

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2012-013/CT

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

RESPONDENT: Councillor Arlene Moss

RELEVANT AUTHORITY: Llantrisant Community Council

1. INTRODUCTION

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

1.2 A hearing was held by the Case Tribunal at 10.00am on Thursday 1 November 2012 at the Copthorne Hotel, Copthorne Way, Culverhouse Cross, Cardiff. The hearing was open to the public.

1.3 Cllr Moss attended the hearing and represented herself.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 5 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 Moss. The allegations were that Cllr Moss had breached Llantrisant Community Council’s Code of Conduct by posting unsubstantiated and highly offensive comments about a former neighbour on Facebook.

2.1.2 Robert Moss, the son of Cllr Moss, made a complaint to the police regarding Mr Crisp. The matter was investigated and the police determined that there was no case to answer. In January 2011 Cllr Moss made comments and allegations about Mr Crisp on the social networking website ‘Facebook’. Mr Crisp complained to the police about the comments and Cllr Moss was later convicted of an offence under s4A (1) of the Public Order Act. On 27 March 2011 Mr Crisp complained to the Ombudsman.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Moss responded to the Ombudsman in writing on the 8 April 2011 following notification of the complaint. She stated, in summary, that she was entirely justified in making the comments because they were true. Cllr Moss denied that she had used her status as a Councillor and stated that this was a private matter. Following notification from the Ombudsman of the investigation Cllr Moss responded on 20 May 2011. She continued to refute the allegations that she had brought her office into disrepute. Cllr Moss said that the matter was the subject of court proceedings. Further questions were asked of Cllr Moss by the Ombudsman's investigator on 21 February 2012 and Cllr Moss responded by way of her letter dated 28 February 2012. Cllr Moss was interviewed by investigators from the Ombudsman's office in March 2012.

2.2.2 The Ombudsman prepared his report on 5 April 2012 and it was sent to Cllr Moss under cover of a letter dated 26 April 2012. Cllr Moss responded on 14 May 2012.

2.2.3 Cllr Moss commented on paragraph 56 of the Ombudsman's report that the comments were taken down and are no longer on the Facebook site. Cllr Moss reiterated that she never meant for this matter to be in the public domain and she did not intend to cause any harm or distress. Cllr Moss maintained that she did not use her position as a Councillor in this matter.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman responded that, with regard to the Facebook comments, Cllr Moss had stated that they remained on the site during her interview on 12 March 2012. He was concerned that steps were only taken to remove them after the criticism had been made in the report.

3 PRELIMINARY ISSUE

3.1 Ms Ginwalla, on behalf of the Ombudsman, submitted that they did not intend to call any witnesses. Cllr Moss indicated that she wished for her son to give evidence although she had not previously advised the Tribunal. Ms Ginwalla submitted that it would not be appropriate for Mr Moss to give evidence as his evidence was not relevant to the fact in dispute and in any event Mr Crisp did not have the right of reply as he was not present to give evidence today.

3.2 Cllr Moss submitted that she wanted her son to give evidence to the panel to explain the postings and to explain what had led to this matter in the first place.

3.3 The Panel decided not to allow Mr Moss to give evidence at the finding of fact stage because, taking into account the explanation given by Cllr Moss about the evidence, the Panel did not consider this would be relevant to the disputed fact. However, the Panel did consider that his evidence would be relevant when considering what, if any, sanction was appropriate. If that stage were reached then

the Panel considered that it would be appropriate to hear evidence from Mr Moss then.

4. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales

4.2. Ms Ginwalla took the Panel through the report. She submitted that the posts were public and damaging and that Cllr Moss had intended to identify Mr Crisp. She submitted that Cllr Moss had failed to show respect and consideration to Mr Crisp and brought her office as Councillor into disrepute. Ms Ginwalla highlighted that Cllr Moss had been convicted of a criminal offence in relation to the comments and that her Facebook page made reference to her status as a community councillor. Ms Ginwalla submitted that the comments had had a devastating effect on Mr Crisp and his family and that the comments were not removed from the site until after the report was sent to Cllr Moss.

4.3 Cllr Moss made the following submissions and gave evidence:

4.3.1 Cllr Moss explained that after she received the report she tried to remove the comments but they were no longer on the site. Cllr Moss gave evidence that she asked a friend to try to remove them but after an extensive search the comments could not be found. Cllr Moss therefore assumed that the comments had been taken down following a complaint to Facebook.

5. FINDINGS OF FACT

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

5.1.1 Cllr Moss became a member of Llantrisant Community Council on 4 May 2008 and attended Code of Conduct training on 11 January 2011. Councillor Moss was re-elected on 3 May 2012.

5.1.2 Cllr Moss was the author of three “posts” on Facebook, which made reference to Mr Crisp and alleged he was a “pervert” and a “paedophile”.

5.1.3 Cllr Moss has included on her Facebook profile page that she is a community councillor.

5.1.4 On 15 January 2011 Cllr Moss was arrested in respect of an offence under section 127 (2) of the Communications Act 2003 and issued with a fixed penalty notice.

5.1.5 On 17 January 2011 Cllr Moss requested a court appearance to deal with the offence.

5.1.6 On 27 March 2011 Mr Crisp complained to the Public Services Ombudsman for Wales Office about the conduct of Cllr Moss.

5.1.7 On 10 August 2011 the charge against Cllr Moss was amended to read as follows,

“On 07/01/2011 at Talbot Green in the County of Rhondda Cynon Taff, with intent to cause Wayne Crisp harassment, alarm, distress, displayed any writing, sign or other visible representation which was threatening, abusive or insulting, thereby causing that person or another harassment, alarm or distress. Contrary to Section 4A(1) and (5) of the Public Order Act 1986.”

5.1.8 On 8 September 2011 Cllr Moss was found guilty after a trial of breach of section 4 of the Public Order Act 1986 and given a conditional discharge for 12 months. Cllr Moss was ordered to pay costs of £250 and a restraining order was made preventing her from approaching Mr Crisp.

5.1.9 On 25 November 2011 at the hearing of an appeal against conviction and sentence the sentence was confirmed and Cllr Moss withdrew the appeal against conviction. Cllr Moss was ordered to pay further costs in respect of the appeal

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

5.2.1 Whether the Facebook comments have been removed and if so when this was done.

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

5.3.1 The Tribunal concluded that the Facebook comments were no longer readily accessible. The Tribunal were satisfied on the basis of the evidence given by Cllr Moss that she had taken no steps to remove them herself.

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

6.1 The Respondent's Submissions

6.1.1 Cllr Moss submitted that this was a private family matter and was never intended to be in the public domain. Cllr Moss explained that she had acted on the spur of the moment and had posted the comments to defend her son. Cllr Moss submitted that she never intended to cause anyone harm or distress and she was acting as a mother not as a Councillor.

6.2 The Ombudsman's Report

6.2.1 It was contended that Cllr Moss was convicted of an offence and the element of that offence involves intention. The language used was abusive and insulting and made in a public forum. The parties live in a small valleys community and these comments could be seen by a large number of people. Cllr Moss took no steps to remove the comments herself. No charges have been brought against Mr

Crisp and he is an innocent family man. Ms Ginwalla submitted that there were other ways that Cllr Moss could have shown support for her son without posting damaging comments in a public forum.

6.3 Case Tribunal's Decision

6.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Llantrisant Community Council's code of conduct.

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

6.3.3 The Case Tribunal found that Cllr Moss made 3 postings through her Facebook account. The Tribunal noted that Cllr Moss' profile page makes reference to her position as a community councillor. The Tribunal was satisfied that making such public postings without appropriate corroborative evidence was conduct which fell short of that expected of an elected member. The Tribunal considered that making such offensive comments on a social networking site and Cllr Moss' failure to take immediate steps to remove those comments was conduct which the Tribunal considered brought the office of community councillor into disrepute.

6.3.4 The Tribunal took into account the submissions made by Cllr Moss that she was showing support for her son. However the Tribunal agreed with the submissions made by the Ombudsman that there were other ways in which she could have shown support without making public and damaging allegations.

6.3.5 The Tribunal considered the criminal conviction against Cllr Moss for a public order offence. The Tribunal was satisfied that the existence of a criminal conviction and the conduct which led to the conviction brings the office of community councillor into disrepute. The conduct of members is subject to a higher degree of scrutiny and a criminal conviction is inconsistent with the high standards expected.

7. SUBMISSIONS ON ACTION TO BE TAKEN

7.1 The Respondent's Submissions

7.1.1 Cllr Moss contended that her actions were knee jerk and not planned. Although she was aware of the impact that her comments had, she did not intentionally set out to harm anyone. Cllr Moss submitted that she loved her work as a community councillor and has done more than is needed to show her commitment. Cllr Moss submitted that she believed she was telling the truth. Cllr Moss explained that she never intended any malice and was responding to false allegations. With hindsight Cllr Moss accepted that she should not have posted those comments and it was not something she was proud of. Cllr Moss said that it would never happen again but she would never apologise to Mr Crisp.

7.1.2 Robert Moss read out a statement in support of his mother and explained to the Tribunal that she was only trying to support him as any parent would. He explained in his letter the context of the postings and the effect that this has had upon him.

7.2 Case Tribunal's Decision

7.2.1 The Case Tribunal considered all the facts of the case and in particular the fact that this was an isolated incident which arose out of what should be a private family matter. The Tribunal noted the excellent references received in support of Cllr Moss and the work that she does in the community. The Tribunal noted the effect that these proceedings had had on Cllr Moss and the upset caused to the whole family. Nevertheless the Tribunal were concerned that Cllr Moss did not fully appreciate the seriousness of her actions. The Tribunal took into account her refusal to apologise to Mr Crisp and the fact she had not taken any positive steps to remove the comments. The Tribunal took into account that Cllr Moss believed her comments to have been true but nevertheless considered that her actions were inappropriate in the circumstances. The Tribunal considered that the conviction was a serious matter for a community councillor.

7.2.2 In all the circumstances the Case Tribunal concluded by unanimous decision that Cllr Moss should be suspended from acting as a member of Llantrisant Community Council for a period of 6 months or, if shorter, the remainder of her term of office. The Tribunal considered that this sanction was necessary to reflect the serious nature of the misconduct and to uphold standards in public life. The Tribunal considered that a period of suspension was appropriate in the circumstances of this case to give Cllr Moss an opportunity to reflect on her actions. The Tribunal considered that a 6 month period of suspension was proportionate in these circumstances.

7.2.3 The Llantrisant Community Council and its Standards Committee are notified accordingly.

7.2.4 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.....
Emma Boothroyd
Chairperson of the Case Tribunal

Date.....

Juliet Morris
Panel Member

Colin Evans
Panel Member