

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/001/2008-09/CT

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

**RESPONDENT:** Councillor E Peter Foley

**RELEVANT AUTHORITY(IES):** Bridgend County Borough Council

**1. INTRODUCTION**

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal at 10.00 am on Wednesday 25 February 2009 at the Heronston Hotel, Ewenny Road, Bridgend. The hearing was not open to the public.

1.3 Cllr Foley attended and represented himself.

**2. PRELIMINARY DOCUMENTS**

**2.1 Reference from the Public Services Ombudsman for Wales**

2.1.1 In a letter dated 9 December 2008, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Foley. The allegations were that Cllr Foley had breached the Council's Code of Conduct by disclosing confidential information at a meeting on 4 March 2008, thereby bringing the office of member and his authority into disrepute.

2.1.2 Cllr Foley held a member surgery on the evening of 4 March. During the course of the evening, Cllr Foley undertook to share his experience as a councillor with a third person ('Mrs C' in the Ombudsman's report) who was standing at the forthcoming local elections. Cllr Foley recounted a case about a girl who had refused a council housing tenancy in an area where her father lived, because her father had abused her. In so doing, Cllr Foley referred to the girl by name. The girl was the step-daughter of another person present at the meeting ('Mrs B'), who was married to the girl's father.

## **2.2 The Councillor's Written Response to the Reference**

2.2.1 Cllr Foley commented on the following matters, referred to by paragraph numbers of the Ombudsman's report:

- a) **Paragraphs 47 and 66** – Cllr Foley apologised to 'Mrs B's' family as well as to her.
- b) **Paragraph 87** – Cllr Foley let slip the name of 'Mrs B's' step-daughter only, in a matter of a second, and immediately moved away from the subject.

## **2.3 The Ombudsman's Written Representations**

2.3.1 In responding to Cllr Foley's written representations (summarised above), the Ombudsman noted that 'Mrs B' had said that Cllr Foley should have apologised to her and her husband (ref paragraph 21, Ombudsman's report). However, neither 'Mrs B' nor Cllr Foley produced a copy of the latter's letter of apology, so its contents could not be proven.

2.3.2 The Ombudsman did not dispute Cllr Foley's assertion that he mentioned 'Mrs B's' step-daughter by name once.

## **3. ORAL SUBMISSIONS**

3.1. Councillor Foley appeared before the tribunal and accepted that he was in breach of the Code of Conduct by virtue of what he said at the meeting in March 2008. He also produced a letter of apology that he had written to Mrs B on 17 March 2008.

## **4. FINDINGS OF FACT**

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

4.1.1 Cllr Foley has been an elected member for over 17 years.

4.1.2 Cllr Foley was a member of Bridgend County Borough Council at the material time.

4.1.3 Cllr Foley gave written undertakings to observe the Council's Code of Conduct on 14 June 2004, 26 March 2008 and 12 May 2008.

4.1.4 Cllr Foley did not attend any of the training sessions for members of the Council on the Code of Conduct which were held on 17 December 2004, 14 January 2005 and 10 February 2005.

4.1.5 Cllr Foley attended a subsequent training session (conducted by Bridgend County Borough Council) on the new Code of Conduct adopted by the Council with effect from 5 May 2008.

4.1.6 Cllr Foley, 'Mrs B' and Mrs 'C' were present at the offices of 'Association G' on 4 March 2008.

4.1.7 Whilst in conversation with 'Mrs B' and 'Mrs C' at the offices of 'Association G' on 4 March 2008, Cllr Foley referred to a case about girl who had refused a council housing tenancy in an area where her father lived, because her father had abused her.

4.1.8 Cllr Foley referred to the girl by name during the conversation.

4.1.9 The girl referred to by Cllr Foley was 'Mrs B's' step-daughter.

4.1.10 The alleged abuser was 'Mrs B's' husband.

4.1.11 Cllr Foley has apologised, both orally and in writing, for referring to the girl by name.

4.2 The Case Tribunal found no **disputed** material facts.

## **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 Foley accepted that what he said amounted to a breach of the code.

### **5.2 The Ombudsman's Report**

5.2.1 The Ombudsman found insufficient evidence to prove that the information given to Cllr Foley about 'Mrs B's' step-daughter by a fellow councillor had been disclosed in confidence. The Ombudsman did not, therefore, consider that there was evidence that Cllr Foley had breached paragraph 5(a) of the Code of Conduct when he revealed the name of 'Mrs B's' step-daughter. Paragraph 5(a) provides that a member must not disclose information given in confidence without the express consent of the person authorised to give such consent, or unless required by law to do so.

5.2.2 The Ombudsman said that Cllr Foley's use of 'Mrs B's' step-daughter's name, though probably a slip, was an error on his part. As a consequence, there was now a danger that details of the girl's case would become more widely known in the community. The Ombudsman asserts that Cllr Foley should have exercised more care to avoid naming a person in a sensitive case, particularly as that person had obvious links with the community where he held his surgery. The Ombudsman was of the view that there was sufficient evidence to support a finding that Cllr Foley had breached paragraph 6(1)(b) of the Code of Conduct by bringing the office of member and his authority into disrepute.

### **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 Bridgend County Borough Council's code of conduct as follows:

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

5.3.3 The Case Tribunal found that Cllr Foley had breached the Code of Conduct in that he disclosed an individual's name to another person in circumstances in which he should not have done so. The consequences meant that in so doing he brought his office and the authority into disrepute.

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

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

6.1.1 Cllr Foley contended that the Tribunal should take into account the following:

- a. his 18 years as a councillor
- b. the work that he had done whilst on the council especially as regards the amount of case work he had undertaken
- c. that he had apologised for his indiscretion orally twice and in writing by letter dated 17 March 2008 which he had sent to Mrs B
- d. that his health had been affected by this referral to the Ombudsman
- e. that he sincerely apologised to the Tribunal and to the family for his lack of judgement
- f. that he had never previously been the subject of a complaint.

### **6.2 Case Tribunal's Decision**

6.2.1 The Case Tribunal considered all the facts of the case and in particular Cllr Foley's contentions in mitigation which affected the manner in which the breach should be dealt.

6.2.2 The Case Tribunal concluded by unanimous decision that it was neither necessary nor desirable to suspend, partially suspend or disqualify the respondent given the unusual circumstances of the case. The Tribunal also took into account the Respondent's acceptance of his actions, long service, his apologies to anyone who may have been affected by the case and all the other mitigating factors.

6.2.3 Bridgend County Borough Council and its Standards Committee are notified accordingly.

6.2.4 The Respondent has the right to seek the leave of the High Court to appeal 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 21 days of the date of the Case Tribunal's decision.

Signed.....

Date...25 February 2009...

Stewart Sandbrook-Hughes  
Chairperson of the Case Tribunal

Colin Evans  
Panel Member

Juliet Morris  
Panel Member