

RESPONDENT: Cllr T G Davies

RELEVANT AUTHORITY(IES): St Brides Major 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 commencing at 10.00am on Thursday 13 September 2007 and continuing on Friday 14 September 2007 at the Copthorne Hotel, Culverhouse Cross, Cardiff. The hearing was open to the public.

1.3 Cllr Davies was in attendance.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 21 December 2006, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Cllr T G Davies. The allegations were that Cllr Davies had breached St Brides Major Community Council’s Code of Conduct by:

- i. failing to declare an interest and/or the nature of an interest and/or failing to withdraw from the consideration of matters in which he had a personal interest at meetings of the Council on 9 January 2006, 13 February 2006 and 13 March 2006; and
- ii. being guilty of improper conduct during the meeting of the Council on 13 February 2006.

2.2 The Councillor’s Written Response to the Reference

2.2.1 Matters commented on by Cllr Davies, referred to by paragraph numbers of the Ombudsman’s report:

- a) Paragraph 153 – Cllr Davies did not accept paragraph 11(a) of the Code is capable of being breached. It is a definition only.
- b) Paragraphs 149-153 – Cllr Davies did not accept he had breached paragraph 16(3) in matters involving CPD Maintenance on the basis that no discussion had taken place and/or there was no requirement to leave the room.
- c) Paragraph 59 – Cllr Davies did not accept there had been a breach of paragraph 16(3) in respect of the riding school as it was not an agenda item and he was unable to declare an interest due to the noise.

2.3 The Ombudsman’s Written Representations

2.3.1 In a letter dated 4 April 2007, the Ombudsman responded to Cllr Davies’ written response to the reference by commenting that he did not consider that the noise in the room would have prevented Cllr Davies from declaring an interest in the riding school as soon as the matter arose and he was aware of his interest.

2.4 Preliminary Issue

2.4.1 Cllr Davies submitted as a preliminary issue that the proceedings should be stayed for abuse of process. The submission consisted of two elements:

- i. Delay; and
- ii. Perceived bias

as a result of which Cllr Davies submitted it would not be possible for him to have a fair hearing.

2.4.2 Cllr Davies relied upon Article 6(2) of the Human Rights Act 1998, namely that he was entitled to a fair and public hearing “within a reasonable time by an independent and impartial Tribunal established by law”.

2.4.3 Cllr Davies submitted that the first complaint was made on 24 January 2006. The Ombudsman’s investigations were not completed until 21 December 2006. The Adjudication Panel for Wales had taken 9 months in setting up a hearing. A period of 20 months had elapsed since the first complaint. No reason he argued had been given for the delay.

2.4.4 Cllr Davies submitted the investigation and procedure adopted made a fair hearing impossible. He accepted the inquisitorial role of the Tribunal. The Ombudsman was of the opinion that there was evidence to support only 9 of 16 complaints made. Cllr Davies submitted that the case Tribunal was biased and prejudiced for the purpose of Article 6(1).

2.4.5 The Ombudsman presented a chronology as to the timescale of his investigation.

2.4.6 The Case Tribunal gave consideration to the submissions. The chronology of events could be summarised as follows:

- i. Complaints were received in respect of three meetings: 9 January 2006, 13 February 2006 and 13 March 2006. The final complaint was received at the end of March 2006.
- ii. The Ombudsman established an investigation and interviewed witnesses in August and September 2006. Arrangements were made with Cllr Davies to interview him at the beginning of October 2006 and an interview conducted in November 2006.
- iii. The Ombudsman completed his investigation on 21 December. This was within a period of 9 months from when the final complaint had been received.
- iv. The Adjudication Panel for Wales wrote to Cllr Davies at the beginning of January 2007. There was correspondence between the Adjudication Panel for Wales and Cllr Davies between January and May 2007. Thereafter the President of the Adjudication Panel established a Case Tribunal. A Listing Directions was submitted and a hearing fixed for 13 and 14 September 2007.

2.4.7 The Case Tribunal was of the view that Article 6 of the Human Rights Act was engaged.

Delay

2.4.8 The criteria to be considered was whether proceedings have been completed in a reasonable

time, not whether they could have been completed sooner. The investigation had been completed within a 9-month period. The proceedings also had been listed for a final hearing within 9 months of the referral.

2.4.9 The Case Tribunal gave consideration also to the complexity of the case and the number of witnesses, together with the conduct of the relevant authorities and Cllr Davies. Though prejudice is not a specific factor, it could, however, be a relevant consideration.

2.4.10 Whilst there is no minimum period of delay laid down, it is possible to find guidance in the authorities to support the proposition that the concept of reasonableness implied a relatively high threshold must be crossed before it can be said in any particular case that the period of delay is unreasonable.

2.4.11 The investigation was concluded within a 9 month period. The proceedings had been concluded within a 9 month period.

2.4.12 The Case Tribunal found that it was incorrect to submit that the commencement time in any consideration of delay is the date of receipt of the first complaint. There were a number of complaints including the complaint at the end of March 2006. The Ombudsman had to carry out a full investigation and prepare his report. The Ombudsman has no power to impose any sanction. The Adjudication Panel for Wales could not establish a tribunal until the Ombudsman had concluded his report. These proceedings had been concluded within a 9 month period.

2.4.13 The Case Tribunal found there has been no delay such as to breach the Respondent's Article 6 rights. The proceedings did not amount to an abuse of process.

Impartiality

2.4.14 The Case Tribunal is an independent tribunal. It is totally independent of the Public Services Ombudsman for Wales. The Case Tribunal considered the report of the Public Services Ombudsman for Wales dated 21 December 2006, together with statements and documents referred to therein including the records of interviews with witnesses.

2.4.15 The role of the Case Tribunal however is inquisitorial. The Case Tribunal considers afresh all facts of the case. The views of the Ombudsman are not binding, nor indeed persuasive. The Case Tribunal will reach its own independent views on the facts of the case. The Case Tribunal will hear direct oral evidence, which will be subject to questioning and analysis.

2.4.16 The Case Tribunal outlined in the Listing Direction the disputed facts in respect of the three meetings and confirmed that breaches under paragraphs 6(1)(b), 11(a), 13(f), 16(2) and 16(3) of the code of conduct for members and co-opted members of St Brides Major Community Council were being considered. The Case Tribunal concluded it was impossible to separate the evidence between events where the Ombudsman may have found potential breaches and those where he believed there might be insufficient evidence to conclude a breach. The Case Tribunal remains impartial and there are no grounds to suggest that its impartiality is compromised.

3. ORAL SUBMISSIONS

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

3.2 Mr Allan Morgan

3.2.1 As to the Council's meeting on 9 January 2006, Mr Morgan said that the minutes of the meeting were incorrect. He said that Cllr Davies had not declared an interest at any time during the meeting. He did not dispute that a written declaration may have been handed in, but said it was not mentioned. He said that the CPD contract was discussed and that Cllr Davies may have been challenged about having an interest in that matter because he said "It's not me, it's my son". Cllr Davies did not declare an interest or leave the meeting. He said that Cllr Kath Mepham had proposed that no payments to CPD be made until the contract had been sorted out. He believed that Cllr Davies voted at the meeting, rather than abstaining as noted in the minutes. He said that he had no evidence to contradict the accuracy of the minutes, apart from his recollection of the meeting. He said that he had raised these points in his complaint and confirmed that his oral evidence was consistent with his complaint.

3.2.2 In cross-examination Cllr Davies put to Mr Morgan that he had not in fact been at the meeting, but was playing darts in a local public house. Mr Morgan said he was most definitely at the meeting and recalled that there were some 17-20 members of the public present, most of the councillors and the clerk. He confirmed in cross-examination that no form of declaration of interest, which may have been signed by Cllr Davies, was produced, that Cllr Davies made no declaration of interest at the meeting, nor did he leave the room at any time.

3.2.3 As to the Council's meeting on 13 February 2006, Mr Morgan recalled that Cllr Davies had given a declaration of interest and, when asked about its nature, had said "I've got an interest in the whole community" and moved the meeting on. He said there had been a discussion about the minutes of the previous meeting and that Cllr Howell had put forward various amendments, the nature of which he could not recall precisely although he thought they were in relation to the voting and the declaration of interests. He believed that one of the items on the Agenda was to regularise contracts and that when the matter was discussed, some councillors had expressed concerns that contractors were being paid when there were no written contracts. He recalled that CPD was mentioned specifically and that the matter was discussed for some 10-15 minutes. He said that Cllr Davies had proposed a sub-committee to deal with the matter of contracts and that Cllr Davies had not withdrawn from the discussions on the matter, or from the room. He also said that the matter of the riding school was discussed under "Police Matters" for some 10 minutes. The matter was raised by Cllr Peter Mepham who had received a complaint from a member of the public about a riding school and a fast-food van. Cllr Mepham had proposed that the county council be asked to investigate whether the riding school and the fast-food van were properly licensed and that Cllr Mepham had said that he had taken a photograph of the van. Mr Morgan said that Cllr Davies had then stated "You've been taking photos of children". He said he recalled Cllr Howell stating that Cllr Davies' daughter-in-law ran the riding school and there had been no response to this comment by Cllr Davies. A vote had then taken place about referring the matter to the county council and Cllr Davies had stated "I'm not putting my hand up one way or another", but he did not declare an interest and had taken part in the discussions. Mr Morgan confirmed that the matter of the riding school had been discussed before the matter of the contracts. He also confirmed that the details contained in his complaint to the Ombudsman were clear and accurate. He stated that he believed that Cllr Davies was trying to change the subject of the riding school and to divert the discussions on that matter.

3.2.4 As to the Council's meeting on 13 March 2007, Mr Morgan said that Cllr Lewis, the Chairman, had stated that Cllr Davies had declared an interest. When Cllr Howell asked for details of the nature of the interest, Cllr Davies had stated, "I don't have to tell you, this is an interrogation". The Chairman had then said that Cllr Davies was related to the contractor. There

was a discussion about re-tendering for the bus shelter cleaning contract. CPD was not specifically mentioned, but it was their contract. He said that the riding school was not on the Agenda, but there was a discussion about the riding school during the Agenda item, "Police Matters". A letter had been received from the county council requesting further information to identify the riding school and there was a discussion about responding to that letter. Mr Morgan did not recall whether Cllr Davies had taken part in any vote at that meeting, but confirmed that he had not declared any interest at the meeting, nor had he left the room.

3.2.5 In cross-examination Mr Morgan agreed with Cllr Davies that the meeting had become heated and confirmed that the Chairman had stated that Cllr Davies had declared an interest.

3.3 Miss Katrina Karp

3.3.1 Miss Karp stated that she attends the meetings of the Community Council and makes contemporaneous notes because she is concerned that the meetings are not conducted properly and that the minutes are biased and non-reflective of the actual events at the meetings. The Case Tribunal took a typed version of Miss Karp's manuscript contemporaneous notes into evidence.

3.3.2 As to the Council's meeting on 9 January 2006, Miss Karp said that Cllr Davies had made no declaration at the meeting, that she had no recollection of the Clerk mentioning any declaration having been received, nor had she seen any form of declaration being handed in. She recalled that the Agenda item to do with "Finance" included the matter of contracts, namely CPD's contract to clean bus shelters and Mrs Marion Lewis' contract as Playing Fields Secretary. Miss Karp recalled that Cllr Kath Mepham had proposed that no further payment be made to CPD until that contract had been sorted out and, likewise, Mrs Lewis' contract.

3.3.3 Miss Karp said that Cllr Davies had said "It's not operated by me, but by my son" and that he was shouting, was very disruptive and was staring aggressively at some of the other councillors and at the public. She recalled that the Chairman, Cllr Lewis, had said, "I think I have an interest" and had left the room. Cllr Davies had said, "I think it affects me as well", but he did not leave. She said she believed that Cllr Davies had voted against both proposals. She said she recalled him raising his hand on both matters.

3.3.4 Cllr Davies put to Miss Karp that her recollection of the voting did not accord with the minutes, which noted his abstention. Miss Karp said that she thought she had seen Cllr Davies raise his hand to vote. Cllr Davies put to Miss Karp that Mr Allan Morgan was not at the meeting. Miss Karp stated she believed he was present.

3.3.5 As to the Council's meeting on 13 February 2006, Miss Karp said that at the start of the meeting Cllr Lewis stated he had received a declaration of interest from Cllr Davies. In response to a question from Cllr Howell, Cllr Davies had stated "I have an interest in the whole community". She said that the riding school was discussed as Cllr Peter Mepham had raised the issue of a burger van at the riding school and said that he had taken a photo of it. She said that Cllr Davies had then said "You took photos of children - ho, ho, ho" and she had taken this as inferring that Cllr Mepham was a paedophile. She was of the opinion that other people had seen the same inference in that there had been a gasp from the public gallery when the statement was made. She said that Cllr Mepham had received hate mail subsequently. She confirmed that the word "paedophile" was never used, but that she felt that the inference was clear from Cllr Davies' response, its tone, his stance and the timing of the statement. She also said that she felt that in making the statement Cllr Davies had succeeded in diverting attention away from the real issues, namely that his daughter-in-law was running a potentially dangerous and unlawful riding

school and that he had an interest in the matter, which was being discussed.

3.3.6 Miss Karp said that a motion was put that a letter should be sent to the County Council to investigate the matter and that Cllr Davies was the only councillor who voted against the motion. She said she recalled seeing him put his hand up, although she also recalled him saying that he had not put his hand up one way or the other.

3.3.7 Miss Karp confirmed that contracts, including CPD's were discussed later in the meeting when concerns about their irregularity were expressed. Cllr Howell had proposed cancelling the contracts and there was a proposal to invite tenders. She recalled that Cllr Davies then stated that he had an interest in the matter, but that he proposed a sub-committee of three, namely himself, Cllr Lewis and Cllr Stephens to deal with the matter.

3.3.8 Cllr Davies, in questioning, asked Miss Karp why the remark about Cllr Mepham had not been reported in the press. Miss Karp was certain the remark had been made.

3.3.9 As for the Council's meeting on 13 March 2006, Miss Karp confirmed that the riding school was discussed and that Cllr Davies did not withdraw from the meeting. She said that she felt that other councillors may have been reluctant to speak out frankly about the matter because of his presence in the room.

3.4 Cllr Peter Mepham

3.4.1 Cllr Mepham confirmed that he had been a member of the Community Council for 7 or 8 years, but had attended meetings of the Council as a member of the public prior to this. He confirmed the summary of his witness statement, as prepared by the Ombudsman's office.

3.4.2 He was present at the Council meeting on the 9 January 2006. The minutes were not an accurate description of events. He said he did not believe Cllr Davies ever made a declaration of interest in any relevant manner and had never, nor in his opinion would he, withdraw from a meeting. The declaration of interest "form" was not something he personally endorsed. This did not represent a proper declaration that, in his view, should be confirmed verbally and then acted upon in the meeting. At that time, no other councillors knew about the forms. As to the motion on finance proposed by Cllr Kath Mepham, he stated that Cllr Davies did abstain in the formal vote.

3.4.3 When cross-examined by Cllr Davies on the matter of raising ad hoc motions, as opposed to giving formal Notice of Motions under the Council's Standing Orders. Cllr Mepham agreed that that was how it should happen, but it didn't always.

3.4.4 As to the Council's meeting on the 13 February 2006, Cllr Mepham agreed that a declaration of interest was minuted for Cllr Davies, but he did not recall such a declaration being made in a proper and appropriate manner. He confirmed that discussion of the riding school was prompted by himself under Police Matters, primarily because at that time a serious case of food poisoning was ongoing in Bridgend and he had concerns about the food van which was "probably unlicensed". He confirmed that he had taken photographs at the riding school and that Cllr Davies had made inappropriate and unacceptable remarks. He said that everyone in his street had received a hate mail letter about the taking of photographs. Cllr Davies made no declaration of interest regarding the riding school. Cllr Mepham could not recall specific debate on CPD, but said "if Cllr Davies was present there was no way he would leave". He confirmed that Cllr Davies had proposed himself on the Sub-Committee to discuss tenders.

3.4.5 When questioned by Cllr Davies about the minutes of the meeting, Cllr Mepham said that the Clerks had been under intolerable pressure for two or three years “since they want to abide by the code of conduct and its rules”. The Clerks were under pressure because members, including Cllr Davies, put them under duress to change the minutes or exclude items of debate. As to procedure, he said the Chairman sometimes made mistakes.

3.4.6 Regarding the meeting on 13 March 2006, Cllr Mepham could not recall any discussion on CPD, but said Cllr Davies did not make a proper declaration of interest, even though he may have put in a form. He said “we have been told often enough what to do”.

3.5 Mr Leslie Walters

3.5.1 Mr Walters confirmed that he had been a county councillor, borough councillor and community councillor for many years, but was now out of politics. He still had an interest in local government, however, and attended the Community Council meetings as a member of the public. He had not been present at the meeting held on the 9 January 2006.

3.5.2 As to the Council’s meeting on the 13 February 2006 and the discussion on the riding school, he recalled that Cllr Davies did say “ho, ho, taking pictures of little children”, and the “look of horror” on many faces. He said he recalled the meeting and its mood very, very well. He said the resulting hate campaign was quite scurrilous, especially involving Cllr Mepham. There had been no declaration of interest on any matter by Cllr Davies. He said that, in his view, councillors should make it their honourable duty to leave the room during matters of interest. He also said that the Council minutes bore little or no resemblance to actual events and, whilst some members made proper declarations of interest, “Cllr Davies never does”.

3.5.3 When questioned by Cllr Davies, he agreed that the press article did not report any remarks by Cllr Davies, but said he did nonetheless make them. When asked about the food van, Mr Walters said he believed it to be unlicensed and that it operated from unlicensed premises. He agreed it was not a ‘burger van’, possibly a caravan providing refreshments to the children.

3.5.4 Regarding the meeting on the 13 March 2006, he said Cllr Davies had been reminded many times about the code of conduct, but he never complied. He did not make any proper declarations of interest on this occasion.

3.6 Cllr Howard Lewis

3.6.1 Cllr Lewis said he had been the Chairman of the Community Council for two years. He said meetings were unnecessarily disruptive and it was difficult to properly conduct the business of the council. He confirmed that he had attended training courses by the Vale of Glamorgan Council on the code of Conduct and that Cllr Davies and the Clerk had also attended. He considered that to “withdraw” from a meeting meant to withdraw from debate. He said that he had not been given guidance on whether withdraw meant leaving the room. He said that he had made enquiries about this from another Committee Clerk and from a barrister. He also drew the Case Tribunal’s attention to the National Association of Local Council’s (NALC) guidance on these matters that indicated that withdrawal was a matter for the individual member in Wales. He personally always felt it advisable to leave the room, but the Council was a member of the NALC and relied on it for its legal advice. He said that when the code was introduced, he felt that the Monitoring Officer should have had a dialogue with the NALC, but he had refused.

3.6.2 As to the Council meeting on the 9 January 2006, he did recall the debate on finance and CPD being raised. He believed Cllr Davies was still in the room, but did not contribute to the discussion. He did not remember Cllr Davies saying 'it's not me, it's my son'. Cllr Lewis left the room, but Cllr Davies remained.

3.6.3 Regarding the Council meeting on 13 February 2006, a lot of time was spent at the start of meetings taking amendments to the minutes. He confirmed that the issue of taking photographs of the food van was raised under Police Matters, but he could not recall Cllr Davies making the remarks about children. He said "the room was not quiet and anything could have been said" - though he did recall Cllr Mephram being upset. Cllr Davies made no declaration of interest in the riding school. He did not recall him taking any part in the discussion. He said he had since asked members of the public whether Cllr Davies made remarks and they had said no. Regarding Item 8.1 of the meeting Agenda, Cllr Lewis confirmed that his declaration of interest was made in respect of his wife. However, he had remained in the room because the issue concerned procedure on contracts rather than specific contracts. He could not recall who proposed the sub-committee; thinking it likely it was Cllr Mephram.

3.6.4 As to the meeting on 13 March 2006, he could not recall whether Cllr Davies had made a verbal or written declaration of interests in relation to CPD or contracts. He accepted that the public would not know about Cllr Davies' interest in the riding school. He remembered one time or maybe more when Cllr Davies has withdrawn from the room. He could not be specific.

3.6.5 In cross-examination, Cllr Lewis agreed after reflection that Cllr Davies may have proposed the sub-committee at the 13 February meeting. However, he had proposed the Chairman (i.e. Cllr. Lewis), the past Chairman and Cllr Stephens be on the sub-committee. Cllr Davies did not propose himself as had been alleged by Miss Karp in her notes. He confirmed that three Clerks had left because of pressure inside and outside the meetings and because of "additional work" being put on them.

3.6.6 Regarding the Vale of Glamorgan Council's Code of Conduct, adopted by St Brides Major Community Council, and the NALC advice, the Council were in a dilemma. The Council members had signed the code, but until the new revised code was produced they considered that the Council's Standing Orders should predominate. They did not want to be "too rigid" and, therefore, they took the NALC guidance. They did not, however, want to mislead the public or give the wrong impression.

3.7 Cllr David Unwin

3.7.1 Cllr Unwin confirmed the accuracy of his record of interview with the Ombudsman's investigating officer. He said that he had known Cllr Davies for 27 years. He said that from early 2006 Council meetings had become acrimonious. He said that he had received no formal training in the code of conduct. When asked about his usual practice when declaring a personal interest, Cllr Unwin said that he would usually do it verbally at the meeting. He would not necessarily leave the room as this was not essential, the essential condition being not to take part in any vote. He contended that there is a stark difference of opinion about the need to leave the room after having declared a personal interest. He did not subscribe to the view expressed by the Vale of Glamorgan Council and the advice on the matter given by the Monitoring Officer, which was to leave the room. He added that if a councillor knew in advance that a matter in which he had a personal interest was to arise in a meeting, the councillor should declare at the beginning of the meeting. If something unexpected arose, the declaration should be made at that time. He said that he had never declared an interest in writing and that there was no procedure set by the

Community Council for declaring an interest. He said a typed pro forma was available, which Cllr Davies uses, but other councillors have not found it necessary to do so. He said he was not interested in other councillors' declarations of personal interests, except to say that they should be noted in the minutes.

3.7.2 As for the Council's meeting on 9 January 2006, Cllr Unwin said that he had no recollection one way or another about whether Cllr Davies made a declaration of interest. He added that everyone interested in the Council's business would know whether any councillor had a personal interest in a matter, as the matter would have been discussed before. It is a small community where everyone knows everyone else's business. In the circumstances, Cllr Unwin did not feel that it was necessary to disclose an interest and describe its precise nature whenever such interest arose, especially if it had been mentioned before.

3.7.3 Cllr Unwin recalled Cllr Kath Mepham's motion that no further payments be made on contracts until they were sorted out. He could not recall whether Cllr Davies had said "It's not me, it's my son", but in any event everyone would have known that Cllr Davies' son was the owner of CPD and that Cllr Davies had no pecuniary interest in the business. He then added that, on reflection, Cllr Davies should have declared an interest and in fact he believed he had. He confirmed that Cllr Davies did not leave the room at any time. He had no recollection as to how the voting went or whether Cllr Davies voted. He said the minutes are not a verbatim record of events, but are as accurate as one can expect in the prevailing circumstances. He agreed that abstaining from voting is not the same as withdrawing.

3.7.4 As for the Council's meeting on 13 February 2006, Cllr Unwin believed Cllr Lewis was in the Chair for that meeting and that as the Clerk was sick, he took the minutes. He believed that Cllr Davies had made a verbal declaration of interest, although he normally used a slip. He confirmed there was no Agenda item for CPD and that the matter of contracts had been discussed in the January meeting. He confirmed that under the discussion of Finance, contracts and re-tendering were discussed. He did not believe that Cllr Davies had made any proposals relating to CPD, as Cllr Davies always makes it clear that he wants nothing to do with any discussions concerning CPD. He could not recall whether Cllr Davies voted. He believed that Cllr Davies may have made a comment along the lines that he would see to it that the bus shelters were cleaned in the meantime. He confirmed that the matter of the riding school was discussed and that most councillors commented on the matter, which was brought up by Cllr Peter Mepham. He could not recall who said what as he was engaged in minute taking. He did not recall any declarations of interest, but if any had been made they would have been acknowledged in the minutes. He said he had not made the connection between Cllr Davies and the riding school, as it was not immediately apparent. He recalled a comment being made about the photographs, but could not recall what was said nor who made the comment. He said that a comment along the lines of Cllr Mepham having taken photographs of children may or may not have been said, but if it was, he did not know who made such comment. He confirmed that the discussions ended with an agreement to refer the matter to the County Council to investigate and that there was a consensus of opinion that the Council should get to the bottom of the matter. Cllr Unwin said that he could not say whether Cllr Davies had voted, but confirmed that he had not withdrawn. He also acknowledged that it was a discussion about whether Cllr Davies' daughter-in-law was running an unlawful business, but that he had probably only realised this at the end of the discussion. Cllr Unwin did not wish to comment on what would have been a proper course of action for Cllr Davies to adopt in these circumstances.

3.7.5 As to the Council's meeting on 13 March 2006, Cllr Unwin confirmed that he was present at the meeting and taking the minutes as the Clerk was sick. He confirmed he had received a

declaration of interest in writing from Cllr Davies. This was mentioned at the meeting and minuted. No one had raised the issue of the nature of the interest. He added he would have been surprised if anyone had asked about the nature of the interest, as everyone would have known its nature. He confirmed that the minute of the declaration of interest made reference to CPD only and not to Julie Davies. He confirmed that this was an oversight on his part, as the written declaration had mentioned CPD and Julie Davies. Cllr Unwin confirmed that the meeting became heated, but had no recollection of the wording of various exchanges between councillors. He had no recollection of Cllr Davies having taken any active part in any discussions to do with contracts or tendering. He confirmed that Cllr Davies did not leave the room.

3.7.6 In cross-examination, Cllr Unwin agreed with Cllr Davies that never in 28 years had he taken part in, or influenced, any discussions to do with CPD. He also agreed with Cllr Davies that it would have been out of character for Cllr Davies to have made the remark about Cllr Mepham taking photographs of children. He also agreed that Cllr Davies had in fact made the proposal for a sub-committee to deal with the contracts. Cllr Unwin also stated that he thought that the Standing Orders took precedence over the code of conduct.

3.8 Cllr Audrey Preston

3.8.1 Cllr Preston confirmed that her record of interview with the Ombudsman's investigating officer was correct and that she had been a councillor for 24 years. She confirmed that she had not in 24 years known Cllr Davies to discuss or vote upon any matters to do with CPD. She said she was satisfied with the minutes as a good and clear record of meetings. Cllr Preston confirmed that she was also a member of the Vale of Glamorgan Council, where the normal practice was for a councillor to leave the room after having declared a personal interest. However, she was of the view that in Community Council meetings it was optional for a councillor to leave or stay, although it is her practice to leave so that there can be no queries.

3.8.2 As for the Council's meeting on 9 January 2006, her recollection was that there were some 8 members of the public present. She had thought that Mr Allan Morgan was not present. However, she was not certain that he was not present. She said that Cllr Davies did not participate in any matter relating to his family. She believed he made the comment "It's not me, it's my son". In relation to Cllr Kath Mepham's proposal, she could not recall whether Cllr Davies had voted. She agreed that abstaining from voting was not the same as withdrawing.

3.8.3 As for the Council's meeting on 13 February 2006, she did not think that Cllr Davies had made any declaration, but added that there was nothing on the Agenda that would have required him to do so. She agreed that the Agenda included an item to do with contracts and this would have included CPD's contract. She recalled a discussion about setting up a sub-committee and that a proposal to do so had been made. As she was uncertain as to who had made the proposal, she preferred not to say who had made the proposal.

3.8.4 She did not recall the comment, "You took photos of children" having been made. She said it could have been made, but she did not hear it as she was not paying particular attention at the time as she was trying to restrain her husband. She said that she had no recollection of Cllr Davies having declared an interest in the riding school, but that matter was not on the Agenda. She agreed that if a matter that was not on the Agenda arose during the course of business, a councillor who had a personal interest in that matter should declare the interest and leave the room.

3.9 Evidence of Cllr T G Davies

3.9.1 Cllr Davies gave evidence that he has served as a community councillor for 42 years. He had always upheld the law. He always dealt with matters in a firm, fair and honest manner. He disputed whether Mr Morgan was present in the public gallery during the meeting on 9 January 2006. He had raised the attendance of Mr Morgan with Cllr Audrey Preston, he believed, within 2 weeks of the meeting. Cllr Preston believed Mr Morgan was not present. He later conceded this conversation with Cllr Preston would have been 2-3 weeks after receipt of the first letter from the Ombudsman, which would have been 6 or 7 weeks after the 9 January meeting. He did declare an interest and the nature of his interest in writing to the Chairman of the meeting. He did not believe that matters that were raised with no "notice of motion" could be lawfully discussed. Standing Orders of NALC covered the whole Country and must prevail. He never took part or influenced any decision to do with CPD Maintenance. He accepted that he interrupted proceedings when it was alleged that the bus shelters were not being swept. As far as he was concerned, his son was sweeping the shelters every week. It was a serious matter if his son was not complying with the terms of the contract. Discussions as to payment to CPD were passed on the nod. The Council had to pay his son.

3.9.2 Cllr Davies said that he did not withdraw from consideration of the matter during the meeting on 9 January 2006. He did not believe that there was any legal requirement for him to do so.

3.9.3 On 13 February 2006, he had again provided a written declaration of interest. The matter relating to the riding school was not on the agenda. Cllr Peter Mephram had raised the issue in order to clear his name. There was a reporter from a local newspaper present. If he had said what was alleged, this would have been reported. If the riding school had been on the agenda, he would have written out a form declaring his interest. His stance during the discussion of the riding school was to fold his arms and sit there and say nothing. He did not make any comment, vote or withdraw. He denied making any inappropriate comment. He did propose a sub-committee of 3, but he did not put his name forward as a member of the sub-committee. The committee would have dealt with future contracts. He did not put his name forward. He stated he would not want to take part in a sub-committee, because he would have to declare his interest in CPD.

3.9.4 On 13 March 2006, he wrote a hand written note declaring interest both in CPD maintenance and in Julie Davies. He accepted that he did not specify the relationship with Julie Davies, he did not withdraw from consideration of the matter as there were no discussions on those matters on 13 March. The future contracts of the Council were an unknown quantity.

3.9.5 When questioned, Cllr Davies was referred to the evidence of Miss Karp. He was also referred to her notes of the Council's meetings. He denied saying "its not operated by me it is my son". He did accept that whilst CPD Maintenance and the contract were being discussed, he told another councillor to sit down and, later, stated "you authorised money you should not have done".

3.9.6 He accepted his written Declaration of Interest for the 13 February 2006 meeting did not outline the nature of that interest. The statement "I have an interest in the whole community" was a statement that he makes from time to time. The item on the agenda relating to future contracts, he believed, did not directly relate to CPD maintenance. His son had held the contract for 18 years. He may, or may not, have applied for future work. He could not recall if the name CPD was raised in the discussion. He accepted he did propose the establishment of a sub-committee,

but did not vote on the matter. He was referred to Miss Karp's notes and accepted that after the vote he may well have said "I will ensure the bus shelters are swept unlike CH".

3.9.10 His daughter-in-law had been operating the riding school, which provided an important service to the community, for 15 years. The discussions as to the riding school continued for 10 to 15 minutes. He did not believe he should have declared an interest. He sat there with his arms folded during the discussion. There was no notice of motion. He accepted that, as the meeting was getting out of order, he may have said that they should move on. It was referred to in the notes of Miss Karp. He accepted he may have said "I take precedence and move progress". He denied that the notes were in any form an accurate record of what was said at that meeting. He denied making the comment to Cllr Mephram "you took photos of children Ho Ho"

3.9.11 Cllr Davies denied saying, at the beginning of the meeting on 13 March 2006, that he was related to the contractor. He did not believe he should have withdrawn when issues as to the riding school were raised.

3.9.12 Cllr Davies said that he would continue to act in the same way when a matter in which he had a personal interest arose. He would sit there folding his arms. He did not believe that there was a requirement to withdraw from the room.

3.10 Public Services Ombudsman for Wales

3.10.1 The Ombudsman's representative made submissions that the model standing orders of NALC emphasise the difference in England that councillors have to withdraw if they have a prejudicial interest. The position in Wales was that paragraph 11(a) of the code of conduct defined a particular category of personal interest. Paragraph 16(3) of the code of conduct states that the councillor must withdraw. There were 3 issues: did Cllr Davies have an interest in CPD and the riding school; if so, were they declared appropriately; and, thirdly, whether the Cllr Davies withdrew.

3.10.2 Cllr Davies did not mention his view that no declaration of interest was required where a matter was raised without notice of a motion in his response to the Ombudsman's report, nor in his interview with the investigating officer. Even if notice of motion is required, the matters were still being discussed and paragraph 16(3) of the code of conduct applied.

3.10.3 The need to withdraw from the meeting, and this included leaving the room, was supported by the Monitoring Officer, by Welsh Assembly guidance and by the case of Paul Richardson and others –v- North Yorkshire County Council.

3.11 Cllr Davies' Final Submission

3.11.1 Cllr Davies, in his final submission, referred to his service to the community and the importance of upholding the law. He reiterated that matters that were raised without notice of motion should not have been discussed. He did not see the requirement to withdraw from consideration of such matters. He further submitted that there was no requirement for him to go in and out of the room when matters were so discussed. There was nothing mandatory in the law requiring him to withdraw. He accepted what the Judge said in the case of Richardson, but he did not view the need to leave the room as mandatory. The standing orders of NALC superseded the code of conduct. He saw nothing wrong in staying at the Council table when matters in which he had a personal interest were raised. He reiterated he had not participated in any matters relating to his family. The notes prepared by Miss Karp were not an accurate record, they were typed up

afterwards. He had submitted handwritten notes showing that on 13 February 2006 there were constant interruptions in the Council Chambers. He denied making any inappropriate comment on 13 February. If he had done so, the newspaper reporter would have put it in the press report

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following undisputed material facts:

4.1.1 Cllr T G Davies was a member of St Brides Major Community Council at the time in question and signed an undertaking to observe the Council's code of conduct on 14 June 2004.

4.1.2 Cllr Davies attended a training session on the code of conduct in 2004 and received an information pack from the Monitoring Officer of the Vale of Glamorgan Council.

4.1.3 Cllr Davies was present at the meetings of St Bride's Major Community Council held on 9 January 2006, 13 February 2006 and 13 March 2006.

4.1.4 Cllr Davies' son is the owner of CPD Maintenance.

4.1.5 CP Maintenance was paid to undertake work on behalf of St Brides Major Community Council.

4.1.6 Cllr Davies's daughter-in-law operates a riding school in St Bride's Major.

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

4.2.1 At the Community Council meeting 9 January 2006:

Did Cllr Davies declare an interest and the nature of his interest in CPD Maintenance?

4.2.1.2 The Case Tribunal found that Cllr Davies had made a declaration in writing of his interest in CPD Maintenance. He further specified the nature of this interest i.e. it was his son. This was confirmed by the handwritten form (B107) and by the minutes of the Council meeting (B115).

Did Cllr Davies participate in the discussion involving CPD Maintenance?

4.2.1.3 The Case Tribunal found that Cllr Davies had not participated in the discussion. Cllr Davies had denied he had participated. The minutes recorded that he had abstained during the vote. The evidence of other witnesses, in particular Miss Karp, was vague as to whether Cllr Davies had participated in the discussion or whether he had voted.

Did Cllr Davies vote on issues affecting CPD Maintenance?

4.2.1.4 The Case Tribunal found that Cllr Davies had not voted at the meeting on 9 January 2006 on issues affecting CPD Maintenance. Reliance was placed upon the minutes and the vagueness of evidence of other witnesses as to whether he voted or abstained.

Did Cllr Davies withdraw from consideration of the matters relating to CPD Maintenance?

4.2.1.5 The Case Tribunal found on the balance of probabilities that he did not withdraw. There was a requirement for him to withdraw if the discussion related to CPD Maintenance. This was a

business operated by his son. The Case Tribunal takes the view that “withdrawal” given the nature of the discussion involving his son’s business required Cllr Davies to remove himself from the room. There is no evidence that he backed away from the discussion in any form or manner. The minutes record that he remained part of the meeting. In respect of the 2 votes taken which involved CPD Maintenance and future contracts, he was recorded as abstaining. The advice of the Monitoring Officer to Cllr Davies was clear, namely: that he should declare an interest and, if in doubt, remove himself from the room. Even if there was no requirement to leave the room, there was no evidence that he distanced himself sufficiently from discussions. He remained part of the meeting. On this basis, the Case Tribunal concluded that Cllr Davies had not withdrawn from consideration of the matters relating to CPD Maintenance.

4.2.2 At the Community Council Meeting on 13 February 2006:

Did Cllr Davies declare an interest and the nature of his interest in CPD Maintenance?

4.2.2.1 The Case Tribunal concluded that Cllr Davies had declared an interest, but did not specify the nature of his interest with CPD Maintenance. The Tribunal relied upon the handwritten form completed by Cllr Davies (B108) and Cllr Davies’ admission that he had not specified the nature of his interest.

Did Cllr Davies participate in the discussion relating to CPD Maintenance?

4.2.2.2 The Case Tribunal concluded, on the balance of probabilities, that he had participated in discussions relating to CPD Maintenance. Item 8.1 of the Agenda related to finance and future Council contracts. CPD Maintenance had held a cleaning contract for 18 years. Cllr Davies admitted he did not know whether his son would be applying for a new contract. A member of the public would perceive that the item being discussed was one in which Cllr Davies should reasonably declare an interest, as it affected his son’s business. Cllr Davies admitted he had put forward a motion in respect of this item on the Agenda.

Did Cllr Davies vote on issues affecting CPD Maintenance?

4.2.2.3 The Case Tribunal was not satisfied, on a balance of probabilities, that Cllr Davies had voted. Cllr Davies denied voting, though accepted putting forward the motion. There was no evidence he had participated in the vote.

Did Cllr Davies withdraw from consideration of the matter of CPD Maintenance?

4.2.2.4 The Case Tribunal concluded that Cllr Davies did not withdraw from consideration of the matter. He remained in the room and remained part of the discussion. It was a matter in which he should have withdrawn, as it related to an issue in which he had a personal interest.

Did Cllr Davies declare an interest and the nature of his interest in the riding school?

4.2.2.5 The Case Tribunal concluded that Cllr Davies did not declare an interest, nor did he declare the nature of his interest in the riding school. Cllr Davies admitted he did not do so. The riding school was operated by his daughter-in-law and required a declaration of personal interest. There was no note in the minutes of a declaration of interest and Cllr Lewis, as Chairman, did not believe Cllr Davies had declared any such interest.

Did Cllr Davies participate in the discussions as to the riding school?

4.2.2.6 The Case Tribunal concluded that Cllr Davies had participated in discussions. He made general comments and tried to move the business on and thus divert attention from the discussion. The Case Tribunal relied upon Cllr Davies' own admission that he had proposed that matters move on.

Did Cllr Davies vote in respect of matters relating to the riding school?

4.2.2.7 The Case Tribunal concluded there was no evidence that Cllr Davies had voted on the matter.

Did Cllr Davies withdraw from consideration of the matter of the riding school?

4.2.2.8 The Case Tribunal concluded that Cllr Davies had not withdrawn from consideration of the matter. Cllr Davies admitted he did not leave the room. He contributed to discussion by proposing that the Council move on to other business. It was a heated debate to which Cllr Davies contributed.

Did Cllr Davies make inappropriate comments to Cllr P Mephram?

4.2.2.9 The Case Tribunal gave careful consideration to this fact and concluded it was more likely than not that Cllr Davies did make the comment "You took photos of children". This was a comment directed at Cllr Peter Mephram.

4.2.2.10 In coming to its conclusion, the Case Tribunal had preferred the evidence of Mr Morgan, Miss Karp, Cllr Mephram and Mr Walters to the evidence of Cllr Davies. There was some contemporaneous record in that the notes of Miss Karp confirm the statement and noted the words as having been stated. Cllr Peter Mephram had recorded those words in a complaint to the Ombudsman within 3 weeks of the meeting. Cllr Davies had accepted that some of the contents of the notes of Miss Karp were an accurate record. The Case Tribunal did not find that there was any evidence to indicate that the witnesses had colluded in making the allegation. The Case Tribunal had an opportunity of assessing the quality of the evidence by questioning the witnesses. .

4.2.2.11 Witnesses Cllr Unwin, Cllr Preston and Cllr Lewis conceded that they could not give absolute confirmation the statement had not been said. Cllr Unwin had stated that most people in the meeting had said things and could not recall what was said. He was taking the minutes and he was trying to listen to what was going on, but if there was "general banter" he would "switch off". Cllr Preston stated it was extremely noisy at the meeting and she may not have heard everything. Cllr Lewis who was the Chairman stated that he could not recall if the statement had been made.

4.2.2.12 The evidence of Cllr Unwin, Cllr Preston and Cllr Lewis was extremely vague on the point. The consistency of the evidence of Mr Morgan, Miss Karp, Cllr Mephram and Mr Walters and other written statements to the Ombudsman satisfied the Case Tribunal, on the balance of probabilities, that the statement had been made.

4.2.3 At the Community Council meeting on 13 March 2006:

Did Cllr Davies declare an interest and the nature of his interest in CPD Maintenance?

4.2.3.1 The Case Tribunal was satisfied that Cllr Davies had declared an interest. The nature of that interest was also declared as the Chairman, at the beginning of the meeting, had confirmed Cllr Davies was related to the contractor.

Did Cllr Davies participate in the discussion in respect of CPD Maintenance?

4.2.3.2 There is no evidence that Cllr Davies had participated in any such discussion.

Did Cllr Davies withdraw from consideration of the matter of CPD Maintenance?

4.2.3.3 The Case Tribunal concluded that Cllr Davies was required to withdraw from consideration of the Agenda item relating to contract documentation and the report of the sub-committee. This was an Agenda item that related to future contracts. On Cllr Davies' own admission, he did not know whether his son would be part of the contract procedure. Cllr Davies admitted he did not withdraw from consideration of the matter.

Did Cllr Davies declare an interest and the nature of his interest in the riding school?

4.2.3.4 The Case Tribunal concluded Cllr Davies did declare an interest (i.e. Julie Davies), but did not specify sufficiently the nature of the interest. He did not specify this either in his handwritten note of 11 March, nor did he confirm verbally at the meeting. Cllr Davies admitted this.

Did Cllr Davies participate in the discussion as to the riding school?

4.2.3.5 The Case Tribunal concluded there was no evidence that Cllr Davies had participated in the discussion as to the letter received from the Vale of Glamorgan Council.

Did Cllr Davies withdraw from consideration of the matter of the riding school?

4.2.3.6 The Case Tribunal concluded that Cllr Davies did not withdraw. The Case Tribunal took the view that withdrawal was required as this was an Agenda item affecting his daughter-in-law's business. The councillor had raised the issue of licensing in respect of the business. The item discussed was one in which Cllr Davies had a personal interest and he did not leave the room, nor did he withdraw in any other form from consideration.

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 Cllr Davies reiterated his view that there was nothing mandatory that required him to withdraw. He accepted this was in variance with what the Judge had said in the Richardson case. He took the view, however, that it was not mandatory and he was not breaking any law.

5.1.2 The model standing orders of NALC superseded the code of conduct. There was evidence that other councillors were not leaving the room and just stayed there. He maintained that he had not participated in any matters relating to his family's businesses. It was not correct to rely on the verbatim notes of Miss Karp.

5.2 The Ombudsman's Report

5.2.1 It was contended that the conduct of Cllr Davies amounted to breaches of the Code.

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 Council's code of conduct as follows:

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

5.3.3 The Case Tribunal found that Cllr Davies on 13 February 2006 made an inappropriate comment. The comment amounted to a breach of paragraph 6(1)(b). Cllr Davies was acting in an official capacity. The comment was made at a Council meeting. The comment was inappropriate and could reasonably be regarded as bringing the office of member into disrepute.

5.3.4 Paragraph 11 of the code of conduct states "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:

(a) the member, one of the member's family or a friend, or any person with whom the member has a close personal association, or

(b) a body which employs those persons, or for which those persons have any degree of ownership, control or management,

to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area."

5.3.5 Paragraph 13 of the code of conduct states that "Members must regard themselves as having a personal interest in a matter to the extent that it relates to: (f) 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;"

5.3.6 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."

5.3.7 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 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."

5.3.8 The Case Tribunal found that Cllr Davies had breached Para 16(3).

5.3.9 The Case Tribunal further found that Cllr Davies on 9 January 2006, 13 February 2006 and 13 March 2006 failed to define the nature of a personal interest (on two occasions), failed to declare a personal interest (one occasion), participated in discussions on matters in which he had a personal interest (two occasions) and failed to withdraw from consideration of matters in which he had a personal interest on five occasions.

5.3.10 There were 10 breaches of paragraph 16(3) which could be summarised as follows:

Failure to withdraw

Meeting - 09.1.2006 (Paragraph 4.2.1.5 of Disputed Facts)

Meeting - 13.2.2006 (Paragraph 4.2.2.4)

Meeting - 13.2.2006 (Paragraph 4.2.2.8)

Meeting - 13.3.2006 (Paragraph 4.2.3.3)

Meeting - 13.3.2006 (Paragraph 4.2.3.6)

5.3.11 The Code of Conduct is unequivocal that a member must withdraw when the member has a personal interest. The Case Tribunal was satisfied on the 5 occasions there were breaches that Cllr Davies had a personal interest. Cllr Davies had submitted that the Standing Orders of NALC superseded the statutory code of conduct. This is a submission the Case Tribunal rejects. Cllr Davies had signed an undertaking to comply with the code of conduct. The code of conduct states that where a member has a personal interest, he must declare the interest and its nature and must withdraw from consideration of the matter.

5.3.12 The Monitoring Officer was unequivocal in his advice that the Member must physically withdraw from the room.

5.3.13 The circumstances of each of Cllr Davies' failures to withdraw were such that it should have required Cllr Davies to leave the room. The items being discussed were discussions as to the business affairs of his son and daughter-in-law. His continued presence in the room would have been perceived as thwarting open debate and influencing the outcome.

5.3.14 Even if the circumstances were such that leaving the room was not necessary, Cllr Davies failed in each of the 5 findings of fact to "withdraw" in any sense of the word on each occasion. There was evidence of other councillors during the 3 meetings under consideration leaving the room.

Failure to Disclose an Interest

Meeting - 13.2.2006 (Paragraph 4.2.2.5)

5.3.15 He had a duty under the Code of Conduct to disclose he had an interest in the Riding School when the matter was raised during the meeting. The fact that the matter had been raised without formal notice of motion did not in any way release Cllr Davies from his requirement to declare an interest.

Nature of interest

Meeting -13.2.2006 (Paragraph 4.2.2.1)

Meeting -13.3.2006 (Paragraph 4.2.3.4)

5.3.16 There were two breaches of failing to define the nature of his interest. It is a duty of a council member to outline precisely the nature of any interest.

Participation in Discussions

Meeting - 13.2.2006 (Paragraph 4.2.2.2)

Meeting - 13.2.2006 (Paragraph 4.2.2.6)

5.3.17 Cllr Davies had actively participated in discussions on 2 occasions on 13 February 2006 as to matters in which he had a personal interest. His son had undertaken work for the Council for 18 years and received payment for such work. The work undertaken by his son was to be the subject of a tender procedure. Cllr Davies contributed to the discussion. The discussions as to the riding school affected the legality of his daughter-in-law's business. A member of the public might reasonably conclude it would significantly affect the member's ability to act purely on the merits of the case. It was not a question of whether Cllr Davies did influence the process, but of the public perception.

5.3.18 The Case Tribunal did not find any other breaches of the code of conduct

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Davies submitted that the appropriate sanction was a reprimand. He would take greater care in the future. He had never previously been charged with any criminal offence or been involved in any civil proceedings, nor had he ever been the subject of any professional complaint. The allegations had been outstanding for 20 months. He would go away and take particular care in the future. He denied again the truthfulness of some of the evidence given. He took the view that the complainants had adopted the principle that if they throw a lot of mud some of it will stick. He had given 41 years service and would invite the Case Tribunal to issue a reprimand. He was due to come up for re-election next year and was seriously considering whether he should stand again as he had had enough.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case. The Case Tribunal concluded there were 10 occasions when there were breaches of Paragraph 16(3). Two of those were failure to define the nature of his business. The Case Tribunal concluded those were technical breaches and if they had stood alone there would be no sanction. Two of the occasions related to active participation by Cllr Davies in matters in which he had a personal interest. One was a fringe involvement (CPD Maintenance) and one in respect of the riding school involved him participating in a heated exchange. This did not assist the good running of the Council. There was a serious failure in respect of the riding school to make any declaration of the item under discussion related to his daughter-in-law's business. The Case Tribunal did not accept that there had been no opportunity to make a declaration. Cllr Davies admitted that discussion had proceeded for at least 10 -15 minutes. There were 5 serious breaches of failure to withdraw. Two

of those failures had occurred after Cllr Davies was aware of complaints having been made to the Ombudsman.

6.2.2 The Case Tribunal gave due consideration to Cllr Davies' good character, his long-standing years of service to the Council and to the community, and more particularly to the comments of some of his fellow councillors and their references. Those individuals held Cllr Davies in the highest esteem. The Case Tribunal also gave consideration to the period of time which had passed since the events. The Case Tribunal also gave consideration to the fact that he had not acted in any way which benefited his son or daughter-in-law's business.

6.2.3 The Case Tribunal, however, concluded that the failure to withdraw was deliberate. Cllr Davies had deliberately ignored the advice of the Monitoring Officer. He was an experienced councillor and would have been aware of the consequences of ignoring the advice of the Monitoring Officer. In the circumstances, the Case Tribunal does not believe a reprimand is appropriate given the number of breaches and the deliberate nature of those breaches. The Monitoring Officer had advised Cllr Davies that if he persisted in his view that there was no need to withdraw from matters where he had a personal interest, he would be subject to proceedings for breach of the code of conduct. The Case Tribunal views the deliberate nature of the breach as a serious aggravating feature. The Case Tribunal is extremely concerned as to the failure of Cllr Davies to recognise the importance and significance of the code of conduct. He has shown during the hearing little insight as to the effect of his conduct. The code of conduct exists in order to ensure that the highest standards of propriety are upheld in public life. The function of the Case Tribunal is to ensure that councillors adhere to the code of conduct so members of the public have confidence in the administration of local government at all levels.

6.2.4 Whilst the breaches are serious, the Case Tribunal believes they fall short of the need for disqualification. However, given the deliberate nature of the breaches, the lack of concern of Cllr Davies and the affect on public confidence, suspension is the appropriate sanction.

6.2.5 The breach of bringing the office of member into dispute arose from a single comment in a highly charged meeting. The Case Tribunal does not believe it requires a separate sanction.

6.2.6 The Case Tribunal, having considered all matters, believes a period of suspension of 9 months is appropriate. The Case Tribunal concluded by unanimous decision that Cllr Davies should be suspended from acting as a member of St Brides Major Community Council for a period of 9 months or, if shorter, the remainder of his term of office.

6.2.7 St Brides Major Community Council and the Vale of Glamorgan Council's Standards Committee are notified accordingly.

6.2.8 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...10 October 2007...

Hywel James

Chairperson of the Case Tribunal

Ian Blair
Panel Member

Helen Cole
Panel Member