

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/004/2011-012/CT

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

RESPONDENT: Former Councillor Michael Eckersley

RELEVANT AUTHORITY Denbighshire County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 In accordance with former Cllr Eckersley's wishes, and in exercise of its powers under paragraph 3(3) of the schedule to the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the Case Tribunal determined its adjudication by way of written representations at a meeting on Monday 11 June 2012 at the Pavilion Conference Centre, Llandrindod Wells, Powys.

2. PRELIMINARY DOCUMENTS

2.1 The Case Tribunal considered the following documentation:

- a. The Public Services Ombudsman for Wales' (the Ombudsman) Report dated 29 November 2011 and the Appendices thereto.
- b. Cllr Eckersley' written representations dated 19 May 2012 and 30 May 2012.
- c. The Ombudsman's comments on Cllr Eckersley's written representations.

2.2 In a letter dated 29 November 2011, the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against then Cllr Eckersley. The allegations considered by the Case Tribunal were that Cllr Eckersley had breached paragraphs 4(a), 4(b) and 6(1)(a) of the Code of Conduct for members or co-opted members of Denbighshire County Council. The failures under consideration were:

- a. that at a meeting of the Corporate Equalities Group on 22 July 2010, during a discussion about an ancient bye-law which allows individuals to

be hanged for speaking Welsh in Chester after 9.00pm, former Cllr Eckersley commented “maybe we should take a load of Welsh Muslims to Chester to test this out” (“the first alleged failure”); and

- b. that at a meeting of the Corporate Equalities Group on 14 October 2010 former Cllr Eckersley commented that “Adolf Hitler had the right idea, and that they should be got rid of out of the country” with reference to gypsies and travellers (“the second alleged failure”).

3. FINDINGS OF FACT

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

3.1.1 Cllr Eckersley has been a member of Denbighshire County Council since May 2008.

3.1.2 Cllr Eckersley signed an undertaking to observe the Code of Conduct for members of Denbighshire County Council on 6 May 2008.

3.1.3 Cllr Eckersley attended the Councillor Induction Day on 6 May 2008, when the County Clerk took members through the Code of Conduct.

3.1.4 On 22 July 2010, the Council held a meeting of its Corporate Equalities Group.

3.1.5 Councillor Eckersley was a member of the Group and attended the meeting in his capacity as a member.

3.1.6 In the course of the meeting, reference was made to an old Chester bye-law that permitted the hanging of anyone who spoke Welsh at night.

3.1.7 On 14 October 2010 the Council held a meeting of its Corporate Equalities Group.

3.1.8 At the meeting Mr Paul Quirk presented the draft Local Unauthorised Encampment Procedure and Joint Protocol on Managing Unauthorised Encampments.

3.1.9 Cllr Eckersley was a member of the Group and attended the meeting in his capacity as a member.

3.1.10 During the meeting, Cllr Eckersley made reference to Hitler’s ideas in relation to gypsies and travellers.

3.1.11 On 5 November 2010, Mr Ian Hearle wrote to Cllr Eckersley. He asked Cllr Eckersley to contact him so that a meeting could be arranged to discuss “a matter relating to the Code of Conduct”.

3.1.12 On 16 November 2010, there was a meeting between Cllr Eckersley, Mr Ian Hearle, the Monitoring Officer, and Mr Mehmet, the Chief Executive, regarding the allegation made concerning Cllr Eckersley's comments at the Corporate Equalities Group meeting on 14 October 2010.

3.1.13 On 24 November 2010, a newspaper, the Denbighshire Visitor, published a story, "Mayor in Hitler row over comments on travellers – Councillor apologises saying: I could have worded it better".

3.1.14 On 15 December 2010, Mr Ian Hearle wrote to Cllr Eckersley. In his letter, Mr Hearle referred to his letter to Cllr Eckersley dated 18 November which confirmed Cllr Eckersley's agreement to apologise to the next meeting of the Corporate Equalities Group.

3.1.15 On 20 December 2010 at 9.43am, Cllr Eckersley sent an e-mail to Mr Ian Hearle which confirmed that he would be attending the Group meeting on 20 January 2011.

3.1.16 On 14 February 2011, Prestatyn Town Council received a 'statement in response to a Notice of Motion' from Cllr Eckersley. In this statement Cllr Eckersley said –

"Firstly, may I state that I want to be categorically clear that the words used are not those I said. My remarks were addressed towards those who have suggested that travellers should be returned to their country of origin. These views are clearly wrong and I do not regret saying that those views are tantamount to extremism and intolerance which I have always opposed. It is very unfortunate that subsequent reports and comments have been based upon hearsay and second hand accounts."

3.1.17 The Corporate Equalities Group meeting scheduled for 20 January 2011 was rescheduled for 18 February 2011.

3.1.18 At a meeting of the Corporate Equalities Group on 18 February 2011, Cllr Eckersley issued a statement in respect of the comments he had allegedly made at the earlier meeting of the Corporate Equalities Group on 14 October 2010. The minutes reflect that Cllr Eckersley said that –

"I understand that certain views I expressed may have been insensitive and misinterpreted. I wish to apologise for any distress that may have been caused by it happening".

3.1.19 On 8 March 2011 Cllr Eckersley wrote to Ms Jane Kennedy regarding the Corporate Equalities Group meeting on 18 February 2011. Cllr Eckersley said –

"I am aware that I did not explain my position as clearly as I should have, in that I wish to reiterate that I do not hold the views that the remarks might suggest that I did hold.

Again can I offer my sincere apologies for the unacceptable remark and any offence caused.”

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

3.2.1 It is disputed that at a meeting of the Corporate Equalities Group on 22 July 2010 that Cllr Eckersley commented that:

“Maybe we should take a load of Welsh Muslims to Chester to test this out.”

in relation to a discussion at the meeting concerning an ancient byelaw which States that those speaking Welsh in Chester after 9.00pm will be hanged.

3.2.2 It is disputed that Cllr Eckersley at a meeting of the Corporate Equalities Group on 14 October 2010 made a comment about gypsies and travellers stating that:

“As far as I’m concerned they are just legalised squatters and scroungers and I think Hitler had the right idea.”

3.3 With regard to the first alleged failure, the Case Tribunal had due regard to the minutes of the Corporate Equalities meeting held on 22 July 2010 and the fact that the alleged comment by Cllr Eckersley was not minuted as it was not part of a discussion about any of the agenda items. The complaint concerning the remark was made to Mr Ian Hearle, the Monitoring Officer by Mr Tony Ward, the Corporate and Improvement Manager. This was the first Corporate Equalities Group meeting Mr Ward attended following his promotion to Corporate Improvement Manager.

3.4 The Case Tribunal carefully considered Mr Ward’s note regarding the first alleged failure and his witness statement. Mr Ward in his note dated 15 October 2010 clearly states that the alleged comments were made following the Corporate Equalities Group meeting on 22 July 2010 and not during it. In his undated witness statement submitted to the Ombudsman, Mr Ward states with regard to the comment alleged to have been made by Cllr Eckersley that ‘Clearly, that comment is open, potentially to interpretation’. He further stated “I am aware that others may interpret the comment differently however my views on the comment were that it was an extremely inappropriate comment to make particularly in the context of a Corporate Equalities Meeting and even if my interpretation is wrong, if it was meant in the way I have interpreted it, it goes beyond inappropriate and becomes an expression of some very dangerous views”. Mr Ward further states in his witness statement that he spoke to his line manager Mr Alan Smith about the alleged remarks and he advised him to speak to Ian Hearle, who “was not aware of the matter until I raised it with him.” Mr Hearle felt “that the comment could perhaps have been interpreted in a different way”.

3.5 It is evident from Mr Ward’s statements that he interpreted the alleged remarks in a certain way that he considered to be inappropriate and offensive. Interpretation of remarks is very subjective and the Case Tribunal notes that no formal action was taken against Cllr Eckersley in respect of the alleged remarks following the 22 July 2010 meeting, nor did anyone else present at that meeting

make formal complaint against him. Mr Hearle, according to Mr Ward, did not follow up in any way the complaint made to him by Mr Ward and it appears matters were left to rest.

3.6 Cllr Christine Evans, the chair of the Group meeting in her letter dated 10 February 2011 to the Ombudsman stated:

“As to the first complaint by Tony Ward on 22 July this did not register with me as anything untoward in fact I cannot really remember the remark being said. Certainly I don’t think Cllr Eckersley meant Welsh Muslims are expendable. I think it was a comment on the Welsh language. Still if Tony Ward had trouble with this perhaps he could have spoken to me as chairman, I would have followed it up”.

3.7 With regard to the second allegation, the note dated 9 February 2011 prepared by Karen Beattie, Corporate Equalities Officer, reflects what occurred at the meeting of the Corporate Equalities meeting on 14 October 2010 namely that Cllr Eckersley made derogatory comments about gypsy travellers. He was reprimanded by the chairperson of the meeting, Cllr Evans, who asked him to refrain from speaking his opinion as other members of the group did not support his prejudice views but he continued. Cllr Evans called a 5 minute break to the meeting. On its resumption Cllr Evans advised that she did not want the incident to be minuted since she believed the matter had now been dealt with.

3.8 In her letter dated 10 February 2012, Cllr Evans stated that the meeting on 14 October 2012 was entirely different and the remark by Cllr Eckersley was “crass, inane and a stupid remark made in the heat of the moment. I rebuked him there and then and told him to shut up. I did not as reported in the Press ask him to leave the meeting but spoke to him at the coffee break to reprimand him. I could see Tony Ward was shaken. Cllr Eckersley said he had made the remark in the heat of the moment and he did not mean it. Incidentally Tony Ward did not comment at the meeting but phoned me up a couple of days later and he said he wished to complain. So I said he should go ahead”.

3.9 By email dated 29 April 2010, Mr Ian Hearle the Monitoring Officer stated to the Ombudsman (paragraph 7):

“From informal conversations I had with the Leader, Cllr Christine Evans and the Chief Executive I felt that I had rushed to judgement on Cllr Eckersley’s conduct and had reached the conclusion that the matter should go to the Ombudsman (and probably the Adjudication Panel) without actually having heard what he had to say. The Chief Executive felt that were I to submit the complaint the Ombudsman would look to me to explain why, having regard to the recent guidance, the matter had to go to the Ombudsman, via a complaint from me rather than be resolved locally. As neither of us had discussed the matter with Cllr Eckersley the Chief Executive rightly felt we needed to establish just what Cllr Eckersley’s views really were and hence the meeting with him that resulted in the letter of 18 November. We were both satisfied that he had handled the situation badly and made remarks that he should not have made, but was genuinely remorseful and had not

been trying to put forward racist or other discriminatory views. It was relevant that the Equalities meeting was of an internal working group not open to the public and that some topics could raise challenging issues that required debate, and that where a member unintentionally overstepped the mark that should be capable of redress without the full force of an Ombudsman investigation.”

3.10 The Chief Executive, Mr Mehmet, in his letter to the Ombudsman dated 20 April 2011 set out his involvement in the complaint and the course of action that followed his meeting with Mr Hearle and Cllr Eckersley namely that Cllr Eckersley should issue a full apology at the next meeting of the Corporate Equalities Group. Once again it is noteworthy that it was Mr Tony Ward who initiated the complaint concerning the second allegation.

3.11 Cllr Eckersley did make a statement to the Corporate Equalities Group at its meeting held on 18 February 2011, but in Mr Mehmet’s view the statement was not an apology. The minutes of that meeting state that Cllr Eckersley made the following statement:

“I understand that certain views I expressed at the last meeting may have been insensitive and misinterpreted and I wish to apologise for any distress that may have been caused.”

The statement was an apology and it is a matter of opinion whether or not it should have been more fulsome. Clearly Cllr Eckersley could have been more humble in providing a more fulsome apology.

3.12 The Case Tribunal finds with regard to both allegations that Cllr Eckersley did make the alleged remarks.

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

4.1 The Case Tribunal has considered carefully all the evidence presented to it concerning the first allegation and the second allegation.

4.2 The Case Tribunal found by unanimous decision with regard to both allegations that former Cllr Eckersley failed to comply with the Denbighshire County Council’s Code of Conduct as follows:

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

It was incumbent on Cllr Eckersley to use language and to express his opinions in a way that would not cause offence or be disrespectful to others. Cllr Eckersley used language that was clearly offensive to others and his apology was an admittance of this fact.

4.3 The Case Tribunal further finds by unanimous decision that former Cllr Eckersley did not breach paragraphs 4(a) and 6(1)(a) of Denbighshire County Council's Code of Conduct.

5. CASE TRIBUNAL'S DECISION

5.1 The Case Tribunal considers that former Cllr Eckersley's conduct merits a censure. It is not acceptable for any Councillor to use language and express opinions in a way that would be inappropriate or offensive to others.

5.2 The Denbighshire County Council and its Standards Committee are notified accordingly.

5.3 Former Cllr Eckersley has the right to seek the permission of the High Court to appeal this decision. A person considering an appeal is advised to take independent legal advice.

Signed
Gwyn Davies
Chairperson of the Case Tribunal

Date...6 July 2012.....

Juliet Morris
Panel Member

Ian Blair
Panel Member