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Contact Officer:
Maureen Potter / 01352 702322
maureen.potter@flintshire.gov.uk

To: Robert Dewey (Chairman)

Councillors: Patrick Heesom, Paul Johnson and Arnold Woolley

Co-opted Members:

Jonathan Duggan-Keen, Phillipa Earlam, Julia Hughes and Kenneth Molyneux
(+ 1 vacancy for a co-opted member)

28 May 2019

Dear Sir/Madam

You are invited to attend a meeting of the Standards Committee which will be held at 6.30 pm on Monday, 3rd June, 2019 in the Clwyd Committee Room, County Hall, Mold CH7 6NA to consider the following items

Please note that a training session for the Standards Committee members will be held from 6.00 p.m until 6.30 p.m.

A G E N D A

1 APOLOGIES

Purpose: To receive any apologies.

2 DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

Purpose: To receive any Declarations and advise Members accordingly.

3 MINUTES (Pages 3 - 8)

Purpose: To confirm as a correct record the minutes of the meeting on 29 April 2019.

4 DISPENSATIONS

Purpose: To receive any requests for dispensations.

5 PUBLIC SERVICES OMBUDSMAN FOR WALES CASEBOOK ISSUE 19 (OCTOBER – DECEMBER 2018) (Pages 9 - 16)

Purpose: To inform the Committee of the latest publication of the Public Services Ombudsman's Code of Conduct Casebook.

6 ADJUDICATION PANEL FOR WALES DECISION – BREACH OF THE CODE OF CONDUCT OF MONMOUTHSHIRE COUNTY COUNCIL (Pages 17 - 38)

Purpose: To provide the details of the decision of the Adjudication Panel for Wales in respect of the Monmouthshire County Council case reported in Issue 18 of the Public Services Ombudsman for Wales Casebook as requested by the Committee.

7 REPORTS FROM INDEPENDENT MEMBER VISITS TO TOWN/COMMUNITY COUNCILS

Purpose: To receive verbal reports from independent members of the Committee on their visits to the following councils:

- Northop Community Council (Phillipa Earlam – 14.01.19);
- Buckley Town Council (Phillipa Earlam – 26.02.19); and
- Bagillt Community Council (Phillipa Earlam – 13.03.19).

8 FORWARD WORK PROGRAMME (Pages 39 - 42)

Purpose: For the Committee to consider topics to be included on the attached Forward Work Programme.

Yours faithfully



Robert Robins
Democratic Services Manager

STANDARDS COMMITTEE
29TH APRIL 2019

Minutes of the meeting of the Standards Committee of Flintshire County Council held at County Hall, Mold on Monday, 29th April 2019.

PRESENT: Rob Dewey (Chairman)

Councillors:

Patrick Heesom, Paul Johnson and Arnold Woolley.

Co-opted members:

Jonathan Duggan-Keen, Phillipa Earlam, Edward Hughes, Julia Hughes and Ken Molyneux.

APOLOGIES:

None.

IN ATTENDANCE:

Monitoring Officer and Team Leader – Democratic Services.

67. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None.

68. MINUTES

The minutes of the meeting held on 4th March 2019 were submitted and approved as a correct record.

RESOLVED:

That the minutes be approved and signed by the Chairman as a correct record.

69. DISPENSATIONS

The Monitoring Officer presented one dispensation request for consideration which had been received after publication of the agenda.

Councillor Adele Davies-Cooke

Councillor Davies-Cook was not in attendance so the Monitoring Officer introduced the dispensation request. She wished to speak only for 5 minutes as the local Member at meetings of Planning Committee in relation to application number 059396 which was a planning application within her ward. She had been involved in a verbal altercation at her home with an individual who she knew to be a director of the applicant company. She reported the encounter to the Police. The application was for 80 dwellings, a convenience store and associated development and was likely to be considered by Planning Committee in May 2019. Whilst the dispute was behind her and that she would act impartially and

in the public interest, she understood that the objective perception could be that she had a personal and prejudicial interest.

Councillor Woolley proposed that the dispensation be granted so that Councillor Davies-Cooke could speak as local Member for 5 minutes. The Monitoring Officer queried the full details of the dispensation which were agreed as speaking for 5 minutes at Planning Committee, and leaving the room before the debate and vote on application number 059396, or any application which, in the opinion of the Monitoring Officer was similar. The dispensation was for 12 months and would cease on 29th April 2020.

RESOLVED:

That Flintshire County Councillor Adele Davies-Cooke be granted dispensation under paragraph (f) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak for 5 minutes at Planning Committee, and leave the room before the debate and vote, on application number 059396, or any application which, in the opinion of the Monitoring Officer is similar. The dispensation was for 12 months and would cease on 29th April 2020.

70. REPORTS FROM INDEPENDENT MEMBER VISITS TO TOWN/COMMUNITY COUNCILS

The following independent members presented their verbal reports:

Ken Molyneux – Sealand Community Council (21.01.19)
Rob Dewey – Leeswood and Pontblyddyn Community Council (05.02.19)
Ken Molyneux – Saltney Town Council (13.02.19)

All reported that observing the meetings had been a positive experience and that they had been well led by Chairs with helpful assistance from Clerks and good participation by attendees. Clerks had been very co-operative prior to the meetings in providing the required information about venues, times, access etc.

The following additional points were made which were to be fed back to Town and Community Councils:

- The duration of meetings – it was noted that when meetings took a long time people could find it more difficult to concentrate and be less able to stay to hear items that may be of importance to them;
- The importance of good chairing skills, such as stopping people from speaking multiple times and curtailing debate after the issues had been thoroughly aired; and
- The positive presence of a Youth Councillor which the Council in question should be proud of.

The Chair proposed that once all visits had been undertaken and reported to Standards Committee that a leaflet could be produced for Town and Community Councils with areas of good practice, lessons learned etc. which was supported.

RESOLVED:

That the verbal reports be received and feedback given to Town and Community Councils.

71. OVERVIEW OF ETHICAL COMPLAINTS

The Monitoring Officer introduced the Overview of Ethical Complaints report which provided a running total of the complaints alleging a breach of the code that had been submitted to the Public Services Ombudsman for Wales.

The complaints distinguished between different Councils and Councillors whilst remaining anonymous. No complaints had been received since the last report. Four complaints had been resolved since the last report and were subject of a separate report.

A significant number of complaints had been submitted in relation to one Town Council; one was from a member of the public and the investigation was still underway. It was not appropriate to comment on that case whilst the investigation was ongoing.

In response to a question from Julia Hughes, the Monitoring Officer said the Ombudsman did not provide updates as to when ongoing cases were likely to be resolved. Rob Dewey expressed his concern that over two thirds of the complaints related to bullying.

RESOLVED:

That the number and types of complaints be noted.

72. STANDARDS COMMITTEE INDEPENDENT MEMBERS

The Monitoring Officer explained that the terms of two independent members of the Standards Committee was due to end later that week having each served a term of six years.

One member, Phillipa Earlam, wished to continue for a further term, the maximum of which could be for four years. The second member, Ed Hughes, wished to stand down due to work commitments. A report would be submitted to County Council to seek approval of the re-appointment of Phillipa Earlam. For the vacancy it would be recommended that the Council advertise the position jointly with Wrexham County Borough Council so that costs could be shared.

For the Interview Panel, the Monitoring Officer suggested it should consist of the Chair of the Council and the Chair of Standards Committee, plus the same from Wrexham. In addition, a lay person which would give the maximum of five allowed.

The Chair thanked Ed Hughes for his hard work and commitment to the Standards Committee and the Council during his six year term which had been invaluable.

RESOLVED:

- (a) That County Council be recommended to re-appoint Phillipa Earlam for a second term, a maximum of four years;
- (b) That Ed Hughes be thanked for all of his hard work on the Committee during his six year terms; and
- (c) That County Council be requested to approve a joint recruitment process with Wrexham County Borough Council for the vacancy.

73. FORWARD WORK PROGRAMME

The current Forward Work Programme was received.

The Monitoring Officer explained that Flintshire was hosting the Standards Committee Forum on 24th June, 11am – 3pm, and sought any questions that members would like to ask the Public Services Ombudsman for Wales who would be in attendance. He asked if members could let him know if they would be in attendance.

In response to a question, the Monitoring Officer said attendance was ordinarily aimed at Chairs and Vice-Chairs but substitutions were accepted.

It was agreed that the report requested at the meeting on 4th March, on further information on the case that was referred to the Adjudication Panel for Wales on a complaint against a Councillor at Monmouthshire County Council, would be reported to the Committee in June.

RESOLVED:

That the Forward Work Programme be noted.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 – TO CONSIDER THE EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That the press and public be excluded for the remainder of the meeting for the following item by virtue of exempt information under paragraph 12 of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended).

74. OUTCOME LETTERS OF COMPLAINTS CONSIDERED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES

The Monitoring Officer introduced the report which provided details of outcome letters of complaints considered by the Public Services Ombudsman for Wales.

Following a discussion, it was agreed that a training provider would be commissioned to provide training to a Town Council, with assistance from the Public Services Ombudsman for Wales. There may also be requirement for mediation given that the Members were familiar with the Members' Code of Conduct. The Town Council in question would be asked to share the costs of the training provided.

Following the discussion under the Forward Work Programme, it was agreed that a question would be drafted to be asked of the Public Services Ombudsman for Wales at the Standards Committee Forum on complaints.

RESOLVED:

- (a) Training be commissioned for a Town Council, with assistance from the Public Services Ombudsman for Wales;
- (b) That mediation be provided if necessary; and
- (c) That the Town Council be asked to share the costs of any training provided.

75. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There were no members of the press or public in attendance.

(The meeting started at 6.30pm and ended at 7.46pm)

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Chairman

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STANDARDS COMMITTEE

Date of Meeting	Monday 3 June 2019
Report Subject	Public Services Ombudsman for Wales (PSOW) Casebook Issue 19 (October - December 2018)
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The PSOW considers complaints that Members of local authorities in Wales have broken the Code of Conduct (the Code). There are four findings the PSOW can arrive at:

- (a) that there is no evidence of breach;
- (b) that no action needs to be taken in respect of the complaint;
- (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 (the APW) for adjudication by a tribunal.

The PSOW summarises the complaints that he has investigated on a quarterly basis in the Code of Conduct Casebook (the Casebook). In reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition covers October to December 2018.

This edition highlights that eleven complaints were investigated by the PSOW during this time, of which there were three findings of no evidence of breach and eight findings of no action necessary (although one complaint related to two incidents of which one was a finding of no evidence of breach and the other a finding of no action necessary). There were no referrals to Monitoring Officers for consideration by their Standards Committees and there were no referrals to the APW for adjudication by a tribunal.

RECOMMENDATIONS

1	To note the findings of those complaints that were investigated by the PSOW during October to December 2018, as summarised in issue 19 of the Casebook.
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REPORT DETAILS

1.00	BACKGROUND
1.01	<p>The PSOW considers complaints that Members of local authorities in Wales have broken the Code. The PSOW 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 PSOW decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the PSOW can arrive at, namely:</p> <ul style="list-style-type: none">(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 APW for adjudication by a tribunal (this is usually only the more serious cases)
1.02	<p>In terms of findings (c) and (d) it is for the Standards Committee or tribunal to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.</p>
1.03	<p>The Casebook contains summaries of reports issued by the PSOW for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, the Casebook only contains the summaries of those cases for which the hearings by the Standards Committee or APW have been concluded and the outcome of the hearing is known. This edition (issue 19) covers October to December 2018. There were no referrals under findings (c) or (d) during this period.</p>
1.04	<p>The summary of the findings in this edition of the Casebook, are as follows:-</p> <p><u>No evidence of breach</u></p> <p><u>Blaenau Gwent County Borough Council – Promotion of equality and respect Case Number 201707024</u></p>
1.05	<p>The complaint was that a Councillor (“the Councillor”) may have breached the Code of Conduct by setting up a page on Social Media which the complainant said unfairly targeted her business. She also complained that the Councillor had intercepted an email she would not otherwise have been entitled to and shared the content of the email on the Social Media page. The PSOW found that the Councillor set up the Social Media page in her private capacity, there was no reference to her work as a Councillor and it was not in any way associated with the Council. The email referred</p>

to had been sent directly to the Councillor. The email was not marked confidential and the Council confirmed that it was the type of information it would share with anyone who made a complaint.

Rhondda Cynon Taf County Borough Council - Duty to uphold the law Case Number: 201802132

- 1.06 The complainant complained that a Councillor (“the Councillor”) breached the Code of Conduct when she signed a police statement indicating she had seen an altercation between “Mr B” and another person. Mr B said the Councillor retracted the information in court and that were it not for the statement he would not have gone to court. The PSOW found that the statement appeared to have been given in good faith and the account given in court was so similar that it appeared to be the Councillor’s version of events.

Powys County Council – Accountability and openness. Case Number: 201706713

- 1.07 The complaint was that the behaviour of a Member (“the Councillor”) of Powys County Council (“the Council”) misled a local resident (“the Complainant”) when the Councillor commented on raising objections to a planning application. The Complainant said the Councillor was attempting to secure an advantage for the applicant and to deter local residents from objecting. An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern disrepute and using their position to create an advantage for themselves or another person.

- 1.08 The PSOW determined there was no evidence to suggest that the Councillor had breached the Code during a telephone conversation with the Complainant.

No action necessary

- 1.09 Beguildy Community Council – Disclosure and registration of interests Case Number: 201801874

- 1.10 The complaint was that a Councillor (“the Councillor”) failed to declare an interest at a meeting, when a discussion took place about survey work on damaged drains on land next to land owned by the Councillor. The complainant also said that the Councillor failed to show her respect and consideration. The Councillor acknowledged a heated discussion with the complainant but said it was not personal and he did not bear her any malice. The PSOW found that the matters raised by the Councillor were of legitimate political concern and it is not the PSOW’s role to inhibit robust political debate. Whilst the matter discussed did directly affect the Councillor’s land and therefore might amount to a technical breach of the Code the issue was of wider significance to the community and therefore his finding was that no action needed to be taken in respect of the matters investigated.

City and County of Swansea – Duty to uphold the law. Case Number: 201802771

1.11	The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code of Conduct by over claiming mileage expenses.
1.12	Having considered the information available to him, the PSOW concluded that whilst there was evidence that the Member had incorrectly over claimed expenses, consideration had to be given to the Member’s inexperience and unfamiliarity with the process; the fact that the Member had also under claimed expenses on a number of occasions; the value of the overpayments and, the Member’s apology and readiness to repay the overpaid money. In view of the above the PSOW found that no further action should be taken.
<p><u>Powys County Council – Promotion of equality and respect</u> <u>Case Number: 201706847</u></p>	
1.13	The PSOW investigated a complaint that a Councillor (“the Councillor”) may have breached the Code of Conduct by failing to honour an undertaking given to the APW that he would send a written letter of apology to two colleagues.
1.14	Having considered the information available to him, including the Member’s comments that he had written and posted the letters, the PSOW concluded that, since the Member had agreed to rewrite and send the letters again, no further action should be taken.
<p><u>Sully and Lavernock Community Council – promotion of equality and respect. Case Number: 201705246</u></p>	
1.15	The PSOW received a complaint that, during a meeting of Sully and Lavernock Community Council (“the Council”), a Member (“the Member”) had breached the Code. It was alleged that the Member made ageist and discriminatory comments about a candidate that had applied to be co-opted to the Council.
1.16	Information was sought from the Council and interviews were undertaken with witnesses who were at the meeting as well as the Member.
1.17	The investigation found that the Member had made such comments, but that there was no evidence to suggest that his comments had a bearing on the outcome for the candidate. Further to this, the Member had only been elected to the Council for six weeks, the Code had not been explained to him and he had not had any training on its content. Additionally, when interviewed, the Member apologised for the comments, said he would not make such comments again and confirmed that he had since had training on the Code.
1.18	Whilst the PSOW suggested that the Member consider attending an equality and diversity training course, he concluded that it was not in the public interest to pursue the matter and that no further action needed to be taken in respect of the matters complained about.
<p><u>Pembrey & Burry Port Town Council – Disclosure and registration of</u></p>	

interests. Case Number: 201704860

- 1.19 The PSOW received a complaint that a Member (“the Member”) of Pembrey & Burry Port Town Council (“the Council”) had breached the Code by taking part in discussions and a vote at two meetings on matters in relation to a former Member of Council staff who had recently made a complaint about the Member.
- 1.20 The Member was interviewed, as was the Councillor who submitted the complaint and a further Member of the Council. At interview, the Member said he sought advice from the Clerk as to whether he could participate in discussions and he was advised that he could. He also sought his own legal advice on the matter. The Member said that he was unaware that a close personal association could give rise to a personal interest where it related to someone with whom a Member may be “in dispute” with. The Member said that at the time he did not feel that he was in dispute with the Member of Council staff. However, the Member acknowledged that he would handle similar matters very differently in future.
- 1.21 The PSOW concluded that the Member’s conduct in respect of both meetings was suggestive of a breach of the paragraphs of the Code which require him to make a declaration of interest and leave the room as appropriate. However, in view of the Member’s actions being misguided rather than intentional, the PSOW concluded that it would not be in the public interest to refer the matter to the Standards Committee.

**Gwynedd Council - Disclosure and registration of interests
Case Number: 201702769**

- 1.22 The PSOW received a complaint that a Councillor (“the Councillor”) had breached the Code of Conduct for Members. It was alleged that the Councillor had breached the Code when he failed to declare his beneficial interest in properties registered in his name and stated that he had no beneficial interests in land in the Council area. It was alleged that the Councillor failed to sign and return the Council’s declaration of interests form, despite numerous opportunities to do so.
- 1.23 The PSOW investigated whether the Councillor’s actions amounted to a breach of paragraphs regarding the disclosure of interests and the requirements regarding conduct where such interests are also prejudicial interests.
- 1.24 As the Councillor was a new Member at the time the events took place, it was the first time that the Councillor’s conduct had been brought to the PSOW’s attention and as the Councillor had since correctly completed the declaration of interest form, the PSOW decided not to take further action against the Councillor.

Llandegla Community Council – Integrity. Case Number: 201704189

- 1.25 A complaint was about the behaviour of a Member (“the Councillor”) of Llandegla Community Council (“the Council”) at two Council meetings (“the First Meeting” and “the Second Meeting”) and also about his conduct in submitting a funding application without the Council’s authority.

1.26	An investigation was commenced to consider whether the Councillor had breached parts of the Code which concern respect and consideration, bullying and harassment, and disrepute.
1.27	The PSOW determined there was no evidence to suggest that the Councillor had breached the Code at the Second Meeting and in respect of the funding application. He found that no action needed to be taken in respect of his behaviour at the First Meeting.
<u>Guilsfield Community Council – Accountability and openness. Case Number: 201707849</u>	
1.28	The PSOW investigated a complaint that a Member of Guilsfield Community Council (“the Councillor”) may have breached the Code by misleading Members of the public regarding the Council’s consideration of a planning application (“the Application”) and in relation to an interest he declared during particular Council meetings.
1.29	The PSOW concluded that there was no evidence to suggest that the Councillor had advised any Member of the public other than in good faith and there was no evidence that he deliberately set out to mislead any Member of the public. Consequently, he decided that it was not in the public interest to pursue this issue any further.
1.30	The PSOW agreed, given that the Councillor had declared an interest in the Application at the two meetings, that he had a personal interest in it. He further considered that a reasonable Member of the public, who had knowledge of the interest, would be likely to consider it so significant that it would be likely to prejudice his judgement. The Councillor should, therefore, have withdrawn from the room when the business was being discussed. However, although the Councillor remained present, there was no evidence that he used his position improperly, disrupted the democratic process or influenced the Council’s discussion and ultimate decision on the Application. The PSOW therefore decided that no action needed to be taken in respect of the matters investigated, although he recommended that the Councillor should consider carefully his duties under the Code, particularly the obligation to withdraw from a meeting when an interest is prejudicial, and seek advice if he was unsure of its implications.

2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
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4.01	N/A
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5.00	APPENDICES
5.01	None

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>https://www.ombudsman.wales/wp-content/uploads/2019/03/CoC-casebook-February-2019.pdf</p> <p>Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>APW – The Adjudication Panel for Wales is an independent tribunal whose function is to determine alleged breaches by elected and co-opted Members of Welsh county, county borough and community councils, fire and national park authorities, against their authority’s statutory code of conduct.</p> <p>PSOW - Public Services Ombudsman for Wales is independent of other bodies and has legal powers to investigate complaints about public services and independent care providers in Wales and to investigate complaints that Members of local government bodies have broken their authority’s code of conduct.</p>

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STANDARDS COMMITTEE

Date of Meeting	Monday 3 June 2019
Report Subject	Adjudication Panel for Wales Decision – Breach of The Code Of Conduct of Monmouthshire County Council
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

On the 4th March 2019 the Committee considered a report on the Public Service Ombudsman for Wales' (PSOW) quarterly casebook issue number 18 (covering the period July to September 2018). The Committee requested that further details be reported to them regarding an Adjudication Panel for Wales (APW) case tribunal decision issued on the 10th August 2018 regarding a former County Councillor of Monmouthshire County Council, Graham Down (the Respondent). The PSOW referred the matter to the APW rather than the Standards Committee of the relevant Council, because the matter involved the Chief Executive and the referral was made to the PSOW by the Monitoring Officer, which would have made it difficult and impractical for that Committee to deal with. The matter was also referred to the APW because the PSOW considered it would be useful for Standards Committees generally to receive guidance from the Case Tribunal in view of the complex European Convention issues that the case involved.

The breaches of the Code of Conduct (the Code) related to emails to the complainant, when acting in his capacity as a Member of the Council, which the complainant considered contained comments which failed to show respect and consideration for Members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community and the language used amounted to a failure to show respect and consideration for others in breach of paragraph 4(b) of the Code.

The Tribunal concluded that the Councillor had breached the Code and suspended the Councillor from the Council for a period of two months.

RECOMMENDATIONS

1	That the Committee considers the judgment of the Case Tribunal and shares with Councillors and messages or lessons arising from the decision that it considers appropriate.
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REPORT DETAILS

1.00	BACKGROUND
1.01	The complaint arose from three emails sent to the Chief Executive of Monmouthshire County Council between the 12th February 2016 and the 1st October 2016 in relation to a Council resource issue, included egregious remarks about homosexuality.
1..02	The case involved two issues which made it complex. The Committee may recall from previous training, the decision of the APW in 2009 regarding a Councillor of Barmouth Town Council who referred to homosexuality as a “notorious disability” in a letter to a third party outside the Council, the transmission of which was by the Councillor himself. Further, the letter was written regarding an officer of the Council. In contrast, this case related to an email from the Councillor to the Chief Executive alone, who then sent the email on to a Cabinet Member and the Monitoring Officer. The email was not shared with other parties by the member himself, was not shared with anyone outside the Council, and was not a remark made about a particular individual, so the question of whether Paragraph 4(b) was in fact breached was at issue for this reason.
1.03	The second complexity related to Articles 9 (freedom of thought, belief and religion) and 10 (freedom of expression) of the European Convention on Human Rights, both in terms of whether those rights were engaged and if so, whether interference with them was justified in the circumstances. The Committee are aware that Article 10 relates to the enhanced protection for politicians and their political expression. Article 9 was relevant due to the Respondent’s claim that (particularly given the expectation by him that the Chief Executive would keep the email private) he was entitled to express his religious beliefs and thoughts in this capacity.
1.04	The Case Tribunal had to make findings in respect six alleged breaches of the Code regarding six particular comments made in the two emails referred to above. Those alleged breaches are summarised below, together with the findings that were made by the Case Tribunal in terms of breach of the Code. Paragraph x then summarises the findings on sanction, in accordance with the recently adopted sanctions guidance. The full decision is appended to this report.
1.05	<p>The first alleged breach of the Code related to the following comment:-</p> <p>“There seems to be some ridiculous multi-coloured rag flying from the flagpoles outside County Hall”.</p> <p>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 (Article 10), this 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 Case Tribunal considered that this would have been the case even without enhanced protection.</p>

1.06	<p>The second alleged breach of the Code related to the following comment:-</p> <p><i>“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”.</i></p>
1.07	<p>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.</p>
1.08	<p>The Tribunal considered Cllr Down’s rights under Articles 9(1) and 10(1) of the European Convention on Human Rights. They found that 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 the Council who also had the right to respect for their private and family lives by virtue of Article 8.</p>
1.09	<p>The Case Tribunal concluded that, even having given a narrow construction to Articles 9(2) and 10(2) (regarding the circumstances under which these rights may be legitimately restricted) 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 the Code.</p>
1.10	<p>The third alleged breach of the Code related to the following comment:-</p> <p><i>“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”.</i></p>
1.11	<p>The Case Tribunal considered that this comment demonstrated an extreme homophobic view which was wholly incompatible with the Code and its underpinning Welsh Principles.</p>
1.12	<p>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.</p>

1.13	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.
1.14	<p>The fourth alleged breach of the Code related to the following comment:-</p> <p><i>“I see that MCC apparently had yet another LBGTQIYGVGI conference yesterday, although there’s still no sign of a similar conference for normal people”.</i></p> <p>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.</p>
1.15	<p>The fifth alleged breach of the Code related to the following comment:-</p> <p><i>“I believe homosexuality, transgenderism, etc are immoral perversions. I do not accept the activities as being “normal” in any way”.</i></p>
1.16	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.
1.17	The Tribunal 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).
1.18	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.
1.19	The Case Tribunal 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.”
1.20	<p>The sixth and final alleged breach of the Code related to the following comment:-</p> <p><i>“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”.</i></p>

1.21	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.
1.22	The Case Tribunal then went on to consider sanctions for the breaches that they had found and (as more fully set out at paragraph 8.3.2 of the decision) having considered both mitigating and aggravating factors of the breaches, suspended the Respondent for two months.

2.00	RESOURCE IMPLICATIONS
2.01	N/A

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	N/A

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	Appendix 1 - Report of the Case Tribunal constituted by the APW.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	N/A Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew.georgiou@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	APW – the Adjudication Panel for Wales is an independent tribunal established to determine alleged breached by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities, against their authority's statutory code of

7.02	conduct. PSOW – the Public Services Ombudsman for Wales has legal powers to investigate complaints about public services and independent care providers and complaints that members of local government bodies have breached their authority’s statutory 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

FLINTSHIRE COUNTY COUNCIL – STANDARDS COMMITTEE – FORWARD WORK PROGRAMME 2018/19

Date of Meeting	Topic	Notes/Decision/Action
1 July 2019	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members • Update on Community Asset Transfers • Review of Flintshire Standard 	<p>Report by Gareth Owens Report by Gareth Owens</p>
3 June 2019	<ul style="list-style-type: none"> • Training • Dispensations • Members' Code of Conduct • Town and Community Council Visits by Independent Members • APW Decision – Breach of the Code of Conduct of Monmouthshire County Council • PSOW Code of Conduct Casebook Issue 19 (Oct 18 – Dec 18) 	<p>Verbal update</p> <p>Report by Matt Georgiou</p> <p>Report by Matt Georgiou</p>
29 April 2019	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members • Standards Committee Independent Members • Overview of Ethical Complaints • Outcome Letters of Complaints Considered by the PSOW 	<p>Verbal update</p> <p>Verbal report Report by Gareth Owens</p> <p>Part 2 Report by Matt Georgiou</p>
1 April 2019 Meeting Cancelled	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members 	

4 March 2019	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members • PSOW Code of Conduct Casebook Issue 18 (July 18 – Sept 18) 	Report by Matt Georgiou
4 February 2019	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members • Town and Community Council Referrals to the Ombudsman • Councillor Training 2018 	Report by Gareth Owens Verbal report by Matt Georgiou
7 January 2019	<ul style="list-style-type: none"> • Training • Dispensations • Officers Code of Conduct • Planning Code of Practice • Town and Community Council Visits by Independent Members 	Report by Gareth Owens Report by Matt Georgiou
3 December 2018	<ul style="list-style-type: none"> • Training • Dispensations • Town and Community Council Visits by Independent Members 	Report by Matt Georgiou
12 November 2018	<ul style="list-style-type: none"> • Training • Dispensations • Response from WG to a request for 	Verbal report

	<p>increased sanctions</p> <ul style="list-style-type: none"> • Revised Social Media Guidance by WLGA • Town and Community Council Visits by Independent Members • Overview of Ethical Complaints • Annual Report of the APW 2016/2017 	<p>Report by Matt Georgiou Verbal update by Ken Molyneux Report</p> <p>Verbal update by Matt Georgiou</p>
1 October 2018	<ul style="list-style-type: none"> • Training • Dispensations • Standards Conference September 2018 • APW Sanctions Guidance • Public Services Ombudsman's Annual Report for 2017/18 • The Public Services Ombudsman for Wales Case Book 	<p>Verbal update by Julia Hughes Report by Matt Georgiou Report by Matt Georgiou</p> <p>Verbal update by Matt Georgiou</p>
3 September 2018	Meeting Cancelled	
<p>To be scheduled –</p> <p>Information on the dispensations process at Gwynedd Council and Wrexham County Borough Council. Annual Report of the Adjudication Panel for Wales. Item to consider the frequency of reporting on the Overview of Ethical Complaints. PSOW Code of Conduct Casebook Issue 19 (Oct 18 – Dec18) PSOW Code of Conduct Casebook Issue 20 (Jan 19 – March 19)</p> <p><u>For future meetings after November:</u></p> <p>Code of Conduct complaints in Flintshire.</p>		

