

Tribunal Reference Number: APW/003/2005/A

Appeal Against Standards Committee Determination in Relation to Alleged Failure to Follow the Local Government Code of Conduct

APPELLANT: Councillor Elisabeth Davies

RELEVANT AUTHORITY(IES): Dunvant Community Council

1. INTRODUCTION

1.1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Elisabeth Davies against the decision of the Community Council Standards Sub-Committee of the City and County of Swansea ("the Community Council Standards Sub-Committee") that she had breached Dunvant Community Council's code of conduct.

1.2. A hearing was held by the Appeal Tribunal at 10.30 am on Tuesday 22 November 2005 at the Marriott Hotel, Maritime Quarter, Swansea. The hearing was open to the public.

2. PRELIMINARY DOCUMENTS

2.1. Appeal Against Decision of Standards Committee

2.1.1. In an electronic mail message dated 22 June 2005, the Adjudication Panel for Wales received an appeal from Councillor Davies against the determination of the Community Council Standards Sub-Committee that she had breached Dunvant Community Council's code of conduct and should be suspended for 3 months and 4 months, to run concurrently.

2.1.2. The Community Council Standards Sub-Committee's determination followed its consideration of a report by the Commissioner for Local Administration in Wales ("the Local Commissioner") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000.

2.1.3. The allegations were that Councillor Davies had breached Dunvant Community Council's code of conduct by:

failing to declare an interest in the up-keep of an access way known locally as the Derlwyn Steps, at meetings of the Council on 21 September 2004 and 23 November 2004; and

failing to have regard to the decision of the Community Council Standards Sub-Committee to refuse a dispensation to speak and vote on the matter.

2.2. The Councillor's Response

2.2.1. Councillor Davies made numerous written responses to the report of the Local Commissioner and associated papers. However, a subsequent written

submission dated 13 November 2005 was stated to supersede those previously made by Councillor Davies. In that subsequent written submission, Councillor Davies challenged the decision of the Community Council Standards Sub-Committee to refuse to grant a dispensation. She asked the Appeal Tribunal to review that decision and to grant her a dispensation in relation to all debate of the Derlwyn Steps issue. The Appeal Tribunal had considered the request as a preliminary matter. It confirmed that it was not within the functions or powers of the Tribunal to review the decision of the Community Council Standards Sub-Committee, nor to grant a dispensation.

2.2.2. In the submission dated 13 November 2005, Councillor Davies now conceded that, on the true construction of the Council's code of conduct, there was a conflict of interest that required declaration or dispensation. Councillor Davies contended that no member of the public could reasonably have concluded that the public interest was prejudiced by her conduct at the Dunvant Community Council meeting on 21 September 2004. Councillor Davies also contended that both the Council and she had acted properly in deferring debate until professional advice had been obtained.

2.2.3. Councillor Davies' submission stated that the advice of One Voice Wales was received by the end of October 2004 and that the advice was a factor that all councillors and the clerk would in due course have to take into account when the substantive debate resumed and when the advice was submitted to the Council. However, she contended that substantive debate was never resumed, either on the 23 November 2004 or at all.

2.2.4. Councillor Davies contended, therefore, that there had not been a breach of the code of conduct.

3. ORAL SUBMISSIONS

3.1. Councillor Davies made the following oral submissions:

3.1.1. Councillor Davies reiterated the contents of her written submission.

3.1.2. She confirmed that she had nothing to add to it.

3.1.3. When asked about her knowledge of the code of conduct, Councillor Davies stated that neither she nor any other community councillor in the Swansea area had received training on the provisions of the code of conduct.

3.1.4. Councillor Davies said that she did not consider that another member of Dunvant Community Council could adequately represent the residents of the community on the issue of the Derlwyn Steps. The allegation of a breach of the code had not been made by a member of the public and local residents had submitted a petition of support to the Tribunal.

3.1.5. Councillor Davies now conceded that she had an interest in the matter of the Derlwyn steps. However, that interest was not such that a reasonable

member of the Duvant public – the man on the Duvant omnibus - would conclude that Councillor Davies could not do her job independently without bias.

3.2. The Appeal Tribunal heard evidence from Councillor Rowland Bevan, current Chairman of Duvant Community Council. Councillor Bevan reaffirmed his written statement dated 13 November 2005. Councillor Bevan referred to past disharmony within the Council, but stated that matters were improving. Councillor Bevan confirmed that the Council, as a body, needed to secure training in the code of code for its members.

4. FINDINGS OF FACT

4.1. The Appeal Tribunal found the following **undisputed** material facts from the papers before it:

4.1.1. Duvant Community Council had adopted a code of conduct for members, which incorporated a model code of conduct set out in an Order made by the National Assembly for Wales.

4.1.2. Councillor Davies had given a written undertaking to comply with the Council's code of conduct.

4.1.3. Derlwyn Steps was a local amenity owned by the Cambrian Housing Association, which also owned and let properties adjacent to Derlwyn Steps to tenants.

4.1.4. Councillor Davies' daughter was a tenant of Cambrian Housing Association and lived adjacent to Derlwyn Steps.

4.1.5. Derlwyn Steps was on the agenda for the Council's meetings on 21 September 2004 and 23 November 2004.

4.1.6. Councillor Davies was present at both of the above meetings in her capacity as a member of the Council.

4.1.7. Councillor Davies did not declare an interest at either of the above meetings.

4.1.8. At a meeting on 12 November 2004, the Community Council Standards Sub-Committee refused an application by Councillor Davies for a dispensation in respect of Derlwyn Steps.

4.1.9. Councillor Davies was present at the meeting of the Community Council Standards Sub-Committee on 12 November 2004.

4.1.10. In his report dated 11 March 2005, the Local Commissioner referred allegations made against Councillor Davies, of failure to declare an interest, to the Monitoring Officer of the City and County of Swansea in accordance with Section 69(4)(c) of the Local Government Act 2000.

4.1.11. In his report dated 28 April 2005, the Monitoring Officer referred the Commissioner's report to the Community Council Standards Sub-Committee for determination.

4.1.12. On 25 May 2005, the Community Council Standards Sub-Committee found that Councillor Davies had failed to comply with the code of conduct and suspended her for three months for breach of paragraph 16(3) and for four months for breach of paragraph 20, to run concurrently.

4.2. During the course of the hearing Councillor Davies also conceded the following as **undisputed** material facts:

4.2.1. Councillor Davies was advised to declare an interest.

4.2.2. Councillor Davies applied for a dispensation after obtaining advice from One Voice Wales.

4.2.3. Councillor Davies accepted that she had a personal interest in the Derlwyn Steps.

4.3. The Appeal Tribunal found the following **disputed** material facts:

4.3.1. Derlwyn steps was discussed at both or either of the Council's meetings on 21 September 2004 and 23 November 2004.

4.3.2. While Councillor Davies accepted that she had a personal interest in the matter of Derlwyn Steps, the nature of that interest was not such that a member of the public might reasonably conclude that it would significantly affect her ability to act purely on the merits of the case and in the public interest.

4.3.3. Councillor Davies disregarded the decision of the Community Council Standards Sub-Committee to refuse a dispensation.

4.4. The Appeal Tribunal found the following in respect of the disputed facts:

4.4.1. Based on the minutes of the meetings on 21 September 2004 and 23 November 2004, that Derlwyn Steps was discussed at both. The Tribunal accepted that there was no substantive discussion at either meeting, but paragraph 16(3) of the code simply states "...at which the matter is discussed..."

4.4.2. The Tribunal found that a member of the public might reasonably conclude that the fact that Councillor Davies' daughter lived in close proximity to the Derlwyn Steps and was a tenant of Cambrian Housing Association, would significantly impact on her ability to act purely on the merits of the case. It was not the views of the residents in that locality that should be regarded as relevant, but the view that the public in general might take. The Appeal Tribunal considered Councillor Davies' application for a dispensation to be a tacit admission of the same.

4.4.3. The Appeal Tribunal found that at the meeting of 23 November 2004, Councillor Davies stated that she was not declaring an interest as she did not believe

that she had one. She also said that for those who intended to report her to the Standards Committee or to the Ombudsman she would speak slowly so that they could make accurate notes. Based on that, the Appeal Tribunal found that Councillor Davies had disregarded the decision of the Community Council Standards Sub-Committee, which had refused her request for a dispensation to speak about the Derlwyn Steps.

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

5.1. The Appellant's Submissions

5.1.1. Councillor Davies conceded that on the Appeal Tribunal's findings of facts, there had been breaches of paragraphs 16(3) and 20 of the Council's code of conduct, but she disputed the Tribunal's interpretation of the "public" and asserted that it should have a much narrower meaning.

5.2. The Local Commissioner's Report

5.2.1. It was contended that Councillor Davies breached the code of conduct by failing to declare an interest and withdraw from the meetings. Her application for dispensation was a tacit admission that she had a personal interest. The nature of the interest was such that a member of the public might reasonably conclude that it would significantly affect Councillor Davies' ability to act on the merits of the case and in the public interest.

5.2.2. Councillor Davies' disregard of the decision by the Community Council Standards Sub-Committee to refuse a dispensation amounted to a breach.

5.3. Appeal Tribunal's Decision

5.3.1. On the basis of the findings of fact and based upon Councillor Davies having conceded the breaches, the Appeal Tribunal found by a unanimous decision that there was a failure to comply with Dunvant Community Council's code of conduct as follows:

Paragraph 13(6) of the code of conduct states that "A member who has a personal interest in a matter which is not specified in paragraphs 12, 13 or 14 above and who attends a meeting of the authority at which the matter is discussed must disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. Members disclosing an interest must enter the agenda number of the matter on the form supplied by the Monitoring Officer at each meeting. If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the member's ability to act purely on the merits of the case and in the public interest if that member were to take part in the discussion of that matter, the member must also withdraw from consideration of the matter at that meeting unless granted dispensation by the authority's standards committee."

The Appeal Tribunal found on the minutes of the meetings of the 21 September 2004 and 23 November 2004 that the matter of Derlwyn Steps was discussed and that a member of the public might reasonably conclude that the fact that Councillor Davies' daughter lives in close proximity to the Derlwyn Steps and is a tenant of Cambrian Housing Association would significantly impact her ability to act purely on the merits of the case.

Paragraph 20 of the code of conduct states that *“Members must exercise personal responsibility in deciding whether they have a personal interest such that they should disclose it. They may seek advice from the authority’s monitoring officer and must have regard to any advice from the relevant standards committee in doing so.”*

The Appeal Tribunal found that at the meeting of the 23 November 2004 Councillor Davies stated that she was not declaring an interest as she did not believe that she had one. She also said that for those who intended to report her to the Standards Committee or the Ombudsman she would speak slowly so that they could make accurate notes. Based on this, the Appeal Tribunal found that Councillor Davies disregarded the decision of the Community Council Standards Sub-Committee, which had refused her request for a dispensation to speak about the Derlwyn Steps.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1. The Appellant’s Submissions

6.1.1. Councillor Davies contended that no action was required as a consequence of the breaches in view of the fact that there had been numerous mistakes and misunderstandings during the course of the matter and no appropriate guidance was given by the Clerk.

6.1.2. Mrs Elizabeth Wakeford mitigated on behalf of Councillor Davies and spoke about her tenacity, selflessness, efficiency and hard work.

6.2. Appeal Tribunal’s Decision

6.2.1. The Appeal Tribunal considered all the facts of the case and in particular the information put forward in mitigation, the petition and numerous letters in support of Councillor Davies and the testimonial put forward by Mrs Wakeford. The Appeal Tribunal regarded the failure to disclose an interest and failure to have regard to a decision of a standards committee as potentially serious breaches of the code of conduct. In this particular case, Councillor Davies failed to follow advice, which she had sought, from One Voice Wales and the Monitoring Officer. The Appeal Tribunal expressed concern about Councillor Davies’ apparent reluctance to accept advice and her disregard for authority, or possibly her misinterpretation of advice or decisions.

6.2.2. The Appeal Tribunal accepted that the Derlwyn Steps and other matters affecting the community were of the utmost importance to Councillor Davies, but this could not allow or justify departure from the code of conduct, the very purpose of which was to uphold standards in public life. Properly serving the community, and being seen to be doing so, was the very essence of the code of conduct. However,

the Appeal Tribunal noted that Councillor Davies had received no training on the code of conduct and at the relevant meetings the Clerk was not equipped to offer appropriate guidance. This may have resulted in a genuine lack of understanding on the part of Councillor Davies of that which was required, which in turn may have led to the sequence of events that followed.

6.2.3. The Appeal Tribunal was wholly satisfied that there was no suggestion whatsoever that Councillor Davies had any ulterior motive or intention to gain. It gave due regard to her long service, good character, commitment and the respect held for her by members of the community. The Tribunal was impressed with Mrs Wakeford's view that Councillor Davies should be allowed to continue to represent her community. The Appeal Tribunal was impressed with the way in which Councillor Davies conducted herself at the hearing and with her co-operation with the Tribunal.

6.2.4. The Appeal Tribunal accordingly decided by unanimous decision to uphold the determination of the Community Council Standards Sub-Committee that Councillor Davies had breached paragraphs 16(3) and 20 of Duvant Community Council's code of conduct. The Appeal Tribunal further determined to refer the matter back to the Community Council Standards Sub-Committee with a recommendation that Councillor Davies should be suspended from being a member or co-opted member of Duvant Community Council for a period of 1 month for each breach, to run concurrently.

6.2.5. The City and County of Swansea's Standards Committee and Duvant Community Council are notified accordingly.

6.2.6. While the Appeal Tribunal has no express powers in the relevant regulations, it nonetheless recommends that the City and County of Swansea's Standards Committee should arrange training for members of community councils in the authority's area, in accordance with its functions under section 54 of the Local Government Act 2000. Such training might also usefully extend to community council clerks.

Signed.....

Date...3 December 2005...

Helen Cole

Chairperson of the Appeal Tribunal

Ian Blair

Panel Member

Colin Evans

Panel Member