

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2014-015/CT

RESPONDENT: Councillor Haulwen Lewis

RELEVANT AUTHORITY: Llanfihangel ar Arth 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 commencing at 10.00am on Thursday 13 August 2015 at the Ivy Bush Royal Hotel, Carmarthen. The hearing was open to the public.
- 1.3 Councillor Haulwen Lewis attended and was represented by Mr David Daycock of Counsel.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 10 September 2014, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Councillor Lewis. The allegations were that Councillor Lewis had breached Llanfihangel ar Arth Community Council’s Code of Conduct by failing to declare a personal and prejudicial interest at a meeting of the Community Council on 16 January 2012, during which a planning application for a wind farm on land adjacent to a farm she owns was considered and a secret ballot held in order to decide whether the Community Council would support or oppose the application.
- 2.2.1 Councillor Haulwen Lewis’ written response to the reference to the Case Tribunal is dated 21 October 2014.
 - a. The Respondent accepted that there was a technical breach of the Code, and in particular paragraphs 10(1) and 12(1). However, she contended that it was not in the public interest to determine these matters as there was no prejudice to good decision making, and no benefit to the Respondent in her mistaken and limited participation in the meeting.

- b. She further contended that the ultimate decision of the Council, such as it was, was ultra vires, as the agenda items related to responding to a request that the Council be registered as an interested party, and not to make known its views regarding the merits of the planning issues.
- c. With regard to breaches of paragraphs 11(1) and 14(1), the Respondent contended that since the Ombudsman did not find a breach of paragraph 12(1), there could not be a breach of paragraph 14(1) and there was no requirement for her to leave the meeting, as there was no prejudicial interest in the circumstances to require the Respondent to leave.
- d. Further, the Respondent contended that a member of the public with knowledge of the relevant facts, namely that this was a matter whereby the Community Council was considering whether to register as an interested party, would not consider the interest as so significant as likely to prejudice the Respondent's judgement of the public interest. She further contended that her unlikely participation in the discussion was too remote from the eventual decision as to be regarded as prejudicing the public interest. Furthermore, the decision that the Respondent thought was taking place was to facilitate the public's awareness of, and participation in, the planning process.

2.3 The Ombudsman's Written Representations

- 2.3.1 In his reply to the Respondent's submissions, the Ombudsman argued that the Respondent had misunderstood the application of the Code of Conduct. The Ombudsman contended that paragraph 12 of the Code was descriptive and sets out the definition of a prejudicial interest and the test to be applied in determining whether a prejudicial interest exists. Having been satisfied that the test applies and that a prejudicial interest existed, and since the Respondent took part in the meeting by exercising her right to vote, the relevant provisions of paragraph 14(1) were engaged.
- 2.3.2 The Ombudsman also argued that paragraph 10(1) of the Code was a descriptive paragraph and in light of the facts was engaged. Accordingly, in light of the Respondent's acceptance that there was a technical breach of the Code, which he assumes to be a breach of paragraph 11(1) in that she agrees that she failed declare a personal interest, which is not disputed on the facts.
- 2.3.3 The Ombudsman did not accept the Respondent's argument that the debate at the meeting was restricted merely to a consideration of whether the Community Council should register its interest with the IPC.
- 2.3.4 Furthermore, the Ombudsman argued that a member of the public with knowledge of the relevant facts (and these facts being that the Respondent had entered into a binding contract under which she stood to receive from the wind farm operator a sum approaching £1,000,000 (One million pounds)

over the subsequent 30 years, would consider the Respondent's judgement to be prejudiced in respect of any decision relating to the wind farm.

3. ORAL SUBMISSIONS

3.1.1 The Respondent accepted at the commencement of the hearing that she had acted in breach of paragraph 11(1) of the Code of Conduct namely that:

“11(1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent”

3.1.2 However, the Respondent (through her Counsel) argued that the relevant test for considering whether a breach of paragraph 14(1) had been made out had not been satisfied and accordingly as a preliminary issue argued that there was in effect no case to answer in so far as paragraph 14(1) is concerned. Paragraph 14(1) provides:

“...where you have a prejudicial interest in any business of your authority, you must, unless you have obtained a dispensation from your authority's Standards Committee, withdraw from the room, chamber or place where a meeting is considering the business is being held...”

3.1.3 The Respondent further argued that since she had not engaged in the meeting by not saying anything, let alone supporting the motion, she was acting neutrally and further, by abstaining in the vote, she could not have been taking sides.

3.1.4 Katrin Shaw, legal representative on behalf of the Ombudsman argued that this was too narrow an interpretation of the Code. Further, that the test to be applied was an objective one, that what had actually happened at the meeting was irrelevant, and that what the Respondent should have considered were the following, namely:

- (i) She jointly owned the farm.
- (ii) She had prior to the meeting entered into two legal agreements.
- (iii) She had already received £25,000 under the said agreements.

Furthermore, Ms Shaw contended that any member of the public presented with such facts would be bound to conclude that the Respondent had an interest which she should have declared.

4. THE TRIBUNAL'S DECISION ON THE PRELIMINARY ISSUE

- 4.1.1 Upon receiving the submissions of Mr Daycock and Ms Shaw, the Tribunal retired to consider the position.
- 4.1.2 They returned to the hearing room and indicated that whereas they had not heard any evidence (save for the facts that were admitted) they were satisfied that there was a case to answer in so far as paragraph 14(1) is concerned.

5. THE RESPONDENT'S POSITION

- 5.1.1 In light of the Tribunal's decision that there was a case to answer in relation to paragraph 14(1) the Respondent accepted that she had acted in breach of the relevant paragraph.
- 5.1.2 Accordingly, the Respondent (albeit belatedly) accepted that she had acted in breach of paragraphs 11(1) and 14(1) of the relevant Code of Conduct.

6. FINDINGS OF FACT

- 6.1 The Case Tribunal found the following undisputed material facts:
 - 6.1.1 The Respondent is a longstanding member of Llanfihangel ar Arth Community Council.
 - 6.1.2 The Respondent is bound by the Community Council's Code of Conduct.
 - 6.1.3 The Respondent and her husband jointly own Carreg Wen Farm, Gwyddgrug, Pencader, SA39 9HP, registered title number CYM66738; they bought this property and other land in title number CYM342717 on 22 June 2010 for £430,000. Both titles are subject to a registered charge dated 22 June 2010 in favour of Barclays Bank Plc.
 - 6.1.4 The charges register for title number CYM66738 refers to part of Carreg Wen Farm being subject to a lease (comprising also other land) dated 12 September 2008 for 30 years from 12 September 2008 ("the 2008 Lease"). The tenant of the 2008 Lease is currently Statkraft Limited who have, by virtue of the 2008 Lease developed a wind farm on the said land comprised in the 2008 Lease being part of title number CYM66738.
 - 6.1.5 On 11 April 2011 the Respondent and her husband (1) and REW Npower (2) entered into two option agreements for a Lease of Rights over land comprised in Title No. CYM66738 (essentially rights to construct an access road and a right of access over it from the main road to a proposed wind farm development). If the option were exercised the lease would be for a term of 30 years with payment of £30,000 on construction of the road plus

£30,000 per annum for the term. The Respondent and her husband were paid £25,000 for entering into the option agreements.

- 6.1.6 The option agreement contains a confidentiality clause.
- 6.1.7 At the meeting of the Community Council on 16 January 2012 a secret ballot was held to decide the Community Council's position, whether to support or oppose the planning application for the wind farm. The Respondent took part in the ballot; she voted to abstain. County Councillor Linda Evans was present at this meeting. She declared an interest in the application and withdrew. She asked the Respondent whether she would also withdraw. The Respondent did not declare an interest nor did she withdraw.
- 6.1.8 The outcome of the secret ballot at this meeting was that five members opposed and two members supported the application with two members casting a vote to abstain, including the Respondent. The Community Council resolved to oppose the application and to submit comments to the consultation on that basis.
- 6.1.9 The Respondent has not registered an interest in the wind farm development in the Council's Register of Members' Interests.
- 6.2 The Respondent also accepted without it being necessary to prove the same that the facts at paragraph 2.1 – 2.4 of the Tribunal's listing direction were made out, namely that:
 - (i) She did have a personal interest in the wind farm at the meeting of the Community Council on 16 January 2012.
 - (ii) She did have a prejudicial interest in the wind farm at the meeting of the Community Council on 16 January 2012.
 - (iii) She did vote (to abstain) in the secret ballot in the meeting on 16 January 2012, which amounted to participation in the meeting, and
 - (iv) Despite the existence of a confidentiality clause in the Option Agreement between her and the wind farm company, she accepted that by law and thus as a serving Councillor she could not hide behind that clause by using it as a reason not to disclose the existence of the agreement at the meeting.

7. ORAL EVIDENCE

- 7.1.1 The Respondent's Counsel indicated that it was not the Respondent's intention to give oral testimony to the Tribunal.
- 7.1.2 In those circumstances, the Tribunal indicated that before they proceeded to receive and consider the Respondent's submissions on mitigation, they would like to clarify some issues with the two witnesses that had been requested to attend the hearing to assist the Tribunal.

7.1.3 The Tribunal called:

(a) Councillor Linda Evans

7.1.4 Councillor Evans confirmed that she was a member of Carmarthenshire County Council and that she nearly always attended meetings of the Llanfihangel ar Arth Community Council as an observer.

7.1.5 Councillor Evans told the Tribunal that without exception she would always declare an interest whenever planning issues were discussed at the Community Council's meetings and would leave the room.

7.1.6 That on the evening in question, namely 16 January 2012, she was present and when the issue of the wind farm was tabled for discussion, she left the room, but before doing so, looked at the Respondent, as if to say to her that she should also leave the room. Councillor Evans confirmed that she had been made aware that the Respondent did have an interest in the wind farm, although she had not either prior to, at or after the meeting in question discussed that interest with the Respondent.

(b) Mrs Anita Evans (Clerk to the Community Council)

7.1.7 Mrs Evans did not have any specific recollection of the events on the evening in question, namely 16 January 2012. She confirmed that she was present and had thereafter prepared the minutes of the meeting. She had been responsible for submitting the Council's response regarding the wind farm to the IPC. She further indicated that she did not see it as her role to advise Councillors on the question of personal and prejudicial interests.

8. THE CASE TRIBUNAL'S DECISION

8.1.1 In light of the Respondent's admissions, the Case Tribunal found by unanimous decision that there was a failure to comply with the Council's Code of Conduct and in particular paragraphs 11(1) and 14(1).

8.1.2 Upon enquiry the Case Tribunal were informed that there were no previous instances of the Respondent acting in breach of the Code of Conduct.

9. SUBMISSIONS ON ACTION TO BE TAKEN

9.1 The Respondent's Submissions

9.1.1 Mr Daycock on behalf of the Respondent submitted that the admitted breaches were not the most serious in all the circumstances; there had been no financial gain to the Respondent; there had not been disregard to advice from a Monitoring Officer, bullying by others and that the issues only came into the public domain a year or so later following the receipt of a complaint.

- 9.1.2 The Respondent argued that the breaches should be viewed as of a technical nature, in that she did not vote positively in favour of the wind farm (she had voted to abstain), she had not attempted to persuade others by speaking at the meeting and she had been caught on the hop with no notice of the issues to be discussed and thus panicked when trying to weigh up her responsibilities under the Option Agreement, including the duty of confidentiality and her responsibilities as a Councillor. In reality, she was confused by the whole issue.
- 9.1.3 The Respondent's whole ethos was to represent the interests of her community which she had served for very many years; she had not received any training on the Code of Conduct; she had offered to her fellow Councillors to resign once the complaint had become public knowledge, which offer had been overwhelmingly rejected and she had not received any advice from the Clerk to the Council on the issues in hand. Despite the situation, she wanted to continue to serve her constituents. The Respondent further submitted that the breaches should be considered towards the bottom end of the appropriate bracket of breaches of this nature and that the Tribunal should view the mitigation as outweighing the aggravating factors in the case. The Respondent also indicated that she was willing to attend training on the Code of Conduct matters.
- 9.1.4 Upon being invited by the Tribunal to address it on Article 10 of the ECHR, the Respondent submitted that whereas it was necessary to maintain public confidence in Code of Conduct issues, it was not necessary to prevent the Respondent from being able to continue to represent her constituents and that despite the publicity given to the events of 16 January 2012, her electors were content for her to continue to represent them.
- 9.1.5 The Tribunal were informed by the Monitoring Officer for Carmarthenshire County Council who was present at the hearing that training on Code of Conduct issues had been offered on several occasions to town and community councillors and their clerks in Carmarthenshire since the election in 2008 and that such training had continued after the election in 2012.

10. CASE TRIBUNAL'S DECISION

- 10.1 The Case Tribunal gave full consideration to all the facts of the case and the Respondent's submissions.
- 10.1.2 The Tribunal concluded that despite the Respondent's suggestion that these were technical breaches of the Code, they were nevertheless serious breaches. The Tribunal stated that members of the public were entitled to openness and transparency on the part of their elected representatives. Such principles are at the heart of the confidence which the public expected of their elected representatives.
- 10.1.3 The Tribunal found that in view of Councillor Lewis' long service as an elected representative she was well aware of the need to declare personal and prejudicial interests. Despite such knowledge she ignored on three

separate occasions during the evening in question, the obligation to step to one side and declare such interests, namely when Councillor Evans left the room when the issues of the wind farm was tabled for discussion, during the discussion itself (although the Tribunal accepted she did not speak) and when the Council voted on whether to support the wind farm (which she did take part in, although by abstaining). By doing so, she allowed her personal interests to prevail and to keep those private and immediately fell into conflict with her duties and responsibilities as an elected representative. Indeed, despite being given the opportunity after the meeting to reflect on her actions, and if necessary to take advice from others, to include the Monitoring Officer, she chose not to volunteer any information to her colleagues about her personal and prejudicial interests.

- 10.1.4 Moreover, when a complaint was received and the Respondent was contacted by the Ombudsman, instead of recognising the error of her ways, she wrote a particularly aggressive letter to the Ombudsman accusing the complainant of mounting a “nasty malicious attack on me (her) personally”. She went on to contend that the complaint was no more than a “vexatious, malicious complaint with no basis in truth”, and that “these unfounded allegations” should be disregarded.
- 10.1.5 Furthermore, and despite the conclusion in the Ombudsman’s report she continued to contest the allegations, indicating for the first time, a day before the Tribunal hearing that she would accept a breach of one of the allegations, namely 11(1). Notwithstanding this, she continued during the first part of the hearing to contend that there was no case to answer with regard to the other allegation and upon the Tribunal deciding as a preliminary issue that there was a case to answer, made an immediate about turn and accepted a breach of paragraph 14(1).
- 10.1.6 The Tribunal concluded that the Respondent had not conducted her response to the allegations in a way that they would have expected a very experienced Councillor to behave. Indeed, she chose not to give evidence before the Tribunal which could have assisted the Tribunal in gaining a greater insight into her decisions not to declare an interest at the meeting on 16 January 2012 and the way she had chosen to contest the complaint, the Ombudsman’s findings and the proceedings before the Tribunal.
- 10.1.7 Nevertheless, the Tribunal gave credit to the Respondent for her lengthy service as an elected representative and for all her hard work in the community, which were evidenced by the body of testimonials that were submitted to the Tribunal to demonstrate her activities.
- 10.1.8 However, the Tribunal concluded that despite all her experience as a Councillor, she committed a grave error of judgement by failing to declare an interest at the meeting on 16 January 2012, and compounded that error by refusing to accept her difficulties in the wholly unreasonable way that she conducted her response to the complaint, the Ombudsman’s findings and the proceedings before the Tribunal.

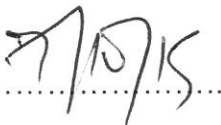
10.1.9 The Tribunal had regard to the guidance available on sanctions before considering the appropriate sanction to impose. The Tribunal also took into account the relevant authority from the High Court on the right to freedom of expression and in particular the Respondent's Article 10 ECHR rights. Whilst of the view that a suspension of 6 months would be justified, the Case Tribunal unanimously concluded that taking into account the Respondent's Article 10 rights, that the appropriate sanction would be a suspension of 3 months.

10.1.10 Accordingly, the Case Tribunal concluded that Councillor Haulwen Lewis should be suspended from acting as a member of Llanfihangel ar Arth Community Council for a period of 3 months.

10.1.11 Llanfihangel ar Arth Community Council and Carmarthenshire County Council's Standards Committee are notified accordingly.

10.1.12 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. It is the Adjudication Panel for Wales' understanding that a notice of appeal to the High Court should be made within 28 days of either the date of notification of the Case Tribunal's decision or the Respondent's receipt of this reasoned decision, if later.

Signed.....

Date.....

J Peter Davies
Chairperson of the Case Tribunal

Helen Cole
Panel Member

Gwyn Davies
Panel Member