

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/007/2010-011/CT

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

**RESPONDENT:** Councillor Aneurin James

**RELEVANT AUTHORITY** Torfaen County Borough 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 at 9.15am on Wednesday 27<sup>th</sup> April 2011 at the Glen-yr-Afon House Hotel, Usk. The hearing was open to the public.

1.3 Cllr James attended and was represented by Mr Nicklaus Thomas-Symonds

**2. PRELIMINARY DOCUMENTS**

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

2.1.1 In a letter dated 16 September 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 James. The allegations were that Cllr James had breached Torfaen County Borough Council's Code of Conduct by failing to declare an interest and using his position improperly when making donations to local organisations under the Council's Small Schemes Allowance.

2.1.2 The circumstances leading to the alleged breach are evident 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 James said that the failure on his part to comply with the Code of Conduct as reported to the Ombudsman was due to pressure of commitment during his year of office as Mayor and family matters at the time. He said he was

regretful and deeply sorry; he offered his sincere apology to the residents of Pont Newydd and Torfaen and provided character references. Cllr James said he had always endeavoured to maintain the highest degree of good conduct and probity in financial and personal affairs and had sought no personal advantage for himself or his family when dealing with local government business.

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

2.3.1 No further representations were made.

## **3. ORAL SUBMISSIONS**

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

### Public Services Ombudsman for Wales

3.2 The Ombudsman relies on his report.

### Cllr James

3.3 Cllr James' representative presented Cllr James' skeleton argument, a copy of which is attached to this Decision Report.

## **4. FINDINGS OF FACT**

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

4.1.1 Cllr James has been a member of Torfaen County Borough Council ("the Council") since 1999 and was previously a Community Councillor for sixteen years and a Local Government Officer for twenty years.

4.1.2 Cllr James signed the Code of Conduct for Members on 6 May 2008 thereby undertaking to abide by its provisions.

4.1.3 Training on the Code of Conduct was arranged for members on 14 May and 17 November 2008. Cllr James did not attend.

4.1.4 On 26 May 2008 Cllr James completed a "declaration of interest for inclusion in the public register" form in which he declared the following - membership of Pont Newydd Working Men's Club and Institute, Pont Newydd British Legion Branch and Pont Newydd British Legion Club; vice president of Pont Newydd Male Choir and Cwm Bran Male Choir; patron of Pont Newydd Bowls Club and president of First Pont Newydd Scouts.

4.1.5 On 4 November 2008 the Council's application form used to nominate small schemes for payments was amended to include a declaration of personal interest; on 4 November 2008 the Monitoring Officer (Lynda Willis) issued a written briefing

advice note to all members regarding the Scheme including advice to be mindful of the potential personal and prejudicial interest issues that could arise when making donations under the Scheme.

4.1.6 On 10 December 2008 (in conjunction with two other councillors) Cllr James, in his official capacity, signed Small Schemes Allowance application forms requesting donations as follows - £105 to Cwm Bran Male Choir, £110 to Pont Newydd Male Choir, £90 to Pont Newydd Bowls Club, £100 to Pont Newydd British Legion, £50 to Pont Newydd Working Men's Club, £150 to First Pont Newydd Scouts. Cllr James did not disclose on the form that he had a personal and prejudicial interest in these organisations at the time of the donation and the payments were made. The application form asked whether the councillors had considered the purpose of the scheme and that it was for the benefit of the community; Cllr James declared "I/we have considered the purpose of the scheme and confirm that it is for the benefit of that community. I also confirm I have no personal interest in this scheme".

4.1.7 On 15 December 2008 (in conjunction with two other councillors) Cllr James, in his official capacity, signed Small Schemes Allowance application forms requesting the following donations - £150 to Pont Newydd Ladies Choir and £110 to the Well Centre. Again the application form asked the councillors to confirm that they had considered the purposes of the scheme and that the scheme was for the benefit of the community; Cllr James again signed the declaration as detailed above, and did not disclose that he had a personal and prejudicial interest in the organisations at the time of the donations; payments were made.

4.1.8 On 28 December 2008 Cllr James completed a "declaration of interest for inclusion in the public register" form in identical terms to the one which he had completed on 26 May 2008 except he also added a declaration that he was vice president of Pont Newydd Ladies Choir.

4.1.9 On 23 September 2009 Cllr James completed a Small Schemes Allowance application form requesting a donation of £100 to Pont Newydd Royal British Legion Branch. Again he signed the declaration and did not disclose that he had a personal or prejudicial interest in the organisation at the time of the donation; payment was made.

4.1.10 On 22 October 2009 Cllr James attended (as a Board Member) a meeting of Bron Afon Housing Association. As part of his declaration of interests at that meeting he declared that he was - a member of Pont Newydd Working Men's Club and Branch and Pont Newydd British Legion Club and Branch; vice president of Pont Newydd Male Choir, Cwm Bran Male Choir and Pont Newydd Ladies Choir; a patron of Pont Newydd Bowls Club and of First Pont Newydd Scouts.

4.1.11 On 5 January 2010 the Ombudsman received an allegation that Cllr James had failed to observe the Code of Conduct by making donations on 10 December 2008 to Cwm Bran Male Choir, Pont Newydd Male Choir, Pont Newydd Bowls Club, Pont Newydd British Legion, Pont Newydd Working Men's Club and First Pont Newydd Scouts.

4.1.12 On 7 January 2010 the Ombudsman notified Cllr James of the allegations made.

4.1.13 On 18 January 2010 Cllr James wrote to the Ombudsman's investigator. He stated, in relation to the donation to Pont Newydd Working Men's Club, that it was a donation to the Retired Members Section of which he is not nor ever has he been a member; he offered to provide details of the secretary of the Association so that this could be verified. In relation to the donation to Pont Newydd Royal British Legion Branch he said that as an ex-serviceman he fully supports the aims of the Branch which has no connection with the Pont Newydd Royal British Legion Club. He also acknowledged, with hindsight, that he should have declared a personal and in some instances a prejudicial interest (in the matters the subject of the allegations) and would recognise this for future donations. He also referred to the written declaration of interest he had made on 28 December 2008 in accordance with his usual practice during the past ten years. He said that he had not given sufficient attention to detail of these forms at the time as he had a heavy workload as Mayor.

4.1.14 On 1 February 2010 in a meeting with Lynda Willis (Chief Legal and Monitoring Officer) and Ian McGill (Principal Members Services Officer) Cllr James discussed personal interests in relation to the Small Schemes Allowance system, the donation Cllr James had made previously (the subject of the Ombudsman's investigation) and a possible application by Cllr James for a dispensation.

4.1.15 On 25 February 2010 Cllr James self reported to the Ombudsman a possible breach of the Code of Conduct in relation to a donation of £50 which he had made to Pont Newydd Ladies Choir on 15 October 2008 of which he is honorary patron; a donation of £40 made to the Well Centre (Christian Healing Centre) on 15 October 2008 of which his wife is an honorary trustee; a donation of £100 to Pont Newydd Royal British Legion on 23 September 2009 of which he is a paid up member of the branch.

4.1.16 The Ombudsman wrote to Cllr James on 25 February 2010 putting him on notice that he was investigating the allegations made against him on 5 January 2010. The Ombudsman wrote to Cllr James on 8 March 2010 putting him on notice that he was investigating the matter which he had self-reported.

4.1.17 On 10 March 2010 Cllr James stated (in response to a request from the Ombudsman's investigating officer for further information) that the Retired Members Section and the Pont Newydd Working Men's Club & Institute Limited are two separate entities; that the cheque given on 10 December 2008 was to the Pont Newydd Working Men's Club Retired Members Section who only use the term "Pont Newydd Working Men's Club" in their title as that is where they hold their weekly social gathering.

4.1.18 Cllr James is not and never has been a member of the Pont Newydd Working Men's Club Senior Citizens Club (ie. the Pont Newydd Working Men's Club Retired Members Section).

4.1.19 Cllr James is a member of Pont Newydd Working Men's Club & Institute, Pont Newydd Royal British Legion Branch and Pont Newydd Royal British Legion Club; he is vice president of Pont Newydd Male Choir, Cwm Bran Male Choir and Pont Newydd Ladies Choir; he is a patron of Pont Newydd Bowls Club; he is a president of First Pont Newydd Scouts.

4.1.20 Cllr James' wife is a non-executive trustee of the Well Centre.

4.1.21 In an interview with the Ombudsman's investigating officers on 5 July 2010, Cllr James accepted that he had a personal and prejudicial interest in the donations made by virtue of his associations with the Pont Newydd Royal British Legion Branch, Pont Newydd Male Choir, Cwm Bran Male Choir, Pont Newydd Ladies Choir, Pont Newydd Bowls Club, Pont Newydd Scouts and the Well Centre and that he had breached paragraphs 10(1), 10(2)(a)(ix)(ee), 10(2)(c)(i), 10(2)(c)(iii), 11(2)(a), 12(1) and 14(1)(d) of the Code of Conduct. He also accepted that his actions in not taking the issues seriously and not requesting training were "reckless" and that his complacency in the matter may be considered as bringing his office of member into disrepute.

4.1.22 In the interview Cllr James denied having any personal or prejudicial interest in Pont Newydd Working Men's Club Retired Members Section and also denied that any of the donations created an advantage for him or another person.

4.1.23 Cllr James accepted at the Tribunal Hearing, as set out in his skeleton argument, that he had a personal and prejudicial interest in Pont Newydd Working Men's Club retired members section.

4.1.24 Cllr James accepted at the Tribunal Hearing, as set out in his skeleton argument, that donations would potentially increase his standing within organisations (and arguably his wife's standing as a trustee in relation to The Well Centre donation). He said this is obviously the case in respect of any donation made by any councillor; any donation arguably enhances the councillor's reputation. However neither he nor his wife benefited in any sense directly financially.

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

4.2.1 In failing to consider and declare his personal and prejudicial interests did Cllr James act out of complacency/by oversight?

4.2.2 Did Cllr James use his position as elected member improperly to create advantage for himself and/or his wife?

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

4.3.1 Cllr James has consistently and repeatedly sought to explain that his failure to declare a personal and prejudicial interest was by reason of complacency or oversight. He has described his family circumstances at the time as exceptional and has referred to his very heavy workload and responsibility at the time as Deputy Mayor and then Mayor. The Case Tribunal does not accept, in these

particular circumstances, that Cllr James acted out of genuine oversight or complacency. It is evident that Cllr James, on several occasions, signed numerous Small Scheme Donation Forms which specifically contained a declaration of no interest. Cllr James signed beneath such declaration. The Monitoring Officer had provided advice in a written briefing note to all members regarding donations under the Small Scheme, which included advice to be mindful of the potential personal and prejudicial interest issues that could arise. As a matter of fact Cllr James had, on various occasions previously, declared interests in the very organisations for which he subsequently signed the forms stating he had no interest. The Case Tribunal is satisfied that Cllr James fully understood the nature of a personal and prejudicial interest and also the requirement to declare such interests. Cllr James acted with complete disregard for the Code of Conduct and the clear obligations it imposes upon him and which he clearly understood.

4.3.2 Whilst the Case Tribunal is absolutely satisfied that Cllr James was not motivated by any financial impropriety or dishonesty or any attempt to gain financially for himself or his wife he nevertheless involved himself in matters in which he had a personal and prejudicial interest; doing so was improper; it is prohibited by the Code of Conduct (unless of course a dispensation has been obtained and Cllr James had not obtained one).

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

### **5.1 The Respondent's Submissions**

5.1.1 Cllr James' representative accepted that Cllr James had breached paragraphs 6(1)(a), 7(a), 10(1), 11(2)(a) and 14(1)(d) of the Code of Conduct.

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

5.2.1 No further representations.

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

5.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that there was a failure to comply with the Torfaen County Borough Council's code of conduct.

5.3.2 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".

5.3.3 Paragraph 7(a) of the Code of Conduct states "you must not in your official capacity or otherwise use or attempt to use your position improperly to confer on or secure for yourself or any other person an advantage or create or avoid for yourself or any other person a disadvantage".

5.3.4 Paragraph 10(1) of the Code of Conduct states "you must in all matters consider whether you have a personal interest and whether this Code of Conduct requires you to disclose that interest".

5.3.5 Paragraph 11(2)(a) of the Code of Conduct states "where you have a personal interest in any business of your Authority and you make written representations....to a member or officer of your Authority regarding that business you should include details of that interest in the written communication".

5.3.6 Paragraph 14(1)(d) of the Code of Conduct states "...when you have a prejudicial interest in any business of your Authority you must unless your have obtained a dispensation from your Authority's standard's committee, not make any written representations....in relation to that business".

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

### **6.1 The Respondent's Submissions**

6.1.1 Cllr James' representative referred the Case Tribunal to Cllr James' skeleton argument.

6.1.2 It would be unfair to view all of these breaches as discreet offences; all related to one matter, namely donations under the Small Scheme, and all occurred during a certain timescale when Cllr James was experiencing very difficult personal circumstances and a heavy workload as Deputy Mayor and then as Mayor.

6.1.3 Cllr James does not shy away from the findings of fact; he has admitted that he did not attend training and has admitted his complacency. He has also, from the outset, admitted virtually all of the breaches; his denial of improper conduct was on the basis of his understanding that "impropriety" meant dishonesty or an attempt to gain financially, which clearly was not the case. Cllr James has learnt his lesson and this will not happen again. He has the support of his constituents and colleagues. He has made no attempt to hide his interests, indeed in the past he has declared them, and they were within the public knowledge.

### **6.2 Case Tribunal's Decision**

6.2.1 The Case Tribunal is absolutely satisfied, in accordance with it's sanction guidelines, that there were no factors which could reasonably justify a disqualification in this instance. The Case Tribunal considered whether suspending Cllr James would be an appropriate sanction with reference to it's sanction guidelines, which indicated that suspension may be appropriate where the circumstances are not so serious as to merit a 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 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.

6.2.2 Cllr James has a long and distinguished career in public service; he has recognised his failures and offered an apology. Certainly there was no dishonesty or attempt to gain financially nor was such the motivation for Cllr James' actions.

6.2.3 The Case Tribunal is prepared to accept that it may be unlikely that Cllr James will repeat the conduct which has given rise to these breaches but is concerned that Cllr James does not really appear to fully appreciate the significance of his conduct nor the seriousness, as the Tribunal sees it, of these breaches. High standards of behaviour are expected of those in public life. That is what the Code of Conduct is for. For those who have achieved high office and are very experienced, the expectations are even higher and reasonably so. Cllr James was Mayor, a member of the Standards Committee and a very long standing and experienced councillor. He evidently understood the provisions of the Code of Conduct relating to declarations of interests and that which was required of him. With all of that in mind, it is of concern to the Case Tribunal that Cllr James gave priority to anything but the Code of Conduct; he was too busy to attend training on it and sought to excuse his breaches by his other commitments; he prioritised his ceremonial duties above his statutory obligations.

6.2.4 The Case Tribunal concluded by unanimous decision that a period of suspension is appropriate. The Case Tribunal did not consider that a warning or a censure would sufficiently impress upon Cllr James the significance of his conduct and the breaches resulting from his disregard of the provisions of the Code of Conduct with which he was wholly familiar. The Case Tribunal concluded by unanimous decision that Cllr James should be suspended from acting as a member of Torfaen County Borough Council for a period of one month or if shorter, the remainder of his term of office and that he attend the next available training session on the Code of Conduct.

6.2.5 The Torfaen County Borough Council and its Standards Committee are notified accordingly.

6.2.6 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.....  
Helen Cole  
Chairperson of the Case Tribunal

Date.....

Kate Berry  
Panel Member

Ian Blair  
Panel Member