

Tribunal Reference Number: APW/004/2005-A

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

APPELLANT: Councillor Randolph Jenkins

RELEVANT AUTHORITY(IES): Llangennith, Llanmadoc and Cheriton 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 Randolph Jenkins against the decision of the City and County of Swansea Community Councils' Standards Sub-Committee that he had breached Llangennith, Llanmadoc and Cheriton Community Council's code of conduct and should be censured.

1.2. A hearing was held by the Appeal Tribunal at 10.30 am on Wednesday 29 March 2006, at the Ramada Hotel, Phoenix Way, Swansea. The hearing was open to the public.

2. PRELIMINARY DOCUMENTS

2.1. Appeal Against Decision of Standards Committee

2.1.1. The Adjudication Panel for Wales received an appeal from Councillor Jenkins on 19 July 2005, against the determination of the City and County of Swansea Community Councils' Standards Sub-Committee that he had breached Llangennith, Llanmadoc and Cheriton Community Council's code of conduct and should be censured.

2.1.2. The Standards Committee's determination followed its consideration of a report by the Monitoring Officer of the City and County of Swansea under the terms of section 70(4) of the Local Government Act 2000 and the 'Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001'.

2.1.3. The allegations were that Councillor Jenkins had breached Llangennith, Llanmadoc and Cheriton Community Council's Code of Conduct by:

i. Having declared an interest in an Employment Tribunal relating to the dismissal of the Council Clerk at a meeting of the Community Council on 5 March 2003, failing to disclose the nature of that interest, not completing the form provided for the purpose and not withdrawing from consideration of the matter.

ii. Having declared an interest in an application by his nephew to the Community Council for the grant of an easement over Rhiwlas Green, failing to withdraw from consideration of the matter at a meeting of the Council on 1 October 2003.

2.2. The Councillor's Response

2.2.1. Councillor Jenkins had made written responses to the Commissioner for Local Administration in Wales ("the Local Commissioner").

2.2.2. Councillor Jenkins had lodged an appeal and provided to the Appeal Panel written submissions dated November 2005 and 28 March 2005. He referred the Appeal Panel to a number of documents attached to his written submissions.

2.2.3. Matters commented on by Councillor Jenkins, by reference to dates of the Community Council meetings included:

2.2.3.1. 5 March 2003 – He had declared at the meeting an interest, but had no opportunity to declare the specific nature of his interest. He did not know the full ambit of the deferred Agenda Items. Members of the public had been asked to leave the meeting and therefore no conclusion could be reached as to his ability to act on the merits of the case. He further maintained that he was not to be deemed a friend of the former Clerk to the Council. He further submitted that there had been no formal adoption of the Code of Conduct by the Community Council.

2.2.3.2. 1 October 2003 – He accepted that the person seeking an easement was his nephew. He confirmed he had declared an interest. He challenged the amendment to the Minutes. They were amended contrary to standard procedure. He maintained it was not necessary for him to withdraw, as the matter of the easement had not been discussed at the meeting.

3. ORAL SUBMISSIONS

3.1. The Panel heard from the following witness:

3.1.1. Mrs Catherine Stewart gave evidence that:

3.1.1.1. She was Chairman of the meetings on 5 March 2003, 1 October 2003 and 5 November 2003.

3.1.1.2. She deferred to the end of the meeting of 5 March 2003 items relating to the former Clerk to the Council, who had made an application to the Employment Tribunal. She was aware that Councillor Jenkins had in the past declared an interest.

3.1.1.3. "Disclosure of Interest" Forms were generally placed in front of the Clerk at meetings. It was the individual councillor's responsibility to complete the forms. Disclosure of Interest forms were available at the meeting of 5 March 2003.

3.1.1.4. Councillor Jenkins, in her view, had every opportunity to withdraw from the meeting of 5 March 2003 when the deferred items were going to be discussed. Councillor Jenkins had declared an interest. She asked him what was the nature of his interest. He replied that he was not prepared to say what his interest was. He had refused to withdraw from the meeting. She had expected

Councillor Jenkins to get up and leave the room. He said he would not leave. The issues in respect of the former Clerk to the Council were sensitive matters and confidential in nature. She felt she had no alternative but to adjourn, as the items to be discussed related to the former Clerk to the Council and her employment dispute.

3.1.1.5. The meeting of 1 October 2003 was an extremely difficult meeting as the Council was discussing issues relating to the village green. She recalled a discussion as to the application for an easement by Councillor Jenkins' nephew. It was a brief discussion.

3.1.1.6. The original version of the minutes of the meeting of 1 October 2003 did not include reference to the discussion of the easement. On 5 November 2003, Councillor Jenkins raised the absence of the appropriate minute. On 5 November 2003, she dictated an amendment to the minutes. She signed the amended minutes and the correct version appeared at page C74 of the Appeal Tribunal's case papers. She accepted that though her signature was dated 5 November 2003, it was probable she signed the amended minutes on a later date.

3.1.1.7. Councillor Jenkins did not withdraw from the meeting of 1 October 2003 whilst the item relating to the application for grant of an easement to the nephew was discussed. She accepted he had abstained from voting.

3.1.1.8. She acknowledged she could not be precise as to how Councillor Jenkins would have been aware that one of the items of correspondence for the 5 March 2003 meeting related to the Employment Tribunal application.

3.1.2 Councillor Jenkins gave evidence that:

3.1.2.1. No formal resolution to adopt a specific Code of Conduct had been passed by the Community Council. This was notwithstanding a letter forwarded by the Clerk to the Local Commissioner, dated 18 February 2002. He accepted that under section 51 of the Local Government Act 2000, the model Code of Conduct applied to members of the Community Council for so long as the council failed to adopt a code. He accepted he was governed by the model Code of Conduct and had signed the appropriate undertaking.

3.1.2.2. Prior to the meeting of 5 March 2003, he had drafted a statement in support of an application by the former Clerk to the Council to the Employment Tribunal. He would have attended the Tribunal as a witness. He was aware, however, that the first Employment Tribunal hearing related only to the question of the applicant's employment status and had in any event been adjourned.

3.1.2.3. He disputed that the former Clerk was a friend of the family. They had little in common. He was extremely concerned as to the repercussions to the Community Council in financial terms if they continued to resist the application to the Employment Tribunal.

3.1.2.4. He had declared an interest at the meeting of 5 March 2003. He accepted he had not defined the nature of that interest. He had little opportunity to confirm the nature of his interest as once he indicated he was not withdrawing the meeting was

immediately adjourned.

3.1.2.5. He did not complete the Code of Conduct form for the 5 March 2003 meeting, though disputed as to whether they were readily available. He accepted that they probably were available, but were usually handed out to the members.

3.1.2.6. He was not going to withdraw from the 5 March 2003 meeting as he felt the public interest was best protected by him being present and exposing the inappropriate action being taken by the Council. He further maintained an unauthorised meeting of five Community Councillors had taken place prior to the 5 March 2003 meeting to discuss issues relating to the former Clerk.

3.1.2.7. There had been no discussion upon the easement relating to his nephew at the meeting of 1 October 2003, though it was included as an agenda item. It was not referred to in the first draft of the minutes of the meeting of 1 October 2003.

3.1.2.8. He did not agree the response dictated by Mrs Stewart on 5 November 2003 reflected the typed minutes for paragraph 9v at page C74 of the Appeal Tribunal's case papers. The amended minutes confirmed a discussion had occurred on 1 October 2003. The proper procedure was for any amendments to be hand-written and not to be typed.

3.3. Councillor Jenkins did not make any further oral submissions.

4. FINDINGS OF FACT

4.1. The Appeal Tribunal, at a Directions Hearing, found the following undisputed material facts:

4.1.1. The Llangennith, Llanmadoc and Cheriton Community Council ("the Community Council") adopted by resolution the 'City and County of Swansea Members' Model Code of Conduct' on 5 December 2001.

4.1.2. Councillor Jenkins gave a written undertaking to observe the Community Council's code of conduct on 6 February 2002.

Allegation of Breach at Meeting on 5 March 2003

4.1.3. The employment of the Community Council's then Clerk, Mrs Elizabeth Maliphant, was brought to an end on 2 October 2002.

4.1.4. An application to the Employment Tribunal alleging unfair dismissal by the Community Council was made by Mrs Maliphant on 20 December 2002.

4.1.5. Councillor Jenkins was present at the meeting of the Community Council on 5 March 2003 in his capacity as a member of the Council.

4.1.6. Councillor Jenkins was a friend of Mrs Maliphant.

4.1.7. Councillor Jenkins was aware of facts appertaining to the application to the

Employment Tribunal and was a potential witness.

4.1.8. At the meeting on 5 March 2003, the consideration of matters relating to the Employment Tribunal was deferred to the end of the meeting.

4.1.9. Councillor Jenkins declared an interest in matters relating to Mrs Maliphant and/or the application to the Employment Tribunal at the meeting.

4.1.10. Councillor Jenkins did not disclose the nature of the interest at the meeting.

4.1.11. Councillor Jenkins did neither prior to, nor at, the meeting complete a form provided for the purpose of recording the disclosure of members' personal interests.

4.1.12. Councillor Jenkins did not withdraw from the meeting.

4.1.13. The meeting was adjourned at 9.45 pm following Councillor Jenkins' indication that he did not intend to withdraw from consideration of matters relating to the former Clerk.

4.1.14. Councillor Jenkins was present at the meeting of the City and County of Swansea Community Council Standards Sub-Committee on 27 June 2005, where he gave oral confirmation of his written representations to the Sub-Committee.

Allegation of Breach at Meeting on 1 October 2003

4.1.15. Mr J D Jenkins was the nephew of Councillor Jenkins.

4.1.16. On 22 September 2003, Councillor Jenkins sent an electronic mail communication to the Community Council Clerk requesting that an item relating to the granting of an easement over Rhiwlas Green, Llanmadoc to Mr J D Jenkins be added to the agenda for the meeting on 1 October 2003.

4.1.17. The request by Mr J D Jenkins for an easement was noted on the agenda for the meeting on 1 October 2003 (Item 9(v)).

4.1.18. Councillor Jenkins was present at the meeting of the Community Council on the 1 October 2003 in his capacity as a member of the Council.

4.1.19. At the meeting on 1 October 2003, Councillor Jenkins declared an interest in the application for an easement and completed the form provided for the purpose of recording the disclosure of members' personal interests.

4.1.20. Councillor Jenkins did not withdraw from the meeting.

4.1.21. There was no reference to agenda item 9(v) - the application for easement – in the draft minutes of the 1 October 2003 meeting, as presented to the Community Council meeting on 5 November 2003.

4.1.22. At the meeting on 5 November 2003, Councillor Jenkins made reference to the omission of agenda item 9(v) from the draft minutes of the 1 October 2003

meeting.

4.1.23. The signed minutes of the 1 October 2003 meeting record that agenda item 9(v) was considered by the Community Council at that meeting.

4.1.24. It was noted at the Appeal Tribunal Hearing that Councillor Jenkins disputed undisputed facts 4.1.1, 4.1.6 and 4.1.8. The Appeal Panel resolved that the issues raised by Councillor Jenkins would be reviewed under the disputed material facts.

4.2. The Appeal Tribunal, at a Directions Hearing, had found the following disputed material facts:

Allegation of Breach at Meeting on 5 March 2003

4.2.1. Whether forms for the purpose of recording members' personal interests were available at the meeting of the Community Council on 5 March 2003.

4.2.2. Whether Councillor Jenkins was afforded an opportunity to disclose the nature of his interest in the Employment Tribunal at the meeting on 5 March 2003.

4.2.3. Given the nature of the discussion at the meeting relating to the dismissal of Mrs Maliphant, whether it was appropriate for Councillor Jenkins to withdraw.

Allegation of Breach at Meeting on 1 October 2003

4.2.4. Whether there was discussion of the application for easement by Mr J D Jenkins at the meeting of the Community Council on 1 October 2003.

4.2.5. Whether it was appropriate for Councillor Jenkins to withdraw from the meeting.

4.3. The Appeal Tribunal found the following in respect of the disputed facts including issues raised by Councillor Jenkins as undisputed facts:

4.3.1. The Appeal Tribunal was not satisfied that Llangennith, Llanmadoc and Cheriton Community Council had formally adopted by Resolution on 5 December 2001, or subsequently, the City and County of Swansea Members Model Code of Conduct.

4.3.2. By Section 51(5) of the Local Government Act 2000, the mandatory model Code of Conduct applied from 21 December 2002. Councillor Jenkins was bound by that model Code of Conduct.

4.3.3. Issues had arisen as to whether the former Clerk to the Community Council was to be regarded as a friend of Councillor Jenkins:

4.3.3.1. The Appeal Tribunal found insufficient evidence that the former Clerk to the Community Council was to be regarded as a sufficiently close friend of Councillor Jenkins whereby he would have had to declare any interest on that basis alone.

4.3.3.2. The Appeal Tribunal found that Councillor Jenkins did have a personal interest in issues relating to the former Clerk's grievance as to the termination of her employment including her application to the Employment Tribunal. This finding was based on the evidence provided by Councillor Jenkins that he intended to provide a witness statement on behalf of the former Clerk to the Employment Tribunal. In the view of the Appeal Tribunal, this put Councillor Jenkins in the position of having a close and personal association. The Appeal Tribunal relied on Councillor Jenkins' admission that he had already drafted a statement prior to the meeting on 5 March 2003 and would have given evidence on behalf of the former Clerk in an action against the Community Council. The Appeal Tribunal further noted that Councillor Jenkins did actually declare an interest at the meeting of 5 March 2003.

4.3.4. The Appeal Tribunal was satisfied that for the purpose of recording members' personal interests, forms were available at the meeting of the Community Council on 5 March 2003. This finding was based on the following reasons:

4.3.4.1. The evidence of Mrs Stewart who confirmed their availability.

4.3.4.2. The entry in the minutes for the meeting of 5 March 2003 confirming another Councillor had signed a Disclosure of Interest Form on that date.

4.3.4.3. The copies of Disclosure of Interest Forms dated 5 March 2003 seen at pages B168 and B169 of the Appeal Tribunal case papers.

4.3.5. The Appeal Tribunal rejected the submission that it was the Clerk's responsibility to distribute the form. It is the personal responsibility of the member to ensure the forms are completed and that the appropriate interest and nature of the interest are disclosed.

4.3.6. The Appeal Tribunal was satisfied Councillor Jenkins had been given an opportunity to declare the nature of his interest. The Appeal Tribunal was satisfied that he had not declared the nature of his interest. The Appeal Tribunal was satisfied on the basis of the evidence of Mrs Stewart that Councillor Jenkins had been asked what the nature of his interest was and that he had replied he was not prepared to say. The Appeal Tribunal further noted he had an obligation under paragraph 16(1) of the Code in any event to declare the nature of his interest.

4.3.7. The Appeal Tribunal was satisfied that Councillor Jenkins should have withdrawn from the meeting when the deferred items were to be discussed. As a finding of fact, the Appeal Tribunal found that he did not withdraw, he refused to withdraw and as a result the meeting was adjourned.

4.3.8. The Appeal Tribunal considered issues arising out of the Meeting on 1 October 2003 and found the following:

4.3.8.1. The item relating to an easement for Councillor Jenkins' nephew had been placed on the agenda of the meeting for 1 October 2003. The Appeal Tribunal was satisfied that the entry recorded in the minutes of the meeting (page C74 of the Appeal Tribunal's case papers) accurately reflected the nature of the discussion. The Appeal Tribunal accepted the evidence of Mrs Stewart that there

had been a discussion, though a brief discussion, in respect of the item relating to the easement at the meeting of 1 October 2003. The Appeal Tribunal also relied on the fact that Councillor Jenkins had raised the absence of the record of discussion at the meeting on 5 November 2003. The Appeal Tribunal found that the dictated response on 5 November 2003 would have mirrored the typed amendment of paragraph 9.v (page C.74) in the minutes, which were signed by Councillor Stewart.

4.3.8.2. The Appeal Tribunal found that Councillor Jenkins did not withdraw from the meeting of 1 October 2003 when the easement to his nephew was discussed. It was noted, however, that Councillor Jenkins did abstain from voting on the item.

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 Jenkins did not make any further submissions other than those contained in his written documentation

5.2. The Monitoring Officer's Report

5.2.1. It was contended that in failing to disclose the nature of his interest at the meeting on 5 March 2003, the failure to complete the Code of Conduct form and his failure to withdraw amounted to breaches of paragraph 16(3) of the Code.

5.2.2. It had been contended further that as the issue of the easement related to the nephew of Councillor Jenkins that he had a personal interest under paragraph 13(f) and that he was required by virtue of paragraph 16(2) to withdraw from the meeting and he did not do so.

5.3. Appeal Tribunal's Decision

5.3.1. On the basis of the findings of fact, the Appeal Tribunal found by unanimous decision that there was a failure to comply with the code of conduct as follows:

i. Paragraph 16(3) 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. If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the member's liability 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 a dispensation by the authority's standards committee".

The Appeal Tribunal found that Councillor Jenkins breached paragraph 16(3) in that at the meeting of the Community Council on 5 March 2003:

a) He failed to disclose the nature of a personal interest in relation to the

grievance of the former Clerk to the Council as to her dismissal and her application to an Employment Tribunal.

b) That because of his failure to withdraw a member of the public might reasonably conclude that the personal interest would significantly affect the member's ability to act purely on the merits of the case and in the public interest.

ii. Paragraph 13(f) of the code of conduct provides that members must regard themselves as having a personal interest in a matter to the extent that it relates to "any land in which the member or a member of the member's family has a beneficial interest and which is in the area of the authority". Paragraph 16(2) of the Code of Conduct states that "A member who has a personal interest in a matter specified in paragraphs 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. In such a case, that member must withdraw from consideration of the matter unless granted a dispensation by the relevant Standards Committee"

The Appeal Tribunal found that Councillor Jenkins, having declared an interest in an item on the agenda relating to his nephew, should have withdrawn but failed to do so.

5.4 The Appeal Tribunal accordingly decided by unanimous decision to uphold the determination of the City and County of Swansea Community Councils' Standards Sub-Committee that Councillor Jenkins had breached the Code of Conduct.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1. The Appellant's Submissions

Councillor Jenkins did not make any further oral submissions, but referred to his detailed written submissions

6.2. Appeal Tribunal's Decision

6.2.1. The Appeal Tribunal had given due consideration to the submissions by Councillor Jenkins. This included evidence as to his contribution to the local community, to the Council, his long service and good character.

6.2.2. This case involved on two separate occasions breaches of the Code of Conduct. The Tribunal gave serious consideration to whether the breaches justified a period of suspension. In such cases where there was failure to withdraw or declare the nature of an interest, suspension could be viewed as a starting point for appropriate sanctions. However, the Appeal Tribunal had regard to:

i. On both occasions when there were breaches Councillor Jenkins had declared an interest. The issues related to refusal to withdraw and to define the nature of the interest.

ii. Councillor Jenkins was in no way maliciously motivated. In particular on 5 March 2003 Councillor Jenkins genuinely believed he was acting in the best interests of the local community. The Appeal Tribunal felt that whilst he may have been misguided as to the means of raising his concerns, it accepted that there was no attempt by him to deliberately deceive.

6.2.3. The Appeal Tribunal further noted that Councillor Jenkins had not sought advice as to the issues. There was no suggestion that he was deliberately ignoring advice. Whilst the Chairman at the meeting of 5 March 2003 raised the question of his withdrawal, the meeting was immediately adjourned and Councillor Jenkins had been given little time to reflect on his position.

6.2.4. The Tribunal further noted that Councillor Jenkins had acknowledged whilst being interviewed by the Monitoring Office that with hindsight he would in such circumstances in the future withdraw from a meeting. It was further noted in respect of matters relating to the easement, that he had abstained from voting on the agenda item. Further it was noted that at a later meeting Councillor Jenkins had indeed withdrawn whilst the item was being discussed.

6.2.5. The Appeal Tribunal further determined to endorse the decision of the City and County of Swansea Community Councils' Standards Sub-Committee that Councillor Jenkins should be censured in respect of both breaches.

6.2.6. The City and County of Swansea Community Councils' Standards Sub-Committee and the Llangennith, Llanmadoc and Cheriton Community Council are notified accordingly.

Signed.....
2006...

Date...10 April

Hywel James

Chairperson of the Appeal Tribunal

Mrs Christine Jones

Panel Member

Colin Evans

Panel Member