

## **Tribunal Reference Number: APW/006/2005/CT**

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

**Respondent: Councillor David Cook**

**Relevant Authority(les): Clydach 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. A hearing was held by the Case Tribunal at 9.45 am on Tuesday 4 July 2006 at the Swansea Marriott Hotel, Maritime Quarter, Swansea. The hearing was open to the public.

1.3. Councillor Cook was unable to attend the hearing due to ill health, but was represented by Mr W Allen Jones.

### **2. Preliminary Documents**

2.1. Reference from the Public Services Ombudsman for Wales

2.1.1. In a letter dated 21 September 2005, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Cook. The allegations were that Councillor Cook had breached Clydach Community Council's Code of Conduct by bringing the office of member into disrepute and attempting to use his position as a councillor to gain advantage for himself or others.

2.2. The Councillor's Written Response to the Reference

2.2.1. Councillor Cook responded to the Ombudsman's investigation in his letter dated 27 April 2005 as follows:

- a) Mrs Dawson's evidence as to the events on the 3 February 2005 was hearsay as she was not present.
- b) There was only the one assistant present at the time of his visit.
- c) The ladies who accompanied him were not from a local rugby club, but were his sister and her daughter in law.
- d) At no time did he inform the shop assistant or Mrs Dawson that he was buying the items on behalf of Clydach Community Council.
- e) His sister made the purchase and he has not invoiced the Community Council.
- f) The value of the cup was £84.99 and the trophy £13.15. Enquiries were also made

about the purchase of an emblem.

g) The assistant stated the emblem would cost about £30 - £35, but could not quote the exact price, so further inquiries of Mrs Dawson were needed.

h) The total figure would exceed £100, so the request for a discount was a valid one.

i) The atmosphere on the 3 February 2005 was cordial to the extent that his sister was allowed to take the cup on the understanding that she would return to pay for it at a later.

2.2.2. Matters commented on by Councillor Cook in his representative's letter dated 16 January 2006, referred to by paragraph numbers of the Ombudsman's report:

a) Paragraphs 11-17 and 23 - allegation of bringing the office of member into disrepute and allegations of attempting to use position as councillor to gain advantage for himself or others. Councillor Cook stated he had not received copies of any statements, nor seen copies of transcripts of the witnesses' interviews.

b) Paragraphs 26-32 - the Ombudsman's conclusions. Councillor Cook said, for the above reasons, the conclusions and reasoning of the Ombudsman were not transparent and were flawed.

2.3. The Ombudsman's Representations

2.3.1. No further representations were made.

### **3. ORAL SUBMISSIONS**

3.1. Councillor Cook's representative made the following oral submissions:

3.1.1. The value of the purchase was £98.14, which with the cost of an emblem would have exceeded £100, hence Councillor Cook's request for a discount.

3.1.2. Councillor Cook is a loud character as he suffers from hearing difficulties. His manner may come across as aggressive and intimidating, but this is unintentional.

3.1.3. Councillor Cook did not say nor imply that the purchase was for Clydach Community Council.

3.1.4. Clydach Community Council may have been mentioned, but not in the context of the purchase nor the discount.

3.1.5. The invoice was made out to councillor Dai Cook Clydach Community Council, but this is a frequent occurrence as this is how he is generally known.

3.1.6. As the staff knew him as a Community Councillor, they may have assumed he was purchasing on behalf of Clydach Community Council.

3.1.7. Councillor Cook paid with a personal cheque.

3.1.8. Purchases for or on behalf of Clydach Community Council are usually made by the Clerk or the Chairman.

3.1.9. There may well have been a dispute, but not on the scale described by the shop assistants.

3.1.10. Councillor Cook did not threaten to harm the business.

3.1.11. Any loss of business was not as a result of any influence on the part of Councillor Cook.

3.2. The Case Tribunal heard evidence from Mrs Diane Nullis the shop manager of Valley Engravings Limited. Mrs Nullis said she was working in the back room of the shop on the 14 February 2005 and that Mrs Dawson was in the shop front area. She heard shouting and went into the shop front area where she saw Councillor Cook arguing with Mrs Dawson and shouting at her. Mrs Nullis said he was insisting upon a discount and would not listen to her nor Mrs Dawson when they each tried to explain that the value of the purchase being less than £100 did not qualify for a discount. She said he left the shop and returned several times slamming the door and that she feared he would damage the window. Mrs Nullis said that Councillor Cook kept saying that the Community Council was a good customer and that because of that a discount should be given on this purchase. Mrs Nullis was sure that it was not a mere assumption on the part of the staff that the purchase was for or on behalf of the Community Council. Mrs Nullis said that Councillor Cook had actually said that the purchase was for the Clydach Community Council. She also said that Mrs Evans, the shop assistant who wrote the invoice on the 3 February, did not know Councillor Cook and could not have written on it, Dai Cook Clydach Community Council, unless Councillor Cook had specifically provided these details. Mrs Nullis said that it was only when he paid with a personal cheque that she realised it was a personal purchase. Mrs Nullis said that Councillor Cook had said he would see to it that the Council's business was removed from the premises and would be contacting the Evening Post. She confirmed that she could not say whether Councillor Cook had actually carried out such threatened courses of action and that any loss of business could well be for wholly unrelated reasons. She said she was upset by the episode and that it was clear to her that Mrs Dawson was also upset. Mrs Nullis said that she was not acquainted with Councillor Cook and that she had not been persuaded by anyone into giving evidence, nor as to what she might say.

3.3. Councillor Cook did not attend the case Tribunal nor did he offer any written statements of evidence. His representative did not offer any evidence in support of his earlier submissions on behalf of Councillor Cook, nor did he challenge Mrs Nullis's evidence.

#### **4. FINDINGS OF FACT**

4.1. The Case Tribunal found the following relevant undisputed material facts:

4.1.1. Clydach Community Council adopted a code of conduct for members that incorporates the provisions of the "Model Code" set out in an Order made by the

National Assembly for Wales.

4.1.2 Councillor David Cook signed an undertaking to observe Clydach Community Council's code of conduct on 22 June 2004.

4.1.3. Councillor Cook was at the premises of Valley Engraving Limited on 3 and 14 February 2005.

4.1.4. Councillor Cook was accompanied by two women on 3 February 2005.

4.1.5. Mrs Susan Dawson runs the business known as Valley Engraving Limited.

4.1.6. Mrs Dawson was not at the premises on 3 February 2005; she was there on 14 February 2005 and spoke to Councillor Cook.

4.1.7. The shop assistant at the premises on 3 February 2005 provided an invoice for two items at £84.99 and £13.15 respectively in the name of "Dai Cook Clydach Community Council". Councillor Cook's party took the items from the shop on that date.

4.1.8. The items were a trophy and a cup, intended by Councillor Cook's family as a memorial tribute to be awarded by Tonmawr Rugby Club in memory of Councillor Cook's late brother.

4.1.9. The items were paid for on 14 February 2005 by Councillor Cook's personal cheque.

4.1.10. The items were not bought for or on behalf of Clydach Community Council or any other local authority.

4.1.11. On 3 and 14 February 2005, Councillor Cook asked for a discount on the items and was refused on both occasions.

4.1.12. An allegation, dated 18 March 2005, about Councillor Cook's conduct at the premises of Valley Engraving Limited on 3 and 14 February 2005 was made by Mrs Dawson to the Public Services Ombudsman for Wales.

4.2. The Case Tribunal found the following relevant disputed material facts:

4.2.1. That on neither occasion did Councillor Cook:

a) Behave in an abusive way towards any member of staff at Valley Engraving Limited.

b) Threaten to harm the business of Valley Engraving Limited.

c) Represent that the items were being bought for or on behalf of Clydach Community Council.

d) Assert that a discount should be given because of his connection with Clydach

Community Council.

e) Assert that a discount should be given because of the amount of business given to Valley Engraving Limited by Clydach Community Council.

4.2.2. That Councillor Cook, as opposed to his sister, bought the items.

4.2.3. That there were more than two members of staff of Valley Engraving Limited involved in the transaction.

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

4.3.1 That Councillor Cook:

a) Behaved in an abusive way towards Mrs Dawson and Mrs Nullis at the premises of Valley engravings limited on the 14 February 2005.

b) Threatened to harm the business of Valley Engravings Limited on the 14 February 2005.

c) Represented that the items were being bought for or on behalf of Clydach Community Council, on the 3 and 14 February 2005.

d) Asserted that a discount should be given because of his connection with Clydach Community Council on the 14 February 2005.

e) Asserted that a discount should be given because of the amount of business given to the Valley Engravings Limited by Clydach Community Council, on the 14 February 2005.

4.3.2. Councillor Cook as opposed to his sister bought the items

4.3.3. There were more than two members of staff of Valley Engravings Limited involved in the transaction.

4.4 The reasons for these findings are as follows:

4.4.1 The Case Tribunal accepted the evidence of Mrs Nullis, which was wholly consistent with the unsworn information she had previously given to the investigating officers of the Ombudsman's office and in that it corroborated such information given by the other shop assistants including Mrs Dawson. The Case Tribunal found her manner to be open and natural, she answered questions fairly with no hesitation, ambiguity or contradictions.

4.4.2. Mrs Nullis stated that on the 14 February 2005, Councillor Cook had shouted, demanded a discount, failed to listen to her and Mrs Dawson when they tried to explain the discount scheme, left and returned several times slamming the door and that she feared he would damage the shop window. She felt upset by the whole episode, as did Mrs Dawson.

4.4.3 Mrs Nullis stated that on the 14 February 2005, Councillor Cook said he would see to it that the Community Council would remove its business and that he would complain to the Evening Post.

4.4.4 Mrs Nullis was sure that on the 14 February 2005, Councillor Cook had said that the purchase was for Clydach Community Council. She also said that Mrs Evans did not know Councillor Cook and could not have filled out the invoice in the name Dai Cook, Clydach Community Council, without having been given those details by Councillor Cook.

4.4.5. Mrs Nullis said that Councillor Cook kept repeating that the Community Council was a good customer and on that basis a discount should be given on this purchase.

4.4.6. Mrs Nullis said that the purchase was paid for by Councillor Cook's personal cheque and the invoice was in his name.

4.4.7. Mrs Nullis confirmed that she, Mrs Evans and Mrs Dawson had served Councillor Cook.

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

### 5.1. The Respondent's Submissions

5.1.1. Councillor Cook's representative repeated some of his earlier representations. Councillor Cook had not had any training on the code of conduct and may not understand it. Councillor Cook worked hard for his community. He may well have been misunderstood, but it was unintentional.

### 5.2. The Ombudsman's Report

#### 5.2.1. The Ombudsman concluded that:

a) Councillor Cook had represented a private purchase as being one made on behalf of the Clydach Community Council and had attempted to negotiate a discount on the purchase price by reference to the volume of business which the Community Council placed with Valley Engravings Limited, in breach of paragraph 7(a) of the Code of Conduct.

b) When refused a discount, Councillor Cook made threats to harm the business in breach of paragraph 7(a) of the Code of Conduct.

c) Councillor Cook took an unreasonably aggressive and bullying stance towards Mrs Dawson and her staff and that his overall conduct was such as to bring the office of Councillor into disrepute, in breach of paragraph 6(1)(b) of the code of conduct.

### 5.3. Case Tribunal's Decision

5.3.1. On the basis of the findings of fact, the Case Tribunal found by a unanimous

decision that there was a failure to comply with paragraph 6(1)(b) of Clydach Community Council's code of conduct.

5.3.2. Paragraph 6(1)(b) of the code of conduct states that "[Members] must not in their official capacity or otherwise behave in a manner which could be reasonably regarded as bringing the office of member of the authority into disrepute."

5.3.3. The Case Tribunal found that Councillor Cook's behaviour at the premises of Valley Engraving Limited on 3 February 2005 and 14 February 2005 was such as to bring the office of member into disrepute by virtue of his abusive attitude towards members of staff and his threat to harm the business when he was refused discount on a purchase. His shouting, failure to listen to the shop staff, repeated confrontations with Mrs Dawson and Mrs Nullis, his slamming of the door and his generally aggressive and bullying attitude falls short of the behaviour reasonably expected from any person let alone a person holding public office. Whether Councillor Cook's threats to harms Mrs Dawson's business were carried out is immaterial as far as breach is concerned. The making of the threats by Councillor Cook is in itself an abuse of his position and is behaviour likely to bring the office of member into disrepute. Mrs Dawson took the threats to heart and was sufficiently upset by these to make an official complaint through the proper channels.

5.3.4. The Case Tribunal also found by majority decision that Councillor Cook failed to comply with paragraph 7(a) of the code of conduct.

5.3.5. Paragraph 7(a) of the code of conduct states that "Members must not, in their official capacity or otherwise, use their position improperly to confer on or secure for any person and in particular their family, friends or those with whom they have a close personal association an advantage or disadvantage or to secure an advantage for themselves."

5.3.6. The Case Tribunal found that Councillor Cook attempted to gain advantage for himself by requesting discount on a private purchase by misrepresenting it as a purchase on behalf of Clydach Community Council. It is an undisputed fact that it was a private purchase, but Councillor Cook actually said it was for the Community Council, gave the Community Council's details for the invoice and insisted that a discount should be given because of the Council's connection with the shop as a good customer.

## **6. SUBMISSIONS ON ACTION TO BE TAKEN**

### **6.1. The Respondent's Submissions**

6.1.1. Councillor Cook's representative expressed disappointment at the decision.

6.1.2. Councillor Cook's representative mentioned his long term of office, 8 years, and his hard work and dedication in the community.

6.1.3 No character references, letters in support of Councillor Cook or testimonials were provided and no apology was offered.

## 6.2. Case Tribunal's Decision

6.2.1. The Case Tribunal considered all the facts of the case, all the evidence, the representations and submissions made by Councillor Cook's representative and in particular the nature of the breaches.

6.2.2. The Case Tribunal considered these to be relatively serious incidents and relatively serious breaches of the Code of Conduct.

6.2.3. The Case Tribunal found that it had little to help in a sympathetic treatment of Councillor Cook. Although he has been a councillor for 8 years, a relatively long period of office and more than one term, and although mention was made by his representative of his good work in the community, no letters in support, character references nor testimonials were offered.

6.2.4. The Case Tribunal considers that long service merits credit. However, it considers it equally true to say that it is reasonable to expect a higher standard of behaviour from a long standing experienced councillor than from someone less experienced or less familiar with that which is expected of someone in public office.

6.2.5. No apology and no remorse were expressed on behalf of Councillor Cook.

6.2.6. There were two incidents on two separate dates in February 2005 and the Case Tribunal considered that had Councillor Cook after the first occasion, left it at that and apologised to Mrs Dawson, the matter would not have gone any further. He did not do so. In fact, he compounded the first incident by returning and exacerbating the situation by making threats to harm Mrs Dawson's business. He did not use the period between the two dates to reflect and make amends.

6.2.7. The Case Tribunal was satisfied that there was no evidence that Councillor Cook carried out his threats to harm the business and if there was any harm, accepts that it was nothing to do with these events, nor due to Councillor Cook's influence. However it is clear to the Case Tribunal that Mrs Dawson took these mere threats very seriously. So troubled and concerned was she that she reported the matter to the Ombudsman's office, a perfectly proper means of dealing with her concerns. Mrs Nullis was also upset by Councillor Cook's behaviour, of which there are numerous aspects including shouting, threatening and bullying, which all amount to an abuse of his position as a councillor.

6.2.8. Councillor Cook's conduct was wholly unprovoked and so it could not even be said in his mitigation that it was a heat of the moment incident, such as an uncontrolled exchange between councillors in the council chamber.

6.2.9. The Case Tribunal felt that Councillor Cook had shown little co-operation with the Tribunal. He had challenged the matter to the very end, which of course is his right, except in such circumstances the Case Tribunal would expect a strong, valid challenge to the evidence and reasoned arguments by him.

6.2.10. The Case Tribunal was wholly unimpressed by Councillor Cook's failure to familiarise himself with the Code of Conduct. It is the duty of every councillor to



ensure that he/she reads the code, understands it and complies with it.

6.2.11. The Case Tribunal concluded by unanimous decision that Councillor Cook should be suspended from acting as a member of Clydach Community Council for a period of 9 months or, if shorter, the remainder of his term of office.

6.2.12. Clydach Community Council and the Standards Committee of the City and County of Swansea are notified accordingly.

6.2.13. 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 respondent's receipt of this reasoned decision, if later.

Signed..... Date.....

Mrs Helen Cole

**Chairperson of the Case Tribunal**

Mrs Christine Jones

**Panel Member**

Mr Ian Blair

**Panel Member**