

Tribunal Reference Number: APW/002/2003/CT

Reference in Relation to a Possible Failure to Follow the Code of Conduct

RESPONDENT: Councillor Charles Colin Westerman

RELEVANT AUTHORITY: Taffs Well Community Council

1. INTRODUCTION

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

1.2 The Case Tribunal met at 10.00am on Monday 24 November 2003 at the Halliwell Conference Centre, Trinity College, Carmarthen, SA31 3EP. With Councillor Westerman's agreement, the Tribunal determined its adjudication by way of written representations.

2. PRELIMINARY DOCUMENTS

2.1. Reference from the Commission for Local Administration in Wales

2.1.1. In a letter dated 10 July 2003, the Adjudication Panel for Wales received a referral from the Commissioner for Local Administration in Wales ("the Local Commissioner") in relation to allegations made against Councillor Charles Colin Westerman. The allegations were that Councillor Westerman had breached Taffs Well Community Council's Code of Conduct by committing the criminal offences of cultivating cannabis plants and of possessing cannabis resin.

2.1.2. During investigation, the Local Commissioner became aware of further allegations about Councillor Westerman. These were that he was convicted at Cardiff Crown Court of an offence of unlawfully cultivating cannabis on 14 May 1999.

2.2. The Respondent's Response to the Reference

2.2.1. The Respondent's reply to the reference was by email dated 13 October 2003. He had no comment to make in relation to the facts but he did wish the Panel to take into account a poem he had written, his proposals to transform Nantgarw into a 21st century village and the legal representations he had submitted to the Crown Court prior to his trial. In addition, he furnished the Panel with five character references.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following undisputed material facts:

3.1.1. that Councillor Westerman was convicted at Cardiff Crown Court on 1 May 2003 of cultivation of cannabis and possession of cannabis contrary to the Misuse of Drugs Act 1971.

3.1.2. that Councillor Westerman had a previous conviction at the same Crown Court on 14 May 1999 for cultivation of cannabis.

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

4.1 The Respondent's Submissions

4.1.1. The Respondent accepted that his conduct amounted to a failure to comply with the Code of Conduct.

4.2 The Local Commissioner's Report

4.2.1. It was contended that the conviction of Councillor Westerman at Cardiff Crown Court on 1 May 2003 was a fundamental breach of the statutory code of conduct for members.

4.2.2. On 20 June 2002, Councillor Westerman signed a formal written undertaking to be guided by the National Code of Local Government Conduct. The written undertaking was not in the prescribed form but, when he gave it, Councillor Westerman understood himself to be agreeing to observe the Council's statutory code of conduct. Bearing in mind the decision of Mr Justice Elias in the Merthyr Tydfil County Borough Council case (2002 EWHC634 (Admin)), the Local Commissioner came to the conclusion that, at the time of the relevant offences, Councillor Westerman was not automatically disqualified by this procedural error. The Local Commissioner concluded that Councillor Westerman had relied in good faith on what the Council's Clerk had said and signed the form given, believing it to be the appropriate form, and believing himself to be then bound by the council's statutory code of conduct.

4.3 Case Tribunal's Decision

4.3.1 The Case Tribunal came to the conclusion that this matter was correctly referred by the Local Commissioner to the Panel for its deliberation in view of the complexities involved in this particular case.

4.3.2 The Case Tribunal concurs with the Local Commissioner's view that Councillor Westerman was in fact at all material times bound by the council's statutory code of conduct.

4.3.3 The Case Tribunal found that, by his convictions at Cardiff Crown Court on 1 May 2003, the Respondent failed to comply with paragraph 6(1)(a) of the Code of Conduct of Taffs Well Community Council, namely that:

members must not, in their official capacity or otherwise, commit a criminal offence or cause one to be committed.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

5.1.1. These were fully set out in the documents supplied to the Panel by Councillor Westerman as detailed at paragraph 2.2.1 above.

5.2 Case Tribunal's Decision

5.2.1. The Case Tribunal considered all the facts of the case and, in particular, gave credit to the Respondent for his co-operation with the Panel and to the written testimonials submitted.

5.2.2. Having regard to all the circumstances, the Case Tribunal considered that the breach of the code was serious. The convictions at Cardiff Crown Court on 1 May 2003 were aggravated by the fact that Councillor Westerman had a previous conviction for a similar type of offence. The Tribunal is always concerned at the commission of criminal offences by those in public office, particularly so in relation to prohibited drugs. Councillor Westerman by virtue of his public office is put in a position of authority so far as the community is concerned.

5.2.3 However, the Tribunal bore in mind that the drug in each offence was cannabis, of a small quantity for his own personal use. The Tribunal also took account of the sentence imposed by the Crown Court. Lastly, regard was had to the mitigation furnished by Councillor Westerman.

5.2.4. The Tribunal concluded by unanimous decision that the Respondent should be suspended for 6 months from acting as a member of Taffs Wells Community Council.

5.2.5. The Taffs Well Community Council and the Standards Committee of Rhondda Cynon Taff County Borough Council are notified accordingly.

5.2.6. The Respondent has the right to appeal to the High Court against the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal. It is the Adjudication Panel for Wales' understanding that a notice of appeal to the High Court should be made within 28 days of either the date of notification of the Case Tribunal's decision or the appellant's receipt of this reasoned decision, if later.

Signed..... Date...24 November 2003...

**Stewart Sandbrook-Hughes
Chairperson of the Case Tribunal**

**Colin Evans
Panel Member**

**Juliet Morris
Panel Member**