

Tribunal Reference Number: APW/002/2005/CT

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

RESPONDENT: Former Councillor Jack Scherer

RELEVANT AUTHORITY: Cardiff County 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 12 October 2005 at the Copthorne Hotel, Culverhouse Cross, Cardiff. The hearing was open to the public.

2. PRELIMINARY DOCUMENTS

2.1. Reference from the Commission for Local Administration in Wales

2.1.1. In a letter dated 16 June 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 former Councillor Scherer. The allegations were that former Councillor Scherer had breached Cardiff County Council's Code of Conduct by committing a criminal offence of assault and by bringing the office of member and the Council into disrepute.

2.2. The Councillor's Response to the Reference

2.2.1. Former Councillor Scherer admitted that he had breached paragraphs 6 (1)(a) and 6(1)(b) of Cardiff City Council's Code of Conduct.

2.3. The Local Commissioner's Representations

2.3.1. No further submissions were made beyond the written report.

3. ORAL SUBMISSIONS

3.1. Former Councillor Scherer made the following oral submission:

3.1.1 that he was not guilty of the offence with which he had been charged but did accept that he had been duly convicted by Cardiff Magistrate's Court on 20 April 2004 of an assault on 3 July 2003 and had been sentenced to a 12 month conditional discharge.

4. FINDINGS OF FACT

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

4.1.1. Former Councillor Scherer was an elected member for the Electoral Division of Rhiwbina, Cardiff at the material time of 3 July 2003.

4.1.2 Former Councillor Scherer gave an undertaking to observe Cardiff County Council's code of conduct on 12 February 2002.

4.1.3 On 29 August 2002, former Councillor Scherer was convicted of driving without due care and attention at Cardiff Crown Court.

4.1.4 As a result of the above conviction, former Councillor Scherer was ordered to pay a fine of £1000 and his driving licence was endorsed with seven penalty points. He was also ordered to pay compensation of £50 and Crown Prosecution Service costs of £70.

4.1.5 Following the above conviction, former Councillor Scherer made a formal apology to Cardiff County Council on 21 November 2002.

4.1.6 Former Councillor Scherer appeared before Cardiff Magistrates' Court on 20 April 2004 where he pleaded not guilty to a charge of assault. At trial, former Councillor Scherer was convicted of assault and was given a twelve month conditional discharge. He was also ordered to pay £75 compensation and Crown Prosecution Service costs of £150.

4.1.7 The above charges and convictions were the subject of press coverage.

4.1.8 Former Councillor Scherer did not stand for re-election at the local elections on 10 June 2004.

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

4.2.1. Did the fact that former Councillor Scherer challenged the veracity of his conviction at Cardiff Magistrates' Court on 20 April 2004 have any bearing on the Case Tribunal's consideration of whether there had been a breach of the Code of Conduct in this case?

4.2.2 Did the fact that former Councillor Scherer challenged the veracity of his conviction at Cardiff Crown Court on 29 August 2002 have any bearing on the Case Tribunal's considerations in this case?

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

4.3.1. Mr Scherer had been convicted at Cardiff Magistrate's Court on 20 April 2004 having pleaded not guilty. This Tribunal was not the appropriate forum to determine the validity of his conviction. The Tribunal had to accept the conviction as a lawful one.

4.3.2. Mr Scherer did not and was not intending to appeal the conviction elsewhere.

4.3.3. Mr Scherer's conviction at Cardiff Crown Court on 29 August 2002 did not influence the Tribunal in so far as determining whether there had been breaches of

the Code of Conduct. The Tribunal would be influenced by this conviction only when and if it came to consider its sanctioning powers.

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

5.1. Case Tribunal's Decision

5.1.1. On the basis of the findings of fact and upon the admission of former Councillor Scherer, the Case Tribunal found by a unanimous decision that there was a failure to comply with Cardiff County Council's Code of Conduct:

His conviction at Cardiff Magistrate's Court on 20 April 2004 necessarily meant that he had committed a criminal offence and, therefore had breached the Code under Paragraphs 6(1)(a).

The nature of the conviction, the ensuing publicity and attention it had received from within the Council and amongst the wider public meant that he had breached Paragraph 6(1)(b). Mr Scherer accepted that this brought the office of member into disrepute but not the council. This itself amounted to a breach.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1. The Respondent's Submissions

6.1.1. Former Councillor Scherer put the following mitigating factors before the Tribunal:

- a) he was 56 years of age and had never received any conviction than those set out above
- b) he had been a head teacher of an independent school for fourteen years
- c) the convictions had had an adverse effect upon his health
- d) the convictions had had an adverse effect upon his family's wellbeing
- e) the convictions had had an adverse effect upon his business/working life
- e) he had retired from public office because of the convictions
- f) there had been extensive press coverage of his convictions
- g) he had no intention of returning to any form of public office
- h) he admitted that he had been naïve in so far as the demands that would be made of him in public office
- i) he had only stood for one term of office, a period of 5 years
- j) it was his future intention to leave the UK.

6.2. Case Tribunal's Decision

6.2.1. The Case Tribunal considered, in the wholly exceptional circumstances of this case, and the nature of the breaches and the Respondent's mitigation that it was neither necessary nor appropriate to suspend, partially suspend or disqualify the Respondent.

6.2.2. The Case Tribunal concluded by unanimous decision that former Councillor Scherer should be reprimanded. The Case Tribunal was influenced by the fact that former Councillor Scherer admitted his breaches of the Code, had retired from public office and had no intention of seeking re-election or further public office in local government.

6.2.3 The Case Tribunal considered that any criminal conviction involving an assault proved against any local councillor was extremely serious and would usually warrant disqualification or suspension. Mr Scherer was convicted of common assault against a third party at his (Scherer's) own place of business. The assault did not take place in a public setting but arose over a dispute over access to his business property. The assault did not take place whilst he was engaged upon public duty.

6.2.4 The effect of the breach had resulted in Mr Scherer not seeking re-election on 14 June 2004. Neither suspension nor disqualification would serve any purpose.

6.2.5 Given the strong mitigation in this case, the effect it had had on Mr Scherer and his family and his future intention so far as local government was concerned, the Tribunal unanimously concluded that a reprimand was the appropriate manner in which to deal with Mr Scherer.

6.2.6 Cardiff County Council and its Standards Committee are notified accordingly.

6.2.7. 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.

Signed..... Date 12 October 2005

Stewart Sandbrook Hughes

Chairperson of the Case Tribunal

Colin Evans

Panel Member

Juliet Morris

Panel Member