

Tribunal Reference Number: APW/001/2005/CT

Reference in Relation to a Possible Failure to Follow the Code of Conduct

RESPONDENT: Councillor Keith Derrick

RELEVANT AUTHORITY(IES):Caerphilly 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. A hearing was held by the Case Tribunal at 10.30 am on Wednesday 14 September 2005 at the Angel Hotel, Cardiff. The hearing was not open to the public. The Case Tribunal noted that where possible a Tribunal hearing should be held in public however was of the view that the interests of justice in this case required the hearing to be held in private. The Case Tribunal considered it wholly essential that no step be taken which could lead to the identification of any child who was subject to the adoption procedure in this case.

2. PRELIMINARY DOCUMENTS

2.1. Reference from the Commission for Local Administration in Wales

2.1.1. In a letter dated 17 May 2005, the Adjudication Panel for Wales received a referral from the Commissioner for Local Administration in Wales ("the Local Commissioner") in relation to allegations made against Councillor Keith Derrick. The allegations were that Councillor Derrick had breached Caerphilly County Borough Council's Code of Conduct by failing to declare an interest, by failing to take decisions objectively and by making unauthorised disclosures.

2.2. The Councillor's Response to the Reference

2.2.1. Cllr Derrick in his response challenged the decision of the Local Commissioner that he needed to declare an interest. Further he maintained he had raised a declaration of interest with the Chairperson of the Adoption Panel. He accepted he may have passed on verbal confidential information to a third party, but in the belief that that person was aware of the details of the case.

2.2.2. Matters commented on by Cllr Derrick, referred to by paragraph numbers of the Local Commissioner's report:

Paragraph 44-48 – *Alleged failure to declare a personal interest* – Cllr Derrick stated that at the September 2002 meeting he asked for guidance and was told by the Chairperson and the Panel that they did not see he should have to declare an interest as he did not know the person making the application to the Adoption Panel. He accepted there was no record within the Minutes of him seeking clarification on the declaration of interest. His understanding was that as he had never met the person making application to the Adoption Panel he was not required

to declare an interest. He questioned why no complaint was made at the time. Cllr Derrick specifically referred to the following extract from the Local Commissioner's report:

"the mere fact that Cllr Derrick knows the parents (and this seems to be the substance of Mrs A's allegation) does not in my view of itself create a declarable interest".

Cllr Derrick also drew attention to the fact that he had on other matters made declarations of interest.

Paragraph 49 –50 – *Alleged failure to take decisions objectively.*

The conclusion of the Local Commissioner was that there was no evidence to suggest that Cllr Derrick was biased in considering the application.

c) Paragraph 51-56 – *Alleged unauthorised disclosure of confidential information.*

Cllr Derrick accepted he had passed on verbal confidential information to Mrs F but believed she was aware of the details of the case. He further maintained that Mrs F knew the information from Mrs A. Mrs F did not recall Cllr Derrick giving her the information. Cllr Derrick did not accept that he revealed information to Mrs A after the first Adoption Panel in 2002. He questioned why no complaint was made after the first suspicion of disclosure of information. When he confirmed the outcome of the matter before the Adoption Panel to Mrs F he believed she had detailed knowledge of the case. He further maintained that "it was common knowledge around the Club". He denied discussing matters with Mrs A's parents.

2.3. The Local Commissioner's Representations

2.3.1. No further representations were made.

3. ORAL SUBMISSIONS

3.1. The Panel heard evidence from 2 witnesses:

3.1.1. **Mrs A** – she had not heard of Cllr Derrick until a conversation with Mrs F. This conversation occurred after the Adoption Panel meeting in September 2002. She had raised her concerns with her Social Worker. She became aware following this conversation that Cllr Derrick knew her parents.

3.1.2. She had split up with her ex partner. She did not believe this was common knowledge in the area though accepted she had advised her mother some 3 weeks after they had separated. She would have advised Social Services around the same time. This would have been in May 2002.

3.1.3. She attended the Adoption Panel on the 18 November 2003. This was the only Adoption Panel she had attended. Soon after entering the meeting Cllr Derrick had banged the table in front of her and stated "Your parents are good people. I worked in the pit with your father. You have put me in a very awkward position in

dealing with the case". This statement had caused her distress. She spoke to her own Solicitor immediately after the meeting. She was adamant that Cllr Derrick had banged the table. She had begun to cry when he did this.

3.1.4. She had a conversation with Mrs F who stated that she knew she had been unsuccessful before the Adoption Panel. When she had raised with Mrs F whether she knew this information through Cllr Derrick Mrs F did not challenge the comment. She was upset that confidential information had been disclosed.

3.1.5. She was aware of conversations between Cllr Derrick and her parents. She had not been present or party to those conversations.

3.1.6. She subsequently made a complaint to the Director of Social Services as to the conduct of the Adoption Panel.

Mr Nick Lawrence - Chairperson of Caerphilly County Borough Council Adoption Panel.

3.2.1 He gave evidence of now recalling a discussion between himself and Cllr Derrick prior to an Adoption Panel meeting. He had not mentioned this in his original statement to the Investigating Officer from the Local Commissioner's office. His view was that this conversation was prior to the November 2003 Adoption Panel meeting held at Avenue House. He was told by Cllr Derrick that he knew the family, but that it was a tenuous relationship. He had assumed that elected members would be privy to a lot of information to do with their community and did not believe there was a conflict of interest in this case.

3.2.2. He recalled at the meeting when Mrs A was present that Cllr Derrick had indicated that she was not a stranger to him but did not believe there was anything untoward in respect of the comments.

Cllr Derrick gave the following evidence:-

He had no recollection of discussing with Mrs F either the application or the outcome of the application to the September 2002 Adoption Panel meeting.

He was adamant that the discussion with Mr Nick Lawrence, Chairperson of the Adoption Panel, occurred prior to the meeting on 24 September 2002. This was the first application made by Mrs A. He did not raise with the Chairperson at any future Adoption Panel meeting the need to make a declaration of interest. He had assumed following the first conversation that there was no requirement to do so at future Panel meetings.

Cllr Derrick knew of Mrs A and her partner separating as a result of gossip in the local club.

Cllr Derrick was adamant that he had not discussed prior to the Adoption Panel meeting on 18 November 2003 any declaration of interest. During the meeting he mentioned that he knew the family but did not make any comments which he believed were inappropriate or which would have caused distress.

He accepted that he had confirmed the outcome of the Adoption Panel meeting, in answer to a question from Mrs F as to whether Mrs A had been successful with her application, by replying “no”. He accepted this was a breach of confidentiality for which he apologised.

He had worked at a local colliery with Mrs A’s father. They were good people. He was concerned as to the situation caused by Mrs A’s application for an adoption of a young child. He was concerned in two respects:

It could split the family.

Her failure to appreciate any risks in inviting a man she met over the internet into her home.

He accepted with hindsight that the comments were insensitive.

3.4 Submissions on behalf of Cllr Derrick:-

3.4.1 Mr Lawrence, it was submitted, was confused as to his dates. There was certainty and consistency in the evidence of Cllr Derrick that the discussion had taken place prior to the September 2002 Adoption Panel meeting.

3.4.2. Cllr Derrick had acted in good faith. He did know of the lady in question. Cllr Derrick had been open and honest.

3.4.3 Cllr Derrick admitted responding to a question as to the application being unsuccessful and had shown genuine remorse for his action and had withdrawn from Council activities including the Adoption Panel.

4. FINDINGS OF FACT

4.1. The Case Tribunal found the following *undisputed* material facts:

4.1.1. Cllr Derrick gave his undertaking to observe the Code of Conduct of Members on 5 December 2001.

4.1.2. On or around 14 October 2003 Cllr Derrick signed a Confidentiality Agreement as a Caerphilly Adoption Panel Member.

4.1.3. Cllr Derrick was a member of the Adoption Panel when it met to consider Mrs A’s application for adoption of X and Y in 2002 and also on 18 March 2003 and 18 November 2003 in respect of the adoption of Z.

4.1.4. In none of the Adoption Panel meetings dated 24 September 2002, 18 March 2003 or 18 November 2003 was a declaration of interest by Cllr Derrick minuted.

4.1.5. Cllr Derrick did not discuss with anybody a potential declaration of interest prior to, or during, the Adoption Panel meeting of 18 November 2003.

4.1.6. The September 2002 Adoption Panel approved the adoption of X and Y.

4.1.7. The Adoption Panel meeting of 18 November 2003 unanimously rejected the adoption of Z.

4.1.8. Cllr Derrick worked with Mrs A's father (Mr B) between the early 1960's and 1972. He was acquainted with both Mrs A's parents, though since 1972 neither he nor they would regard themselves as close friends and would only see each other occasionally. Mr & Mrs B attended Cllr Derrick's daughter's wedding at the invitation of Cllr Derrick's son-in-law's parents.

4.1.9. At the meeting of 18 November 2003 when Mrs A was present, Cllr Derrick stated he had worked with her father.

4.1.10 After the November meeting, Cllr Derrick confirmed to Mrs F the outcome of the meeting's consideration of Mrs A's application for adoption.

4.1.11 Cllr Derrick spoke to Mr B in December 2003 and stated what a good foster parent Mrs A was. Cllr Derrick spoke also to Mrs B.

4.2. The Case Tribunal found the following to be *disputed* material facts:

4.2.1. Did Cllr Derrick raise with Mr Lawrence the Chair of the 2002 Adoption Meeting the question as to whether Cllr Derrick should be declaring an interest because he was friendly with Mrs A's father?

4.2.2. Did Mr Lawrence indicate he saw no reason for Cllr Derrick to declare an interest?

4.2.3. What were the precise words used by Cllr Derrick at the meeting of 18 November and were those words inappropriate?

4.2.4. Did Cllr Derrick inform Mrs F of the outcome of the Adoption Panel decision of 24 September 2002 as regards the adoption of X and Y?

4.2.5. What were the precise details of the discussion between Cllr Derrick and Mrs F following the Adoption Panel Meeting of 18 November 2003?

4.2.6. Did Cllr Derrick discuss the outcome of either meeting with Mr B?

4.2.7. What was the content of the discussion between Cllr Derrick and Mrs B? Further, in Councillor Derrick's discussion with Mrs B did he reveal information to her that he could only have gleaned from being a member of the Adoption Panel?

4.3. The Case Tribunal found the following in respect of the *disputed* facts:

4.3.1. Cllr Derrick did raise prior to the meeting of 24 September 2002 his relationship with Mrs A's parents. The Panel preferred the evidence of Cllr Derrick that this occurred before the meeting on 24 September 2002, as opposed to Mr Lawrence's evidence of the discussion taking place before the meeting of 18 November 2003. The reasons for this finding were:

4.3.1.1. The Case Tribunal preferred Cllr Derrick's evidence as to the date of his discussion with Mr Lawrence, in particular Cllr Derrick had been consistent throughout that this conversation had occurred prior to the September 2002 meeting.

4.3.1.2 Mr Lawrence had not mentioned, when interviewed by the Ombudsman less than 10 months after the November 2003 meeting, this discussion.

4.3.1.3. Rachel Owen, Solicitor, had been adamant in her written statement that there had been no discussions. She was not a member of the September 2002 meeting.

4.3.1.4. Evidence had been given by Mr Lawrence that Cllr Derrick on another matter had raised the question of a conflict of interest at an Adoption Panel meeting in January 2003. The Case Tribunal believed it was probable therefore that Cllr Derrick would have raised issues as to his interests at a meeting on or around this date.

4.3.2 Cllr Derrick had advised Mr Lawrence prior to the September 2002 Adoption Panel meeting that he had worked with Mrs A's father but did not know Mrs A. On this basis Mr Lawrence had indicated he saw no reason for Cllr Derrick to declare an interest. This conversation related to an application for the adoption of X and Y.

4.3.3. The words used at the 18 November 2003 meeting included :

Cllr Derrick knew Mrs A's parents.

They were good people, pillars of the community.

His disappointment at the difficult position he had been put in.

Whilst accepting a member of an Adoption Panel would have been entitled to criticise a person appearing before them, the comments by Cllr Derrick were wholly inappropriate as he placed the comments in a personal context and gave the impression that he was friendly with Mrs A's parents. By these comments he placed a close proximity between himself and Mrs A's parents. These comments were perceived by Mrs A as being some form of personal censure of her.

Cllr Derrick did discuss the outcome of the September 2002 Adoption Panel meeting with Mrs F. The reasons for this finding were:

4.3.4.1 Whilst giving full consideration to the written evidence of Mrs F the Case Tribunal preferred the evidence of Mrs A. She had not previously heard of Cllr Derrick. This was the first occasion mention had been made of his name and led to her making enquiries of others.

4.3.4.2. Such a comment by Cllr Derrick was consistent with his admission of a similar indiscretion after the 2003 meeting.

4.4. After 18 November 2003 meeting Cllr Derrick confirmed to Mrs F the refusal of the Adoption Panel to approve the adoption by Mrs A of Z. There is no further evidence of any further discussion.

4.5 There was no evidence that Cllr Derrick had discussed the details of the application or outcome of any meeting with Mr B.

4.6. There had been a discussion between Cllr Derrick and Mrs B the mother of Mrs A as to the fact that Mrs A had separated from her partner. The Case Tribunal was not satisfied this was information Cllr Derrick would have gleaned from his membership of the Adoption Panel.

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

5.1. The Respondent's Submissions

5.1.1. Cllr Derrick submitted that if there had been a close personal association with Mrs A's family it had been in the 1960's. He had not met Mrs A. She did not fall within the definition of a friend.

5.1.2. It was accepted the disclosure of confidential information amounted to a breach.

5.2. The Local Commissioner's Report

5.2.1. It was contended that Cllr Derrick had breached the code of conduct by failing to declare a personal interest and withdraw from the proceedings of the Adoption Panel in respect of applications by Mrs A.

5.2.2. Cllr Derrick had improperly revealed information about the proceedings of the Adoption Panel as they had affected Mrs A and the children whom she had applied to adopt. Councillors who discharge responsibilities affecting the welfare of children have a special responsibility to keep personal information concerning them confidential.

5.3. Case Tribunal's Decision

5.3.1. On the basis of the findings of fact, the Case Tribunal found by an unanimous decision that Cllr Derrick did not fail to comply with the relevant authority's code of conduct as follows:

Paragraph 8(a) of Caerphilly County Borough Council's code of conduct in that he did not fail to reach decisions on the basis of the merits of the circumstances involved and in the public interest.

5.3.1.1. Rejection of the application heard in November 2003 was an unanimous decision of the Adoption Panel. There were valid reasons for the decision.

5.3.2. On the basis of findings of fact, the Case Tribunal found that Cllr Derrick failed to comply with the authority's code of conduct as follows:

5.3.2.1 Paragraph 11 of the Code of Conduct states:

“a member has a personal interest in the matter if that member anticipates that a decision upon it might reasonably be regarded as to likely benefit or disadvantage the member, one of the member’s family, a friend or any person with whom the member has a personal association.....to a greater extent than other Council Tax payers, rate payers or inhabitants of an Authority’s area. Further under paragraph 16 (3) of the Code of Conduct a member with such an interest who attends a meeting of the Authority at which the matter is discussed must disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent”.

The Case Tribunal found that Cllr Derrick used words that inferred and established a sufficiently close friendship with Mrs A’s parents that he should have declared an interest. He had further failed under paragraph 16(3) to withdraw from the meeting on 18 November 2003. The Case Tribunal noted paragraph 20 of the Code of Conduct that members must exercise personal responsibility in deciding whether they have a personal interest and as such they should disclose it. They may seek advice from the Authority’s Monitoring Officer and must have regard to any advice from the relevant Standards Committee in doing so. Cllr Derrick had not approached the Authority’s Monitoring Officer.

5.3.2.2. Paragraph 5(a) of the Code of Conduct states that members must not disclose any information given in confidence, without the express consent of the person authorised to give such consent, or required by Law to do so.

The Case Tribunal found that Cllr Derrick had revealed on 2 occasions confidential information.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1. The Respondent’s Submissions

6.1.1. Cllr Derrick contended in respect of the failure to declare an interest that he had notified the Chairperson of the Adoption Panel. He had declared a personal interest in a number of other matters and in respect of another Adoption Panel meeting.

6.1.2. Cllr Derrick contended in respect of the breach of confidentiality that this was in response to a question put to him. He had shown remorse and contended that the appropriate punishment was that of a suspension.

6.2. Case Tribunal’s Decision

6.2.1. The Case Tribunal considered all the facts of the case and in particular the nature of the breaches, the evidence heard and the Respondent’s submission in mitigation.

6.2.2. The Case Tribunal, in considering the failure to declare an interest, had taken into account the discussion between Cllr Derrick and the Chairperson of the Adoption Panel, but held that a declaration of interest was the personal responsibility

of a member and therefore viewed the circumstances of the failure to declare an interest as being unfortunate rather than deliberate.

6.2.3. There can be no more serious situation than unauthorised disclosure of confidential information concerning children. The Case Tribunal had seen the effect that this unauthorised disclosure had had on others including Mrs A. The breach of confidence relating to the disclosure of confidential information was a serious matter which could have resulted in disqualification. The Case Tribunal had given particular regard to the distress caused by the disclosure. The Case Tribunal however gave full credit to Cllr Derrick's contrition, co-operation and the isolated nature of the disclosures. Regard was given to his long years of service and to the effect the investigation and attendance at the Case Tribunal had had upon him. The Case Tribunal did not believe he had acted maliciously in the disclosure of confidential information.

6.2.4. The Case Tribunal concluded by an unanimous decision that Cllr Derrick should be suspended from acting as a member of Caerphilly County Borough Council for a period of 6 months, or, if shorter, the remainder of his term of office.

6.2.5. The Caerphilly County Borough Council and its Standards Committee are notified accordingly.

6.2.6. The Respondent has the right to appeal to the High Court against 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.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1. The Case Tribunal makes the following recommendation to Caerphilly County Borough Council.

7.1.1. To remind its members of paragraph 20 of its Code of Conduct. It is the personal responsibility of individual councillors to decide whether they have an interest and to seek advice from the Authority's Monitoring Office. The Authority needs to ensure that there is clear guidance in place.

7.1.2. The Adoption Panel should be reminded, as should all Panels and Committees where councillors are members, that any discussion, whether informal or not, as to a declaration of interest should be recorded in the minutes.

Signed.....
2005

Date 4 October

Hywel James

Chairperson of the Case Tribunal

Juliet Morris

Panel Member

Ian Blair

Panel Member