

PANEL DYFARNU CYMRU ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/013/2009-010/CT

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

RESPONDENT: Councillor Peter Kraus

RELEVANT AUTHORITY(IES): Conwy Town 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 Cllr Kraus made no response to the written notice sent to him by the Registrar to the Adjudication Panel for Wales under paragraph 2 of the schedule to the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 ("the 2001 Regulations"). The Case Tribunal therefore determined its adjudication without a hearing at a meeting on Tuesday 19 October 2010 at Pavilion Conference Centre, Spa Road, Llandrindod Wells, pursuant to its powers under paragraph 3(3) of the schedule to the 2001 Regulations.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 11 March 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 Kraus. The allegations were that Cllr Kraus had breached Conwy Town Council's Code of Conduct by using disrespectful, bullying and intimidating behaviour towards Civil Enforcement Officers (CEOs) on four separate occasions.

2.1.2 During investigation, the Ombudsman became aware of further allegations about Cllr Kraus. These were that, on a further occasion, he again behaved inappropriately towards CEOs and sought to use his position as a councillor improperly in relation to a parking offence.

2.1.3 Between 3 October 2008 and 20 December 2008, there were five occasions when it was alleged that Cllr Kraus inappropriately confronted CEOs in the Conwy County Borough Council area.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Kraus made no representations.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following undisputed material facts:

3.1.1 Councillor Peter Kraus became a co-opted Member of Conwy Town Council on 9 June 2008.

3.1.2 On 11 June 2008, Cllr Kraus signed the Declaration of Acceptance of Office and the undertaking to comply with Conwy Town Council's Code of Conduct.

3.1.3 Cllr Kraus attended training on the Code of Conduct on 16 July 2008.

3.1.4 An incident occurred on 3 October 2008 at Conwy Quay where Cllr Kraus was present with others. Two CEOs (CEO Robert Corcoran and CEO Fay Jones) were also present. A verbal exchange took place between them. Cllr Kraus stated in the course of the exchange that he was a councillor.

3.1.5 An incident took place on 27 October 2008 at Town Hall Car Park Llandudno when there was a verbal exchange between Cllr Kraus and CEO Corcoran.

3.1.6 An incident took place on 1 November 2008 at Conwy Quay when there was a verbal exchange between Cllr Kraus and CEO Fay Jones. As a result of this exchange, CEO Fay Jones attended the local police station. On 1 November 2008, Cllr Kraus was spoken to by WPC Kate Bithell.

3.1.7 An incident occurred on 29 November 2008 at Conwy Quay when there was a verbal exchange between Cllr Kraus and CEO Corcoran.

3.1.8 A complaint relating to Cllr Kraus' conduct towards various CEOs employed by Conwy County Borough Council was made to the Ombudsman by a Mr Owen Gwynfor Hughes of Parking Services Conwy County Borough Council on 19 December 2008.

3.1.9 An incident occurred on 20 December 2008 at Berry Street Conwy. An altercation took place between Cllr Kraus, CEO Emma Westwood and CEO Corcoran. During the incident Cllr Kraus referred to displaying a parking permit

issued to him. He also referred to the fact that he was a Town Councillor. PC Jethro Christie also attended the incident.

3.1.10 Cllr Kraus was interviewed by representatives of the Public Services Ombudsman for Wales on 21 October 2009.

3.2 The Case Tribunal found the following disputed material fact:

3.2.1 What was said and done by Cllr Kraus during the exchanges dated 3 October 2008, 27 October 2008, 1 November 2008, 29 November 2008 and 20 December 2008.

3.3 The Case Tribunal found the following in respect of the disputed fact:

3.3.1 During the 3 October 2008 incident Cllr Kraus' behaviour towards the two CEOs (Corcoran and Jones) was intimidating. He repeatedly identified himself as a member of the Council and used foul language aimed at the two CEOs. The words used by Cllr Kraus included the 'f word'. He made a derogatory statement about the uniforms of the CEOs and sought to undermine their role. His conduct caused the two CEOs to feel harassed and threatened.

3.3.2 During the incident on 27 October 2008, Cllr Kraus made personal and insulting comments at CEO Corcoran. He made the threatening comment to CEO Corcoran "you won't be working for the Council much longer as I have ways of having you removed."

3.3.3 On 1 November 2008 Cllr Kraus drove past CEO Fay Jones whilst she was issuing a ticket for a parking contravention. Cllr Kraus stated "I'm Peter Kraus the councillor. You're all a waste of space."

3.3.4 On 29 November 2008 Cllr Kraus approached CEO Corcoran whilst he was issuing a ticket for a parking contravention. Cllr Kraus used foul and abusive language towards CEO Corcoran. He said to the CEO, "you don't f*****g deserve to wear the uniform."

3.3.5 As a result of the previous incidents, CEO Corcoran requested to be released from patrolling Conwy Quay to avoid being confronted by Cllr Kraus.

3.3.6 On 20 December 2008 a verbal exchange took place between Cllr Kraus and CEO Westwood. Cllr Kraus was aggressive. He informed CEO Westwood that he was a town councillor. He asked her "if I put my badge up will I get longer?" The reference to a badge was to a badge issued to him as a town councillor. Cllr Kraus further said "I am the Council, you wait there, you just wait." Cllr Kraus during the incident tore up the ticket issued and threw it to the ground. CEO Westwood felt intimidated and shaken by the events.

3.3.7 The Case Tribunal found the above facts on the basis of the written witness evidence and contemporaneous notes.

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

4.1 The Respondent's Submissions

4.1.1 Cllr Kraus made no submissions.

4.2 The Ombudsman's Report

4.2.1 It was contended that:

Cllr Kraus' disrespectful, intimidating and bullying behaviour towards the CEOs on all five occasions indicated a potential breach of paragraphs 4(b) and 4(c) of the Code of Conduct.

That his conduct on 20 December 2008, in asking if his vehicle could remain parked on double yellow lines if he displayed his councillor's parking permit, indicated a potential breach of paragraph 7(a) of the Code of Conduct.

That his conduct towards the CEOs on all five occasions, when viewed as a whole, indicated evidence of a breach of paragraph 6(1)(a) of the Code.

4.3 Case Tribunal's Decision

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with Conwy Town Council's code of conduct. Cllr Kraus' behaviour on each occasion was covered by the Code of Conduct under paragraph 2(1). In the first incident (3 October 2008) he repeatedly identified himself as a member of the Council. On each subsequent occasion he held himself out as a member of the Council.

4.3.2 Paragraph 4(b) of the Code of Conduct states "*You must show respect and consideration for others.*"

4.3.3 Paragraph 4(c) of the Code of Conduct states "*You must not use bullying behaviour or harass any person.*"

4.3.4 The Case Tribunal found that Cllr Kraus on each occasion failed to show respect and consideration for others and used foul and abusive language, aggressive behaviour and insulting comments. He failed to show respect for CEOs attempting to carry out their duties. Cllr Kraus sought on several occasions to initiate confrontation and was guilty of harassing CEOs on more than one occasion. A threat to the future employment of a CEO amounted to bullying.

4.3.5 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 or create or avoid for yourself, or any other person, a disadvantage.*"

4.3.6 The Case Tribunal found that by raising the issue with the CEO of unlawfully extending the time to park a vehicle, by reference to a badge issued to him as a town councillor, a breach has occurred.

4.3.7 Paragraph 6(1)(a) of the Code of Conduct states "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"

4.3.8 The gravity and frequency of the incidents brought both the office of member and the authority into disrepute.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

5.1.1 Cllr Kraus made no submissions.

5.2 Case Tribunal's Decision

5.2.1 The Case Tribunal considered all the facts of the case. The Tribunal had regard to his short length of service and to his health. However the Case Tribunal viewed the breaches as serious. There were five different occasions within a short period of time when Cllr Kraus was guilty of bullying CEOs whilst they were ordinarily going about their daily work. His actions had a serious adverse effect on the CEOs personally and on their operational effectiveness. Persons holding public office should set a positive example.

5.2.2 The Case Tribunal concluded by unanimous decision that Cllr Kraus should be suspended from acting as a member of Conwy Town Council for a period of 12 months or, if shorter, the remainder of his term of office.

5.2.3 Conwy Town Council and Conwy County Borough Council's Standards Committee are notified accordingly.

5.2.4 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.....

Date...19 October 2010...

Hywel James
Chairperson of the Case Tribunal

Ian Blair
Panel Member

Juliet Morris
Panel Member