

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/008/2009-010/CT

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

**RESPONDENT:** Councillor W D Lyndon Lloyd

**RELEVANT AUTHORITY:** Ceredigion County Council

**1. INTRODUCTION**

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

1.2 A hearing was held by the Case Tribunal on Wednesday 14 July 2010 at the Castell Malgwyn Hotel, Llechyrdd, Nr Cardigan. The hearing was open to the public.

1.3 Cllr Lyndon Lloyd attended the hearing.

**2. PRELIMINARY DOCUMENTS**

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

2.1.1 In a letter dated 28 January 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Lloyd. The allegations were that Cllr Lloyd had breached Ceredigion County Council's Code of Conduct by failing to declare an interest and withdraw from a meeting of the Council's Development Control Committee on 20 August 2008, when the Committee considered a planning application relating to land at Bath House Farm, Cardigan.

2.1.2 It was alleged that Cllr Lloyd, who was a member of the Local Community Health Council (CHC), voted in favour of a controversial planning application which proposed a new hospital, having earlier publicly stated his support for the hospital. At the time of the events complained of, Cllr Lloyd was also an associate member of the former Ceredigion Local Health Board (LHB).

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

2.2.1 Cllr Lloyd made written submissions to the Case Tribunal prior to the hearing. Matters commented on by Cllr Lloyd:

- a) At the time of the meeting of the Development Control Committee on 20 August 2008 he was a member and Vice Chairman of the CHC representing Age Concern and an Associate Member of the former LHB on which he represented the CHC.
- b) He had no executive decision making function on the LHB and was "never part of any decision regarding Cardigan Hospital made by the LHB."
- c) He denied that he had a closed mind and that it was only after listening to the discussions that he came to a conclusion.
- d) He did not therefore consider that he had a personal interest in the planning application, or that his role with either the former LHB or the CHC should lead to a member of the public in Ceredigion to consider that his interest in the planning application was sufficiently significant as to prejudice his judgement of the public interest.

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

2.3.1 In a letter dated 16 March 2010, the Ombudsman responded to Cllr Lloyd's submissions as follows:

- a) Cllr Lloyd's membership of the CHC is registered in the Council's Register of Member's Interests as a personal interest, so as to comply with paragraph 10(2)(a)(ix) of the Council's Code of Conduct.
- b) Paragraph 10 of the relevant Code of Conduct does not distinguish between executive and associate membership of bodies that exercise functions of a public nature.
- c) The test for determining whether the interest arising from the membership of the LHB or CHC is what a member of the public with the knowledge of the relevant facts would think – not what the complainant thought.

## **3. ORAL SUBMISSIONS**

3.1. The Case Tribunal heard oral submissions as follows.

### Public Services Ombudsman for Wales

3.2.1 The Ombudsman's representative Mr Andrew Walsh presented the Ombudsman's report. He summarised the issues.

3.2.2 In particular, he submitted that the key issue was whether on 20 August 2008, Cllr Lloyd did have a personal interest and that it was prejudicial. He

suggested that Cllr Lloyd had considered the relevant provisions of the Code, but that he had applied the wrong subjective test – he should have applied an objective test.

### Cllr Lyndon Lloyd

3.3 Cllr Lloyd made the following oral submissions:

3.3.1 He did not believe that he had a personal interest. He believed that as an associate member of the LHB, with no right to vote, he could not influence the Board and accordingly he was not required to declare an interest.

3.3.2 He did not believe that the CHC had any influence or control over Cardigan Hospital.

3.3.3 He had listened to the evidence and asked pertinent questions during the debate. He had not formed a view prior to the meeting.

3.3.4 He had voted for the development of the Bath House Farm site on merit.

## **4. FINDINGS OF FACT**

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

4.1.1 At the material time, Cllr Lyndon Lloyd was (and continues to be) a member of Ceredigion County Council.

4.1.2 Cllr Lloyd is also a member of Beulah Community Council.

4.1.3 Cllr Lloyd gave a written undertaking to observe Ceredigion County Council's code of conduct on 9 May 2008.

4.1.4 Cllr Lloyd is a member of Ceredigion County Council's standards committee.

4.1.5 At the material time, Cllr Lloyd was a member of Ceredigion CHC, as a representative of Age Concern, and its Vice-Chair.

4.1.6 At the material time, Cllr Lloyd was an Associate Member of Ceredigion LHB, representing the CHC.

4.1.7 Cllr Lloyd signed Ceredigion County Council's Register of Members' Interests confirming his membership of the CHC and Age Concern on 14 May 2008.

4.1.8 Cllr Lloyd attended training sessions on the Code of Conduct and other planning issues on 9 May, 19 May, 21 May and 10 June 2008.

4.1.9 A meeting of Ceredigion County Council's Development Control Committee was held on 20 August 2008. It considered a planning application (ref: A080414) in respect of land at Bath House Farm which included plans for a new hospital. A

number of members of the public, some holding placards, were gathered outside the meeting to protest at the development plans.

4.1.10 Cllr Lloyd was a member of the Development Control Committee and attended the meeting on 20 August 2008.

4.1.11 Cllr Lloyd spoke to the protestors outside the offices of Ceredigion County Council prior to the meeting of the Development Control Committee.

4.1.12 Cllr Lloyd did not declare an interest prior to the start of the meeting of the Development Control Committee.

4.1.13 Cllr Lloyd took part in the discussion about the proposed Bath House Farm development and was recorded as voting in favour of granting planning permission. The Committee resolved that planning permission be refused and gave its detailed reasons in the minutes of a subsequent meeting on 10 September 2008.

4.1.14 Cllr Lloyd did not apply for a dispensation to speak and/or vote on the application from the Council's standards committee.

4.1.15 Cllr Lloyd was also present at the Development Control Committee meeting on 10 September 2008 when the Bath House Farm development application was formally refused. Cllr Lloyd did not declare an interest at the beginning of this meeting.

4.2 The Case Tribunal considered the following **disputed** material facts:

4.2.1 Whether Cllr Lloyd's Associate Membership of the LHB should have been registered in the County Council's Register of Interests?

4.2.2 Whether the proposed development of the Bath House Farm site (Planning application ref: A080414) related to, or was likely to affect, either the CHC or the LHB.

4.2.3 Did Cllr Lloyd inform the protestors prior to the Development Control Committee meeting on 20 August 2008 that he would vote in favour of the application, or did he say "what if Cardigan lost its hospital?"?

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

4.3.1 Cllr Lloyd's Associate Membership of the LHB should have been registered in the Council Council's Register of Interests.

4.3.2 The proposed development of the Bath House Farm site, related to, or was likely to affect both the CHC and the LHB.

4.3.3 Cllr Lloyd admitted that he had said to protestors outside the meeting "what if Cardigan lost its hospital".

## **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 Lloyd indicated that he was not aware that he had a personal interest and that he still believed that, as an associate member of the LHB, he should not have had to register an interest.

5.1.2 The Hywel Dda Trust took the decision as to what would happen to the local hospital, albeit that the CHC and the LHB expressed a view on the proposed redevelopment.

5.1.3 He approached the meeting on 20 August 2008 on the basis that he did not have an interest and, if he was unaware, then he could not have an interest.

5.1.4 His role as an associate member was non voting and therefore he did not have corporate responsibilities.

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

5.2.1 It was contended that the Code does not distinguish between associate and full voting membership of the LHB.

5.2.2 In any event, the CHC clearly did have an interest.

5.2.3 The fact that the Respondent says that he was unaware of his interest does not mean that he does not have a duty to check what interest he does have.

5.2.4 The relevant Code is clear. If there is a personal interest, it is incumbent on the Respondent to declare it orally at the meeting.

5.2.5 Taking all matters into account, an informed member would have concluded that, if it was likely to have affected his voting intentions, he should have declared that interest.

### **5.3 Case Tribunal's Decision**

5.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that there was a failure to comply with Ceredigion County Council's Code of Conduct.

5.3.2 Paragraph 10(1) of the Code of Conduct states: *"You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest."*

5.3.3 Paragraph 10(2)(a)(ix) (aa) of the code of conduct states: *"You must regard yourself as having a personal interest in any business of your authority if...it relates to, or is likely to affect...any...public authority or body exercising functions of a*

*public nature...in which you have membership or hold a position of general control or management.”*

5.3.4 Paragraph 11(1) of the code of conduct states: *“Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.”*

5.3.5 The Case Tribunal found that Cllr Lloyd had failed to declare that he had a personal interest when he attended the meeting of Ceredigion County Council’s Development Control Committee on 20 August 2008.

5.3.6 Paragraph 12(1) of the Code of Conduct states: *“Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”*

5.3.7 Paragraph 14(1) of the Code of Conduct states: *“Subject to sub-paragraphs (2), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority’s standards committee....withdraw from the room, chamber or place where a meeting considering the business is being held...”*

5.3.8 The Case Tribunal found that Cllr Lloyd did have a prejudicial interest when he attended the meeting on 20 August 2008 and that he should have withdrawn from the meeting and should not have voted in favour of the application.

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

### **6.1 The Respondent’s Submissions**

6.1.1 Cllr Lloyd contended that his breach was very much a technical breach of the Code. The CHC no longer exists. The LHB is also something from the past. There is no risk of such a conflict of interest arising again.

6.1.2 He had served as a County Councillor for 7 years and as a Community Councillor for over 20 years.

6.1.3 Other Councillors had been given dispensation to take part in the debate on 20 August 2008.

6.1.4 He was a man of integrity and that he did not deliberately set out to challenge the Code.

6.1.5 The complaint and the investigation by the Ombudsman and the subsequent referral to the Panel had affected him greatly. He was embarrassed by the proceedings. Nevertheless, he had faith, and it is that faith that had sustained him, together with the support of his fellow Councillors.

6.1.6 As a result of these proceedings, he had decided to resign as a member of the Standards Committee of Ceredigion County Council.

## **6.2 The Ombudsman's Submissions**

6.2.1 The Ombudsman's representative indicated that he did not accept that it was a technical breach. The decision taken at the meeting on 20 August 2008 was a controversial decision. It was necessary therefore for the Ombudsman to be seen to take action in the public interest.

## **6.3 Case Tribunal's Decision**

6.3.1 The Case Tribunal considered all the facts of the case and in particular that Cllr Lloyd was a man of integrity who had served in local government for over 40 years.

6.3.2 The Case Tribunal accept that these breaches will not be repeated.

6.3.3 Nevertheless, Cllr Lloyd did not accept until the day of the hearing that he had acted in breach of the Code of Conduct.

6.3.4 The Case Tribunal concluded by unanimous decision that, following Cllr Lloyd's indication that he would resign his membership of Ceredigion County Council's Standards Committee, the appropriate sanction to impose was one of partial suspension. Accordingly Cllr Lloyd is suspended from acting as a member of Ceredigion's Development Control Committee until 1 September 2010, with effect from the date of the hearing, ie 14 July 2010.

6.3.5 Ceredigion County Council and its Standards Committee are notified accordingly.

6.3.6 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.

*Prepared by Mr J Peter Davies and signed in  
his absence by the Registrar to the Adjudication Panel*

J Peter Davies  
Chairperson of the Case Tribunal

Date...24 August 2010...

Colin Evans  
Panel Member

Juliet Morris  
Panel Member