

Adjudication Panel for Wales

Annual Report



2006 - 2007

Foreword

It is time again to bring you up to date on the activities of the Adjudication Panel for Wales. This is the third formal report since my appointment as President of the Panel and covers the financial year 2006-07.

There is no statutory requirement for me to produce a formal annual report, but as last year was another relatively busy one for the Panel, I have decided once again to produce a comprehensive report.

In 2006-07, the Panel carried forward 5 referrals from the Public Services Ombudsman for Wales and 2 appeals against the determinations of standards committees from the previous financial year. During the year, I received a further 4 referrals from the Ombudsman and 2 appeals. A summary of those cases that were determined can be found at Section 3 of this Report.

In September 2006 I attended the second annual All Wales Standards Committee Conference, which was again hosted by Ceredigion County Council. The Conference was also attended by Adam Peat, the Public Services Ombudsman for Wales, who gave an overview of his role in investigating allegations of misconduct against members. The keynote speech was given by Mr James Goudie QC who dealt with the question of bias and predetermination and the different approaches that had been taken by the Courts on these issues.

I continue to place great emphasis on training and development of Panel members and once again this has been an important part of the Panel's activities over the past year. In September, Panel members again joined their counterparts in the Adjudication Panel for England and the Standards Commission for Scotland for a joint training seminar in Sheffield. Although our "codes" may differ, there is much to be gained from these joint training events, which provide a useful forum for members to discuss matters of common interest to the three jurisdictions.



In addition, an Adjudication Panel for Wales training event was held in December. We were joined during this event by Ian Medicott, Monitoring Officer, Caerphilly County Borough Council who provided valuable insight to the operation of the ethical framework at the local level from "A Monitoring Officer's Perspective".

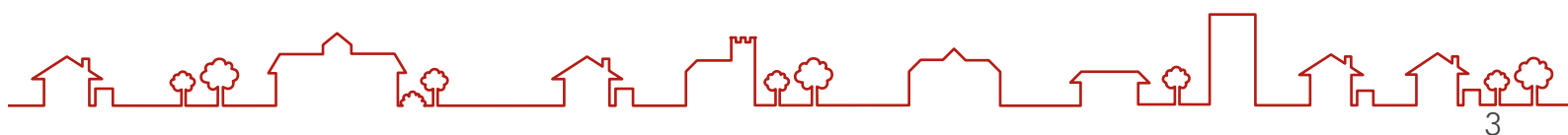


J PETER DAVIES
President
September 2007



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1. Introduction/Background

Local Government Act 2000

Part III of the Local Government Act 2000 established a new framework to promote observance of consistent standards of conduct by local government members in England and Wales. On 21 June 2001, the National Assembly made the first set of regulations giving effect to that framework in Wales.

Code of Conduct

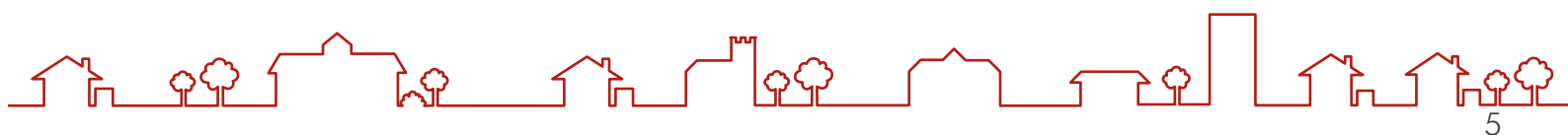
The basis of the ethical framework is a statutory code of conduct. All parts of local government in Wales (with the exception of police authorities) - county, and county borough councils, town and community councils, national park authorities and fire and rescue authorities - have adopted a code of conduct encompassing the provisions of a Model Code of Conduct prescribed by the National Assembly. All local government members, elected and co-opted have to give an undertaking to abide by the code which their council or authority, has adopted.

Police authorities in Wales, as in England, are subject to a model code of conduct prescribed by the UK Government.

Role of the Public Services Ombudsman for Wales/Standards Committees

Anyone may make a written allegation to the Public Services Ombudsman for Wales that an elected or co-opted member has breached an authority's code of conduct. The Local Government Act 2000 gave the Ombudsman powers to consider and investigate such allegations.

The Ombudsman may conclude upon investigation that there was no breach of the code or that no further action needs to be taken. If he finds otherwise, he will produce a report on the completed investigation and send it either to the Monitoring Officer of the relevant authority concerned, or to the President of the Adjudication Panel for Wales.



If the Ombudsman refers the matter to the Monitoring Officer, the relevant authority's Standards Committee will consider the report of the investigation. They will also consider any representations from the person who is the subject of the investigation and, where there has been a failure to comply with the code, will decide whether any penalty should be imposed. This could range from censure to suspension for up to six months.

The Ombudsman may cease an investigation at any time and refer the matters subject to the investigation to the Monitoring Officer of the relevant authority concerned to undertake an investigation and report to the Standards Committee.

Role of the Adjudication Panel for Wales

The Adjudication Panel has two statutory functions:

- To form case or interim case tribunals to consider reports from the Public Services Ombudsman for Wales, following the investigation of allegations that a member has failed to comply with the relevant authority's code of conduct;
- to consider appeals from members against the decisions of local standards committees.

Case and Interim Case Tribunals

Where the Ombudsman sends a report to the President of the Adjudication Panel, a "case tribunal" formed from the Panel will be convened to consider the report, to receive evidence and to determine whether there has been a breach of the code of conduct.

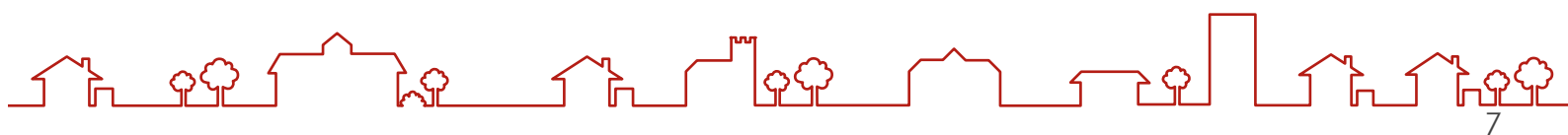
If the tribunal determines that a failure to comply with an authority's code of conduct has occurred, it has powers to suspend, or partially suspend, a member for up to one year; or it can disqualify a member for up to five years. Where a case tribunal decides that a person has failed to comply with an authority's code of conduct, that person may appeal to the High Court against that decision, or any decision of the tribunal as regards the sentence to be applied under section 79 of the Local Government Act 2000.



Where the Ombudsman considers it necessary in the public interest, he may make an interim report to the President of the Adjudication Panel recommending that a member be suspended while an investigation is ongoing. An interim case tribunal will decide whether the member should be suspended or partially suspended for up to six months.

Appeal Tribunals

Where the Ombudsman has referred the matter to the monitoring officer and the standards committee has determined that there has been a failure to comply with the code of conduct, the member concerned has a right of appeal to the Adjudication Panel. This right must be exercised within 21 days of the member's receipt of notification of the standards committee's determination. Where the appeal tribunal agrees that there has been a breach of the code it may endorse the penalty set by the standards committee, or refer the matter back to the committee with a recommendation that a different penalty be imposed. The appeal tribunal can also overturn the determination of a standards committee that a member has breached the code of conduct.



2. Members of the Adjudication Panel for Wales

Members were appointed to the Adjudication Panel on 1 October 2002 for a period of five years. The Panel members have a wide range of knowledge and experience. They are located around Wales, which means that providing there is no conflict of interest, members can be appointed to tribunals on a geographical basis.

The President, the legal members and one of the lay members are Welsh speakers.



The President of the Adjudication Panel, **Mr J Peter Davies**, runs his own legal practice in Cardiff specialising in civil and commercial litigation and, in particular, regulatory matters. He is a deputy District Judge and chair of the Solicitors Disciplinary Tribunal.



Mr Stewert Sandbrook-Hughes is a barrister in Swansea and is also an adjudicator for the National Parking Adjudication Service.



Mr Hywel James is a partner with James & Bulteel in Cardiff specialising in litigation and in professional negligence in particular.



Mrs Helen Cole is a senior partner in a general practice in rural west Wales specialising in non-contentious private client work.



Mr Ian Blair is a part time civil engineering consultant. He was County Surveyor with Powys County Council and has been an invited lecturer for the University of Wales, Aberystwyth. He is a member of the Courts Board for Mid and West Wales.





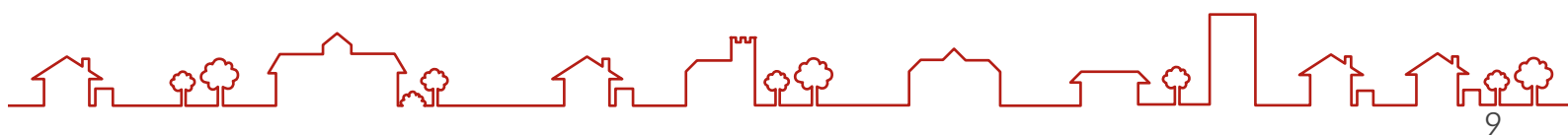
Cllr Colin Evans is a Labour councillor with Carmarthenshire County Council and is Chairman of the Council's Environment Scrutiny Committee. He is also a councillor with Cwmamman Town Council.



Cllr Christine Jones is an independent member of Llandudno Town Council. She is also a member of the Conwy Community Health Council.



Ms Juliet Morris is a Policy Officer with the Local Government Information Unit and freelance social policy researcher for organisations including the Wales Consumer Council. Previously she worked in the independent advice sector in Wales.



3. Allegations of Misconduct

Overview

From its inception in October 2002 to 31 March 2007, the Adjudication Panel has made determinations on 9 references from the Public Services Ombudsman for Wales and 6 appeals against the decisions of standards committees. Figures 1 and 2 give a breakdown of the outcome of those determinations.

A summary of the actual sanctions imposed is in the Annex to this report.

Figure 1

Case tribunal decisions - October 2002 and March 2007

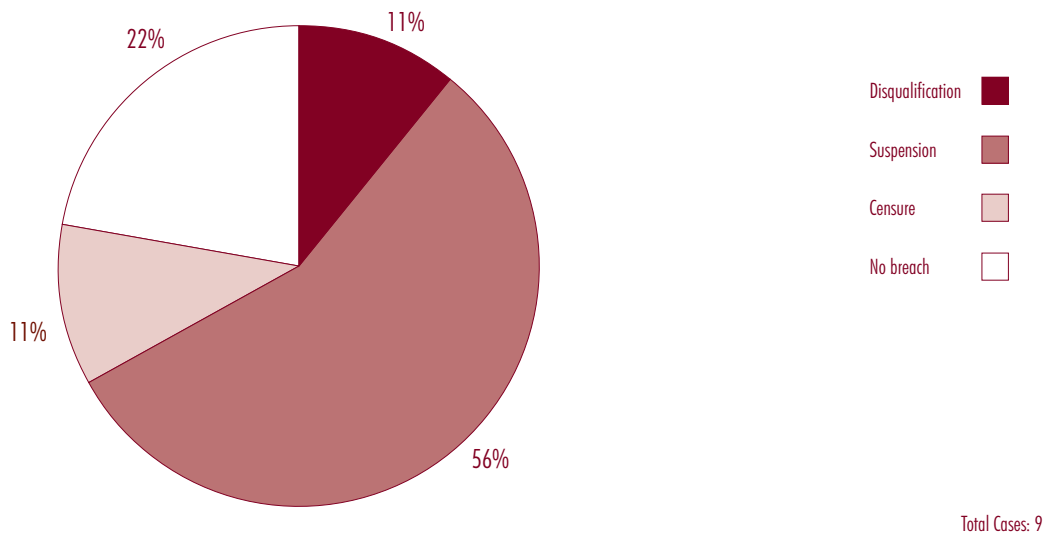


Figure 2

Appeal Tribunal Decisions - October 2002 to March 2007

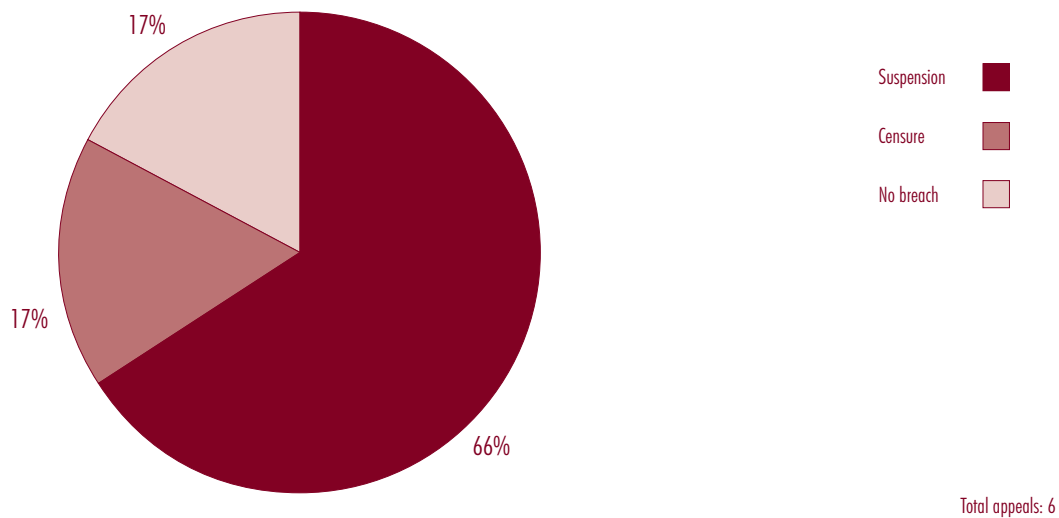
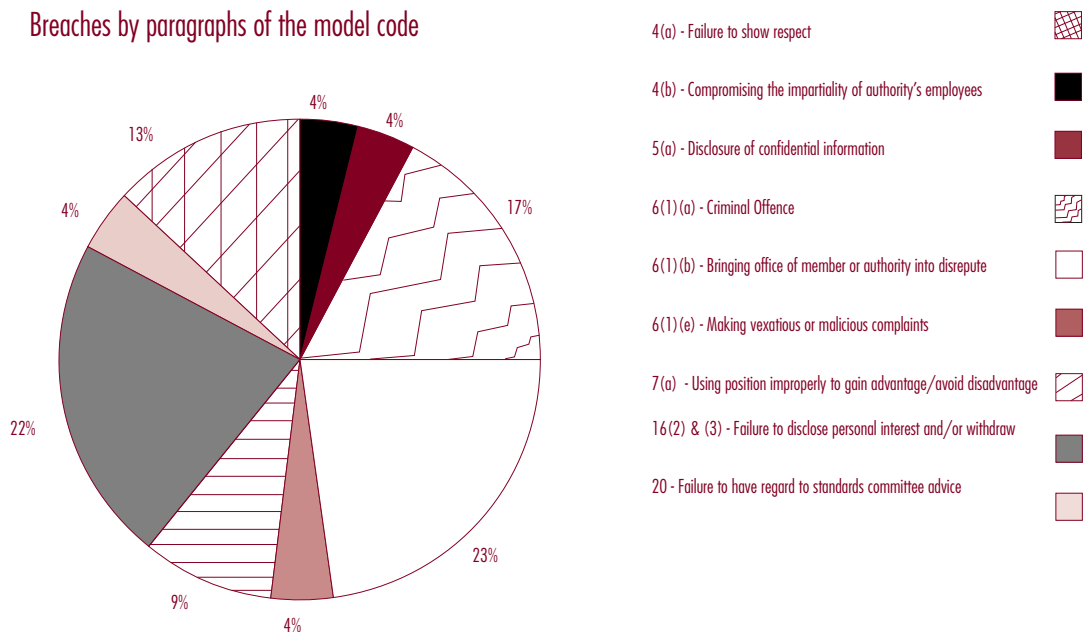


Figure 3 provides a breakdown of decisions showing the paragraphs of the code found to have been breached. The total number of breaches exceeds the number of cases determined because in some cases the member was found to have breached multiple paragraphs of the code.

Figure 3

Breaches by paragraphs of the model code



In 2006-07, the Panel carried forward 5 referrals from the Public Services Ombudsman for Wales from the previous financial year. The Ombudsman referred 4 new cases to the Panel during the reporting period. The 5 cases that were determined by a case tribunal in the period covered by this report are summarised below.

Summary of Case Tribunals

APW/006/2005/CT - Clydach Community Council

The referral from the Ombudsman concerned allegations that the councillor had breached the council's code of conduct by bringing the office of member into disrepute and attempting to use his position as a councillor to gain advantage for himself or others.

The alleged breaches were that the councillor attempted to gain advantage for himself by requesting discount on a private purchase by misrepresenting it as a purchase on behalf of the community council. When this was refused, he became abusive towards members of staff of the business concerned. He also threatened to harm the business.

The case tribunal found that the councillor's behaviour at the shop premises was such as to bring the office of member into disrepute. His shouting, failure to listen to the shop staff, repeated confrontations with members of staff, his slamming of the door and his generally aggressive and bullying attitude fell short of the behaviour reasonably expected from any person let alone a person holding public office.

The case tribunal also found that the councillor attempted to gain advantage for himself by requesting discount on a private purchase by misrepresenting it as a purchase on behalf of the community council.

The tribunal concluded that the councillor should be suspended for 9 months from acting as a member of Clydach Community Council.

APW/007/2005/CT - Blaenau Gwent County Borough Council

The referral from the Ombudsman related to an allegation that the councillor had breached the council's code of conduct by making a malicious complaint to the Ombudsman against another member of the council.

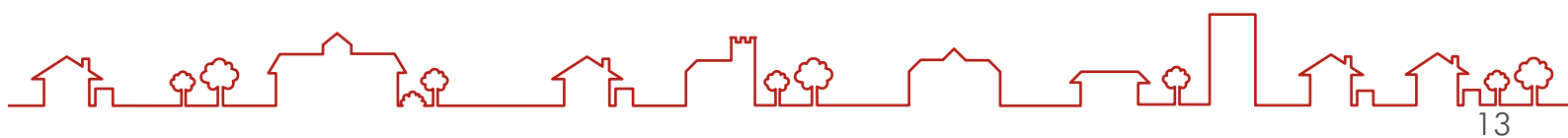
The councillor had made a written allegation to the Ombudsman that the Leader of the council had reneged on a deal to provide office accommodation in return for the Liberal Democrats' support for a particular candidate for the post of Chief Executive. The Ombudsman's investigation found no evidence of a breach of the code by the Leader of the council and concluded that the allegation made by the councillor was without foundation. It was also alleged that the councillor was responsible for releasing details of his complaint into the public domain and in so doing had brought the office of councillor and the authority into disrepute.

The case tribunal accepted that there were conversations between the councillor and the Leader regarding the provision of a room for the Liberal Democrat Group. However they rejected the submission that there was any "deal" ie that the offer of the room was conditional upon support for a particular candidate for Chief Executive.

The case tribunal found that the councillor did speak to one newspaper and that he had forwarded a letter to another after the Ombudsman had commenced his investigation.

The case tribunal found that the councillor's complaint to the Ombudsman was both vexatious and malicious. The complaint was malicious in that it was intended to cause damage to the Leader and was vexatious in that it caused unnecessary work and investigation by the Ombudsman.

The case tribunal found that this was a case where a serious and unfounded allegation was made against a Leader of a council, which brought the authority as a whole into disrepute. The case tribunal concluded that the councillor should be suspended from acting as a member of Blaenau Gwent County Borough Council for a period of 12 months.



APW/008/2005/CT - Rhondda Cynon Taf County Borough Council and Llantrisant Community Council

The referral from the Ombudsman related to allegations that the councillor had breached the council's code of conduct by using his position improperly to secure an advantage for a member of his family by sending a letter to the Family Court and failing to treat a person with respect in an e-mail.

During his investigation the Ombudsman became aware of further allegations regarding the councillor. These were that the councillor had been convicted of a criminal offence and had brought the office of member into disrepute.

The councillor did not wish to attend the Tribunal and he did not dispute the content of the Ombudsman's Report. The case tribunal determined its adjudication by way of written representations.

The case tribunal found that the councillor did not fail to comply with paragraph 7(a) of the relevant authorities' codes of conduct in that while his letter to the Family Court had described his various roles in the community, he had not placed any particular emphasis on his being a councillor.

The case tribunal found that the councillor had breached paragraphs 4(a) and 6.1(b) of the authorities' codes of conduct. He had failed to show respect and consideration to a person by sending them an e-mail whose content was aggressive, upsetting and threatening and because it was wholly unnecessary, inappropriate and unsolicited in the circumstances.

The case tribunal found by unanimous decision that the councillor's conviction for driving with excess alcohol meant the councillor had breached paragraph 6.1(a) of the authorities' codes of conduct.

The case tribunal accepted that at the time the breaches were committed, the councillor was suffering from ill health and that his medical condition affected his judgement and conduct. The tribunal also took into account the councillor's co-operation with the tribunal and the written testimonials submitted.

If it were not for the overwhelming mitigating factors the case tribunal would have considered a lengthy suspension or a period of disqualification. The case tribunal

concluded that the councillor should be suspended from acting as a member of Rhondda Cynon Taf County Borough Council and Llantrisant Community Council for a period of two months.

APW/001/2006/CT - Newport City Council

The referral from the Ombudsman related to allegations that the councillor had breached the council's code of conduct by disclosing confidential information without consent.

The councillor was a member of the council's adoption panel. The alleged breaches of the code were in connection with disclosure of information obtained as a result of being a member of that panel.

The hearing by a case tribunal was held in public, except for the evidence the tribunal deemed to be of a confidential nature.

The councillor denied that she had released any confidential information, in particular any information she would have obtained as a result of being a member of an Adoption Panel.

The case tribunal was not satisfied, on a balance of probabilities that the councillor had disclosed confidential information and found that there had not been a failure to comply with the code of conduct.

APW/003/2006-07/CT - Brecon Beacons National Park Authority

The referral from the Ombudsman related to allegations that the councillor had breached the council's code of conduct by deliberately setting out to mislead the Ombudsman's investigating officer on two occasions, by failing to disclose information relating to an entry in the register of gifts and hospitality of the authority.

The Ombudsman had investigated an earlier allegation that the councillor had failed to declare an interest in a planning application, which fell to be determined by the authority, despite the fact that she had allegedly been a guest of the applicant at a tourist attraction he owned. The councillor said that she had visited



the attraction as a “paying tourist” and denied having an interest in the planning application.

The Ombudsman concluded at that time that there was no evidence the councillor had been a guest of the applicant, which would have obliged her to declare an interest in the application when it was considered by the authority.

Following the issue of his report, the Ombudsman received new evidence suggesting that the councillor had received hospitality from the applicant and had recorded the visit to the attraction in the authority’s register of gifts and hospitality.

The case tribunal found that the councillor had paid the admission price to the attraction and that her party did not receive free refreshments during their visit. The case tribunal found that the entry in the register of gifts and hospitality was made in all probability as a result of a misunderstanding.

The case tribunal found that the councillor did not mention the entry to the Ombudsman or his investigators as she had not appreciated its significance.

On the basis of their findings of fact, the case tribunal found that there had not been a failure to comply with the authority’s code of conduct.

Summary of Appeal Tribunals

Two appeals were carried over from the previous reporting year and the Panel received a further 2 appeals against the determination of a local standards committee. Three of these appeals were determined during the period covered by this report and are summarised below.

APW/005/2005/A - Coedffranc Community Council

An appeal was received against the decision of the Neath Port Talbot County Borough Council’s Standards Committee that the councillor had breached the community council’s code of conduct and should be suspended for 2 months. The allegations were that the councillor had:

- a. attempted to use his position as a councillor to secure an advantage for a football club of which he was a committee member by seeking to influence a youth club to write-off a debt owed to it by the football club.
- b. failed to declare an interest and withdraw from consideration of a letter of complaint against him at a meeting of the community council on 3 March 2004.

The councillor contended that he took no part in the decision made by the football club to attempt to persuade the youth club to write off their debt.

Regarding the second allegation, the councillor asserted that he had no prior knowledge that the letter was to be read out and that it was an oversight on his behalf that he failed to declare an interest and take the appropriate action.

The appeal tribunal found that the councillor had been party to the football club's decision to try to extinguish the debt and made phone calls to members of the community in which he sought to engineer the cancellation of the debt. The tribunal was satisfied that when making the phone calls he was doing so as a councillor and as treasurer of the football club.

The appeal tribunal was not satisfied that the councillor had prior knowledge of the letter of complaint that was going to be read out at the meeting of the community council. However, it concluded that it must have been apparent to him when the letter was read out that it involved him and that he should have immediately declared an interest. He should also have informed the council that he would play no part in their deliberations, considered absenting himself and certainly stepped down from the Chair.

The appeal tribunal found that there was a failure to comply with paragraphs 7(a), 11(a) and 16(3) of the code of conduct.

The tribunal upheld the determination of the standards committee that the councillor had breached the code of conduct. The tribunal further determined to endorse the decision of the standards committee that the councillor should be suspended for a period of 2 months.



APW/009/2006/A - St Brides Major Community Council

An appeal was received against the decision of the Vale of Glamorgan Council Standards Committee that the councillor had breached the community council's code of conduct and should be suspended for a period of 3 months. The allegations were that the councillor had failed to declare an interest and withdraw from a meeting of the community council when a matter concerning a contract came before the council for discussion and/or decision.

The appeal tribunal accepted the appellant's argument that while the standards committee had found that there had been a breach of the code, the committee had failed to identify in its written determination when the breach had occurred, nor had it given adequate reasons for its decision.

The appeal tribunal concluded that it did not have a statutory power to remedy such defects and, consequently, quashed the determination of the Vale of Glamorgan Council Standards Committee that the councillor had breached the community council's code of conduct.

APW/002/2006-07/A - Blaenau Gwent County Borough Council

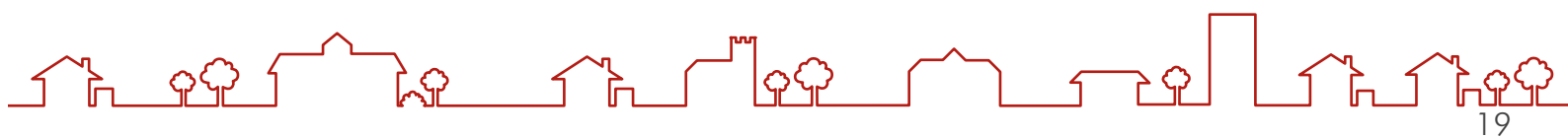
An appeal was received against the decision of the Blaenau Gwent County Borough Council Standards Committee that the councillor had breached the authority's code of conduct. The allegations were that the councillor had failed to show respect for a planning officer at a meeting of the Planning Sub-Committee.

The councillor challenged that the words he used at the site meeting amounted to a breach of the code. He asserted that he had apologised to the planning officer and told him that his complaint was against highways and not planning officers.

The meeting of the Planning Sub-Committee involved a number of councillors, officers of the council and members of the public. The statement made by the councillor at the site meeting questioned the professional integrity of the planning officer. The appeal tribunal found that the words were careless and/or reckless (but not malicious) and failed to show respect to the professional integrity of the planning officer.

The tribunal found that the councillor did make a telephone call to the planning officer on the day after the site meeting, but did not fully apologise for his disrespectful remarks. The appeal tribunal took account of the evidence in support of the councillor who it was confirmed had worked hard in the community.

The appeal tribunal accordingly decided to uphold the determination of Blaenau Gwent County Borough Council Standards Committee that the councillor had breached the authority's code of conduct. The appeal tribunal further determined to endorse the decision of the standards committee that the councillor should be suspended for 3 months, that he should undergo training in the code and should make a written apology.



4. Overview of Procedures

The work of the Adjudication Panel for Wales is governed by Part III of the Local Government Act 2000 and subordinate legislation made by the National Assembly for Wales and the UK Government (the latter in respect of police authorities).

The overriding aim of the Adjudication Panel is to ensure that all parties are able to have their cases presented and to have them considered as fully and fairly as possible.

Tribunals will normally comprise a legally qualified chairperson, plus two others. This may be varied at the President's discretion.

Tribunal hearings will normally be held in public except where the tribunal considers that publicity would prejudice the interests of justice, or where the respondent or appellant agrees that the allegations may be dealt with by way of written representations. There may be other reasons from time to time for not holding a hearing, or part of a hearing, in public.

Hearings will usually take place locally where suitable accommodation is available. Hearing arrangements take account of any special needs of those attending eg wheelchair access, interpreter, hearing assistance.

A simultaneous translation service is provided for those who wish a tribunal hearing to be conducted in Welsh and all current tribunal chairpersons are Welsh speaking.

The person who is the subject of the allegations is entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal on matters pertinent to allegations under consideration.

Details of tribunal hearings and their outcome are published on the Panel's web-site and in the local press, as appropriate.

There is a right of appeal under sections 78(10) and 79(15) of the Local Government Act 2000, as appropriate, against the decision of interim case tribunals and case tribunals established by the Adjudication Panel. There is no right of appeal against the decisions of appeal tribunals, but, as a public body,

the Adjudication Panel and its tribunals may also be subject to judicial review where appropriate.

Further information on tribunal procedures can be found on the Adjudication Panel's web-site (www.adjudicationpanelwales.org.uk).

5. Support Unit

The Panel is supported by:

Stephen Phipps, Registrar to the Panel.

John Davies,

Carol Webber,

The Panel's address is:

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Web-site: www.adjudicationpanelwales.org.uk



Summary of sanctions imposed by case tribunals and appeal tribunals in period October 2002 to 31 March 2007

| Sanction | Length of Time | No of Decisions |
|----------------------------------|----------------|-----------------------|
| Case and Appeal Tribunals | | |
| Disqualification | 2 years | 1 |
| Suspension | 12 months | 1 |
| | 9 months | 1 |
| | 6 months | 3 |
| | 3 months | 1 |
| | 2 months | 2 |
| | 1 month | 1 |
| Partial suspension | | 0 |
| Censure | | 2 |
| Breach - no action | | 0 |
| No breach | | 3 |
| Appeals | | |
| Breach of code upheld/dismissed | | 5 (83%)/1(17%) |
| Different sanction recommended | | 1 increase/1 decrease |
| Refused: out of time | | 1 |