

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2009-010/CT (“First Reference”)
APW/012/2009-010/CT (“Second Reference”)

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor A J Moelfryn Maskell

RELEVANT AUTHORITY(IES): Ceredigion County Council
Henfynyw 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 10.00 am on Tuesday 28 September and continuing on 29 and 30 September 2010 at the Castell Malgwyn Hotel, Llechryd, Cardigan. The hearing was open to the public.

1.3 Cllr Maskell attended and was represented by Mr Philip Harris-Jenkins, Counsel. The “Public Services Ombudsman for Wales (“the Ombudsman”) was represented by Mr Gwydion Hughes, Counsel.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In letters dated 30 June 2009 and 26 February 2010, the Adjudication Panel for Wales received two separate, but related, referrals from the Ombudsman in relation to allegations made against Cllr Maskell. The allegations were that Cllr Maskell had breached the above Councils’ Codes of Conduct by attempting to misuse his position, failing to declare an interest and, when appropriate, to withdraw from consideration of various planning matters on a number of occasions.

2.1.2 The circumstances leading to the alleged breaches are evident from the Case Tribunal’s findings of undisputed material facts which are set out at paragraphs 4.1.1 to 4.1.21 of this report.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Maskell made written submissions to the Case Tribunal prior to the hearing. Matters commented on by Cllr Maskell and referred to by paragraph numbers of the Ombudsman's report:

First Reference

- a) Paragraph 18 – It was not accepted that Cllr Maskell had objected to Mr James' previous planning applications on improper grounds.
- b) Paragraphs 61(c) and 63 – it was not accepted that there was a boundary dispute between Cllr Maskell and Mr James.
- c) Paragraphs 61(d), 64 and 70 – it was not accepted that there was a need to declare the relationship with Mr Mathias, as
 - (i) There was an open declaration on the register.
 - (ii) Other members knew that Cllr Maskell owned a plot adjacent to Mr Mathias.
 - (iii) Mr Mathias was not a friend or relation of Cllr Maskell.
- d) Paragraphs 61(e), 63, 68 and 69 – it was not accepted that Mr James' application for planning was considered at the meeting on 8 April 2008; rather it was resolved to seek additional information from the applicant; members voted to allow Cllr Maskell to remain present during the discussions and there was no evidence that Mr James was disadvantaged by Cllr Maskell remaining and participating in the discussions.
- e) Paragraphs 61(f) and 71 – It was not accepted that Cllr Maskell's land at Ffosyffin was mentioned in the local development plan – rather it was mentioned in the unitary development plan.
- f) Paragraph 66 – it was disputed that Cllr Maskell had a personal interest in the improvement of Rhiwgoch with the creation of a pavement; planning consent for Cllr Maskell's land had already been granted without the need for the creation of a pavement; Cllr Maskell's campaigning for the creation of a pavement was simply to improve road safety.

Second Reference

- a) Paragraph 13 – it was not accepted that any training was provided at the meeting on 9 May and the training that was provided on 22 May 2008 was limited.
- b) Paragraph 20 – Cllr Maskell suggested that rather than being concerned about his observations on the Aberaeron Spatial plan, Ms Quelch had "welcomed" his observations.

- c) Paragraph 24 – Cllr Maskell denied that he had a prejudicial interest; moreover even if a personal interest existed, he could take part in the debate but not vote.
- d) Paragraph 28 – the plan indicated that Cllr Maskell’s land was included as part of Aberaeron and not Ffosyffin.
- e) Paragraph 44 – Cllr Maskell disputed parts of the monitoring officer’s recollection and her note of their telephone conversation on 6 October 2008. Further, he contended that as no one had made a complaint then his email to Ms Quelch could be ignored.
- f) Paragraph 50 – Cllr Maskell challenged Ms Quelch’s recollection and note of their telephone conversation on 6 October 2008.
- g) Paragraph 55 – Cllr Maskell contended that his field had not been included in the local development plan as suitable for development at that moment in time.
- h) Paragraph 79 – Cllr Maskell contended that the email which he sent to Ms Quelch was intended to communicate information and not intended to influence her views.

2.3 The Ombudsman’s Written Representations

2.3.1 The Ombudsman responded to Cllr Maskell’s written representations as follows:

First Reference

- a) Paragraph 18 – if Cllr Maskell contends that Mr James had been undermining him for a number of years, it is surprising that Cllr Maskell felt he could reach objective decisions about matters involving Mr James.
- b) Paragraph 61(c) and 63 – it was not accepted that there was no “boundary dispute”. Indeed, Cllr Maskell in his own evidence accepted that “...there had only been a minor dispute...in 1991”.
- c) Paragraphs 61(d), 64 and 70 – whether his fellow members knew that Cllr Maskell owned land is immaterial – all personal interests had to be declared.
- d) Paragraphs 61(e), 63, 68 and 69 – the minutes show that Mr James’ planning application was discussed at some length at the meeting on 8 April 2008; dispensation to participate in discussions can only be given by a standards committee and not by members of a community council; moreover, it is not necessary to prove that Cllr Maskell did disadvantage Mr James by participating in discussions.

- e) Paragraphs 61(f) and 71 – it does not matter whether Cllr Maskell’s land was mentioned in the local or unitary development plan.

Second Reference

- a) Paragraph 13 – at the meeting on 9 May, the monitoring officer outlined to members their general duties under the Code of Conduct; detailed training was provided on 22 May 2008.
- b) Paragraph 20 – Ms Quelch’s note of the conversation with Cllr Maskell does not tie in with his recollection.
- c) Paragraph 24 – Cllr Maskell does not give reasons as to why he does not accept he had a prejudicial interest.
- d) Paragraph 68 – the issue in question was whether Llwynceilyn (as opposed to Ffosyffin) should have been identified as an overflow settlement for the area’s housing needs.
- e) Paragraph 69 – Cllr Maskell’s land had been identified as suitable for development in the unitary development plan.

3. ORAL SUBMISSIONS

3.1 Preliminary Issue

3.1.1 On being advised by the Chairman that one of the complainants, Mr James, was known to him and that the other complainant, namely the Monitoring Officer, was also known to the Chairman, Cllr Maskell made an application that the Chairman should recuse himself from the hearing.

3.1.2 The Tribunal indicated that the relevant test to apply was whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.

3.1.3 The Tribunal invited both Cllr Maskell’s representative and the Ombudsman representative to make submissions on the application.

3.1.4 Following submissions and consideration of the facts and the test to apply, the Tribunal concluded that the Chairman’s knowledge of Mr James as a fellow school pupil between 1969 and 1973 (there being no contact whatsoever between the two since 1973) was not a sufficient reason for the Chairman to stand down. Further, the Chairman’s recognition of the second Complainant, namely Ceredigion County Council’s Monitoring Officer with whom he had contact since his appointment as President of the Adjudication Panel for Wales in 2002 was also not a sufficient reason for him to recuse himself from the hearing.

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

Public Services Ombudsman for Wales

3.3 Mr Gwydion Hughes Counsel summarised the issues set out in the two reports of the Ombudsman dated 30 June 2009 and 26 February 2010.

Mr Chris James

3.4 Mr Christopher James gave evidence on oath. He confirmed the contents of his letter of complaint to the Ombudsman and the documents that he had supplied in support. In particular, he confirmed that:

3.4.1 Following his discovery that the boundary fence between his land and Cllr Maskell's land had been moved, it had been necessary for him to ask his solicitors to write to Cllr Maskell to ask him to reinstate the fence to its original position. Upon receipt of the letter, Cllr Maskell contacted Mr James and agreed to move the fence.

3.4.2 There had been animosity between Mr James and Cllr Maskell since 1991 culminating in a confrontation on a farm lane adjacent to Mr James' property in 2007, when Cllr Maskell had threatened to use his position to influence others regarding Mrs James' position as a highways engineer with Ceredigion County Council.

3.4.3 Mr James had attended meetings of Henfynyw Community Council when applications for planning permission by him and/or members of his family had been considered. Notwithstanding that Cllr Maskell had failed to declare an interest, he had participated in the discussions.

3.4.4 Under cross examination, Mr James also indicated that:

3.4.4.1 He had sold the plot that he purchased from Cllr Maskell back to Cllr Maskell for a sum over and above that which he had paid for it.

3.4.4.2 He had submitted five applications for planning permission, all of which had been objected to by Henfynyw Community Council but only one of which had been refused by Ceredigion County Council.

Ms Llinos Quelch, Principal Planning Officer, Ceredigion County Council

3.5 Ms Quelch gave evidence on oath. She confirmed the contents of her letter to the Ombudsman's Office of 30 October 2009 and the note of her telephone conversation with Cllr Maskell on 6 October 2009.

3.5.1 Under cross examination, Ms Quelch confirmed that she had prepared her note of the telephone conversation on 6 October 2009 shortly after the conversation took place; that she knew that Cllr Maskell owned land that had the benefit of planning permission; that she had been advised by the Monitoring Officer to look out for any members who were making enquiries regarding the upcoming discussions on the local development plan.

Miss Claire Jones, Head of Legal Services and Monitoring Officer, Ceredigion County Council

3.6 Miss Claire Jones gave evidence on oath. She confirmed the contents of her communications to the Ombudsman, her letters of advice to Councillors regarding the Code of Conduct and her note of a telephone conversation between her and Cllr Maskell on 6 October 2009. She also confirmed that she had assisted Cllr Maskell in his application to the Standards Committee dated 4 November 2008 for dispensation to speak on the local development plan which had been refused. She also indicated that Cllr Maskell had indicated to her that he had received her various letters of advice and guidance concerning the Code of Conduct.

3.6.1 Under cross examination, Miss Jones indicated that she had spent more time with Cllr Maskell than with other Councillors to advise him on issues arising from the Code of Conduct; however ultimately it was a matter for each Councillor to decide whether they accepted that advice and in particular it was for them to comply with the Code of Conduct.

3.6.2 Miss Jones did not accept that matters had got better since the period in question regarding the Council's approach to educating members on different aspects of the Code; she had asked Ms Quelch to look out for any member who was seeking to influence the debate on the local development plan; who had an interest in land and to alert her if she received any approach; she believed that Cllr Maskell felt that he was shackled and frustrated by the constraints of the Code; that she had a good professional relationship with Cllr Maskell and that he was not being made an example of due to his breaches of the Code; and that she was sad that his conduct had got to a point that matters had to be referred to the Ombudsman.

Cllr Moelfryn Maskell

3.7 Cllr Maskell gave evidence on oath:

3.7.1 He stated that he was not a developer; that he was building a house for himself on the plot that he had purchased back from Mr James and that he had earlier this year put his land at Rhiwgoch (which did have the benefit of planning permission) up for sale.

3.7.2 He denied that he had fallen out with Mr Christopher James until the incident when they met on the road and where he had told Mr James that if he persisted in his behaviour he would have to make a complaint to the police, they had enjoyed a perfectly cordial relationship; he denied that he had moved the fence any nearer Mr James' property but that he did agree to relocate the fence in order to appease Mr James, even though he had no recollection of having received a letter from Mr James' solicitor.

3.7.3 He accepted that he had via an agent put in an offer to purchase the plot back from Mr James without disclosing his identity.

3.7.4 He denied that he had left a number of obstacles near to the boundary between him and Mr James, except for a short period of time.

3.7.5 He denied speaking out against applications for planning permission by Mr James or members of his family during the time he was a member of Henfynyw Community Council; he denied that he had any interest to disclose in relation to Mr James' applications and that on every application he had made, Mr James had been present at meetings of the Henfynyw Community Council when his applications were considered.

3.7.6 Cllr Maskell accepted that he had taken part in the meeting on 6 April 2008 when the Henfynyw Community Council considered the most recent application by Mr James and that he had suggested that the application should be put back to enable further investigations to be made during a site meeting.

3.7.7 Cllr Maskell indicated that he did not object to Mr Mathias' application for permission to develop his site but that other members had decided to reject his application as he owned land elsewhere which was more suitable for development.

3.7.8 He accepted that he had volunteered to represent Henfynyw Community Council on planning issues as he had a lot of knowledge and interest in planning issues.

3.7.9 He did not accept that he had received the benefit of such advice as the Monitoring Officer had said he had received on issues arising out of the Code of Conduct and in particular that he had received help and assistance both formally and informally.

3.7.10 Cllr Maskell argued that the purpose of his email to Ms Quelch was to provide her with information that would assist her and that he was not seeking to influence her and that during their telephone conversation she had welcomed his contribution.

3.7.11 He contended that it would be necessary for him to explain to his electors that it would not be possible for him to represent their interests due to the constraints that the Code was placing on him; he did not accept that it would be fit and proper for him to ask another Councillor to speak on his behalf and on behalf of his electors and ward regarding issues which he had to declare an interest in.

3.7.12 Under cross examination, Cllr Maskell denied that he had an interest in land which required him to declare an interest and which meant that he could not participate in discussions regarding applications for planning permission; he argued that even if he did have a personal interest; that did not amount to a prejudicial interest.

3.7.13 Cllr Maskell confirmed that since the beginning of 2010, his land at Rhiwgoch had been on the market and that he had received advice that it was worth in the region of £200,000 - £300,000; he also accepted that improvements to the road at Rhiwgoch would benefit his land.

3.7.14 He accepted that he should not have sent the communication to Katy Spain in February 2009 regarding the improvements to the road at Rhiwgoch and that he had apologised for this afterwards.

3.7.15 That he had learnt a lot more about the Code of Conduct as a result of the investigations by the Ombudsman and as a result of having to deal with the two referrals to the Adjudication Panel; that he felt that the Code of Conduct had prevented him from properly representing the interests of his electors and participating in the debate on the local development plan.

4. FINDINGS OF FACT

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

First Reference

4.1.1 Cllr Maskell was a member of Henfynyw Community Council until May 2008. He has been a member of Ceredigion County Council since May 2008.

4.1.2 Cllr Maskell undertook to abide by the terms of Henfynyw Community Council's code of conduct adopted in 2002 on 8 January 2002. He undertook to abide by the terms of Ceredigion County Council's code of conduct adopted on 5 May 2008 on 9 May 2008.

4.1.3 Cllr Maskell did not declare a personal interest in a planning application submitted by his neighbour (Mr Mathias) that was discussed at the meeting of Henfynyw Community Council on 13 November 2007.

4.1.4 Cllr Maskell never declared a personal interest in planning applications submitted by Mr James whilst he was a member of Henfynyw Community Council, including Mr James' planning application that was discussed at the meeting of Henfynyw Community Council on 8 April 2008.

4.1.5 Cllr Maskell accepts that he has a personal interest in the Unitary Development Plan/Local Development Plan because of his land ownership.

4.1.6 Cllr Maskell attended meetings about the Local Development Plan on behalf of Henfynyw Community Council. His fellow members nominated him to attend.

4.1.7 Cllr Maskell assisted the Clerk to the Community Council in compiling the Community Council's response to the Local Development Plan.

4.1.8 Cllr Maskell owns land adjacent to the road known as 'Rhiwgoch'.

4.1.9 Cllr Maskell discussed road improvements to Rhiwgoch with a Council officer in February 2009, which affected his land. He apologised for doing so.

Second Reference

4.1.10 Cllr Maskell owns land on the boundary of Ffosyffin, which is included in the Unitary Development Plan as being suitable for development.

4.1.11 On 4 November 2008, Cllr Maskell applied to the Ceredigion County Council's Standards Committee for a dispensation to speak at the Council meeting on 11 November 2008, when a report on the Local Development Plan was to be considered.

4.1.12 On 8 November 2008, the Standards Committee refused Cllr Maskell's application for dispensation because it considered that the nature of his interest was likely to damage public confidence in the conduct of the Council's business.

4.1.13 The Council's Monitoring Officer wrote to all members of the Council advising them of the need to consider whether they had personal and prejudicial interest in the "preferred options" in reports to the Council on the Local Development Plan on 11 November 2008 and on 12 February 2009.

4.1.14 The Monitoring Officer also wrote to all members of the Council on 2 October 2009 in advance of a report on the Urban and Rural Service Centres (also referred to as Spatial Plans) of the Local Development Plan to the Council on 8 October. She advised members that it was likely that some members who owned development land would have a personal and prejudicial interest in at least part of the discussion.

4.1.15 On 6 October 2009, Cllr Maskell telephoned Ms Quelch and said that he wished to submit comments on the proposed Urban and Rural Service Centres to her via email. Ms Quelch told him that she would welcome his comments. Cllr Maskell then emailed Ms Quelch his comments on the Aberaeron Urban Spatial Plan and the Rural Spatial Plan at 2.50pm on 6 October.

4.1.16 At 5.05pm on 6 October, the Monitoring Officer telephoned Cllr Maskell to discuss his earlier email to Ms Quelch, during which she informed him that he could withdraw his email on the basis that he had made a mistake.

4.1.17 On 7 October 2009, Cllr Maskell telephoned the Monitoring Officer at 9.50am during which he told her that he had not intended to take part in the final decision on the settlements in the Local Development Plan.

4.1.18 On 7 October 2009, Cllr Maskell emailed Ms Quelch at 10.23am and the Monitoring Officer at 10.39am stating that he had decided not to take any further action as he had done nothing wrong.

4.1.19 Cllr Maskell accepts that he has a personal and prejudicial interest in the development of land at Ffosyffin only insofar as it relates to the land in his ownership.

4.1.20 Cllr Maskell accepts that he has a personal interest in the Local Development Plan, because of his land ownership. He accepts that he has a prejudicial interest in certain aspects of the Local Development Plan.

4.1.21 Cllr Maskell accepts that he has a personal interest in the Urban and Rural Service Centres of the Local Development Plan. He only accepts that he has a prejudicial interest in the Urban and Rural Service Centres insofar as they relate to his own land.

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

First Reference

4.2.1 Did Cllr Maskell have a personal interest in matters relating to Mr James, when they came before Henfynyw Community Council?

4.2.2 Did Cllr Maskell have a personal interest in his neighbour's planning application when it came before Henfynyw Community Council?

4.2.3 Did Cllr Maskell have a personal interest in the creation of a pavement on Rhiwgoch?

4.2.4 There was a boundary dispute between Cllr Maskell and Mr James in the 1990s. Their relationship deteriorated thereafter.

Second Reference

4.2.5 Did Cllr Maskell have a prejudicial interest in the development of land at Ffosyffin and the Urban and Rural Service Centres, when he submitted this email on the Local Development Plan to Ms Quelch on 6 October?

4.2.6 Did Cllr Maskell outline his concerns about the proposed Urban and Rural Service Centres during his conversation with Ms Quelch?

4.2.7 Did Ms Quelch invite Cllr Maskell to submit his observations?

4.2.8 Did Cllr Maskell receive advice, guidance and training on Ceredigion County Council's code of conduct?

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

First Reference

4.3.1 That at the meeting of Henfynyw Community Council on 8 April 2008, Cllr Maskell did have a personal interest in Mr James' application for planning permission, although there was no real discussion at that meeting on Mr James' application. Nevertheless, Cllr Maskell should have declared an interest at that meeting in view of the clear animosity that existed between the two.

4.3.2 At the meeting of Henfynyw Community Council on 13 November 2007, when his neighbour's (Mr Mathias) planning application was considered, Cllr Maskell did have a personal interest which he should have declared as he owned land in the locality.

4.3.3 Cllr Maskell clearly had an interest in land at Rhiwgoch and accordingly should have declared a personal interest when contributing to any discussion or debate or preparing any document regarding the provision of a pavement alongside that land at Rhiwgoch.

4.3.4 A dispute arose between Mr James and Cllr Maskell in 1991 concerning the correct location of a boundary between their land. This was the beginning of the animosity between the two which continued up to and including the present.

Second Reference

4.3.5 Cllr Maskell clearly had a prejudicial interest in the development of land at Ffosyffin and in the Urban and Rural Service Centres at the time that he sent his email to Ms Quelch on 6 October 2009; he owned land in Ffosyffin when he submitted his comments, arguing that Ffosyffin should be considered as an overflow settlement for the area's housing needs as opposed to Llwynceilyn.

4.3.6 Cllr Maskell did not outline his concerns about the proposed Urban and Rural Service Centres during his telephone conversation with Ms Quelch on 6 October 2009. Ms Quelch's note of that telephone conversation does not record such concerns being expressed.

4.3.7 Ms Quelch did not ask Cllr Maskell to submit his observations to her.

4.3.8 Cllr Maskell received substantial formal and informal advice, guidance and training on Ceredigion's Code of Conduct prior to October 2009.

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

5.1 The Respondent's Submissions

First Reference (2002 and 2008 Codes)

5.1.1 Mr Harris-Jenkins on behalf of Cllr Maskell denied that there was any evidence that Cllr Maskell had benefited personally or that anyone had suffered a disadvantage as a result of Cllr Maskell participating in discussions on planning applications which were considered by Henfynyw Community Council. Similarly, there was no evidence that he had benefited personally nor had anyone suffered a disadvantage as a result of his participating in discussions or whilst making contributions on behalf of Henfynyw Community Council to the Unitary Development Plan, the Local Development Plan or road improvements in an area in which he owned land. Accordingly, he denied that Cllr Maskell had acted in breach of clause 7(a) of the 2002 Code.

5.1.2 Mr Harris-Jenkins conceded that as a result of Cllr Maskell's ownership of land at Ffosyffin, he should have disclosed an interest at any meeting when any planning applications for adjacent land had arisen or when any discussion of the Unitary Development Plan, the Local Development Plan and road improvements at Rhiwgoch had been discussed, and that he should have withdrawn unless he had been granted dispensation (which he had not). Accordingly, Cllr Maskell accepted that he had acted in breach of paragraph 16(2) of the 2002 Code relevant to Henfynyw Community Council.

5.1.3 Mr Harris-Jenkins also conceded that Cllr Maskell accepted that he had acted contrary to paragraph 16(3) of the 2002 Code, in that he had failed to declare an interest and withdraw when Mr James' applications were discussed.

5.1.4 Mr Harris-Jenkins argued that there was no attempt by Cllr Maskell to secure an advantage for himself or others in relation to discussions with the Council's Highways Officer on 11 February 2009 regarding the improvements to Rhiwgoch. Mr Harris-Jenkins conceded that Cllr Maskell had acted contrary to paragraph 14(1)(d) of the Code i.e. making written representations when he sent his submission dated 13 February 2009 to Ms Spain.

Second Reference (2008 Code)

5.1.5 Mr Harris-Jenkins argued that there was no attempt by Cllr Maskell to secure an advantage for himself or others in relation to discussions with Ms Quelch regarding making Ffosyffin and not Llwynceilyn the overflow settlement for the area's housing needs.

5.1.6 Mr Harris-Jenkins denied there was a breach of paragraph 14(1)(c) (seeking to influence a decision) when Cllr Maskell wrote to Ms Quelch, as he was simply providing her with information.

5.2 The Ombudsman's Report and Submissions

5.2.1 Mr Hughes argued that Cllr Maskell had acted in breach of paragraphs 7(a) and 14(1)(c) when he participated in discussions and/or wrote to others regarding improvements to Rhiwgoch and in relation to his arguments that Ffosyffin was more suitable than Llwynceilyn as an overflow settlement.

5.2.2 It was contended by Mr Gwydion Hughes on behalf of the Ombudsman that in addition to the concessions by Mr Harris-Jenkins, Cllr Maskell had also contravened paragraph 7(a) of the 2002 Code when participating in discussions and/or representing the Henfynyw Community Council on issues affecting Mr James' and Mr Mathias' applications for planning, the Unitary and Local Development Plans and road improvements at Rhiwgoch.

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 Councils' codes of conduct.

Henfynyw Community Council's Code of Conduct (2002)

5.3.2.1 Paragraph 7(a) of the Code of Conduct states *'Members must not, in their official capacity or otherwise, use their position improperly to confer on or secure for any person.....an advantage or disadvantage or to secure an advantage for themselves.'*

5.3.2.2 Based on the evidence before it, the Case Tribunal was satisfied that Cllr Maskell should not have participated in any matters to do with planning applications, nor to do with the Unitary Development Plan, the Local Development Plan or road improvements in an area where he owned land. However, there was insufficient evidence that Cllr Maskell had used his position improperly to gain advantage or to disadvantage anyone by his actions.

5.3.2.3 Paragraph 16(2) of the Code of Conduct states *'A member who has a personal interest in a matter specified in paragraphs 13 and 14 [of the code] 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 the discussion or when the interest becomes apparent. In such a case, that member must withdraw... unless granted a dispensation by the...standards committee.'*

5.3.2.4 The Case Tribunal found that by virtue of his ownership of land in the area, Cllr Maskell had a personal interest in a planning application for adjacent land, in the Unitary Development Plan, the Local Development Plan and road improvements to Heol Rhiwgoch. He did not declare such interest nor withdraw.

5.3.2.5 Paragraph 16(3) of the Code of Conduct states *'A member who has a personal interest in a matter specified in paragraphs 13 and 14 [of the code] 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... unless granted a dispensation by the...standards committee.'*

5.3.2.6 The Case Tribunal found that by virtue of a dispute with a third party Cllr Maskell had a personal interest in that person's planning application. He failed to declare such interest and to withdraw.

Ceredigion County Council's Code of Code (2008)

5.3.3.1 Paragraph 14(1) of the Code of Conduct states *'...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:.....*

(c) not seek to influence a decision about that business;

(d) not make any written representations...in relation to that business; and

(e) not make any oral representations....in respect of that business or immediately cease [doing so] when the prejudicial interest becomes apparent.'

5.3.3.2 The Case Tribunal found that Cllr Maskell breached this paragraph of the code by making oral representations to a Highways Department Officer about road improvements at Heol Rhiwgoch where he owned land.

5.3.3.3 The Case Tribunal also found that Cllr Maskell sent an email to a planning officer in which he sought to influence matters to do with the development of land in relation to the Aberaeron Spatial Plan.

5.3.3.4 Paragraph 7(a) of the Code of Conduct states *'You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage...'*

5.3.3.5 The Case Tribunal found that the representations made to the officers were intended to influence matters to his advantage.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Mr Harris-Jenkins, on behalf of Cllr Maskell, submitted that Cllr Maskell had served his electors and his community for thirty years, both as a Community and County Councillor. During that time, he had earned the respect of everyone in the locality. He was a very proud person. Due to an illness, matters had got on top of him over the last few years. The existence of these proceedings had not helped the situation – they had been hanging over him for in excess of two years. They had attracted unfavourable interest in the press and this has had a detrimental effect on his reputation. He has felt ashamed of the events that have taken place. If he is disqualified from holding the office of Councillor, he feels that he will have to move from the area. He has learnt a lot from these proceedings regarding the Code of Conduct. There is no evidence that others have suffered as a result of his actions. It will be a loss to the Community. He is considerably out of pocket as a result of these investigations and proceedings.

6.2 The Ombudsman's Submissions

6.2.1 The Ombudsman's representative argued that a substantial number of the aggravating features set out in the Adjudication Panel President's guidelines on factors to be taken into account in determining the appropriate sanction, arose in this case. The Ombudsman did not accept Cllr Maskell's position regarding the actions and steps that he had taken and that his was an honestly held belief. There had been repeated breaches of the Code over a lengthy period. His actions had brought both the Community and County Councils into disrepute. Yet, despite overwhelming evidence, he had continued to deny the multiple breaches up to the very end, had sought to blame others for the situation he found himself in and had failed to heed appropriate advice. He continues to be in a state of denial regarding the persistent pattern of breaches arising out of his interest in planning issues. Despite two applications, he had failed to secure dispensation from the Standards Committee.

6.3 Case Tribunal's Decision

6.3.1 The Case Tribunal considered all the facts of the case and in particular the submissions by Mr Hughes and Mr Harris-Jenkins. At the end of the day, it is for the Tribunal to fix an appropriate sanction, taking into account its role in maintaining standards in public life. These were serious breaches of two Codes of Conduct. The Tribunal considered the long and tireless service by Cllr Maskell to his community over a 30 year period and his previous unblemished record.

6.3.2 Nevertheless, there were serious aggravating features arising in this case which warranted an appropriate sanction. The Tribunal accepted that there was no evidence that others had suffered disadvantage as a result of Cllr Maskell's actions. Nevertheless, the activities complained of, and which have largely been proven, go to the root of the role of a Community and County Councillor – namely putting himself in a position of potential advantage as a result of planning law issues. These matters bring both Councils into disrepute. These proceedings, which have been hotly contested by Cllr Maskell to the bitter end, will cost the tax payer substantial sums of money, at a time when there are other pressures on the public purse. Taking all these matters into account, the Tribunal concluded that the only appropriate sanction is that of disqualification.

6.3.3 The Case Tribunal concluded by unanimous decision that Cllr Maskell should be disqualified for 18 months from being or becoming a member of Ceredigion County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

6.3.4 Henfynyw Community Council, Ceredigion County Council and its Standards Committee are notified accordingly.

6.3.5 The Respondent has the right to seek the permission 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.

Signed.....
J Peter Davies
Chairperson of the Case Tribunal

Date...5 November 2010...

Helen Cole
Panel Member

Colin Evans
Panel Member