

Tribunal Reference Number: APW/001/2006-07/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Councillor Laura Buchanan-Smith

RELEVANT AUTHORITY(IES): Newport City 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 at 10.00am on Tuesday 23 January and continuing on Wednesday 24 January 2007 at the Hilton Hotel, Langstone, Newport. The hearing was open to the public, save for evidence deemed by the tribunal to be of a confidential nature.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 23 February 2006, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Laura Buchanan-Smith. The allegations were that Councillor Buchanan-Smith had breached Newport City Council's Code of Conduct by disclosing confidential information without consent.

2.2. The Councillor's Written Response to the Reference

2.2.1 Councillor Buchanan-Smith had denied any release by her of confidential information, in particular any information she would have obtained as a result of being a member of an Adoption Panel.

2.2.2 Councillor Buchanan-Smith disputed a number of findings of fact upon which the Ombudsman's report was based.

2.3. The Ombudsman's Representations

2.3.1 The Ombudsman made the following written representations in response to Councillor Buchanan-Smith's representations:

- i. Councillor Buchanan-Smith did not sign the confidentiality agreement relevant to the Adoption Panel.
- ii. The name and address of the person referred to in the Ombudsman's report as "Miss Gray" were in the Form E before the Adoption Panel.
- iii. Clare Payne summarises her recollection of events as told to her by "Miss

Gray". A number of matters mentioned (e.g. disruptive childhood, residential placements, behavioural difficulties) were contained in the paperwork before the Adoption Panel. There were certain facts mentioned by "Miss Gray" which could only have been obtained from the documents before the Adoption Panel.

iv. Clare Payne confirmed to the child's social worker the following day the nature of the personal information revealed and the source.

v. Councillor Buchanan-Smith, at interview, stated that "Mr N" approached her for advice as a councillor and that the shop was used as an open surgery.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal heard oral evidence and submissions as follows.

"Miss Gray", the subject of the complaint

3.2.1 The Case Tribunal heard evidence from "Miss Gray", who outlined her personal circumstances in 2004 and that she had taken up a tenancy with a housing association. She lived next door to a "Mr N". Difficulties arose immediately with "Mr N". She recalled a specific incident when she was leaving her house and passing "Mr N's" front door. She was accompanied by her friend.

3.2.2 "Mr N" stated, "I know you, I know your type". She responded that he did not know her.

3.2.3 "Miss Gray" stated that "Mr N" proceeded to outline facts as to where her father would be seen drinking, the location where she became pregnant, a serious medical condition suffered by her family and that she was always in trouble with the police. She was shocked at what she heard and accused "Mr N" of stalking her. "Miss Gray" was adamant that she immediately telephoned the police, who arrived some 15 minutes later. A police officer attended and spoke to "Mr N". The police officer advised "Miss Gray" that "Mr N" had gained the information from somebody. He told "Miss Gray" to forget the matter. "Miss Gray" was adamant she would not have discussed with her friends her medical condition or circumstances as to her pregnancy.

3.2.4 She revealed to Clare Payne the full details of what "Mr N" had said to her. At a later date, Clare Payne told her that it was a councillor who released the information.

3.2.5 In response to questioning from a representative of Councillor Buchanan-Smith, "Miss Gray" stated that she had told the police officer full details of all of the personal details revealed.

3.2.6 "Miss Gray" was recalled to comment upon police logs disclosed. The logs showed an incident when "Mrs N", the wife of the neighbour, twice telephoned the police on 6 May 2004. Police officers arrived at approximately 10.30p.m. The main concern on that date was of youths in a nearby car. The police spoke to "Mr and Mrs N" but not, according to the log, to "Miss Gray". A police log exists for the 14 May

2004, where police were called by both “Mr N” and “Miss Gray”. The complaint made by “Miss Gray” on that date was that the neighbour was calling her a prostitute, and that photos of her were being taken. She also believed the neighbour was stalking her. “Miss Gray” was adamant that this was the date when personal information was revealed, as it was the date she called the police. She telephoned the police on a single occasion only.

Mrs Clare Payne, Support Worker, Barnado’s Cymru

3.3.1 Clare Payne worked as a Support Worker for “Miss Gray”. She recalled being told by “Miss Gray” of personal information revealed to “Miss Gray” by a “Mr N”. The specific information disclosed included “Miss Gray’s” past criminal convictions and mention of a specific children’s home. “Miss Gray” also complained that “Mr N” had described an area of Newport where her father was seen drinking. Clare Payne accepted this latter point could have been general knowledge.

3.3.2 Clare Payne had prepared an attendance note on 25 May 2006, which made reference to a visit to “Miss Gray’s” property on 10 May 2004. The note stated she had accused “Mr N” of having personal knowledge of “Miss Gray”, namely “that she had lived in various children’s homes and had criminal convictions – he looked surprised and said that it was only what Laura had told him.”

3.3.3 She conceded “Mr N” did not say that Laura was a councillor. Clare Payne knew she was a councillor and worked in the Charity Shop. She went and immediately spoke to Councillor Buchanan-Smith. In response to questioning, she confirmed that in their conversation Councillor Buchanan-Smith made no reference to either the adoption case or the child. The only issues raised were those concerning “Miss Gray’s” property and those who visited it. Clare Payne did not pursue the issue of “Miss Gray’s” personal details because of Councillor Buchanan-Smith’s “attitude”.

Mrs Gillian Chamberlain, Social Worker, Newport City Council

3.4.1 Miss Chamberlain gave evidence that she was the Social Worker for the daughter of “Miss Gray”, who was subject to adoption proceedings. She confirmed that the Form E would contain the address of the mother. She was present at the Adoption Panel meeting in 2004. Her notes of conversations with individuals would have been made the same day or very soon afterwards. Her notes refer to confidential information being passed to a neighbour by Councillor Buchanan-Smith, but did not contain the specific detail. She was adamant the dates in her notes were accurate.

3.4.2 In response to questioning from the representative of Councillor Buchanan-Smith, she confirmed that no reference was made during conversation by the councillor to the child. Reference was made in conversations to complaints from a neighbour of the address she was attending. Councillor Buchanan-Smith made no comments at the relevant Adoption Panel meeting.

3.4.3 Mrs Chamberlain was under the impression that problems had built up after an initial “honeymoon period” and not from the first day of “Miss Gray’s” placement at

the housing association property.

“Mr N”, “Miss Gray’s” former Neighbour

3.5.1 “Mr N” gave evidence that problems with “Miss Gray” occurred some three weeks after she moved in. She was showing hostility towards both him and his wife. He knew Laura by sight, but his first contact with Councillor Buchanan-Smith was when the councillor witnessed a stone-throwing incident. “Mr N” thought she was a Neighbourhood Watch person. He did not know she was a councillor at that stage. He confirmed an incident had occurred when “Miss Gray” approached him and stated, “you don’t know nothing about me”. “Mr N” in response stated that he knew she was from a children’s home and that her father drank in a specific area. He was adamant he did not have any knowledge of a particular medical condition, nor that she had been living in a particular area of England. He was aware of ongoing police matters, because the police were always calling at “Miss Gray’s” property. He conceded that he knew the children’s home where “Miss Gray” had been resident. He had obtained this information either from “Miss Gray” herself, her friends, or in particular a male gentleman who had attended at the property after being the victim of an alleged assault by “Miss Gray” and her friends.

3.5.2 “Mr N” was adamant that Councillor Buchanan-Smith had not released any information to him as to “Miss Gray” or her history. He was “overwhelmed” by the support Councillor Buchanan-Smith had given him in respect of his neighbour problems, since this was his principal concern.

3.5.3 “Mr N” recalled mention being made of a children’s home. “Mr N” stated further that he knew of drug dealers who attended at the property because the lady at the shop had told him. This was Laura Buchanan-Smith the councillor. He was adamant that when he told Clare Payne of information obtained from “the lady at the shop”, he was referring to the drug dealer and not to any other personal information. It was Clare Payne who told him that Laura was a councillor.

“Mr S”

3.6.1 “Mr S” gave evidence as to Cllr Buchanan-Smith’s character and trustworthiness.

Councillor Laura Buchanan-Smith

3.7.1 Councillor Buchanan-Smith gave evidence confirming she had been a councillor for 8 years, had undergone police checks and signed the local authority’s code of conduct. It was necessary for her to liaise with others with regard to signing the undertaking in respect of the Adoption Panel.

3.7.2 During 2004 she had serious health problems. Because of these health problems she did not always attend the Adoption Panel meetings. She did not attend meetings if she knew the names of individuals who were involved. She did not notice the address of “Miss Gray” in the papers received in advance of the Adoption Panel meeting.

3.7.3 Councillor Buchanan-Smith had given advice to “Mr N” over his neighbour problems, but was adamant she had not released any confidential information. She recalled meeting Clare Payne. She told Miss Payne that she should be doing more to assist the neighbours in respect of the harassment. Councillor Buchanan-Smith confirmed she represented the Pill area but did not live in the area. She stated she did not know the family of “Miss Gray”, or “Miss Gray’s” father in particular. She accepted that the address of “Miss Gray” would have been on the Form E, but she did not pick up on it. She would have had a big input into the meeting if she had been aware of “Miss Gray’s” identity. She accepted that there was reference in the Form E to a particular medical condition and an area in England where “Miss Gray” had visited. She did not connect those to “Mr N” and his problems.

3.7.4 Councillor Buchanan-Smith told Clare Payne that she was fed up with the “goings on” at the property. She did say to Miss Payne that she was a councillor and sat on the Adoption Panel. She said this because she knew Clare Payne was a Social Worker. Clare Payne knew she was a councillor. At no time did Clare Payne raise with her the issue of the release of confidential information. If Clare Payne was concerned, she should have gone through the correct channels with Social Services and not come direct to the shop. She denied the release of any confidential information to “Mr N”.

Further representations of the Ombudsman

3.8.1 The Case Tribunal invited further representations from the Ombudsman. The representatives of the Ombudsman’s office outlined further details in respect of the dates of the conversation between “Miss Gray” and “Mr N”. The only logical interpretation of the notes was that the conversation between “Mr N” and “Miss Gray” had to be on the 6 May 2004. Whilst it was accepted Clare Payne could provide a detailed account, she outlined a summary of what had been said to “Miss Gray”. Full information would have emanated from “Miss Gray”.

Representations on behalf of Councillor Buchanan-Smith

3.9.1 In closing submissions, it was submitted that Councillor Buchanan-Smith was a lady who could be trusted with confidential information. An outline was given of her reasons for not signing the undertaking with regard to the Adoption Panel.

3.9.2 Councillor Buchanan-Smith did not make the link between the lady who was causing difficulties to “Mr N” and the lady who was mentioned in the Form E. The Adoption Panel meeting took place on 18 March 2004. There was an escalation in the dispute between “Mr N” and his neighbour from April/May onwards. It was accepted the Form E would have contained the address. She had not denied receiving the Form E, but stated that her knowledge was limited in that she had not tied up the information to “Miss Gray”.

3.9.3 There was contradictory evidence as to what “Mr N” had said to “Miss Gray”. Clare Payne had noted certain information, but those notes had not been written up for a number of weeks after the incident. There were no contemporaneous notes. “Miss Gray” was confused with regard to the date of this incident as she was adamant that she had called the Police. The notes of Clare

Payne only mentioned the fact that “Miss Gray” had lived in various children homes and had criminal convictions. No mention was made of her medical condition.

3.9.4 It was now common ground in respect of the conversation between “Mr N” and Clare Payne that there was mention of a drug user attending the flat and that it was Clare Payne who noted that Laura was a councillor. “Mr N” did not appreciate that the lady in the shop was a councillor. The conversation between Clare Payne and Councillor Buchanan-Smith was short. Clare Payne did not say why she had called at the shop. The councillor had raised her concerns as to what was occurring at the flat.

3.9.5 “Mr N” could have obtained the information from other sources. There were a number of agencies, the police were calling at the property, or information could have been overheard from the garden. The Case Tribunal had also heard of evidence from a man who had been mugged who “Mr N” had spoken to.

3.9.6 It was submitted on behalf of Councillor Buchanan-Smith that the Case Tribunal should look at the overall picture. Councillor Buchanan-Smith was not aware that the person causing the problems at the property was the parent of a child being considered at an Adoption Panel meeting. There was nothing to suggest that there had been a breach of the Code of Conduct.

4. FINDINGS OF FACT

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

4.1.1 Councillor Buchanan-Smith gave a written undertaking to observe Newport City Council’s code of conduct on 30 August 2003.

4.1.2 Councillor Buchanan-Smith was a member of the Newport Adoption Panel at the material time.

4.1.3 Councillor Buchanan-Smith had not, at the material time, signed the ‘Newport Adoption Panel Member’s Confidentiality Agreement and Statutory Declaration’, as required by the Council.

4.1.4 In January 2004, “Miss Gray” obtained the tenancy of a 2 bedroom flat in Newport, with Charter Housing.

4.1.5 A meeting of the Newport Adoption Panel took place on 18 March 2004.

4.1.6 Councillor Buchanan-Smith was present at the meeting of the Adoption Panel on 18 March 2004.

4.1.7 An agenda item for the Adoption Panel meeting was a discussion relating to “Miss Gray’s” child.

4.1.8 Members of the Adoption Panel were provided in advance of the meeting with a completed “Form E” containing background information and contact details of “Miss Gray” and her child.

4.1.9 Issues arose between “Miss Gray” and her immediate neighbours “Mr and Mrs N”, with a number of incidents being reported to the police between 6 May and 10 May 2004.

4.1.10 On 10 May 2004, Mrs Clare Payne, support worker with Barnado’s Cymru, carried out a planned visit to “Miss Gray’s” home. Upon leaving, Mrs Payne spoke to “Mr N” and Councillor Buchanan-Smith.

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

4.2.1. Did Councillor Buchanan-Smith disclose confidential information to “Mr N” without consent? In considering the disputed facts, the Case Tribunal had regard to those issues which appeared to be in dispute including, but not limited to, the following:

i. Councillor Buchanan-Smith’s reasons for not signing the ‘Newport Adoption Panel Member’s Confidentiality Agreement and Statutory Declaration’

ii. What did Councillor Buchanan-Smith know prior to the Adoption Panel meeting on 18 March 2004?

iii. What did “Mr N” say to “Miss Gray” in the few days prior to 10 May 2004?

iv. What did “Mr N” say to Mrs Clare Payne on 10 May 2004?

v. What did Councillor Buchanan-Smith say to Mrs Clare Payne on 10 May 2004?

vi. Could “Mr N” have obtained information about “Miss Gray” from sources other than Councillor Buchanan-Smith?

vii. Did “Mr N” know that Councillor Buchanan-Smith was a councillor?

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

The reasons for Councillor Buchanan-Smith not signing the Newport Adoption Panel Member’s Confidentiality Agreement and Statutory Declaration.

4.3.1 The Case Tribunal found that Councillor Buchanan-Smith did not sign the Agreement and the Declaration. The first request for her to sign the Agreement and Declaration was made in January 2003.

4.3.2 Councillor Buchanan-Smith in 2003 signed the undertaking to abide by the code of conduct of Newport County Borough Council. This would bind her in any event as to disclosure of any information received whilst attending the Adoption Panel.

4.3.3 Councillor Buchanan-Smith’s resistance to sign the document was initially as a result of a need to consult others. This factor was corroborated by the written statement of Mrs Wiltshire and oral evidence before the Case Tribunal. Councillor

Buchanan-Smith's later failure to sign the document was as a result of forgetfulness and not deliberate omission.

4.3.4 The Case Tribunal finds that Councillor Buchanan-Smith's attendances at the Adoption Panel meetings during 2003 were sporadic. The Case Tribunal accepts this was caused, in part, by ill health. The Case Tribunal notes that Councillor Buchanan-Smith had attended the November and December meetings of 2003. The Case Tribunal sees no ulterior motive in her attending the March 2004 Adoption Panel meeting.

What did Councillor Buchanan-Smith know prior to the Adoption Panel meeting of 18 March 2004?

4.4.1 Councillor Buchanan-Smith was aware of a dispute between "Mr N" and his female neighbour, but did not know the neighbour's full name.

4.4.2 The Form E before the Adoption Panel meeting of 18 March 2004 revealed the full name and address of "Miss Gray". The Case Tribunal was not satisfied on a balance of probabilities that Councillor Buchanan-Smith had made the link between the name and address of the mother on the Form E and the dispute between "Mr N" and his neighbour. Whilst the Case Tribunal is of the view a competent and conscientious councillor would have noted the address, the Case Tribunal finds that Councillor Buchanan-Smith in this case did not make the link. The Case Tribunal notes that no significant contribution was made by Councillor Buchanan-Smith at the 18 March 2004 Adoption Panel meeting. This is confirmed by the minutes, the evidence of Gill Chamberlain and the evidence of Councillor Buchanan-Smith. The Case Tribunal accepts it is probable, given the serious difficulties in respect of the property where "Miss Gray" lived, that Councillor Buchanan-Smith is more likely than not to have made a significant contribution at the Adoption Panel meeting of 18 March 2004 if she had made the link.

4.4.3 The Case Tribunal is not satisfied that Councillor Buchanan-Smith deliberately sought to mislead the Ombudsman's officers as to whether "Miss Gray's" address was on the Form E. Councillor Buchanan-Smith's letter of 29 November 2004 states that she did not believe, as at the 18 March 2004, that "Miss Gray" lived at the address given. Whilst this information was incorrect, it was not a deliberate attempt to mislead. In respect of the interview Councillor Buchanan-Smith gave on 23 November 2005, the Case Tribunal concluded from the transcript of interview that the documents shown to Councillor Buchanan-Smith were only the minutes of the Adoption Panel and not the Form E containing the address.

What did "Mr N" say to "Miss Gray" in the days before the 10 May 2004?

4.5.1 The Case Tribunal finds that a conversation occurred on 6 May 2004 between "Mr N" and "Miss Gray". During this conversation "Mr N" revealed certain personal information relating to "Miss Gray". Confusion has arisen as to the precise date of the conversation given "Miss Gray's" evidence that she had telephoned the police immediately after the incident. The only record of a telephone call by "Miss Gray" from the police log was on 14 May 2006. The Case Tribunal finds that the date of the conversation was 6 May 2005. The Case Tribunal prefers the evidence of Clare

Payne as supported by documentary notes in respect of the date of the conversation. On 7 May 2004 a meeting took place with Clare Payne, "Miss Gray" and a member of the housing association. Mention was made of an incident on the previous evening when personal information was revealed. The note of Clare Payne's visit of 10 May 2004 refers to the revelation of information on the previous Thursday. This is consistent with the date being 6 May.

4.5.2 As to the precise words of "Mr N" on 6 May 2004, the Panel is satisfied that "Mr N" accused "Miss Gray" of being a prostitute, that she had been living at a specific children's home, and that she had been in trouble with the police. The Case Tribunal also found that "Mr N" had mentioned that "Miss Gray's" father would drink in a specific area.

4.5.3 The Case Tribunal has considered at considerable length the evidence of "Miss Gray" as to mention being made of where she had become pregnant, that she was fighting for her daughter and of a serious family medical condition. On a balance of probabilities, the Case Tribunal cannot come to a finding that these 3 matters were mentioned. The Panel in reaching this conclusion has noted the following:

- i. No mention is made in the notes of Clare Payne of any of these 3 matters. Given their seriousness and their uniqueness the Case Tribunal would have expected to have seen some written reference. From the documents disclosed to the Case Tribunal there are no references. The notes of Gill Chamberlain did not provide assistance.
- ii. Clare Payne did not recollect in her evidence all the 3 matters being relayed to her by "Miss Gray". She conceded that her contemporaneous notes would be more accurate than her memory before the Case Tribunal.
- iii. "Mr N" has been consistent in his denial that he knew of these 3 matters. He reiterated this point during his evidence. The Case Tribunal preferred his evidence on this point to that of "Miss Gray", in light of "Miss Gray's" insistence that the police were called by her on the same evening. The police log did not reveal that was the case. As to "Mr N's" credibility, the Ombudsman placed emphasis on the fact that "Mr N" was aware that Mrs Buchanan-Smith was a councillor and was denying this to the Ombudsman's officers. The Ombudsman may in part have been misled by Clare Payne's written witness statement. In her evidence to the Tribunal, she conceded that "Mr N" had made no mention that he knew Mrs Buchanan-Smith was a councillor.

What did "Mr N" say to Clare Payne on 10 May 2004?

4.6.1 The Case Tribunal was satisfied that "Mr N" told Clare Payne he was aware that "Miss Gray" had been a resident at a specific children's home and that she had criminal convictions. The Tribunal are also satisfied that "Mr N" mentioned a drug dealer who called at the property. In response to questioning about where the information about a drug dealer came from, "Mr N" indicated it was Laura. "Mr N" did not state that he knew Laura was a councillor.

4.6.2 The Case Tribunal could not be satisfied on a balance of probabilities that the

mention of Laura's name was as a result of the enquiry as to the source of the personal information. The Case Tribunal would have expected that if this was the case Clare Payne would have confronted Councillor Buchanan-Smith as to her revelations. She did not. The note of Clare Payne refers to a drug dealer, but that it was Councillor Buchanan-Smith who mentioned this. Unfortunately the notes of Clare Payne were not written up until 2 weeks later.

4.6.3 The Case Tribunal further notes that information as to "Miss Gray" being at a specific children's home would not have been information which would have originated from the Form E.

4.6.4 The Case Tribunal notes Clare Payne's evidence that it was her who made the link between Laura and her being a councillor and working at the Charity Shop.

What did Councillor Buchanan-Smith say to Clare Payne on 10th May 2004?

4.7.1 This was a brief conversation. It was common ground between all parties that there was no mention of Councillor Buchanan-Smith revealing personal information. Councillor Buchanan-Smith did not seek to hide the fact from Clare Payne that she was a member of the Adoption Panel.

Could "Mr N" have obtained information about "Miss Gray" from sources other than Councillor Buchanan-Smith?

4.8.1 The Case Tribunal was satisfied that the information revealed by "Mr N" was as follows:

- i. That "Miss Gray" had lived at a specific children's home.
- ii. "Miss Gray" had been in trouble with the police.
- iii. "Miss Gray's" father would drink in a specific area.

4.8.2 The Case Tribunal noted that this information could have been obtained from other sources. The Case Tribunal noted no mention was made of the specific Children's Home in the Form E.

Did "Mr N" know that Councillor Buchanan-Smith was a Councillor?

4.9.1 The Case Tribunal is satisfied that "Mr N" did not know that Mrs Buchanan-Smith was a councillor prior to the 10 May 2004.

4.10 The Case Tribunal was not satisfied, therefore, on a balance of probabilities that Councillor Buchanan-Smith had disclosed confidential information to "Mr N".

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 Buchanan-Smith submitted on the basis of the findings of fact that there was no failure to comply with the Code of Conduct

5.2 The Ombudsman's Report

5.2.1 No further representations were made.

5.3. Case Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that there was not a failure to comply with Newport City Council's code of conduct.

5.3.2 Paragraph 2.1.3(a) of the Code of Conduct states that '[Members:] must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so.'

5.3.3 The Case Tribunal was not satisfied that confidential information had been disclosed.

5.3.4 Newport City Council and its Standards Committee are notified accordingly.

Signed..... Date...16 March 2007.....

Mr Hywel James
Chairperson of the Case Tribunal

Mr Ian Blair
Panel Member

Mrs Christine Jones
Panel Member