

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

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

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

RESPONDENT: Councillor Peter S Rogers

RELEVANT AUTHORITY(IES): Isle of Anglesey County Council
North Wales Police Authority

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 10.00am on Wednesday 6 July 2011 and concluding on Friday 8 July 2011 at the Tre-Ysgawen Hall Hotel, Capel Coch, Llangefni. The hearing was open to the public.

1.3 Cllr Rogers attended and was represented by Mr Graham Wells, Counsel. The Public Services Ombudsman for Wales ("PSOW") was represented by Mr Gwydion Hughes, Counsel.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 25 October 2010, the Adjudication Panel for Wales received a referral from the PSOW in relation to allegations made against Cllr Rogers. The allegations were that Cllr Rogers had breached the Codes of Conduct of the Isle of Anglesey County Council and North Wales Police Authority ("NWPA").

2.1.2 The allegations were that Cllr Rogers had breached paragraphs 3(1), 3(2)(d), 5 and 6(a) of the Code of Conduct for members and co-opted members of the NWPA. The failures under consideration were that:

- i. during a telephone conversation with Temporary Assistant Chief Constable Geraint Anwyl ("T/ACC"), Cllr Rogers attempted to engage him in conversation in connection with a complaint against his constituent Mr Cooper:
- ii. Cllr Rogers emailed T/ACC Geraint Anwyl criticising the way the police were dealing with the investigation against his constituent; and

- iii. Cllr Rogers had displayed overbearing and intimidating behaviour towards three police officers during his visit to Holyhead Police Station on 20 January 2010 and attempted to influence the course of a police investigation.

2.1.3. The allegations in respect of the Code of Conduct for members and co-opted members of the Isle of Anglesey County Council were that Cllr Rogers had breached paragraphs 4(b), 4(c), 5(a) and 6(1)(a) of the Code of Conduct. The failures under consideration were that:

- i. Cllr Rogers' conduct at Holyhead Police Station failed to show respect and consideration for others and that his behaviour was bullying and harassing;
- ii. Cllr Rogers disclosed confidential information about the health of a fellow councillor; and
- iii. Cllr Rogers' conduct could be reasonably regarded as bringing his office or authority into disrepute.

2.2 The Respondent's Written Response to the Reference

2.2.1 A written response was submitted on Cllr Rogers' behalf by Bone & Payne, Solicitors on 29 March 2011.

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

- a) **Paragraphs 18, 21 and 22** – the paragraphs do not include certain factual matters surrounding the events leading up to issues under consideration. The Coopers had made a planning application which had been recommended for acceptance by the Council's officers, but which was turned down as a result of Cllr Durkin's intervention. Cllr Rogers was asked to intervene by the Coopers as he was their Councillor. He had taken an active part in seeking to overturn the objections and had made complaints to the PSOW. Further, Cllr Durkin had alleged that Cllr Rogers had "stirred up" Mr Cooper, causing him to threaten to assassinate Cllr Durkin. Finally, when interviewed by the police, Cllr Durkin had told them that he had taken the threat seriously and that according to Mr Cooper, Cllr Rogers had alleged that Cllr Durkin had been responsible for causing the Coopers to incur appeal costs of £1,600.
- b) **Paragraphs 23 to 25** – the account of the events on 8 January 2010 is based on the statement of Temporary Assistant Chief Constable Anwyl ("T/ACC) and did not include the material provided by Cllr Rogers.
- c) **Paragraph 37** - the evidence included does not properly reflect what PS Llewellyn had said, in particular that Cllr Rogers was described as being polite throughout their conversation; that the description of Cllr Rogers' excitability and being a little overbearing was to a lesser degree

than that described by the other officers and finally that PS Llewellyn was unaware until after their discussion that Cllr Rogers was a member of the NWPAs.

- d) **Paragraph 128** – the answer given by Mrs Peckett-Johnson to the first question she was asked was much fuller and the short summary provided was misleading; in particular, doubt is raised as to whether Cllr Rogers did or could have been heard raising his voice during his conversation with DS Williams.
- e) **Paragraph 134** – the suggestion by Cllr Durkin that he had not given his permission for his letter to be passed on to Cllr Rogers is not correct; the letter was not marked confidential; indeed its appearance gave rise to it being an open letter relaying his apologies for an intemperate outburst.
- f) **Paragraph 151** – the reference to a conversation between the investigator Beverley Jones and Cllr Rogers arising from an account in another document appears to be wrong. Moreover, the answers noted do not support the contention that Cllr Rogers discussed matters with the investigator in an inappropriate way. Rather, he simply requested advice as to how he should respond to press enquiries surrounding the investigation.
- g) **Paragraph 152** – the suggestion that Cllr Rogers told the investigator that he had gone to Holyhead Police Station with Mr Cooper to “get him off the hook” and to get himself “off the hook” is entirely wrong, as that is not mentioned in the relevant document. Cllr Rogers believed that he had been implicated in the alleged threat to kill.
- h) **Paragraph 183** – Cllr Rogers denied that it was an “undisputed” fact that he did not treat the officer with respect. The evidence of T/ACC Anwyl states that during their telephone conversation Cllr Rogers was polite and friendly; further in his email to T/ACC Anwyl of 20 January 2010, whereas he was agitated, even irate, he was not abusive. He was urging action, not directing action to be taken.
- i) **Paragraph 184** - Cllr Rogers denied that it was an undisputed fact that he had tried to secure an advantage for himself and Mr Cooper by involving himself in the police investigation. Cllr Rogers was already involved and had material information as a witness.
- j) **Paragraph 215** – by excluding proper consideration of Cllr Rogers’ involvement in the planning appeal and his perception of how he had been involved in the police investigation, the PSOW had misled himself.
- k) **Paragraph 216** – it is striking that none of the officers who dealt with Cllr Rogers on 20 January 2010 suggest that he was using his position as a member of the NWPAs or as a Councillor on that day.
- l) **Paragraph 218** – to suggest that because he was a member of NWPAs he was not entitled to voice criticism of the police is absurd.

- m) **Paragraphs 219 and 221** – it is unclear as to how it is said that by showing Mrs Peckett-Johnson Cllr Durkin’s letter of apology or the relevant Council minutes which referred to the apology, Cllr Rogers had abused his position as a member of NWPA or as a Councillor.
- n) **Paragraph 223** – it is denied that Cllr Rogers attempted to compromise the impartiality of the police officers. He simply:
 - (i) Suggested a certain course of action to the officers.
 - (ii) Provided the police with information that undermined the credibility of Cllr Durkin as to whether in the circumstances under consideration, he was a reliable witness.
 - (iii) Provided the police with evidence, namely the Council minutes which were material to their investigation.
 - (iv) Attended to assist the police with their enquiry as he was named to have incited the alleged offence.
 - (v) Attended the police station to support his constituent, whose affairs he had already been involved in.
- o) **Paragraphs 224 and 225** – it is further denied that Cllr Rogers had attempted to direct the police enquiry or that he had attended the police station to get himself and Mr Cooper “off the hook”.
- p) **Paragraph 227** – the PSOW has ignored relevant background facts, namely that Cllr Rogers had already been involved by Mr and Mrs Cooper in the planning appeal.
- q) **Paragraph 228** – Cllr Rogers made it clear that he was present at the police station as a private individual, because he had been accused by Cllr Durkin of inciting the threat to kill. It was in that capacity he had made the criticism and not as a member of NWPA or as a Councillor.
- r) **Paragraph 229** – Cllr Rogers denied bullying the officers, whether by criticising them or otherwise. Moreover, as a Councillor or as a member of NWPA, he is entitled to express his disagreement and to question an officer’s performance.
- s) **Paragraph 231** – Cllr Rogers was simply seeking to put before the police information that was material to their investigation.
- t) **Paragraph 235** – Cllr Rogers is concerned that in light of the evidence provided by the witnesses Mr and Mrs Cooper and Mrs Peckett-Johnson, why further questions were not put to the police officers in order to clarify certain key issues.
- u) **Paragraph 236** – to suggest that the witnesses, Mr and Mrs Cooper and Mrs Peckett-Johnson, have somehow colluded or been influenced in what they have put in their witness statements is deplored.

- v) **Paragraph 239** – the contradiction in the accounts given by Mr and Mrs Cooper and Mrs Peckett-Johnson, when compared with the evidence of the police officers, has not been dealt with by the PSOW.

2.3 The Ombudsman's Written Representations

2.3.1 The PSOW responded to Cllr Rogers' representations as follows:

- a) **Paragraphs 18, 21 and 22** – the PSOW notes the information provided, questions why it could not have been provided during the investigation and in any event the relevance of the information.
- b) **Paragraphs 23 to 25** – these paragraphs were not intended to be a complete account of the events of 8 January 2010. Moreover, the additional evidence contended by Cllr Rogers appear to be controversial.
- c) **Paragraph 37** - the suggestion that PS Llewellyn was unaware that Cllr Rogers was a member of NWP is somehow proof that he could not have been seeking to influence the officer is not accepted. Cllr Rogers had suggested on two occasions during his discussions with PS Llewellyn that he had access to senior officers of NWP up to the Chief Constable, access which would not normally be available to ordinary members of the public or most Councillors. Further, Cllr Rogers indicated to PS Llewellyn that he had seen a NWP file on Cllr Durkin – this again is suggestive that it was not as an ordinary member of the public or as a Councillor he had been given such access.
- d) **Paragraph 128** – the PSOW does not accept that the summary given of Mrs Peckett-Johnson's evidence is not a reasonable one. In any event, her full account is available for the Case Tribunal.
- e) **Paragraph 134** – the PSOW contends at paragraph 245 of his report that the Cllr Durkin letter was not confidential.
- f) **Paragraph 151** – the PSOW accepts that in error a telephone note dated 14 April 2010 had been submitted instead of a telephone note dated 13 May 2010. However, in the note dated 14 April 2010, Cllr Rogers directly criticised the PSOW's handling of the complaint against him.
- g) **Paragraph 152** – the PSOW refers to the comments at paragraph 151 above.
- h) **Paragraphs 182 and 183** – the PSOW notes that the two facts noted are now disputed. These will be matters for the Case Tribunal to make findings upon.
- i) **Paragraph 215** – the PSOW does not accept that Cllr Rogers was involved in the police investigation – rather, he involved himself. The PSOW does

however note that Cllr Rogers accepts that he attended Holyhead Police Station as a member of Anglesey County Council to assist a constituent.

- j) **Paragraph 216** – the PSOW notes the conflicting account given by Cllr Rogers; according to Cllr Rogers he was there to assist a constituent – it follows he was there as a member of the Anglesey County Council. PSOW also argues that there is evidence entitling the Case Tribunal to find that he was also there in his official capacity as a member of NWPA.
- K) **Paragraph 218** – the PSOW suggests that Cllr Rogers' conduct in threatening to make complaints to the Chief Constable about an ongoing police investigation with a view to bringing that investigation to an earlier end than might otherwise have been the case, and where he considered himself was implicated is extraordinary.
- l) **Paragraphs 219 and 221** – the suggestion that Cllr Rogers had relevant evidence to give the police does not explain or excuse his conduct. To suggest that he would submit a complaint to the Chief Constable about the ongoing investigation is nothing other than to attempt to bring the investigation to an early end.
- m) **Paragraph 223** – no response.
- n) **Paragraphs 224 and 225** – the fact that the investigation eventually resulted in no further action being taken against Mr Cooper does not excuse Cllr Rogers' conduct.
- o) **Paragraph 227** – the PSOW does not accept that he has ignored the relevant context.
- p) **Paragraph 228** – PSOW does not accept the factual premise to this representation. Moreover, Cllr Rogers did not answer questions put to him as to the capacity in which he took various steps the subject of the PSOW's investigation. Cllr Rogers has indicated that he attended the police station to assist a constituent and subject to the Case Tribunal's findings, some of the things he said whilst present indicate that he was giving the impression that he was acting as a representative of the NWPA.
- q) **Paragraph 229** – PSOW stands by his evaluation of the evidence regarding Cllr Roger's conduct.
- r) **Paragraph 231** – Cllr Rogers (based upon the evidence of the police officers) made it clear that he would involve the Chief Constable in a review of the propriety of their investigation.
- s) **Paragraph 235** – PSOW does not consider these further investigations to have been necessary.
- t) **Paragraph 236** – no response.

- u) **Paragraph 239** – no response.

3. ORAL SUBMISSIONS

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

PRELIMINARY ISSUES

PUBLIC SERVICES OMBUDSMAN FOR WALES

3.2 The PSOW's representative, Mr Gwydion Hughes, presented the PSOW's report. He summarised the issues. He also referred the Tribunal to the skeleton argument that had been delivered in advance (in accordance with the Tribunal's direction) which dealt with the question of whether the NWPA Code applied or not. In his view it would be necessary for the Tribunal to hear from the witnesses and to make findings on the primary facts before it could consider whether the NWPA Code was engaged or not. A copy of that skeleton argument is annexed to this Decision at Annex A.

THE RESPONDENT

3.3 Mr Wells, Counsel for Cllr Rogers, contended that as a preliminary issue, the Tribunal had to be satisfied on the evidence contained in the papers as to whether the NWPA Code was engaged. If the Tribunal concluded that there was no evidence, or insufficient evidence on the papers so as to justify that the Code was engaged, the Tribunal did not have any jurisdiction to consider the allegations that have been raised against Cllr Rogers under the NWPA Code. Mr Wells referred the Panel to the skeleton argument which again had been filed on behalf of Cllr Rogers in accordance with the Tribunal's direction and which is annexed to this Decision at Annex B.

3.4 The Tribunal retired to consider the preliminary submissions and to review the evidence that had been obtained by the PSOW as part of his investigation. Following a detailed consideration of the evidence, the Tribunal concluded and ruled that there was amongst the case papers and in particular as set out in witness statements that had been obtained by PSOW evidence that showed that there was a prima facie case that the NWPA Code was engaged and that the Tribunal therefore had jurisdiction to consider the allegations of breaches of the NWPA Code. In support of this decision, the Tribunal referred to passages in the evidence of DS Williams which suggested that:

- a) He knew that Cllr Rogers was a member of the NWPA, and
- b) Cllr Rogers had indicated to him that he knew and had seen a large file on Cllr Durkin, presumably in his capacity as a member of the NWPA, and
- c) Cllr Rogers had indicated to him that he would make a complaint directly to the Chief Constable concerning the ongoing police investigation, which

suggested he had direct access to the Chief Constable as a member of NWPWA.

The Tribunal also referred to passages in the written statement of T/ACC Anwyl, which stated:

- a) He knew Cllr Rogers was a member of NWPWA, and
- b) had reminded Cllr Rogers not to get involved in the matter or attend at the police station in view of his membership of NWPWA, and
- c) had referred to the email of 20 January 2010 from Cllr Rogers who had indicated that the investigation was a disgrace to NWPWA.

WITNESS EVIDENCE

MS BEVERLEY JONES, INVESTIGATING OFFICER, PSOW

3.5.1 Ms Jones gave evidence on affirmation. She referred to her telephone conversation with Cllr Rogers which took place on 14 April 2010, which she subsequently wrote up and which appears at page B181 of the Tribunal papers. She also referred to a subsequent telephone discussion with Cllr Rogers on 13 May 2010. During both conversations, Cllr Rogers expressed his concerns about the PSOW investigation and how he thought it was unnecessary. She said that he also told her that he had gone with Mr Cooper to Holyhead Police Station on 20 January 2010 so as to get both him and Mr Cooper “off the hook”.

3.5.2 Under cross-examination from Mr Wells, Ms Jones indicated that she was aware of the evidence of DC Lisa Jones and that Cllr Durkin was blaming Cllr Rogers for putting Mr Cooper up to assassinate him, at the time she spoke to Cllr Rogers. She also indicated that at that time, she had seen the two emails that Cllr Rogers had sent to T/ACC Anwyl and that Cllr Rogers had suggested that NW Police should arrest him as part of their investigation into Cllr Durkin’s complaint. Ms Jones accepted that there was nothing sinister in the telephone conversations. Ms Jones also accepted that PSOW was not suggesting that Mr and Mrs Cooper and Ms Peckett-Johnson had colluded when they submitted their evidence to the PSOW. However, there were similarities in the way in which their evidence had been submitted, which struck her as being unusual.

FORMER T/ACC GERAINT ANWYL

3.6.1 T/ACC Anwyl gave evidence on oath. He confirmed the contents of his witness statement dated 22 January 2010 which he had given to the PSOW. The statement was read out to the Tribunal. He confirmed that he had enjoyed a good working relationship with Cllr Rogers for many years and that he had discussed policing issues with him on a regular basis. He also confirmed that they did exchange emails with each other, which he had encouraged.

3.6.2 T/ACC Anwyl indicated that he had not given his email contact address or his mobile telephone number to other members of Anglesey County Council, although if they wanted it, they could obtain it.

3.6.3 He viewed Cllr Rogers as a passionate man who worked hard and tirelessly for his constituents. He accepted that he sometimes was impetuous – nevertheless, he did at times become too personally involved in issues and in that context he advised him not to become involved in the police enquiry arising from the complaint by Cllr Durkin. He reminded him of his status and membership of NWWA. He accepted that he had conveyed the views expressed by Cllr Rogers to officers who were in charge of the Cllr Durkin complaint.

3.6.4 Under cross examination by Mr Wells T/ACC Anwyl accepted that Cllr Rogers had contacted him, both as a member of Anglesey County Council and as a member of NWWA. More often than not there was no clear distinction between the roles Cllr Rogers was undertaking.

3.6.5 T/ACC Anwyl confirmed that during their telephone conversation on 8 January 2010, he had reminded Cllr Rogers of his position as a member of the NWWA. He felt that Cllr Rogers was becoming too involved and that he was compromising his position by his approach and attitude. He felt that this was a “train crash waiting to happen”, if he chose to involve himself and accompanied Mr Cooper to the police interview. He told him not to.

3.6.6 T/ACC Anwyl also conceded that he did tell Cllr Rogers during their telephone conversation that he would keep a “watching brief” on the ongoing enquiry into Cllr Durkin’s complaint, but that he would not intervene in the enquiry. He was confident, based upon his 33 years of police service, that Cllr Rogers should have no real concerns arising out of the enquiry but he did not tell Cllr Rogers that. Notwithstanding his advice, he became aware following receipt of the second of the two emails that Cllr Rogers had not heeded his advice and had become involved. However, he chose not to respond to the emails.

DETECTIVE CONSTABLE LISA JONES

3.7.1 DC Lisa Jones gave evidence on oath. She confirmed the contents of her witness statement. The statement was read out to the Tribunal. She confirmed that she had interviewed Mr Cooper for a period in excess of 3 hours. She had not seen or spoken to Cllr Rogers prior to interviewing Mr Cooper. She recognised that Mr Rogers was a local Councillor.

3.7.2 Cllr Rogers had indicated to her that he had evidence which was of relevance to the enquiry. As a result, she took him into an interview room. She confirmed that Cllr Rogers became aggressive – he stood over her, pointed his finger at her, had raised his voice and shouted at her. She became concerned for her safety and well being – she said she started shaking. She said that she was shocked that a Councillor was speaking to her in this way. As a result, she went to discuss matters with a colleague.

3.7.3 Under cross examination, she could not remember whether she had told Cllr Rogers to calm down. She accepted that she had, during her 10 years of police service, undertaken front line duties. She conceded that Cllr Rogers had not attempted to block her from leaving the room and there had been no threat of violence by him towards her.

3.7.4 She explained that when she subsequently went to interview Mrs Peckett-Johnson, she did not display any concerns following her discussions with Cllr Rogers. She said that she had to display a professional attitude when discussing the case with another potential witness. She explained that she had discussed the strategy that she would adopt for interviewing Mr Cooper with a senior officer and that it was common in circumstances such as this to arrest a suspect before interviewing him under caution. She accepted that Cllr Rogers may have been implicated in the investigation and that he did raise with her the question of why he had not been arrested.

3.7.5 She indicated that her discussion with Cllr Rogers had lasted for about 10 minutes and for half of that time he had been shouting at her. She accepted that she had told Cllr Rogers that the police did not have a tape recording of the telephone conversation between Mr Cooper and Cllr Durkin. During her interview with Mr Cooper, he did not implicate Cllr Rogers in the complaint brought by Cllr Durkin.

DETECTIVE SERGEANT STEPHEN WILLIAMS

3.8.1 DS Williams gave evidence on oath. He confirmed the contents of his statement, which he read out to the Tribunal. He confirmed that he was aware on 20 January 2010 that Cllr Rogers was a member of NWPA and that he was also a member of Anglesey County Council.

3.8.2 He confirmed that DC Lisa Jones had come to see him on 20 January 2010. She had told him that she had been shouted at by Cllr Rogers in a meeting that had taken place. He confirmed that she was visibly shaken and that her voice was trembling and that she was on the verge of tears.

3.8.3 He indicated that he went to speak to Cllr Rogers. During their conversation, Cllr Rogers pointed his finger at him. He confirmed that Cllr Rogers was overbearing but he did not think that during their discussion Cllr Rogers had committed any public order offence. Cllr Rogers did tell him that he was going to pursue matters further.

3.8.4 Under cross examination, he conceded that he had not mentioned in his statement that Cllr Rogers had direct contact with the Chief Constable. He also conceded that Cllr Rogers did not say at any point that he was a member of the police authority. He said that Cllr Rogers was passionate and impatient and that he put his points across on behalf of Mr Cooper forcefully.

POLICE SERGEANT OWAIN LLEWELLYN

3.9.1 PS Llewellyn gave evidence on oath. He confirmed the contents of his statement which he read out. He confirmed that he had seen DC Lisa Jones who was visibly distressed that morning.

3.9.2 He conceded that he did not know that Cllr Rogers was a member of the NWPA and that he did not understand the reference by Cllr Rogers to having seen a large file on Cllr Durkin. He described Cllr Rogers as animated on the day.

3.9.3 On cross examination he accepted that he had not heard Cllr Rogers shouting but that he was talking quite loudly.

MR MALCOLM COOPER

3.10.1 Mr Cooper gave evidence on oath. His statement was read out to the Tribunal by the Chairman. Mr Cooper confirmed that the contents of his statement were accurate. He confirmed that he attended Holyhead Police Station on 20 January 2010 and that he was accompanied by his wife, Susan Cooper, Mrs Peckett-Johnson and his solicitor, Mr Guile. On the completion of the police interview he discovered that Cllr Rogers was also present.

3.10.2 He confirmed that he had spoken to Cllr Durkin as a result of advice that he had received from Council officers to contact him following his successful appeal of the planning decision. He denied that he had threatened to kill Cllr Durkin. He indicated that his colleague, Mrs Peckett-Johnson, had overheard part of his telephone conversation with Cllr Durkin.

3.10.3 He confirmed that he had been interviewed by DC Lisa Jones following his arrest and a period in the cells. He had been told about a week after his interview that the police would not be taking any further action against him.

3.10.4 Under cross examination, he indicated that he had not heard Cllr Rogers shouting at officers during the time that he was at Holyhead Police Station.

MRS SUSAN COOPER

3.11.1 Mrs Cooper gave evidence under affirmation. Her letter to the PSOW dated 1 March 2010 was read out to the Tribunal by the Chairman. She confirmed that the contents were correct.

3.11.2 She confirmed that she accompanied her husband to Holyhead Police Station on 20 January 2010. Also present were Mrs Peckett-Johnson and Mr Guile, a police station representative who attended to represent her husband. After her husband had gone into the station to be interviewed, she confirmed that Cllr Rogers arrived. She confirmed that she, Mrs Peckett-Johnson and Cllr Rogers sat in the foyer area of the police station for about 3 ½ hours.

3.11.3 She confirmed that DC Lisa Jones accompanied her husband out to the foyer area after his interview, whereupon Cllr Rogers indicated that he wished to

give information to DC Jones. DC Jones and Cllr Rogers then entered the main part of the station.

3.11.4 Cllr Rogers returned about half an hour later. He indicated that he was not happy about the way in which her husband had been dealt with. He offered to assist her husband in making a complaint about Cllr Durkin's report to NW Police. She confirmed that she did not hear Cllr Rogers shouting at police officers.

MRS SIAN PECKETT-JOHNSON

3.12.1 Mrs Peckett-Johnson gave evidence on oath. Her letters to PSOW, both of which were undated but which had been received by the PSOW on 12 March and 12 April 2010 were read out to the Tribunal by the Chair. She confirmed that their contents were correct. She confirmed that she had prepared and typed the two letters herself.

3.12.2 She confirmed that she had overheard part of the conversation between Mr Cooper and Cllr Durkin. She had not heard Mr Cooper threaten to kill Cllr Durkin. She became aware during the course of the morning of 20 January 2010 that Cllr Rogers had attended because he felt that he had evidence that was relevant to the police enquiry.

MR JEFF GUILLE

3.13.1 Mr Guile gave evidence on oath. He read out his letter to PSOW of 12 April 2010. He confirmed that the contents were correct.

3.13.2 He confirmed that he had overheard Cllr Rogers telling those who were assembled in the foyer of the police station that his role as a member of NWPA may be called into question as a result of his intervention into the enquiry.

COUNCILLOR PETER ROGERS

3.14.1 Cllr Rogers gave evidence on oath. He confirmed the truth and contents of letters and responses he had sent to the PSOW in relation to his enquiries and in particular letters dated 5 February, 28 May and 7 October 2010. He also confirmed the truth of answers and responses he had given to the Adjudication Panel.

3.14.2 He confirmed that he had had a long standing personal and professional relationship with T/ACC Anwyl. He suggested that their relationship was far stronger than T/ACC Anwyl had been prepared to accept during his evidence to the Tribunal.

3.14.3 Cllr Rogers accepted that T/ACC Anwyl had warned him not to become involved in the enquiry arising from the complaint by Cllr Durkin. He had told him he should stay clear but that he (T/ACC Anwyl) would keep a watching brief on the enquiry as it progressed. Cllr Rogers took that to mean that T/ACC Anwyl would take some action in the matter.

3.14.4 He confirmed that his constituents, Mr and Mrs Cooper, had asked him to assist them with their planning appeal which had arisen due to Cllr Durkin interfering and persuading his fellow Councillors to vote against the planning application, which was contrary to the advice of the Council's officers.

3.14.5 He had decided (notwithstanding the advice of T/ACC Anwyl) to attend Holyhead Police Station on the spur of the moment. He had been implicated in the threat by Cllr Durkin and he wanted to clear his name. He also had evidence that he believed would assist the police in their enquiry, comprising minutes from the Council meeting and the letter of apology from Cllr Durkin.

3.14.6 Cllr Rogers confirmed that he was due to undergo medical treatment shortly and that he did not want the police enquiry hanging over him whilst he was in hospital and recuperating.

3.14.7 He agreed that he had spoken to DC Lisa Jones. She had told him that the police did not have a taped conversation between Cllr Durkin and Mr Cooper which was a great relief to him. He denied shouting at DC Jones, but agreed that he did tell her that he wanted to make a complaint about the way in which the investigation had been handled. He denied that he had told DC Lisa Jones that he was there to represent his constituent, Mr Cooper. He conceded that he may have pointed his finger at her. He denied raising his voice at DS Williams. He accepted that he had told PS Llewellyn that he would make a complaint himself, but denied saying that he would contact the Chief Constable. He accepted that he may have said he would take the matter up at a higher level. He accepted that the record made by Mrs Beverley Jones of their conversations on the telephone were accurate.

3.14.8 Under cross examination by Mr Hughes for the PSOW, he conceded that he had attended the police station to support his constituent but also to defend his own position. He accepted that T/ACC Anwyl may have believed that the complaint would not end up in any action against him, but he did not receive any reassurance from him and he was genuinely concerned about his position as being the person who had allegedly incited Mr Cooper to make the threat to kill Cllr Durkin.

3.14.9 Cllr Rogers denied that by telephoning T/ACC Anwyl on 8 January 2010, his call could be interpreted as an attempt to cause the enquiry to be brought to an end, sooner rather than later. He was concerned about the damage that Cllr Durkin's totally unfounded allegations were having on his constituents, Mr and Mrs Cooper. He denied that by telephoning T/ACC Anwyl, he was using a privileged means of access to a senior officer, which was only available to him as a member of NWPA.

3.14.10 He accepted that his subsequent email to T/ACC Anwyl was couched in emotive terms – he was at the time very annoyed about the way in which Mr Cooper had been treated. He was also annoyed that T/ACC Anwyl had done nothing despite his assurance to keep a watching brief.

3.14.11 He accepted that he did tell Mrs Peckett-Johnson and Mr Guile (after Mr Cooper's interview) that his presence at the police station may get him in to trouble with NWPA. He did not accept that as a member of NWPA, a complaint by him to the Chief Constable would be taken more seriously than a complaint by an ordinary member of the public.

3.14.12 He denied telling PS Llewellyn that he would meet with the Chief Constable on a "face to face" basis.

SUBMISSIONS ON THE FACTS

3.15 Mr Gwydion Hughes on behalf of the PSOW indicated that:

- (i) By using the privileged access provided to contact T/ACC Anwyl (out of hours) he was telephoning him in his capacity as a member of NWPA.
- (ii) By sending the emails that he did to T/ACC Anwyl on 19 and 20 January 2010 he again was using a privileged access which was not available to other Councillors but to him as a member of NWPA.
- (iii) DS Williams knew that Cllr Rogers was a member of NWPA – indeed he gave evidence that Cllr Rogers had accompanied him and other officers on a police raid (as an observer); further by referring to the existence of a police file on Cllr Durkin, Cllr Rogers was implying that he was using his knowledge and status as a member of NWPA; finally by indicating that he would raise a complaint with the Chief Constable unless Cllr Durkin was charged with wasting police time, Cllr Rogers was clearly giving the impression that he was acting in his capacity as a member of NWPA.
- (iv) Whereas PS Llewellyn did not know prior to their meeting that Cllr Rogers was a member of the NWPA, by making reference on two occasions to a complaint to senior officers and his knowledge of the existence of a file on Cllr Durkin, he was clearly giving the officer the impression that he had contacts with senior officers of NW POLICE which were not available to ordinary members of the public and indeed to most Councillors.
- (v) The accounts given by the police officers were clear and were corroborated. Both DS Williams and PS Llewellyn witnessed that DC Lisa Jones was visibly shaken and upset following her meeting with Cllr Rogers. The email that Cllr Rogers sent to T/ACC Anwyl some ten hours after the interview at the police station indicate the anger that Cllr Rogers showed towards NW Police. It reflects his state of mind. The evidence of Mr and Mrs Cooper and Mrs Peckett-Johnson does not contradict the evidence of the police officers.

3.16 Mr Wells, on behalf of Cllr Rogers, made the following oral submissions:

- (i) The contact between T/ACC Anwyl and Cllr Rogers was evidence of a healthy working relationship. The fact that Cllr Rogers sent emails to T/ACC Anwyl late at night or telephoned him on his mobile outside ordinary working hours did not mean that such contact was always in an official capacity.
- (ii) The fact that Cllr Rogers was critical of the fact that NW POLICE was treating Cllr Durkin's complaint as a serious one did not mean that he was using the privileged access to try and get the complaint stopped in its tracks, sooner rather than later. The fact that T/ACC Anwyl had indicated that he would adopt a "watching brief" approach showed some reassurance to Cllr Rogers.
- (iii) T/ACC Anwyl accepts that there was no attempt by Cllr Rogers to influence him into interfering with the enquiry. Accordingly, the NWP Code cannot apply in the circumstances arising here.
- (iv) The fact that Cllr Rogers was critical of the police conduct – the delay, the arrest of Mr Cooper, the lengthy interview and the fact that Cllr Durkin's complaint was being taken seriously, does not mean that as an elected representative, he was not entitled to assist his constituents in trying to right a wrong. Being critical is not a breach of the Code.
- (v) The fact that DC Jones believed that Cllr Rogers was behaving in an inappropriate way does not mean that he was. There was no evidence afterwards that his conduct had prevented her from completing her enquiries that day.

4. FINDINGS OF FACT

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

4.1.1 Cllr Rogers became a member of the Isle of Anglesey County Council on 10 June 2004 and the NWP Code on 29 May 2005. Cllr Rogers is the named representative of the Council on the NWP Code.

4.1.2 Cllr Rogers agreed to abide by the Code of Conduct of the NWP Code on 6 June 2008 and also agreed to abide by the Council's current Code of Conduct on 4 June 2008.

4.1.3 Cllr Rogers received training on the Code of Conduct of the NWP Code on 16 December 2009.

4.1.4 Cllr Rogers did not attend update training on the Council's Code of Conduct when it was offered in mid 2008.

4.1.5 Cllr Rogers spoke to T/ACC Geraint Anwyl on 8 January 2010 regarding the Cooper case.

4.1.6 Cllr Rogers sent two emails to T/ACC Anwyl on 19 and 20 January 2010 regarding the investigation into the Cooper matter and setting out his dissatisfaction with the investigation.

4.1.7 Cllr Rogers attended Holyhead Police Station on 20 January 2010 and spoke with DC Lisa Jones, DS Stephen Williams and PS Owain Llewellyn.

4.1.8 Cllr Rogers spoke with Mrs Cooper and Mrs Peckett-Johnson at Holyhead Police Station on 20 January 2010 and shared documents and his views with them.

4.1.9 The discussion with Mrs Cooper and Mrs Peckett-Johnson took place in a public area of the police station prior to Mrs Peckett-Johnson giving a witness statement in support of Mr Cooper about the allegation made by Cllr Durkin.

4.1.10 Cllr Rogers disclosed a copy of a letter dated 2 October 2009 written by Cllr Durkin to Mrs Cooker, Mrs Peckett-Johnson and the three police officers mentioned in paragraph 4.1.7 above. Cllr Rogers also discussed the contents of that letter with these parties. Cllr Rogers did not have permission from Cllr Durkin to disclose or discuss the contents of that letter.

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

4.2.1 During the telephone call with T/ACC Anwyl on 8 January 2010, Cllr Rogers:

- a) made comments critical of the police handling of the Cooper investigation;
- b) was attempting to confer an advantage for himself or others or was attempting to confer a disadvantage for another person;
- c) was attempting to compromise the impartiality of those who work for or on behalf of NWPA; and
- d) repeatedly received advice from T/ACC Anwyl not to involve himself in the investigation due to his position on the Police Authority.

4.2.2 In his emails of 19 and 20 January 2010 to T/ACC Anwyl, Cllr Rogers:

- a) made comments critical of the police's handling of the investigation;
- b) attempted to confer an advantage for himself or others or attempted to confer a disadvantage for another person; and
- c) attempted to compromise the impartiality of T/ACC Anwyl.

4.2.3 Cllr Rogers used overbearing, intimidating, bullying or otherwise inappropriate behaviour towards:

- a) DC Lisa Jones
- b) DS Stephen Williams
- c) PS Owain Llewellyn

4.2.4 Cllr Rogers when at Holyhead Police Station on 20 January 2010 and when speaking to DC Lisa Jones, DS Stephen Williams and PS Owain Llewellyn;

- a) made comments critical of the police handling of the Cooper investigation;
- b) attempted to confer an advantage for himself or others or attempted to confer a disadvantage for another person; and
- c) attempted to compromise the impartiality of those who work for on or behalf of NWPA.

4.2.5 The letter dated 2 October 2009 from Cllr Durkin was confidential or contained confidential information.

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

4.3.1

- a) During the telephone conversation between Cllr Rogers and T/ACC Anwyl on 8 January 2010, Cllr Rogers drew T/ACC Anwyl's attention to the complaint by Cllr Durkin and the resulting police investigation. However, the Case Tribunal finds that at no stage during the said telephone conversation was Cllr Rogers critical of the handling of the investigation.
- b) The Case Tribunal further finds that at the time of the said conversation, Cllr Rogers was not attempting to confer an advantage for himself or Mr Cooper.
- c) The Case Tribunal further finds that there is no evidence that Cllr Rogers was attempting to compromise the impartiality of those who were working for the NWPA during the said telephone conversation.
- d) Cllr Rogers accepts, and we are satisfied, that T/ACC Anwyl did advise Cllr Rogers, on more than one occasion during their telephone conversation, not to involve himself in the investigation due to his position on the NWPA.

4.3.2

- a) It is clear that on the face of the emails dated 19 and 20 January 2010 and we are satisfied that Cllr Rogers did make comments that were critical of the NW Police investigation.
- b) The Case Tribunal is not satisfied that by sending the two said emails, Cllr Rogers was attempting to seek an advantage for himself or Mr Cooper.

- c) The Case Tribunal is not satisfied that by sending the two said emails, Cllr Rogers was attempting to compromise the impartiality of T/ACC Anwyl.

4.3.3 The Case Tribunal was not satisfied that during his attendance at Holyhead Police Station on 20 January 2010, Cllr Rogers had used overbearing, intimidating, bullying or otherwise inappropriate behaviour towards PS Llewellyn and DS Williams.

However, the Case Tribunal was satisfied that Cllr Rogers' conduct during his conversation with DC Lisa Jones on 20 January 2010 was inappropriate in that he got to his feet, leaned towards her, pointed his finger towards her and shouted at her. The Tribunal preferred the evidence of DC Lisa Jones about Cllr Rogers conduct and accepted the evidence of DS Williams and PS Llewellyn who observed that DC Lisa Jones was upset and distressed following her meeting with Cllr Rogers.

4.3.4

- a) The Case Tribunal accepts and finds that during the course of his conversations with officers Jones, Llewellyn and Williams at Holyhead Police Station on 20 January 2010, Cllr Rogers made comments that were critical of the police handling of the Cooper investigation. In particular, the Tribunal rely on the following passages which it accepts and finds:
 - (i) To DC Lisa Jones – “This is a waste of time – I cannot believe you’re investigating this; you have no evidence; Mr Cooper should not be here; why is this taking so long; you have had Mr Cooper here for hours”.
 - (ii) To DS Williams – “The whole matter was a disgrace and a waste of police time; it was outrageous that Mr Cooper should be accused of making such threats; that’s ridiculous, I can tell you now there’s no case here; if you had investigated this properly, you would have seen this earlier”.
 - (iii) To PS Llewellyn – “I want to complain against the police in general and NW Police as a whole; it was a disgrace that NW Police were investigating the matter”.
- b) The Case Tribunal found that there was no improper attempt to confer an advantage for himself or Mr Cooper during the attendance at the police station.
- c) The Case Tribunal found that Cllr Rogers did not attempt to compromise impartiality of the three officers that he spoke to during his attendance at the police station.

4.3.5 The PSOW accepts that the letter dated 2 October 2009 could not be regarded as being confidential. Indeed, the Case Tribunal received evidence from the Monitoring Officer of Anglesey County Council that Cllr Durkin’s letter was freely available to members of the Audit Committee and to officers who had

attended the meeting at which Cllr Durkin's behaviour gave rise to concern. Further, the Case Tribunal accepts that Cllr Rogers found the letter in the members' lounge to which the public have access. In those circumstances, the Case Tribunal concluded that the said letter could not be considered confidential.

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

5.1 The Ombudsman's Submissions

5.1.1 Mr Gwydion Hughes, on behalf of the PSOW, indicated that:

- a) In light of the Tribunal's primary findings on the facts, he could not argue that the NWP Code was engaged.
- b) Nevertheless, he did contend that in light of the Tribunal's findings that Cllr Rogers had failed to show respect and consideration to DC Lisa Jones, the Tribunal could properly conclude that Cllr Rogers had during his visit to Holyhead Police Station on 20 January 2010, acted in breach of paragraph 4(b) of the Anglesey County Council Code. Further, he also contended that Cllr Rogers had bullied DC Lisa Jones although he had not harassed her.
- c) He accepted that in light of the Tribunal's finding that Cllr Durkin's letter was not a confidential letter, there was no breach of paragraph 5(a) of the Anglesey County Council Code.
- d) However, by conducting himself in the way that he had towards DC Lisa Jones, he had brought his office and that of the authority into disrepute.

5.2 The Respondent's Report

5.2.1 Mr Wells on behalf of Cllr Rogers contended that whereas the Anglesey County Council Code was engaged, he did not accept that Cllr Rogers had acted in breach of the relevant provisions. In particular, he stated:

- a) Whereas DC Lisa Jones was surprised by the way Cllr Rogers had spoken to her, that did not, on an objective basis, satisfy the relevant provision so as to justify a finding that he had failed to show her respect of consideration.
- b) Moreover, whereas it may have been unacceptable for Cllr Rogers to have behaved in the way that he did, were he only attending in a representative capacity, it should not be forgotten that he was also present to represent his own interests as a suspect.
- c) Cllr Rogers' conduct was a reaction to the circumstances in which he found himself and the behaviour was not sustained or continuous. There was no abuse of the officer, no unpleasant language was used – his conduct was rational and critical.

5.3 Case Tribunal's Decision

5.3.1 At the beginning of the hearing, the Case Tribunal received written and oral submissions from Mr Hughes and Mr Wells as to whether the NWPA code was engaged.

5.3.2 At that stage, and on the paper evidence alone, the Case Tribunal was satisfied that there was a basis to contend that the NWPA code was engaged.

5.3.3 However, on the basis of the Tribunal's findings of fact, the Tribunal was not satisfied that the NWPA code is engaged. In particular, the Tribunal concluded that at all material times, namely

- a) During the telephone conversation with T/ACC Anwyl on 8 January 2010,
- b) In the email Cllr Rogers sent to T/ACC Anwyl on 19 January 2010
- c) When Cllr Rogers attended Holyhead Police Station on 20 January 2010, and
- d) In the email Cllr Rogers sent to T/ACC Anwyl on 20 January 2010,

Cllr Rogers was not conducting the business of the NWPA. Further, the Case Tribunal was satisfied that Cllr Rogers did not give the impression that he was so acting as a representative of the NWPA.

5.3.4 The following paragraphs of the Anglesey County Council Code of Conduct state:

4(b) "You must show respect and consideration for others."

4(c) "You must not use bullying behaviour or harass any person."

5(a) "You must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so."

6(1)(a) "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

5.3.5 On the basis of its findings of fact, the Case Tribunal concluded that when conducting public duties, a public servant such as a serving police officer, is entitled to the protection of the law.

5.36 The Code of Conduct exists to govern the way in which a Councillor is expected to conduct himself whilst carrying out his duties.

5.37 The Case Tribunal has found that during his discussions with DC Lisa Jones on 20 January 2010, Cllr Rogers engaged in inappropriate behaviour. In particular,

he stood over her (whilst she was sitting down in a room in which she and Cllr Rogers were the only occupants); pointed his finger towards her and shouted at her.

5.3.8 This, in the view of the Tribunal, amounted to an attack on her as an individual and accordingly, Cllr Rogers failed to show DC Lisa Jones respect and consideration. In those circumstances, the Case Tribunal finds a breach of paragraph 4(b) of the Anglesey County Council Code.

5.3.9 DC Lisa Jones was an experienced police officer. She had over 10 years' experience in the police service. She had been engaged in front line duties. She accepted during evidence that she had been trained to deal with conflict situations – yet she did not challenge Cllr Rogers or attempt to calm him down during their meeting. Further, neither DS Williams nor PS Llewellyn challenged Cllr Rogers about his conduct towards DC Lisa Jones. For those reasons, the Case Tribunal does not accept that Cllr Rogers used bullying behaviour towards DC Lisa Jones or that he attempted, let alone succeeded, in harassing her. In those circumstances, the Case Tribunal does not find that Cllr Rogers breached paragraph 4(c) of the Code.

5.3.10 The Case Tribunal has found that the letter from Cllr Durkin was not a confidential document. In those circumstances, the Case Tribunal finds that there is no breach of paragraph 5(a) of the Code.

5.3.11 We now turn to paragraph 6(1)(a). As a Councillor, the actions and behaviour of an individual are subject to greater scrutiny than those of ordinary members of the public. Conduct such as that that the Case Tribunal has found could bring the office of Councillor and the Council itself into disrepute.

5.3.12 On this occasion, Cllr Rogers was at the police station in his representative capacity as a Councillor to represent the interests of his constituent, Mr Cooper.

5.3.13 His reaction on leaving the police station was very telling – he thought and told Mr and Mrs Cooper and Mrs Peckett-Johnson that his conduct in failing to heed the advice of T/ACC Anwyl and attending at the police station, and as the Case Tribunal has found, conducting himself in the way that he did, namely inappropriately, was the “train crash” which T/ACC Anwyl told the Tribunal about in evidence thought might happen and which did happen.

5.3.14 DC Lisa Jones was shocked that a Councillor could and did behave in this way.

5.3.15 For those reasons, the Case Tribunal is satisfied that Cllr Rogers did bring both the office of Councillor and the Council itself into disrepute.

6. SUBMISSIONS ON ACTION TO BE TAKEN

The Tribunal was advised by its clerk, and it was confirmed by both Monitoring Officers, that there were no previous issues involving breaches of the Codes of Conduct by the Respondent.

6.1 The Respondent's Submissions

6.1.1 Mr Wells, on behalf of Cllr Rogers, argued that Cllr Rogers' belief was honestly and sincerely held, albeit mistaken i.e. that Mr Cooper should not have been pursued in the way that he had been and, in particular, arrested, fingerprinted, kept in a cell and interviewed for the length of time that he had been.

6.1.2 This was a one off breach – it was not a deliberate flouting of the Code. It was at a time when he was under stress because of his own medical condition. There was a rational basis for his complaint about the police investigation. He wanted to help – he was passionate and impetuous and felt responsible for the position in which Mr Cooper had found himself in.

6.1.3 Cllr Rogers had, over many years, undertaken considerable public service – not only as a Councillor and member of the NWPA but also as a Justice of the Peace and High Sheriff.

6.2 The Ombudsman's Submissions

6.2.1 Mr Hughes on behalf of the PSOW contended that of the aggravating features set out in the President of the Adjudication Panel's guidelines, two stood out, namely that Cllr Rogers had failed to act on the advice of T/ACC Anwyl and, as a result, he had bought his authority, namely Anglesey County Council, into disrepute.

6.3 Case Tribunal's Decision

6.3.1 The Case Tribunal accepted that this was a one off incident where Cllr Rogers had an honestly held but mistaken belief as to what he could and should do about the situation in which Mr Cooper came to find himself in. This was a reaction to a realisation that his constituent and he had been the subject of an investigation which, in his view, could and should have been brought to a conclusion at an earlier stage.

6.3.2 The Case Tribunal itself had on the first day of the hearing raised the question as to why, if the complaint against Mr Cooper, namely one of a threat to kill was being taken so seriously, it had taken over three months to interview the prime suspect and that the interview necessitated his arrest, the taking of fingerprints, his placing into a cell to be followed by a lengthy interview.

6.3.3 The Tribunal accepted that this was not a deliberate flouting of the Code of Conduct.

6.3.4 The Tribunal also accepted that Cllr Rogers had given considerable public service to his community, the County and indeed to North Wales generally as a Councillor, Justice of the Peace and as High Sheriff. As a result, a number of valuable testimonials had been produced which spoke highly of Cllr Rogers' qualities.

6.3.5 Nevertheless, the Tribunal do take into account the effect that the incident has had on a young police officer. This is not conduct which she expected from an experienced senior Councillor.

6.3.6 In light of the above, and taking into account the guidance issued by the President of the Adjudication Panel, the Tribunal concluded that the appropriate sanction is one of censure, whereby Cllr Rogers is warned about his future conduct.

6.3.7 Anglesey County Council and the NWPA and their Standards Committees are notified accordingly.

6.3.8 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.

Prepared by the Chair of the Tribunal and signed on his behalf by the Registrar to the Adjudication Panel for Wales.

Signed.....

Date...26 August 2011.....

Peter Davies
Chairperson of the Case Tribunal

Emma Boothroyd
Panel Member

Andrew Bellamy
Panel Member