

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/011/2009-010/CT

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

RESPONDENT: Councillor Ralph Cook

RELEVANT AUTHORITY(IES): Cardiff 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 commencing at 9.30 am on Monday 8 November and continuing on 9 and 10 November 2010 at the Mercure Holland House Hotel, Newport Road, Cardiff. The hearing was open to the public.

1.3 Cllr Cook attended and was represented by Ms Frances Randle, Solicitor, Steel & Shamash.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 24 February 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 Cook. The allegations were that Cllr Cook had breached Cardiff County Council's Code of Conduct by using language which he knew offended the Leader of the Council in order to attack the Administration at the Council meeting on 26 February 2009 and during the recess.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Cook's representative made written comments on his behalf on 25 March 2010 which, in summary, included the following in respect of paragraph numbers as per the Ombudsman's report:

- a) **Paragraph 6** – Cllr Cook had studied modern German history. Witnesses to what was said during the recess were part of the ruling group inner circle and close associates of Cllr Berman.

- b) **Paragraph 8** – the Report did not include accurately what happened at the Executive meeting on 14 July 2008.
- c) **Paragraph 10** – the Report did not reflect fully what happened at the Council meeting on 26 February 2009 where it was alleged by Cllr Cook that bad faith was shown by the Administration in curtailing the debate on the Budget.
- d) **Paragraph 11** – Cllr Cook’s intention in the recess was to take a cup of coffee from a machine and not to approach the Liberal Democrat table.
- e) **Paragraph 48** – Cllr Cook disagreed with the Ombudsman’s analysis and the Report had failed to take into account Cllr Cook’s specialised knowledge of German history and that he intended no reference whatsoever to the Nazi party itself.
- f) **Paragraph 50** – there was an inaccuracy in that Cllr Cook’s question was about encouraging constituents to contact officers via their local councillor, which was contrary to council policy.
- g) **Paragraph 51** – there was failure to acknowledge Cllr Cook’s scholarship in the field and that he was referring to a particular piece of German history which may not have been obvious to the general listener.
- h) **Paragraph 52** – this section is incomplete in that it fails to take account of the fact that Cllr Cook became aware, during the recess, that a distorted version of what he had said was circulating.

2.3 The Ombudsman’s Written Representations

2.3.1 The Ombudsman responded to Cllr Cook’s written comments on 27 July 2010 as follows:

- a) **Paragraph 6** – assertions made as to witnesses were not admitted.
- b) **Paragraph 8** – not admitted.
- c) **Paragraph 10** – not accepted that the paragraph did not give an accurate version of events.
- d) **Paragraph 11** – not accepted that the “small detail” is relevant.
- e) **Paragraph 48** – it is asserted that on this occasion Cllr Cook’s comments were intended to equate the conduct of the Administration with the conduct of the Nazi party. Cllr Cook’s attempt to assert some other meaning to his comments is an exercise in obfuscation and sophistry.
- f) **Paragraph 50** – the comments are recorded in the minutes and it is not accepted the Report contains an inaccurate characterisation of the question asked.

- g) **Paragraph 51** – the words used are recorded in the minutes and that they should be given their ordinary meaning.
- h) **Paragraph 52** – it is not accepted that the Report is incomplete or misleading. The conclusion reached is justified.

3. ORAL SUBMISSIONS

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

Cllr Rodney Berman

3.2.1 Cllr Berman gave evidence where he confirmed the contents of his letter to the Ombudsman dated 18 June 2009. The contents provided the background to the budget meeting vote and his recollection of the events which had taken place during the recess of the meeting on 26 February 2009.

3.2.2 Cllr Cook had “marched up to the table” where Liberal Democrat Councillors were seated “in a clearly aggressive manner”. Cllr Cook made reference to the Nazi regime and the “gist of what he said was that whilst he might not have likened us (Liberal Democrats) to Nazis in the past, he was intending to liken us to them now”.

3.2.3 He believed Cllr Cook used the word Nazi although it could have been that the words used were analogous to the term Nazi. Cllr Berman explained how he was deeply offended by the remarks and became extremely upset at what Cllr Cook was saying.

3.2.4 He confirmed the e-mail exchange between him and Cllr Cook in July 2008 when he had explained he found the comparison between the Liberal Democrats, of whom he was their Leader, and the German Nazi regime during the 1930’s deeply offensive. This was in particular because of his Jewish faith and the experience suffered by members of his family at the hands of the Nazi regime.

3.2.5 Cllr Berman had submitted a written answer to a question raised by Cllr Cook in which he had asked Cllr Cook to apologise for a leaflet which he felt made “clear analogies between Liberal Democrat campaigners and the German Nazi regime”. Cllr Cook, in his supplementary oral question, took the matter further by asking “why I shouldn’t liken your Administration to the early days of a period of sad times in Germany in 1933?” Cllr Berman stated he found this further comment deeply upsetting and, for the first time which he can recall, left the chamber early. He believes he was not present when Cllr Cook gave his personal explanation.

3.2.6 Under cross-examination, Cllr Berman confirmed he had issued on 10 July 2008 a press release to the Echo. His relationship with Cllr Cook over the years had been fairly good. They would, on occasions, dine together. Whilst they would have robust political debates in the Chamber, they had a mature relationship outside. He could not recall ever discussing German history with Cllr Cook. Cllr Cook was aware of Cllr Berman’s Jewish background. Cllr Berman conceded that the 2008 leaflet contained comments aimed at the Liberal Democrat party but felt

one could not divorce it from the Leader. He found the comments made during the recess and in the supplementary question to be personally offensive. He had explained the reasons for such offence in his 2008 email to Cllr Cook.

Cllr Judith Woodman

3.3.1 Cllr Woodman gave evidence confirming that she had forwarded an email to the Monitoring Officer on 26 February 2009 complaining about Cllr Cook's conduct at the Council Meeting on that evening. In the email she had stated Cllr Cook had approached the Liberal Democrat table and stated he would now put out a leaflet "referring to Liberal Democrats as stormtroopers and a blitzkrieg". Cllr Hyde sought to remonstrate with Cllr Cook. Cllr Berman was visibly shocked. When Cllr Cook first approached the table she was seated. Cllr Berman was standing with his back to the wall, between herself and Cllr Hyde. Cllr Cook came over looking aggressive but at the same time smiling. She could not recall verbatim what was said however the gist was that they would now put out a leaflet commenting that the Liberal Democrats were like stormtroopers and blitzkrieg. This was said to Cllr Berman. The choice of words was intended to have an effect and to create an association between the Liberal Democrats and the Nazi machinery. Cllr Cook directed his words, saying "Rodney and Judith". She believed the word Nazi was used but could not be precise in what context.

3.3.2 She was present when Cllr Cook raised his supplementary question. It was apparent, from his immediate reaction, that Cllr Berman was upset and angry at the comment. She believed the actions of Cllr Cook amounted to victimization in that there was the history of the leaflet, the comments during the recess and now in the Chamber.

3.3.3 Cllr Woodman was cross-examined as to her evidence. She confirmed she could not specifically recall the precise words used. Whilst the words were "directed at us", Cllr Cook was speaking direct to Cllr Berman. He spoke to Cllr Berman on an individual basis. If there were issues between the parties, procedures existed for a frank exchange between the whips. She had known Cllr Cook since 2003 and had got on well with him. She had never previously seen him use anti-Semitic language. The personal explanation was not of any comfort to her. It did not defuse the situation. She could not recall the precise point when Cllr Berman left the Chamber but, before doing so, Cllr Berman had said to her "I can't take anymore I have to leave". He appeared as if he was about to burst into tears.

Cllr Keith Hyde

3.4.1 Cllr Hyde gave evidence that he had forwarded an email to the Monitoring Officer on 28 February 2009. He had related in the email Cllr Cook approaching the table of Liberal Democrat councillors stating he would refer to the Liberal Democrats as "Storm Troopers engaging in a blitzkrieg". He found the words racist and offensive. Cllr Berman had been standing against a wall. He did not pick up immediately what Cllr Cook stated but his ears pricked up at the words storm troopers and SS. He requested Cllr Cook to withdraw the remarks but instead he repeated them. The words were said and directed at Cllr Berman and that is why he believes them to be racist remarks. Cllr Berman was deeply upset. He was present in the Chamber when Cllr Cook asked his supplementary question. It was

clear from Cllr Berman's reaction he did not like what was said. Cllr Berman left the chamber though he could not be precise when.

3.4.2 Cllr Hyde was cross-examined and he accepted that there was no mention of the SS in the leaflet produced in 2008. He did not accept that what was said by Cllr Aubrey was an accurate reflection of what was actually said. He had asked Cllr Cook to withdraw the remark. He had no recollection of the word Nazi being used explicitly.

Cllr Gareth Aubrey

3.5.1 Cllr Aubrey gave evidence confirming he had sent an email to the Monitoring Officer on 26 February 2009. He had indicated in the e-mail the words used by Cllr Cook during the recess were "I didn't do it last time, but after that I'll do it next time. My next leaflet will be 'Stormtroopers Censor Council'." He described Cllr Cook's manner as a mixture of being slightly aggressive and jovial. He could not remember the precise response. He has subsequently recalled the specific use of the word Nazi but concedes his recollection at the time, as conveyed in his email, was closer to the events. He was of the view Cllr Cook was approaching Cllr Berman. He believes he was present in the Chamber when the supplementary question was asked by Cllr Cook with specific reference to 1933 Germany. He recalls turning to a colleague and saying something along the lines "does he not realise Dachau started in 1933, they weren't just nasty to a few socialists".

3.5.2. During cross-examination he conceded that his recollection on 26 February 2009 would be better then. However he had only been a councillor for 8 months and had not come across such a situation previously. The implication of what Cllr Cook had said was that he likened the Liberal Democrats to the early Nazi regime. The comments during the tea break were directed towards Cllr Berman. He viewed the comments as racist because the attack was made for reasons of Cllr Berman's race. The comment was made with full knowledge of Cllr Berman's race and Cllr Cook knew he would be offended.

Cllr Freda Salway

3.6.1 Cllr Salway confirmed that she had forwarded an email to the Monitoring Officer on 26 February 2009. She had outlined the comments made by Cllr Cook to Cllr Berman as "I did not mean to call you a Nazi in the leaflet, but I am calling you one now after what happened back there." She did not recall Cllr Cook approaching the table. She had heard voices and looked up to find him standing there. He appeared annoyed and was pointing a finger as he said the words which were directed to Cllr Berman. There were gasps from the other members at the table. Cllr Hyde did remonstrate with Cllr Cook. She was present later in the Chamber.

3.6.2 Cllr Salway was cross-examined as to her evidence. She saw nothing particularly bad in the finger wagging. She did it on occasions. She had sent her email shortly after the meeting and believes it accurately reflected what was said. She had had previous spats with Cllr Cook and sworn at him on one occasion but had apologised the next day. The remarks during the recess were directed at Cllr Berman because he was Jewish.

Cllr Roderick McKerlich

3.7.1 Cllr McKerlich was called as a witness on behalf of Cllr Berman. He was a member of the Conservative Group of councillors on Cardiff Council. He was at the Council Meeting on 26 February 2009. He did not witness the events during the recess. He explained the procedures followed in respect of the Budget debate. His understanding was there had been a pre-meeting at which it had been agreed to follow a particular Protocol as to speakers whilst Standing Orders were suspended. Whilst he thought Labour initially had been clever at their attempt to use the procedures by delaying their opportunity to speak at the debate, he felt they were trumped by the Liberal Democrats as the Chief Whip had proceeded to a vote, after which no further speakers were allowed. Whilst he believed this was clever he did not believe it was wise. The comments of Cllr Cook in the Chamber referred to the closure of the debate and that the rights of a minority party had been trumped. He did not believe the comments were anti-Semitic. Cllr Cook was agitated and excited and sought to apply the comments to the closure of the debate by the Liberal Democrat Chief Whip.

3.7.2. Cross-examined by the representative of the Ombudsman, Cllr McKerlich conceded that both parties had played within the rules of the debate. He was aware of an issue between Cllrs Berman and Cook concerning a leaflet issued in Summer 2008. The words used by Cllr Cook in the chamber were inappropriate and offensive. Cllr McKerlich agreed that it may have been the case that Cllr Berman had taken great umbrage at the words used and was offended. Cllr Cook however was incensed at the outcome of the debate and sought to use a metaphor. It was a spontaneous expression and he believed the comments were not racist and that Cllr Cook was upset.

Mr William Kohnstamm

3.8.1 Mr Kohnstamm provided character testimony confirming that he had written a letter to the Adjudication Panel commenting on his knowledge of Cllr Cook's character and of its bearing on the allegations. Mr Kohnstamm's close family, who were Jewish, had fled Germany during the 1930's. Although he had not been party or witness to any of the specific allegations, he was adamant that Cllr Cook would never exhibit any anti-Semitic or anti-Jewish views. Cllr Cook was always on the side of the underdog. Cllr Cook may be guilty on occasions of speaking his mind and this may offend some people. He respected Cllr Cook and found him to be a very able man.

Cllr Ralph Cook

3.9.1 Cllr Cook gave evidence that he had been a councillor in Cardiff since 1999. Between 2008 and March 2010 he had been Leader of the Labour opposition Group.

3.9.2 He was aware of the issues surrounding the terms used in the July 2008 leaflet. Party political activists were referred to as storm troopers as they are the ones who go out and do the work. In his view it is an expression fairly commonly used by political parties. So too are the terms blitzing or blitz. He had been

impressed by the number of Liberal Democrats canvassing in the lead up to the May 2008 council election. A number of his constituents had described themselves as being under siege from Liberal Democrat canvassers. In his first draft of the leaflet, he had used other military phrases including this not being Labour's Waterloo. He had edited some of these out of the final version. Storm Troopers and blitzkrieg had remained as had the phrase "shock and awe" which came from the Gulf War.

3.9.3 He outlined his interest in German history from a young age, his anti-fascist activities, his work on behalf of the gypsy community and efforts to secure an equal right for the Independent group to be able to lay a wreath at the Remembrance Sunday ceremony. He believed he had discussed German history with Cllr Berman. He had known Cllr Berman since they were both elected in 1999. Initially they had a very good relationship, frequently having lunch together. He felt there was more hostility towards him once he had become leader of the Labour Group.

3.9.4 He was referred to the letter dated 10 July 2008 sent to him by Cllr Berman which took issue with the wording of the leaflet. He said he had been surprised to receive it. His recollection was that it had been a particularly busy day for him. He disagreed that the words were synonymous with Nazism. He interpreted synonymous as meaning exactly the same thing. He could empathise with Cllr Berman's point to an extent. His response was that the words were not exactly the same. He regarded the response as forming part of a philosophical discussion. He was unaware that the letter had been circulated more widely. He was contacted by David James of the South Wales Echo almost immediately after his response had been sent. He sent a copy of the email to Mr James. He was angry to see the article in the newspaper the following day. He had not been able to speak to the journalist in depth. He now viewed the communication as a political attack upon him rather than personal communication.

3.9.5 During the Budget debate in February 2009, Labour had presented 5 amendments. This was done in the context that they wished to present individual small amendments which would not require the officers to make time-consuming re-calculations of the Budget. He had assumed that each group would have equal time to speak. Each Executive member should have spoken to present their share of the budget, whilst Labour members had reserved their right to speak. He accepted that, for a short period of time, there were no names on the board but was surprised at the speed of the proposal to move to a vote. He believed the move was pre-planned but accepted it was strictly within the rules.

3.9.6 He was later than most members entering the refreshment room during the recess. He approached the coffee machine which was next to the table of Liberal Democrats. He recalled moving across towards the table, a distance of no more than 3 steps. He stood between Cllrs Berman and Woodman and said something like "Stormtroopers censoring council debate". Nobody asked him to withdraw the remark. He turned around got his coffee and sat down. He did not use the phrases Nazi or SS. He was surprised anybody had heard him.

3.9.7 Procedurally, a supplementary question had to be linked to the main answer. He would have received the written answer some half an hour after the start of the meeting. Following the recess, he was aware of what Liberal

Democrats were saying about events during the recess. He accepted that he was not thinking things through, as he was focussed on the debate. He viewed the way in which it was handled as undemocratic and drew the parallel, that he saw, between that and the way in which local government was being treated in Germany in 1933.

3.9.8 He should not have said what he said in his personal explanation regarding his comments during the recess. It does not reflect what he actually said in the refreshment room. As he was speaking, he was aware that Nigel Howells, the Liberal Democrat Whip, was preparing to stand up and, holding a red book which contained the debating rules, predicted he would be asked to withdraw. He believes he did say something along the lines “I am going anyway”, though accepts those words were not in the agreed minutes.

3.9.10 In terms of comments to the Ombudsman, Cllr Cook’s response altered after seeing the draft report. He was deeply upset at being accused of making a racially motivated attack on Cllr Berman. Throughout his life he had fought for people and indeed animal rights. He hated injustice. It was one of the most hurtful accusations that could be made against him.

3.9.11 He outlined his health difficulties. He described his own and his partner’s history in terms of persecution by the Nazi regime. He was adamant that his comments during the recess were not addressed to an individual. He had not thought about Cllr Berman being Jewish. Nor had it sunk in what was being said. He did not see the relevance of Cllr Berman’s family. In hindsight, he is sorry about it.

3.9.12 In cross-examination Cllr Cook was referred to page B120 of the hearing bundle and his quote:

“what I actually said is – “Judith and Rodney what I witnessed just now is an example of the sort of thing that happened in Nazi Germany which was using systems to stop people speaking out loud to stop oppositional points of view being expressed”

He conceded that this would have been said within 10 to 15 minutes of the recess, but denied that it was what he had actually said. None of the witnesses had been able to confirm the precise wording and indeed had provided differing accounts. It was put to him that his was the most contemporaneous account. He agreed and repeated that his evidence was that it was not actually what he had said.

3.9.13 He accepted, looking back, that such an explanation might appear ridiculous. At the time, the Liberal Democrats were telling him that he was alleged to have used the words “Nazi Storm Troopers” in the recess. The matter had been raised by Cllr Aubrey’s question. It was not unknown for him to be requested to withdraw comments at Council meetings. He regretted not being more accurate in what he had said. He was aware that the Chief Whip was going to ask the Lord Mayor to take action. He did not target people because of their race.

3.9.14 In the Council meeting, after the recess, he was aware that he was being accused of something significant but his mind had not fully worked it through

before he started his personal explanation. Were it not for the fact the Chief Whip appeared to be about to intervene, he may have corrected matters.

3.9.15 He agreed that, 7 months earlier, he understood the offence that could be caused to Cllr Berman because of the correspondence surrounding the leaflet. That was not forefront in his mind at the time of the debate. He had read the written answer prior to the budget debate and had to link his supplementary question to the answer. He did originally have a different question to ask. He was aware that at least 2 of the Liberal Democrat councillors in their evidence had said that the word "Nazi" was used. He repeated that he was thinking matters through whilst articulating his personal explanation.

3.9.16 He conceded that, as a result of the manner in which the Budget debate was curtailed, he felt righteous indignation. He accepts that what he said was insensitive and wrong.

3.9.17 His recollection of what was said in the recess was "your Storm Troopers" are censoring the Council. He used those words on the basis that he felt the Liberal Democrats had been acting in a dictatorial fashion. He had spoken to a table of people rather than any individual. The conversation lasted a few seconds only. He believes that he conveyed it in a jovial fashion. He did not use the word "SS" or "Nazi". What he said later was an expansion of that and it was his fault that he did not use the word "Storm Trooper" in his personal explanation. He accepted the reasons for Cllr Berman's upset. Matters had been a catalogue of disasters. It was not his intention to be hurtful to Cllr Berman. He had forgotten the issues relating to the leaflet at the time of the exchange.

3.9.18 Turning to the leaflet he confirmed that he knew Cllr Berman was Jewish. The leaflet had been used to create analogies. They were not exclusively related to the Second World War. It was put to him that the email to the South Wales Echo journalist made the link to "Nazi bombing strategy". Cllr Cook explained that, on 10 July 2008, he was very busy and had not devoted the time to the matter which he should have. He should have understood Cllr Berman's concern. His insensitivity was beyond belief. He sought to answer matters in a pedantic fashion. Once the matter had been referred to the journalist he viewed it as a political attack. He conceded that most people would associate "Storm Troopers" with "Nazi Germany" though disputed that the majority of his electorate would make such an association. He accepts that there was room for misunderstanding of the leaflet. He did not accept that personal sensitivity should be sacrificed in a political spat.

3.9.19 He accepted that, after the exchange and with hindsight, it was obvious that the comparison between Liberal Democrat and "Nazi" would cause offence. The supplementary question was clumsy and asked in a highly charged political exchange. He wished that he had not said it and that he had withdrawn it immediately. The supplementary question was 7 months after the earlier issue relating to the leaflets. He accepted the offence it caused Cllr Berman and thoroughly regrets matters. His intention had been to make the Liberal Democrats sit up. He accepted that Cllr Berman was the Leader of the Liberal Democrat party in the Council. He believed that the actions did have parallels with what happened in local government in Germany.

3.9.20 His view was that he left the meeting prior to Cllr Berman. His recollection was that Cllr Berman was present when he gave his personal explanation. He repeated that his mind was not fully functioning when he gave the personal explanation in particular to the sensitivity of Cllr Berman on the issue. Cllr Cook stated that he had begun to get upset on seeing the Chief Whip seeking to interfere. He believes that, had he been left to finish his personal explanation, he may have issued a general apology

Public Services Ombudsman for Wales

3.10.1 The Ombudsman submitted that there were 2 issues in respect of findings of fact:

- A. What was said in the recess?
- B. Interpretation of all the words used by Cllr Berman on 26 February 2009.

The best evidence as to what was said during the recess is Cllr Cook's statement, made on that day in the Council Chamber. It was conceded that there was some confusion from the witnesses recalling precise wording. However, two witnesses (Cllr Berman and Cllr Salway) confirmed that the word "Nazi" was used.

3.10.2 All witnesses were clear that Cllr Cook was making a comparison between the conduct of the administration that evening and "Nazi Germany". The attempts by Cllr Cook to move away from the quotation were unconvincing. All witnesses agree that there was an express reference to "Nazi Germany" and that this was directed at best to Cllrs Woodman and Berman. The statement in the Council Chamber should be considered in light of the fact that Cllr Cook was aware that what he had said was being regarded as controversial. It would be expected therefore that his personal explanation would seek to put his comments in the best possible light, from his point of view. Cllr Cook felt righteous indignation of the Liberal Democrats' curtailment of the budget debate. The comments were directed to the party's leader, Cllr Berman.

3.10.3. The supplementary question was also directed at Cllr Berman and made clear comparison with the Nazi regime. Cllr Berman immediately reacted, making it clear that he found it deeply upsetting and requesting a withdrawal of the comment. The suggestion by Cllr Cook that, in some way his specialist knowledge of Germany gave the issue a different perspective, was not convincing. His reliance on this argument was undermined by his own email to the journalist and his comments to Cllr Berman in which he confirmed that the leaflet had a World War II theme. Cllr Berman made the link. It is submitted that it was obvious that the connection intended to be made was between the Nazi regime and Cllr Berman's administration. The use of the words was clear to all. The attempt by Cllr Cook to state that the words did not carry their obvious meanings was disingenuous.

Cllr Ralph Cook

3.11.1 Cllr Cook's representative made the following oral submissions:

3.11.2 The post-election leaflet was the product of a seasoned political campaigner and historian who was pedantic at the correct use of language. It was a political

leaflet. Whilst the reaction of Cllr Cook may appear pedantic, his background was steeped in German history and this affected his perception of the subject. He knew what specific terms meant and, in the email exchange, assumed that he and Cllr Berman were discussing the use of words on a historical context. Cllr Berman sought publicity in respect of his response to the leaflet. A press release was issued and reference made to other Council members, an AM and a MP who were not connected with it. There had been a cordial relationship between Cllr Cook and Cllr Berman but when Cllr Cook received the telephone call from the journalist, this confirmed to him that this was a political exchange. The leaflet was withdrawn.

3.11.3 On 26 February 2009, there was frustration as to the curtailment of the budget debate. There are many discrepancies in the evidence as to what was said in the recess. The best recollection is that of Cllr Aubrey. At most a couple of sentences were said before Cllr Cook moved away from the table. It is submitted that no member had asked him to withdraw the comment at the table. The best position is the evidence now given by Cllr Cook and by Cllr Aubrey, making no mention of the use of the word "Nazi".

3.11.4. Cllr Cook's statement in the Council Chamber might best be described as "verbal soup". Various accusations had been flying around. Cllr Cook is not a man to use words loosely and would not have used the word "Nazi" loosely. Whilst the general population may link the words "Storm Troopers" to the "Nazi regime", Cllr Cook did not because of his historical knowledge. The context to his statement was an "incendiary bear pit", following the curtailment of the Budget debate. His supplementary question emphasised German history in "early "1933. Cllr Cook cannot stop himself using precise words because they have precise meanings to him. He was not making a sweeping statement as to a "Nazi Germany regime".

3.11.5 The Case Tribunal had heard evidence from Cllr McKerlich and his perception was not one of abuse. He believed that the metaphor being used was reasonable. The words were being addressed to the Council and to the Liberal Democrats in general. Cllr Cook was not attacking an individual.

4. FINDINGS OF FACT

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

4.1.1 Cllr Ralph Cook has been and is a member of Cardiff County Council since 1999 and during the period under consideration was Leader of the Labour Group.

4.1.2 Cllr Rodney Berman, who is Jewish, was (and still is) Leader of the Council.

4.1.3 Cllr Cook signed a Declaration of Acceptance of Office on the 7 May 2008 and the Cardiff County Council Undertaking for Councillors on the 15 May 2008.

4.1.4 A leaflet was printed and distributed in the Trowbridge area of Cardiff during the summer of 2008. It was promoted by Cllr Ralph Cook on behalf of the Trowbridge Branch of the Labour Party. The leaflet contained reference to an "Electioneering army", "storm-troopers" and "Lib Dem blitzkrieg". These phrases

were used in the context of the Liberal Democrat's campaign in the Trowbridge area leading up to the May 2008 Council elections.

4.1.5 On the 10 July 2008 Cllr Berman wrote to Cllr Cook enclosing a copy of the leaflet and indicating that he found the words used in the leaflet "completely unacceptable and deeply offensive". Councillor Berman also said:

"...that words like 'blitzkrieg' and 'storm-troopers' are synonymous with the German Nazi regime during the second world war and it is abundantly clear that the intention of these analogies is to liken the Liberal Democrats to the Nazis"

Cllr Berman requested an apology and an assurance that Cllr Cook would "not publish any leaflets with such inappropriate and offensive comparisons in future."

4.1.6 An exchange of e-mails took place on the 10 July 2008 between Cllrs Cook and Berman. They include the following points:

- i. Cllr Cook stated he had "nothing to apologise for" and pointed out that Nazis were not mentioned in the article.
- ii. Cllr Berman responded (at 15.31) that he remained "deeply offended" by the leaflet and that the words "blitzkrieg" and "storm-troopers" would, by "most people", be associated with the Nazis. Cllr Berman further stated that members of his family had been murdered by the Nazis in concentration camps.
- iii. Cllr Cook replied (at 16.21) to say that he had "great sympathy with regard to the treatment of people of many origins by the Nazis but I will not accept any lectures on the use of language or the problems of perceptions that are based on misunderstood history".

There followed a further exchange of e-mails between the two councillors on 14 and 15 July 2008.

4.1.7 A full Council Meeting was held on the 26 February 2009. A debate on the approval of the Council Budget took place at the meeting. A resolution for its approval was carried. The minutes note "Members queried the appropriateness of this motion as a number of Members had reserved the right to speak during the debate and had not had the opportunity to do so. The Lord Mayor advised that the motion had been properly moved and seconded and that it was a matter for Council to determine."

4.1.8 The Minutes record the meeting was adjourned at 7.00 p.m. and re-commenced at 7.25 p.m. During this recess, Cllr Cook spoke to a number of Liberal Democrat members sitting and standing around a table.

4.1.9 At the re-convened Council Meeting, Cllr Cook raised a query as to a Liberal Democrat leaflet to which Cllr Berman responded, as recorded in the minutes:

"I will be happy to engage with you further on discussion of this leaflet, however, just as soon as you apologise [sic] one of your local leaflets last

year which contained clear analogies between Liberal Democrat campaigners and the German Nazi regime.”

4.1.10 Cllr Cook raised a supplementary question in response, recorded in the minutes as follows:

“I refer to your last paragraph in your answer. I did have a different question but after the events of a few minutes ago I’ve got this one instead. Can you think of any reason why I shouldn’t liken your Administration to the early days of a period of sad times in Germany in 1933?”

4.1.11 Cllr Berman’s response is recorded:

“I find that remark deeply upsetting and I’d ask you to withdraw it.”

4.1.12 The minutes record that, later in the Council meeting, Cllr Woodman raised issues as to alleged comments made during the recess:

“In relation to this evening, I was enjoying my break and I regret that I overheard the conversation that Councillor Ralph Cook said to Councillor Berman and myself. I have to say what I heard was appalling. It was appalling for the topic that was raised and has been raised in the Chamber here again tonight. I think he has withdrawn it but he didn’t withdraw what he said at tea. I have to say in my opinion now it is bordering on, dare I use the word victimisation, or certainly targeting a certain individual of this Council. So I do hope that all parties who overheard it make a complaint to the Monitoring Officer to get this addressed. As regards making Members attend equalities training, as I said in my answer, it isn’t compulsory but I will be taking this forward with the Clerk to the Council and Leaders of all political groups because this is unacceptable.”

4.1.13 The Lord Mayor is recorded as stating the following:

“I will take this as an opportune time to say that I initially thought that the very objectionable statement you made had been withdrawn. I was told otherwise. I do find it objectionable and I have referred it to the Monitoring Officer.”

4.1.14 The minutes record Cllr Cook as responding:

“The leaflet that is referred to in the answer from Councillor Berman’s question that I put to him, referred to storm troopers and blitzkrieg. Now Councillor Berman decided to communicate with myself and other members of the Labour Party suggesting that this was an attempt to smear the Liberal Democrats as a Nazi Party. My response to him was that I wouldn’t apologise. The blitzkrieg precede the Nazi Party’s power in Germany by something like 20 years and so did storm troopers and I obviously did not refer to the Liberal Democrat party as Nazis. They clearly don’t have any of the Nazi style policies, so I was using those terms in the context of very efficient electioneering and they chose to find it as an insult. I can sort of understand why but it was not meant in that way.

On today, I was not making a personal attack on anybody. I was not. If I had I would have said "Rodney you are - if that's the person you are identifying". What I actually said is – 'Judith and Rodney what I witnessed just now is an example of the sort of thing that happened in Nazi Germany which was using systems to stop people speaking out loud to stop oppositional points of view being expressed.' That is what I believe happened here today. A group with a majority, with a majority knowing full well there are other people wishing to speak, having been granted the opportunity, then using their superior numbers to prevent others from speaking."

4.1.15 E-mails referring to alleged comments made by Cllr Cook were forwarded to the Monitoring Officer for Cardiff County Council as follows:

- i. Cllr Woodman on 26 February 2009
- ii. Cllr Hyde on 28 February 2009
- iii. Cllr Salway on 26 February 2009
- iv. Cllr Aubrey on 26 February 2009

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

4.2.1 Cllr Cook's comments and actions during the recess of the Council Meeting on 26 February 2009.

4.2.2 The interpretation of comments made by Cllr Cook and his actions.

4.3 The Case Tribunal found the following in respect of the disputed facts which included further findings requested by Cllr Cook.

4.3.1 On 10 July 2008, Cllr Berman issued a press release complaining as to the wording of a Labour Party leaflet issued in 2008 in the Trowbridge area of Cardiff. A Journalist contacted Cllr Cook on 10 July 2008 in respect of the press release. Cllr Cook forwarded a copy of his reply to Cllr Berman by way of email at 13.46 on 10 July 2008. An article appeared in the South Wales Echo relating to the matter on 11 July 2008.

4.3.2 The words "storm troopers" and "blitzkrieg" would, to most people, be linked to the Nazi Germany period during the Second World War. The term "storm troopers" can refer to political canvassers and the term "blitzing an area" can refer to distribution of leaflets.

4.3.3. Prior to May 2008 Cllr Cook and Cllr Berman had a cordial relationship.

4.3.4 The Case Tribunal comes to the above findings based on the documents read and the evidence heard including that of Cllr Cook.

4.3.5 During the recess of the Cardiff Council meeting on 26 February 2009, a number of Liberal Democrat councillors were seated at a table. Cllr Berman was standing. Cllr Cook approached the table and directed comments at Cllr Berman and Cllr Woodman who had, by the time Cllr Cook arrived, stood up. Cllr Cook was indignant at the

curtailment of the budget debate. He had, prior to this exchange, read the written response noted in paragraph 4.1.9 above. The Case Tribunal is satisfied that Cllr Cook sought to compare the actions of the administration with the actions of Nazi Germany. The Case Tribunal were satisfied during this exchange Cllr Cook used the words “storm troopers” and the words “Nazi”.

4.3.6 The Case Tribunal came to the findings in paragraph 4.3.5 on a balance of probability based on:

- i. The evidence of Cllr Berman who was the person standing closest to Cllr Cook. The Case Tribunal prefers the evidence of Cllr Berman on this point to that of Cllr Cook. Although Cllr Berman was not able to recall verbatim what was said, in part due to his level of upset at the comparison, his evidence was firm. It was also supported by Cllr Salway and her email on 26 February 2009 confirming matters. Cllr Woodman and Cllr Aubrey did not mention the word “Nazi” initially but did believe, on reflection, that it could have been used.
- ii. Further, the finding is based upon Cllr Cook’s statement to the Council meeting in which he is recorded as using the term “Nazi Germany”. The Case Tribunal does not accept the evidence of Cllr Cook that he admitted, in the Council Chamber, something he had not said. As was pointed out on his behalf, he is extremely careful as to his precise use of language and words. He is fully conscious of the connotations associated with the term “Nazi” – he had been involved in campaigning against people who had held such views and, on his own admission, he would not call someone a “Nazi” lightly. Also on his own admission, he was aware of rumours that he had made a link between the administration and “Nazi Germany”. If they were untrue, he would have used his personal statement to deny the same. His personal explanation was an attempt to clarify his allegation that the actions of the administration had been dictatorial. It was not to seek to deny that he had used the word “Nazi” or that he had made the comparison between the administration and “Nazi Germany”. He was aware, because he had read the written answer prior to the recess, of previous issues relating to the link between the Liberal Democrats and Nazi Germany.

4.3.7 Cllr Cook was indignant as to the curtailment of the budget debate. A purpose of the comments he made, on 26 February 2009, was to seek a reaction from Cllr Berman. It would have been obvious to any reasonable person that the comments would cause particular offence to Cllr Berman.

4.3.8 The Case Tribunal came to the above findings based on the evidence heard and, in particular, the correspondence concerning the 2008 leaflet. Cllr Cook had been advised that members of Cllr Berman’s family had been murdered by the Nazis. Cllr Cook was aware of Cllr Berman’s Jewish background. Cllr Cook was aware that comparison of the Liberal Democrats and/or the administration in Cardiff to the Nazi regime would cause offence to Cllr Berman who was the leader of the party in Cardiff and the administration and had indicated that he found such comments deeply offensive. Cllr Berman’s response to the supplementary question also clarified his upset at the link and sought its withdrawal. Cllr Cook refused to do so.

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

5.1 The Ombudsman's Report and Submissions

5.1.1 Mr Gwydion Hughes, on behalf of the Ombudsman, referred the Case Tribunal to paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct. Failure to show respect and consideration to others had to be viewed in the light of the leaflet in 2008 and the ensuing correspondence. That ought to have left Cllr Cook in no doubt that linking conduct to that of a Nazi regime would be profoundly offensive. It should have been obvious that any person of Jewish background would have found such an allegation of close association offensive. On 26 February 2009 there were two instances when Cllr Cook chose to use the analogy. Cllr Cook accepted that he was rightly indignant. His conduct goes beyond that which is acceptable.

5.1.2 In respect of 4(c), the Ombudsman submitted that the Case Tribunal could find that there was a course of conduct. He conceded, however, that the statements on 26 February were made within close proximity to each other.

5.1.3 In respect of bringing the office into disrepute, Cllr Cook was challenging the Leader of the Council in a highly charged debate but in such a way that would lead the public to form a lower view of the debate as a result.

5.2 The Respondent's Submissions

5.2.1 Submissions made on behalf of Cllr Cook were that the Ombudsman, in his report, accepted that there was no breach of paragraph 4(a) which is the principle of equality. For there to be a breach of 4(c), the Case Tribunal would have to find that there was wilful targeting because of race or religion. It is not accepted that there was any bullying or harassment. There is a fundamental problem that the actions and comments as to the leaflet are not linked existentially to the debate.

5.2.2. Cllr Cook is highly regarded as an individual and a politician. Evidence from Mr Kohnstamm was that in no way was Cllr Cook anti-Semitic. There was evidence of the effects upon Cllr Cook's own family and his partner's family of the Nazi regime. Cllr Cook was an individual who showed tolerance and integrity and often would act against the party line.

5.2.3 Cllr Cook felt angry that the draft Ombudsman's Report suggested his actions to be racially motivated. It is conceded the language was ill-considered and that he should have immediately apologised. It is submitted however that a course of conduct is not made out and that this was not a personal attack. In terms of bullying, as per the guidance issued by the Ombudsman's office, it could not be said that Cllr Berman was a weaker person. Whilst there may have been a lapse of judgment by Cllr Cook, it would be wrong to ascribe particular motives to him. He was not specifically targeting Cllr Berman because of Cllr Berman's faith or race.

5.2.4 The term "bringing the office into disrepute" does not, in the eyes of members of the public, require councillors to be "nice to each other". The Labour Group were extremely upset at their perceived gagging during the budget debate. What was said was

part of the rough and tumble of the Council chamber and did not bring the Council into disrepute.

5.2.5 A further submission was made that the Convention of Human Rights needed to be considered by the Case Tribunal. Article 10 allows freedom of expression. What was said was in a political arena and statements were quasi political which would afford Councillor Cook a higher level of protection. The Case Tribunal was referred to the case of Sanders –v- Kingston.

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 Cllr Cook did not fail to comply with paragraph 4(c) of Cardiff County Council’s Code of Conduct.

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

5.3.1.2 The Case Tribunal found that Cllr Cook’s conduct did not amount to harassment on the basis that there was not a course of conduct. It did not amount to bullying on the basis that the necessary threshold had not been met.

5.3.1.3 The Case Tribunal accepts that there was an incident which caused Cllr Berman upset and distress but, in order for harassment to be made out, there had to be a course of conduct. There were 2 incidents but they were extremely close to each other. It was only a matter of minutes, at most, between the comments at recess and the supplementary question. The Case Tribunal formed the view that they were not sufficiently separate incidents so as to amount to a course of conduct for the purposes of harassment. The leaflet was not a part of the course of conduct, as conceded by the Ombudsman, as the Tribunal did not regard it as being addressed to Cllr Berman. The leaflet however did serve to put Cllr Cook on notice of the effects of such comments.

5.3.1.4 Careful consideration had been given as to whether the conduct could have amounted to bullying. Bullying can occur in a single incident. The Case Tribunal had regard to the guidance issued by the Ombudsman. Whilst it could be said that Cllr Berman was not a “weaker person”, such a person can be interpreted as “a vulnerable person”. On balance, the Case Tribunal was not satisfied that the threshold had been overcome for it to conclude that bullying had occurred in all the circumstances of the case. The actions of Cllr Cook were not deliberately anti-Semitic, though his actions and comments were extremely naïve. The correct steps were taken by the councillors in reporting the matter to the Monitoring Officer and it is significant that there had been no further incidents which could support the allegation of bullying.

5.3.2 The Case Tribunal found by a unanimous decision that Cllr Cook did fail to comply with other aspects of Cardiff County Council’s Code of Conduct.

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

5.3.2.2 The Case Tribunal was satisfied that there was a breach of paragraph 4(b) of the Code of Conduct and in particular the failure to show respect and consideration to others.

5.3.2.3 The Case Tribunal came to this view on the basis of their findings of fact. The breach had occurred in the comments made by Cllr Cook on 26 February 2009 during the recess, in the supplementary question and in the personal explanation in the Council Chamber. The Case Tribunal found that Cllr Cook, by his comments, had failed to respect Cllr Berman's beliefs and feelings and had sought to goad him. Cllr Cook was aware of the effect of making a link between the Nazi regime and the administration, of which Cllr Berman was leader, and that this would have an upsetting effect upon Cllr Berman. This had been made clear in the email exchanges following Cllr Berman's objection to the post-election leaflet. Cllr Cook had chosen to make the comments on 26 February 2009 which he knew would cause offence and in so doing failed to show respect to Cllr Berman's beliefs and feelings.

5.3.2.4 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."*

5.3.2.5 The Case Tribunal was satisfied that Cllr Cook's actions could be regarded as bringing the office or authority into disrepute. Cllr Cook's actions were subject to greater scrutiny as a councillor and, in particular, as the Leader of the Labour Group at the time. The question the Case Tribunal had to ask itself was: what would a reasonable member of the public think? It is important to note that a reasonable member of the public would be assumed to have all the knowledge of the case. The Case Tribunal balanced the fact that comments were made in the heat of an argument and the stresses of the budget debate. However, it was satisfied that the actions amounted to disrepute. This was because Cllr Cook had already been made aware of the offence which would be caused to Cllr Berman if a link was made between Nazi Germany and the political administration in Cardiff, and that the offence was based in part upon race. Cllr Cook, in a letter to the Ombudsman, had conceded *"I have accepted that a person having a Jewish background could be offended by anything they interpret as suggesting they or the group they are a member of is analogous or likened to the German Nazis"*. That is what Cllr Cook did and, in so doing, called the office and authority into disrepute.

5.3.2.6 The Case Tribunal gave consideration to matters raised by the Human Rights Act and in particular to the case of Sanders –v- Kingston. Article 10 of the European Convention on Human Rights provides:-

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless offrontiers"

Sub-section 1 has to be considered in the light of sub-section 2:

2. "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by Law and are necessary in a democratic society, in the interest of the protection of the reputation or rights of others....."

The case of Sanders, following consideration of 3 factors, accepted that procedurally the Code of Conduct was compliant with the convention. However, in

each individual case, regard has to be given as to whether the comments and actions are of pure political opinion. The Case Tribunal concluded in this case that the comments were not of pure political opinion because they sought to exploit Cllr Berman's feelings and religion. Cllr Cook was aware that they would cause offence and the comments made at the recess and the supplementary question were made directly to Cllr Berman. Other analogies could have been made as to the perception by Cllr Cook of the unfair curtailment of the budget debate. They amounted to personal abuse and on the basis of the finding of facts they are breaches as found. The Case Tribunal had regard to all factors within article 10 and were fully entitled to find that the conduct was in breach of paragraphs 4(b) and 6(1)(a) of the Code of Conduct. The protection of others required the same.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Ombudsman's Submissions

6.1.1 The Ombudsman submitted that the actions had been found to bring the Council into disrepute and there had been a denial of the facts to the end. The Ombudsman conceded that a number of aggravating factors as per the guidelines were not in existence in the case.

6.2. The Respondent's Submissions

6.2.1 Cllr Cook contended that the Case Tribunal had to bear in mind that there were no breaches of paragraphs 4(a) or 4(c) of the Code of Conduct. The Case Tribunal was referred to the guidance and to aggravating and mitigating factors.

6.2.2 A number of written references were handed in including one from the Leader of the Conservative Group. Cllr Cook's financial position is that he is reliant on his allowance as a councillor as his sole form of income. During the past few years he had to sell his business.

6.2.3 It was submitted that, as per the guidance, a reprimand was the appropriate sanction. Two main aspects to consider in respect of a reprimand are that there had been an inadvertent failure and that the Case Tribunal could be re-assured there would be no future breaches. In respect of inadvertent failure, the leaflet expressed genuinely held beliefs. Cllr Cook was of the view that this was a historical or philosophical argument. He accepts they were ill-chosen words said in the Council Chamber but was viewing matters purely from a political prospective. The breach of the code was therefore inadvertent.

6.2.4 The ordeal of the hearing and of the investigation had had an adverse effect on Cllr Cook's health which would ensure that there would be no future breaches. On this basis, there was no requirement to disqualify or suspend. He devoted himself to public service and there was ample evidence of the good work he had carried out on behalf of his constituents and campaigning on behalf of others.

6.2.5 In terms of aggravating or mitigating factors, the views of Cllr Cook were honestly held. There had been provocation and matters were said in the heat of the moment. It was the other side who had introduced the link to the leaflet on 26 February 2009. In

terms of the precise words he was not denying the facts of the case but seeking to offer his interpretation.

6.3 Case Tribunal's Decision

6.3.1 The Case Tribunal considered all the facts of the case and reached the following decision.

6.3.2 Upon taking up the office of a councillor each individual signs an undertaking to comply with the Code of Conduct. These are Rules which govern the conduct of councillors. It ensures probity, fairness and that people are treated with respect.

6.3.3 The purpose of the Code is not to thwart political debate or to silence councillors. The public expect their councillors to be able to express their points of view with some force and to advance arguments in favour of a particular cause. However, they must do so within the Rules. It was pleasing for the Panel to hear evidence that prior to the events leading to this referral, Cllr Cook and Cllr Berman had had a positive relationship. For a council to operate effectively, it requires councillors to be able to work well together across party divide. It is, in Cllr Cook's words, a "tragedy" that matters have reached where they are today.

6.3.4 The Case Tribunal considered carefully all the mitigating factors, guidelines and representations made on behalf of Cllr Cook and the numerous written references handed in on his behalf. The Case Tribunal had particular regard to:

- i. The substantial years of good service given by Cllr Cook as a councillor. He had provided good service both to his constituents and the citizens of Cardiff generally.
- ii. Cllr Cook is a politician through conviction with firmly held political beliefs.
- iii. The effect which these matters had already had upon Cllr Cook, including relinquishing leadership of the Labour group, the strain of the allegations and effect upon his health of having to face the Case Tribunal, and the adverse publicity.
- iv. There have been no further breaches of the code.

6.3.5 It was submitted on behalf of Cllr Cook that a reprimand would be appropriate. The breaches were inadvertent and there was no risk of future repetition. In the guidance, a third relevant consideration is in the absence of any harm caused or the potential of such harm as a result of the breaches.

6.3.6 The Case Tribunal gave careful consideration to the imposition of a reprimand, but was of the firm view that the circumstances of the case have crossed the threshold for suspension. The circumstances are sufficiently grave to require public assurance and to impress upon Cllr Cook the severity of his breaches. By its findings, the Case Tribunal was satisfied that Cllr Cook's conduct has brought the office and authority into disrepute.

6.3.7 The Case Tribunal emphasises that the issues relating to the publication of a leaflet in 2009 were not the subject of the referral to it. The words used in the leaflet

“storm troopers” and “blitzkrieg” were not at that time a personal attack upon Cllr Berman. However they led to an email exchange in which Cllr Berman made it explicitly clear to Cllr Cook why such comparisons were personally upsetting:

“perhaps if like me you had members of your family that you will never have the opportunity to meet because they were murdered by the Nazis in concentration camps, or if you yourself had grown up knowing people who had survived such concentration camps as children, then you would view this matter differently”.

Cllr Cook was already aware of Cllr Berman’s Jewish background.

6.3.8 The Case Tribunal accepts, in the words of Cllr Cook, that he felt “righteous indignation” as to the curtailment of the Budget debate on 26 February 2009. However, the Code of Conduct required Cllr Cook to comply with certain Rules of Conduct as to how to express that indignation. Cllr Cook had been handed, on that evening, a written answer which reminded him of the personal offence felt by Cllr Berman at the linking of Cllr Berman’s group and “Nazi Germany”. Cllr Cook approached Cllr Berman and made a comment, likening his administration to that of Nazi Germany, despite the clear warning the effects such comments had upon Cllr Berman personally given his background.

6.3.9 The Case Tribunal found this to be a breach of the Code in that it failed to show respect and consideration to Cllr Berman and brought the office and authority into disrepute.

6.3.10 If the offence caused was as a result of a single comment, the Case Tribunal would accept, in part, that it was said in the heat of the moment. However, following the making of the comment in the refreshment room during the recess, Cllr Cook proceeded to exacerbate the situation by asking an alternative supplementary question. This again sought to make the link which Cllr Cook knew, and any reasonable person would have known, would have the effect of causing further harm. Cllr Berman immediately replied that he found the remark deeply upsetting.

6.3.11 This was said in the forum of a public arena, namely a Council meeting. Cllr Cook was “reckless” to the harm such comment could cause. Cllr Cook was asked to withdraw the comment which he refused to do. Cllr Cook’s personal explanation followed a comment by another councillor who indicated that Cllr Cook was targeting an individual. The personal explanation compounded the situation and the potential for further harm. It is for these reasons we believe a suspension is the appropriate sanction.

6.3.12 The Case Tribunal gave credit to the personal factors noted in mitigation including the years of good service by Cllr Cook and the effect the proceedings had had upon him. It also had regard to the loss of income which would result from a suspension.

6.3.13 The Case Tribunal also has particular regard to Cllr Cook’s initial comments made to the Ombudsman. In a letter dated 17 June 2009, Cllr Cook stated as follows:

“With hindsight I very much regret my words that day both in and out of the Council Chamber”.

Cllr Cook further accepted the offence which was caused to Cllr Berman by his comments and offered his sincere and unqualified apologies. Without the apology and the regret expressed the period of suspension would have been greater.

6.3.14 The Case Tribunal concluded by unanimous decision that Cllr Cook should be suspended from acting as a member of Cardiff County Council for a period of 2 months or, if shorter, the remainder of his term of office, with effect from 10 November 2010.

6.3.15 Cardiff County Council and its Standards Committee are notified accordingly.

6.3.16 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.....
Hywel James
Chairperson of the Case Tribunal

Date...17 December 2010...

Christine Jones
Panel Member

Juliet Morris
Panel Member