



STANDARDS COMMITTEE

9.30 AM - FRIDAY, 23 NOVEMBER 2018

COMMITTEE ROOM 3 - PORT TALBOT CIVIC CENTRE

PART 1

1. Declarations of Interest
2. Minutes of Previous Meeting (*Pages 5 - 10*)
3. Car Parking Dispensation (*Pages 11 - 14*)
Report of the Head of Legal Services and Monitoring Officer
4. The Adjudication Panel for Wales - Guidance on the Imposition of Sanctions (*Pages 15 - 40*)
Report of the Head of Legal Services and Monitoring Officer
5. Summary of Cases Undertaken by the Public Service Ombudsman for Wales (*Pages 41 - 62*)
Report of the Head of Legal Services and Monitoring Officer
6. Social Media Guidance for Councillors (*Pages 63 - 102*)
Report of the Head of Legal Services and Monitoring Officer
7. Recent Decision of the Adjudication Panel for Wales (*Pages 103 - 122*)
Report of the Head of Legal Services and Monitoring Officer

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

PART 2

9. Access to Meetings
To resolve to exclude the public for the following item(s) pursuant to Section 100A(4) and (5) of the Local Government Act 1972 and the relevant Exempt Paragraphs of Part 4 of Schedule 12A to the above Act
10. Referral from the Ombudsman
(Exempt under Paragraph 18c) (*Pages 123 - 464*)

Private Report of the Head of Legal Services and Monitoring Officer

S.Phillips
Chief Executive

Civic Centre
Port Talbot

29 October, 2018

Committee Membership:

Chairperson: C.L.Jones

Vice

Chairperson: Mrs B.Richards

Independent Members: L.Fleet and T.Ward

NPTCBC Members: A.L.Thomas and S.E.Freeguard

Community Committee Member: A.Carter

Substitutes

NPTCBC Substitutes: R.W.Wood

*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

(Committee Room 3 - Port Talbot Civic Centre)

Members Present:

13 July 2018

Chairperson: C.Jones

Vice Chairperson: B.Richards

Independent Members: L.Fleet

NPTCBC Members: Councillors A.L.Thomas and S.E.Freeguard

Community Committee Members: A.Carter

Officers In Attendance: C.Griffiths and N.Headon

Apologies: T.Ward

1. **APPOINTMENT OF CHAIRPERSON**

Prior to the election of the Chair and Vice Chair, Mr.C.Griffiths opened the meeting.

RESOLVED: that Cliff Jones be appointed Chair of the Standards Committee for Neath Port Talbot County Borough Council.

2. **APPOINTMENT OF VICE CHAIRPERSON**

RESOLVED: that Barbara Richards be appointed Vice Chair of the Standards Committee for Neath Port Talbot County Borough Council.

3. **DECLARATIONS OF INTEREST**

The following Members made a declaration of interest at the commencement of the meeting:

- | | |
|------------------------|---|
| Councillor A.Thomas | - Report of the Head of Legal Services and Monitoring Officer – Item 6 – Grant of Dispensations Under Section 81 (4) Local Government Act 2000 – as he is a beneficiary of general dispensation for governors of Neath Port Talbot Schools. |
| Councillor S.Freeguard | - Report of the Head of Legal Services and Monitoring Officer – Item 6 – Grant of Dispensations Under Section 81 (4) Local Government Act 2000 – as her sister-in-law works for Cleaning Services and member of Abertawe Bro Morgannwg University Health Board, Community Health Council. |
| Clifford Jones | - Report of the Head of Legal Services and Monitoring Officer – Item 3
Councillor D. Cawsey is his wife's Nephew. |
| Alan Carter | - Report of the Head of Legal Services and Monitoring Officer – Item 6
School Governor, Crynallt Primary School. |

4. **MINUTES OF PREVIOUS MEETING**

RESOLVED: that the Minutes of the previous meeting held on the 16 March, 2018 be confirmed as a true and accurate record of proceedings.

5. **THE REMIT OF THE STANDARDS COMMITTEE**

RESOLVED: That the remit of the Standards Committee and the legislative background in which the Standards Committee operates, as detailed within the circulated report, be noted.

6. **GRANT OF DISPENSATIONS AND RENEWAL OF GRANTS UNDER SECTION 81(4) LOCAL GOVERNMENT ACT 2000**

Members considered renewals and applications received for Employment Dispensations, Miscellaneous Dispensations, Dispensations regarding School Governors, Standard Dispensations for School Reorganisation and Dispensations for Voluntary Sector Funding, as detailed in the circulated report.

RESOLVED: (a) that the Applications for Employment Dispensation as set out in paragraph 1.2.8. of the report, be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in the standard form as set out in Paragraph 1.2.6. to speak and vote and that the dispensations run to the Standards Committee which follows the Annual Meeting of Council 2019;

(Councillor S.Freeguard and C.Jones left the meeting before the commencement of this item)

(b) that the new applications and the applications for renewals of Miscellaneous Dispensations, as set out in paragraph 1.3.2. of the report, be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak or to speak and vote as set out in the Schedule as detailed within the

circulated report, and that the dispensations run to the Standards Committee which follows the Annual Meeting of Council 2019;

(Councillor S.Freeguard remained outside the meeting for this item)

- (c) that the Grant of General Dispensations: School Governors, to speak and vote, as detailed in the report, be further granted until the Standards Committee which follows the Annual Meeting of Council 2019;

(Councillor A.Thomas and A.Carter left the meeting before the commencement of this item)

- (d) that the Applications for School Reorganisation Dispensation as set out in paragraph 1.5.4 of the report, be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in the standard form as set out in Paragraph 1.5.2. to speak but not vote and that the dispensations run to the Standards Committee which follows the Annual Meeting of Council 2019;

- (e) that Standards Committee Application for Voluntary Sector Funding Dispensation, as set out in paragraph 1.6.4 of the circulated report be approved in the circumstances set out in Regulation 2 (c), (d), (g) and (h) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak only and that the dispensations cover all matters relating to the funding for the voluntary/third sector, and that the dispensations run to the Standards

Committee which follows the Annual Meeting of Council 2019.

7. **OMBUDSMAN CODE OF CONDUCT CASEBOOK**

RESOLVED: That the findings in the Public Service Ombudsman for Wales Code of Conduct Casebook, as detailed within the circulated report, be noted.

8. **RECENT DECISION OF THE ADJUDICATION PANEL FOR WALES**

RESOLVED: That the report of the Adjudication Panel for Wales regarding compliance with the Members Code of Conduct, as detailed within the circulated report, be noted.

9. **HIGH COURT DECISION CONCERNING STANDARDS COMMITTEES**

RESOLVED: That the decision of the High Court in the recent judgement relating to the role of a Standards Committee, as detailed in the circulated report, be noted.

10. **FORWARD WORK PLAN**

RESOLVED: That the following items be included in the Standards Committee Forward Work Programme:

Standards Committee	Matters for Agenda
23 November 2018	<ul style="list-style-type: none">• Ombudsman Annual Report• Code of Conduct Update• Discussion of training regime undertaken by County Borough Councillors

	<p>and to identify areas of need that should be recommended to the Council's Democratic Services Section</p> <ul style="list-style-type: none">• Discussion of training regime that should be provided to Town and Community Councillors and Clerks on Code of Conduct issues• How Committee relates to Town and Community Councils.• Whistleblowing Policy• Code of Conduct
29 March 2018	<ul style="list-style-type: none">• Code of Conduct Update• Feedback on training regimes for County Borough Councillors and Town and Community Councillors

CHAIRPERSON

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 November 2018

REPORT OF THE HEAD OF LEGAL SERVICES – C.GRIFFITHS

Matter for Decision

Wards Affected: All

Grant of Dispensation under S81(4) of the Local Government Act 2000

Purpose of the Report

1. To seek a dispensation for all members of the Neath Port Talbot County Borough Council in respect of considering reports on car parking.

Background

2. Under Section 81(4) of the Local Government Act 2000 Standards Committees may grant dispensations to a Member of a relevant authority (including a Community Council) allowing the Member to participate in any business where that participation would otherwise be prohibited by the mandatory provisions of the Members' Code of Conduct.
3. The National Assembly for Wales in the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 sets out the circumstances in which these dispensations may be granted. The Standards Committee may only grant dispensations in the circumstances set out in the Regulations. In the report which follows, I set out the circumstances or grounds on which dispensations may be granted in each case.
4. The form of the report will generally set out the dispensation, the circumstances in which it may be granted and details of the applicant for the dispensation.
5. In accordance with previous practice, it is suggested that all dispensations be granted until the first meeting of the Standards Committee following the Council Annual General Meeting in 2019 in order to ensure that they all come up for renewal at the same time.
6. As part of its forward financial planning process, a report was taken to the Council's Cabinet on the 31st October 2018 to increase car parking charges

for staff by a fixed amount. This proposal is currently being consulted on and will be brought back before Cabinet and Council in early 2019.

7. The proposal itself though will equally apply to elected members of the Council and even though the effect of the proposal will see an increase in cost for such parking permits for Members, the Members Code of Conduct could prohibit decisions being made in this area as potentially a majority of members could be affected meaning any decision would not be quorate.
8. Regulations 2(a) and (b) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001 allows for the Standards Committee to grant a dispensation to all members where no fewer than half of the members of the Council has an interest that relates to that business.
9. To ensure that members can vote on such matters, it is requested that Standards Committee grant dispensations to all members to enable them to speak and vote on such matters when such matters are brought back before Council and Cabinet.
10. The Member using the dispensation must understand that it cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect the Member's ability to act purely on the merits of the case and in the public interest if the Member were to take part in the discussion.

Financial Impact

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

Equality Impact Assessment

12. There are no equality impacts associated with this Report

Workforce Impacts

13. There are no workforce impacts associated with this Report

Legal Impacts

14. There are no immediate legal impacts associated with this Report.

Consultation

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

Recommendations

16. That Members of the Standards Committee grant a dispensation to all elected members of the Council to speak and vote on issues relating to the business of car parking charges for staff and members provided that member using the dispensation must understand that it cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect the Member's ability to act purely on the merits of the case and in the public interest if the Member were to take part in the discussion

Appendices

17. None

List of Background Papers

18. None

Officer Contact

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NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 November 2018

REPORT OF THE HEAD OF LEGAL SERVICES – C.GRIFFITHS

Matter for Information

Wards Affected: All

The Adjudication Panel for Wales – Guidance on the imposition of sanctions

Purpose of the Report

1. To draw to Members attention the sanctions guidance issued by the Adjudication Panel for Wales which is came into force on 1 September 2018 as the subject matter of this guidance is relevant to the remit of the Standards Committee.

Background

2. Guidance has been issued by the Adjudication Panel for Wales (“the APW) to assist the APW’s case, appeal and interim case tribunals, when considering the appropriate sanction to impose on a Member found to have breach their authority’s code of conduct.
3. The guidance also describes the role of the ethical framework and code of conduct in promoting high public standards, among other persons, Members of local government
4. A copy of the APW’s guidance is attached at Appendix 1 for information.
5. Whilst the guidance is intended primarily for the APW, the principles which underpin the guidance are relevant to work of the Standards Committee, and Members are invited to take account of its provisions. In this regard, the Standards Committee has the power to censure or suspend any member referred to who has breached the Code of Conduct for a period of 6 months, the guidance provides a useful tool identifying relevant factors when deciding whether any sanction should be imposed should any cases be referred to the Standards Committee in future.

Financial Impact

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

Equality Impact Assessment

7. There are no equality impacts associated with this Report

Workforce Impacts

8. There are no workforce impacts associated with this Report

Legal Impacts

9. 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

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

Recommendations

11. That Members note the guidance issued by the Adjudication Panel for Wales regarding compliance with the Members Code of Conduct

Appendices

12. Appendix 1 – APW’s Sanctions Guidance.

List of Background Papers

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

Officer Contact

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Sanctions Guidance

Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.

Foreword by the President

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim case tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman for Wales, Monitoring Officers and other interested parties. I would like to thank everyone for their contributions. In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local members, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

Claire Sharp
President, Adjudication Panel for Wales

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Introduction

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- the status, purpose and intended use of the Guidance, and its relevance to the public, individual members, Monitoring Officers and Standards Committees of councils, fire and rescue authorities, and national park authorities in Wales, the Public Services Ombudsman for Wales and the Adjudication Panel for Wales.

Standards in Public Life

page 3

- the Code of Conduct, expectations for local members and the process to be followed when a breach of the Code is alleged.

The Adjudication Panel for Wales

page 5

- the role of the Adjudication Panel for Wales, the purpose of the sanctions regime and sanction powers available to case, appeal and interim tribunals of the Adjudication Panel for Wales.

The Tribunals' Approach: underlying principles

page 7

- an overview of the general principles that underpin the broad approach of case, appeal and interim case tribunals, specifically fairness, public interest, proportionality, consistency, equality and impartiality, and Article 10 of the European Convention on Human Rights.

Case and Appeal Tribunals: determining sanction

page 9

- the specific sanctions available to case and appeal tribunals and the five stage process to be used to assess the seriousness of a breach, relevant mitigating and aggravating circumstances and any wider factors, and guidance on how to determine the specific sanction and duration; it also addresses the tribunal's power to make recommendations.

Interim Case Tribunals: determining sanction

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- the distinct aims of interim case tribunals to facilitate an ongoing investigation and the specific powers available in response to a report, and any recommendation, from the Ombudsman.

Annex: other relevant documents and guidance

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Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000¹. Its primary purpose is to assist the APW's case, appeal and interim case tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
 - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
 - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
 - iii. the approach to be taken by its tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of sanctions and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered to be by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider in addition to this Guidance other factors that they consider necessary and appropriate. Nor does the Guidance affect the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of relevant sections of this Guidance.
5. In setting out the factors to be considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparent approach for the benefit of all parties involved tribunal proceedings. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal is likely to arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Wales², confirming the expectations on local members in

¹ Section 75(10) of the Local Government Act 2000 ("the 2000 Act") provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

² The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils:

terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on 1 September 2018. It is a living document that will be updated and revised as the need arises, following consultation.

Standards in Public Life

The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is the Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members (with voting rights) must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their term of office.
9. The Welsh Government has issued a model Code of Conduct³ in order to ensure consistency across Wales and to give certainty to members and the public as to the minimum standards expected. The model Code is consistent with ten core principles of conduct⁴ prescribed by the National Assembly for Wales in 2001, which are themselves derived from the Nolan Committee's Principles for Public Life⁵:
 - i. Selflessness
 - ii. Honesty
 - iii. Integrity and Propriety
 - iv. Duty to Uphold the Law
 - v. Stewardship
 - vi. Objectivity in Decision-making
 - vii. Equality and Respect
 - viii. Openness
 - ix. Accountability
 - x. Leadership

Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

³ The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf and
www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf

⁴ The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf

⁵ Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales"

Local codes must incorporate any mandatory provisions of the model Code and may incorporate any optional provisions of the model Code. At this time, all provisions of the model Code are mandatory.

Expectations on local members

10. Members of county councils, county borough councils, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
 - whenever they are acting or present at a meeting of their authority, claiming to act or giving the impression of acting in an official capacity in the role of member to which they were elected or appointed or as a representative of their authority;
 - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.
11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code⁶. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and whether their actions constitute bullying or harassment– in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the Code and the Principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

Allegations of breach

13. There are non-statutory local protocols in place for low-level member-on-member complaints which do not result in case or appeal tribunals. Allegations that a member's conduct is in breach of the Code can be made to the Ombudsman, who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim case tribunal.

⁶ The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

The Adjudication Panel for Wales

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales⁷ as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

Case tribunals

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).

Appeal tribunals

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.

Interim case tribunals

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim case tribunal is a neutral act, given the ongoing nature of the Ombudsman's investigation.

The sanctions regime

18. The Committee on Standards in Public Life⁸ had a key role in developing the ethical framework and identified the need for mechanisms to enforce and punish public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

⁷ Part III, Local Government Act 2000

⁸ Reference to the report on enforcement

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a case tribunal that has found a breach of the Code are⁹:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

The sanctions available to an appeal tribunal that has found a breach of the Code are:

- d. censure;
- e. to suspend or partially suspend the member from the authority concerned for up to 6 months.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

⁹ Section 79, Local Government Act 2000

The Tribunal approach – underlying principles

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

Fairness

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the authority, the electorate and the wider public.

Public interest

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should consider the reputation of and public confidence in local democracy as more important than the interests of any one individual.

Proportionate

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook¹⁰ in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

Consistent

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done so.

Equality and impartiality

26. Fair treatment is a fundamental principle for the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

¹⁰ <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

Human Rights (Articles 6 and 10)

27. Tribunals must ensure that their processes and practices respect human rights. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Articles 6 and 10 of the European Convention on Human Rights in their deliberations. These articles enshrine the right to a fair hearing and freedom of expression.

28. Article 10 is a key provision when considering possible breaches of the Code. It provides that:

“10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...”

10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to ‘*hate speech*’ directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie¹¹ in the case of *Sanders v Kingston (No1)* and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent’s conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

¹¹ Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145

Case and Appeal Tribunals – determining sanction

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining any appropriate sanction, the tribunal's approach should be sufficiently broad so as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in particular, the wider public interest) and the tribunal's wider judicial responsibilities.
32. Case tribunals will decide on the appropriate sanction to impose, if any, and the duration of any such sanction; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

The five-stage process

33. Case and appeal tribunals will follow a five step process in determining sanction:
- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
 - 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
 - 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
 - 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
 - 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

Assessing the seriousness of the breach

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate. It is important to bear in mind though that appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.
35. The tribunal will assess seriousness with particular reference to:
- the nature and extent of the breach, and number of breaches;

- the member’s culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent to which the member’s actions have, or are likely to have the potential to, bring his/her office or the relevant authority into disrepute.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain or discrimination is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;
- a breach involving the systematic harassment or bullying of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer’s confidential advice;
- a breach resulting in significant negative reputational damage to the office or authority is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer), the deliberate abuse of confidential, privileged or sensitive information for personal gain or that of a close personal associate, and sexual misconduct, criminal, discriminatory, predatory, bullying and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election is automatically subject to disqualification¹².

Choosing the potential sanction

39. Having assessed the relative seriousness of the member’s breach of the Code, the tribunal will consider which of the courses of action available to it is most appropriate¹³. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact.

No action

39.1 The tribunal may decide that, despite the member having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

¹² Section 80(1)(d), Local Government Act 1972

¹³ Section 79, Local Government Act 2000

- an inadvertent failure to follow the Code;
 - an isolated incident with extremely limited potential for consequential harm;
 - an acceptance that a further failure to comply with the Code on the part of the member is unlikely, nor are there any wider reasons for a deterrent sanction;
 - specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and/or disproportionate.
- 39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the member as to their conduct and/or seek assurances as to future behaviour. This provides an effective means of placing the member's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same member being found to have breached the Code in the future. A failure to comply with any assurances given to the tribunal may be brought to the attention of the tribunal in any future hearings.

Suspension for up to 12 months

- 39.3 A case tribunal may suspend the member for up to 12 months from the authority(ies) whose Code/s has/have been breached.
- 39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter such future action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public that standards are being upheld.
- 39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction. It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the member's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (though the most appropriate sanction will depend on the specific facts of each case);

- the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
- the member has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

Partial Suspension for up to 12 months

- 39.7 The tribunal may impose a partial suspension, preventing the member from exercising a particular function or role (such as being a member of a particular committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the member is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.
- 39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the member is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.
- 39.10 Circumstances in which a partial suspension may be appropriate include:
- the member is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
 - the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
 - the member should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

Disqualification for a maximum of 5 years

- 39.11 A case tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.
- 39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the term of office of the member is due to expire during that period or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately disregarding or failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a second or subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent's fitness for public office;
- bringing the relevant authority into serious disrepute.

Mitigating and aggravating circumstances

40. The tribunal will go on to consider how any particular circumstances of the member may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the member's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. This process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension (if any) may be more appropriate than a disqualification, and vice versa.

41. Tribunals are encouraged to work through the examples set out below but are reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:

- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;

- if the breach is regarded as serious because it includes ‘bringing the authority into disrepute’, this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.

42. Tribunals should also take care to respect a member’s legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

Mitigating circumstances

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. that the member was acting in good faith, albeit in breach of the Code;
- vi. the misconduct arose from provocation or manipulation on the part of others;
- vii. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- viii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- ix. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see paragraphs 27-30 above and Aggravating factor xii below);
- x. self-reporting the breach;
- xi. recognition and regret as to the misconduct and any consequences;
- xii. an apology, especially an early apology, to any affected persons;
- xiii. co-operation in efforts to rectify the impact of the failure;
- xiv. co-operation with the investigation officer and the standards committee/APW;
- xv. acceptance of the need to modify behaviour in the future;
- xvi. preparedness to attend further training;
- xvii. commitment to seeking appropriate advice on the Code in the future;
- xviii. compliance with the Code since the events giving rise to the adjudication.

Aggravating factors

- i. long experience, seniority and/or position of responsibility;
- ii. seeking to unfairly blame others for the member's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or close personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or close personal associate) or political gain;
- v. abuse or exploitation of a position of trust;
- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with little or no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others (see paragraphs 27 – 30 above);
- xiii. obstructing and/or failing to co-operate with any Ombudsman's investigation, Standards Committee, and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous advice and/or warnings and to adhere to any previous assurances given as to conduct relevant to the Code.
- xvii. Previous findings of failure to follow the provisions of the Code.
- xviii. Continuing to deny the facts, despite clear evidence to the contrary.

Fulfilling the purpose of the sanctions regime

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the

individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

Public interest

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 in 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.

Eligibility for public office in other relevant authorities

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.

46. A suspension will preclude the member from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the member's overall suitability to public office, a disqualification may be more suitable than a suspension.

Former members

47. In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate (this can only apply in case tribunals). This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected. For appeal tribunals, a censure remains an option.

Financial impact

48. Tribunals should take into account the financial impact on members of a sanction: during suspension and disqualification, a member will be denied payment of their salary and allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary

plus expenses for county councillors to the higher salaries paid to leaders of larger councils¹⁴.

Impact on the electorate

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such ‘interference’ may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.
50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member.

Timing of local elections

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the member. For example: a disqualification of 18 months, imposed in December 2020, would prevent a member from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

Automatic disqualifications

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification.

Confirming the sanction

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

¹⁴ <http://gov.wales/irpwsb/home/?lang=en>

Recommendations

54. Case tribunals also have the power to make recommendations¹⁵ to the relevant authority whose Code it has considered about any matters relating to:

- the exercise of the authority's functions
- the authority's Code of Conduct;
- the authority's Standards Committee.

55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to take. If the Ombudsman is not satisfied with the action taken or proposed, he/she has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

Interim case tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim case tribunals are not disciplinary. Interim case tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal¹⁶ are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

¹⁵ Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

¹⁶ Section 78(1), Local Government Act 2000

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensure the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

The nature of the allegation(s)

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

No action

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.

63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

Partial Suspension

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.

65. Partial suspension may be appropriate in circumstances where the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or – the Respondent may be excluded from their specific or executive responsibilities in order to reassure the public whilst not undermining the authority's ability to function effectively or depriving the electorate of their division/ward representation.

Suspension

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:

- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
- the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her

remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;

- the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

Annex: other documents and guidance relevant to tribunals

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Adjudications by Case Tribunals and Interim Case Tribunals (Wales Regulations 2001 No. 2288 (W.176), as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001 No. 2281 (W171), as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 No. 85 (W.39)

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 November

REPORT OF THE HEAD OF LEGAL SERVICES – MR C GRIFFITHS

Matter for Information

Wards Affected: All

Summary of cases undertaken by the Public Service Ombudsman for Wales

Purpose of the Report

1. To provide Members with a summary of cases that have been undertaken by the Public Service Ombudsman for Wales (“the Ombudsman”).

Background

2. The Ombudsman publishes a Code of Conduct Casebook quarterly which contains the summaries of all reports issued under section 69(4) of the Local Government Act 2000 relating to breaches of the Members Code of Conduct to which all elected members of County Borough Councils and Town and Community Councils must comply.
3. Members will note that where the Ombudsman decides that a complaint against a County Borough Councillor or Town and Community Councillor should be investigated, there are four findings to which the Ombudsman can arrive at:
 - (a) that there is no evidence that there has been a breach of the authority’s code of conduct;
 - (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
 - (c) that the matter be referred to the authority’s monitoring officer for consideration by the standards committee;

(d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

4. In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.
5. The Code of Conduct Casebook (attached as Appendix 1) contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. The Casebooks cover the period of January to March 2018 and April to June 2018

Financial Impact

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

Equality Impact Assessment

7. There are no equality impacts associated with this Report

Workforce Impacts

8. There are no workforce impacts associated with this Report

Legal Impacts

9. 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. The powers of the Public Services Ombudsman for Wales are as defined in the Local Government Act 2000 and the Public Service (Ombudsman) Wales Act 2005 (as amended)

Consultation

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

Recommendations

11. That Members note the findings in the Public Service Ombudsman for Wales Code of Conduct Casebook

Appendices

12. Appendix 1 – Public Service Ombudsman for Wales Code of Conduct Casebooks 16 and 17

List of Background Papers

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

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The Code of Conduct Casebook

Issue 16 May 2018

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Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what

penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to March 2018.

Case summaries

No evidence of breach

There are no summaries in relation to this finding

No action necessary

Llanbedrog Community Council – Disclosure and registration of interests

Case Number: 201700942 & 201702074 – Report issued in January 2018

The Ombudsman received a complaint that a member of Llanbedrog Community Council (“the Councillor”) breached the Code of Conduct by failing to declare an interest when his planning application came up for discussion at a meeting of the Community Council (“the meeting”).

The Ombudsman investigated whether the Councillor had breached parts of the Code relating to personal and prejudicial interests. Interviews were conducted with those members of the Council who were present at the meeting. The evidence indicated that the Councillor:

- declared an interest when his planning application came up for discussion
- did not take part in the discussion
- did not leave the room but as the item was so brief, he did not have an opportunity to do so.
- The members present at the meeting did not feel that the Councillor’s presence influenced their decision

The Ombudsman found that the Councillor had acted appropriately and in line with the requirements of the Code of Conduct in declaring a personal interest when his planning application came up for discussion. However, his action in not leaving the meeting room was in breach of the Code of Conduct as he would have had a prejudicial interest in the matter.

The Ombudsman considered the breach was mitigated as the Councillor took no part in the discussion and as the item was so brief, the Councillor did not have an opportunity to leave the room before the item was concluded. The Community Council was also not the final decision-maker on planning matters. He took the view that the Councillor’s actions were of limited consequence.

Under section 69(4)(b) of the Local Government Act 2000, the Ombudsman found that no action needed to be taken in respect of the complaint.

Abertillery & Llanhilleth Community Council – Integrity

Case Number: 201700261 – Report issued in January 2018

The Ombudsman received a complaint that a member (“the member”) of Abertillery & Llanhilleth Community Council (“the Council”) had breached the Code of Conduct for members. It was alleged that the member had arranged for a sum of money, intended for the Council, to be paid to a community project (“the Project”). At the time of the actions complained of the member was Chairman both of the Council and of the Project.

The Ombudsman investigated whether the member’s actions amounted to a breach of para-

graphs 6(1)(a), 7(b)(ii) and 7(b)(iv) of the Code of Conduct relating to bringing their office or authority into disrepute, and the use of the authority's resources.

The Ombudsman found that the Council had no legal right to receive the money in question, and that it could not therefore be considered to be the Council's resources. The member had therefore not breached paragraph 7(b)(ii) or paragraph 7(b)(iv). However, the member had acted improperly in the way in which he obtained funding for the Project, representing himself as acting on behalf of the Council, at the possible expense of other groups, and may therefore have been in breach of paragraph 6(1)(a) in that he had brought his office or the authority into disrepute.

The Ombudsman noted the member's inexperience as Chairman, the fact that he believed, albeit mistakenly, that he was acting in the public interest and that he obtained no personal gain from his actions. The Ombudsman concluded that, on balance, the public interest did not require that the case should be referred to a Standards Committee or Adjudication Panel for Wales, and decided that no further action needed to be taken.

Case Number: 201701904 – Disclosure and registration of interests

Llay Community Council – Report issued in January 2018

The Ombudsman received a complaint from a member of the public that the Councillor had breached the Code of Conduct ("the Code") for Llay Community Council ("the Council"). The complainant said the Councillor had, at a meeting of the Council, failed to declare a personal interest in - and participated in a discussion about - a planning application which affected the site of the Llay branch of a charitable organisation. The Councillor is the Secretary of the Social Committee of the Social Club which is licensed to operate from the charitable organisation's site.

The Ombudsman considered whether, in failing to declare a personal interest and remaining in the room, the Councillor had breached the Code. The Ombudsman took witness statements from the other councillor's present at the meeting and interviewed the Councillor. The Council unanimously voted to oppose the planning application and none of the witnesses said they felt influenced by the Councillor's presence. There was some confusion amongst councillors as to whether the Councillor should have declared an interest and withdrawn. At interview, the Councillor remained of the view that he had not been required to declare an interest and withdraw. The Council was not the determining authority and so was simply being consulted on the application.

The Ombudsman concluded that the Councillor's personal interest was prejudicial and that he should have withdrawn from the room while the application was under discussion. However, the Ombudsman found that the Councillor did not stand to personally benefit from the outcome of the planning application. The Councillor's position as Secretary of the Social Committee and the Council's role in the determination of the application were sufficiently distant from application as to mitigate their impact. The Ombudsman considered the general confusion amongst councillors and the fact that the Councillor presence had no bearing on the Council's unanimous opposition to the application.

The Ombudsman concluded that there was evidence suggestive of a breach of paragraphs 11(1) and 14(1)(a)(ii) of the Code. Whilst the Ombudsman was concerned at the apparent confusion amongst councillors generally in respect of personal interests, he considered that additional train-

ing would address this. On balance, the Ombudsman concluded that although the Councillor may have breached two paragraphs of the Code, there were mitigating circumstances and so no further action was necessary.

Referred to Standards Committee

There are no summaries in relation to this finding

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to Matthew.Aplin@ombudsman-wales.org.uk or sent to the following address:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 0300 790 0203
Fax: 01656 641199

e-mail: ask@ombudsman-wales.org.uk (general enquiries)

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Further information about the service offered by the Public Services Ombudsman for Wales can also be found at www.ombudsman-wales.org.uk

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The Code of Conduct Casebook

Issue 17 July 2018

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Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what

penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers April to June 2018.

Case summaries

No evidence of breach

Merthyr Tydfil County Borough Council – Promotion of equality and respect

Case Number: 201704719 – Report issued in April 2018

An employee (“the Complainant”) of Merthyr Tydfil County Borough Council (“the Council”) complained that, at a staff meeting, an elected member of the Council (“the Councillor”) had made reference to some members of staff being “dead men walking”. The Complainant said that the Councillor made further comments which led some members of staff to conclude that this phrase referred to him. The Complainant said that this put him in fear for his job.

The Ombudsman investigated the complaint on the basis that the Councillor may have breached the paragraphs 4(b), 4(c), 6(1)(a) and 7(a) of the Code of Conduct for Members (“the Code”), relating to showing respect, bullying behaviour, disrepute and creating a disadvantage for others.

In the absence of any formal record of the meeting, the Ombudsman interviewed a selection of those present, as well as the Councillor, the Complainant and his manager. The Ombudsman considered what the Councillor said, his explanation of what he had meant and how his comments had been received.

The Ombudsman found that although the Councillor had used the phrase “dead men walking” there was no evidence to support the complaint that the comment was specifically directed at the Complainant or that it was intended to be seen as a threat to anybody’s job. The Ombudsman concluded that there was no evidence that the Councillor had breached the Code.

No action necessary

Chepstow Town Council – Disclosure and registration of interests

Case Number: 201703539 – Report issued in May 2018

A complaint was received that a member of Chepstow Town Council (“Councillor A”) had participated in discussions about the future ownership and management arrangements for a local public facility at a meeting of the Town Council, despite having declared a prejudicial interest in the matter.

The Ombudsman’s investigation found that it was likely that Councillor A had spoken at the meeting, despite having a prejudicial interest in the item, contrary to the requirements of paragraphs 14(1)(a), (c) and (e) of the Code of Conduct.

The Ombudsman decided that despite the fact the evidence suggested that there had been a breach of the Code, no further action should be taken. This was because Councillor A did not stand to gain personally from any decision made, the evidence suggested that he had withdrawn from the room for the vote, his preferred option was not agreed by the Council, and the Chair of the Council had indicated that he could speak. The Ombudsman did, however, remind Councillor A of his responsibilities in relation to prejudicial interests.

Trellech United Community Council – Objectivity and propriety

Case number 201700946 – Report issued in April 2018

The Ombudsman received a complaint that a Councillor (“the Councillor”) of Trellech United Community Council (“the Council”) had breached the Code of Conduct for members. It was alleged that the Councillor had breached the Code when he wrote to an adjudicator of a competition, giving the impression that he was acting as a representative of the Council, in an attempt to negatively influence the chance of a specific entry winning the competition and thereby creating disadvantage for a member of the public who would benefit if that entry was successful.

The Ombudsman investigated whether the Councillor’s actions amounted to a breach of paragraph 7(a) of the Code of Conduct which states that members must not, in their official capacity or otherwise, use or attempt to use their position improperly to create a disadvantage for another person.

The Ombudsman found that the Councillor, by writing to the adjudicator with information intended to lessen the likelihood of that specific entry winning the competition and by signing off that correspondence as a Councillor, may have breached paragraph 7(a).

The Ombudsman noted, however, that the entry subsequently won the competition, so the Councillor’s intervention did not actually cause a disadvantage to the person in question. The Ombudsman concluded that, on balance, it was not in the public interest to refer the matter to a Standards Committee or Adjudication Panel for Wales and, therefore, no further action should be taken.

Referred to Standards Committee

There are no summaries in relation to this finding

Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to Matthew.Aplin@ombudsman-wales.org.uk or sent to the following address:

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NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 November 2018

REPORT OF THE HEAD OF LEGAL SERVICES – C.GRIFFITHS

Matter for Information

Wards Affected: All

WLGA Social Media Guidance for Councillors

Purpose of the Report

1. To provide Members with a copy of the recent guidance produced by the Welsh Local Government Association (“WLGA”) regarding social media guidance for Councillors (“the Ombudsman”).

Background

2. The WLGA recognises that social media is playing an increasingly important role in local politics and has prepared a guide for Councillors in relation to its use.
3. The Public Service Ombudsman for Wales has seen a number of complaints that have been made to the Ombudsman recently from members of the public regarding comments that have been placed by Members throughout Wales on social media platforms such as Facebook and Twitter, to which they have taken objection to and wish to complain further. The Ombudsman have found that there has been no breach of the Members Code of Conduct in some of these complaints but nevertheless they are becoming more mindful of such issues.
4. The guide explains some of the more common types of social media that are available and sets out both the advantages and disadvantages of social media use.

5. The guide also sets out some “Golden rules” for social media use and specifically addresses the relationship between social media and the member’s code of conduct.
6. Finally the guide references the various criminal and civil liabilities that could arise from misuse of social media.
7. In due course a copy of this guidance note will be issued to all Members and forwarded on to Town and Community Clerks for onward distribution.
8. The Head of Legal Services and the Democratic Services Manager will shortly be embarking on a training programme for Members with regards to social media issues which in effect will discuss the same principles identified in this WLGA guide.
9. On the 24th September 2018, the Monitoring Officer, issued some general guidance to Members reminding them that if they can be identified as a councillor when they are using social media, either by their account name or how they describe themselves or by what they comment on and how they comment, the requirements of the Members Code of Conduct will apply. Some practical guidance was also given, similar in vein to that which is set out in the WLGA guide

Financial Impact

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

Equality Impact Assessment

11. There are no equality impacts associated with this Report

Workforce Impacts

12. There are no workforce impacts associated with this Report

Legal Impacts

13. 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. The powers of the Public Services Ombudsman for Wales are as defined in the Local Government Act 2000 and the Public Service (Ombudsman) Wales Act 2005 (as amended)

Consultation

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

Recommendations

15. That Members note the content of this report.

Appendices

16. None

List of Background Papers

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

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Email: c.griffiths2@npt.gov.uk

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CLILC • WLGA

Social Media

A Guide for Councillors



Contact

Welsh Local Government Association

The WLGA's primary purposes are to promote a better local government, its reputation and to support authorities in the development of policies and priorities which will improve public service and democracy.

It represents the 22 local authorities in Wales with the 3 fire and rescue authorities and 3 national park authorities as associate members.

Welsh Local Government Association

Local Government House

Drake Walk

Cardiff

CF10 4LG

Tel: 029 2046 8600

www.wlga.wales

We are indebted to the officers and members who have contributed to this guide, particularly in Denbighshire, Flintshire County Council on behalf of North Wales Local Authority Emergency Information Team Chairs. Lawyers in Local Government, the Heads of Democratic Services, Chairs of Democratic Services Committees, the MSO and Lead Members Network, guidance from the LGA and Scottish Improvement Service and The Office of the Welsh Language Commissioner. Also, to Kevin O'Keefe, then of Excelsa Interim Management & Consultancy Ltd, who contributed to the 2013 first edition of this guide.

Contact Sarah Titcombe – Policy and Improvement Officer for Democratic Services.
029 2046 8638 sarah.titcombe@wlga.gov.uk

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Introduction

Social media is changing the world.

It is changing the way we communicate, the way we receive our news and, increasingly, the way we think about ourselves and others. Social media is transforming politics too; it makes politicians and public institutions more accessible, allows individuals to have their voices heard and helps share ideas or promote campaigns, potentially to millions, in an instant.

It is a powerful tool that can do much good but, in the wrong hands, can cause harm too. The growth of online abuse or trolling is a concern, as is the mounting evidence that organisations or even foreign agencies can exploit social media or use 'fake news' to influence public opinion or even affect democratic contests¹.

Social media's influence is growing, not only are the number of active users increasing but it is also being used more effectively as a medium to communicate, engage and mobilise.

Social media has therefore become a vital tool for councils and councillors to inform and engage with the communities they serve.

Many councillors already use social media and many more are thinking about using it. As a councillor, there are additional things to consider when using it, including the Code of Conduct and managing expectations and workload.

This guidance offers advice for those councillors who are new to social media and some tips for those already using it. Social media is rapidly evolving, so this guidance offers a general overview, some key pointers and principles and references to step-by-step resources online.

¹ <https://www.bbc.co.uk/news/uk-39830727> and <https://www.bbc.co.uk/news/world-us-canada-41355903>

1. What is social media?

Social media is a vast blanket term applied to a range of online multimedia tools; in short, social media allows you to communicate, broadcast or publish to millions in an instant, usually for free and all from a small device in the palm of your hand.

Social media can be set up and accessed via your smartphone, PC, laptop, tablet or smart TV. Social media applications (apps) or platforms allow you to communicate (either with individuals, specific groups or everyone), share information, share photos, create, edit and share audio or videos and play games with others.

Councils now use social media as a matter of course to communicate and consult with their residents who now expect this to be another communication channel, especially for urgent information. Council Twitter feeds include information on community events, school and road closures, job vacancies, sporting events and consultations, as well as details and, occasionally, detailed accounts of council meetings, including links to webcasts. Council scrutiny committees may also be using social media to promote and consult on their activities and undertake service reviews, such as in [Monmouthshire](#) and [Swansea](#).

Although there are some risks to using social media, which will be covered later in this guide, social media can be fun and innovative and can be used as an alternative method of communication and engagement, it can also break down barriers and stereotypes. Councils and other public bodies have used it for positive public relations, for example, it is worth looking at Swansea's [Faces of Swansea](#) social media campaign or the Twitter account [Love the Lagoon](#), or Torfaen's '[In the Depot](#)' video.

Some councils [have asked the public to name snow ploughs](#).

We have social media to thank for [Boaty McBoatface](#)!

Social media has a massive reach and some individuals (typically celebrities or national politicians) have many millions of followers. Social media is growing in usage too, an Office of National Statistics survey in 2017² showed that 66% of people in the UK had used social media in the last 3 months. It's not just younger people who use social media, further research by the ONS showed that that there is significant use across all age groups:

²<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/adhocs/007401socialnetworkingbyagegroup2011to2017>

Age	16-24	25-34	35-44	45-54	55-64	65+	All
%	96	88	83	68	51	27	66

According to Ofcom³, in 2017:



84%
OF WELSH HOUSEHOLDS
HAD ACCESS TO THE
INTERNET



74%
OF ADULTS USED
A SMARTPHONE



21 Hours
ON AVERAGE SPENT
ONLINE EVERY WEEK BY
WELSH INTERNET USERS

Facebook and Twitter are the most widely used social media platforms and therefore the most relevant to councillors. According to Twitter⁴, and Facebook⁵ there are:



AN ESTIMATED
17.1m
TWITTER USERS
IN UK



30m
FACEBOOK USERS IN THE UK
ON MOBILES ALONE...
AND OVER 2.20bn MONTHLY
ACTIVE USERS WORLDWIDE

This guide will therefore focus on Facebook and Twitter for councillors, and will touch on other platforms too.

³ https://www.ofcom.org.uk/data/assets/pdf_file/0027/104985/cmr-2017-wales.pdf

⁴ <https://www.statista.com/statistics/271350/twitter-users-in-the-united-kingdom-uk/>

⁵ <https://zephoria.com/top-15-valuable-facebook-statistics/>

Blogs

A blog (an abbreviation of “web-log”) is essentially an online journal with your latest posts appearing first. It can be a journal of diary entries, thoughts or ideas or somewhere to publish more detailed articles on particular issues. Anyone can add comments to your blog and you can use the site to link or draw attention to other online comments or sources of information. Blogs are most effective when they are regularly maintained and updated.

Blogs tend to be included as part of an existing website or via Facebook, which means it’s easier to promote and encourage broader feedback.

Some leaders or chairs produce blogs via their council websites, for example in [Caerphilly](#), [Rhondda Cynon Taf](#), and [Chairman of Denbighshire County Council](#).

Other councillors publish their own, for example:

- [Cllr Peter Black](#)
- [Deputy Lord Mayor of Swansea 2018-2019](#)
- [Cllr Neil Prior](#)

Keep at it!

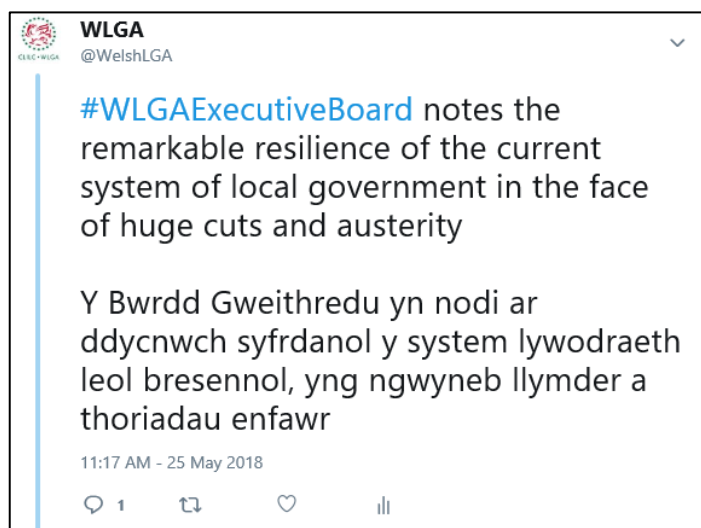
As with all social media, if you start blogging, it’s best to keep it up and keep it up-to-date; all it takes is for someone to find your last blog entry of some years ago and they can criticise you by saying ‘you have nothing else to say’ or ‘you have no new ideas’. If you do stop blogging, think about archiving the material or moving it over to a new social media platform.



Twitter is technically a micro-blog. Twitter allows you to post information, news, photos or videos in messages that are known as **tweets**. Twitter enables you to **follow** people, organisations, news or information that you are interested in and post information and messages of your own. People or organisations in turn can follow you, so they can see all of your tweets; you can even adjust the settings to allow you to be alerted when someone you’re particularly interested in tweets.

Tweets are each limited to 280 characters (characters include letters, numbers, punctuation and spaces). Tweets are not a private means of communication and can be seen by anyone who is following you.

For example:



You can **like** or **retweet** information and someone else's tweets that you would like to pass on to others. For example:



Conversations on the same theme on Twitter are called **threads**. You can search for tweets on a subject that you are interested in by typing your subject into the search box.

Tweets on the same theme are drawn together using **hashtags**. People use the hashtag symbol (#) before a relevant keyword or phrase in their tweet to categorise those tweets and help them show more easily in a Twitter search. Clicking on a hash tagged word in any message shows you other Tweets that include that hashtag.

You can have a private conversation or create a group conversation with anyone who follows you by using the **Direct Message** option. Anyone you do not follow can also send you a Direct

Warning

As a politician, others may consider your tweets 'fair game'. A good rule of thumb is not to commit anything to social media that could at some point be used against you. Even your retweets can be perceived as something you endorse or support.

As with emails, although Direct Messages are private and you may trust the recipients, they can become public if leaked!

Here are some examples of councillors' Twitter accounts:

[@LeaderNewport](#)

[@CllrRobJames](#)

[@PeterFox61](#)

[@Cllrjuliefallon](#)

[@CllrSaif](#)

[@CllrFionaCross](#)

[@elinmwj](#)

[@DebbieWallice](#)

[@Alun_Williams](#)

[@CllrJoshuaPlaid](#)

[@CllrLisaMytton](#)

[@PriorNeil](#)

And some useful organisations:

[@WelshLGA](#)

[@LGAComms](#)

[@WelshGovernment](#)

[@WG_localgov](#)

[@AssemblyWales](#)

[@BBCWalesNews](#)

Message, if you have opted to receive Direct Messages from anyone or you have previously sent that person a Direct Message.

You can **block** or **mute** accounts on Twitter. Once an account has been blocked, those accounts cannot follow you and you cannot follow them. However, even those you have blocked can still access your account through a third party who follows you.

All the details about how twitter works and how you can set up an account can be found [here](#).



Facebook is the most extensively used social network in the world. Essentially, it allows you to easily create your own webpage or group, or an interactive newsletter about you, your life, your interests and friends.

Have a look at these councillors' pages

- [Councillor Neil Prior](#)
- [Councillor Dhanisha Patel](#)
- [Councillor Matthew Dorrance](#)
- [Councillor Steve Churchman](#)

And these authority pages:

- [Wrexham Council](#)
- [Isle of Anglesey County Council](#)
- [Blaenau Gwent County Borough Council](#)
- [Snowdonia National Park](#)
- [Flintshire County Council](#)
- [Vale of Glamorgan Council](#)

To use Facebook, you'll need to create a profile - a **Timeline** where you might add a photo, describe yourself, what you do and your interests. You can also describe your **Status** which would inform your friends about how you are feeling or what you are doing at any given time. You can update this as often as you like.

On Facebook, you can invite people to be your **Friends** and set different levels of access to your account. Some people can see all the information about you or you can make less detail available to others. You can also use Facebook to communicate with groups or individuals. People who find your page, comments or proposals of interest can **Like** you or your latest post, which encourages further use, and is a useful way of taking a straw poll of your ideas. People can also add a **Comment** on your post or **Share** your post on their own timelines.

You may wish to set up a Facebook page about your community, to promote events, announcements or your council activities; many councils and councillors do this and it can be a very effective method to engage and seek views from the community. You should be prepared to receive challenge and criticism however, as it is an open forum and not everyone will agree with your ideas or views; you can however set rules, moderate and edit other people's posts if their language or content is offensive or inappropriate.

You can also set up a Facebook group. When you [create a group](#), you can decide whether to make it publicly available for anyone to join, require administrator approval for members to join or keep it private and by invitation only.

You can send private notes to any "friend" you're connected with on Facebook; they can only be seen by the person to whom they're sent; Facebook's **Messenger** app is increasingly popular. You can also **'Live Chat'** on Facebook. This is a real-time conversation with any of your Facebook friends who happen to be online and signed in at the same time as you are.

Crucially, Facebook lets each user control who can see their personal information and what they post on the network. You can set the level of privacy for different categories of your information and posts and extend different levels of permission to different people who view your site. As a member you might want to differentiate between what you show your close friends and family and members of the public. Find out more and join Facebook [here](#).



WhatsApp is a free messaging app which also allows you to have traditional 'phone conversations'. It is very popular as it allows you to set up groups of friends or colleagues to keep them updated on a particular theme. It may be a quick and easy way, for example, of keeping your political group up to date on key issues. You can download the app from various app stores or visit [the website](#).



YouTube is a video sharing platform. Videos are easy to record via a smartphone and are more easily distributed via Twitter or Facebook, however, some people prefer to use YouTube and it is increasingly being used by councils to post information. Here are some examples:

[Cardiff](#)

[Conwy](#)

[Gwynedd](#)

[Monmouthshire](#)

[Powys](#)

2. Why you may find social media useful

Social media will allow you to open new conversations with the people you represent, and the potential for councillors using social media is huge. Social media allows you to be innovative and responsive as well as providing links to useful sources of information or sign-posting to other organisations.

Don't ignore social media – it's there and won't go away! People are already online and it's growing, and people increasingly expect their councillors to be contactable via social media. If you're not involved people may bypass you or may even 'talk about you' and you'll be missing out on a useful source of intelligence.

- It's a useful way of finding out what people are talking about locally, their concerns and interests.
- It's useful for finding out about breaking news, the latest research or publication or the latest policy announcements from political parties.
- It's a good way of making the electorate more aware of the work you do personally.
- It can help make you appear more human and down-to-earth! People often don't understand what councillors do and may have negative perceptions, but social media can give people a taste of your personal life and remind them that you are just like them, with similar interests – you do need to consider balance though and how much of your personal life you want in the public domain: for example - do you want strangers to be able to identify your family and friends?
- It's an effective way of coordinating campaigns, for example, mobilising support and interest and gathering followers, you can also allow campaign workers access to your Facebook account to post on your, or your campaign's, behalf to share the workload.
- It allows you to have a conversation with a range of people that you would never be able to physically meet and who do not traditionally seek out their local representatives.
- It allows for immediate communication. You can pass on information and receive opinions in minutes. You can forward information from other people equally quickly. "Going Viral" refers to a mass spreading of a piece of information around the world – but be careful, only share information you are confident is correct, Fake News is damaging and there is the risk of defamation if you spread falsehoods.

- The local and sometimes national press will follow councillors on Twitter or Facebook. Social media is a growing source for stories for news outlets as each tweet or comment is effectively a mini-press release. Journalists will know what you are talking about the minute you talk about it.
- Social media is mobile. You can take it around your community, on the train, or to a coffee shop. You can upload pictures and videos, showing for example your role in local events, pictures of potential sites for development, new buildings, local eyesores - a picture tells a thousand words.
- It's free and you probably already have the equipment you need. All you need is time.
- You can receive immediate feedback on your ideas and manifesto to allow you to modify your proposals in line with local thinking.
- Above all, it can be a lot of fun!

What are the drawbacks?

- Having a social media presence means that people can contact you 24/7. This is great in terms of accessibility but means that they may expect you to reply immediately. Technology and social media has raised expectations, people often expect a speedy response and resolution to their query; this expectation, coupled with the fact that social media shows everyone how responsive you are, can create more pressure.
- Using social media can become addictive, many people find themselves answering messages late into the night because they just can't put it down.
- Similarly, too much weight can be given to what goes on in the 'Twittersphere'; sections of Twitter are often described as 'echo chambers' – it may only be a couple of people with a limited number of followers with strong views on a subject who are 'bouncing' off each other – they may be in the minority and not be representative - the rest of the community or the rest of society may be blissfully unaware or may not think in the same way!
- People can post false information, insults or messages that you would not want to be associated with on your social media platforms. These can be spread rapidly via social media.

- Some people say things via social media that they would not say to your face, it's an easy way of taking personal pot shots at councillors. People making these comments are often called 'Trolls' and may not be interested in facts, just in attacking you.
- Councillors, and in particular women councillors, are increasingly the subject of online abuse, bullying and harassment on social media.
- The WLGA has produced a [separate guide](#) on how to deal with online abuse.

It's easier said than done, but try not to get too concerned about what's said online...

You are likely to receive criticism at some point and trolls may try to rile you, but often they will have few followers and their comments may not be seen by many people. Keep calm and the best advice is to ignore, often trolls will crawl back under their bridge...if it does get serious, you can report it

Are you controlling your social media use or is it controlling you?

Recent research has recognised that some people feel out of control in their use of social media⁶.

Ask yourself how comfortable you feel if you cannot access your social media accounts. It is important for councillors to bear in mind that even if the rest of the world seems to be online 24/7, you don't have to be. Being a councillor is a professional role and you can decide how available you want to make yourself. There are some common recommendations for managing your time in front of a screen and you may want to consider some of these:

Top tips to manage social media use

- Establish a routine, check your messages at the same time every day rather than responding to the 'ping' of every new message arriving
- Looking at a screen can disrupt your sleep patterns, consider turning off all screens two hours before going to bed and make the bedroom a screen free zone
- When you are with your residents face to face, give them your undivided attention to help you focus on what's happening where you are and not appear rude.

⁶ <http://www.bbc.com/future/story/20180118-how-much-is-too-much-time-on-social-media>

3. Getting started

A good place to start is to contact your Democratic Services officers and find out what support and training is available.

Choose your medium and sign up. Signing up is very straightforward and will take you less than five minutes! Facebook and Twitter are good places to start.

If you don't already have an account, ask a colleague, friend or family member for advice, ask them to show you how they use social media. You might want to begin with a trial personal account (rather than calling yourself "Councillor Jones") and experiment with family and friends. Make sure that you understand how people find you and who can access your material.

Remember:

On Facebook you can control who has access to different parts of your account. You can manage what the world sees and what your "friends" see.

On Twitter the whole world can see everything you tweet. You can '**Protect my Tweets**', which essentially makes your tweets private to only your current followers, but that defeats the object of using Twitter to engage more widely.

When you are ready to set up your final account, consider the identity you use. The name you give yourself online is important as it allows people to find you. Prefacing your Twitter account with Cllr lets people know exactly who you are and indicates that the Code of Conduct will apply.

Consider:

- Different councillors have different views, but you might want to consider setting up a separate personal and "councillor" account, at least at first - you can talk about the amazing food in the restaurant around the corner to your friends and followers in your informal account, and the plans for the new bypass to your friends and followers on your councillor account.

Separate accounts can help you manage some of the online trolling that is likely to come your way as a councillor – it can be a way of keeping your home life and councillor life separate.

However, many councillors think that some of their personal comments about food, places they've visited, football matches or TV helps break down perceptions of councillors and proves that they are normal like everyone else!

- Make it easy for people to find you online. Many people will start their search for the area that you represent, so make sure you mention your location frequently as this will then be picked up by search engines. You will also want to make sure that your social media account details are on your business cards, posters and flyers.
- Increase your social media following by following other people, retweeting other people's tweets, liking tweets or posts or commenting on people's Facebook posts. Find people on Twitter with links to your community, county or region or with similar interests by searching using the 'hashtag' (#) symbol to prefix your search term for example #llandrindod, #powys #midwales.
- Reach more people on Twitter by timing your tweets when the audience you want to reach are online. Ask your friends for a retweet, use hashtags and include photos for a larger and more noticeable post.
- Be disciplined about making time available to write new content and answer your "friends" and "followers" at a regular time each week to update your Facebook status and throughout the day to check Twitter. If you use your mobile phone, you can set notifications to alert you each time you are mentioned in a tweet.
- If you do not want to be available every hour of the day or night, tell people when your account will be checked, for example you might add "available 9.00-7.00 weekdays" on your profile.
- Decide on what you are going to talk about and how. This could be
 - Weekly updates of your own activities as a councillor - don't forget your pictures! This works better on Facebook as you can include more detail. Remember a tweet is only 280 characters and tends to be more instant and timely.
 - Regular updates on council policies and actions of interest to your community.
 - Links and re-tweets of other relevant national activities.
 - Issues on which you would like feedback.
 - Notice of events and public meetings.

- Using social media is all about two-way communication, it's good for providing information to your community or flagging up press statements, but it's better as a tool to get useful feedback. You will get feedback and you should expect some people to challenge your ideas or enter into a debate with you online. This is part and parcel of social media.
- Keep your communications clear, positive, polite and professional. Plain language helps. Many people use abbreviations on Twitter – you'll pick these up as you go along!
- On Facebook, you will need to monitor and, if necessary, censor the contributions that other people make to your page; or group and delete them if they do not match your required standards of behaviour or language. Defamatory and offensive language could be attributed to the publisher (that's you!) as well as the original author and could incur financial liability. It is up to you to decide if you want to remove posts that disagree with your political position, however if you do remove them you may be accused of censoring contributions on political grounds.
- It is up to you to decide if you want to remove posts that disagree with your political position, however if you do remove them you may be accused of censoring contributions on political grounds.
- Bear in mind that constituents may find party political point scoring tedious and prefer to hear information about what you are achieving.
- If appropriate, consider setting up an account for your ward with your fellow ward members – this way you can share the administrative tasks.
- If you don't have anything to say...don't say anything. Even though it's tempting to let your followers know how busy you are they will soon become bored with constant updates on your day without some relevant or interesting information.

Monitoring social media

It can be difficult to keep on top of what's happening online; people are posting and tweeting all the time and if you are following many people or organisations, social media can become 'noisy' and you could miss things of interest or significance.

A quick way to check up on things on Twitter is to visit the Twitter page of some of your favourite people, organisations or news outlets to see what they've been saying. You could also search for a particular theme or issue with a hashtag#.

If you're keen to find out what people are saying about you, your local area or local council for example, there are social media management applications that you can use such as [Hootsuite](#) or [Buffer](#). These are simple to set up and use and can allow you to see how often people read or retweet your tweets. It also allows you to schedule tweets, for example, to send a pre-prepared tweet at a certain time of day.

The Welsh Language

As a councillor you will want to use and promote the Welsh language and culture as much as possible. There are also legal requirements which apply to the use of the Welsh language on social media. How these rules apply, depends on the type of work you are doing and which of the Welsh Language Standards apply to your local authority.

When you are representing your local authority, the same standards will apply to you as they do to officers. So, if you are, for example, a cabinet member tweeting about a new policy decision, a mayor blogging about your recent activities on behalf of the council, the chair of a scrutiny committee undertaking a formal consultation on behalf of the committee or letting people know about the forward work programme of the committee, then you may be subject to the standards which apply to the officers in your authority.

This may mean that your communication, including responses to messages, must be translated and the content and format of the message must treat the Welsh language no less favourably than the English language. Your authority will provide you with guidelines for how your local Welsh language standards apply when you are representing the authority – if you are in any doubt, it's best to contact the council for guidance.

If you are acting in the capacity of a ward member, acting on behalf of individuals or communities then the same rules apply as if you were a member of the public. So, regardless of your role on the council, if you are tweeting about a local fete, commenting on a council decision in, for example, your role on a local pressure group, or retweeting a complaint about pot holes then you may communicate in the language of your choice.

The exception to this is when you are communicating in relation to an activity for which you are using council resources (beyond the standard remuneration and equipment provided to you as a member) for example council buildings for a community meeting.

Some of the [practical guidance](#) in the Welsh Language Commissioner's guide for businesses and charities about using Welsh on social media may be useful.

4. Staying safe and dealing with trolls

Some form of online disagreement and criticism is inevitable and, if you're not online, you or your policies may already be subject to debate without you. Disagreement and challenge is a key feature of democratic debate, however, online it can easily spill over into abuse or harassment.

You will therefore need to prepare yourself for some uncomfortable reading, which may cause some upset. You cannot prevent online abuse, but you can take control of how and whether you respond and, if it becomes serious, you can report it.

The WLGA has produced separate guidance on dealing with online abuse which you may find useful. You can read it [here](#).

Some advice

- **Take Control**

Decide for yourself and make it clear on your homepage what you expect from people who are engaging with you on social media. You might say, for example, that whilst you welcome an open and frank exchange of views, any inappropriate comments will be removed and that any comment which is libellous or threatening or becomes harassment will be reported.

- **Remember that you don't have to put up with abuse or harassment just because you are a political figure**

Be prepared to 'Mute', 'Block' or 'Unfriend' abusive users from your account or ask them to remove comments. If a comment crosses the line into abuse or harassment you can report this to Facebook or Twitter or even the police.

- **Respond or ignore?**

When faced with an abusive comment give yourself some time to decide whether to respond or ignore it. Trolls often have few followers or few followers of significance – if you reply it can lead to a tit for tat argument fuelling further confrontation and provides the troll with the "oxygen of publicity" or the satisfaction of seeing you riled. Chances are you'll have far more followers than the troll, so if you reply, all of your followers will be aware of the troll's original tweet. Ignoring the comment can lead to short term allegations of dodging an issue but may succeed in the long term.

Don't feed the troll!

- **Stay calm and polite**

Not every criticism is from a troll – sometimes a frustrated member of the public may be critical or angry with you initially on social media, particularly if they are trying to resolve a council service issue. If you respond constructively, their tone will change and they may even apologise or show you appreciation online.

Bear in mind that for every troll there will be many more legitimate and sensible followers. Think of them when you respond. One approach is to respond with facts only or to refer the troll to a longer factual statement about the situation or a set of “frequently asked questions” that you can post to pre-empt queries. You might want to invite the troll to a public meeting. They may find it harder to be abusive in public. You may also want to remind the troll that you are more than happy to have a political debate in your role as a councillor but that personal comments about you or your family are unacceptable.

The [Facebook](#) and [Twitter Help Pages](#) have full details about how to block users and how to report abuse

A Criminal Offence?

If someone sends threatening, abusive or offensive messages they may be committing an offence. If you receive a message which you consider falls into this category, do not respond to it, check out the guidance provided by the [police](#) and [CPS](#) and if appropriate report it.

5. Support from the council

A good place to start is to contact your Democratic Services officers and find out what support and training is available

Councillors are generally provided with the ICT equipment that they need to do their job. The Independent Remuneration Panel expects that this will include equipment, support and training.

It is also reasonable to expect that you should have access to social media sites via council ICT equipment to enable you to carry out your councillor role more effectively. You do not need the council to set you up with a personal social media account, but you should take advantage of any training or guidance provided to help you use it properly.

Most councils have a social media policy. You will need to abide by this and any social media protocols that may have been agreed when using your "councillor" account.

It's worth remembering that the council is responsible for any information provided on its website and is subject to legal responsibilities. **You** are personally responsible for the material that you broadcast via your own social media accounts or websites – but more of this later.

Advice will be available to you from a number of council officers. The Monitoring Officer, Head of Democratic Services, the Communications Team and the ICT Manager are likely to have useful advice.

Using social media in an emergency

During emergencies (such as severe weather events, pollution incidents or major fires) partner agencies such as local authorities, police, health, Natural Resources Wales and fire and rescue services will use social media to provide information to help people prepare, keep them informed and to signpost where they can get help.

It's important during these situations that the most up to date and correct information is communicated to the public and the partner agencies will coordinate the content and timing of the information to be provided.

In an emergency situation, the council will also identify an official spokesperson - an officer or a senior member - who will use the approved information to speak on behalf of the council.

It's always best in these circumstances to restrict your own social media activity to sharing official communications from the partner agencies responding to the situation.

For more information about how your council operates in these circumstances please contact your council's civil contingencies team so that you know what to do in an emergency.

6. Social media and council meetings

Your council's social media policy and/or council constitution will provide you with guidance about if and when you can use social media during council meetings. Other than what your constitution or social media policy says, there is no legal reason why you shouldn't use social media during meetings. However, some common sense does need to apply.

Tweeting on meeting progress and receiving comments from the community can be helpful for transparency and engagement BUT excessive use of Twitter may give people the impression that you are not concentrating on the business in hand or are even relying on guidance from outside the meeting. For that reason, it is probably sensible not to use Twitter during a planning or licensing debate. Committee chairs may want to decide how to address this in their meetings and you should abide by the rules set out in your constitution.

Many politicians tweet their contributions or questions to meetings or debates to keep their followers informed of how they're representing their communities' interests. Remember, you may not need to tweet about the detail of a meeting if the meeting is being webcast. Your council may have official" twitter feeds for live on-line conversations to run alongside the meeting webcast.

Remember that you should not tweet or communicate in any way the content of exempt or confidential business dealt with by local authorities in closed session such as when making formal appointments.

7. Golden rules

- Think before you tweet or post on Facebook. Do not say anything, post views or opinions that you would not be prepared to:
 - Discuss face to face with the person you are speaking about.
 - Write on a placard and carry down your high street and discuss and defend with anyone who sees it.
 - Be prepared to have minuted in a public meeting – remember, Twitter or Facebook effectively publicly minutes everything for you as you go along!
- Remember that once you have said something it may be seen by millions - friends, supporters, political opponents and the press and could be re-tweeted around the world in minutes.
- Keep your messages professional, polite and positive.
- Remember to try to keep tweets and texts separate – many people tweet comments that they would have texted to someone privately before the advent of social media; this may be about meeting up later (do you want all your followers knowing your plans and gate-crashing your lunch!?) through to 'in' jokes or banter that could be misinterpreted.
- Exercise discretion when choosing who to follow on Twitter or 'befriend' on Facebook, for example, some council employees might find it a bit uncomfortable or inappropriate to have a councillor hanging on their every word. If you follow or are Facebook "friends" with council employees, contractors who have been procured to provide services to the council, a company or member of the public making a planning application or pressure groups, this might be construed as having a close personal association with them and therefore a personal interest.

Warning

Don't discuss casework on social media or encourage people to contact you about issues that might be personal to them.

Encourage them to use more secure channels.

- If you make a mistake admit it. Mistakes happen so don't try to cover it up as there will always be a record of what you've said.
- Don't tweet or post on Facebook when you are "tired or emotional"! It's probably sensible to turn off your phone at any time when you think your judgement may be impaired. Even if you exercise social media control, other people will still have their smart phones, so may post a photo or video of you 'enjoying yourself'; you need to let your hair down, but it's just one extra thing to consider as a councillor in the age of social media.
- As with your own leaflets or newsletters, ask permission before taking a picture that you intend to use. NEVER take photos of children without the express permission of their parents based on an understanding of what you intend to use the picture for. Your council will have a policy on taking pictures of children, take advice on this before taking or using pictures.
- Do not allow anyone else access to your social media accounts. Protect your passwords and use robust, unique passwords and change them regularly especially if you use a public or shared computer.
- Just like email, you can be hacked on social media! Be wary about direct messages via Twitter, even from people you know, with messages such as 'Hi, have you seen this photo of you on Twitter?' Delete these before opening, as the spam could then be sent to all of the people you are following. Do not open videos or links on, for example, Facebook Messenger if you are not expecting them. It could be a hack.

THINK before you post; even if you later delete your post, someone may have already taken a screen shot.

CHECK before you share or retweet information.

Is it true?

Who said it and why?

Do you trust the source?

8. Keep on the right side of the law...

Councillors new to social media tend to be concerned about the legal implications. It is an important consideration, and some councillors and other politicians have fallen foul of the law, but with careful use and following some ground-rules you will be fine!

The style of communication employed in the social media environment tends to be fast and informal. Messages can appear lightweight and transitory.

Whenever you post something on social media, it becomes a publication, you have effectively made a broadcast. As it is now in the public domain, it is subject to both the **Code of Conduct** and to various **laws**.

Code of Conduct

If you conduct yourself on Twitter or Facebook as you would in person on the street or in your leaflets, then you will be fine.

Remember that according to guidance from the Ombudsman, the Code of Conduct applies to you whenever you are "Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority" Also the Code applies if you "Conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute"⁷

If you can be identified as a councillor when you are using social media, either by your account name or how you describe yourself or by what you comment upon and how you comment, the requirements of the Code of Conduct apply. If you say something that could be regarded as bringing your office or authority into disrepute the Code applies even if you are not apparently acting in your official capacity or do not identify yourself as a member.

Remember that the Ombudsman's guidance states that "Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute"

⁷ <https://www.ombudsman.wales/guidance-policies/>

In the same way that you are required to act in council meetings or in your communities you should:

- **Show respect for others** - do not use social media to be rude or disrespectful
- Not disclose confidential information about people or the council
- **Not bully or intimidate others** - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- Not try to secure a benefit for yourself or a disadvantage for others
- **Abide by the laws of equality** - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010. Even as a joke or "tongue in cheek"

Predetermination

As a councillor, you are aware that when you act in a quasi-judicial capacity, for example on a planning or licensing committee, you should not make up your mind about an issue that is to be formally decided upon before you had heard all the relevant information. You are allowed to be predisposed to a particular view but not to have gone so far as to have predetermined your position.

It is important to remember therefore, that anything relevant you might have said about particular issues on social media could be used as evidence of your having made up your mind in advance of hearing all the relevant information.

Don't become a troll yourself!

Social media is a great tool for councillors to challenge and scrutinise, but always think about what you are saying, how you are saying it, how often and about whom. If you are perceived to be too aggressive or too confrontational or too frequent, it could begin to damage your reputation, undermine your relationship with colleagues or you could risk breaching the Code of Conduct in terms of bullying, intimidation or lack of respect for others.

It's therefore not appropriate for you to use social media to criticise your council's officers, who often will not be in a position to defend or respond publicly.

Many councils have apps or member referral services; it is often best to use these mechanisms to request council services or report local concerns as you are likely to receive a resolution to your request.

Criminal Offences

Don't panic! These generally apply to you already in your conduct as a councillor, but it is worth considering them as they apply to social media:

Harassment - It is a criminal offence to repeatedly pursue a campaign against someone where this is likely to cause alarm, harassment nuisance or distress.

Data Protection and the General Data Protection Regulation. - It is illegal to publish personal data about individuals unless they have given you their consent. This might apply to your constituents or service users. As a councillor you are a data controller in your own right and therefore personally responsible for what you publish. Make sure you understand the requirements of the GDPR and Data Protection Act. There is more information about this [here](#).

Contact the Data Protection Officer in your council for more information.

Incitement - It is a criminal offence to incite any criminal act.

Discrimination and Racially Aggravated Offences (or any other protected Characteristic) - It is a criminal offence to make a discriminatory remark about anyone based on a "Protected Characteristic" as defined in The Equality Act 2010 (such as their race, religion, sexual orientation etc).

Malicious & Obscene Communications - It is a criminal offence to send malicious or obscene communications.

Remember

If you receive a message or someone posts something on your page that you consider to be unsuitable remove it as soon as possible. If you "like" or appear to endorse or retweet a message or image you are regarded as having published it, and will face any legal consequences. It is therefore important to regularly check and moderate any site on which others can post. If you are in any doubt about how to deal with a message you receive, consult your Monitoring Officer.

Civil Law

This is where things get riskier for anyone who uses Twitter or Facebook, whether they are councillors, members of the public or celebrities:

Defamation - It is against the law to make a false statement about someone which damages their personal or professional reputation. **Crucially - even if you simply retweet or pass on information originally posted by others, you may still be held equally as responsible as the original commentator.** This can also apply to publishing images. If found liable to another person, you could be ordered to pay large sums of money as damages.

Copyright - The legal ownership of the contents of documents, photos, videos and music belong to the person who created them. You could be in breach of copyright if you reproduce such material without the owner's permission. Always ask for written consent before you use someone else's material.

Political Comment and Electioneering - Remember that although it is acceptable to make political points or canvass votes via your own social media accounts this will not be permissible if you are using this via council supplied computer equipment, certainly in the run-up to elections. The Electoral Commission has further information about the return on expenditure that candidates need to provide on advertising or campaign literature.

Beware of Fake News!

Social media is breeding ground for fake news or 'click bait' (where a deliberately salacious headline with a link tries to draw you in, often to a very mundane news item accompanied by lots of pop-up adverts); view all news or gossip with a discerning eye – it could be embarrassing if you retweet or promote fake news and, worse, you could be breaking the law if you circulate false statements about someone, even if you are just retweeting something someone else has posted.

9. Further information, interesting sites and sources of help

Bear in mind that information, sites and terminology change quickly. The next big social media platform will soon be on its way. Here are some current examples of information and useful sites but bear in mind that they may be quickly out of date.

Social Media websites

[Sign up to Twitter here](#)

[Sign up to Facebook here](#)

[Social Media Checklist for Councillors](#) (Local Government Association)

[#FollowMe - A guide to social media for elected members in Scotland](#)
(Scottish Improvement Service)

[Nextdoor](#) is a social network for neighbourhoods where people who live within the same or neighbouring communities can share information, organise events and take opinion polls. It's a useful platform for members to raise awareness and tap into what is interesting or concerning local residents.

10. Links

Here is a list of the links that were used in this guide:

Monmouthshire County Council - https://twitter.com/Mon_CC_Scrutiny

Swansea Council - <https://twitter.com/SwanseaScrutiny>

'Faces of Swansea Council 2018' Twitter campaign - <https://twitter.com/hashtag/facesofswanseaouncil2018>

Love the Lagoon - <https://twitter.com/lovethelagoon?lang=en>

'In the Depot' campaign, Torfaen County Borough Council - <https://www.youtube.com/watch?v=G6UerjFCLdI>

Naming gritting lorries, BBC News - <https://www.bbc.co.uk/news/uk-england-south-yorkshire-42026485>

Public using social media to choose the name 'Boaty McBoatface', BBC News - <https://www.bbc.co.uk/news/uk-england-36064659>

Blogs

Caerphilly County Borough Council Leader's blog - <http://www.caerphilly.gov.uk/My-Council/Councillors-and-committees/Leader-s-blog>

Rhondda Cynon Taff County Borough Council Leader's blog - <https://www.rctcbc.gov.uk/EN/Council/TheLeadersBlog/RhonddaCynonTafCouncilLeadersBlog.aspx>

Denbighshire County Council Chairman blog - <https://denbighshirecouncilchairman.wordpress.com/>

Cllr Peter Black - <http://peterblack.blogspot.com/>

Deputy Lord Mayor of Swansea 2018-19 - <http://swanseamayoralmusing.blogspot.com/>

Cllr Neil Prior - <https://www.linkedin.com/pulse/year-county-councillor-surviving-thriving-elected-life-neil-prior/?published=t>

Councillor Twitter accounts

Cllr Debbie Wilcox - <https://www.twitter.com/LeaderNewport>

Cllr Rob James - <https://twitter.com/CllrRobJames>

Cllr Peter Fox - <https://twitter.com/PeterFox61>

Cllr Julie Fallon - <https://twitter.com/Cllrjuliefallon>

Cllr Saifur Rahaman - <https://twitter.com/CllrSaif>

CLlr Fiona Cross - <https://twitter.com/CLlrFionaCross>
CLlr Elin Walker Jones - <https://twitter.com/elinmwj>
CLlr Debbie Wallice - <https://twitter.com/DebbieWallice>
CLlr Alun Williams - https://twitter.com/Alun_Williams
CLlr Joshua Davies - <https://twitter.com/CLlrJoshuaPlaid>
CLlr Lisa Mytton - <https://twitter.com/CLlrLisaMytton>

Useful organisations' Twitter accounts

Welsh Local Government Association - <https://www.twitter.com/WelshLGA>
Local Government Association - <https://www.twitter.com/LGAComms>
Welsh Government - <https://www.twitter.com/WelshGovernment>
Local Government Section, Welsh Government - https://www.twitter.com/WG_localgov
National Assembly for Wales - <https://www.twitter.com/AssemblyWales>
BBC Wales News - <https://www.twitter.com/BBCWalesNews>

Councillor Facebook pages

CLlr Neil Prior - <https://www.facebook.com/cllrneilprior/>
CLlr Dhanisha Patel - <http://www.facebook.com/dhanisha4ogmore/>
CLlr Matthew Dorrance - <https://www.facebook.com/CLlrMatthewDorrance/>
CLlr Steve Churchman - <https://www.facebook.com/councillorstevechurchman/>

Local Authority Facebook pages

Wrexham Council - <http://www.facebook.com/wrexhamcouncil/>
Isle of Anglesey County Council - <http://www.facebook.com/IOACC/>
Snowdonia National Park - <https://en-gb.facebook.com/visitsnowdonia>
Flintshire County Council - <https://www.facebook.com/Flintshire-County-Council-124912774260207/>
Vale of Glamorgan Council - <https://www.facebook.com/valeofglamorgancouncil/>

Council YouTube pages

Cardiff Council - <https://www.youtube.com/user/cardiffcouncil/featured>

Conwy County Borough Council - <https://www.youtube.com/user/ConwyWeb>

Gwynedd Council - <https://www.youtube.com/user/CyngorGwynedd>

Monmouthshire County Council -

https://www.youtube.com/channel/UCZHCKKCI7DqtxDabOkj_Esg/featured

Powys County Council - https://www.youtube.com/channel/UCop_U-YVW7OB0jRIt3b8f1Q

Social media support pages

Facebook support pages - <https://en-gb.facebook.com/help/tools>

Twitter support pages - <https://help.twitter.com/en/safety-and-security/cyber-bullying-and-online-abuse>

Welsh Language

Welsh Language Commissioner guidelines on using the Welsh language on social media -

<http://www.comisiynyddygybraeg.cymru/hybu/SiteCollectionDocuments/Using%20Welsh%20on%20Social%20Media%20SA.pdf>

Guidelines

WLGA Councillors' Guide to Handling Online Abuse -

<http://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=1504>

Police social media guidelines - <https://www.askthe.police.uk/content/Q770.htm>

Crown Prosecution Service guidelines on social media communications -

http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/

The General Data Protection Regulation - Information for Councillors, WLGA -

<https://www.wlga.wales/gdpr-information-for-councillors>

Local Government Association (LGA) social media guidelines -

<https://www.local.gov.uk/our-support/guidance-and-resources/comms-hub-communications-support/digital-communications/social-1>

Scottish Improvement Service Social Media guide for elected members -

http://www.improvementservice.org.uk/documents/elected_members/follow-me-guide-to-social-media-for-elected-members.pdf

Useful links for social media websites

Twitter - <https://twitter.com/>

Facebook - <https://en-gb.facebook.com/>

Nextdoor - https://nextdoor.co.uk/about_us/

WhatsApp - <http://www.whatsapp.com/>

Hootsuite - <https://hootsuite.com/>

Buffer - <https://buffer.com/>

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NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 November 2018

REPORT OF THE HEAD OF LEGAL SERVICES – 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 a recent decision 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 is an independent body which deals with the more serious breaches of the Code of Conduct referred to it by the Ombudsman and also appeals against decisions of standards committees.
3. On the 10th August 2018 the Panel issued its decision in the case of former County Councillor (now community councillor) Mr Graham Down from Monmouthshire.
4. This was a case referred to the Panel by the Ombudsman who alleged that Councillor Down had breached the Code by failing to show respect and consideration for others by making a series of homophobic statements in emails to the Chief Executive of the County Council.
5. The Panel considered the content of Five emails sent by Councillor Down between the 12th February 2016 and 13th October 2016 and found that in the case of 3 of the emails although his comments were 'disrespectful' they did not amount to a breach of the Code due to the enhanced protection that exists

for political expression under the European Convention on Human Rights (ECHR) and therefore the Human Rights Act.

6. However in the other 2 cases the Panel found that the comments were so offensive that despite the protections afforded to Councillor Downs under Articles 9 (Freedom of thought, conscience and religion) and 10 (freedom of expression) of the ECHR it was still necessary to take action for the protection of the rights and interests of others.
7. The Panel took into account a variety of factors when considering what sanction to impose, identifying in Councillor Down's conduct a number of mitigating and aggravating factors (the latter including his failure to attend code training).
8. Taking into account these factors and decisions made in other similar cases the Panel decided to impose a 2 month period of suspension upon Councillor Downs
9. A copy of the Adjudication Panel for Wales' decision is attached at Appendix 1 for information.
10. The decision, although not setting out in full detail the allegations against Mr Down, provides useful guidance on the interpretation of key parts of the Code.
11. 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

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

Equality Impact Assessment

13. There are no equality impacts associated with this Report

Workforce Impacts

14. There are no workforce impacts associated with this Report

Legal Impacts

15. 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

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

Recommendations

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

Appendices

18. Appendix 1 – Decision of the Adjudication Panel for Wales of the 10th August 2018.

List of Background Papers

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

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DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2017-018/CT

REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Former County Councillor (currently Community Councillor) Graham Down.

RELEVANT AUTHORITIES: Monmouthshire County Council (currently Mathern Community 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 A hearing was held by the Case Tribunal at 10.00am on 19th July 2018 at Cwmbran Magistrates Court, Tudor Road, Cwmbran, NP44 3YA. The hearing was open to the public.

1.3 Cllr Down attended and represented himself.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 20th December 2017, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Cllr Down. The allegations were that Cllr Down had breached the code of conduct of Monmouthshire County Council (MCC) by failing to show respect and consideration for others by sending e-mails to the Chief Executive of MCC, Mr Paul Mathews, containing homophobic statements in alleged breach of Paragraph 4(b) of the code.

2.1.2 The Ombudsman’s investigation related to two sets of e-mails forwarded by the Respondent to the Chief Executive of MCC, the first set sent in February 2016 and the second in October 2016.

2.2 The Councillor's Written Response to the Ombudsman's Report and Reference

2.2.1 Cllr Down forwarded a letter to the Ombudsman's Investigation Officer on 27th November 2017 in response to the Ombudsman's draft report. It was highly critical of that report and the delay in concluding it.

2.2.2 Cllr Down stated that there had been three conferences or events organised by MCC which had caused him concern in a period of little over six months and he said that he was "concerned at the direction of travel in these matters, and found arrangement of the events to be offensive and demonstrating a lack of respect to those [sic] faith or who object to these issues for any other reason."

2.2.3 He also made the points that the e-mails which formed the subject of the complaint were e-mails passing between two individuals which were not intended for a wider audience and that any distribution to others was none of his doing, being entirely the choice of the Chief Executive. He stated that he made no secret of his views about homosexuality and stated that he did not feel any embarrassment about the fact that: "I believe homosexuality to be unnatural, perverted, immoral and wrong." He stated that this was not only his view as it was also the traditional, mainstream teaching; "of virtually every major world religion."

2.2.4 In his letter, Cllr Down addressed various paragraphs of the Ombudsman's report in detail and the Case Tribunal had regard to these further views. He repeated that in his view; "both homosexual and paedophile acts are unnatural, perverted and immoral. In that sense both are, therefore, I contend, comparable in substance." He further stated; "I therefore stand by my comment without qualification."

2.2.5 Finally, Cllr Down stated that he would not use the language he used for addressing a wider audience or, specifically, someone of "homosexual persuasion" and that the language used must be seen in the context of the recipient of the message. He felt that it was not at all inappropriate that he should express himself in terms which reflected his strength of feeling.

2.2.6 On 26th January 2018, Cllr Down forwarded his reply to the Notice of Reference and again referred to his letter dated 27th November 2017. He contended that the Ombudsman had made a number of uncorroborated and speculative assumptions and that the investigation was; "based on a desire to reach a pre-determined conclusion." He also referred to freedom of expression, freedom of religious expression and also the public interest.

2.3 The Ombudsman's Written Representations

No further representations were made by the Ombudsman.

3. APPLICATIONS MADE PRIOR TO HEARING/LISTING DIRECTION

No applications were made further to the issue of standard Listing Directions on 10th May 2018.

4. APPLICATIONS MADE AND DIRECTIONS GIVEN DURING THE HEARING

4.1 No formal applications were made during the hearing, although the Chairman acceded to Cllr Down's request to put relevant questions, through the Chairman, to the Ombudsman's representative regarding various aspects of the Ombudsman's report.

4.2 The Chairman explained that as there were no disputed material facts in this case, the first two stages of the proceedings would be conflated, namely resolution of facts and determination of whether there has been a failure to comply with the code of conduct. There were no objections from either party to this proposed course of action.

5. THE HEARING

5.1. The Case Tribunal went on to hear oral evidence and submissions as follows:-

Public Services Ombudsman for Wales – presentation of the investigation report

5.1.1 In presenting the investigation report, the Ombudsman provided an overview of events, explaining that Cllr Down had not stood for re-election as a County Councillor in 2017, however had become a Community Councillor for Mathern Community Council. The complaint related to two sets of e-mail exchanges, one in February 2016 and the other in October 2016, comprising of a number of comments which were each considered by the Ombudsman's Investigator.

5.1.2 The Ombudsman's representative made it clear that the right to challenge Council spending was not being questioned. The Ombudsman was mindful of the European Convention on Human Rights, Article 10 being the right to freedom of expression; however, it was asserted that in this case, the level of inflammatory, offensive and abusive language crossed the line. In response to points of clarification, the Ombudsman's representative provided an explanation for the length of time taken to investigate this matter. The reasons for not pursuing investigation in relation to Paragraphs 4(a) and 6(1)(a) were also clarified.

5.2 Witness: Mr Paul Mathews, Chief Executive of Monmouthshire County Council gave evidence further to his statement dated 16th January 2017.

5.2.1 Mr Mathews stated that he had worked in public service for thirty years and had been Deputy Chief Executive or Chief Executive for fifteen years and had seen a lot in that time, however when he received the February e-mails from Cllr Down, he thought that they were totally at odds with what MCC was all about, albeit that he was not personally offended.

5.2.2 With regard to Cllr Down's comparison between homosexuality and paedophilia, he felt that this was an outrageous and abhorrent statement. He had pondered the matter; however he did not make a referral at that time and the matter was not handled internally at the time.

5.2.3 Due to the ethos of the Council, giving rights and opportunities to fulfil potential regardless of how people chose to live their lives and his duty of care as the Head of Paid Service, he considered it reasonable to set an appropriate tone and rhythm to the Council's work and he struggled to validate that with some of the comments made by Cllr Down.

5.2.4 It was Mr Mathews' view that Councillors can strongly challenge the Council's actions, however that there are rules within which they must operate. As a councillor, it is a privilege and an honour to represent all constituents and it is part of the role to promote the well-being of all. He did not make the referral lightly and had never previously made a referral, however following the second set of e-mails, he felt that Cllr Down's comments showed a pattern of behaviour, were unacceptable and needed to be addressed.

5.2.5 Mr Mathews said in evidence that he could receive several hundred e-mails in a day and these usually needed to be routed to another part of the organisation and he would have expected Cllr Down to have understood that. Cllr Down did not revert to him to object to the matter being referred. Mr Mathews accepted the need for humour on occasions, however in this instance a line had been crossed. He did not accept that the correspondence was private as it was addressed to the Chief Executive as representative of the organisation. In this case, the question raised by Cllr Down was forwarded, as was normal and routine, to the appropriate Cabinet Member with responsibility for equalities, who also happened to be openly gay.

5.2.6 Following questions from Cllr Down, Mr Mathews confirmed that Usk was Mr Mathews' 'normal' place of work as he spent the greatest proportion of his time, about 35%, in that locality. He also acknowledged that certain tragic events in Orlando, associated with homosexual community had been marked by the flying of the 'rainbow' flag at County Hall, whereas other atrocities had not been marked by the flying of the relevant national flags.

5.2.7 Mr Mathews confirmed that he had never previously had occasion to consider that Cllr Down had placed employees in a vulnerable position or dealt with them disrespectfully. He said in evidence that a person with certain religious beliefs would, as would any other candidate standing for election, need to reconcile themselves with undertaking to abide by the Councillors' code of conduct and if they could not do so, they should not stand for election.

5.2.8 Mr Mathews did not accept that referral was a ploy to get rid of Cllr Down and he stated that Cllr Down was not in a particular position of power and had a marginal role and the complaint was instigated purely by Cllr Down's use of language.

5.3 The Respondent, Cllr Down gave evidence as follows. The Case Tribunal had also read the relevant e-mails, the transcript of Cllr Down's interview of 24th August 2017 and Cllr Down's response to the Ombudsman's report dated 27th November 2017.

5.3.1 Cllr Down accepted that the exchange of e-mails was about Council business. He contended that the e-mails were private e-mails to the Chief Executive however and that it was the Chief Executive who had further circulated the e-mail. He also stressed that the Chief Executive was not personally offended by the comments. Cllr Down felt that Mr Mathews could have 'cut and pasted' e-mails so as not to send any part of them which the Chief Executive thought could cause offence.

5.3.2 He referred to a recent report of the Office for National Statistics. In terms of the sexual orientation of the population, 93.4% of the population described themselves as heterosexual. He said that if it is fair to describe a location where one spends only 35% of one's time as a 'normal' place of work, then it must be fairer to describe 93.4% of the population as 'normal.' He said that it was Mr Mathews who had read something into the term and nevertheless forwarded it on to the Cabinet Member.

5.3.3 Cllr Down was offended that the Council was promoting homosexuality and he argued that the Council had no duty to do so. Cllr Down asserted that he was not against individuals who are gay but that he disagreed with their lifestyle. By way of example, he explained that he had employed an openly gay person, who had been a valued member of his team, this was not to say that he approved of her lifestyle. Cllr Down found it wrong and deeply offensive as a tax-payer, that the Council should be seen to be promoting homosexuality. There had been three events within just over six months and he felt that 'his nose was being rubbed in it' and he said that he was not alone in believing this.

5.3.4 He said that his views had not changed and that it would be against his conscience to recant. Despite agreeing that people can do what they like in the privacy of their own homes, he did not expect it to be demonstrated in public and celebrated. He appreciated that paedophilia is unlawful, whereas homosexuality is lawful. Also children are not able to give consent whereas adults can do so. He believed that both were perverted and unnatural however.

5.3.5 Cllr Down explained that he was very angry at the time, however if he had been writing to a stranger or making a speech in Council, he might have used different terminology, although he would have said substantially the same thing. Following questions, he said that as an employer, he was aware of the provisions of the Equality Act 2010 and was aware of protected characteristics under the Act and the duty to treat people fairly and without discrimination. He continued to believe that he had done nothing wrong and, when pressed, was

not sure whether he would have made the 'paedophilia' comparison with the benefit of hindsight and would probably have chosen different words.

5.3.6 Cllr Downs agreed that he had not attended the training sessions referred to in the Ombudsman's report, however he noted that attendance generally at those training sessions had been low and that he had read and understood the code in any event.

Submissions

5.4 Submissions by the representative of the Public Services Ombudsman for Wales.

5.4.1. The Ombudsman's representative referred to relevant case-law with regard to Article 10 of the European Convention on Human Rights namely *Sanders v Kingston (No 1)* [2005] EWHC 1145 (Admin) and *R (Calver) v Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) and in particular the three-stage approach as promulgated in the *Sanders* case. Reference was also made to an earlier decision of the Adjudication Panel for Wales in 2009 in relation to Cllr William A Pritchard of Barmouth Town Council where it was decided that there had been a breach of the Code when the Respondent made a comment, amongst others, that homosexuality was a 'notorious disability'. The Ombudsman's representative acknowledged that there were differences between the two cases. In the 'Barmouth' case, the comment was directed at an employee and had been disseminated widely by the Councillor and personal offence had been caused to an individual, unlike in the present case. The Ombudsman submitted however that the wording of Paragraph 4(b) was wide and it was not necessary to show that personal offence had been caused.

5.4.2 The Ombudsman was not questioning the right to personal or religious beliefs. It was the manner in which the views were expressed to the Chief Executive that was an issue as he had a duty of care towards a large workforce. The Ombudsman acknowledged that each case must be considered on its own merits, that a finding of breach would be an interference with Cllr Down's Article 10 rights, however in this case, it was submitted that the interference would be justified

5.4.3 The Ombudsman's representative submitted that within his e-mails, Cllr Down was conducting Council business as he had written in his capacity as a Councillor about public funding and public administration and the Ombudsman was of the view that the Code provisions were fully engaged.

5.4.4 There was no issue with Cllr Down's initial questions to the Chief Executive, which were entirely appropriate. It was submitted however that the e-mails became more egregious and, even bearing in mind the enhanced protection held as an elected member, the Ombudsman considered that the relevant e-mails were inflammatory and abusive. Reference to a "ridiculous rag" to describe the rainbow flag would cause offence to the homosexual community and others. Comparison between homosexuality and paedophilia was plainly offensive.

5.4.5 In the October e-mails it was clear from the context of the e-mails that Cllr Down was suggesting that anyone who was not 'normal' in the sense of being heterosexual, was abnormal. The Ombudsman's representative submitted that in conducting Council business, it could not be expected that the Chief Executive would redact Councillor e-mails and remove offensive material.

5.4.6 The Ombudsman's representative referred to the Ombudsman's Guidance as mentioned in Cllr Down's evidence in relation to senior officers requiring a thicker skin, however this was not the issue and was to do with the Chief Executive doing the right thing and standing up for his duties and the equalities legislation. If a person did not feel that they could sign up to the code of conduct then they shouldn't become a Member.

5.4.7 The Ombudsman considered that this was an unusual, but serious case. The Chief Executive had made the complaint via the Monitoring Officer and it was felt in the circumstances that it was neither practical nor easy for a Standards Committee to hear this case and that it would also be useful for Standards Committees generally to receive guidance from the Case Tribunal in view of the complex Convention issues in this case.

5.5 Submissions made by Cllr Down

5.5.1 Cllr Down submitted that the Ombudsman had adduced no evidence to show that he had prevented officers from carrying out their functions in any way. He felt that the Ombudsman had tried to put words into his mouth and that they had carried out no work to find out the probability or otherwise of anyone being offended.

5.5.2 With regard to the February e-mails, the Ombudsman had accepted that there was nothing offensive in the e-mail sent on the 12th February 2016 at 11.22am and he had received no reply or objection to his e-mail sent at 15.01pm on the same date. It was only in relation to an e-mail in October that Mr Mathews used the word 'inappropriate'. In his further e-mail on 3rd October 2016 at 13.15pm, Cllr Down said that this was simply explaining the position and that it was more measured than his e-mail of 12th February 2016. If an e-mail was so offensive, then he queried why the Chief Executive would send it to someone who was openly gay.

5.5.3 Cllr Down referred to the Local Government Act 1988 Act and the repeal of the prohibition on promoting homosexuality and he said that MCC's Equality Policy referred to ensuring that there was no discrimination but did not refer to promotion of homosexuality and no resolution of the Cabinet had changed that. He felt that the conferences which had been organised were going further than treating people fairly, they were promoting homosexuality.

5.5.4 With regard to the ability to redact Members' e-mails, Cllr Down said that Chief Executives regularly received politically sensitive e-mails and needed to cut and paste information from time to time.

5.5.5 Cllr Down stated that the code of conduct refers to all Members, whether they are for or against homosexuality and he said that it was abundantly clear

that the Council, through its Cabinet Member with responsibility for equalities issues, was not treating those with religious views with any sort of consideration whatsoever and was blind to the fact that people may hold different views to them.

5.5.6 With regard to the reference to a 'ridiculous rag', he said that it was not unknown for Union Jack towels to be taken on holiday and for sun-tan lotion to be dropped onto them. To suggest that there is something magical about a flag which does not represent the Council and that you cannot 'take the mick out of it' is absurd. He did not consider that this reference was a breach of the code.

5.5.7 Cllr Down also referred to the Barmouth Town Council case which he said was very, very different. In that case, the Councillor's comments were contained in a letter to a third party, external to the Council and the onward transmission was an action of the Councillor, not an action of the Council. The only similarity was that it happened to deal with homosexuality.

5.5.8 Finally Cllr Down referred to the right to freedom of expression and the ability to impart ideas. He said that the only way in which the right could be removed was where just and where morality and the well-being of society required it and this was not the case here.

5.6 The Case Tribunal's assessment of the Witnesses

5.6.1 The Tribunal found Mr Paul Mathews to be a considered and straightforward witness. He readily accepted that he had not had any cause for concern for Cllr Down's behaviour towards officers over many years previously. He readily accepted that Cllr Down had not referred his e-mails to any third party. He was less clear however as to why Cllr Downs had not been challenged or warned by Mr Mathews following the February exchange of e-mails.

5.6.2 Likewise the Tribunal found Cllr Downs to be a considered and straightforward witness. He did not waiver from his strongly held views whilst giving evidence. His evidence in relation to his use of the word 'normal' to denote 'the majority of people' however, was at odds with the context of the use of the word in his e-mail to the Chief Executive dated 1st October 2017.

6. FINDINGS OF FACT

6.1 The facts were agreed and the Case Tribunal therefore found the following **undisputed** material facts;

6.1.1 At the relevant time, Councillor Down was a Member of MCC

6.1.2 Cllr Down is currently a Member of Mathern Community Council

6.1.3 Cllr Down signed an undertaking to observe the code of conduct of MCC on 8th May 2012.

6.1.4 Cllr Down forwarded e-mails to the Chief Executive of MCC on the 12th February 2016 and on the 1st to 13th October 2016, the contents of which are not in dispute.

7. FINDINGS OF WHETHER MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

7.1 Case Tribunal's Decision

7.1.1 On the basis of the findings of fact and the evidence, the Case Tribunal found by a unanimous decision that Cllr Down had failed to comply with the code of conduct for Monmouthshire County Council as follows.

7.1.2 As well as looking at the e-mails as a whole, the Case Tribunal considered each of Cllr Down's e-mail comments which were alleged to contain homophobic statements in the light of the following.

7.1.3 Paragraph 4(b) of the code of conduct states;

"You must show respect and consideration for others".

The code is underpinned by certain principles. Paragraph 2(2) of the code of conduct states that; "You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales" (the Welsh Principles). The relevant principle states;

"Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others."

Paragraph 4(b) of the code must also be carefully considered in the light of the Articles of the European Convention on Human Rights however.

7.1.4 Article 8(1) of the Convention as embodied in the Human Rights Act 1998 states as follows:-

"Everyone has the right to respect for his private and family life,..."

7.1.4 Article 9 of the Convention states as follows:-

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

7.1.5 Article 10 of the Convention states as follows:-

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

7.1.6 In this context, the Case Tribunal referred to the cases of Calver, Sanders (No1) as well as Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin) which was within the knowledge of the Case Tribunal and followed the three-stage approach in Sanders (No 1) as follows:-

“1. Was the Case Tribunal entitled as a matter of fact to conclude that [Cllr Down’s] conduct was in breach of Paragraph [4(b)] of the code of conduct?

2. If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10?

3. If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?”

7.1.7 The Case Tribunal also noted the references to the Equality Act 2010 duties from the evidence and submissions. Under the Act, protected characteristics include sexual orientation. Section 149(5) states as follows:-

“Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

(a) Tackle prejudice, and

(b) Promote understanding.”

7.1.8 The Tribunal was mindful that Cllr Down’s comments had not been directed at any particular individual, however it considered that Paragraph 4(b) of the Code required respect and consideration to be shown by Councillors to others, whether this be an individual, a group or the electorate as a whole. It considered that Cllr Down’s e-mails had been directed to the Chief Executive who represented the Authority and the community as a whole and who, as Head of Paid Service, had a duty towards all staff.

7.1.9 The Tribunal was satisfied that the e-mails were sent to the organisation by Cllr Down in his official capacity as a representative of his community, as confirmed in his interview with the Ombudsman’s Investigating Officer. Moreover, the e-mails had not been sent as private and confidential documents,

Cllr Down was aware that they were, in some instances, being circulated more widely, yet he did not object at the time and it is also a fact that he had been willing to repeat these comments more widely and ultimately publicly in his letter to the Ombudsman dated 27th November 2017. Paragraph 4(b) was therefore engaged.

7.1.10 The Case Tribunal gave careful consideration to the right of freedom of thought, conscience and religion under Article 9 of the Convention. Within his e-mails, Cllr Down referred to being a Christian. In his letter dated 27th November 2017, Cllr Down had quoted from the Old Testament and referred to other religious teachings to justify his comments. The Tribunal accepted that on a wide reading, Article 9(1) was engaged, as some of Cllr Down's comments directly expressed one narrow element of his belief and could therefore be interpreted to be a manifestation of his religion or belief, such manifestation not being limited simply to acts of worship or devotion.

7.1.11 The Case Tribunal was satisfied in relation to Article 10(1) of the Convention that all relevant e-mail comments attracted full and enhanced protection afforded to politicians expressing their political views as they were all made in the context of public administration, including the use of Council property namely the flag-pole on Council premises, the organisation of Council conferences/events and the cost of such conferences/ events and Cllr Down's comments in connection with them were considered to be political expression in its widest sense.

7.2 Case Tribunal's Decision.

The Case Tribunal therefore considered each relevant e-mail comment in the light of all of the above.

7.2.1 E-mail dated 12th February 2016 11:28 headed; "Monmouthshire Youth LBGXYZ Conference". Comments as follows:-

"There seems to be some ridiculous multi-coloured rag flying from the flagpoles outside County Hall".

The Case Tribunal considered that Cllr Down's comment was disrespectful, however it accepted that, in the light of the enhanced protection for political expression, this flippant and impatient comment, despite being likely to be offensive to some, was not so egregious as to justify the restriction of Cllr Down's right to freedom of expression justifying a finding of a breach of the code. The Panel considered that this would have been the case even without enhanced protection.

7.2.2 E-mail dated 12th February 2016 15.01 Comments as follows:-

"I am, and have been, always quite open that I agree with the teachings of just about every major world religion in that homosexuality is an immoral perversion to be condemned, not promoted".

The Case Tribunal was clear that these comments did not show respect and consideration for a section of society with protected characteristics under the Equality Act 2010.

The Tribunal carefully considered Cllr Down's rights under Articles 9(1) and 10(1) of the European Convention on Human Rights. Although the comments attracted enhanced protection as they comprised of political expression, the Tribunal considered that the comments were so unnecessary, offensive and egregious that they amounted to a blatant disregard for equality principles and legislation, the public interest in good administration and the duty of trust and confidence between all councillors and their Council's workforce. It was a deliberate challenge to the inclusive ethos of the Council and although not directed at a particular individual, the comments were an affront to the private life of a whole section of the community with protected characteristics, including staff and Members of MCC who also had the right to respect for their private and family lives by virtue of Article 8.

It concluded that, even having given a narrow construction to Articles 9(2) and 10(2) of the Convention, a finding of a breach of Paragraph 4(b) of the Code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others." The comments were gratuitous and homophobic and in clear breach of Paragraph 4(b) of MCC's code of conduct.

7.2.3 Comments as follows:-

"Indeed as a matter of straightforward logic I do not understand why a homosexual act is apparently acceptable but not a paedophile act. Both are unnatural and I struggle to see a difference of substance".

The Case Tribunal considered that this comment demonstrated an extreme homophobic view which was wholly incompatible with the code and its underpinning Welsh Principles.

Although the comments attracted protection under Article 9(1) and full, enhanced protection under Article 10(1) of the European Convention on Human Rights, they demonstrated complete failure to show respect and consideration for others, including staff and Members of Monmouthshire County Council as well as the wider community with protected characteristics. It was the Tribunal's view that the comment which made a comparison between lawful relations and child abuse was outrageous, inflammatory, gratuitous and abhorrent. It consisted of a flagrant disregard for equality principles and the Equality Act 2010, the public interest in good administration and the duty of trust and confidence between all councillors and their Council's workforce. It deliberately challenged the inclusive ethos of the Council.

The Tribunal concluded that, even having given a narrow reading of Articles 9(2) and 10(2) of the Convention, a finding of a breach of Paragraph 4(b) of the Code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others", and to uphold standards in public life.

7.2.4 E-mail dated 1st October 2016 20:24 headed 'LBGTQIYGVGI Conference. Comment as follows:-

"I see that MCC apparently had yet another LBGTQIYGVGI conference yesterday, although there's still no sign of a similar conference for normal people".

The Case Tribunal considered that Cllr Down's comment was pejorative and disrespectful, however it accepted that in the light of the enhanced protection for political expression that this provocative comment, despite being likely to be offensive to some, did not justify the restriction of Cllr Down's rights to freedom of expression so as to justify a finding of a breach of the code. Indeed the Panel considered that this would have been the case even without enhanced protection.

7.2.5 E-mail dated 1st October 2016 20:24 Comments as follows:-

"I believe homosexuality, transgenderism, etc are immoral perversions. I do not accept the activities as being "normal" in any way".

The Case Tribunal were clear that this comment did not show respect and consideration for a section of society with protected characteristics under the Equality Act 2010.

The Tribunal carefully considered Cllr Down's Convention rights and concluded that the comments attracted protection under Article 9(1) and full, enhanced protection under Article 10(1).

Despite having been challenged by Mr Matthews at the relevant time in this instance, Cllr Down repeated his view that 'the activities' were not normal, however on this occasion he linked the pejorative use of the word 'normal' to his view of the activities being 'immoral perversions' as opposed to being activities conducted by a minority of the population as Cllr Down argued in his submissions. In the circumstances, the Case Tribunal decided that, although the comments attracted full enhanced protection, they were wholly unnecessary, abusive and egregious and demonstrated complete failure to show respect and consideration for others, including staff and Members of Monmouthshire County Council as well as the wider community with protected characteristics. It was a deliberate and gratuitous challenge to the inclusive ethos of the Council, taking no account of equality principles, let alone the public sector equality duty.

It concluded that, even having given a narrow reading of Articles 9(1) and 10(2), a finding of a breach of Paragraph 4(b) of the code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others."

7.2.6 E-mail dated 13th October 2016 8:28:55 headed 'Our recent exchanges' Comment as follows:-

“Perhaps you would also be kind enough to let me know the difference in principle between flying the striped flag outside County Hall, even though that may offend some, and erecting a banner saying something like “homosexuality is perverted,” which may offend others”.

The Case Tribunal considered that Cllr Down’s comment was disrespectful, however it accepted that in the light of the enhanced protection for political expression that this provocative yet rhetorical question, despite being likely to be offensive to some, did not justify the restriction of Cllr Down’s rights to freedom of expression justifying a finding of a breach of the code. Indeed the Panel considered that this would have been the case even without enhanced protection.

8. SUBMISSIONS ON ACTION TO BE TAKEN

8.1 Evidence of previous conduct

No evidence was produced of any previous breaches of the code of conduct by Cllr Down.

8.2 The Ombudsman’s submissions

8.2.1 The Ombudsman contended that although Cllr Down was no longer a member of MCC, by virtue of Sections 79 (4) (a) and 79 (13) (b) of the Local Government Act 2000, the legislation allowed the Case Tribunal to suspend the Councillor from a different Authority to that in which the conduct occurred, in this case, Mathern Community Council. Cllr Down had become a Member of Mathern Community Council in May 2017.

8.2.2 The Ombudsman’s representative acknowledged that there may be mitigating factors, in that the code provisions to do with bringing the office or the Council into disrepute had not been invoked, that Cllr Down had co-operated with the investigation and that some of the comments had been made in the ‘heat of the moment’.

8.2.3 With regard to aggravating factors, the comments escalated following challenge by Mr Mathews. Although Cllr Down said that he had read and understood the code of conduct, his non-attendance of training on the code over the years showed a poor attitude to code matters and that there was a failure to look at a councillor’s role from a distance.

8.3 Cllr Down’s Submissions

8.3.1 Cllr Down contended that he could not and would not recant and quoted Martin Luther on this point. He felt that the whole episode was bizarre and a breach of natural justice and he felt that there was a tacit understanding between chief executives and the Ombudsman’s office that investigations would be long and drawn-out. He felt that the delay was a sanction in itself.

8.3.2 He also stated that no-one had been offended by the e-mails and the Chief Executive had not been offended personally. The only person who had been offended was himself. He felt that blind assumptions had been made by MCC. As to the Chief Executive's duty to protect staff, it had been acknowledged that there was not a single example or incident of poor treatment of anyone by Cllr Down. He felt that the nub of this was that he was being expected to give up his faith and he would not do so.

8.3 Case Tribunal's Decision

8.3.1 The Case Tribunal considered the nature of the three e-mails which were found to breach the code of conduct and in particular the comment which compared homosexuality to paedophilia. Cllr Down had reluctantly indicated that, in retrospect, he would 'probably' have used different words. They were not words used in the 'heat of the moment' however as having had ample time to reflect, he used similar wording and went on to justify the comments in his letter to the Ombudsman dated 27th November 2017.

8.3.2 In accordance with the Adjudication Panel for Wales' current Sanctions Guidance, the Case Tribunal also had regard to the following mitigating factors: that the breaches arose from a genuinely and strongly held view and that Cllr Down had a previous record of good service. It also had regard to the following aggravating factors: non-attendance of training with the October e-mail showing a repeat pattern of behaviour and a lack of remorse or insight. The Case Tribunal recognised that in other circumstances, this may have been a matter which would have been appropriate for Standards Committee hearing and therefore also took into account the upper limit of sanction for Standards Committees.

8.3.3 The Case Tribunal gave very careful consideration to all submissions on sanction and once again considered sanction in the light of Articles 9 and 10 and the principles of proportionality and although it found that the imposition of a sanction was a prima facie interference with the right to manifest one's religion or belief under Article 9 and freedom of expression under Article 10, it was proportionate and justified under Articles 9(2) and 10(2), as the breaches of the code had been gratuitous and egregious and was necessary to reinforce the fact that the code of conduct and Welsh Principles are key to the proper operation of and public confidence in local democracy. The Case Tribunal considered the least intrusive measure possible, without unacceptably compromising the achievement of the objective.

8.3.4 It has also considered Sections 79 (4) (a) and 79 (13) (b) of the Local Government Act 2000 in relation to sanction and it accepted the Ombudsman's submissions that suspension as well as disqualification were within the powers of the Case Tribunal.

8.3.5 The Case Tribunal had regard to sanctions in other cases. The 'Barmouth' case had led to disqualification for one year, however the Case Tribunal recognised that Cllr Down had not directed his behaviour towards a particular individual and wrote solely to the Chief Executive. In *Sanders v Kingston (No 2)* [2005] EWHC 2132 (Admin), Sullivan J considered that a

suspension of six months would have been appropriate in place of the disqualification for 18 months originally imposed by the relevant Tribunal. The Sanders (No 2) case involved a one-off incident of poor behaviour towards an officer.

8.3.6 Due to the mitigating factors described in Paragraph 8.3.2 above, the Case Tribunal considered that a short period of suspension would be proportionate and two months was considered to be the minimum sanction necessary, bearing in mind that many Town and Community Councils do not hold any formal Council meetings during August, whilst aiming to discourage the Respondent and any other Councillor from conducting himself/herself in a similar manner in future.

8.3.7 The Case Tribunal concluded by unanimous decision that Cllr Down should be suspended from acting as a member of Mathern Community Council for a period of two months or, if shorter, the remainder of his term of office.

8.3.8 MCC and Mathern Community Councils and their Standards Committee are notified accordingly.

8.2.9 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.

9. CASE TRIBUNAL RECOMMENDATIONS

9.1 Although this does not form part of the Case Tribunal's formal findings, the Case Tribunal would recommend that Cllr Down uses the two months' suspension to seek code of conduct and equalities training through MCC and Mathern Community Council and their Monitoring Officer.

Signed:



Date: 10 August 2018

Claire N Jones
Chairman of the Case Tribunal

Susan Hurds
Panel Member

Glenda Jones
Panel Member

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