

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/006/2009-010/A

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

APPELLANT: Councillor R E Barton

RELEVANT AUTHORITY(IES): Llanarmon yn Ial Community Council
Llandegla Community Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Robert (“Bob”) Barton against the decision of Denbighshire County Council’s Standards Committee that he had breached the above community councils’ codes of conduct and should be suspended for 3 months.

1.2 A hearing was held by the Appeal Tribunal commencing at 9.30 am on Tuesday 23 March 2010 at the Northop Hall Country House Hotel, Chester Road, Nr Chester, CH7 6HJ. The hearing was open to the public.

1.3 Cllr Barton attended the hearing.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 In an email dated 8 December 2010, the Adjudication Panel for Wales received an appeal from Cllr Barton against the determination of Denbighshire County Council’s Standards Committee that he had breached the code of conduct.

2.1.2 The Standards Committee’s determination followed its consideration of a report by the Public Services Ombudsman for Wales (“the Ombudsman”) under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000.

2.1.3 The allegations were that Cllr Barton had breached paragraph 6(1)(a) of the above community councils’ codes of conduct through his behaviour at a meeting of Llanferres Community Council on 10 July 2008.

2.1.4 Cllr Barton attended the meeting on 10 July 2008 as a member of the public and sat in the public gallery. He addressed the community council on a number of matters with the council's consent. He also asked to address the council on another specific matter and the council stated that it did not want to hear from him on that matter. Cllr Barton spoke with a loud voice whilst the council discussed that item. It was alleged by councillors and members of the public who attended the meeting that he interrupted, that the Chairman asked him to stop interrupting and reminded him about his obligations under the code of conduct. It was also alleged by these persons that the Chairman warned Cllr Barton that if he did not stop interrupting he would ask him to leave and that he then in fact asked him to leave after further interruptions. Cllr Barton's response was "I would like to see him make me". Cllr Barton did not leave and remained to the end of the meeting. The council's concern about Cllr Barton's behaviour during the meeting was minuted by the Clerk.

2.1.5 In a letter dated 11 July 2008 Mrs Pat Armstrong, who was present at the meeting as a member of the public, complained to the Ombudsman about Cllr Barton's behaviour at the meeting and the Ombudsman then commenced an investigation and prepared a report, which is dated 24 July 2009. The Ombudsman referred the matter to the Standards Committee of Denbighshire County Council who, on 13 November 2009, found that Cllr Barton failed to comply with paragraph 6(1)(a) of the code of conduct at the meeting and that he should be suspended from being a member for a period of 3 months. The Chair of the Standards Committee wrote to Cllr Barton on 16 November 2009 to notify him of the decision, giving reasons.

2.2 The Appellant's Response

2.2.1 On 13 January 2009 Beverley Allen, one of the Ombudsman's investigators wrote to Cllr Barton with some questions and sought his replies. She sent him a copy of all of the information that had been gathered and sought his response.

2.2.1.1 Cllr Barton said he had to accept that the consequences of his Asperger's means at times he has little control of his reactions. Whilst he has researched Asperger's and ADHD and is aware of his limitations, he still awaits formal NHS support. He is well known for his forthrightness and ability to comment spontaneously on almost any subject.

2.2.1.2 Cllr Barton said that how paragraph 6(1)(a) of the code applies comes down to interpretation of the wording, especially "reasonably". He would expect it to cover him mainly when officially acting as a council member. He was attending meetings of Llanferres Community Council as a private individual. Any actions made by him must be conscious ones. The Chair is well aware of his Asperger's but has consistently ignored it and the Chair and members of public know how to goad him and on this occasion they succeeded.

2.2.1.3 Cllr Barton said he attended the meeting as a member of the public and as a former member of this council. He was aware of outstanding projects that he had established as a member of the council and in which he had been actively involved. He was asked to address the meeting on numerous matters and each

time he wished to contribute he raised his hand and waited for the Chair to invite him to speak. On item 9 of the agenda he was not invited to speak and for the first time that evening he was not invited to contribute. He had not therefore interrupted the meeting up to this stage. When he raised his hand he had to wait several times before the Chair even acknowledged him and on more than one occasion he had to call out "Chair" when the Chairman was about to close an item without calling him. He did not break the continuity of the meeting. He had contributed to the discussion on this item at the previous meeting, but the Chair had not contacted him in the meantime and given this background he was not surprised that for the first time he was not called to speak on this item in the meeting on 10 July. He had spoken to Tony King during the meeting and given his loud voice, the Chair may have picked up some of his comments, but they were not directed at members and it was only at this stage that the Chair commented about interruptions. Cllr Barton asked Tony King why persistent talking by other members of the public was not deemed interruptions.

2.2.1.4 Cllr Barton said he was not asked to leave the meeting. The Chair had asked him whether he would like to leave the meeting to which he answered "no". He took out his copy of the Llandegla Community Council standing orders and showed Tony King paragraph 66, pointing out the words "order" and "removed". He would have left had the Chair consulted the Clerk and referred to that standing order. He is well known for being a stickler in relation to standing orders. He had not left the meeting as he considered the Chair had given him the option to stay.

2.2.1.5 Cllr Barton made no comment on the information given to the Ombudsman by some of the witnesses. He felt that Mrs Armstrong's formal complaint is unjustified in the circumstances and is a personal vendetta, frivolous, vexatious and politically motivated. He did not agree with her recollection of the events. He did not "continually" interrupt and he objected to her saying "his attitude was arrogant and domineering towards the Chair" and "tantamount to bullying". The Chair was bullying him and it was premeditated.

2.2.1.6 Cllr Barton felt that the Monitoring Officer, Ian Hearle, had a good understanding of him, his training and his core beliefs.

2.2.1.7 Cllr Barton's response to the information given to the Ombudsman by Cllrs Olive Parry, John Almond (the Chairman), Yvonne McCorry, David Jones, Jac Armstrong, Christine Evans, Robert Jones, Margaret Davies and Peter Williams and by the members of the public present, Janet Jones and Vera Stobbs, was essentially that their recollection is unreliable and unclear on many important matters.

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

- a) **Paragraphs 4 and 49** – Should read paragraph 66 (not paragraph 64) of Llanferres Community Council Standing Orders.
- b) **Paragraphs 6, 51, 54 and 56** - The Ombudsman has failed to understand the nature of Asperger's Syndrome and how it affects him.

- c) **Paragraphs 14, 15, 34, 35 and 45(a)** - The ombudsman should not have referred to this Report.
- d) **Paragraphs 16 and 54** - He was invited to address the meeting and did so ten times and he did not interrupt on those occasions.
- e) **Paragraph 33** - The Ombudsman has failed to include some information which he provided.
- f) **Paragraphs 34 and 41** - Should read 10th not 12th of July 2008.
- g) **Paragraphs 42, 45(g)-(i) 49, 50, 55 and 56** - It is factually incorrect to say that he was asked to leave the meeting. He was asked 'if I would like to leave' and because of his Asperger's Syndrome he took this literally as a question to which there are two answers, yes or no, and he said no. The Chair knew he would take him literally.
- h) **Paragraphs 42, 45(i), 49, 51 and 55** - The Ombudsman's Report is biased.
- i) **Paragraph 45** - The Standards Committee Meeting was procedurally flawed.
- j) **Paragraph 47** - Council members 'may have heard' his comments not 'would have heard'.
- k) **Paragraph 48** - The Chair did not refer to the code of conduct at this stage of the meeting. It was referred to in relation to a booklet 'how to complain that a local authority member has broken the code of conduct'.
- l) **Paragraph 48** - It was not at this stage of the meeting that he was asked why he was attending.
- m) **Paragraph 54** - He was given no formal warning. His comment ' I would like to see him make me' was made as a jocular aside to Tony King, his immediate neighbour. He made only two comments at the end of the meeting in duress/stress brought on by his Asperger's Syndrome. No malice was intended by these comments which were over heard. He showed respect for the Chair. He was not 'bullying towards the Chairman'. The Chairman was bullying him.

3. ORAL SUBMISSIONS

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

Mrs Pat Armstrong

3.2 Mrs Armstrong gave evidence on oath. She confirmed the content and truth of her letter of complaint. Cllr Barton had interrupted the meeting by shouting

"Chair, Chair" when he wished to be heard, by speaking when the councillors were discussing matters, by speaking loudly on the item upon which he had been refused permission to speak and by imposing his views on the meeting. He was asked to leave the meeting by the Chairman, Cllr John Almond, and responded by saying "no". Cllr Barton made the comment "I would like to see him make me" loudly and in an aggressive, bullying and intimidating manner. The comment was directed at the Chairman. She believed that Cllr Barton's behaviour shocked and upset people at the meeting. This is not the first time she has seen Cllr Barton behave in this way since she has attended council meetings since 2007. She has nothing personal against Cllr Barton; she does not know him; it is his behaviour, not him, to which she objects. She was very uncomfortable about his behaviour at the meeting, which was why she complained to the Ombudsman. Mrs Armstrong also confirmed she distinctly remembered Cllr Almond reminding Cllr Barton that he had to follow the code of conduct. She was horrified at the way he bullied the Chairman. He was formally warned about his interruptions and reminded about the code of conduct, therefore given a fair chance to moderate his behaviour, before he was asked to leave.

Cllr John Almond

3.3 Cllr Almond gave evidence on oath. He confirmed the content and truth of the information which he had given to the Ombudsman in a letter dated 4 October 2008. He had made notes of the meeting in his journal on the following day and his letter was based on those notes. He was the chairman of the meeting. Cllr Barton raised his hand indicating he wished to speak on a particular matter; he asked the councillors if they wished to hear from him, they said "no" and he said to Cllr Barton "no, sorry Bob". Cllr Barton spoke in a loud voice and he stopped him again on two occasions, warning him that if he continued to interrupt he would have to ask him to leave. Cllr Barton continued to speak and he asked him to leave. He believed the words he had used were "I must ask you to leave". Cllr Barton's response was along the lines of the words attributed to him, namely "I would like to see him make me" and said in a challenging, not a jocular manner. Cllr Almond reminded Cllr Barton about his obligations to observe the code of conduct and asked him, again, to leave, to which Cllr Barton's response was an emphatic "no". Cllr Almond found Cllr Barton's conduct disrespectful to him and his office of Chairman.

Cllr Olive Parry

3.4 Cllr Parry gave evidence on oath. She confirmed the content and truth of the email which she had sent to the Ombudsman on 3 October 2008. Cllr Barton was allowed to speak and spoke freely during the meeting. On one occasion he was not given permission to speak on a particular item, but he kept interrupting by "butting in with his opinion" taking no notice of the Chairman's request for him to be quiet. The Chairman asked him to be quiet at least twice before asking him to leave. The words attributed to Cllr Barton were made in a serious not a jocular fashion and he refused to leave. She could not confirm or deny, as she did not remember, whether or not the Chairman had reminded Cllr Barton about the code

of conduct. He was "acting like a councillor" at this meeting. He did not show respect to the Chairman's office. He is a councillor and should know how to behave better than this.

Cllr David Jones

3.5 Cllr Jones gave evidence on oath. He confirmed the content and truth of the letter dated 10 October 2008 which he had sent to the Ombudsman. During the meeting the councillors indicated they did not wish to hear Cllr Barton's views, but he interrupted by speaking on the matter when he had been denied permission to speak. The Chairman warned him twice about the interruptions and warned him that he would ask him to leave if he continued to interrupt. Cllr Barton continued to speak and the Chairman then asked him to leave the meeting. The words attributed to Cllr Barton were made by him. These comments were made seriously. The Chairman definitely reminded him about the code. Cllr Barton's behaviour was disrespectful to the office of the chairman.

Mrs Gwyneth Dillon

3.6 Mrs Dillon gave evidence on oath. She confirmed the content and truth of the information which she had previously given to the Ombudsman and the minutes of the meeting. Mrs Dillon was the Clerk of the meeting. Generally, when Cllr Barton wishes to speak he will raise his hand and then speak at length. Sometimes he is denied, otherwise he will "go on and on and on". She did not recall his being denied the opportunity to speak at this meeting. He interrupted the meeting: He was asked to leave and refused. Cllr Almond reminded him about the code of conduct. He said he was not at the meeting as a councillor but as a member of the public. Towards the end of the meeting she felt Cllr Barton was disrespectful to the councillors and this upset her. They intended to speak to him about his behaviour. She felt this matter need not have got to this stage. She had hoped it could have been dealt with "in house" which would depend on Cllr Barton's co-operation and it may have been difficult for him to "hold back" as there are so many items to which he wishes to provide input. Although he is no longer a member of the Llanferres Community Council he "can't let go". His continued interruption disconcerted the councillors. There has been an improvement in his behaviour lately, he is a lot quieter and a bit more sedate. She had not been surprised to hear he had a preliminary or provision diagnosis of Asperger's syndrome and she had found him some literature on the matter.

Cllr Bob Barton

3.7 Cllr Barton made the following oral submissions on the disputed facts:

3.7.1 He was asked to address the meeting on ten occasions, therefore he did not interrupt during this time, nor was his involvement unwanted. He did not intentionally interrupt and is not aware that he had interrupted the meeting. He sat next to Tony King and "passed cracks" all evening with him.

3.7.2. The code of conduct was raised in relation to an item to do with a booklet received from the Ombudsman's office about how to complain about councillors. It was not mentioned or raised in relation to his conduct at the meeting.

3.7.3 The comment "I would like to see him make me" was said to Tony King and he laughed. Cllr Barton is well known for his "quips and comments" and this comment was made in a jocular fashion but it backfired. He was referring to his own height and weight compared to those of the Chairman, who is smaller.

3.7.4 For the bulk of the meeting he was respectful. He was fuming inside but he contained it. He made one comment and "let them get on with it". Whilst the evidence of the other witnesses is consistent and to the effect that his conduct and attitude towards the chairman was disrespectful, they are mistaken and he has an exceptionally good and reliable memory.

3.7.5 The Chairman did not ask him to stop interrupting the meeting, or if he did he was not aware that he had said anything to that effect. No formal or informal warning was made by the Chairman that if he did not stop interrupting he would be asked to leave. The Chairman did not ask him to leave. He was asked "if I would like to leave" and replied "no". He believed he had the choice to stay or leave and chose to stay.

3.7.6 He does not accept the written information in the Tribunal Bundle given by Cllrs Yvonne McCorry, Jac Armstrong, Robert Jones, Margaret Evans and by Mrs Vera Stobbs to the Ombudsman. It is unreliable or they are mistaken or unclear on many important matters.

4. FINDINGS OF FACT

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

4.1.1 Cllr Barton is a member of Llanarmon yn Ial Community Council and Llandegla Community Council.

4.1.2 On 7 May 2008, Cllr Barton signed a declaration of acceptance of office as a member of Llanarmon yn Ial Community Council, undertaking to observe its code of conduct. On 12 May 2008, Cllr Barton signed a declaration of acceptance of office as a member of Llandegla Community Council, undertaking to observe its code of conduct.

4.1.3 Llanferres Community Council met on 10 July 2008 and Cllr Barton was in attendance at the meeting in the public gallery.

4.1.4 At that meeting, Cllr Barton addressed the Community Council on a number of matters with the Council's consent.

4.1.5 At that meeting, Cllr Barton asked to address the Community Council on another specific matter and the Council stated that it did not want to hear what he had to say.

4.1.6 Cllr Barton spoke with a loud voice whilst the Community Council was discussing the item he had been refused permission to address the Council upon.

4.1.7 Cllr Barton has confirmed that he said "I would like to see him make me."

4.1.8 Cllr Barton did not leave and remained to the end of the meeting.

4.1.9 The Council's concern about Cllr Barton's behaviour during the meeting was minuted.

4.1.10 The following members attended the meeting:

Cllr John Almond

Cllr Olive Parry

Cllr Yvonne McCorry

Cllr David Jones

Cllr Jac Armstrong

Cllr Robert Jones

Cllr Margaret Davies

Cllr D Peter Williams

4.1.11 The clerk to the meeting was Mrs Gwyneth Dillon.

4.1.12 The following persons were present at the meeting in the public gallery:

Mrs Pat Armstrong

Mrs Vera Stobbs

Mrs Janet Jones

Mr Tony King

4.1.13 In a letter dated 11 July 2008, Mrs Pat Armstrong complained to the Ombudsman about Cllr Barton's behaviour at the meeting of the Llanferres Community Council in 10 July 2008.

4.1.14 The Ombudsman then commenced an investigation into Cllr Barton's conduct at that meeting and prepared a report, which is dated 24 July 2009.

4.1.15 The Ombudsman referred the matter to the Standards Committee of Denbighshire County Council.

4.1.16 On 13 November 2009, the Standards Committee found that Cllr Barton failed to comply with paragraph 6(1)(a) of the code of conduct at the meeting of the

Llanferres Community Council on 10 July 2008 and that he should be suspended from being a member for a period of three months.

4.1.17 The Standards Committee found that Cllr Barton did interrupt the meeting and did not heed the warnings given to him by the Chairman.

4.1.18 The Standards Committee also found that Cllr Barton had attended the meeting in the knowledge that he expected to be asked to leave.

4.1.19 The Standards Committee found that Cllr Barton's understanding of the decision of the Chairman to ask him to leave the meeting was met with the remark "I would like to see him make me", confirming that Cllr Barton did understand the request to withdraw from the room.

4.1.20 The Standards Committee found the remark "I would like to see him make me", and Cllr Barton's refusal to obey the Chairman's instruction to leave the meeting, disrespectful and "can reasonably be regarded as conduct which brings the office of member into disrepute."

4.1.21 The Standards Committee found that, on the balance of probabilities, the evidence presented to the Standards Committee meeting supported that Cllr Barton did act in the way described by the complainant and the witnesses.

4.1.22 The Chair of the Standards Committee wrote to Cllr Barton on 16 November 2009 to notify him of the Standards Committee's determination.

4.1.23 Cllr Barton has been investigated by the Ombudsman in relation to a similar matter. The Ombudsman's report on that matter was issued on 7 April 2006. The Ombudsman found in that instance that no action should be taken.

4.1.24 Cllr Barton was provisionally diagnosed with Asperger's syndrome in October 2004.

4.1.25 Cllr Barton has stated that following the recommendations of the Ombudsman's report dated 7 April 2006, he worked with Denbighshire County Council and his General Practitioner in order to find a specialist to help him with his condition, however the search was fruitless. Cllr Barton has also stated that he is aware of his limitations and that one of the consequences of his condition is that there are times when he has had little control over his reactions.

4.1.26 Cllr Barton has also stated that he is well known for his forthrightness and ability to comment spontaneously on almost any subject.

4.2 The Appeal Tribunal found the following **disputed** material facts:

4.2.1 Did Cllr Barton interrupt the meeting of the Llanferres Community Council on 10 July 2008?

4.2.2 At the meeting on 10 July 2008, did the Chairman, Cllr John Almond, remind Cllr Barton about his obligations under the code of conduct?

4.2.3 Did the Chairman ask Cllr Barton to stop interrupting the meeting?

4.2.4 Did the Chairman warn Cllr Barton that if he did not stop interrupting the meeting he would ask him to leave?

4.2.5 Did the Chairman ask Cllr Barton to leave the meeting?

4.2.6 To whom did Cllr Barton say "I would like to see him make me"?

4.2.7 Did Cllr Barton say "I would like to see him make me" in a jocular fashion?

4.2.8 Was Cllr Barton's conduct and attitude towards the Chairman at the meeting on 10 July 2008 arrogant and domineering, showing disregard for the Chairman's office and generally disrespectful?

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

4.3.1 The evidence given at the Hearing by Mrs Armstrong, Cllrs Almond, Parry and Jones and by Mrs Dillon (the Clerk) was consistent. They all said Cllr Barton had interrupted the meeting. The minutes of the meeting record that "concerns were expressed by the continued interruptions during the course of the meeting by Mr B Barton". The written information, contained in the Tribunal Bundle, given by the other witnesses (other councillors and other members of the public also present at the meeting) is also reasonably consistent and to similar effect. In the light of such weight of evidence, the Appeal Tribunal found that Cllr Barton interrupted the meeting.

4.3.2 The evidence given at the Hearing by Mrs Armstrong, Cllrs Almond and Jones and by Mrs Dillon was consistent. They all said the Chairman reminded Cllr Barton about his obligations under the code of conduct. Cllr Parry could not remember, one way or the other, whether he had or not. Cllr Jac Armstrong said in the letter which he sent to the Ombudsman, that the Chairman had done so. The written information given by the other witnesses is silent on the matter, but the question was not specifically put to them by the Ombudsman's investigator. Cllr Barton said he told the Chairman, at the meeting, that he was attending not as a councillor but as a member of the public, which suggests to the Appeal Tribunal that his obligations under the code of conduct were indeed mentioned in the context described by the witnesses. The Appeal Tribunal found that the Chairman reminded Cllr Barton about his obligations under the code of conduct.

4.3.3 The evidence given at the Hearing by all the witnesses was consistent. They all said the Chairman asked Cllr Barton to stop interrupting the meeting and the written information provided by the others is reasonably consistent and to similar effect. The Appeal Tribunal found that the Chairman asked Cllr Barton to stop interrupting the meeting.

4.3.4 The evidence given at the Hearing by all the witnesses was consistent. They all said the Chairman warned Cllr Barton that if he did not stop interrupting the meeting he would be asked to leave and the written information given by the

others is also reasonably consistent and to similar effect. In the light of such weight of evidence the Appeal Tribunal found that the Chairman warned Cllr Barton that if he did not stop interrupting the meeting he would ask him to leave.

4.3.5 The evidence given at the Hearing by all the witnesses was consistent. They all said the Chairman asked Cllr Barton to leave the meeting and the written information given by the others is reasonably consistent and to similar effect. Cllr Barton said he was asked by the Chairman "If I would like to leave". It may be that Cllr Barton misunderstood or did not appreciate that he was being asked to leave but the other witnesses were in no doubt that he had in fact been asked to leave rather than given any choice about the matter. In the light of the weight of evidence the Appeal Tribunal found that the Chairman asked Cllr Barton to leave the meeting and that he refused.

4.3.6 All of the witnesses who gave evidence at the hearing remembered these words or words to a similar effect. Three of the other witnesses also recall words to similar effect. Cllr Barton explained he had said them to Tony King who was sitting next to him. In light of the exchange happening at the time between Cllr Barton and the Chairman, the Appeal Tribunal found that these words were directed at the Chairman in response to his request that Cllr Barton leave the meeting.

4.3.7 None of the witnesses who gave evidence at the Hearing took this comment as a joke. They considered it had been made in a challenging and serious fashion and took it in that way. Mr King did not attend to give evidence. In his email to the Ombudsman he said he did not remember what was said nor does he pay attention to any "altercations" which may occur at meetings. He remembered the Chairman "taking exception" to some of Cllr Barton's comments. He remembered Cllr Barton muttering something. In the light of that the Appeal Tribunal found that Cllr Barton did not say "I would like to see him make me" in a jocular fashion, but in a challenging and serious fashion.

4.3.8 Again the evidence given at the Hearing by all witnesses was consistent. They all said that Cllr Barton's conduct at the meeting showed disregard and disrespect to the Chairman and his office. Much of the written information given by the others was to similar effect - Mrs Stobbs described Cllr Barton's conduct as "bullying...to try and show the chairman up"; Cllr Peter Williams said that "the authority of the chairman appeared to be undermined by Cllr Barton's refusal to be quiet...and his refusal to leave"; Cllr Jac Armstrong described Cllr Barton's actions as "disgraceful and completely indefensible"; Cllr McCorry described Cllr Barton's conduct as "disrespectful and disgraceful". In the light of such weight of evidence the Appeal Tribunal found that Cllr Barton's conduct and attitude towards the Chairman was arrogant and domineering, showing disregard for the Chairman and his office and generally disrespectful.

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

5.1 The Appellant's Submissions

5.1.1 Cllr Barton said that in making the decision on whether the findings of facts amount to a breach of the code of conduct, the Appeal Tribunal should take into account his Asperger's syndrome and he provided two leaflets on the matter from "Autism London". He said that whilst of an "ordinary person" the findings of fact amount to a breach of the code of conduct, they do not of someone who "can't control himself". He then went on to concede that he had broken the code of conduct.

5.2 The Ombudsman's Report

5.2.1 It was contended that Cllr Barton's conduct is clearly unworthy of an elected member. It is clear that he is disappointed that he has not been re-elected onto Llanferres Community Council and that he is eager to provide the newly elected members with some guidance, particularly in relation to any projects in which he was involved whilst he was a member. However, this eagerness is not an excuse for poor conduct, whether Cllr Barton is at the meeting in an official capacity or not. Interrupting the meeting either by addressing the Council without permission or speaking in a loud voice to the person next to you is rude and disrespectful to councillors. Ignoring the warnings and requests of the Chairman clearly undermined the Chairman's status. Irrespective of to whom the comment "I would like to see him make me" was directed, the comment itself is both rude and bullying towards the Chairman. It is therefore reasonable to state that Cllr Barton's conduct in this matter could be considered disrespectful and could reasonably be regarded as conduct which brings the office of member into disrepute, contrary to paragraph 6(1)(a) of the code.

5.3 Appeal Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Appeal Tribunal found by a unanimous decision that there was a failure to comply with the respective codes of conduct of Llanarmon yn Ial Community Council and Llandegla Community Council.

5.3.2 Paragraph 6(1)(a) of the code of conduct states that *'[Members] must not conduct [themselves] in a manner which could reasonably be regarded as bringing [their] office or authority into disrepute.'*

5.3.3 The Appeal Tribunal found that Cllr Barton's conduct at the meeting amounted to a breach of this paragraph in that it brought his office into disrepute, for the reasons given by the Ombudsman in his report and also for the reasons given by the Standards Committee. It is not acceptable conduct by an elected member, whether he attends a council meeting as an elected member or as a member of the public, to speak when refused permission to do so, to interrupt, to disregard warnings given by and requests made by the Chairman nor to behave disrespectfully towards the Chairman or his office.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Appellant's Submissions

6.1.1 Cllr Barton contended that he had had problems with people throughout his life including problems in holding down jobs. He provided details of his public service over 40 years and his involvement in many and varied projects. He said he always acted in what he believed to be the best interests of the community and the community council. He still talks to the Clerk about outstanding items in which he used to be involved when he was a member of this council and there are many things left to be done in relation to which he has information, knowledge and experience which would be useful to the community council. He said he intended no malice whatsoever. He attributed his conduct to lack of training on the code of conduct, the actions of others and their treatment of him and various misfortunes and medical conditions, in particular his Asperger's syndrome. When asked by the Chairman of the Appeal Tribunal whether he was acting upon the "self help" advice in one of the "Autism London" booklets, he said he was not. When asked by her whether he believed it was likely that there would be future breaches of this nature by him he said he could not give any guarantee that it would not happen again; it would depend upon the actions of others towards him but he would not intentionally breach the code again.

6.1.2 Cllr Barton furnished the Appeal Tribunal with written character references written on his behalf by Mr Tony King and Mr David Clough, both of whom were former members of Llanferres Community Council. Both spoke of his good works as a councillor during the past 30 years, his commitment to the community, his enthusiasm, his willingness, experience and knowledge. Mr King described Cllr Barton as "keen to express his opinion and in his enthusiasm he can sometimes be repetitive". Mr Clough was aware of how his Asperger's affected his behaviour and the difficulties this gave to other people and the sometimes negative effect that he had on others. As a past chairman of the Llanferres Community Council, he tried to "Keep the peace between the rest of the council and Bob. This was incredibly wearing and I did not enjoy it". He can be "very difficult to restrain". However he sincerely believes that Cllr Barton means well.

6.2 Appeal Tribunal's Decision

6.2.1 The Appeal Tribunal considered all relevant information contained in the Tribunal Bundle, all of the facts of the case as found, Cllr Barton's submissions and the information given in the written character references. Although Cllr Barton did not provide any medical evidence to support his assertion that he has Asperger's syndrome and although in fact he has only received a preliminary diagnosis, the Appeal Tribunal nevertheless gave him the benefit of the doubt on this matter and considered the information provided in the "Autism London" leaflets.

6.2.1.1 The Appeal Tribunal gave credit for Cllr Barton's long service to the community and his involvement in many varied projects. The Appeal Tribunal is in no doubt at all that he means well and is very committed. The Appeal Tribunal can see that Cllr Barton genuinely feels that he has a great deal of knowledge,

information and experience which would be useful to the community council; however this is no excuse for seeking to force it upon them nor for ignoring reasonable warnings and requests made by the Chairman nor is it an excuse for interruptions and disrespectful behaviour towards the Chair or otherwise at council meetings. It is an aggravating feature that the Appeal Tribunal is satisfied that Cllr Barton understands the procedure of putting up his hand and waiting to be invited to speak before doing so; it is also an aggravating feature that it is clear to the Appeal Tribunal that Cllr Barton in fact understood the Chairman's request for him to leave the meeting, in the light of his comment "I would like to see him make me". It is also an aggravating feature that Cllr Barton has challenged the Ombudsman and the Appeal Tribunal to the very end in the face of the weight of evidence against him, wherein he had no witnesses to support his version of the events, yet he nevertheless insisted that all other witnesses were mistaken and unreliable and that his was the only accurate recollection of events. It is a further aggravating feature that Cllr Barton unfairly sought to blame others - the councillors, the Ombudsman, the Standards Committee, lack of training - rather than accept any degree of responsibility. The apparent persistence with a pattern of behaviour of this nature is also a further aggravating feature as is the failure to heed appropriate advice and warnings, not only those given by the Chairman, but the failure to follow the advice in the "Autism London" booklet as to how persons with Asperger's might self help. The Appeal Tribunal is also concerned that Cllr Barton seemed unwilling to give any real assurances that this would not happen again nor to apologise.

6.2.1.2 In his mitigation all of this happened in the heat of the moment when Cllr Barton may have felt provoked; Mrs Dillon has seen some improvement in his behaviour since; Cllr Barton ultimately admitted before the Appeal Tribunal that, yes he had breached the code of conduct and prior to that he had honestly but mistakenly held the view that his actions did not constitute a failure to follow the code.

6.2.2 The Appeal Tribunal decided by unanimous decision to uphold the determination of Denbighshire County Council's Standards Committee that Cllr Barton had breached the community councils' codes of conduct. The Appeal Tribunal further determined to endorse the decision of the Standards Committee that Cllr Barton should be suspended for 3 months.

6.2.3 Llanarmon yn Ial Community Council, Llandegla Community Council and Denbighshire County Council and its Standards Committee have previously been notified accordingly.

Signed.....
Helen Cole
Chairperson of the Appeal Tribunal

Date.....

Colin Evans
Panel Member

(AT04 v17.04.09)

Christine Jones
Panel Member