

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2012-013/CT

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

RESPONDENT: Former Councillor Adam Brown

RELEVANT AUTHORITY: Merthyr Tydfil 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 Former Cllr Brown was given a number of opportunities to respond and make representations to the Tribunal. However, Former Cllr Brown did not respond to the Adjudication Panel's correspondence concerning this referral. Accordingly, 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 on the basis of the papers before it at a meeting on Thursday 16 August 2012 at the New House Country Hotel, Thornhill Road, Cardiff.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 25 April 2012, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Brown. The allegations were that former Cllr Brown had breached Merthyr Tydfil County Borough Council's Code of Conduct by sending an email to all members of the Council in which he misrepresented the outcome of a previous Tribunal hearing on 13 April 2011; by co-operating with the Merthyr Express to produce a story about his suspension; misrepresenting the decision of the Tribunal when he wrote to the Merthyr Express; on 16 May 2011 publishing a confidential letter and other similar material on his blog for which he had already been suspended by the Adjudication Panel; participating in a live radio programme phone-in during which he misrepresented Council policies and failed to state that he was, at the time, suspended from the Council.

2.1.2 Former Cllr Brown had been the subject of a number of complaints which resulted in him appearing before an Adjudication Panel Case Tribunal on 13 April 2011. He was found to have breached a number of paragraphs of the Code of Conduct and was suspended from office for a period of 9 months. The Case Tribunal felt that this would give former Cllr Brown an opportunity to reflect on his conduct, familiarise himself with the Code of Conduct and seek appropriate training and advice. The Tribunal considered that such a sanction was appropriate to ensure that there was no repetition of the conduct giving rise to the breaches of the Code and in the interest of upholding standards in public life and public confidence.

2.13 In a three month period immediately following that Tribunal, former Cllr Brown sent an email, posted blogs, sent letters to the press, gave interviews to the press and took part in a radio phone-in, making statements and comments which resulted in further complaints being made against him by the Chief Executive of Merthyr Tydfil County Borough Council. The specific details of the complaints are set out in paragraph 2.1.1 above.

3. FINDINGS OF FACT

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

3.1.1 On 13 April 2011 an Adjudication Panel Case Tribunal found that then Cllr Adam Brown had breached paragraphs 3(a), 4(b), 5(a), 6(1)(a), 7(b)(i), 7(b)(ii), 7(b)(iv), 7(b)(v) and 7(b)(vi) of the code of conduct and he was suspended from office for nine months. The Tribunal expressed concern about Cllr Brown's lack of awareness of the code and recommended that he seek further training prior to his returning to office.

3.1.2 On 14 April 2011 the Monitoring Officer of Merthyr Tydfil County Borough Council wrote to Cllr Brown to advise him of the consequences of his suspension.

3.1.3 On 15 April 2011 Cllr Brown sent an e-mail to all his fellow councillors entitled "Thank you" which purported to express the reason for his suspension and impliedly criticised an un-named member of staff.

3.1.4 On 21 April 2011 the Merthyr Express published an article entitled "Councillor is suspended for leaks to the Express" in which Cllr Brown is directly quoted. He said he was seeking advice about an appeal against the Tribunal's decision and refused to accept that he had any choice in leaking information.

3.1.5 On 5 May 2011 a letter signed by "Adam Brown suspended Gurnos councillor" was published in the Merthyr Express which again purported to explain his suspension as being his refusal to apologise for leaking an e-mail. He also made critical remarks about fellow councillors who sat on the Merthyr Valley Homes Board.

3.1.6 On 6 May 2011 the above mentioned letter was published on Cllr Brown's blog.

3.1.7 Cllr Brown participated in a radio phone-in about unreported potholes. He identified himself as a councillor and in the course of the discussion made derogatory remarks about officers of Merthyr Tydfil County Borough Council and implied that the Council was implementing a deliberate policy of not mending potholes as a “traffic calming measure”.

3.1.8 On 16 May 2011 Cllr Brown published two items on his blog:

- a) a copy e-mail dated 2 December 2009 from the then Chief Executive of Merthyr Valley Homes which was the subject of the previous Tribunal hearing referred to in paragraph 3.1.1 above; and
- b) a letter to Huw Lewis AM commenting on the reason for his suspension. Mr Lewis responded to this on 25 May.

3.1.9 On 10 June 2011 the South Wales Echo published an article entitled “A curfew could be the solution to teen offending” which was accompanied by a photograph identified as Cllr Adam Brown. The article indicated that Cllr Brown had been suspended for nine months but also reported that Cllr Brown, in his capacity as an elected member, was calling on the Council and the police to take action.

3.1.10 On 13 June 2011 Cllr Brown wrote an entry on the “about me” page of his blog which described himself as “a suspended Councillor who shoots from the lip”. He went on to say that the opposition did not like his actions in getting information out to the public and consequently made complaints about him.

3.1.11 During this period (13 April – 13 June 2011) Cllr Brown did not seek advice from the Monitoring Officer or any other officer about the appropriateness of his actions.

3.1.12 During the same period Cllr Brown did not seek any information from the Monitoring Officer about training on the code of conduct.

3.1.13 In commenting on the draft of the Ombudsman’s report Cllr Brown provided two copies of confidential reports from Merthyr Valley Homes to the Ombudsman. He was not a Board member when they were written.

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

3.2.1 Whether Cllr Brown received a letter dated 14 April 2011 from the Monitoring Officer.

3.2.2 Whether Cllr Brown had a personal obligation to clarify his status as a suspended councillor.

3.2.3 Whether Cllr Brown had a personal obligation to seek further training on the code of conduct following the Tribunal’s recommendation on 13 April 2011.

3.2.4 Whether the alleged lack of training provided to Cllr Brown is a relevant explanation for his actions.

3.2.5 Whether the radio phone-in took place before 13 April 2011.

3.2.6 Whether his comments during the phone-in constituted an inappropriate criticism of officers and the Council or were legitimate comment.

3.2.7 Whether his comments in the article on 10 June were knowingly provided and in collaboration with the journalist.

3.2.8 Whether Cllr Brown had altered his Facebook settings and blog before or after 13 June.

3.2.9 Whether Cllr Brown's disclosure of documents from Merthyr Valley Homes to the Ombudsman constituted a breach of confidentiality.

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

3.3.1 The Tribunal was unable to make any finding about the letter of 14 April 2011 on the balance of the evidence before it.

3.3.2 The Tribunal found that former Cllr Brown did have a clear and personal obligation to clarify his status as a suspended councillor which he failed to exercise. Therefore whether he received the letter from the Monitoring Officer dated 14 April 2011 was immaterial.

3.3.3 Former Cllr Brown had a personal obligation to seek training on the Code of Conduct, both following the Tribunal's recommendations on 13 April 2011 and, separately, within the Code itself.

3.3.4 Former Cllr Brown had been provided with three separate opportunities to attend training at Merthyr Tydfil County Borough Council. He had been given training materials by the Council. He had further attended a training session organised by the Merthyr Valley Homes Board on their own code of conduct. Given all of these opportunities the Tribunal considered former Cllr Brown's use of this reason to be reprehensible.

3.3.5 The Tribunal had evidence from the Chief Executive that the phone-in took place after the 13 April 2011. Former Cllr Brown could not provide any evidence of the date of the phone-in. The transcript of the phone-in gave the impression that it had taken place after his suspension on 13 April. The Tribunal found on the balance of probabilities that it did take place after that date.

3.3.6 During the phone-in former Cllr Brown deliberately misrepresented the policies of Merthyr Tydfil County Borough Council in relation to Highway Network Management. This was an illegitimate comment.

3.3.7 The Tribunal found that former Cllr Brown had co-operated with the press in providing information and comments to them and had held himself up as a councillor despite being suspended at the time.

3.3.8 Based on the evidence, on the balance of probabilities, former Cllr Brown had altered his Facebook settings after 13 June 2011.

3.3.9 Former Cllr Brown forwarded a set of minutes to the Ombudsman which contained information clearly marked as confidential. During the relevant period former Cllr Brown was not a member of the Merthyr Valley Homes Board and had no authority to hold those documents, nor to forward them on to a third party. The Tribunal found this was a clear breach of confidentiality.

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

4.1 The Respondent's Submissions

4.1.1 No submissions were received from former Cllr Brown.

4.2 The Ombudsman's Report

4.2.1 The Ombudsman concluded that following a detailed investigation and having regard to former Cllr Brown's responses that there was evidence to support the complaint and that his conduct had breached paragraph 6(1)(a) of the Code of Conduct. In particular the Ombudsman said that former Cllr Brown could not continue to blame others for the situation he now found himself in and must take personal responsibility for his actions. Further, he believed that former Cllr Brown could not use the excuse that he is "not in control of what reporters write". The Ombudsman considered that former Cllr Brown was in full control in what he said in his emails, in his blog and what he wrote and said to the media.

4.3 Case Tribunal's Decision

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

4.3.2 Paragraph 5(a) of the Code of Conduct states *"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."*

4.3.3 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."*

4.3.4 The Tribunal considered paragraph 2(1)(b) of the Code of Conduct which says “*whenever you act, claim to act or give the impression [emphasis added] you are acting in the role of member to which you were elected or appointed.*” The Ombudsman has also given clear guidance which says “*even if you do not use your title if the content is clearly related to your role the Code will apply.*” Former Cllr Brown demonstrated a failure to understand this basic principle within the Code. This was compounded by his refusal to seek appropriate advice and guidance.

4.3.5 During the period 13 April 2011 to 13 June 2011 former Cllr Brown had:

- a) Persistently and deliberately misrepresented his position as a councillor following his suspension by a previous Tribunal, in emails, blogs, letters and articles to the press and a radio phone-in in a 3 month period following the Tribunal finding;
- b) Deliberately and persistently misrepresented the findings of the previous Tribunal;
- c) Misrepresented the Council and its policies; and
- d) Despite the finding of the Tribunal on 13 April 2011, he had knowingly published confidential information and failed to seek advice from the appropriate authorities.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent’s Submissions

5.1.1 No submissions were received from former Cllr Brown.

5.2 Case Tribunal’s Decision

5.2.1 The Case Tribunal considered all the facts of the case. It had regard to its sanctions guidance which indicates that a disqualification may be appropriate in circumstances where had a person still been a member of their authority a suspension would have been the likely sanction. However, in this case disqualification was considered because former Cllr Brown had deliberately failed to abide by the code and had persistently breached the Code. There were a number of aggravating factors:

- a) Repeated breaches
- b) Actions brought the Council into disrepute
- c) Intentionality
- d) Challenging the investigation and adjudication to the end
- e) Seeking unfairly to blame others
- f) Persisting with a pattern of behaviour

g) Failing to heed appropriate advice or warnings

5.2.2 The Case Tribunal concluded by unanimous decision that former Cllr Brown should be disqualified for 3 years from being or becoming a member of Merthyr Tydfil County Borough Council or of any other relevant authority within the meaning of the Local Government Act 2000, with immediate effect.

5.2.3 Merthyr Tydfil County Borough Council and its Standards Committee are notified accordingly.

5.2.4 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.....

Date...16 August 2012.....

Kate Berry
Chairperson of the Case Tribunal

Andrew Bellamy
Panel Member

Colin Evans
Panel Member