

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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