

NOTICE OF DECISION

TRIBUNAL REFERENCE NUMBER: APW-007-2021-022-AT

APPELLANT: Councillor George Michael Stevens

RELEVANT AUTHORITY(IES): Tywyn Town Council
(Gwynedd Council)

1. Following a decision by the Standards Committee of Gwynedd Council (“the Standards Committee”) that the Appellant breached the Code of Conduct of the Relevant Authority on 8 December 2021, and the Notice of Decision dated 17 December 2021 which was emailed and sent by first-class post on 17 December 2021, the Appellant has made an application to appeal under Regulation 10(8) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001.
 2. I have deemed the application to be in time. The Appellant’s appeal was received by the office of the Adjudication Panel for Wales between Friday 7 January 2022 and Thursday 13 January 2022, despite the Appellant being previously informed by the Registrar that it was best to email as the office is not staffed every day due to the pandemic. A similar notice is on our website. This means that it is not certain when the appeal was received. Under the Regulations, the Appellant must appeal within 21 days of 17 December 2021, namely by 7 January 2022. While the Appellant has stated he received the decision of the standards committee on 18 December 2021, the Monitoring Officer has provided at my request further information that the decision was emailed and so deemed received on 17 December 2021. The application form and covering letter from the Appellant is dated 29 December 2021. I also noted that the Appellant was given an incorrect address to use in the appeal form, which may explain the delay in receipt if the application was posted on 29 December 2021. As I am unable to establish if the appeal was received on 7 January 2022 after making enquires with the Registrar, I have taken the position that I will treat the appeal as being received in time and give the Appellant the benefit of the doubt.
 3. I have made my decision on the basis of the following evidence:
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- a. The completed APW05 form dated 29 December 2021 from the Appellant seeking permission to appeal and the details of the grounds of his appeal, together with additional letters (one with the application to the APW dated 29 December 2021 and one received on 18 January 2022 which repeats information sent earlier), the Appellant's annotated decision from the standards committee and an additional document commenting on the conduct of the Ombudsman (amongst others);
 - b. The Notice of Decision from the Standards Committee sent to the Appellant on 17 December 2021, which records the Appellant failed to attend the standards committee hearing.
 4. The Appellant has raised several grounds of appeal. I am required to consider whether any ground has no reasonable prospect of success. I will take the Appellant's case at its highest (this means assuming his version of key disputed facts is correct for the purposes of considering his application), unless it is conclusively disproved, is entirely unsupported by reasonable argument or the evidence before me, or can reasonably be viewed as fanciful allegations. I note that the Appellant has not ticked the statement of truth required within his appeal form, which may affect the weight on which I will place on his statements.
 5. If any grounds of appeal are found by me to have no reasonable prospect of success, those grounds will not proceed to be considered by the Appeal Tribunal. I am required to give reasons if I find a ground of appeal has no reasonable prospect of success. The threshold is low to obtain permission to appeal – even if I take the view the ground is unlikely to succeed, unless I find there is no reasonable prospect of success, I will allow the ground to be considered by an Appeal Tribunal. Where there is a dispute about the fact-finding undertaken by a standards committee, I will consider the decision of that committee to consider whether the criticisms made have no reasonable prospect of success.
 6. If any ground does have a reasonable prospect of success, I am required to arrange for an Appeal Tribunal to be convened to hear the appeal.
 7. I note that the decision report of the standards committee is reasoned. It sets out the evidence it considered, the submissions made, and the reasons why it reached the conclusions that it did.
 8. The Appellant has raised several grounds of appeal. I will deal with each one in summary and my decision as to whether or not it has a reasonable prospect of success:
 - a. The Appellant has asserted that the Public Services Ombudsman for Wales ("PSOW") carried out a biased investigation and produced
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a prejudiced report which was not evidence-based. However, in relation to this ground of appeal, which is not set out in any detail, I note that the covering letter from the Appellant says that the original investigation file of the PSOW consisted of 4 files and the file used at the hearing consisted of 631 pages. I do not see how in light of this it can be realistically argued that there was no evidence.

When I consider the decision of the standards committee, I see that there was no dispute about what the Appellant had written over a period of approximately 12 months – the only dispute was about the intention of the Appellant in respect of one email sent to all members of Gwynedd Council. I note a finding that the Appellant continued to use discriminatory language during the investigation and gave evidence that appeared to show that he did not understand the requirement to show respect to others (paragraph 13.4 of the decision of the standards committee); this is mirrored in his submissions to me. The committee has set out the evidence before it and how it reached its decision, and the evidence is from the PSOW; it cannot be said not to be based on evidence. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

The Appellant asserts that the PSOW was biased, and has provided an Appendix setting out his arguments to support such a serious allegation. This is a very serious allegation to levy at office-holders and requires very cogent evidence to support it. I have considered this document, but do not consider it provides very cogent evidence of bias. It appears that the Appellant objects to the PSOW investigation and does not accept his conclusions or choice of words e.g. “swimming pool” as opposed to “paddling pool”. This is not evidence. The Appellant offers more than once to take a polygraph; this is not relevant as the issue is the Appellant’s conduct and such tests are generally not admissible in courts and tribunals in the UK. Having considered all the evidence available to me, and the Appellant’s case, in my judgment, there is no evidence supporting allegations of bias by the investigator or the PSOW. An assertion of bias is not enough to have a reasonable prospect of success, and the Appellant’s comments do not provide sufficient evidence. I bore in mind the relevant legal tests for bias. There was no evidence supporting any argument of actual bias. I then considered the test for apparent bias as set out in *Porter v Magill* [2002] 2 AC 357, and reiterated in the Court of Appeal case of *Janan George Harb -v- HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz* [2016] EWCA Civ 556. I find that a fair-minded and informed observer, having considered the facts, would not conclude that the PSOW or his staff were biased against the Appellant. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

- b. The Appellant submits that the sanction imposed by the standards committee should be overturned on the basis that it was not evidence based. I have already dealt with the allegation of lack of evidence above and found it to have no reasonable prospect of success.

The Appellant resigned from Tywyn Town Council on 4 December 2021, prior to the standards committee hearing. This meant that the options available to the committee were limited; it could only take no action or censure the member if a breach of the Code of Conduct was found. It is generally always arguable that a sanction imposed was too harsh or too lenient; this is an exceptional case where I consider that due to the limited options available to the committee, there is no reasonable prospect of success. Given the findings of the committee and the fact that the other grounds of appeal have failed to receive permission to proceed to an appeal, compounded with the evidence that the Appellant continues to make inappropriate comments about others with whom he has dealt in his role within this Appeal, I consider that there is no prospect of a finding that no action should be taken. The findings of the committee are of a nature where if the Appellant had not resigned, I would have anticipated a period of suspension to be imposed as the committee itself observes. As censure is the only option available to the standards committee in such circumstances, **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

- c. While it is not formally raised a ground of appeal, the Appellant disputes that he has breached paragraph 4(b) of the Code of Conduct (he is silent about paragraphs 4(c) and 6(1) in the appeal form) and says he has respect for everyone, but then goes on to name an individual for whom he says he has little respect. Within his covering letter to the APW and his annotations regarding the decision of the standards committee, the Appellant makes a number of comments which appear to show no or little respect. The decision of the standards committee sets out why it found the Appellant in breach of this part of the Code, and the reasons are cogent and based on evidence. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**
 - d. The Appellant provided with his application to appeal an annotated copy of the decision of the standards committee. It is for the Appellant to set out his grounds of appeal within the form provided, not for the President to scrutinise documents sent with the form in order to create grounds of appeal. However, I have attempted to identify the points the Appellant is likely to be attempting to raise as I have borne in mind that he is representing himself. It remains though the obligation of the Appellant to set out his grounds of
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appeal, and the observations below are to demonstrate that his comments have been considered, notwithstanding this failure.

Within the annotated decision of the standards committee, the Appellant seeks to dispute several points, but has given little explanation why he did not attend the hearing to do so. The explanation within the annotated decision is insufficient; the only potential point of potential merit is that the Appellant says he was struggling to prepare – no explanation is given why he did not attend the hearing to seek a postponement. I note that within the appeal form, the Appellant says he would wish an appeal dealt with by written representations and will not call witnesses (his reasons for not calling witnesses are unsubstantiated) – written representations are not appropriate if the Appellant wishes to dispute the matters in his annotated decision. If the Appellant wanted to challenge the findings of fact, an oral hearing is likely to be directed.

However, on review of the annotated decision of the standards committee, I note that the Appellant significantly focuses on making allegations about the actions of others and asserts that the Code of Conduct is not fit for purpose. He is particularly critical about the requirement to show respect to others. The Appellant was found to have breached the Code, which is not optional and must be upheld by the standards committee and the APW, due to his own actions, not the actions of others. It is not a defence to argue that the contents of the Code are not accepted by the accused member; in accepting office, they agree to be bound by the Code and sign an undertaking to do so. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

The Appellant within his annotations refers to Article 10 and 14 of the European Convention of Human Rights. The standards committee did consider the Appellant's Article 10 rights and I consider that there is no reasonable prospect of success in relation to this point as the decision shows that the committee carefully balanced the Appellant's enhanced rights when making its decision. In relation to Article 14, the Appellant complains that the committee discriminated against him but his comments demonstrate that he has not understood the law in this area, which is complex. The complaint that his freedom of expression was suppressed is addressed by the committee's consideration of the Article 10 point. Being a councillor is not a protected characteristic so discrimination cannot be argued on this basis. I am unable to understand the Appellant's other comments on this issue. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

I note that the Appellant refers to his election to the relevant authority and more than once comments on the number of votes he

received compared to other Councillors. This is irrelevant – the number of votes an elected representative receives does not entitle them to a higher standing than others. **I do not consider this ground of appeal to have a reasonable prospect of success and direct it not to be considered by the Appeal Tribunal.**

9. No Appeal Tribunal will be convened by the President of the Adjudication Panel for Wales as no ground of appeal has been given permission to proceed to an appeal.

Signed:



Date: 24 January 2022

Claire Sharp
President of the Adjudication Panel for Wales
