

Tribunal Reference Number: APW/004/2006-07/CT

Reference in relation to a possible failure to follow the code of conduct.

Respondent: Councillor Hefin Thomas

Relevant authority(ies): Isle of Anglesey County 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 1.00pm on Wednesday 13 June and continuing on Thursday 14 June 2007 at the Tre-Ysgawen Hall Country House Hotel, Capel Coch, Llangefni. The hearing was open to the public.

1.3 Cllr Hefin Thomas attended and was represented by Mr Louis Browne, Exchange Chambers, Liverpool.

2. Preliminary Documents

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 13 July 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 Hefin Thomas. The allegations were that Councillor Thomas had breached the Isle of Anglesey County Council's Code of Conduct by failing to declare an interest and to withdraw from consideration of the allocation of land for housing development at meetings of the Council's Executive.

2.2 The Councillor's Written Response to the Reference

2.2.1 Councillor Thomas said: -

- a. This was the second complaint about him by Councillor Peter Rogers in a few weeks.
- b. That he had always supported the development of the land, to meet local need.
- c. That on reflection, the use of the word "friend" to describe his relationship with Mr John Wood was inappropriate.
- d. That he was not friends with Mr and Mrs Wood and had no relationship with Mr Wood requiring him to declare an interest.
- e. During the passage of time he had hardly seen Mr and Mrs Wood.
- f. With hindsight he had made an error in saying that Mr Wood was his friend.

2.2.2 Matters commented on by Councillor Thomas, referred to by paragraph numbers of the Ombudsman's report:

- a. Paragraph 10 – That Councillor Peter Rogers' evidence is factually incorrect.

- b. Paragraph 12 – He had erred on the side of caution when making the declaration in 2003 and did not think it necessary to do so again.
- c. Paragraph 13 - He was not a friend of Mr Wood at the material time.
- d. Paragraph 15 - Councillor Rogers' comments are factually incorrect. He does not class Mr Wood or any member of his family as a friend. He had signed a declaration in 2003 after attending two parties where Mr and Mrs Wood were present, erring on the side of caution. Two years later in 2005 he did not feel there was any need to declare as during the passage of time he had hardly seen the Woods and had not even spoken to them for over 12 months. He supported the idea of affordable housing only. On checking the Ombudsman's report he merely looked at the correctness of what he had said and did not think it was his place to question other people's opinions. In hindsight he had made an error in filling in the declaration form in 2003. He did not consider himself to be a friend of Mr and Mrs Wood at the time, nor in 2005, nor now.
- e. Paragraph 17 - The comments of Councillor Rogers are factually incorrect. The limited company of which he was a director carried out work at a site for a company connected to Mr Woods. There is no direct link between them. Whilst, on a previous occasion, he felt it incumbent upon him to declare the potential conflict, the position had changed sufficiently by the relevant time for him to feel that it was not necessary to register any potential conflict of interest in 2005.
- f. Paragraphs 20, 21 and 22 - The Ombudsman has not given due weight to his evidence, which does not support the Ombudsman's finding. He was not a friend of Mr Wood at the time of the complaint. His stance on the development has been consistent.

2.3 The Ombudsman's Written Representations

2.3.1 No further written representations were made.

3. Oral Submissions

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

Councillor Peter Rogers

3.2.1 Councillor Rogers confirmed that he stood by the information he had given to the Ombudsman in his complaint, namely that Councillor Thomas and Mr Wood were friends, that Councillor Thomas had pursued the UDP matter against fervent opposition, that there was tremendous furore from locals, that Councillor Thomas had blatantly disregarded the code and inexplicably failed to declare an interest, that the friendship was obvious, and that only Councillor Thomas and Mr Woods supported the development. Councillor Rogers did acknowledge, however, in the light of information now available to the Tribunal, that Councillor Thomas' contractual interests should probably not now be described as "major".

3.2.2 Councillor Rogers was asked to provide details of the friendship between Councillor Thomas and Mr Wood. He said he had never seen them together but that their friendship was "common knowledge" and that there were "all sorts of things" to

indicate the friendship, but he provided no details in this respect.

3.2.3 He confirmed that he relied upon the declaration of interest made by Councillor Thomas in 2003 where he had described Mr Wood as a friend.

3.2.4 He was not aware of any deterioration in any commercial relationship between Councillor Thomas and Mr Wood.

3.2.5 Whilst he accepted that Councillor Thomas would not be involved in the development he felt there could be other gain or advantage but he provided no details of any actual or potential gain or benefit, saying if he had any evidence he would have taken the matter to the Police.

3.2.6 He drew attention to the fact that the Monitoring Officer was investigating the relationship between Councillor Thomas and Mr Wood as indicated in a letter dated 27 January 2006 which he had received from her.

Ms Lynn Ball

3.3.1 Ms Ball is the Monitoring Officer of Anglesey County Council and was present at the Tribunal.

3.3.2 Ms Ball was asked to give evidence to clarify the nature of the letter referred to by Councillor Rogers.

3.3.3 Ms Ball confirmed that as Councillor Thomas had spoken in favour of the inclusion in the UDP for development of land owned by Mr Wood and as he had previously declared a friendship with Mr Wood, she had been looking into the matter and had written to Councillor Rogers on 27 January 2006 to assist him with his complaint.

3.3.4 After writing to Councillor Rogers she had not taken her investigation any further.

Mr John Wood

3.4.1 Mr Wood was accompanied and represented by Ms Sarah Venn, Halliwells LLP, Manchester.

3.4.2 Mr Wood confirmed the accuracy and the truth of his written statement made on 7 June 2007.

3.4.3 At all material times, namely the Executive Meetings of the 6 June 2005, 11 July 2005 and 5 September 2005, Councillor Thomas and he were not friends.

3.4.4 At all material times Councillor Thomas and he did not have nor had they ever had a direct commercial relationship. Councillor Thomas' business was in financial difficulty, which led to it eventually ceasing trading such that it would have been impossible for them to have any commercial relationship.

3.4.5 At all material times Councillor Thomas and he had no close personal association and their business relationship had irretrievably deteriorated.

3.4.6 Councillor Thomas would not gain personally or financially or accrue any benefit from the allocation of the site for housing so far as he is aware and in the event that Councillor Thomas was motivated to speak in support thereof for personal gain or advantage, such gain or advantage would not result from a direct or indirect relationship, commercial venture, past relationship or other interaction with him. He is unaware of any means by which Councillor Thomas could personally gain from the inclusion of the site in the UDP.

3.4.7 He did not procure, request or otherwise bring about Councillor Thomas' representations aside from discussing with the County Council through the official channels a much needed housing scheme which had national support and acclaim and is congruent with current housing policy. He, like the national bodies, charities and figureheads supporting the development, including the Princes Foundation, would expect any Councillor to be in favour of the site development and similar developments.

3.4.8 Whether or not the site was included within the UDP as a site for housing was immaterial to the success of the development and Planning Permission had not, nor had it subsequently, been requested. The success of the development does not turn on it being included in the UDP as the Council had been told on numerous occasions, the scheme would be developed under Section 106 of the Town & Country Planning Act 1980 as an exception site. It is a unique development which requires special considerations.

3.4.9 He considered that he should have been interviewed by the Ombudsman.

3.4.10 Cefni Pentraeth Limited (Councillor Thomas' former business) had been involved in a very small way in one previous development carried out by Anglesey Properties Limited.

3.4.11 He is a director of Anglesey Properties Limited.

3.4.12 He is not involved in engaging contractors and was not aware that Cefni Pentraeth Limited had been engaged, nor that Councillor Thomas was a director of that company.

3.4.13 The value of the work carried out by Cefni Pentraeth Limited in the said development was approximately 5%-7% of it's total value.

3.4.14 Councillor Thomas had done some work personally for him namely clearance of a ditch and some fencing at his private residence.

3.4.15 The work carried out by Cefni Pentraeth Limited for Anglesey Properties Limited was unsatisfactory to such extent that complaints had been made and ultimately a notice terminating the contract had been issued. This had, from June 2004, led to a deterioration in the relationship between the two companies and between Councillor Thomas and Mr Wood to such an extent that there was

correspondence between their Solicitors.

3.4.16 Prior to June 2004 the relationship between him and Councillor Thomas was "cordial" but they never discussed business when they happened to be in each other's company socially. They were "just friends" not "good friends" nor "close friends". He considered Councillor Thomas merely an "acquaintance".

3.4.17 After June 2004 their relationship was "staggeringly bad", Councillor Thomas was "objectionable" and ignored him whenever they happened to be in each other's company.

Councillor Gareth Winston Roberts

3.5.1 Councillor Roberts is the Leader of Anglesey County Council.

3.5.2 He was present at the Executive Meetings the purpose of which was to consider housing for the island for the next 15 years.

3.5.3 He agreed with the sentiments expressed by Councillor Thomas at those meetings and considered that Councillor Thomas was doing his duty as a local member, namely addressing local need for housing.

3.5.4 He considered the opinions expressed by Councillor Thomas in the Executive Meetings to be in the public interest in that the Inspectorate had not addressed need for housing in rural villages.

3.5.5 Councillor Thomas had made it clear in the meetings that he was only interested in affordable housing for local people.

3.5.6 Feeling in general on the island is in support of affordable housing.

3.5.7 Local Councillors should have vision for the future.

3.5.8 He had known Councillor Thomas as a colleague, namely a fellow Councillor for some 12-15 years but did not see him socially.

3.5.9 He was absolutely confident from his knowledge of Councillor Thomas as a Councillor during the past 12-15 years that his only motivation in supporting the site for development was public interest.

3.5.10 Councillor Thomas has always been consistent in his approach, namely development of the site for affordable housing only.

3.5.11 Councillor Roberts said that he would have been happy to provide all this information long before now if he had been asked.

Councillor W J Williams

3.6.1 Councillor Williams is the Deputy Leader of Anglesey County Council.

3.6.2 He said he had known Councillor Thomas all his life, since Councillor Thomas was a boy, and that Councillor Thomas had always lived in his constituency and was Anglesey born and bred.

3.6.3 He considered that Councillor Thomas knew the area very well.

3.6.4 He is very supportive of Councillor Thomas' views on affordable housing for the island where wages are low, unemployment high and where there is housing shortage for young local people.

3.6.5 He was certain that Councillor Thomas' views were in the local interest and that similar views were expressed by other Councillors especially those representing rural constituencies.

3.6.6 He did not support Councillor Rogers' view that Councillor Thomas was a lone voice or that he was supporting a developer with a view to making a "quick buck".

3.6.7 Councillor Thomas had been consistent in his approach.

3.6.8 He was not aware of any other factor that might have influenced Councillor Thomas and was convinced that he spoke for the benefit of his electorate.

3.6.9 No one had told him that they were against the development of the site.

Councillor Hefin Thomas

3.7.1 Councillor Thomas said that he had been born in Pentraeth and lived there all his life and had been a Councillor since 1995.

3.7.2 Mr Wood had accurately described their relationship up to 2004.

3.7.3 There had been occasions when he and Mr Wood were in each other's company socially but they never actively dined or went out together socially.

3.7.4 The relationship turned sour in June 2004 since when he "couldn't stand the sight" of Mr Wood and deliberately ignored him when they happened to be in each other's company.

3.7.5 He had declared an interest in 2003, in another Planning Application by Mr Wood, because at the time Councillor Thomas' company, Cefni Pentraeth Limited, had a contract with Anglesey Properties Limited and because there had been a few parties where they were both present. He had also been a friend of the objectors to that application, Mr and Mrs Walton.

3.7.6 With hindsight the use of the word "friend" to describe his relationship with Mr and Mrs Wood was wrong. He should have said in the declaration of interest that he occasionally saw Mr and Mrs Wood socially and that he was good friends with the Waltons.

3.7.7 The opinions which he had expressed in the Executive Meetings were honestly

held and motivated solely by his genuine belief in the need for affordable housing for local people on the island.

3.7.8 He had discussed the development with his constituents and that the majority were in favour.

3.7.9 The earlier petition against the development had been raised against market housing and in the fear that such housing would accommodate unacceptable overspill from Manchester and Liverpool. He had been against such development and the proposal in 2005 was totally different.

3.7.10 He had not believed that any advantage, money or any other benefit would come his way from supporting the development.

3.7.11 He had considered whether he needed to declare an interest and felt he did not in that he knew of nothing which would prevent him from coming to a correct and proper decision on the basis of his judgement.

3.7.12 He confirmed the details given by Mr Wood as to the work which he personally had done for him and for the work done by Cefni Pentraeth Limited for Anglesey Properties Limited.

3.7.13 He had not challenged the accuracy of the Ombudsman's Report as he had thought he was being asked to check only the accuracy of what he had said, not other people's opinion. He had also considered that he was "innocent until proven guilty", namely that it was not for him to disprove the allegations made by Councillor Rogers, but for the Ombudsman to investigate those allegations and to obtain all relevant information and in this respect neither he nor Mr Wood nor any Councillor nor any local people had been interviewed.

3.7.14 He does not support Mr Wood's current proposals for the development of the site nor does the local Community Council. He supports only affordable housing for local people of Pentraeth.

3.7.15 Cefni Pentraeth Limited was a small building company carrying out minor extensions and renovation works, replacement windows and conservatories. The company went into liquidation in October 2005. Cefni Pentraeth Limited and Anglesey Properties Limited each claim money is owed by the one company to the other.

3.7.16 Had he been influenced in any way by any relationship, in view of the circumstances, he would have been more likely to have spoken against the development to spite Mr Wood.

Public Services Ombudsman for Wales

3.8.1 Representing the Ombudsman, Mr Gwydion Hughes presented the Ombudsman's Report.

3.8.2 Mr Hughes pointed out that only some 18 months before the first of the

Executive Meetings Councillor Thomas had declared an interest, describing himself as a friend of Mr Wood and this amounted to an admission of the nature of the relationship.

3.8.3 In a previous report prepared by the Ombudsman in respect of another Councillor (Councillor Hughes) there are various references to the relationship between Councillor Thomas and Mr Wood as friends and neither Councillor Thomas nor Mr Wood had objected to these references.

3.8.4 Councillor Thomas had not given any details to the Ombudsman as to how the relationship had changed nor had he given any particulars to refute a commercial relationship.

3.8.5 There was no local support for the development.

3.8.6 The value to Cefni Pentraeth Limited of the contract between that company and Anglesey Properties Limited was approximately £100,000 and that Cefni Pentraeth Limited claimed approximately £30,000 which was disputed by Anglesey Properties Limited.

3.8.7 The contract and the dispute between the two companies might lead a reasonable member of the public to perceive that it would affect Councillor Thomas' judgement.

4. Findings of Fact

4.1 The Case Tribunal found the following undisputed material facts:

4.1.1 Councillor Hefin Thomas is an elected member of the Isle of Anglesey County Council.

4.1.2 On 11 June 2004 Councillor Thomas signed a declaration undertaking to observe the Council's Code of Conduct.

4.1.3 At the Unitary Development Plan (UDP) Inquiry, the Council had argued against the allocation, for housing, of a site adjacent to Pentraeth Village (Reference T48) and the Inspector had accepted the Council's arguments.

4.1.4 Councillor Thomas consistently supported the inclusion of the site in the UDP for housing.

4.1.5 In meetings on 6 June and 5 September 2005 the Council's Executive revised the Schedule of Housing Sites in the UDP.

4.1.6 Councillor Thomas is a member of the Executive.

4.1.7 At the meetings on 6 June and 5 September 2005 Councillor Thomas spoke in favour of the allocation of the site for house.

4.1.8 At the meeting on 6 June 2005 the Executive recommended that the site be

reinstated in the UDP for housing. This recommendation was considered by the Overview/Scrutiny Committee who referred the matter back to the Executive. At the meeting on 5 September 2005 the Executive resolved that the site should be omitted from the UDP, but acknowledged representations from Councillor Thomas that the site could be developed as an exception site for possibly 50 affordable housing units.

4.1.9 The site is owned by Mr & Mrs John Wood.

4.1.10 Councillor Thomas and John Wood are acquainted.

4.1.11 Councillor Thomas was a director of a building company which carried out work at a site for a company with which John Wood was connected.

4.1.12 John Wood is involved in property development.

4.1.13 In December 2003 Councillor Thomas declared an interest in relation to a planning application made by Mr & Mrs John Wood for another development, describing himself as "a friend of the applicant".

4.1.14 In 2004 the Ombudsman reported on an investigation into an allegation made against another elected member of the Council. In that report there are references to a friendship between Councillor Thomas and John Wood.

4.1.15 Councillor Thomas was provided with a copy of that report before it was issued and at the time did not challenge its accuracy.

4.2 The Case Tribunal found the following disputed material facts:

4.2.1 Councillor Thomas and John Wood were friends.

4.2.2 Councillor Thomas and John Wood had a commercial relationship.

4.2.3 Councillor Thomas and John Wood had a close personal association.

4.2.4 Councillor Thomas' motivation for speaking in support of the allocation of the site for housing was personal gain and/or advantage for himself and/or John Wood.

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

4.3.1 There is evidence of some degree of friendship between Councillor Thomas and Mr Wood prior to June 2004. On the balance of probabilities following that date any degree of friendship had broken down. Accordingly at the times of the Executive Meetings in 2005, Councillor Thomas and Mr Wood could not properly be described as friends.

4.3.2 There is evidence of an indirect contractual relationship between Councillor Thomas and Mr Wood because the two separate companies of which each was respectively a director did have a contractual relationship, albeit in relatively small terms when expressed in total contract value. It is clear that the contractual relationship broke down progressively from June 2004 onwards, culminating in the

decision by Anglesey Properties Limited to terminate the contract in October 2005. Even before then, as early as the Spring of 2005, Cefni Pentraeth Limited had left the site. All this considered, at the time of the Executive Meetings in 2005, there was an indirect commercial relationship between Councillor Thomas and Mr Wood.

4.3.3 There is no evidence of a close personal association between Councillor Thomas and Mr Wood at any time.

4.3.4 There is no evidence that Councillor Thomas' motivation for speaking in support of the allocation of the site for housing, was personal gain and/or advantage for himself and/or Mr Wood. Councillor Thomas' only motivation was public interest, namely his genuine conviction that there is need for affordable housing for local people in the village of Pentraeth.

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 Thomas' representatives stated that the purpose of the Code of Conduct is to ensure proper standards when a Councillor carries out his duties, which include care and caution when there are issues that might affect impartiality.

5.1.2 In view of the findings of fact, the only paragraph of the Code of Conduct which needs further consideration is paragraph 5.1.3.7(iii) and in this respect the question is, was the existence of the indirect commercial relationship, deteriorated as it was, relevant to what the member was speaking about.

5.1.3 There is no personal relationship because the indirect commercial relationship was so poor so as to be wholly irrelevant and in the circumstances there was no obligation to declare an interest.

5.1.4 In fact, had Councillor Thomas declared an interest and not spoken, such course of action may have been viewed suspiciously by a member of the public.

5.2 The Ombudsman's Report/Submissions

5.2.1 It was contended that there was a breach of the Code in that the nature of the relationship was such as to require a declaration of interest in that it would be viewed by a suspicious member of the public as affecting Councillor Thomas' impartiality.

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 the Isle of Anglesey County Council's code of conduct as follows:

5.3.2 Paragraph 5.1.2.7(i) 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.”

5.3.3 The Case Tribunal found that Councillor Thomas and Mr Wood were not friends, nor did they have a close personal association.

5.3.4 Paragraph 5.1.2.8(i) of the Code of Conduct states that “[A member] must reach decisions on the basis of the merits of the circumstances involved and in the public interest.”

5.3.5 The Case Tribunal found that Councillor Thomas was motivated solely by his genuine belief of the need for affordable housing for the locals of Pentraeth.

5.3.6 Paragraph 5.1.3.2 of the Code of Conduct states that “[A member has a personal interest in a matter if that member anticipates that a decision upon it might reasonably be regarded as likely to benefit or disadvantage: (i) the member, one of the member’s family or a friend, or any person with whom the member has a close personal association.....to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area.”

5.3.7 As stated above, the Case Tribunal found that Councillor Thomas and Mr Wood were not friends, nor did they have a close personal association.

5.3.8 Accordingly the Tribunal found no breach of Paragraph 5.1.2.7(i), 5.1.2.8(i) and 5.1.3.2 of the Code of Conduct.

5.3.9 Paragraph 5.1.3.7(iii) of the Code of Conduct states that “A member who has a personal interest in a matter which is not specified in paragraphs 5.1.3.3, 5.1.3.4 or 5.1.3.5 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 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 a dispensation by the authority’s standards committee.”

5.3.10 The Case Tribunal found that the indirect commercial relationship between Councillor Thomas and Mr Wood did amount to a personal interest. Whilst it was a poor relationship it was nevertheless an ongoing relationship in that the contract between the two companies was not terminated until October 2005 and each company claims that money is owed to it by the other. The Case Tribunal found that this might reasonably be perceived as affecting Councillor Thomas' judgement, namely his ability to act purely on the merits of the case and in the public interest. Nevertheless the particular circumstances here are that Councillor Thomas had always and consistently supported the development of this site for affordable housing in the genuine belief that there was need for such for the local people of Pentraeth village. In those particular circumstances the Case Tribunal did not find that a member of the public might reasonable conclude that such personal interest would significantly affect Councillor Thomas' ability to act purely on the merits of the

case and in the public interest.

5.3.11 The failure to declare the personal interest is a partial breach of Paragraph 5.1.3.7(iii) of the Code of Conduct. However in view of the Case Tribunal's findings as stated, had Councillor Thomas declared his interest he could have spoken, as he did, on the matter at the Executive Meetings.

5.3.12 All things considered, the Case Tribunal found that the nature of the breach on the part of Councillor Thomas was not such as to merit a suspension or a disqualification and without inviting any further submissions the Case Tribunal decided not to impose any sanction.

5.3.13 An application for costs was made by Ms Venn for Mr Wood. No award was made as the Tribunal did not consider that the Ombudsman's conduct had been frivolous, vexatious or wholly unreasonable.

Signed..... Date...22 June 2007...

Mrs Helen Cole
Chairperson of the Case Tribunal

Mrs Christine Jones
Panel Member

Mr Ian Blair
Panel Member