions but tonight's episode is beyond contempt. I...would like to know what as my councillor you're going to do you (sic) rectify this disgusting situation and also what you're going to do about the Facebook account using your name that wrongly accused me of being an ex convict?"
  - 24.2 Mr Davies identified himself as "Marc" and his email address is clearly visible. The other Councillor, to whom he said former Councillor Dowson was referring, was Councillor Joshua Beynon.
  - 24.3 At this stage, it may also assist to introduce the fact that there is another person, called Mr Mark Davies, who has previous convictions and is unrelated to Mr Marc Davies. It is an undisputed fact that Mr Marc Davies has no offences listed on his DBS certificate dated April 2019.

- 24.4 On 19<sup>th</sup> September 2020, former Councillor Dowson replied. "Everything I may have hinted about on my facebook page is true. I will not go into details with you about it as it should be up to the Cllr to come clean himself about it." Mr Marc Davies responded the same day, expressing dismay as to former Councillor Dowson's position.
- 24.5 In his witness statement to these proceedings, Mr Marcel Laval, a member of the public said that over a period of 6 to 8 months, former Councillor Dowson repeated "over and over again" that Mr Marc Davies was an ex-convict and not to be trusted; and that he made these statements even though Mr Marc Davies and others told him that he was referring to the wrong person.
- 24.6 Mr Marc Davies complained to the Ombudsman, referring amongst other things to allegations made on social media about Councillor Joshua Beynon. Correspondence indicates that former Councillor Dowson was informed of Mr Marc Davies' complaint on 12<sup>th</sup> October 2020.
- 24.7 On 12<sup>th</sup> October 2020, former Councillor Dowson responded to the Ombudsman in relation to Mr Marc Davies' complaint with an email in which he continued to allege that Mr Marc Davies had been imprisoned for violent offences. He repeated this accusation in a further email to the Ombudsman on 28<sup>th</sup> October 2020.
- 24.8 On 4<sup>th</sup> January 2021 former Councillor Dowson was informed that the Ombudsman had decided to investigate that part of Mr Marc Davies' complaint that related to Councillor Beynon.
- 24.9 On 5<sup>th</sup> and 12<sup>th</sup> January 2021, former Councillor Dowson provided to the Ombudsman screenshots and suggested that Mr Marc Davies was involved in a campaign against him.
- 24.10 On 16<sup>th</sup> January 2021, former Councillor Dowson wrote to the Ombudsman by an email in which he again accused Mr Marc Davies as having a "history of incarceration for violent crime", and campaigning against him.
- 24.11 On 21<sup>st</sup> January 2021, former Councillor Dowson posted the following on his "Cllr Paul Dowson" Twitter account. "@DyfedPowys would be worth running this mans name through the police national computer before taking any notice of him. Imprisoned for beating up a helpless man. Then recalled to prison for breaching parole. He is causing me alarm and distress and I will be making a report today." Mr Marc Davies responded

via Twitter. "You're accusing me of that? Just to be sure you don't think it could be anyone else?"

24.12 On 1<sup>st</sup> February 2021 former Councillor Dowson sent Mr Marc Davies a message via Facebook. It read, "Hi Marc. It appears I really did have you mixed up with someone else. A very good friend of mine gave me the wrong information about you and foolishly I did not check the facts out properly myself. All I can do is apologise for this error and hope we can move on from it and not waste any more time battling each other on our differing beliefs and opinions. If we were not in lockdown I would convey this apology in person. Perhaps when we come out of lockdown I can put this right with you. My mistake and I am sorry."

24.13 Mr Marc Davies responded the next day. "Hi Paul thanks very much for the apology. I have emailed you on 2 separate occasions to inform you that I wasn't the person you were talking about or that a fake account was talking about. I'm not sure you realise the influence you have over others who share your beliefs. There are several of your friends sharing this rumour about me at the moment...If you'd have listened in August or September this could have been avoided...I understand you've had threats yourself...so I know you understand where I'm coming from. I'm happy to meet up after this lock down is done and talk about things over a pint."

24.14 In his witness statement tendered in evidence to these proceedings, Mr Marc Davies said amongst other things that former Councillor Dowson had called him a drug dealer and said that he had spent time in prison. This was not Mr Marc Davies but Mr Mark Davies. He said that this was unsettling, and that people had asked him what he had been imprisoned for. He has a clear DBS history, good references, and acts as the Adult Protection Officer for a local youth rugby team he coaches.

24.15 When interviewed by the Ombudsman, former Councillor Dowson accepted that his allegations were incorrect and said he had apologised for them.

25. The first complaint: in relation to Councillor Joshua Beynon.

25.1 Former Councillor Dowson appeared in a live-streamed video on the "Voice of Wales" YouTube channel. The date cannot be ascertained. The following exchange took place. PAR1 is talking to PD who is former Councillor Dowson.

*PAR1: ...But there's other things about Josh, isn't there, that we could bring up.*

*PD: That he's confided in me.*

*PAR1: That he's confided in you. Like I've heard some stories about when Joshy was a Head Boy, so you know, I don't know obviously he, and you've heard that from the horse's mouth haven't you?*

*PD: Yeah. He confided in me. I've got no problem, you know, relaying it, because I know it's a fact, it's true. Er yeah, I've got the screen shots, like he says, I've got the screen shots.*

*PAR1: Yeah. I've seen the screen shots.*

*PD: He was expelled as Head Boy whilst in the Sixth Form. 18 years old, to be Head Boy, makes him an adult.*

*PAR1: Mmm hmm.*

*PD: He denies it, but you know, the majority of people know about this. He, he had, uh, got into a girl's Facebook account, found a pornographic video she'd been sending to her boyfriend and decided that he'd pass it around everybody else. He was taken down a peg from Head Boy, expelled, wasn't allowed to give a speech at the end of the year, whatever, as they are normally. But nothing came of it because obviously you know, the person's parents did not want this in the public domain.*

*PAR1: And how old was the girl?*

*PD: The girl was a uh teenager, but she wasn't an adult, she was under 17 so...*

*PAR1: And it's a, right, yeah, yeah.*

*PD: And working on the doors recently, I came across a couple of lads, only about two months ago, that still had that video on their ...*

*PAR1: Really?*

*PD: ... on their phone and you know, in other words, yeah that poor girl's life is, yeah, it just goes on forever for her.*

*...*

*PAR1: I'm sure I heard, I may be wrong, but I'm sure I heard she was underage for sex. PD: Yeah, probably, yeah.*

*PAR1: So, under the age of 16, so that would take that offence to a whole another level.*

*PD: You know I've got the text messages here where he comes round to tell me all about it. Yeah, he actually came to my house, opened a McDonalds and told me all about it.*

*PAR2: So, he was boasting?*

*PD: Well, no, in a way he, he was confiding in me...*

25.2 On 14<sup>th</sup> June 2021 a "Voice of Wales" video was posted to Facebook. This video featured former Councillor Dowson referring to videos posted to the TikTok social media site. INT speaks with PD, Paul Dowson.

*PD: ... I'm also aware, er, I'm privy to some more information that he, um, you know, gave to me in confidence about a year ago, um, and it's caused me, er, concern because last year, er, when he told me about the story, it was about how he hacked into a schoolgirl's personal Facebook account, found a very private, explicit sex video on there, that he sent to loads of his friends. This girl was under age and he was eighteen years old which is an adult at the time.*

...

*PD: So, you know, that shows the measure of who, who this is, and there seems to be this overriding sexual theme in everything he does wrong.*

*INT: Mm.*

*PD: Er, you know, and it all seems to involve people, minors, or teenagers.*

...

*PD: I think the only reason why he wasn't prosecuted as an adult for a crime, was the fact that that girl's parents and family, and the girl herself, they don't want that being broadcast all over the place.*

25.3 It is an undisputed fact that Councillor Joshua Beynon did not share a pornographic video of a girl when he was 18 years old. Intimate, but not explicit, photographs of the girl and her partner (both of whom were 18 years old) were shared in a Facebook Messenger group created by

Councillor Beynon whilst he was a school pupil. No further action was taken by the police at the request of the girl.

25.4 In his witness statement tendered in evidence to these proceedings, Councillor Joshua Beynon said that he did not recall the specifics of his conversation with former Councillor Dowson. Councillor Beynon recalls telling former Councillor Dowson that he had received anonymous letters and messages asking if it was true that he had shared images of a girl whilst at school. Councillor Beynon said that he explained to former Councillor Dowson that he did go onto a girl's Facebook account, but that he never shared an image. In his statement, Councillor Beynon went on to say that he was 17 when he left school and that his expulsion from school was due to comments he made in a speech at a Record of Achievement ceremony, rather than because of the incident involving access to the girl's Facebook account.

25.5 In a subsequent interview conducted by the Ombudsman with Councillor Beynon, Councillor Beynon said that he had shared one image to four other people in a Facebook Messenger chat group, but he did not share this image publicly or in a public group. That image was not pornographic.

25.6 In his live evidence to the Case Tribunal, Councillor Beynon said that he did not recall the specific conversation with former Councillor Dowson but Councillor Beynon said that he never shared any video material and that in so far as he spoke to former Councillor Dowson, he would have told him the truth about what happened. He said that the untruths told about him had left him anxious, that his reputation had been impeded and that he found the experience traumatic. He said that his performance as a Councillor had probably been affected.

26. **Findings of fact in relation to the first complaint.**

26.1 Did the Respondent say that Councillor Beynon shared a pornographic video of a girl aged either: 17; or under the age of 17?

26.1.1 The Case Tribunal found that former Councillor Dowson said that Councillor Beynon had shared a pornographic video of a girl aged under 17. The Case Tribunal relied upon the references in the "Voice of Wales" material set out above, in particular to the points where former Councillor Dowson said "The girl was uh teenager, but she wasn't an adult, she was under 17 so..."; and "...that shows the measure of who, who this is, and there seems to be this overriding sexual theme in everything he does

wrong...you know, and it all seems to involve people, minors, or teenagers.”

26.2 Did Councillor Beynon tell the Respondent that, when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17?

26.2.1 The Case Tribunal found that Councillor Beynon did not tell the respondent that when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17. The Case Tribunal accepted Councillor Beynon’s evidence that he would not have told former Councillor Dowson anything other than what happened. Councillor Beynon was not 18 when the incident occurred. The incident related to photographs, not a video recording. The female person involved was 18. The Case Tribunal could see no reason why Councillor Beynon would have told former Councillor Dowson information that was factually inaccurate. This is particularly true because taking, making or distributing an indecent photograph of a person under the age of 18 is an offence contrary to s.1 of the Protection of Children Act 1978. If former Councillor Dowson’s version of events is correct, Councillor Beynon would have admitted a serious criminal offence to him, and the Case Tribunal finds that he did not do this.

27. The second complaint.

27.1 Following a consultation which ended on 19<sup>th</sup> July 2019, the Welsh Government published its “Curriculum for Wales guidance” on 28<sup>th</sup> January 2020. A copy of this document was provided to the Case Tribunal. The Welsh Government published its “Statutory Guidance and Code” for RSE on 21<sup>st</sup> May 2021 which sets out the draft statutory guidance for and the draft Code on RSE for its new curriculum. The consultation period ended on 16<sup>th</sup> July 2021.

27.2 On 17<sup>th</sup> January 2021, on a Facebook page headed “Paul H Dowson, County Councillor”, posted the following.

*“If you are worried about our children’s future watch this RSE. New curriculum for sex education being sneaked in to our schools soon.  
It will teach  
Masturbation  
From age 0-3  
It includes teaching 13 year old boys and girls about anal sex. Illustrated by a banana and Nutella.*



*A lot more graphic examples I won't state due to Facebook standards. This is real, I kid you not... the draft document is available on PCP WALES WEBSITE  
Would like to hear cllr guy Woodham (cabinet member for education) and the new director of education should share his views too.  
Sexual rights from birth. Wtf??”*

- 27.3 On 14<sup>th</sup> June 2021, former Councillor Dowson sent an email to Councillor Tessa Hodgson, which read, in part, as follows.

*Regarding RSE Curriculum. Welsh government are not in full possession of the actual lesson content. They are that ignorant to it they recently suggested that I was spreading misinformation...I am absolutely certain that what I am saying is 100% accurate...The lesson plans really do teach 3 year olds about masturbation. What is good touch and bad touch. It also really does contain lesson plans for 11 years and upwards about bondage, anal sex, facial ejaculation and a lot more...This RSE Curriculum is abuse and has no place in our childrens childhood.”*

- 27.4 On his Councillor Facebook page, former Councillor Dowson also shared a post written by “Paul Dowson” which read as follows.

*“We also need to say No to this RSE sex education curriculum...mandatory from age 3.  
At age 3 they want to teach children about masturbation.  
Are we going to let the woke brigade call the shots for our children too?”*

- 27.5 When interviewed by the PSOW Investigating Officer on 31<sup>st</sup> August 2021, former Councillor Dowson said that it was “absolutely true” that the new curriculum would teach masturbation from age 3, but that it had been decided that children have sexual rights from age 0. The following exchange then took place. LM is the interviewer. PD is the Respondent.

*LM: Where, where did you get that information?*

*PD: I got that from UNESCO and the World Health Organisation, the global rollout of the RSE which has happened in England and in Scotland already, and it comes from material that they've got.*

*LM: Okay. Is that in any of the Welsh Government documentation?*

*PD: There's nothing in any of the Welsh Government documentation, apart from generalisation, they haven't, er, they ... well, they won't, er, admit to what the contents are going to be. However, er, there is*

*a video on line of Caroline Jones Assembly Member referring to the Senedd and her referring to teaching masturbation at age 3 and nobody's disputing it with her.*

*LM: Well, I don't know whether anyone's disputing it with her or, or not. Um, I did, I did watch the video and I didn't see ... at the end she just asks for the evidence but, um, I'm not sure if the evidence was sent or not.*

*PD: It hasn't even been drawn up properly in Wales but, er, you know, it's, it's quite easy for, for the Welsh Government to say it's misinformation at the moment because they haven't even drawn it up.*

The interviewing officer also asked the Respondent to identify the source of his information in relation to teaching about anal sex using a banana and Nutella. The Respondent referred to hyperlinks which he said took a reader to lesson plans but conceded that they had not been developed by Welsh Government, nor did they refer to Welsh Government. Former Councillor Dowson suggested that there had been a vote in March for the RSE curriculum to go ahead in Wales, "and the RSE curriculum is the UNESCO and World Health Organisation global rollout."

The Respondent doubted that the statement he was being asked about said "0 to 3" and if so, that would be a mistake. Rather, he said, 3-year-olds would be taught about masturbation and children had sexual rights from age 0 to 16. This was part of the curriculum "that they have adopted to implement".

*LM: Okay. So, if the Welsh Government haven't drawn it up yet, how can you say that what it will and will not include if it's not been drawn up yet?*

*PD: Because the framework has to include what I have said, how they deliver it is up to them.*

*LM: Okay. And where, where does it state that the Welsh Government must, er, include every element of this framework?*

*PD: In the UNESCO and the WHO, um, information that's provided in those hyperlinks.*

28. **Findings of fact in relation to the second complaint.**

28.1 Were the Respondents statements about the content of the RSE curriculum true?

28.1.1 The Case Tribunal found that the Respondents statements about the content of the RSE curriculum were not true. The Tribunal was provided with a massive quantity of documentation. The Tribunal accepted the PSOW's submission that the available material provided no credible evidence to suggest that the Welsh Government or the Senedd intended to include in the curriculum the content which former Councillor Dowson has said it will include.

28.1.2 The Case Tribunal also accepted the submission that when pressed in interview, former Councillor Dowson could not identify any Welsh Government or Senedd documentation to prove his point because as he conceded, at that point, the RSE curriculum had yet to be drawn up. The Welsh Government "Curriculum for Wales" guidance makes no mention of the lesson plans which former Councillor Dowson says will be taught.

28.1.3 In the Listing Directions for the final hearing, former Councillor Dowson was asked to specifically identify those passages in the served documents which proved that his statements were true. He chose not to engage with the Tribunal any further.

29. The third complaint.

29.1 On 12<sup>th</sup> April 2021, The Pembrokeshire Herald published a post on Facebook headed "Dowson dissents on new CEO". The post gave rise to several responses. One of those responding was Mr Timothy Brentnall, who used the name "Timothy Stjohn", "St John" being his middle name. Former Councillor Dowson joined the thread to communicate with Mr Brentnall. According to Mr Brentnall, the following exchange took place.

**Paul Dowson.** *Timothy Stjohn get a grip I get you don't like me because I don't share your opinions. But don't get taken in by someone else's hate campaign. That pic was a selfie with a wall mural I'd just put up.*

**Timothy Stjohn.** *no Pauly, it's not that you don't share my opinions, that's not why I don't like you. I don't like you because you're a racist bigot, that's why I don't like you.*

**Paul Dowson.** *Timothy Stjohn what a t\*\*ser. I heard you are on the register but it's not been proven so I'm not spreading it around. Better man than you.*

29.2 In his initial complaint, made on 16<sup>th</sup> April 2021, Mr Brentnall said that during the discussion, former Councillor Dowson called him a “tosser” (which he then edited to “t\*\*ser”) and tried to suggest that he was a convicted sex offender. He provided a screenshot of the edit history for the exchange and the exchange itself.

29.3 On 21<sup>st</sup> April 2021, former Councillor Dowson responded to the complaint by email to the Ombudsman. He attached screenshots which contained text identical to that provided by Mr Brentnall, in particular the comment “I heard you are on the register”.

29.4 In an email on 18<sup>th</sup> May 2021 responding further to the complaint and its investigation, former Councillor Dowson said this.

*His reference to the register being a sec (sic) offenders register is nothing more than his own interpretation of it. There are numerous registers but he automatically assumed it was the sex offenders register.*

29.5 Former Councillor Dowson was interviewed by the Investigating Officer (LM) in relation to Mr Brentnall’s allegations on 1<sup>st</sup> September 2021. He said this.

*LM: Okay. So, why did you refer to him being on the register in that comment thread?*

*PD: That, by the way, was the Antifa Register, not the Sex Offenders Register. If he chose to take it that way, that's not my fault.*

*LM: What do you mean by the Antifa Register?*

*PD: There's an unofficial register going round, with all the Antifa members in Pembrokeshire who are openly abusing people online. Somebody decided to make a page called the Antifa Register, where they're all named and shamed.*

*LM: Okay. So, when someone would read that comment, do you think they would think you were referring to the Antifa Register or the Sex Offenders Register?*

*PD: It all depends who they are and what they know about the Antifa Register.*

*LM: Okay. Is there anywhere within that thread where you refer to it being the Antifa Register?*

*PD: No, not at all.*

*LM: Okay, so what ... If you were referring to the Antifa Register, is there any reason why you didn't specifically refer to that?*

*PD: Because Mr. Stjohn, or whatever his real name is, is well aware of the Antifa Register, so he would know exactly what I'm on about.*

Towards the end of the interview, former Councillor Dowson was asked if he had anything else to add. He declined to do so.

- 29.6 In an email to the Ombudsman on 13<sup>th</sup> December 2021, former Councillor Dowson forwarded a screenshot of his exchange with Mr Brentnall which reads as follows at the point in issue.

***Paul Dowson.** Timothy Stjohn what a t\*\*ser. I heard you are on the Antifa register but its not been proven so I'm not spreading it around. Better man than you.*

- 29.7 Former Councillor Dowson's comments have subsequently been deleted and cannot now be accessed.

- 29.8 Mr Brentnall gave live evidence to the Case Tribunal in which he confirmed that the Respondent used the phrase "on the register" and therefore not "on the Antifa register".

### **30. Findings of fact in relation to the third complaint.**

- 30.1 Did the Respondent post on Facebook that he "heard" that Mr Brentnall was "on the register"; or "on the Antifa register"?

- 30.1.1 The Case Tribunal accepted the PSOW's submission that the Respondent posted on Facebook that he "heard" that Mr Brentnall was "on the register"; and not "on the Antifa register". The Case Tribunal accepted Mr Brentnall's oral and written evidence. The document that former Councillor Dowson himself sent to the investigation on 21<sup>st</sup> April 2021, only a matter of days after the event did not include the word "Antifa" and therefore supported Mr Brentnall's version of events. That

submission was further bolstered by the evidence of the Respondent's other early correspondence on the point, and his replies in interview, where he himself said that he did not specifically refer to the "Antifa" register.

30.2 IF the Respondent posted "on the register" and not "on the Antifa register", was he referring to registration as a sex offender?

30.2.1 The Case Tribunal found that former Councillor Dowson used the term "on the register" to refer to Mr Brentnall as being a registered sex offender, and thereby to discredit him in a hurtful and harmful way. This was the meaning that Mr Brentnall understood when the term was used against him. The Case Tribunal accepted that is the meaning that any ordinary person would understand by that comment.

30.3 IF the Respondent posted "on the register" and not "on the Antifa register", did he deliberately attempt to mislead the PSOW's investigation by providing a fabricated exhibit?

30.3.1 The Case Tribunal found that former Councillor Dowson deliberately tried to mislead the PSOW's investigation by providing a fabricated exhibit. The Case Tribunal compared the document produced by former Councillor Dowson with the documents provided by Mr Brentnall. The Case Tribunal looked at the context and conversation. It looked again at the document former Councillor Dowson produced within days of the exchange, and his responses in writing and in interview. In the absence of expert evidence, the Case Tribunal did not need to go as far as the PSOW suggested in submitting that the document looked inauthentic. The rest of the evidence demonstrated that the inclusion of the word "Antifa" in the later document produced by former Councillor Dowson was a deliberate later addition, designed to mislead the Ombudsman.

31. **Findings of whether material facts disclose a failure to comply with the Code of Conduct.**

31.1 Paragraph 4(c) of the Code of Conduct reads as follows.

*You must — (c) not use bullying behaviour or harass any person.*

31.2 Paragraph 6(1)(a) of the Code of Conduct reads as follows.

*You must — (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

- 31.3 The Case Tribunal found that the first complaint relates to two people whose complaints are similar in that in each case, former Councillor Dowson used social media to say in public that each person had behaved criminally. After Mr Marc Davies told former Councillor Dowson in September 2020 that he had not been convicted of any offences, as had previously been suggested, former Councillor Dowson later used Twitter to wrongly allege that Mr Davies was a violent criminal who breached parole. He made similar allegations during the PSOW's investigation. In Councillor Beynon's case, former Councillor Dowson alleged that Councillor Beynon engaged in serious criminal conduct, namely the posting of criminally indecent images. Neither allegation was true.
- 31.4 In the case of Mr Marc Davies, the Case Tribunal took the view that former Councillor Dowson did not care whether what he said was true or false and at best took no steps to determine the truth until Mr Marc Davies made a complaint and the Respondent was aware that he would have to answer it. In Councillor Beynon's case, the Case Tribunal took the view that former Councillor Dowson relied for credibility upon his untrue version of a conversation he had with Councillor Beynon, knowing that it was untrue. To that lie, he added others, again to bolster his credibility and to make life worse for a fellow elected Member.
- 31.5 Making such serious, false allegations against, on the one hand a member of the public, on the other, a fellow elected Member brought not only the office former Councillor Dowson held into disrepute but also the Council itself. The potential and actual reputational damage for both the office holder and the Council are obvious. In each case, former Councillor Dowson's actions demonstrated a wilful disregard for the truth. In the case of Mr Marc Davies, former Councillor Dowson continued with his statements even after he had been challenged. In the case of Councillor Beynon, former Councillor Dowson sought to justify his comments by reference to a conversation that never happened, at least in the manner that he suggested it did
- 31.6 In each case, former Councillor Dowson's behaviour also amounted, by reason of repetition to bullying against Councillor Beynon; and harassment against Mr Marc Davies. As the PSOW submitted and the Case Tribunal accepted, bullying can be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour; and that bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to confidence and capability, and may adversely affect their health. The Case Tribunal found that former Councillor Dowson's behaviour towards Councillor Beynon fell four-square within this definition.

- 31.7 Similarly, as the PSOW submitted and the Case Tribunal accepted, harassment is repeated behaviour which upsets or annoys people. The Case Tribunal found that former Councillor Dowson's behaviour towards Mr Marc Davies fell four-square within this definition.
- 31.8 Former Councillor Dowson's behaviour towards both Mr Marc Davies and Councillor Beynon do not come within the ambit of free speech protected by Article 10 of the Convention. His comments about each were directed towards each personally. They were not aspects of "political expression" and were in any event, not merely offensive but grossly offensive, and therefore not protected by Article 10.
- 31.9 Accordingly, the Case Tribunal found that on the first complaint, in respect of both Mr Marc Davies and Councillor Beynon, former Councillor Dowson's behaviour amounted to breaches of paragraphs 6(1)(a) and 4(c) of the Code of Conduct.
- 31.10 In relation to the second complaint, the Case Tribunal found this to be a further example of former Councillor Dowson representing something as true when he had no grounds to do so, from a position of authority on a subject that had the capacity to wrongly cause serious alarm to both his constituents and members of the public. That brought both his office and the Council into disrepute, particularly when taken as part of his wider course of similar conduct.
- 31.11 Considering again the question of whether former Councillor Dowson's comments came within the ambit of free speech protected by Article 10 of the Convention, the Case Tribunal agreed with the PSOW's submission that whilst Article 10 protects the right to make incorrect but honestly made statements in a political context, it does not protect statements which the publisher knows to be false. As he admitted in interview, former Councillor Dowson knew that he had no real foundation for his assertions about the future RSE curriculum.
- 31.12 In the absence of same, the Case Tribunal found that his comments were directed to cause shock and outrage, rather than to honestly inform the public and so were not protected by Article 10. They amounted to wilful misinformation. The Tribunal was fortified in this decision by its decisions in relation to the nature of former Councillor Dowson's behaviour towards Councillor Beynon, Mr Marc Davies and Mr Timothy Brentnall. His comments on the RSE curriculum can be seen as part of a similar pattern of behaviour.



- 31.13 Accordingly, the Case Tribunal found that on the second complaint, that former Councillor Dowson's behaviour amounted to a breach of paragraph 6(1)(a) of the Code of Conduct.
- 31.14 In relation to the third complaint, the Case Tribunal found this to be a further example of former Counsellor Dowson suggesting serious criminal conduct by a member of the public when he had no cause or grounds to do so. To allege for no reason that a person is a registered sex offender can do no other than bring both the Council and the officer holder into disrepute, given the potential for loss of public confidence caused by such behaviour. To seek to justify that behaviour by misleading an investigation and relying upon a fabricated exhibit can again do nothing other than bring both the office holder and the Council into disrepute.
- 31.15 Former Councillor Dowson's behaviour towards Mr Timothy Brentnall does not come within the ambit of free speech protected by Article 10 of the Convention. His comments were directed towards Mr Brentnall personally. They were not aspects of "political expression" and were in any event, not merely offensive but grossly offensive, and therefore not protected by Article 10.
- 31.16 The Case Tribunal therefore found breaches of paragraph 6(1)(a) of the Code of Conduct in relation to both aspects of the third complaint.
- 31.17 All the Case Tribunal's findings were unanimous.

## **32. Submissions on action to be taken.**

- 32.1 Ms Shaw brought to the Case Tribunal's attention a report of a decision of the Standards Committee of Pembrokeshire County Council that took place in a hearing on 9<sup>th</sup> June 2022, when former Councillor Dowson was censured for behaviour on social media that breached paragraph 6(1)(a) of the Code of Conduct and other provisions. Former Councillor Dowson was not re-elected to office in May 2022, so by the time that hearing took place, the sanction passed was the maximum sanction available. The Committee noted that had former Councillor Dowson been re-elected, it was highly likely that he would have been suspended from office.
- 32.2 Ms Shaw directed the Case Tribunal's attention to the Sanctions Guidance, issued by the President of the Adjudication Panel for Wales under s.75(10) of the Local Government Act 2000. She outlined the role of the ethical framework in promoting high standards of public trust and confidence and noted the purpose of the sanctions regime as set out in

paragraph 18 of the guidance. She also noted that sanctions had to be applied in a fair and proportionate fashion, taking into account the public interest in maintaining public confidence in local democracy.

- 32.3 Ms Shaw directed the Tribunal to paragraph 33 of the guidance and the five-stage process prescribed therein. She noted that the Tribunal had returned five findings that former Councillor Dowson had brought both his office and the Council into disrepute. She also noted the evidence of actual and further potential harm to Mr Marc Davies, Councillor Beynon and Mr Brentnall.
- 32.4 Given that former Councillor Dowson is no longer an elected member of the Council, the Case Tribunal had a binary choice: either to take no action or to pass a period of disqualification from being or becoming a member of Pembrokeshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000. Ms Shaw accepted that the lack of any other sanction did not mean that the Tribunal should simply proceed to disqualification by default; and that this sanction should only be imposed if it was justified. Given the consequences and the seriousness of the breaches, Ms Shaw submitted that it was not appropriate to take no action and that disqualification was appropriate.
- 32.5 In terms of mitigating circumstances, Ms Shaw asked the Case Tribunal to consider the fact that former Councillor Dowson had served a relatively short length of service, having been in office since May 2017; that he had apologised to Mr Marc Davies in February 2021; and that he had co-operated with the process for example by being interviewed.
- 32.6 In terms of aggravating circumstances, Ms Shaw agreed that the Tribunal should be careful not to double-count as aggravating those features which were already considered as elements of the case proved. These were serious, numerous repeated breaches of the Code. The elements of dishonesty and the provision of misleading information were serious aggravating factors. Former Councillor Dowson had demonstrated a lack of acceptance of the wrong he had done and very little concern and reckless disregard for the consequences to others.
- 32.7 Ms Shaw submitted that in the circumstances, disqualification was proportionate, given that the behaviour to be sanctioned was at the very serious end of the scale. There are no comparable cases. The next elections for office will take place in 2027.

**33. The Case Tribunal's decision.**

- 33.1 Having applied the five-stage process directed in the sanctions guidance and having assessed the seriousness of the breaches and consequences for the individuals concerned and the Council, the Case Tribunal identified that disqualification was both appropriate and proportionate given the number of findings of disrepute; the gravity of each finding; the gravity of those findings when taken cumulatively; their persistence; and the serious potential and actual consequences for the complainants. The Case Tribunal agreed with the PSOW's submission that former Councillor Dowson's conduct called into question his fitness for public office.
- 33.2 Former Councillor Dowson may, at one time, have made some manner of apology to Mr Marc Davies but it was much too late to count seriously as mitigation. There was no such apology to Councillor Beynon, who had suffered real and serious personal and professional harm. Rather than apologise to Mr Brentnall, former Councillor Dowson had tried to explain his actions by using fabricated evidence.
- 33.3 The Case Tribunal considered mitigating features. Although former Councillor Dowson was relatively newly elected, the Case Tribunal did not consider his length of service to be mitigation. These were not trivial failures that could be explained by lack of knowledge or experience. His co-operation with the investigating authority was noted but very seriously undermined by his provision of a fabricated exhibit and his attempts to brazen out much of this case.
- 33.4 Former Councillor Dowson has been found to have bullied Councillor Joshua Beynon; harassed Mr Marc Davies and brought both his office and Pembrokeshire County Council into disrepute on five occasions. He alleged that Mr Marc Davies was a violent criminal when he was not. He alleged that Councillor Beynon distributed criminally indecent material when he did not. He alleged that Mr Timothy Brentnall was a registered sex offender when he was not. He alleged that the Welsh Government's relationships and sex education curriculum was to teach subject matter that it did not. He sought to undermine part of the investigation into him by relying on a fabricated exhibit and misleading the investigating authority.
- 33.5 This conduct, when taken together with the actual and potential further consequences for both the individuals concerned and the Council is so serious that disqualification is a reasonable and proportionate outcome. It is the only fair outcome.

- 33.6 Ms Shaw, in fairness to the Respondent, set out some possible mitigating features, however the Case Tribunal was unable to give them weight for the reasons set out above.
- 33.7 The Case Tribunal was careful not to double count those inherent facts of the breaches as additional aggravating features. The most recent, separate finding against former Councillor Dowson does him no credit but was distinct enough to be kept to one side.
- 33.8 The Case Tribunal found that the aggravating circumstances included: -
- 33.8.1 The repeated nature of the breaches and the findings of disrepute.
- 33.8.2 The lack of understanding of the consequence of misconduct for others.
- 33.8.3 The fact that former Councillor Dowson showed very little concern for those about whom he made allegations.
- 33.8.4 The fact that he sought to blame others for his faults.
- 33.8.5 He sought to blame Mr Timothy Brentnall for producing false documents, rather than admitting his own dishonesty.
- 33.8.6 He sought to blame Councillor Beynon for telling him what he repeated, even though no such conversation took place.
- 33.8.7 His behaviour demonstrated deliberate and reckless conduct with little or no concern for the Code of Conduct.
34. The Case Tribunal therefore decided unanimously that former Councillor Paul Dowson should be disqualified for three years from being or becoming a member of Pembrokeshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000, with effect from the date of this notice.
35. The Respondent has the right to seek the leave of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.
36. Pembrokeshire County Council and its Standards Committee are notified accordingly.

**TOM MITCHELL**

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Chairperson of the Case Tribunal

**SUSAN HURDS**

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Panel member

**DEAN MORRIS**

.....

Panel member

**16<sup>th</sup> September 2022**

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**STANDARDS COMMITTEE**  
**FORWARD WORK PROGRAMME**

**2022 - 2023**

**Standards Committee (9.30am unless otherwise stated)**

<b>Meeting Date 2023</b>	<b>Agenda Item</b>	<b>Type</b>	<b>Contact Officer</b>
<b>11 April 2023</b>	Attendance of Group Leader at Standards Committee to seek assurances – Councillor Martyn Peters, Cllr Helen Ceri Clarke	Information	Craig Griffiths
	Forward Work Programme	Information	Craig Griffiths
	Member Code of Conduct Complaints and Local Resolution Process	Information	Craig Griffiths
	Gifts and Hospitality Received	Information	Craig Griffiths
	Town and Community Council Standards Update and actions for consideration	Decision	Craig Griffiths
	Standards Committee Annual Report	Decision	Craig Griffiths
	Standards Committee Complaints Process	Information	Craig Griffiths

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**As Needed:**

- Ombudsman Code of Conduct Casebook
- Complaints from Public Service Ombudsman
- Dispensation Reports
- Code of Conduct Updates
- Case Law Update
- CJC Updates
- Member Training