

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2010-011/CT

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

RESPONDENT: Councillor John Major

RELEVANT AUTHORITY(IES): Monmouthshire County Council
Magor with Undy 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 23 November 2010 at Glen yr Afon Hotel, Usk and continuing at 9.30 am on Wednesday 9 February 2011 at the Hilton Hotel, Newport. The hearing was open to the public.

1.3 Cllr Major attended and was represented Mr Richard Payne, Solicitor of William Graham Law Ltd.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 23 June 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to an allegation made against Cllr Major. The allegation was that Cllr Major had breached Monmouthshire County Council’s Code of Conduct when, during a recruitment exercise for the post of Chief Executive Officer, he made a discriminatory, racist or inappropriate remark about an applicant.

2.1.2 During investigation, the Ombudsman became aware of a further allegation about Cllr Major. This was that he had used inappropriate language in a conversation with a fellow community councillor following a meeting of Magor with Undy Community Council.

2.1.3 The circumstances leading to the alleged breaches are evidenced from the undisputed material facts and the disputed material facts set out in this Decision Report.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Major's representative submitted a written response by email on 17 August 2010.

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

- a) **Paragraphs 13, 30, 35, 36, 37 and 38** – Cllr Major has always maintained that he said "he was a breath of fresh air and he is black" in a complimentary manner with the view that his appointment would also improve the Council's recruitment record of ethnic minorities. Cllr Howarth's account differs from that of other councillors; he is of a different political persuasion to Cllr Major. Cllr Major did not grin when he made his comment and the opinion of Cllr Watts as to what he considers other should have heard should be disregarded. It is denied that other members present grimaced, let out a groan of discontent or looked uncomfortable; it is denied that Cllr Major smirked. It is admitted that he was not remorseful or apologetic as he had neither said nor done anything wrong and had only been complimentary about the candidate. The comment by Cllr Watts to Cllr White (that Cllr Major was dangerous) is strenuously denied.
- b) **Paragraphs 18, 19 and 44** – The words used by Cllr Major "where did you get that tan, you are almost half a wog", were made in jest; he apologised to Cllr Cadwallader for any offence caused and subsequently understood his apology to have been accepted. Cllr Brian Burt has now corroborated his account. He did not say "I didn't mean anything by it, you are clearly not one of them with a surname like Cadwallader", therefore this could not amount to a failure to show respect and consideration for others nor of bringing the office into disrepute.
- c) **Paragraphs 76, 77 and 79** - Cllrs Strong, Powell, Burrows, Hayward, Webb, Edwards and Eassom gave positive accounts supporting Cllr Major; Cllrs Eassom and Edwards are of a different political persuasion. Inappropriate weight has been given to the accounts of Cllrs Howarth and Watts; they are not independent and are notably different from the accounts given by the majority of others. Cllr Watts' account is in any event denied.
- d) **Paragraphs 80 and 81** - The conclusions are flawed.
- e) **Paragraph 82** - Insufficient weight is given to Cllr Major's account despite his consistencies and the lack of corroborative evidence in relation to Cllr Cadwallader's account.
- f) **Paragraph 83** - Cllr Major's conduct could not be regarded as having brought the office of member into disrepute.

- g) **Generally** - Cllr Major has never been of a racist disposition; he is aware of the rules governing political correctness. He gave up his duties voluntarily in order to welcome this investigation and has suffered financial loss. At no stage did he intend to act disrespectfully towards any candidate and thought that the candidate (to which the first complaint relates) was excellent and his comment was complimentary regardless of whether it was taken out of context. He referred to the candidate's ethnicity in comparison to the current American President for whom he has the utmost respect and to acknowledge that society today encourages equal opportunities, to the extent that it is almost unavoidable to positively discriminate. Cllr Major leads an active social life belonging to many organisations with many friends of various ethnic backgrounds; he would be deeply upset if the allegations affected his friendships and reputation. He is nearing the end of his term as a councillor of 32 years and is proud of his record; he would wish to continue without any prejudice to his reputation. He is 78 years old and has been a public servant all his life, serving in the Army, in the Police Force and for the Environment Agency. He recently underwent medical treatment for a condition exacerbated in part by the stress of these proceedings; it is a disgrace that he is now subjected to such a process with his impeccable record of serving the community.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman commented on Cllr Major's representations as follows:

- a) **Paragraphs 13, 30, 35, 36, 37 and 38** – The Ombudsman's Report clearly reflects Cllr Major's assertion as to what he said. Witness evidence cannot be considered simply on the basis of political persuasion. The Adjudication Panel will draw its own conclusions.
- b) **Paragraphs 18, 19 and 44** – Whether the comment "where did you get that tan, you are almost half a wog" was made in jest has no bearing on the seriousness of the matter. Even if Brian Burt's evidence supports that they were made in jest, Cllr Cadwallader stated he was shocked and he subsequently responded to Cllr Major when they spoke in the car park. Cllr Major's contention as to what he said and that he considered Cllr Cadwallader to be a friend, are fairly outlined throughout the Report. If comments were made to a friend in jest, it does not follow that they could not amount to a failure to show respect and consideration for others, nor accordingly that they could not amount to a breach of the Code. The Ombudsman found that the comments were made by Cllr Major in his official capacity, so the Code was invoked.
- c) **Paragraphs 76, 77 and 79** - The comments made by Cllr Major's representative are not accepted. Appropriate consideration and weight has been given to the evidence.
- d) **Paragraphs 80 and 81** - That Cllr Major used the word "wog" on 1 June so soon after the events of 21 May and following the press reports, suggests

that Cllr Major may have used inappropriate language on 21 May. If Cllr Major said "he is a breath of fresh air and he's black", such reference to the candidate's ethnicity during the selection process was inappropriate and supports a finding of breach of paragraph 4(b) of the Code as opposed to paragraph 4(a) as inaccurately stated in the Report. Cllr Major may have intended his comment to have been entirely complimentary, however whether the comment failed to show the candidate respect and consideration is determined by way of an objective analysis and the Ombudsman contends that a reasonable member of the public would consider reference to the candidate's ethnicity as inappropriate and in breach of paragraph 4(b) of the Code.

- e) **Paragraph 82** - The Report is not misleading and accurately reflects both parties' accounts of the conversation.
- f) **Paragraph 83** - Cllr Major's conduct has brought the office of member into disrepute. Notwithstanding the matters in dispute, Cllr Major has accepted that he used the word "wog" and his response, that such comment was made in jest, suggests he does not accept any wrongdoing, nor that such language is unacceptable.

3. ORAL SUBMISSIONS

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

Cllr Major's Representative

3.2 Mr Payne submitted, as a preliminary matter, that Cllr Major has the right to a fair trial (under Article 6 of the European Convention on Human Rights). The way in which the evidence has been presented offends natural justice - what happened on 1 June can have no bearing on what happened on 21 May. It is faulty and prejudicial and wrong in law to seek to deal with all the evidence together. In the interests of justice the Panel should deal with each allegation separately. Firstly hearing evidence, reaching its decision on relevant disputed facts and (on the basis of the facts as then found) whether there is a breach of the Code arising from the events on 21 May; before moving on to consider the second allegation. Mr Payne also submitted the Respondent's Skeleton Argument which is annexed to this Decision Report.

Public Services Ombudsman for Wales

3.3 Ms Shaw relies on the Ombudsman's Report. There are two separate allegations relating to events respectively on 21 May and 1 June. Cllr Major accepts that he used the word "wog" on 1 June and, whilst it does not necessarily follow that he used inappropriate language on 21 May, the Case Tribunal is entitled to consider the type of language he uses. No particular objection to proceeding as requested by Mr Payne.

Cllr Armand Watts (in relation to the events on 21 May)

3.4 Cllr Watts gave evidence on oath. He confirmed no instruction or direction had been received to positively discriminate, or in relation to appointment of ethnic minorities for this position. The Chair had advised about being professional during the process. At the end of the mock exercise members were asked on an individual basis to give comments and Cllr Major said "yes, good candidate, shame he's black". There was laughter in the room and "mild distress". No one seemed prepared to challenge Cllr Major. No one else was speaking when Cllr Major made these comments. He was sitting close to Cllr Major and he clearly heard what he said. He said to Cllr Major "you can't say that". Cllr Major did not offer an apology. He then asked Cllr Howarth (the Chair of this meeting) to come outside. They went outside and were followed by Sue White and Jim Higgins. He had an exchange with Cllr Howarth; Cllr Watts wanted Cllr Major removed from the meeting immediately, whilst Cllr Howarth wanted to continue. According to Cllr Watts, Sue White could see his distress, she was supportive and comforting. He then went to see the then Chief Executive, Mr Colin Berg, about the matter. According to Cllr Watts, Mr Berg had concerns about Cllr Major's treatment of ethnic minorities. Cllr Watts is of the view that there are cultural issues in the Authority, in which case he would not be surprised that others will support Cllr Major's version of events; they may wish to cover up; they may be friends who wish to help him; there may be some people who genuinely do not appreciate that comments such as those made by Cllr Major are wholly unacceptable in this generation. Cllr Watts was adamant that he is not mistaken about what he heard and he was surprised and distressed by Cllr Major's remark "...shame he's black". At best, one might say it was a very bad joke; at worst, it is a racist and discriminatory remark. Cllr Watts said he had been an elected member for 7 years and had little experience of working with Cllr Major and sparse knowledge of him.

3.5 When questioned by Mr Payne, Cllr Watts did not depart from his evidence in chief. He confirmed again the words he had heard and that Cllr Major had not said "he is a breath of fresh air". He would not accept that others did not hear the remarks which he had heard. He agreed that the Authority has a low percentage of ethnic minority employees but did not recall anything of a positive nature said by Cllr Major in relation to this candidate. He was adamant that he was in no way mistaken and anyone who supported Cllr Major's version of the events was not merely mistaken; they would be misleading the Tribunal process. He had been particularly upset by Cllr Major's remark because he is a father of "a mixed race family". He said again he was sure that Cllr Major used the words "shame he's black" and added that there was no place, in a recruitment exercise, to make reference at all to a candidate's colour. He accepted that he had spoken to the press about the matter, but so had Cllr Major.

Cllr Brian Strong (in relation to the events on 21 May)

3.6 Cllr Strong gave evidence on oath. He confirmed the accuracy and truth of his signed statement. He was part of the appointment process on 21 May. He was sitting two seats to the left of Cllr Major. After the presentation by the candidate the Chairman asked for comments. Cllr Strong said he was "virtually 100% sure" of the words used by Cllr Major, namely as set out in his statement, "he could be

the one, he was like a breath of fresh air and he's black". He was certain that Cllr Major did not say "shame he's black". He remembered Cllr Watts saying "you can't say that", twice, and that Cllr Watts had spoken to Cllr Howarth. Upon being asked by the Case Tribunal, did he not find that reaction strange (in the light of what he believes Cllr Major said), he said it was strange but possibly Cllr Watts misheard or misinterpreted what Cllr Major said. Cllr Major's comments were "awkwardly worded". Cllr Strong could not remember the reaction to all of this; he did not think that Cllrs Watts and Howarth left the room at that point, but sometime later; he did see them speaking outside, but didn't know what they were talking about. Cllr Strong confirmed that he was not aware of any direction given to positively discriminate in this appointment. He also confirmed that he had not been questioned by, nor attended any interview with, either the Chief Executive or Cllr Fox. He said he had not discussed this matter with Cllr Major and was clear in his own mind what had happened. When the matter was reported in the press he had made some notes to assist his recollection of the events as he assumed that he may be interviewed by or asked to provide information to the Ombudsman. He repeated that Cllr Major's comments were awkwardly worded and that he personally would not have made such a remark. He believed that Cllr Major was trying to convey a view that this candidate would be a good appointment on his merits and that it would be good for the Authority to appoint a black candidate. He added, once the comment had been made, perhaps it was a difficult one to withdraw and would be the sort of comment that could get someone into trouble, as had happened on this occasion. He said that he and Cllr Major had been colleagues for about 2 years.

3.7 When questioned by Mr Payne Cllr Strong confirmed that Cllr Major had been very enthusiastic about the candidate and he had not picked up any negative connotations from Cllr Major's remarks. He confirmed that he was clear as to that which he had heard and how it was said and that he would not mislead this Tribunal. He repeated that Cllr Watts may have misheard Cllr Major's comments.

Cllr Maureen Powell (in relation to the events on 21 May)

3.8 Cllr Powell gave evidence on oath. She took part in the recruitment exercise on 21 May. She was sitting to the left of Cllr Major and thought there may have been one person sitting between them. She confirmed the accuracy and truth of her signed statement. The words used by Cllr Major were "he is like a breath of fresh air, and he's black". She had taken this to mean that Cllr Major thought it would be a good thing to have a black person. Cllr Powell had little recollection of what happened after these comments were made; she said everyone else was given the opportunity of giving their opinion about the candidate; there was a break when some people went outside and she remembered seeing Cllr Watts speaking to Cllr Howarth outside and that Cllr Watts appeared concerned. She had no recollection about the reaction of the meeting to Cllr Major's comments; she thought there may have been some muttering; she could not particularly remember Cllr Watts' challenge, but remarked that he was "apt to challenge". She confirmed that no direction had been given to the meeting to positively discriminate. She could not confirm whether the candidate in question was black or Asian, but he had "dark skin". Neither Mr Berg nor Cllr Fox had spoken to her or interviewed her following the allegation of "racism" made against

Cllr Major. She had been told not to discuss the matter with Cllr Major and had not done so, except to ask him in passing whether anything had come of it. She had read the press reports, but denied that her judgement was clouded by those. She believes that Cllr Major's use of the word "black" was "a bit dubious" and not a word which she herself would have used. She is of the view that it is "a generation thing". She has only known Cllr Major during this term of office.

Cllr Susan White (in relation to events on 21 May)

3.9 Cllr White gave evidence on oath. She confirmed the accuracy and truth of her letter to the Ombudsman so far as she could recollect the events at the meeting on 21 May. In that letter she states that Cllr Major's comment was "it is a very good report but a bit black" and she had thought that his comment referred to the pessimistic parts of the report presented by the candidate. She was at the meeting as an observer and was very busy with her paperwork in that capacity. Cllr White said in evidence that after Cllr Major spoke the atmosphere of the meeting changed, it was "buzzing" and there were "raised voices". Cllr Armand Watts then approached the observers (herself and Jim Higginson) to make a complaint about Cllr Major. She told him she would deal with the matter afterwards as she wanted to get her paperwork in order. Cllr Watts complained that he had heard "an inflammatory statement". She remembered speaking to him outside the meeting and that he was very angry. She had not offered him words of comfort. His accusations had caused turmoil at the meeting. If the comments Cllr Watts alleges to have been made by Cllr Major were indeed made, they would have been wrong and inappropriate.

3.10 Mr Payne referred Cllr White to Cllr Watts' written response to the Ombudsman's questions where Cllr Watts stated that she had referred to Cllr Major as a "stupid old man" when they spoke outside the meeting. Cllr White denied that she would use such words to describe anyone.

Cllr Anne Webb (in relation to events on 21 May)

3.11 Cllr Webb gave evidence on oath. She confirmed the accuracy and truth of her signed statement. She was a member of the recruitment panel on 21 May, but it was "a long time ago" and she could not remember what happened nor what was said. The atmosphere at the meeting was very good and very co-operative. She said "we all sometimes say things we don't mean" especially those of the more elderly generation; in that light, as she could not believe that Cllr Major intended any offence, she could not see anything wrong with whatever he may have said.

Cllr John Major (in relation to events on 21 May)

3.12 Cllr Major gave evidence on oath. He confirmed the accuracy and truth of his signed statement. He said that following the candidate's presentation he was the first to speak. He had been most impressed with the candidate's performance. He thought he was excellent. The comment he made was "well that was a breath of fresh air, and he's black". His comment was entirely complimentary and not at all derogatory. The reason why he had mentioned the candidate's colour or ethnicity was intended to convey his view that it would be appropriate to have

another black "gentleman" as an officer of the Authority. There had been two previous black employees of the Authority who were popular, worked well and got on with everyone and this was an excellent opportunity to have another black employee. Cllr Major emphatically denied using the words "...shame he's black".

3.13 When it was put to him that Cllr Watts was certain that he had used those words, Cllr Major responded by saying he knew what he had said and that he had not used those words. He had been entirely complimentary as the candidate was outstanding and the best interviewed so far during the process. Cllr Major described the layout of the room; Cllr Watts was sitting to his right, three or four persons away from him; Cllr Doug Edwards was on his immediate left and Cllr Bob Hayward on his right. After he spoke Cllr Watts "mumbled something under his breath" and added "my son is black"; as Cllr Major recalls, Cllr Watts then left the room. Cllr Major said he had been astounded with the complaint made against him and repeated that he had been entirely complimentary.

3.14 When questioned by Ms Shaw Cllr Major said that there was no concern in the room; Cllr Watts had merely mumbled something which he had not understood until he had said more clearly that his son was black and then left the room. He denied having changed his version of the events in a response to or after the complaint was made. He had said nothing of a derogatory nature and Cllr Watts must have "imagined" that he had used the words "shame he's black". He did not believe that the use of the word "black" was inappropriate. In fact it was relevant being as this was the only black person interviewed. Cllr Major said he would not have used the word "black" if he had realised that "it would come to all this". Cllr Major conceded that he could see that others might regard the use of the word "black" as offensive, but he does not see so himself; he has the "utmost respect" for "our ethnic minorities" and had an Indian doctor for 15 years. Cllr Major said that he questions the motives of Cllrs Watts and Howarth but possibly both are simply mistaken. He would not accept that he attacks anyone who believes he had made the remark "...shame he's black". He confirmed that no direction had been given to the meeting to positively discriminate. He said again, that after he had made his comment at the meeting, Cllr Watts merely mumbled something and said "my son is black", so he had not known the precise nature of his complaint at the time. Only when Cllr Fox came to speak to him afterwards did he know that he was being accused of making a racist remark, namely "shame he's black". He had not apologised as he had not done anything wrong. Cllr Howarth did not say anything to him at the meeting. He denied any smugness, sniggering or anything inappropriate at the meeting; there was no reaction by the others, to his recollection, to his comment. He'd enjoyed a reasonable working relationship with Cllr Watts.

Cllr Simon Howarth (as to the events on 21 May)

3.15 Cllr Howarth gave evidence on oath. He confirmed the truth and accuracy of the written information he had given to the Ombudsman. He has been an elected member for nearly seven years; for approximately five years at the date of the allegation. He had been asked to chair the recruitment exercise on 21 May and he had taken the matter and his role "very seriously". Prior to the meeting he had spoken to all members who would be taking part as he wanted to ensure that

they understood the processes involved and what they were expected to do. The Chief Executive had also highlighted the process and Cllr Howarth was satisfied that the members understood that they were acting in a scrutinising capacity. Cllr Howarth said the day went well in accordance with due process. After the candidates left discussions took place and members were given the opportunity to give their point of view and to score the candidates. Most of the members remarked that this particular candidate was excellent, probably one of the best. Cllr Howarth said he recalled Cllr Major had said that he was a very good candidate "but a shame/pity he's black". Cllr Howarth said he had been taken aback by this comment and had told Cllr Major that he was "out of order". There was no response from Cllr Major; there were some "astonished looks". All of this happened quickly and the meeting then adjourned. The members left the room and he was "accosted" by Cllr Watts outside and they had a heated debate. Cllr Watts wanted the matter resolved there and then; Cllr Howarth wished to continue the process and said he would take it up with the Chief Executive afterwards. He had then considered the matter and decided to see the Chief Executive. Cllr Watts was already with the Chief Executive and he pleaded with Cllr Watts to continue with the process - there were still other candidates to be seen and he did not want to see the whole process collapse. Although Cllr Watts was not happy, he agreed to continue and the process continued without problem. During his evidence, Cllr Howarth referred to Cllr Major as "John". He said he had known him for about five years. He repeated that when Cllr Major made his remark "...shame he's black" he had told him he was "out of order" as he did not believe that the remark was in the interests of that which was being undertaken. Cllr Howarth said that councillors sometimes say things they don't mean or say things which convey a different meaning from that which they intend. However, Cllr Major did not respond when he told him he was "out of order".

3.16 When questioned by Mr Payne, Cllr Howarth agreed that this was a closed session dealing with private business. He also confirmed he had not authorised the disclosure to the press of any of the details of this meeting. He did not agree that Cllr Major had a loud voice or "no louder than others". He could not specifically recall whether Cllr Major was the first to speak after the candidate left the room. All members were given the opportunity to discuss the candidates' performance, to express their view upon it and to score through the "scoring persons", ie. the observers. As he recalled, Cllr Major was complimentary of most of the candidates. When put to Cllr Howarth that Cllr Major denies saying "...shame he's black" and that he actually said "...and he's black", Cllr Howarth emphatically denied that to be so and was certain that he was not mistaken about that which Cllr Major said which was definitely "...shame he's black". He said he believed that other councillors may say differently, but he was certain of his recollection of what was said. He added, had Cllr Major said "...and he's black" he would not have reacted in the way he had, namely telling Cllr Major that he was "out of order". He also added had Cllr Major's comment been complimentary, he would not have reacted as he did and said to Cllr Major that his remarks were uncalled for. He confirmed he had not sought clarification from any other member as to what was said as he was clear as to what was said. He said he was sitting some 5-6 metres away, virtually opposite Cllr Major. At the time the comment was made there was no "cross chatter" and he heard the remark clearly. He had not made any notes or minutes. As he recalled, Cllr Watts had not reacted

immediately to Cllr Major's remark; he had no recollection of his having said "you can't say that" but he had accosted him outside as soon as the meeting adjourned and was "very unhappy" insisting that the process be stopped and Cllr Major removed because of his remark.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following **undisputed** material facts in relation to events on 21 May: -

4.1.1 Cllr Major is a member of Monmouthshire County Council.

4.1.2 On 6 May 2008 Cllr Major signed an undertaking to observe the Monmouthshire County Council's Code of Conduct.

4.1.3 On 21 May 2009 Cllr Major was, in his capacity as an elected member, a member of the Overview and Scrutiny Committee which assessed candidates who had been shortlisted for the post of Chief Executive of Monmouthshire County Council.

4.1.4 Following "Candidate 3's" assessment Cllr Major said "he's a breath of fresh air" and made reference to the candidate's colour or ethnic origin as "black".

4.1.5 On 21 May 2009, at 22.31 hours, Cllr Armand Watts sent an email to the then (now retired) Chief Executive Mr Colin Berg in which he referred to "discriminatory remarks" made by Cllr Major following the assessment of "Candidate 3".

4.1.6 Cllr Watts alleged that Cllr Major said that "Candidate 3" was a very good candidate but then said "...shame he's black".

4.1.7 Cllr Major asserts that he spoke in complimentary terms and in a positive way about "Candidate 3" and that he said "he was a breath of fresh air and he's black", not "...shame he's black".

4.1.8 The Leader of the Council, Cllr Peter Alan Fox, submitted a complaint to the Ombudsman on 27 May 2009 in which he referred to concerns raised about "something inappropriate and of a racist nature" allegedly said by Cllr Major whilst taking part in the exercise on 21 May 2009.

4.1.9 Cllr Fox said he did not take part in this particular exercise; he stressed to the Ombudsman that he was making the referral as Leader of the Council.

4.1.10 The Ombudsman carried out an investigation into the allegations made against Cllr Major and issued his report on 23 June 2010. The Ombudsman referred his report to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

4.2 The Case Tribunal found the following **disputed** material facts in relation to events on 21 May: -

4.2.1 At the Overview and Scrutiny Committee on 21 May 2009, what did Cllr Major say about "Candidate 3" - was it "shame he's black" or was it "and he's black"?

4.2.2 At that meeting did Cllr Major make a discriminatory, racist or inappropriate remark about "Candidate 3"?

4.3 Both Ms Shaw and Mr Payne submitted that the evidence about what Cllr Major said conflicts and each pointed out various discrepancies. Ms Shaw submitted, if the Case Tribunal finds as a matter of fact that Cllr Major said "...shame he's black" it follows that he made a discriminatory, racist and inappropriate remark. Ms Shaw also submitted, if the Case Tribunal were to find instead that he said "...and he's black" that still amounts to a discriminatory, racist or inappropriate remark as there is no need or justification for referring to a candidate's colour in an interview setting. A candidate should be judged on merit and in this case there was no direction to positively discriminate. Mr Payne agreed, if the words used were "...shame he's black" it would follow that this was inappropriate. However, on the basis of the evidence, the Case Tribunal cannot come to a finding that those were the words used. Mr Payne reminded the Case Tribunal about the standard of proof (probability) and about the burden of proof resting with the Ombudsman. He disagreed with Ms Shaw's submission that if the finding is that the words used were "...and he's black", that this amounts to a racist, discriminatory or inappropriate remark. Racism and discrimination have negative connotations and simply using the word "black" is not racist, discriminatory or inappropriate and is especially not so in this context where there is ample evidence that Cllr Major spoke positively and in a complimentary way, with enthusiasm, about this candidate. Furthermore, the fact that he did so, makes a complete nonsense of any suggestion that he then went on to derogate the candidate or his positive remarks and endorsement, by then adding "...shame he's black".

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

4.4.1 It is of course for the Ombudsman to prove that Cllr Major used the words "...shame he's black", not for Cllr Major to prove that he did not. Having considered the information in the Tribunal Bundle, the submissions of Mr Payne and Ms Shaw, the signed witness statements and the oral evidence, the Case Tribunal could not conclude that undoubtedly Cllr Major used the words "...shame he's black". However, that is not the standard of proof. Having considered all the information before it (as aforesaid) the Case Tribunal concluded that it was more probable than not that Cllr Major used the words "...shame he's black". There are a number of discrepancies in the evidence and much of the evidence conflicts. None of the witnesses were able to give a full or thorough, clear and consistent account of the entire process from start to finish. That may not be surprising or unusual as the events happened a long time ago. Most of the witnesses focussed only on that which they believed, thought or remembered Cllr Major said (or in their opinion may or may not have said) and again that is not especially surprising or unusual as

that was the focus of the Ombudsman's investigation and the line of questioning put to witnesses by his investigators before the Report was compiled.

4.4.2 In written response to the Ombudsman's questions, Cllr Burrows said he could not recall exactly what Cllr Major said, verbatim, except that he had expressed approval but had qualified it in an unfortunate way, he thought, along the lines of "well he was a breathe of fresh air and he's black". In his signed witness statement Cllr Burrows referred to the same "off the cuff remark" and he added that "John" wasn't talking directly to him and he wasn't paying any particular attention to him. Cllr Hayward wrote in response to the Ombudsman's questions, saying he was sitting next to Cllr Major and heard him say "well that was a breathe of fresh air" he said he did not hear any derogatory comments whatsoever, but added he was aware of Cllr Watts shouting at Cllr Major along the lines of "you can't say things like that" and Cllr Major defending himself with something like "I was praising the man - I think he was a very good candidate". He also said he was certain that he did not hear the comment "a pity he is black" and that Cllr Major would certainly not make "a malicious racist remark". Cllr Hayward repeated all of this in his signed witness statement. In written response to the Ombudsman's questions Cllr Andrew James stated he could not provide evidence of any merit or any sound evidence of any remarks made. In his written response to the Ombudsman's questions Cllr Edwards said he was unable to recall any racist remarks made by Cllr Major and his only recollection of a conversation he had with him was that he had been complimentary about the candidate. In his signed witness statement Cllr Edwards said he could not recall Cllr Major using any "potentially racist language". In his written response to the Ombudsman's questions, Cllr Eassom said that he had no recollection of a racist remark or otherwise made by Cllr Major and if he heard or felt inappropriate remarks had been made it would have been incumbent upon him to report them. He repeated this in his signed witness statement and added "all I can recall of this incident was some kind of commotion the contents of which I was not aware of at the time". In his written response to the Ombudsman Cllr Higginson (also an observer) said he was aware of talking going on, in particular by Cllr Major, but he was concentrating on his notes and did not take particular notice of the conversation content, however he heard the word "black" mentioned, but did not have any idea to what the reference was made.

4.4.3 As for the witnesses who gave oral evidence, Cllr Major was steadfast and consistent about what he said; Cllrs Strong and Powell were reasonably certain that he used the words "...and he's black"; Cllr White, as far as she could remember, heard "It is a very good report but a bit black" and was concentrating on her role as observer and evidently pre-occupied with getting her paperwork in order; Cllr Webb could not remember what was said or what happened. Cllrs Watts and Howarth were steadfast and consistent about what they heard, namely "...shame he's black".

4.4.4 Whilst, purely on the basis of numbers the weight of evidence favours Cllr Major, those who simply provided statements were not tested before the Tribunal Hearing on their brief and in some cases hazy recollection of events, their opinion and associations with any parties concerned, whether they were influenced by any party concerned, by any discussions or the reporting of the matter in the press.

Whilst the Case Tribunal considered that Cllr Watts' recollection of the entire process (as with others) may not have been entirely clear or consistent, and whilst the Case Tribunal felt that parts of it may have been embellished somewhat, his actions at the time, namely raising the matter immediately with Cllr White (an observer), his accosting the chairman as soon as the meeting adjourned and complaining straight away to the Chief Executive, certainly more than suggested that he was certain about what he had heard. It is also of some evidential value that the Chief Executive and Cllr Fox (Leader of the Council) saw fit to suspend Cllr Major and to make a referral to the Ombudsman. This suggests to the Case Tribunal that they do not consider that Cllr Watts was or must have been mistaken or that his complaint was without foundation.

4.4.5 The Case Tribunal was impressed by the evidence of Cllr Howarth. He did not impress as having any allegiance to any member, including in particular to either Cllr Watts or Cllr Major. He clearly took his role as chairman very seriously. He was certain that he heard Cllr Major use the words "...shame/pity he's black" and weight was added to that by his evidence that he had immediately challenged the remark, which was accepted by the Case Tribunal. That being so, further weight was added by the fact that Cllr Major did not respond to such reproach. The Case Tribunal formed the view that it might reasonably be expected of a member reproached by the chairman about having made an uncalled for remark or being out of order, if he did not consider that to be the case, to at least ask for an explanation as to what precisely had been uncalled for or out of order. Cllr Howarth also reported the matter immediately to the Chief Executive.

4.4.6 Having found, as a matter of fact, that Cllr Major used the words "...shame he's black" the Case Tribunal found that such remark was discriminatory, racist and inappropriate and any complimentary comments previously made do not change that.

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT (IN RELATION TO THE EVENTS ON 21 MAY)

5.1 The Ombudsman's Report and Submissions

5.1.1 Ms Shaw directed the Case Tribunal on the relevant tests in finding whether there has been a breach of the Code of Conduct with reference to Sanders. Firstly, was Cllr Major acting in his official capacity? The answer is clearly "yes". Secondly, was his conduct capable of breaching the Code of Conduct? Given that the Case Tribunal has found as a matter of fact that Cllr Major said "...shame he's black" and that this was a discriminatory, racist and inappropriate remark, it follows that paragraphs 4(a) and 4(b) of the Code of Conduct have been breached. The comment was very serious, made as it was during the process of interviewing candidates for the position of Chief Executive. Thirdly, have Cllr Major's Article 10 rights been infringed? Whilst it may be said that they have to some extent, such infringement is justified and lawful. This was not a scenario where a higher level of protection is afforded to Cllr Major because he expressed political comments or views of an offensive nature or in an offensive way. He made a racist,

discriminatory and inappropriate remark about a candidate who had applied for the position of Chief Executive, during the appointment process in which he took part.

5.1.2 The Case Tribunal is entitled to find breach of the Code of Conduct without involving itself in an unlawful infringement of the rights protected by Article 10. Ms Shaw also submitted that it follows from the findings of fact that Cllr Major, in making a racist discriminatory and inappropriate remark brought his office and his Authority into disrepute in breach of paragraph 6(1)(a). The Case Tribunal shall make what it will of Cllr Watts taking the matter to the press and thereby bringing it into the public domain. The interview process was indeed confidential, but the fact remains that the racist and discriminatory remarks made by Cllr Major in that process came into the public domain and thereby reflected badly on his office and that of the Authority.

5.2 The Respondent's Submissions

5.2.1 Mr Payne submitted that there is clear evidence of positive and complimentary remarks made by Cllr Major about, and endorsing this candidate. This demonstrates Cllr Major's belief in equality of opportunity, respect and consideration for others and the use by him of the words "...shame he's black" does not detract from that. There is therefore no breach of paragraphs 4(a), (b) or 6(1)(a) of the Code of Conduct. Mr Payne accepts Ms Shaw's submissions about Article 10.

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 Monmouthshire County Council Code of Conduct as a result of Cllr Major's conduct on 21 May.

5.3.2 Paragraph 4(a) of the Code of Conduct states that *'You must carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion.'*

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

5.3.4 It was an undisputed fact that Cllr Major had said "he's a breath of fresh air" and that he had referred to the candidate as very good. However, he then immediately added "shame he's black". The Case Tribunal does not accept Mr Payne's submissions that these words do not detract from the earlier positive or complimentary comments. The remark "shame he's black" shows that Cllr Major considered this candidate's colour to be a negative factor as he referred to the candidate's colour or ethnicity as "a shame". The Case Tribunal considers that any reference to the colour or race of a candidate, during an appointment process, goes contrary to the principle of equality embodied in paragraph 4(a) of the Code of Conduct. There is no place for consideration of a person's colour or race which is wholly immaterial to a person's suitability or qualification for a post (unless there has been a specific direction to positively discriminate on the basis of colour or race). In this case Cllr Major not only made reference to the candidate's colour or

ethnicity but did so in a negative, racist and discriminatory way. Cllr Major's comments failed to show respect and consideration for others, in particular to the candidate but also to others involved in the process. Cllrs Watts and Howarth were clearly offended and several witnesses said they would not have used the word "black" at all, that it was awkward or dubious, that it could get someone into trouble and is not acceptable. Accordingly the Case Tribunal found Cllr Major to be in breach also of paragraph 4(b) of the Code of Conduct.

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

5.3.6 The Case Tribunal found that the racist discriminatory and inappropriate language used by Cllr Major in his official capacity during an interview exercise, fell far short of that expected of an elected member and accordingly brought his office into disrepute. Furthermore the comment triggered a report by Cllr Watts to the papers and the matter was thereby brought into the public domain; the Case Tribunal found accordingly that Cllr Major's comment also brought his Authority into disrepute as all of this reflected poorly on the Authority of which he was named as a member.

6. ORAL SUBMISSIONS

6.1 The Case Tribunal heard oral evidence and submissions as follows in relation to the events on 1 June 2009.

Cllr Lyn Cadwallader

6.2 Cllr Cadwallader gave evidence on oath. He confirmed the accuracy and truth of his signed witness statement. He attended the meeting on 1 June, not long having returned from a week's holiday in the Isle of Wight. He had seen the front page of the Western Mail before going on holiday and was aware of the earlier allegation against Cllr Major.

6.3 At the meeting on 1 June Cllr Major was quite quiet. Cllr Baicher raised the issue of the remarks allegedly made by Cllr Major which had been reported in the press and suggested equality training for the Community Councillors. The Chair prevented Cllr Major from responding. When the meeting closed, as people were leaving, Cllr Major tried to mention the matter again to the Chair and she said "that's enough". Cllr Major then said to Cllr Cadwallader "anyway you're already half a wog yourself". Cllr Cadwallader said he is not easily offended and he had taken the comment to refer to his suntan. However, in the light of earlier comments allegedly made by Cllr Major, and equality training having been raised at the meeting, he was shocked. Cllr Major left. The Chair (Cllr Hopkins) asked if he was alright and confirmed she had heard the same thing. He told Cllr Hopkins that he was shocked and dumbfounded and she said she would go to speak to Cllr Major. She left the room and returned shortly afterwards, saying that Cllr Major wished to speak to him. Cllr Cadwallader left the room and spoke to Cllr Major in the car park. He said that Cllr Major said "I didn't mean anything by it, you are

clearly not one of them with a surname like Cadwallader". He responded by saying that the use of such language is unacceptable and has to stop. Cllr Major then said that he was over-reacting, but he offered an apology. Before they parted company they shook hands, but he had not said that he had accepted Cllr Major's apology; Cllr Cadwallader felt that he had to think about it, as the matter had ramifications. He said he was aware of his responsibilities under the Code of Conduct and if he considered that Cllr Major had breached the Code of Conduct, he must report it. When he arrived home he discussed the matter with his wife and later with the Chief Executive of One Voice Wales, for advice. Cllr Cadwallader said he wanted reassurance and advice, before reporting the matter to the Ombudsman, that he was not over-reacting. Cllr Cadwallader said the advice he received from One Voice Wales was to report to the Ombudsman and let him deal with the matter. Cllr Cadwallader said he is now the Chief Executive of One Voice Wales.

6.4 When questioned by Mr Payne, Cllr Cadwallader confirmed that when Cllr Major had spoken to him the meeting had finished. He said he'd known Cllr Major for sometime and they had a good relationship which continues. He agreed that they often exchange "banter" and that in the past Cllr Major had made comments about his surname, alluding to descendancy from the Welsh Princes. Mr Payne put to Cllr Cadwallader that the comments made by Cllr Major following this meeting were similar banter, made in a light hearted and jocular fashion. In response Cllr Cadwallader said whilst Cllr Major may very well have thought so, it had not come across in that way to him and he had been offended. In relation to the comment which included the word "wog", Cllr Cadwallader accepted that Cllr Major had been referring to his suntan but the use of the word "wog" had shocked him. Mr Payne put to Cllr Cadwallader that Cllr Major was not aware that he had taken offence until Cllr Hopkins informed him; Cllr Cadwallader responded by saying that he had stood still and silent when the comment was made, as he was in disbelief, the comment taken in the context of what Cllr Baicher had raised during the meeting. He felt his silence showed his shock and disbelief and he also believed that it was as a result of his lack of response that Cllr Major left. He accepted that Cllr Major apologised as soon as Cllr Hopkins had spoken to him; however he said Cllr Major's subsequent comment "I didn't mean anything by it, you are clearly not one of them with a surname like Cadwallader" had compounded the situation. Cllr Cadwallader would not accept that Cllr Major had said "with a name like Cadwallader he could not be accused of being anything other than a Welshman" but accepted that it is one person's word against another's. Cllr Cadwallader went on to say that when he got home that evening he wrote down exactly what had happened and what was said because he was contemplating making a report to the Ombudsman and he wanted to ensure that he had an exact a recollection as possible in case he should find himself having to give evidence. He said he had written all of this down within 5 minutes or so of the events.

6.5 Cllr Cadwallader said no one else had heard the conversation in the car park. He said he had made his complaint to the Ombudsman in a telephone call on 5 June.

Cllr Burt

6.6 Cllr Burt gave evidence on oath. He is no longer a councillor. He has known Cllr Major for about seven years. He explained that whilst the minutes show an apology, this is because he arrived late. He said he has a fairly straight forward relationship with Cllr Cadwallader. He said he heard the conversation between Cllr Cadwallader and Cllr Major after the meeting had closed about Cllr Cadwallader's tan. He described it as a jocular social discussion, something along the lines of "you look like you're turning into a wog or half a wog". He had not thought that Cllr Cadwallader was offended by this conversation about his holiday. Cllr Burt said that all this was a long time ago and he could not remember who was there and who was talking and the sequence of events.

6.7 When questioned by Ms Shaw he confirmed he had heard the conversation which contained the word "wog" and that he had not regarded the use of the word as offensive although he understands that the use of the word is inappropriate in this day and age. He was not aware of any conversation between Cllr Cadwallader and Cllr Major in the car park afterwards.

Cllr Major

6.8 Cllr Major gave evidence on oath and confirmed the truth and accuracy of his signed witness statement. He described his role as a Community Councillor as "not just a member, he has been chairman several times and a member of this Community Council for over 24 years". At the meeting on 1 June he noticed that Cllr Cadwallader was very, very brown, he had a deep tan. He had said "good lord Lyn, where did you get that tan you're almost half a wog". He said this was ribald humour in conversation and they were chatting away together as normal. Cllr Cadwallader definitely did not take offence and the first he knew of any taken was when he was approached by Cllr Hopkins in the car park afterwards, who said to him "what have you done to him in there". He waited for Cllr Cadwallader to come out and said he was deeply sorry and apologised profusely. He had said to Cllr Cadwallader that surely he was not seriously considering taking this matter any further and "with a name like yours, you can't be accused of being anything but a Welshman". Cllr Major said he was "pretty certain", although it was 21 months ago (and he, unlike Cllr Cadwallader, had not written it down) that those were the words he used and he had in past years introduced Cllr Cadwallader as a descendant of the Welsh Princes. Cllr Major confirmed that during the meeting Cllr Baicher had said that he was accused of being a racist and should go on a course. He said that what he understands and means by the use of the word "wog" is "worthy oriental gentleman". He would use the word with that meaning (and still does) sixty years ago when he was serving in the Middle East. He acknowledged that sixty years on it is an offensive word, but had simply used it on the spur of the moment in a ribald humorous conversation to refer to Cllr Cadwallader's tan and during this conversation Cllr Cadwallader "gave as good as he got"; he had left the meeting thinking that they were on good terms. Cllr Major acknowledged, on reflection, that in the context of the matter raised by Cllr Baicher during the meeting, the use of the word was stupid and an inconsiderate remark, but he had not intended any offence and was simply referring to his tan. Whilst he could see that the comment would be demeaning to another ethnic group, he could not see that it would be

demeaning to a white man and could not see how a white man could be offended by such comment.

6.9 In questioning by Ms Shaw, Cllr Major accepted that his use of the word "wog" was inappropriate. He believed he had received some equality training years ago. He asserted again that he was sure that Cllr Cadwallader had not been shocked by his comment and that he could not see that calling a white man "wog" is offensive. Cllr Major asserted that Cllr Cadwallader is "climbing on the band wagon". Cllr Major would not accept that the words he says he used in the conversation in the car park were offensive. In relation to his use of the word "accused" ("with a surname like yours you could not be accused of being anything other than a Welshman") it was unfortunate phraseology.

6.10 Ms Shaw submitted that it is a matter for the Tribunal to decide whether it favours the evidence of Cllr Major or Cllr Cadwallader as to what was said in their conversation in the car park. It is the Ombudsman's stance that regardless of which comment was made by Cllr Major, either is inappropriate and each suggest Cllr Major could not see how his language had upset Cllr Cadwallader.

6.11 Mr Payne submitted that both Cllrs Major and Cadwallader are equally satisfied about what they said. The Case Tribunal may therefore not be able to make a finding one way or the other. Cllr Major's account has always been consistent and his admission in early courses of his use of the "wog" as a regrettably, foolish and stupid remark, gives credit and mitigates towards a submission that he is telling the truth about what was said in the car park. The account of neither Cllr Major nor Cllr Cadwallader has any negative connotations or inference, so whatever was said was not inappropriate.

7. FINDINGS OF ACT

7.1 The Case Tribunal found the following **undisputed** material facts in relation to the events on 1 June: -

7.1.1 Cllr Major is a member of Magor with Undy Community Council.

7.1.2 On 9 May 2008 Cllr Major signed an undertaking to observe the Code of Conduct of Magor with Undy Community Council.

7.1.3 Cllr Major in his capacity as elected member attended a meeting of the Magor with Undy Community Council on 1 June 2009.

7.1.4 At that meeting Cllr Neeta Baicher expressed concern about press reports of alleged remarks made by Cllr Major and suggested equality training for councillors be arranged.

7.1.5 After the end of that meeting, before leaving the meeting room, Cllr Major and Cllr Lyn Cadwallader spoke and during their conversation Cllr Major referred to Cllr Cadwallader as being "half a wog".

7.1.6 Cllr Major asserts that this comment was made purely in jest to someone he regards as a colleague and an acquaintance; but on reflection Cllr Major now acknowledges that in this day and age such comment is not acceptable and is an offensive remark.

7.1.7 Shortly afterwards, before going home, Cllr Major and Cllr Cadwallader spoke again in the car park.

7.1.8 In October 2009 Cllr Cadwallader made a statement to the Ombudsman in which he alleged that Cllr Major had used inappropriate language during their conversation (both in the meeting room and in the car park) following the meeting of the Community Council on 1 June 2009.

7.1.9 The Ombudsman carried out an investigation into the allegations made against Cllr Major and issued his report on 23 June 2010. The Ombudsman referred his report to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

7.2 The Case Tribunal found the following **disputed** material facts: -

7.2.1 What did Cllr Major say to Cllr Cadwallader in their conversation in the car park on 1 June 2009 - was it, as alleged by Cllr Cadwallader, "I did not mean anything by it. You are clearly not one of them with a surname like Cadwallader" or was it, as Cllr Major asserts, "with a name like Cadwallader he could not be accused of being anything other than a Welshman"?

7.2.2 Did Cllr Major use inappropriate language in that conversation?

7.3 The Case Tribunal found the following in respect of the above disputed facts: -

7.3.1 The Case Tribunal found that Cllr Major said "I did not mean anything by it. You are clearly not one of them with a surname like Cadwallader". The Case Tribunal preferred the evidence of Cllr Cadwallader; he said he had made a contemporaneous note (within some 5 minutes of the events). The Case Tribunal had no reason to doubt that he had done so and it was not challenged by Cllr Major or his representative. Unlike Cllr Major, he was not simply relying on his memory to recall events which happened some 18 months ago. Cllr Cadwallader also made a complaint to the Ombudsman, based on that contemporaneous note, within a few days of the events.

7.3.2 The Case Tribunal found that the remark "I did not mean anything by it. You are clearly not one of them with a surname like Cadwallader" is inappropriate; it has connotations of differentiating between - "them and us" - people whose skins are white in colour and those whose skins are not white. It was more so in the context made, following and being related to the earlier inappropriate word "wog" used by Cllr Major in his comment about Cllr Cadwallader's tan and as Cllr Baicher had raised in the meeting, inappropriate or racist language allegedly previously used by him.

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

8.1 The Ombudsman's Report and Submissions

8.1.1 The Ombudsman continues to rely upon his Report. Ms Shaw adopts, such as are relevant, her earlier submissions made and her earlier response to the Respondent's skeleton argument. The comments made by Cllr Major following the meeting (in the meeting room and in the car park) were sufficiently connected to the matters raised by Cllr Baicher during the meeting, for him to be regarded as acting in his official capacity (Livingstone). It was sufficiently proximate for him still to be acting as a member, in which case paragraphs 4(b) and 6(1)(a) are breached, as the language showed lack of respect and consideration and reflected badly on a member's office. However, if the Case Tribunal finds that Cllr Major was not acting in his official capacity, the Code of Conduct is still engaged if Cllr Major's conduct was such as to bring his office or Authority into disrepute. It is submitted, given Cllr Major's admission about his use of the word "wog" and the Case Tribunal's finding on disputed fact, the Case Tribunal should find such language unbecoming of a member and capable of bringing his office into disrepute. There is no issue of freedom of expression as this was not political comment.

8.2 Respondent's Submissions as to Breach

8.2.1 Mr Payne submitted that the behaviour admitted and the behaviour as found by the Case Tribunal do not come within the Code of Conduct at all. Cllr Major raised a personal matter with a friend after the meeting had closed. This was not "sufficiently proximate" or "so closely allied to his official function" to be regarded in any way as acting in his official capacity (Livingstone). Accordingly as Cllr Major was not acting in his official capacity he was entitled to say what he liked. There can be no breach of paragraphs 4(a) or 4(b) of the Code.

8.2.2 In relation to paragraph 6(1)(a) it is not an accurate application of the legal position to say that when an elected member uses inappropriate language it must follow that this brings his office into disrepute. As in Livingstone, Cllr Major's conduct does not reflect well on him personally - he was foolish and he comes out of it without credit - however it does not reflect upon his office nor therefore does it bring his office of member into disrepute.

8.2.3 Article 10 is engaged. As Cllr Major was not acting in his official capacity, he has the freedom to express his views, however unwise such views were.

8.3 Case Tribunal's Decision

8.3.1 On the basis of the finds of fact, the Case Tribunal found by unanimous decision that there was no failure to comply with Magor with Undy Community Council's Code of Conduct in relation to Cllr Major's behaviour on 1 June.

8.3.2 Paragraphs 4(a), 4(b) and 6(1)(a) of the Code of Conduct are set out earlier in this Decision Report.

8.3.3 The Case Tribunal found that Cllr Major did not breach paragraphs 4(a), 4(b) or 6(1)(a) of the Code of Conduct. The Case Tribunal was persuaded by Mr Payne's submissions. The Case Tribunal accepts that Cllr Major was not acting in his official capacity during the conversations he had with Cllr Cadwallader. These took place after the meeting had finished and had nothing to do with Council business; the first conversation was about Cllr Cadwallader's suntan and holidays, the second was about the language which Cllr Major had used when referring to Cllr Cadwallader's suntan. Whilst the inappropriate language in these conversations, for which he apologised, was used shortly after the close of a meeting during which Cllr Baicher had raised the inappropriate language allegedly previously used by Cllr Major, the Case Tribunal did not consider this took the matter into the realms of being sufficiently proximate or so closely allied to Cllr Major's official function to amount to his acting in his official capacity. That being so, the Code of Conduct would be invoked only if Cllr Major's conduct was such as to bring his office or Authority into disrepute. Again in that respect the Case Tribunal was persuaded by Mr Payne's argument. These were private and personal conversations between two individuals. Accordingly, although the language used by Cllr Major in those conversations reflected badly on him personally, it did not bring his office into disrepute. The Code of Conduct is not invoked and there can be no breach of any paragraph of the Code by Cllr Major's conduct on 1 June.

9. SUBMISSIONS ON ACTION TO BE TAKEN

9.1 The Ombudsman's Submissions

9.1.1 Ms Shaw directed the Case Tribunal to its sanction guidelines. She contended there are aggravating factors, namely the seriousness of the breaches and that Cllr Major has been found to have brought his office and his Authority into disrepute. He has also sought to blame others by speculating that those who have complained about him were politically motivated. Sanction is a matter for the Case Tribunal.

9.2 The Respondent's Submissions

9.2.1 Mr Payne submitted that whilst Cllr Major speculated about the political motivation of others, this was not part of the presentation of his case. Although the Case Tribunal found as a matter of fact that Cllr Major said "...shame he's black", there were others who supported Cllr Major's evidence in the matter, in which case it was not unreasonable for him to have proceeded as he did.

9.2.2 The language used occasionally by Cllr Major come from a by-gone era of the 1950's-60's and he is a product of his time. The older generation finds the language used these days by teenagers as alien, just as the younger generations find the language of such by-gone era. Cllr Major is aware that such language used in the past is no longer appropriate in this day and age. He has acknowledged and admitted that to be so. He intended no offence whatsoever, though it was taken, and it is a matter of fact that he also said positive things about

the candidate. Cllr Major cannot stress strongly enough that he is not a racist and that he would not treat any minority differently.

9.2.3 Cllr Major was suspended from his Party. He encouraged the reporting to the Ombudsman of the first allegation and voluntarily relinquished various positions, including for example, his vice chairmanship of the Planning Committee and accordingly he did not become chairman of that Committee. In financial terms Cllr Major estimates that he has lost approximately £15,000 in remuneration by voluntarily relinquishing various positions.

9.2.4 Cllr Major has an outstanding and impeccable record of public service. He has dedicated his life to serving the public. He has been a councillor for 32 years. Early on in his career he undertook National Service and thereafter served in the Army and also in the Police force. At the age of 79 years he is still dedicated to public service and making a valuable contribution. This is the first and only complaint made against him in a very long and distinguished career. He has held high office as a councillor, including being the first chair of the Standards Committee, a chairman of the Authority and a chair of various committees. He has given, voluntarily, without financial remuneration, to public life. There are numerous testimonials as to Cllr Major's good character and public service in the Tribunal Bundle and as heard from other witnesses.

9.2.5 More important than his financial loss is the loss of his reputation. The allegation made against him was widely reported in the press and came into the public domain; those who do not know Cllr Major or of his distinguished record and career, may very well see him as a racist or a pernicious influence. With that in mind, Mr Payne urged the Tribunal to consider that such damage to such an entirely unblemished record of a man of this age, may be punishment enough in itself.

9.2.6 Without any criticism whatsoever, Mr Payne reminded the Tribunal that the initial complaint made in May 2009 did not come before the Case Tribunal until November 2010, in which case all of this was hanging over Cllr Major for some 18 months and it also took a toll on his health.

9.2.7 Cllr Major has confirmed that he will not be standing again for public office in the next election in May 2012.

9.2.8 In view of all of the above mitigating factors, Mr Payne urged mercy on the part of the Case Tribunal and submitted it may consider making a recommendation of awareness training for members of the Authority.

9.3 Case Tribunal's Decision

9.3.1 The Case Tribunal considered all the facts of the case, the submissions made by Mr Payne in Cllr Major's mitigation and its sanction guidelines. The Case Tribunal was also mindful of its function, namely to uphold and improve standards of conduct expected of members as part of the process of fostering public confidence in local democracy.

9.3.2 The Case Tribunal did not consider that there were, in accordance with its sanction guidelines, factors which could reasonably justify a disqualification. The Case Tribunal considered whether suspending Cllr Major would be an appropriate sanction, with reference to its sanction guidelines which indicate that a suspension may be appropriate where the circumstances are not so serious as to merit disqualification, but sufficiently grave to give rise to the need to reassure the public and impress upon the Respondent the severity of the matter and the need to avoid repetition; factors which may lead to this option being, bringing the office of member or the Authority into disrepute and the likelihood of further failures in the future. The Case Tribunal also considered relevant aggravating and mitigating factors respectively and in this case found more in mitigation than in aggravation.

9.3.3 Cllr Major had an honestly held (although mistaken) view that his actions did not constitute a failure to follow the provisions of the Code of Conduct. There is no doubt whatsoever that he has a very long, impeccable, distinguished record of public service and indeed has been a public servant all of his adult life and is still keen to contribute, although he is now nearly an octogenarian. It is also to Cllr Major's credit that he has made some admissions and the Tribunal Bundle suggests that he co-operated with the Ombudsman's investigation and he certainly conducted himself in a courteous and reasonably co-operative manner before the Case Tribunal. Cllr Major has also complied with the Code of Conduct since these complaints were made and, whilst he was suspended by his Party, he also voluntarily withdrew from numerous positions whilst the investigation continued and encouraged the complaint to the Ombudsman.

9.3.4 The Case Tribunal was satisfied that Cllr Major had not made his remark about the candidate with any intention of influencing others and certainly there was no evidence that his remark influenced the process or the appointment in any way. Similarly there was no evidence that the remark was made with any intention to disadvantage this candidate or to gain advantage for any other, nor was there any evidence of any disadvantage or advantage. Although the Tribunal was clearly and unanimously of the view that the remark was (on the objective basis which applies) racist, discriminatory and inappropriate, the Case Tribunal accepts that Cllr Major inadvertently uses racist, discriminatory and inappropriate language without intending to cause offence because he is the product of a by-gone age, when use of such language was more common place (although certainly not necessarily thereby, more acceptable). The Case Tribunal has also noted Cllr Major's acknowledgement that his use of language is unacceptable and believes he sees that it has undesirable consequences which he would wish to avoid. Cllr Major has also given assurances that he will address the matter by undertaking equality training.

9.3.5 The Case Tribunal is reasonably satisfied that Cllr Major now understands the severity of this matter and the need to avoid repetition. He has also said he will not be standing at the next election.

9.3.6 Although Cllr Major did not produce evidence of his loss of income as a result of his having voluntarily withdrawn from various positions during the course of this investigation, the Case Tribunal accepts that would have been the result of such withdrawal and is entitled to consider such financial implications.

9.3.7 The Case Tribunal also accepts that the reporting of this matter in the press, thereby bringing it into the public domain, has sullied an otherwise impeccable reputation and that this must, naturally have been very distressing for Cllr Major.

9.3.8 All of the above considered, the Case Tribunal was reasonably satisfied that this was an inadvertent failure to abide by the Code of Conduct, that there is not likely to be any further failure to comply on the part of Cllr Major and that the appointment process was not harmed as a result of the failure in this instance.

9.3.9 Finally, the Case Tribunal has also noted as relevant in this sanction exercise, that in his report the Ombudsman said he may not have taken any further action in relation to the first allegation but for the second complaint, and the Case Tribunal found no breach in relation to the second allegation.

9.3.10 All of the above having been said, the Case Tribunal concluded by unanimous decision that it was neither necessary nor desirable to suspend, partially suspend or disqualify Cllr Major.

9.3.11 Monmouthshire County Council and its Standards Committee are notified accordingly.

9.3.12 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.

10. CASE TRIBUNAL RECOMMENDATIONS

10.1 The Case Tribunal recommends to the Monmouthshire County Council that it arrange equality training for all its members.

Signed.....

Date.....

Helen Cole
Chairperson of the Case Tribunal

Colin Evans
Panel Member

Christine Jones
Panel Member