

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2007-08/CT

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

RESPONDENT: Former Cllr Lawrence Bailey

RELEVANT AUTHORITY(IES): City and County of Swansea

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 The Case Tribunal met at 12.00 pm on Wednesday 28 November 2007 at the Angel Hotel, Cardiff. In accordance with the Respondent's wishes, and in exercise of its powers under the relevant regulations, the Case Tribunal determined its adjudication by way of written representations.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 26 June 2007, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against former Cllr Lawrence Bailey. The allegations were that, whilst a member, Cllr Bailey had breached the City and County of Swansea's Code of Conduct by:

- i. Making improper use of Council-owned computer equipment for private purposes by downloading inappropriate images and sending letters to a local newspaper, which he falsely represented as being from members of the public.
- ii. In so doing, Cllr Bailey brought the office of member into disrepute.

- iii. Cllr Bailey failed to show respect and consideration for others by failing to take account of the impact of his actions on council employees who later saw the images on the computer equipment.
- iv. Cllr Bailey's pattern of persistent misconduct demonstrated a failure to promote the principles of the code by leadership and example.

2.2 The Councillor's Written Response to the Reference

2.2.1 In a letter from his solicitor dated 1 August 2007, former Cllr Bailey commented:

- i. He voluntarily drew the Ombudsman's attention to misuse of Council supplied equipment.
- ii. He submitted that two of the computers were not currently operational, though he accepted misuse of another computer amounted to a breach of the code of conduct.
- iii. Writing letters to the press under pseudonyms was widespread practice in political life in Wales.
- iv. He had resigned his seat as a councillor and publicly stated he did not intend to return to public life. He had suffered the embarrassment of being arrested and the allegations being given prominence in the press.
- v. No criminal charges were brought against him.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following **undisputed** material facts:

3.1.1 Cllr Bailey had been a member of the City and County of Swansea Council and, prior to that, the City of Swansea Council since 1983.

3.2 Cllr Bailey was the Leader of the City and County of Swansea from 2001-2004.

3.3 Cllr Bailey gave written undertakings to observe the Council's code of conduct on 10 January 2002 and 14 June 2004.

3.4 Cllr Bailey was a member of the Council's Standards Committee from 2004 to 2006.

3.5 Cllr Bailey was present at a meeting of the Standards Committee on 24 June 2005, when the Committee approved a “Members’ Protocol for the use of Council provided IT Facilities.”

3.6 Cllr Bailey was also present at a meeting of the Standards Committee on 20 January 2006, when the Committee considered an amended protocol.

3.7 Cllr Bailey addressed the Standards Committee on 20 January on the dangers of accessing the internet where “inappropriate images could be accidentally downloaded”.

3.8 As a direct result of Cllr Bailey’s intervention, an amendment was made to the protocol before the Council approved the final version on 2 March 2006.

3.9 The Council issued the following computer equipment to Cllr Bailey:

HP laptop model number NX500 – issued in June 2004
Compaq desktop – issued in February 2003
Dell laptop – issued in October 2003
Compaq laptop – issue date not known

3.10 Cllr Bailey returned the HP laptop to the Council for repair in October 2005. On examination, the computer’s hard disk drive was found to contain adult pornographic images. The laptop was returned to Cllr Bailey with a new replacement hard disk drive fitted.

3.11 There were a number of discussions in the period October 2005 to January 2006 between Cllr Bailey and the then Chief Executive of the Council and, separately, the then Deputy Monitoring Officer, about the images that had been found on the removed hard disk drive.

3.12 Cllr Bailey returned the HP laptop to the Council for further repair in April 2006. The replacement hard disk drive was again found to contain pornographic images.

3.13 A subsequent police examination of the computer equipment issued to Cllr Bailey found the following:

HP laptop – hard disk drive removed in October 2005

The hard disk drive contained 6009 adult pornography images.

HP laptop – replacement hard disk drive inserted in October 2005

The hard disk drive contained a number of image files of pornography.

Compaq desktop

The hard disk drive contained a large number of graphic image files of which almost half were adult hard-core pornography.

Dell laptop

The hard disk drive contained a quantity of adult pornography, but the main finding was of 253 documents consisting in the main of letters to the Swansea Evening Post. Although the police examination showed Cllr Bailey as being the author, the documents purported to have originated from various residents of Swansea. A number of these letters were sent to, and published by, the Swansea Evening Post. A dip sample of the letters found that the alleged authors did not reside at the addresses stated, that in some cases the addresses did not exist or the postcodes did not match them, or that the true residents had no knowledge of the letters or the alleged authors.

3.14 The police investigation concluded that Cllr Bailey had committed no criminal offence.

3.15 On 17 November 2006, the Ombudsman received an allegation from Mr Paul Smith, Chief Executive of the City and County of Swansea, that Cllr Bailey had failed to comply with the Council's code of conduct.

3.16 On the same date, the Ombudsman received a self-referral from Cllr Bailey in which he said that he had misused his "...council supplied computer equipment breaching 7(c) of the code of conduct and 6(b) n (sic) bringing the office of councillor into disrepute.

4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

4.1 The Respondent's Submissions

4.1.1 Through his solicitor's letter of 1 August 2007, former Cllr Bailey acknowledged that, in making a voluntary reference to the Ombudsman, he accepted that he had misused computer equipment supplied by the Council in breach of paragraph 7(c) of the code of conduct and, in so doing, brought the office of councillor into disrepute in breach of paragraph 6(b) (sic). Former Cllr Bailey also indicated that he did not disagree with the Ombudsman's conclusion that he had breached paragraphs 4(a) and 9(d) of the Council's code of conduct.

4.2 The Ombudsman's Report

4.2.1 It was contended that the conduct amounted to a breach of the code of conduct.

4.3 Case Tribunal's Decision

4.3.1 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 City and County of Swansea's code of conduct as follows:

4.3.2 Paragraph 4(a) of the code of conduct states “[Members of the authority:] must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.”

4.3.3 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.”

4.3.4 Paragraph 7(c) of the code of conduct states that “[Members:] Must ensure that the resources of the authority are not used improperly for their own private purposes, their family, friends and persons with whom they have a close personal association.”

4.3.5 Paragraph 9(d) of the code of conduct states “Members must promote these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority’s statutory officers and its resources.”

4.3.6 The Case Tribunal found that Cllr Bailey had used three separate computers to download hard-core adult pornography. The Council had supplied the three computers for use by him as a councillor.

4.3.7 In October 2005, due to the images on the HP laptop computer the hard disk drive was removed and replaced by a new hard disk drive.

4.3.8 Cllr Bailey intentionally downloaded a large number of images of adult hard-core pornography, between June 2001 and April 2006. The number of images were as follows:

HP laptop – hard disk drive removed in October 2005

The hard disk drive contained 6009 adult pornography images.

HP laptop – replacement hard disk drive inserted in October 2005

The hard disk drive contained several thousand pornographic images.

Compaq desktop

The hard disk drive contained at least 70,000 graphic image files. Almost half of those images were adult hard-core pornography.

Dell laptop

The hard disk drive contained a quantity of adult pornography.

4.3.9 The images were not of a criminal nature. The images, however, would have caused distress and embarrassment to Council officials that would have had to view them. This amounted to breach of paragraph 4(a). In reaching this view, the Case Tribunal has noted all of the evidence before it and, in particular, the report of the Police following examination of the computer equipment.

4.3.10 The three computers remained Council equipment. Their misuse amounted to a breach of paragraph 7(c).

4.3.11 The gross and persistent misuse of Council equipment and the failure to give regard to the effect on employees of viewing the images amounted to a breach of 6(1)(b) in that it brought the office of member into disrepute.

4.3.12 Cllr Bailey drafted, submitted and allowed to be published in a local newspaper letters which he had prepared using Council equipment and which he falsely represented as being from members of the public. The Case Tribunal was satisfied that this amounted to a deliberate attempt to create fake expressions of view by members of the public. The Case Tribunal relied on the findings of the police, his own admissions and upon reading some of the letters submitted. This amounted to a breach of 7(c). The deceit on the public also amounted to a breach of 6(1)(b) in that the office of member was brought into disrepute.

4.3.13 The cumulative effect of the above conduct amounted to a breach of 9(d).

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

5.1.1 In a typed statement to the tribunal dated 14 November 2007, Cllr Bailey submitted:

- i. Regret for his misconduct and that he had made a public apology.
- ii. That he had resigned his office as a councillor.
- iii. He had been subject to a disproportionate amount of press attention, which had caused distress to him and his family.

5.2 Case Tribunal's Decision

5.2.1 The Case Tribunal considered all the facts of the case including the submissions made by Cllr Bailey on 1 August and 14 November 2007. The Case Tribunal felt that the breaches were so serious that disqualification was appropriate. In so doing it took account of:

- i. the persistent and repeated breaches of the code of conduct,
- ii. the serious misuse of the Council's property

- iii. the severe undermining of public confidence caused by the disrepute that he brought to the office of member.

5.2.2 The aggravating factors included:

- i. The volume and persistent downloading of images over five years.
- ii. Use of more than one computer for this purpose.
- iii. Failure to heed advice given on two occasions as to his conduct.
- iv. The fact that he was a member of the Standards Committee, whose functions include promoting and maintaining high standards of conduct by members.
- v. He had sought to influence the formulation of the Council's proposed member protocol for use of council provided IT facilities.
- vi. He was a senior and experienced member of the authority.
- vii. The deliberate misleading of the public as to the authors of letters published in a local newspaper. The political nature of the letters would indicate that he was motivated by political gain.
- viii. The serious undermining of public confidence by his actions.

5.2.3 These factors would justify an period of disqualification in excess of 3 years. The Case Tribunal had regard to mitigating factors, including:

- i. Cllr Bailey's long years of service and that he had not been guilty of any previous breaches of the code of conduct.
- ii. Cllr Bailey had resigned as a councillor.
- iii. His cooperation during the investigation
- iv. His expressions of remorse.
- v. His acceptance to the Case Tribunal that his conduct amounted to a breach of the code of conduct.

The above allowed the Case Tribunal to reduce the length of disqualification.

5.2.4 The Case Tribunal concluded by unanimous decision that former Cllr Bailey should be disqualified for 2 years and 6 months from being or becoming a member of the City and County of Swansea Council or of any other relevant authority within the meaning of the Local Government Act 2000.

5.2.5 The City and County of Swansea and its Standards Committee are notified accordingly.

5.2.6 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...28 November 2007...

Mr Hywel James
Chairperson of the Case Tribunal

Mr Colin Evans
Panel Member

Mrs Christine Jones
Panel Member