

CYNGOR SIR POWYS COUNTY COUNCIL.**Standards Committee
9th April 2014****REPORT BY: Solicitor to the Council****SUBJECT: Matters relating to Standards Issues**

REPORT FOR: Decision, Information and Discussion

A. General Standards Issues for County Councillors and Co-opted Members**A1 Code of Conduct Training**

The new Church Representative on the People Scrutiny Committee has been nominated by the St Asaph Diocese. It will be necessary to arrange training for her together with the newly appointed Lay Member of the Standards Committee. One further Lay Member vacancy exists for a Parent Governor Representative on the People Scrutiny Committee. The appointment process for this vacancy will commence after Easter.

A2 Member Development**A2.1 Mandatory Training**

At the last meeting of the Standards Committee Members made a number of comments on Mandatory Training which have been considered by the Member Development Working Group. An extract of the minutes of the meeting of 27th February 2014 are attached at **APPENDIX 1**. The Member Development Working Group are seeking the views of the Standards Committee with regard to Mandatory Training.

B. Referral of Councillors to Public Services Ombudsman for Wales**B1. County Councillor Referrals**

B1.1 There are no outstanding Code of Conduct complaints with the Public Services Ombudsman for Wales

C. Other Standards Issues**C1.1 Local Resolution Panels**

The Public Services Ombudsman for Wales has for some time been encouraging Councils to adopt a process for local resolution of Councillor on Councillor complaints, with the intention of reducing the number of complaints to the Ombudsman.

A draft Local Resolution Panel process has been prepared and will be provided prior to the meeting. Comments on this draft document will be sought.

D Dispensations

D1. Applications - County Councillors

An application for dispensation has been received from County Councillor W. B. Thomas. Councillor Thomas has been invited to attend the meeting to present his application, however, is unable to attend due to other Council business. A copy of the application and briefing is attached at **APPENDIX 2**.

E. Late payment of expenses

Claims for payment of expenses have been submitted by the following Member:

Councillor Peter Harris – a claim for Broadband submitted on 31st January 2014 for the period 22nd January 2013 to 21st October 2013

Councillor David Evans – a claim for mileage submitted on 16th January 2014 for October 2013.

Details will be provided at the meeting and the Members have been invited to attend.

F. Appointment of Independent (Lay) Member of Standards Committee

The process for appointing an Independent (Lay) Member to replace Independent Member Mrs Harris is ongoing.

The Appointment Panel sat on 6th March 2014 and shortlisted the 46 eligible applicants. Six applicants were invited to interview on 13th March 2014. The Panel have made a recommendation for ratification at Full Council on 30th April 2014. The new Independent (Lay) Member will start on 22nd June 2014.

G. Ombudsman's Case Book

The Ombudsman published the first of sixth monthly case books on Code of Conduct in October 2013. Standards Committee Members have asked for further detail regarding the background to the decisions reported in the Casebook.

The reports into a selection of the cases included in the casebook have been downloaded from either the Adjudication Panel for Wales' website or the websites of Local Authority Standards Committees.

Reports into the following cases are attached at **APPENDIX 3**.

1. Former County Councillor David Evans
Ceredigion County Council
Case heard by: Adjudication Panel
Outcome: Disqualification 3 months

2. County Councillor P Heeson
Flintshire Council
Case heard by: Adjudication Panel
Outcome: Disqualification 2 ½ years

3. Town Councillor Ms A O'Grady
Llandudno Town Council
Case heard by: Conwy County Council Standards Committee
Outcome: Disqualification 6 months

4. Town Councillor D J Thomas
Gorseinon Town Council
Case heard by: City and County of Swansea Council Standards Committee

H. Meeting Dates

H1 To note dates of future meetings as follows:

25th June 2014
3rd September 2014
3rd December 2014

All meetings to commence at 10.00am with the option of training available afterwards.

Contact Officer Name:	Tel:	Fax:	Email:
<i>Clive Pinney – Solicitor to the Council</i>	01597 826746	01597 826220	clive.pinney@powys.gov.uk

NOTES OF A MEETING OF THE MEMBER DEVELOPMENT WORKING GROUP HELD AT COUNTY HALL, LLANDRINDOD WELLS ON THURSDAY 27TH FEBRUARY, 2014

3. MANDATORY AND OTHER DEVELOPMENT

The Working Group received the minutes from the Standards Committee of 5th February, 2014 at which it considered the Working Group's draft details of Mandatory and other development.

The Working Group considered the Standards Committee's comments and agreed the following:

Standards Committee's comments	Member Development Working Group's response
Mandatory training should be kept to a minimum	No comment
Consideration should be given to using Governor training on Child Protection when Members are unable to attend the date for Member training on this issue	Using other sources of training will be considered.
The use of training sessions in neighbouring authorities should be considered for those Members unable to attend Powys County Council training where appropriate	Using other sources of training will be considered.
The training programme for new Councillors should be programmed in time to allow details to be included in candidate packs	Agree the induction programme will be included in the Candidate pack, clearly stating that specific training must be completed prior to a new Councillor participating in their new role.
Consideration should be given to offering online training	The Member Development Working Group has included a review of online training available for staff in its Work Programme. This will be to establish its relevance for Members and whether any changes are required to meet Members' needs.
Different levels of attendance would be expected from different training offered – potentially: <ul style="list-style-type: none"> • Mandatory – 100% • Recommended – 80% • Offered – at Members discretion The levels of expected attendance needed further consideration including how closely it should match the level of attendance expected by Members monitored by Standards Committee (currently 60%)	Mandatory training – 100% - agree. The Council has already agreed that if this is not completed then the individual member cannot undertake their role on Committees etc. Recommended – 80% - the Working Group questioned this level. It was noted that the attendance at Committee meetings was set at 60%, even though this is where decisions are made. The National Park Authority has an attendance level of 75% for committees and development. Offered – the Working Group did not consider the need for a further category, as this would lead to confusion. Member development should be categorised as either Mandatory or Non-Mandatory.

	<p>Resolved that The Working Group recommends to the Standards Committee that either</p> <ol style="list-style-type: none"> 1. Attendance at Committee meetings and Non-Mandatory development sessions should be 80% or 2. Attendance at Committee meetings and Non-Mandatory development sessions should be 70%.
Attendance at afternoon sessions could be encouraged by defining the morning and afternoon sessions separately and calculating attendance accordingly	Agreed
Attendance would be monitored by Standards Committee	Agreed
<p>Potential mandatory training</p> <ul style="list-style-type: none"> • Code of Conduct • Data Control • Corporate Parenting • Treasury Management (1 of 2 per annum) 	Agreed plus the Mandatory development identified for specific Committees.
It was suggested that Members would not be able to sit on committees until they had undertaken the Code of Conduct training	Agreed

POWYS STANDARDS COMMITTEE / COMMUNITY SUB-COMMITTEE

APPLICATION FOR DISPENSATION BY MEMBER WITH PREJUDICIAL INTEREST

I, Councillor WILLIAM BARRY THOMAS
of Powys County COUNCIL

hereby apply to the Powys Standards Committee/Community Sub-Committee for a Dispensation to participate, as described in Section 1 below, in that business of the Council described in Section 2 below notwithstanding that I have the Prejudicial Interest(s) detailed in Section 3 below.

I make this application on the ground(s) set out in Section 4 below which I submit apply because of the reasons detailed in Section 5 below.

SECTION 1

How you wish to participate – please tick all relevant categories below:

Attend a meeting	<input checked="" type="checkbox"/>
Speak at a meeting	<input checked="" type="checkbox"/>
Vote at a meeting	<input checked="" type="checkbox"/>
Seek to influence a decision on a matter	<input checked="" type="checkbox"/>
Make written representations	<input checked="" type="checkbox"/>
Make oral representations	<input checked="" type="checkbox"/>
Exercise Board functions (County Councillor only)	<input checked="" type="checkbox"/>

SECTION 2

(A) Describe in the box below:

- i) the business in which you wish to participate;
- ii) how your Council will deal with the matter;
- iii) how many Members there are on your Council;
- iv) what meetings will be held to consider it, when and where they will be held; and
- v) those taking part.

INVOLVEMENT IN DISCUSSIONS ON ALN PROVISION IN THE County

(B) If the business relates to or affects an organisation(s) please detail below:

- o how were you appointed to that organisation (i.e. by appointment by the Town or Community Council or by other means), and

- what is the nature of the business:
 - A Funding
 - B Planning – applications, building improvement/changes
 - C Licences – liquor/entertainment
 - D Land
 - E Management/operation of the organisation
 - F General matters

CHAIR OF Powys Dyslexia Support Group WHICH
I HELPED TO ESTABLISH

(C) Is the organisation a registered charity? If so, are you a Trustee of the charity?

No

SECTION 3

Detail the PREJUDICIAL interest(s) you have in the business referred to in Section 2 above. Please refer to the attached Guidance Notes (Attached) and include the relevant category reference e.g C.4 if the matter concerns a good friend of yours who stands to benefit as a result of a decision on the matter.

PUBLIC PERCEPTION THAT, AS CHAIR OF THE
Dyslexia Support Group, THE INTEREST WOULD BE
PREJUDICIAL BECAUSE DYSLEXIA MAY RESULT IN
SPECIAL EDUCATIONAL NEEDS.

SECTION 4

Set out the GROUND(S) upon which you rely by placing a tick in the right hand column against the relevant category/ies below.

Eligible Applicant	Ground		
County Councillors and Town and Community Councillors	(a) No fewer than half of the Members of the relevant Authority or of a committee of the Authority (as the case may be) by which the business is to be considered has an interest which relates to that business;	Speak and Vote Speak only	-
County Councillors only	(b) No fewer than half of the Members of a leader and cabinet executive of the relevant Authority by which the business is to be considered has an interest which relates to that business and either Paragraph (d) or (e) also applies;	Speak and Vote Speak only	-
County Councillors only	(c) In the case of a County or County Borough Council, the inability of the Member to participate would upset the political balance of the relevant Authority or of the committee of the Authority by which the business is to be considered to such an extent that the outcome would be likely to be affected.	Speak and Vote Speak only	-
County Councillors and Town and Community Councillors	(d) The nature of the Member's interest is such that the Member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant Authority's business;	Speak and Vote Speak only	-
County Councillors and Town and Community Councillors	(e) The interest is common to the Member and a significant proportion of the general public;	Speak and Vote Speak only	-
County Councillors and Town and Community Councillors	(f) The participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise;	Speak and Vote Speak only	-
County Councillors only	(g) The business to which the interest relates is to be considered by an Overview and Scrutiny Committee of the relevant Authority and the Member's interest is not a pecuniary interest.	Speak and Vote Speak only	-
County Councillors and Town and Community Councillors	(h) The business which is to be considered relates to the finances or property of a voluntary organisation of whose Management Committee or Board the Member is a Member otherwise than as a representative of the relevant Authority and the Member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or	Speak only	
County Councillors and Town and Community Councillors	(i) It appears to the committee to be in the interests of the inhabitants of the area of the relevant Authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify.	Speak and Vote Speak only	-

SECTION 5

Detail in full the reasons why you submit the grounds selected in Section 4 apply in the case of your application and justify the grant of the dispensation you seek

IT IS IMPORTANT THAT, AS LEADER OF THE COUNCIL, I AM ABLE TO TAKE A FULL PART IN THE DISCUSSIONS ON ALN PROVISION IN THE COUNTY. FURTHER, THE CONNECTION BETWEEN THE DYSLEXIA SUPPORT GROUP AND ALN PROVISION IS REMOTE AND I ALSO UNDERSTAND THAT THERE IS NO CHILD PRESENTLY IN AN ALN UNIT DUE TO DYSLEXIA

Applicant's home address:	GLANVERNIEW (THE SMITHY) LLANGYNIEW WELSIPOOL POWYS
Applicant's telephone number:	
Applicant's fax number:	
Applicant's E Mail address:	

SIGNED: _____

DATED: 26/3/14

This form fully completed, signed and dated should be returned to:

Mrs Elizabeth Patterson, Committee Clerk, Legal, Scrutiny and Democratic Services, County Hall, Llandrindod Wells, Powys, LD1 5LG.

**Tel No: 01597 826980
Fax No: 01597 826220**

E-Mail: Elizabeth.patterson@powys.gov.uk

From whom further information and advice may be obtained.

Application by	County Councillor W.B. Thomas
Council	Powys County Council
Involvement With	(i) Involvement in Discussions on ALN (Assisted Learning Needs) provision in the county.
Business To Be Considered	All Matters relating to the proposed changes to ALN provision in Powys.
Background	<p>The County Council has recently concluded its consulting on proposed changes to ALN provision for pupils with Additional Learning Needs in Powys. Councillor Thomas when he was Chair of Council in 2011-12 established the Powys Dyslexia Support Group and he is Chair of that group. The group signposts adults and individuals to services and provides advice. In addition Councillor Thomas is Leader of the Council and is dyslexic.</p> <p>Councillor Thomas is an LEA appointed governor at Ysgol Pontrobert. There is no ALN unit at the school. However all schools in Powys will be affected by the proposals.</p> <p>The matter is likely to be discussed at meetings of the Cabinet, the Shire Committee, and meetings of the County Council.</p> <p>The types of matters which could be considered at these meetings relate to the budget, the proposed re-configuration of the service and how the service will be delivered across the County.</p> <p>The applicant is seeking a dispensation to:</p> <ul style="list-style-type: none"> (i) Attend a meeting. (ii) Speak at a meeting. (iii) Vote at a meeting. (iv) Seek to influence a decision on the matter. (v) Make written representations. (vi) Make oral representations. (vii) Exercise Cabinet functions.
STEP 1 Personal Interest(s) under paragraph 10 of the Code.	<p>Councillor Thomas has the following personal interests:</p> <p><u>Chair of the Powys Dyslexia Support Group:</u></p> <p>10 (2) (a) (ix) (cc) - You must regard yourself as having a personal interest in any business of your authority if it relates to, or is likely to affect any body whose principal purposes include the influence of public opinion or policy in which you have membership or hold a position of general control or management.</p> <p>10 (2) (a) (ix) (ee) - You must regard yourself as having a personal interest in any business of your authority if it relates to, or is likely to affect any private club, society or</p>

	<p>association operating within you authority’s area in which you have membership or hold a position of general control or management.</p> <p><u>School Governor:</u></p> <p>10 (2) (a) (viii) - You must regard yourself as having a personal interest in any business of your authority if it relates to, or is likely to affect any body to which you have been elected appointed or nominated by your authority.</p> <p>10 (2) (a) (ix) (aa) - You must regard yourself as having a personal interest in any business of your authority if it relates to, or is likely to affect any public authority or body exercising functions of a public nature in which you have membership or hold a position of general control or management.</p>
<p>STEP 2 Exemptions under paragraph 12 (2) & (3) of the Code.</p>	<p>In relation to County Councillor Thomas, the only exemptions in Paragraph 12(2) which would apply in relation to the personal interests relates to his role as a school governor.</p> <p>12 (2) (a) (ii) - Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business relates to (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management</p> <p>12 (2) (a) (iii) - Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business relates to a body to which you have been elected, appointed or nominated by your authority</p> <p>12 (3) - The exemptions in subparagraph (2) (a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration</p>
<p>STEP 3 Application of “public perception” test under paragraph 12 (1) of the Code.</p>	<p>In applying the Paragraph 12(1) test in relation to the business involving the restructuring of the provision for pupils with Additional Learning Needs relating to the personal interest set out in Step 1 above it is suggested that the Committee approach the issue in this way i.e. to ask itself:</p> <p>“Is it reasonable to suppose that the public perception would regard the Councillor’s personal interest, as so significant that whenever a proposal regarding ALN provision was discussed at a the Cabinet / committee / Council the potential conflict of interest would be so significant as to be likely to prejudice his / her judgement of the public interest in performing his / her role as a County Councillor?”</p> <p>In applying the Paragraph 12(1) test in relation to this matter (and particular interest) it is difficult to arrive at a simple conclusion as to whether a prejudicial interest would exist.</p>

	<p>The reason for that is based on advice from the Education Service as to whether dyslexia falls within the category of ALN provision. Basically this is not a clear cut position as a person with dyslexia can function at a very high level with no additional learning need whilst others with dyslexia could function at a lower level and have a varying degree of additional learning need.</p> <p>The reason that Councillor Thomas initially decided to disclose a prejudicial interest in matters relating to ALN provision in Powys was as he had received indications from members of the public that as the Chair of the Dyslexia Support Group he would automatically have a prejudicial interest. Therefore he took the decision to disclose both a personal and prejudicial interest and not take part in the debate. However since the Council meeting on the budget he has further reflected on the matter and taken additional advice from other Members who have suggested that he might not have an interest, hence the application for dispensation to the Committee.</p>
<p>STEP 4 Ground(s) on which dispensation could be granted</p>	<p>In relation to the County Councillor the grounds which could be considered for this matter would be grounds (d) and (f), namely:</p> <p>(d) The nature of the Member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant Authority's business.</p> <p>This ground enables the grant of dispensation to speak and vote or to speak only.</p> <p>(f) The participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise.</p> <p>This ground enables the grant of dispensation to speak and vote or to speak only.</p>
<p>STEP 5 Determine the application:-</p> <ul style="list-style-type: none"> (i) Refuse (ii) Approve:- <ul style="list-style-type: none"> (a) attend (b) speak (c) vote (d) exercise Board Function (e) seek to influence (f) make written communications (g) make oral representations 	<p>The applicant has requested a dispensation to attend meetings and to speak, vote, seek to influence and make oral and written representations as well as exercise Executive functions, on matters relating to the proposed restructuring of ALN provision.</p> <p>The issue for consideration is whether the Committee believes that a prejudicial interest exists, and once that has been determined whether Councillor Thomas can be granted a dispensation to take part in discussions relating to ALN provision in Powys.</p>

RECOMMENDATION:	It is difficult to make a recommendation as this is complex and hinges on whether a prejudicial interest exists or not. The Committee will need to consider whether a dispensation can be granted to Councillor Thomas under paragraphs (d) and (f).
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**DECISION REPORTS FOR A SELECTION OF CASES FROM THE
OMBUDSMAN'S CASEBOOK APRIL – SEPTEMBER 2013**

1. Former County Councillor David Evans
Ceredigion County Council
Case heard by: Adjudication Panel
Outcome: Disqualification 3 months

2. County Councillor P Heeson
Flintshire Council
Case heard by: Adjudication Panel
Outcome: Disqualification 2 ½ years

3. Town Councillor Ms A O'Grady
Llandudno Town Council
Case heard by: Conwy County Council Standards Committee
Outcome: Disqualification 6 months

4. Town Councillor D J Thomas
Gorseinon Town Council
Case heard by: City and County of Swansea Council Standards Committee

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/008/2012-013/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Former Councillor David Evans

RELEVANT AUTHORITY: Ceredigion County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 In accordance with former Cllr Evans' wishes, and exercise of its powers under paragraph 3(3) of the schedule to the Adjudications by Case Tribunals and interim Case Tribunals (Wales) Regulations 2001, the Case Tribunal determined its adjudication by way of written representations at a meeting on Friday 12 July 2013 at the Holiday Inn, Cardiff City Centre.

2. PRELIMINARY DOCUMENTS

2.1 The Case Tribunal considered the following documentation:

- a. The Public Services Ombudsman for Wales' ("the Ombudsman") Report dated 3 January 2013 and the Appendices thereto;
- b. Ceredigion County Council's Complaints Panel Decision Notice dated 14 December 2011;
- c. Record of Tape Recorded Interview conducted at Aberystwyth Police Station on 25 November 2011;
- d. Letter dated 19 June 2013 from AgriAdvisor, solicitors to former Cllr Evans and attached witness statement of former Cllr Evans dated 18 June 2013.

2.1.1 In a letter dated 3 January 2012, the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against Mr Evans. The allegations were that Mr Evans had breached Ceredigion County Council's Code of Conduct by claiming expenses he was not entitled to and had gained a financial advantage by over-stating his mileage and subsistence claims over a period of 11 years.

2.1.2 On 2 November 2011, Mr Ray Daniel, a member of the public made a complaint to the Ombudsman alleging that Mr Evans had failed to observe the

Council's Code of Conduct by systematically over-claiming mileage expenses over a period of 11 years.. As a result of his allegations, the matter was initially investigated by the Council, who subsequently referred the matter to the Police and the Ombudsman. Following advice from the Crown Prosecution Service, the Police decided no further action be taken against Mr Evans. Although not specifically relevant to the allegations against Mr Evans being determined by the Case Tribunal, it must be mentioned that the Case Tribunal is cognisant that Mr Daniel raised concerns about the expense claims of other councillors.

2.2 The Respondent's Written Response to the Reference

2.2.1 By letter dated 10 December 2012, AgriAdvisors wrote to the Ombudsman on behalf of their client, Mr Evans, and gave their comments on the Ombudsman's draft report. The Ombudsman responded to the representations made on behalf of Mr Evans on 15 March 2013.

2.2.2 AgriAdvisors made further representations to Case Tribunal by letter dated 19 June 2013.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following **undisputed** material facts:

3.1.1 Mr Evans was a member of Ceredigion County Council ('the Council')

3.1.2 The Council adopted a Code of Conduct for its members as required by the Local Government Act 2000.

3.1.3 On 13 December 2001, 16 June 2004 and 9 May 2008 Mr Evans gave undertakings that he would abide by the Code of Conduct.

3.1.4 The Council operated a Members Allowances Scheme ("the Scheme") which allowed for members to claim reimbursement of allowable expenses incurred whilst carrying out approved duties.

3.1.5 On 26 February 2004 the Council considered and then adopted a revised members' scheme for 2004/05 providing for the chairman and vice-chairman's allowances to be increased to include an amount equivalent to that previously claimed by post-holders as travel expenses. Following adoption of the Scheme, the chairman and vice-chairman would then not be eligible to claim travel expenses when undertaking those duties since a sum for travel expenses was included in the allowance. Mr Evans was present at that meeting.

3.1.6 From 2004/05 to 2011/12 Mr Evans was present at the meetings when the Council considered the Director of Finance's annual reports on the Scheme.

3.1.7 Mr Evans has accepted that the minutes of the meetings record that he was present when the Scheme was discussed and that he was provided with the Scheme documents as part of Agendas and Minutes of the Meetings.

3.1.8 Mr Evans submitted claim forms under the Scheme between May 1999 and February 2012 that did not comply with the Scheme.

3.1.9 In May 2004 Mr Evans was nominated to the role of Chairman of the Council.

3.1.10 On 27 January 2005 Mr Evans travelled to a seminar to Dublin and submitted a claim for expenses incurred during the trip. The form was marked 'chairman' by Mr Evans and included a claim of 110 miles for a car journey. Mr Evans has since admitted that he did not travel by his own car but took a train or taxi to the meeting location.

3.1.11 On 15 November 2007 Mr Evans travelled to Belfast to attend a conference. He submitted an expenses claim for the visit which included a mileage claim for his Daihatsu vehicle. However, the mileage claim was supported by a parking reservation receipt for a Ford Focus. It was also supported by a hotel bill which included £76.30 for a restaurant charge; and a flight booking for 2 persons. Mr Evans has admitted he did not take his car to Belfast but flew there from Cardiff Wales Airport. He has further admitted that the restaurant charge was for a meal taken by Mr Evans and his wife.

3.1.12 During the Council and Police interview, Mr Evans said he claimed mileage as if he made the journey by car. He further stated that he thought it was acceptable to claim mileage for a car journey when he had actually travelled by taxi or train. He thought that this was the standard procedure.

3.1.13 On 10 February 2011 the Council requested Mr Evans to repay £5,100.42 of expenses that he had over-paid and he promptly repaid this amount on 14 February 2011.

3.2 The Case Tribunal found the following **disputed** material facts:

3.2.1 It is disputed that Mr Evans was aware or had been made aware that he should not have claimed travel expenses when he became Chairman of the Council.

3.2.2 It is disputed that Mr Evans received the letter dated 12 July 2004 which outlined the Members Allowances Scheme.

3.2.3 It is disputed that it is unacceptable to submit mileage claims for a journey undertaken by taxi or train.

3.2.3 It is disputed that Mr Evans knowingly or dishonestly claimed expenses to which he was not entitled or that he knowingly or dishonestly over-claimed expenses.

3.2.4 It is disputed that Mr Evans knowingly or dishonestly claimed expenses to which he was not entitled when he made the trip to Belfast.

3.2.5 It is disputed that Mr Evans deliberately or knowingly over-claimed mileage expenses on claim forms he submitted.

3.2.6 It is disputed that Mr Evans was responsible for claim forms he had completed but not signed.

3.3 The Case Tribunal found the following in respect of the disputed facts:

3.3.1 In May 2004 Mr Evans was appointed chairman of the Council.

3.3.1.1 On 12 July 2004, following his appointment, the Director of Finance wrote to Mr Evans congratulating him on his appointment and advising him of the allowances that he was now entitled to as chairman.

3.3.1.2 The letter stated:

“The personal allowance is intended to meet any expenses incurred as a result of you holding office of chairman of the Council. You are advised to maintain a record of all expenses incurred and make a claim for a reduction in your tax liability to the Inspector of Taxes.

Travelling expenses for journeys to meetings, seminars and conferences etc can be claimed in the usual manner for those approved duties which the Council has formally resolved that you should attend. All other travelling expenses should be met from the personal allowance or the special allowance mentioned above.”

3.3.1.3 The Scheme for allowances and expenses had been approved at a Council meeting (para 447 of minutes) held on 26 February 2004, at which Mr Evans was present. The Scheme provided for the Chairman’s allowance to include an amount equivalent to that previously claimed by post-holders as travel expenses. Put simply travel expenses were included in the Chairman’s allowance.

3.3.1.4 Mr Evans when interviewed by the Ombudsman and the Police advised that he had no recollection of receiving the letter, dated 12 July 2004 from the Director of Finance. However, he was unable to explain when interviewed by the Ombudsman, why during the Police interview and in his written response dated 2 July 2012, he had said he had followed the advice contained in the letter dated 12 July 2004. It is apparent from his statements that he did receive the letter.

3.3.1.5 In his written response dated 2 July 2012, Mr Evans stated “I accept that I am responsible for completing the claim form.”

3.3.1.6 The declaration on claim forms states that the claimant confirms that: -

“I have actually paid the fares and other payments shown on the claim form and the amounts claimed are in accordance with the approved rates. The above statements are correct.”

3.3.1.7 Mr Evans has sought to attribute responsibility for any errors or inconsistency in claim forms he has submitted to not being advised on the appropriate Scheme rules by Council staff; not understanding the Scheme rules; and officers of the Council being ultimately responsible for the accuracy of claims made since in effect they would be the final arbiters of them.

3.3.1.8 In his witness statement dated 18 June 2013, Mr Evans states that he denies seeing the letter of 12 July 2004, but confirmed that he had been present at meetings which discussed the Members Allowance Scheme. He further states that since at that time he was not 'contemplating' being a chairman of the Council that would excuse him from being aware of the relevant provisions. He went further and stated that he was not aware of the change in policy in relation to the Chairman's allowance and that he relied on Council officers' knowledge of the Members Allowance Scheme to ensure that they only completed and authorised relevant claims in accordance with the Scheme.

3.3.1.9 Such contentions are not supportable and the Case Tribunal rejects them.

3.3.1.10 Mr Evans was present at the Council meeting when the new Scheme was introduced and subsequent meetings when reports on the Scheme from the Director of Finance were presented. It was incumbent upon and indeed all councillors to understand the Scheme and comply with its rules.

3.3.1.11 Mr Evans following his appointment as chairman, began submitting two claim forms when making claims, one marked 'chairman'.

3.3.1.12 This was a clear acknowledgment by Mr Evans that he understood and acknowledged that his position with regard to making claims under the Scheme had changed. If he had any doubts about what he was entitled to claim in new role as chairman, he could have sought clear guidance from Council officials to ensure that claims he submitted met with the Scheme rules.

3.3.1.13 It is insufficient and unacceptable that Mr Evans should place the reliance he has sought on verbal advice allegedly given to him by Council officials. The claim form declaration makes clear that the claim included on the form is made in accordance with approved rates and contains a confirmation of acceptance of responsibility for the claim made by the claimant.

3.3.1.14 The Case Tribunal finds that Mr Evans knew of and / or was made aware of the Scheme and its rules. It was his sole responsibility to comply with them.

3.3.2 Mr Evans submitted mileage claims for journeys undertaken by taxi or train. During the Police interview, he stated that he thought it was acceptable to claim mileage for a car journey when he had actually travelled by taxi or train and he thought this was the standard procedure.

3.3.2.1 In respect of his visit to Dublin (27 January 2005) Mr Evans submitted a mileage claim for 110 miles noted as "Dublin – Greystone – Dublin".

3.3.2.2 During his Police interview, he admitted that he didn't get a receipt from the taxi driver and thought that was the standard procedure to take the mileage of the taxi journey and claim the mileage regardless of how the journey was undertaken. He later admitted that he flew to Dublin and therefore did not take his car. In his Police interview he admitted that he was not sure whether or not he had taken a train for part of the journey from Dublin to Greystone.

3.3.2.3 His explanation for claiming mileage instead of taxi or train fares was that he thought taxi drivers did not give receipts and that he thought it was just a payment for which he could make an expense claim. Mr Evans claim form for February 2009, by way of illustration, shows a claim for a train fare to London (£44.90) which indicates that Mr Evans understood that when he submitted a claim his claim should reflect the actual expense incurred.

3.3.2.4 To ascertain the mileage of a taxi journey, he must have requested the taxi driver to record the mileage. When making this request, he could easily have asked the driver if a receipt for the fare could be issued. It is irrelevant whether or not the mileage claim would have been less than a claim for the taxi. It is incumbent on an office holder to submit only claims that are accurate and properly reflect the expense and the mode of transport. The claimant cannot elect as in this case to claim for mileage when a taxi or train was used even if it results in a lesser cost. To be able to do so would make a mockery of, and compromise the integrity of, the expenses system, since reimbursement of expenses would not reflect the expense actually incurred.

3.3.3 On 15 November 2007, Mr Evans travelled to Belfast to attend a conference. He submitted an expenses claim for the trip and included a mileage claim for a return journey between his home and Cardiff Wales airport. The claim also included a mileage claim for a journey between Belfast Airport and the Ramada Hotel. He entered his Daihatsu vehicle on the claim form as the vehicle he used but the parking reservation receipt showed he had travelled in a Ford Focus and not a Daihatsu.

3.3.3.1 The claim also enclosed his hotel bill which included a restaurant charge of £76.30 and a flight booking for two passengers. Mr Evans later admitted that he did not take his car to Belfast but flew there with his wife.

3.3.3.2 During the Council interview, he said that he went to Belfast unaccompanied and that he did not buy a meal for anyone. He later admitted that his wife accompanied him. In his witness statement dated 18 June 2013, he explains this contradiction by stating that his response was to a question regarding his attendance at the Conference. The restaurant charge was for a meal taken by Mr Evans and his wife. He said he did not query the charge and had relied on the hotel staff to charge him correctly.

3.3.3.3 AgriAdvisors in their letter dated 19 June 2013 submitted that with regard to the issue of the correct vehicle being identified on claim forms, it was of no effect since the vehicles were in the same tax band and there would be no difference in the amount claimed. There was only room for one vehicle per monthly claim form. The current forms do not request vehicle make and model. The claim forms at the

relevant time, did require that the make, model and registration number of vehicle, if there was a mileage claim be included.

3.3.3.4 AgriAdvisors submission on this point is not accepted. Those claim forms required to be completed as stated and a claimant cannot unilaterally decide to circumvent or modify them. If more than one vehicle was used, then the claimant could and should use a separate form for each vehicle. To do otherwise would compromise the integrity of the expenses system.

3.3.3.5 In the record of Mr Evans interview with the Council dated 8 November 2011 (page 6 para 4) in response to the question what was the bill of £76.30 in respect of, Mr Evans replied stating:

‘There was nobody with me – it was a meal just for me. It does seem a lot. I definitely did not buy a meal for anybody else. What should I do, just put the restricted amount on the claim? How come others can pay for more expensive hotels?’

3.3.3.6 The Case Tribunal does not accept the explanations put forward by Mr Evans and his solicitor. It was incumbent on Mr Evans to make expense claims in accordance with the Scheme rules and truthfully. It is not acceptable for Mr Evans or any other councillor to use their discretion as to whether or not they claim mileage for a taxi or claim mileage when they did not use their vehicle at all.

3.3.3.7 The explanations given for the restaurant charge claim are not supportable. It was incumbent on Mr Evans to make sure that the cost of the meal for his wife was not included in his claim. He could easily have requested the restaurant staff to bill him separately for his wife’s meal. Even if he had overlooked this at the time they had their meal, on check out from the hotel, he was obliged to check the hotel bill before settlement. If he had done so, he would have noticed that the restaurant charge was for both his wife and himself. The amount of the charge should have triggered his enquiry to the fact that it was not for one meal.

3.3.3.8 It is irrelevant that Mr Evans was entitled to a per diem attendees allowance of £30.39, which he did not claim and that this should be taken into account.

3.3.4 Mr Evans was solely responsible for accurately completing his expense claim forms. Claim forms, as he should have been well aware, having been a councillor for many years, are required to be completed accurately and the declaration on them makes this clear. Mr Evans was only entitled to submit claims in accordance with the Scheme rules as they applied from time to time.

3.3.4.1 It was not open to Mr Evans to in effect vary the Scheme to suit himself or comply with the Scheme rules as he saw fit.

3.3.4.2 The explanations given by him for overstating mileage claims, claiming for mileage when a taxi or train was taken, claiming mileage when he did not use his car and failing to segregate his wife’s expenditure from his own were unconvincing and untenable. At best, it appears that Mr Evans had a casual

approach to making expense claims, understanding the Scheme and complying with its rules. It was open to him at all times to seek proper guidance on the Scheme rules to ensure his claims were in accordance with the Scheme. Mr Evans had a duty of care to do so and failed in this duty.

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

4.1 The Case Tribunal has considered carefully all the evidence presented to it and the submissions made.

4.2 The Case Tribunal found by unanimous decision that Mr Evans had failed to comply with the rules of the Scheme and had wrongly over claimed for mileage claims, claimed mileage claims when he had not used his vehicle, made mileage claims when he had used another mode of transport and wrongly included a restaurant charge for his wife in his own expenses.

4.3 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with Ceredigion County Council's Code of Conduct.

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

4.5 The Case Tribunal found that Mr Evans breached the code of conduct by over-stating mileage and subsistence claims and by doing so had brought his office and or authority into disrepute.

4.6 Paragraph 7(a) of the code of conduct states that *"You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage."*

4.7 The Case Tribunal found that Mr Evans breached the code of conduct by over-stating mileage and subsistence claims and as a result had improperly conferred or secured for himself an advantage.

4.8 Paragraph 9(a) of the code of conduct states that *"You must observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member."*

4.9 The Case Tribunal found that Mr Evans had failed to observe the authority's rules concerning expenses and as a result had breached the code of conduct by over-stating mileage and subsistence claims.

5. CASE TRIBUNAL DECISION

5.1 The Case Tribunal considered all the facts of the case and in particular the fact that Mr Evans had on demand, promptly repaid over-claimed expenses. The Case Tribunal also took into account the fact that the Council's procedures during the relevant period relating to councillors' expenses had on its own admission fallen short of the standard the public is entitled to expect.

5.2 The Case Tribunal concluded by unanimous decision that Mr Evans should be disqualified for 3 months from being or becoming a member of Ceredigion County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

5.3 Ceredigion County Council and its Standards Committee are notified accordingly.

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

6. CASE TRIBUNAL RECOMMENDATIONS

6.1 The Case Tribunal noted the recommendations in Ceredigion County Council's Complaints Panel Decision Notice dated 9 December 2011 relating to the complaint made by Mr Ray Daniel.

6.2 The Case Tribunal endorses the Complaints Panel's recommendations relating to mechanisms put in place to ensure improvements to the expenses claim system and that appropriate guidance should be issued to Councillors and staff regarding expense claims and arrangements for regular and comprehensive audits of claim forms.

Prepared by Mr Gwyn Davies and signed in his absence by the Registrar to the Adjudication Panel

Mr Gwyn Davies
Chairperson of the Case Tribunal

Date...6 August 2013...

Mr Andrew Bellamy
Panel Member

Mrs Christine Jones
Panel Member

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/005/2010-011/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor Patrick Heesom

RELEVANT AUTHORITY(IES): Flintshire County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal commencing on 18 January 2011. The Case Tribunal sat in North Wales for a total of 58 days before concluding its adjudication on 19 July 2013. During this period, the Case Tribunal was unable to conclude hearing evidence for a period of some 12 months due to the ill-health of the Respondent. The hearing was open to the public, save for a limited number of occasions when the matters before the Case Tribunal were of a sensitive and private nature.

1.3 Cllr Heesom attended and was represented by Counsel, Mr Michael Murphy.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 22 July 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Heesom. The allegations were that Cllr Heesom had breached Flintshire County Council's Code of Conduct by failing to show respect and consideration for officers of the Council; using bullying or harassing behaviour, attempting to compromise the impartiality of officers and, in so doing, conducting himself in a manner likely to bring his office or the Council into disrepute.

2.1.2 The circumstances leading to the allegations of breach are noted in the detailed Findings of Fact appended to this Decision.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Heesom made an initial written response dated 14 September 2010 and two further witness statements during the course of the proceedings.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman submitted a written response by email dated 21 October 2010.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal heard oral evidence and submissions as noted in the detailed Findings of Fact appended to this Decision. The Case Tribunal also refers to all decisions made during the course of proceedings in response to applications made by the Respondent and Ombudsman.

4. FINDINGS OF FACT

4.1 The Case Tribunal made detailed Findings of Fact which are appended to this Decision (Appendix 1). A brief summary of our Findings are as follows:

4.1.1 Scrutiny Meeting, 14 February 2007 – we find that the Respondent described the management of the Adult Social Care Directorate as a “shambles” and “shambolic”. At the conclusion of the meeting, the Respondent, whilst looking in a menacing fashion at Susan Lewis and Maureen Mullaney, stated that a number of Managers in the Authority had been dispensed with and there were more to go. The intention and effect of this statement was one of a threat to either or both of the Officers. (*ref: Chapter 2, Findings of Fact*)

4.1.2 In terms of the mutual exchange, we are satisfied that the Respondent, on 9 August 2007, wrote letters to Mr and Mrs Dodd and to Ms Mills, authorising them to proceed with an exchange of their properties when he knew that such action was in contravention of the refusal of Flintshire County Council to grant their application for a mutual exchange. He attempted to involve himself, both before and after the writing of the letters, in the decision making process and made misleading statements. (*ref: Chapter 3, Findings of Fact*)

4.1.3 We find in terms of the Sheltered Housing Meeting on 4 July 2008, that the Respondent was confrontational and aggressive. He was rude and aggressive to Dawn Evans, a relatively junior Officer. He questioned Dawn Evans in an aggressive manner and accused her of trying to downgrade residential wardens. He was critical of how she managed accommodation issues in his constituency. Dawn Evans, who found his conduct confrontational and intimidating, was upset by his conduct. (*ref: Chapter 4, Findings of Fact*)

4.1.4 In terms of Visioning Day, we find the preparations had been fully scoped and discussed with the Respondent. His actions in circulating the letter to Councillors before the meeting were intended to undermine Susan Lewis, the

Director. Comments in his note, that Visioning Day was arranged without the authority of Elected Members, were unwarranted and without foundation and intended to undermine Officers. Whilst we believe comments were made during the meeting by the Respondent, and there is some evidence that those comments caused upset to Susan Lewis, we do not find on the balance of probability that this was a sustained verbal attack. However, he referred to the Director as *“that Officer”* and intimated *“that Officer has no business to be bringing these things to you here today.”* His tone was dismissive and confrontational. We are satisfied that from March 2007 to the date of the complaint being submitted to the Ombudsman, the Respondent engaged in a course of conduct against Susan Lewis which amounted to harassment. (ref: Chapter 5, Findings of Fact)

4.1.5 We find on 14 November 2008 that the Respondent stated to another Member in the Members’ Executive Room *“Sue Lewis is shit at her job.”* This was a comment made by the Respondent on the same day that he forwarded a letter purporting to be an apology in respect of his conduct at Visioning Day. The Respondent had also been critical of Susan Lewis in comments made to Maureen Harkin, a Senior Officer who worked under Susan Lewis in her Directorate. He had indicated to Maureen Harkin that Susan Lewis *“knew nothing about Housing”* and *“her days are numbered.”* The words uttered by the Respondent were inappropriate and we find that the comment *“her days are numbered”* was intended to be a threat that the Respondent was going to seek to oust Susan Lewis from her post. The comments were made with the intention of undermining the position of Susan Lewis. (ref: Chapter 6, Findings of Fact)

4.1.6 We find in terms of the meeting of 18 December 2008:

- a. The Respondent had sought to interfere in the housing allocation process by seeking that Officers operate outside the allocations policy.
- b. That he sought to bring undue pressure as an Executive Member on Housing Officers to operate outside the allocations policy. His conduct in seeking to persuade officers to allocate properties in his ward to specific individuals outside the Council’s agreed policy breached the clear guidance given to the Respondent in a letter dated 14 December 2006 from the then Interim Head of Housing. The letter indicated such action could breach the “law and current good practice....”
- c. He stated in particular to Maureen Harkin Head of Housing *“I don’t want to hear that, I want you to listen to me as the Executive Member”*. This was on the basis of the policy he viewed as not working. The policy, however, was the policy that had to be operated by the Officers.
- d. At the meeting, he stated words of the nature of the following: *“I am not threatening you as I don’t need to as I know you will follow what I*

am saying as you won't like the repercussions if you don't and you won't believe the man I can become if you put me in this position." We find that this is a direct threat to Maureen Harkin and that she perceived it as a threat. She felt intimidated and that the Respondent was inappropriately involving himself in operational activity which was outside the remit, both of his roles as an Executive Member and as a Ward Councillor.

- e. At the conclusion of the meeting, he stated *"I am not going to fall out with you about this as you are a bright girl and I know you are listening to me"*. This, again, was put in the nature of a threat. We find that the words were also patronising. (ref: Chapter 7, Findings of Fact)

4.1.7 In terms of the Scrutiny Meeting on 7 January 2009 we find that whilst the Respondent was critical of the report presented and the way it was prepared, and that he may have expressed his opinion in a loud and confrontational manner, we do not find that there is evidence of him showing lack of respect to others at that meeting or of him undermining Officers. The Respondent was loud and confrontational but that confrontation was with other elected Members. (ref: Chapter 8, Findings of Fact)

4.1.8 In terms of the Head of Planning appointment process, we find that the Respondent did not act with the objectivity required. At the meeting on 29 January 2009, he questioned Sharon Carney, a Human Resources Officer, as to her planning qualification and such comments were made with the intention of undermining the Officer and her role in the process. At the meeting on 6 February 2009 he adopted an aggressive and hostile attitude to Sharon Carney and her presentation of Behavioural Event Interview feedback. His comment on 6 February 2009 aimed at the Director of Environmental Services *"if he dares"* was intended to ensure that the Officer did not speak and was a threat. The complaint as to Officers' conduct as outlined in a letter to Carl Longland was unwarranted and misleading. (ref: Chapter 9, Findings of Fact)

4.1.9 In terms of the Head of Housing process, we find that the Respondent's conduct on 12 February 2009 included a verbal attack, both on Natalie Pridding and Susan Lewis and that he was seeking to undermine the role of the Officers at that meeting. We do not find that there was any such verbal attack on 19 February 2009. (ref: Chapter 10, Findings of Fact)

4.1.10 At the Homelessness Prevention interview on 25 February 2009, the Respondent made inappropriate comments and sought to wrongly interfere in the role of the Homelessness Prevention Officer. He acted in a manner which intimidated and undermined the role of Caroline Littlewood and amounted to an attempt to bully the Officer. (ref: Chapter 11, Findings of Fact)

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 Submissions were received both on behalf of the Ombudsman and the Respondent as to whether on the basis of the Findings of Fact Cllr Heesom had breached the relevant Codes of Conduct.

5.2 Case Tribunal's Decision

5.2.1 The Case Tribunal found by unanimous decision that Cllr Heesom failed to comply with Flintshire County Council's Code of Conduct as follows:

2001 Code of Conduct

5.2.1.1 Conduct towards officers of the Council at a meeting of the People Performance Overview and Scrutiny Committee on 14 February 2007 (paragraph 4(a) - Failure to show respect and consideration for others).

5.2.1.2 Conduct relating to a proposed mutual exchange by Council housing tenants between 27 April 2007 and 21 November 2007 (paragraphs 4(a) and 4(b) – conduct which compromises, or which is likely to compromise, the impartiality of the authority's employees).

5.2.1.3 Writing an inappropriate letter to a Council housing tenant on 9 August 2007 (paragraphs 4(a) and 6(1)(b) – bringing the office of member or the authority into disrepute).

2008 Code of Conduct

5.2.1.4 Conduct towards an officer of the Council prior to a Sheltered Housing Visioning Day on 7 November 2008 (paragraph 4(b) - Failure to show respect and consideration for others; and paragraph 4(c) – Using bullying behaviour or harassing any person).

5.2.1.5 Making inappropriate comments about an officer of the Council on an unidentified date after August 2008 (paragraph 4(b)).

5.2.1.6 Conduct towards an officer of the Council at a meeting on 4 July 2008 (paragraphs 4(b) and 4(c)).

5.2.1.7 Conduct towards officers of the Council at a meeting on 18 December 2008 and at a homelessness interview on 25 February 2009 (paragraph 4(b)).

5.2.1.8 Conduct towards officers of the Council at a Head of Housing selection meeting on 12 February 2009 (paragraph 4(b)).

5.2.1.9 Conduct towards officers of the Council at Head of Planning selection meetings on 29 January 2009 and 6 February 2009 (paragraphs 4(b) and 4(c)).

5.2.2 The Case Tribunal found that Cllr Heesom did not breach the Code of Conduct as follows:

2001 Code of Conduct

5.2.2.1 Comments made about the Council's Adult Social Care Directorate at a meeting of the People Performance Overview and Scrutiny Committee on 14 February 2007 (paragraph 4(a)).

5.2.2.2 Writing an inappropriate letter to a Council housing tenant on 9 August 2007 (paragraph 7(a) – using position improperly to confer on, or secure, for any person ...an advantage or disadvantage).

2008 Code of Conduct

5.2.2.3 Conduct towards an officer of the Council at a Sheltered Housing Visioning Day on 7 November 2008 (paragraphs 4(b), 4(c) and 6(1)(a - bringing the office of member or the authority into disrepute).

5.2.2.4 Comments made about an officer of the Council on 14 November 2008 (paragraph 4(b)).

5.2.2.5 Conduct towards an officer of the Council at a meeting on 4 July 2008 (paragraph 4(d) – conduct which compromises, or is likely to compromise, the impartiality of those who work for the Council).

5.2.2.6 Conduct towards officers of the Council at Head of Housing selection meetings on 18 and 19 February 2009 (paragraphs 4(b) and 4(c)).

5.2.2.7 Conduct towards officers of the Council at a meeting of the Community and Housing Overview and Scrutiny Committee on 7 January 2009 (paragraphs 4(b) and 4(c)).

5.2.3 The Case Tribunal gave detailed reasons as to its Findings as to Breach which are appended to this Decision (Appendix 2).

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 Submissions were received both on behalf of the Ombudsman and the Respondent as to sanction.

6.3 Case Tribunal's Decision

6.3.1 The Case Tribunal considered all the facts of the case and appended to this Decision is the full reasons as to its Findings in terms of Sanction (Appendix 3).

6.3.2 The Case Tribunal concluded by unanimous decision that Cllr Heesom should be disqualified for 2 years and 6 months from being or becoming a member

of Flintshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000, with effect from 19 July 2013.

6.3.3 Flintshire County Council and its Standards Committee are notified accordingly.

6.3.4 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.

Prepared by Mr Hywel James and signed in his absence by the Registrar to the Adjudication Panel

Hywel James
Chairperson of the Case Tribunal

Date...6 August 2013..

Peter Davies
Panel Member

Susan Hurds
Panel Member

**MINUTES OF THE STANDARDS COMMITTEE
HELD AT BODLONDEB, CONWY
TUESDAY, 30 APRIL 2013 AM 10.00 AM**

PRESENT: Independent Members Howie Roberts (Chair)
 Samuel Adams
 John Roberts
 Mike Mason
 Dr Mary Dowell-Jones

 Councillor Peter Lewis MBE
Conwy County Borough Council Representatives: Councillor Delyth Ann MacRae
 Councillor Deion Smith

 Ifor Glyn Efans
Community Committee Member:

Monitoring Officer: Delyth Jones

Deputy Monitoring Officer: Ceri Williams

Committee Services Officer: Sian Harland

Also in attendance: Councillor Nigel David Smith

 Beverley Allen (Investigating Officer - Ombudsman's Office)
 Haidee James (Investigating Officer – Ombudsman's Office)

(77) APOLOGIES FOR ABSENCE

None.

(78) DECLARATIONS OF INTEREST: CODE OF LOCAL GOVERNMENT CONDUCT

None.

(79) URGENT MATTERS

None.

(80) HEARING OF COMPLAINT INVESTIGATED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES AGAINST TOWN COUNCILLOR ANGIE O'GRADY

In attendance

Investigating Officer – Ombudsman's Office
Haidee James
Beverley Allen

The Complainant
Mr Gareth Davies

Member

Councillor Angie O'Grady was not in attendance, but had submitted a letter to the Standards Committee.

The Chair outlined the procedure of the Hearing for all those in attendance.

All those present were reminded that the concern of the Committee were the issues contained within the Ombudsman's report.

Investigating Officer

In response to the letter submitted by Councillor O'Grady, the Investigating Officer advised the Committee that Councillor O'Grady had been given several opportunities to respond to the Investigating Officer, but had declined. Furthermore, it was unclear as to what transcript Councillor O'Grady was referring to within her letter.

The Investigating Officer outlined the events leading to the complaint as contained within the report.

The alleged breaches of the Code of Conduct were as follows:-

1. On 27 November 2011 at 11.55 pm, Councillor Angie O'Grady attempted to gain entry to the Town House after hours. Whilst it was not certain that Councillor O'Grady was verbally abusive, her persistence in remaining outside and accepting a drink were disrespectful to Mr Davies. Councillor O'Grady had failed to acknowledge that she was doing anything wrong by attempting to gain entry to the Town House after the licensed hours. Therefore, on balance, it was likely that Councillor O'Grady used her position as a Town Councillor to gain entry into Mr Davies' premises, thereby attempting to create an advantage for herself.
2. On 28 November 2011 at 1.28 am, Councillor Angie O'Grady sent an e-mail to Members of Llandudno Town Council, Councillor Philip Evans JP, Cabinet Member for Governance and Regulation, and Carwyn Jones AM, First Minister for Wales. The comments contained within the e-mail had the potential to damage both Mr Davies' professional reputation, and his position as Licensee. In sending this e-mail, Councillor O'Grady attempted to secure an advantage for herself, whilst attempting to disadvantage Mr Davies.

The Investigating Officer took the view that Councillor O'Grady's behaviour outside the Town House was not becoming of the office of member and that her e-mail, the content of which was dishonest and had been inappropriately addressed, was capable of bringing the office of member into disrepute.

There were 3 disputed facts, which the Investigating Officer acknowledged as follows:-

1. Councillor O'Grady disputed that she expected to gain entry into the Town House by using her role as a Town Councillor. On balance of the evidence it was highly probable that she did, as Councillor O'Grady was not previously known to Mr Davies or the CCTV Controller, who created the incident log, and unless she had mentioned to Mr Davies that she was a Town Councillor, it was highly unlikely the CCTV record would have stated "claims to be a town councillor",
2. In relation to Councillor Angie O'Grady's claims that she sat on the Licensing Committee, and threatened to have Mr Davies' premises shut down, it was found that the complaint could not be corroborated as there were no independent witnesses.
3. Councillor O'Grady felt that she was being 'set up' when asked to hold the drink passed to her. Having reviewed the CCTV evidence, it seems that Councillor O'Grady was being supplied with a drink, rather than being asked to hold one. Furthermore, it is not a plausible scenario, when none of the parties appear to have been known to each other previously.

The Investigating Officer answered Members' queries as follows:-

- As the boundary of the Town House covered part of the pavement, Councillor O'Grady's actions had taken place on the premises of the Town House.
- There were no witness statements from Councillor O'Grady as she had not responded to the Investigating Officer's questions.
- Councillor O'Grady had been given an extension of time to answer the 33 questions set by the Investigating Officer.
- There had been no other correspondence from Councillor O'Grady, other than the letter included within the Investigating Officer's report and the letter circulated to the Standards Committee.

Complainant

Mr Gareth Davies was afforded the opportunity to put forward his reasons for making the complaint against Councillor Angie O'Grady.

Mr Davies stated that he had been a licensed doorman for 15 years and had never received a complaint.

The person seen passing the drink to Councillor O'Grady was not known to Mr Davies at the time of the complaint. He had bought the drink for Councillor O'Grady and had then turned to go back into the premises.

The person who was with Councillor O'Grady on 27 November 2011, subsequently apologised to Mr Davies for Councillor O'Grady's behaviour on that night.

Councillor O'Grady had remained on the premises even when she had been requested to leave.

Mr Davies answered Members queries as follows:-

- The boundary of the Town House was 5 paving slabs from the building, and was distinguishable by blocked paving.
- The trouble Councillor O'Grady had caused by her actions was unacceptable, including the threats to the licence.
- There had been no communication between Councillor O'Grady and Mr Davies since the telephone call Mr Davies made to Councillor O'Grady on 28 November 2011, in order to resolve the matter.

The Chair advised the Committee that on receipt of Councillor O'Grady letter, an e-mail had been sent to Councillor O'Grady to advise that Mr Davies would not be in attendance, as that was the understanding at that time. However, Councillor O'Grady had declined to attend the Hearing and had also stated in her response that "the decision is already cut and dried". The Chair took exception to this comment, as the decision was one for the Standards Committee to make.

In accordance with the Hearing procedure, the complainant was given the opportunity to sum up.

Mr Gareth Davies stated that Councillor O'Grady had tried to use her influence as a Town Councillor to force Mr Davies into a position which would breach his public licence, and together with her false claim that she sat on the Licensing Committee and could remove his license, made Mr Davies feel threatened and intimidated.

The Committee retired to deliberate in private and view the CCTV footage of the incident.

Upon returning the Chairman made the following announcement:-

It was the overall conclusion of the Standards Committee that Councillor Angie O'Grady had failed to comply with the Code of Conduct for Members.

In reaching its decision, the Committee took full account of the Investigating Officer's Report and the continuing failure to cooperate with the investigation despite two emails being sent by the Ombudsman.

The Standards Committee had considered the breaches of the Code of Conduct set out in the Investigation report and found breaches of Paragraph 6(1)(a) which prohibits conduct which could be reasonably regarded as bringing office of member and authority into disrepute and Paragraph 7(a) which prohibits using or attempting to use their position improperly to confer on or secure advantage. In addition the Committee found a breach of Paragraph 6(2) failure to cooperate with the Ombudsman's enquiry. It was felt that the maximum sanction should be imposed due to the seriousness of the breaches, especially as the attempt to gain entry into a public house after hours had occurred in a public place namely the main street in Llandudno, and therefore determined a period of suspension of 6 months be imposed.

Written notification of the Standards Committee's decision would be sent to Councillor Angie O'Grady within 5 days of the date of the Hearing.

Councillor Angie O'Grady would have the right to appeal to the Adjudication Panel for Wales within 21 days of receiving the written notification from the Standards Committee. If Councillor O'Grady did not appeal, the suspension would come into force at the end of those 21 days. However, if Councillor O'Grady appealed to the decision the suspension would not take effect until the Adjudication Panel for Wales had made their decision.

RESOLVED-

- (a) That a 6 month suspension be imposed on Councillor Angie O'Grady from Council duties, as a Town Councillor.**

- (b) That Councillor O Grady be formally advised of the decision and the Complainant, Mr Davies and Ombudsman be similarly notified.**

(The meeting ended at 11.45 am)



CITY & COUNTY OF SWANSEA

**NOTICE OF DETERMINATION BY THE COMMUNITY/TOWN
COUNCIL'S STANDARDS SUB COMMITTEE**

Summary

Member:	Councillor D J Thomas
Relevant Authority:	Gorseinon Town Council
Date, time and Place of Standards Sub Committee hearing:	25 th June 2013 at 9.30am –Committee room 1, Civic Centre, Swansea
Complainant:	Mr R J Taylor
Public Services Ombudsman for Wales reference no.	201201628

1. The Community/Town Council Standards Sub Committee ("the Sub-Committee") of City & County of Swansea considered a report by the Public Services Ombudsman for Wales ("the Ombudsman") regarding alleged breaches of the Code of Conduct by Councillor D J Thomas, which was referred to the Sub Committee by the Ombudsman under Section 71(2) of the Local Government Act 2000 for determination. Ms Claire James and Ms Sian Davies appeared as representatives for the Ombudsman. Councillor Thomas attended the hearing with a friend and former Gorseinon Town Councillor, Mr Victor Bruno who assisted him in presenting his case.
2. The Ombudsman had received a complaint that Councillor Thomas had failed to observe the Code of Conduct for Members of Gorseinon Town Council ("the Town Council"). It was alleged that Councillor Thomas had made untrue and malicious statements about the Lewis Jones Bar and Restaurant ("the Lewis Jones") in a Town Council meeting. The comments were later published in the South Wales Evening Post and associated website. The complainant had said in his complaint that Councillor Thomas lived close to the Lewis Jones and

was using his position to “continue a vendetta” against the Lewis Jones.

The particular paragraphs of the Code considered were as follows:

a) **Paragraph 6(1)(a)**

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

b) **Paragraph 7(a)**

You must not in your official capacity, or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage.

c) **Paragraph 10(1)**

You must in all matters consider whether you have a personal interest, and whether this Code of Conduct requires you to disclose that interest.

d) **Paragraphs 14(1)(a), (c) and (e)**

...where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee –

(a) Withdraw from the room ...where a meeting considering the business is being held...

(b) ...

(c) not seek to influence a decision about that business

(d)

(e) not make any oral representations (whether in person or in some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.

The Sub-Committee also considered the definition of “prejudicial interest” contained in **Paragraph 12(1)** of the Code which says:

...where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

3. The Sub Committee determined that Councillor Thomas had failed to comply with the Code of Conduct as follows:-

3.1 The Sub Committee found that Councillor Thomas had a personal interest in the Town Council's discussions about the Lewis Jones. Councillor Thomas should have considered the Code and whether he

had a personal interest and he should then have declared that personal interest. In failing to do so he was in breach of Paragraph 10(1) of the Code.

The Sub-Committee also found that Councillor Thomas' personal interest was a prejudicial interest within the definition set out in paragraph 12(1) of the Code. Given Councillor Thomas' involvement and actions in relation to the Lewis Jones, a member of the public with knowledge of the facts would reasonably regard Councillor Thomas' interest as so significant that it was likely to prejudice his judgement of the public interest.

The Sub-Committee found that, as Councillor Thomas had a prejudicial interest, he was required by the Code to withdraw from the meeting and not make any oral representations. In staying and speaking in the meeting when the Lewis Jones was discussed, Councillor Thomas breached the Code (paragraph 14(1)(a) and 14(1)(e)).

However, the Sub-Committee found there was no breach of paragraph 14(1)(c) in that they were not satisfied that Councillor Thomas had sought to influence a decision about the business before the Committee.

The Sub-Committee also found that Councillor Thomas's conduct did not breach paragraphs 6(1)(a) and 7(a) of the Code. The Sub-Committee were not satisfied on the evidence before them that Councillor Thomas' conduct had brought his office or his Authority into disrepute and neither was there sufficient evidence to satisfy them that Councillor Thomas was using his position to gain advantage.

3.2 The reasons for the Sub Committee's conclusions were as follows:-

The Sub-Committee carefully considered all the information and evidence contained in the detailed Report of the Ombudsman. The Sub-Committee also heard the representations made at the hearing by the officers from the Ombudsman's office and from Councillor Thomas in person and from Mr Bruno.

The Sub-Committee accepted the report of the Ombudsman as correct.

As set out in the Report, the only disputed facts were:

- a) Did Councillor Thomas have a personal and prejudicial interest in the Town Council business relating to the Lewis Jones; and
- b) Did Councillor Thomas bring his office or his Authority into disrepute.

3.3 In his Investigation, the Ombudsman had considered information from the complainant, Councillor Thomas, the Town Council, the City & County of Swansea, the Evening Post and South Wales Police.

The complaint arose following a meeting of the Town Council on the 6th June 2012. During that meeting, under the Agenda item "Police Meeting", members raised questions about the Lewis Jones and in response Councillor Thomas made comments about rowdy behaviour and those comments were the subject of the Code of Conduct complaint

The press were present at the Town Council Meeting and on the 8th June 2012 an article entitled: "Gorseinon Town Councillor alleges pub "is like the OK Corral" appeared in the South Wales Evening Post and on its associated website and repeated the comments allegedly made by Councillor Thomas.

In the Ombudsman's Report it stated that Councillor Thomas had said that he had not received training on the Code and he did not believe he had breached the Code. He said his comments were genuinely held, reasonable and honest beliefs and represented the views of his constituents and many residents of Gorseinon. He confirmed that he had made the comments but said he did not know the press were present. He said that if he had known he may have chosen his words differently.

At the Sub Committee hearing, Councillor Thomas accepted that he had breached the Code and in hindsight he would not have expressed himself in the way he did at the meeting.

The Sub-Committee considered the Analysis of the evidence in the Ombudsman's report.

The Sub Committee agreed with the Ombudsman's conclusion that the role of Town & Community Councillors is to represent their constituents, and it is entirely appropriate for Councillors to discuss issues of apparent anti-social behaviour. It is also appropriate for such matters to be part of local council business. However, the way a councillor conducts himself when dealing with that business is a matter for the Code. As the Ombudsman indicated "If Councillor Thomas' comments had been measured and proportionate, and if he had complied with the Code, it would not have been necessary to issue a Report. However, Councillor Thomas' comments were exaggerated and excessive and failed to comply with the Code."

Councillor Thomas had a personal interest in the discussion about the Lewis Jones because he believed the Lewis Jones affected his well-being. This was demonstrated by his having signed a petition in 2009; his comments at the Town Council meeting on 6th June 2012; and his comments to the Ombudsman during the investigation.

Councillor Thomas also had a prejudicial interest. The Sub-Committee accepted the view of the Ombudsman that the public would find it very

difficult to understand how, given his comments and actions, he could possibly be objective about the matter. However, the Sub Committee were also of the view that Councillor Thomas was genuine in his belief that he was representing the views of his constituents but it was also clear that he could not be objective in the matter.

The Sub-Committee did not find a breach of paragraph 14(1)(c) because this arose out of an agenda item which was not about the Lewis Jones, the comments arose following questions to the police, there was no formal decision and they were not satisfied that Councillor Thomas had sought to influence a decision about the business before the Committee

The Sub Committee also accepted the findings in the Report that there was no evidence that Councillor Thomas was using his position to "continue a vendetta", nor that Councillor Thomas attempted to use his position to gain advantage.

The Sub-committee also accepted the Ombudsman's findings that, on balance, taking into consideration Councillor Thomas' lack of experience, lack of training and history of complaints about the Lewis Jones, that his conduct was not sufficient to bring his role into disrepute on this occasion.

- 3.4** The Sub Committee, in deciding the sanction to impose, took into account the representations made on behalf of Councillor Thomas in mitigation. The meeting had been the first Town Council meeting after Councillor Thomas was elected. He was new and naive. He thought he was carrying out his role of Councillor and representing his constituents. He had been unable to attend the training on the Code and did not at that time understand that he should have declared an interest. Councillor Thomas appreciated that it was his responsibility to consider the Code and declare any personal interests and he would be more careful in future.

Councillor Thomas had been so concerned about this matter that he had stopped attending Town Council meetings for a period and it had also affected his health.

Having considered all the representations, the Sub-Committee unanimously decided that although there had been a breach, no action was required on this particular occasion.

However, the Sub-Committee made the following recommendations:

- a) That Councillor Thomas must attend training as soon as possible. Councillor Thomas should contact his Town Council clerk to arrange

such training from the Monitoring Officer. The Town Council may also wish to consider if any other Councillors should attend the training.

- b) That Councillor Thomas consider applying to the Standards Sub Committee for a dispensation. Guidance on this can be obtained from the Monitoring Officer.

- 3.5 The sanction shall be effective on the day after the expiry of the time allowed to lodge a notice of appeal, as noted below.
4. Councillor Thomas may appeal against the determination of the Sub Committee to an appeals tribunal drawn from the Adjudication Panel for Wales. The appeal must be instigated by giving notice in writing to the address below within 21 days of receiving this notice of determination. The notice of appeal must specify the grounds for appeal and whether or not the member consents to the appeal being conducted by way of written representations.
5. The Sub Committee was chaired by Mr Clive Walton and comprised of Mrs J Gomes, Mr Merion Howells, Town Councillor Gail John and Town Councillor P Crayford. A report on the outcome of the investigation will be published in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (as amended).
6. Mr R J Taylor, the above named complainant and the Ombudsman are notified accordingly.

Signed: *Janel Hooper*
Miss J Hooper on behalf of the Standards Committee

Date: *16th July 2013*

The address for an appeal to the Adjudication Panel for Wales is:

Adjudication Panel for Wales
First Floor, North wing (N04)
Cathays Park
Cardiff
CF10 3NQ