

**Tribunal Reference Number: APW/008/2005/CT**

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

**Respondent: Councillor Paul Baccara**

**Relevant Authorities: Rhondda Cynon Taf County Borough Council**

Llantrisant 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 Meeting Was Held By The Case Tribunal At 10.00am On Tuesday 22 August 2006 At The Halliwell Conference Centre, Trinity College, Carmarthen. With Councillor Paul Baccara's Agreement, The Tribunal Determined Its Adjudication By Way Of Written Representations.

**2. Preliminary Documents**

2.1. Reference From The Public Services Ombudsman For Wales

2.1.1. In A Letter Dated 17 November 2005, The Adjudication Panel For Wales Received A Referral From The Public Services Ombudsman For Wales ("The Ombudsman") In Relation To Allegations Made Against Councillor Baccara. The Allegations Were That Councillor Baccara Had Breached Rhondda Cynon Taf County Borough Council's Code Of Conduct By Using His Position Improperly To Secure An Advantage For A Member Of His Family And Failing To Treat A Person With Respect.

2.1.2. During Investigation, The Public Services Ombudsman For Wales Became Aware Of Further Allegations About Councillor Baccara. These Were That He Had Been Convicted Of A Criminal Offence And Had Brought The Office Of Member Into Disrepute.

2.1.3. The Case Tribunal Also Considered Whether The Allegations Amounted To A Breach Of Llantrisant Community Council's Code Of Conduct, Of Which Councillor Baccara Was Also A Member At The Material Time.

2.2. The Councillor's Written Response To The Reference

2.2.1. Councillor Baccara Responded To The Reference To The Tribunal In A Letter Dated 8 December 2005. He Said That He Did Not Wish To Attend The Tribunal And That He Did Not Dispute The Content Of The Ombudsman's Report.

2.2.2. In His Letter Councillor Baccara Made The Following Comments:

A) As For The Letter To The Court - He Stated That It Was A Totally Inappropriate

Approach, But That He Honestly Did Not Go Out To Gain Any Advantage For His Family By Stating That He Was A Councillor And That No Advantage Was Gained. He Said That He Truly Believed That By Not Using Council Notepaper, By Stating His Relationship To The Party To The Court Proceedings And By Saying That He May Be Biased Because Of That Relationship, He Felt That He Had Made His Position Clear. He Also Said That Had He Been In The Court Giving Oral Evidence And Had Been Asked His Occupation, He Would Have Said That He Was A Councillor And That This Was Why He Described Himself In This Way In The Letter. He Said It Was A Serious Error On His Part.

B) As For The Email - He Said He Could See Why The Recipient Of The Email Was Upset By It And That He Was Extremely Sorry For His Inappropriate Action In Sending It.

C) As For The Criminal Conviction - He Admitted That He Was Convicted At Miskin Magistrates Court On 31 August 2004 For Driving With Excess Alcohol.

D) As For The Code Of Conduct - He Said He Had Read It And Was Fully Conversant With It.

### 2.3. The Ombudsman's Representations

2.3.1. No Further Representations Were Made.

## 3. Findings Of Fact

3.1. The Case Tribunal Found The Following Undisputed Material Facts:

### General

3.1.1. Rhondda Cynon Taf County Borough Council Adopted A Code Of Conduct For Members On 5 December 2001.

3.1.2. Llantrisant Community Council Adopted A Code Of Conduct For Members On 8 January 2002.

3.1.3. Councillor Paul Baccara Signed A Written Undertaking To Observe Rhondda Cynon Taf County Borough Council's Code Of Conduct On 12 June 2004 And Llantrisant Community Council's Code Of Conduct On 20 May 2002.

### Letter To Family Court

3.1.4. On 17 May 2005, Councillor Baccara Sent A Letter To The Court, Which Was Considered In Family Proceedings Involving Members Of His Family.

3.1.5. In The Letter, Councillor Baccara Described Himself As A "County Borough Councillor" And As A "Community Councillor". He Also Described Himself As A "Postmaster, Governor Of Two Schools And Lead Member Of Our Community Halls" And An "Upstanding Member Of Our Community".

3.1.6. In The Letter, Councillor Baccara Expressed Views And Opinions Which He

Asked The Court To Consider, Adding That They Were “Probably Slightly Biased” Due To The Family Relationship.

3.1.7. The Letter Was Written On Personal Notepaper And Was Signed “Paul Baccara”.

3.1.8. In A Letter To The Case Tribunal Dated 8 December 2005, Councillor Baccara Accepted That The Communication Was “Totally Unacceptable” And Stated That “It Was A Serious Error On My Part”.

#### Electronic Mail Communication

3.1.9. In April 2005, Councillor Baccara Wrote An Article That Appeared In That Month’s Edition Of The ‘The District Diary’, A Local Newspaper. The Article Included The Following Paragraph:

“Remember, Pirate Videos And DVD’s Are Illegal, A Local Man Had A 15 Month Sentence Last Month, Please Don’t Fuel The Drug Trade By Buying These Bad Copies Because That Is Where The Money Goes!”

3.1.10. Mrs Edwards Is The Wife Of The “Local Man” Mentioned In The Article.

3.1.11. On 7 April 2005, Mrs Edwards Sent An Electronic Mail Message (Email) To Councillor Baccara Expressing Her Concerns About The Article And Requesting An Apology For What She Perceived As An Implication That Her Husband Was Involved In Drugs. The Email Was Signed “From The Wife And Children Of Mr John Edwards”. The Email Was Sent From “Morph@Safe-Mail.Net”.

3.1.12. In May 2005, Councillor Baccara Wrote An Article In That Month’s Edition Of The ‘The District Diary’, Which Included The Following Paragraph:

“I Mentioned Last Month That Someone Had Gone To Prison For 15 Months Due To Involvement With The Copy Of DVD’s And Videos. I Explained That A Lot Of Money From This Type Of Activity Was Organised Crime And Involved With Drugs Etc. I Did Not And Do Not Want To Imply That The Individual Involved Was Or Has Been Involved With Drugs. My Point Was That Most Money From Any Illegal Operation Is Backed By Organised Professional Criminals Who Themselves Are Involved In Anything From Illegal DVD’s, Illegal Cigarettes, Booze, Drugs Etc. The Person Who Supplies Often Is Stupid Enough Not To Realise Where The Money Ends Up But, Ignorance Is No Excuse In Law. If You Have Any Information On These Type Of Activities You Can Call Me In Confidence, Crime Stoppers Or The Police On.....”

3.1.13. Councillor Baccara Also Responded To Mrs Edwards In Three Separate Emails All Dated 8 April 2005. He Copied The Third Email To A Third Party. The First Two Emails Were Found To Be Acceptable By The Ombudsman.

3.1.14. When Interviewed By An Investigating Officer From The Ombudsman’s Office, Councillor Baccara Accepted That The Third Email Was “Offensive And Aggressive”. In A Letter To The Case Tribunal Dated 8 December 2005, Councillor Baccara Accepted That His Actions In Sending The Email Were “Inappropriate”.

## Driving With Excess Alcohol

3.1.15. Councillor Baccara Has Two Convictions, One In February 2002 And The Other In August 2004, For Driving With Excess Alcohol, Contrary To Section 5(1)(A) Of The Road Traffic Act 1988 And Schedule 2 To The Road Traffic Offenders Act 1988.

3.2. The Case Tribunal Found The Following Disputed Material Facts:

### Letter To Family Court

3.2.1. That In The Letter To The Court, Dated 17 May 2005, Councillor Baccara Emphasised His Position As A Councillor.

3.2.2. That Councillor Baccara Did So In Order To Confer Upon Or Secure Advantage For A Member Of His Family.

### Driving With Excess Alcohol

3.2.3. That The Offence Of Driving With Excess Alcohol Is A Criminal Offence.

### Failure To Familiarise Himself With Code Of Conduct

3.2.4. That Councillor Baccara Failed To Familiarise Himself With The Provisions Of The Code Of Conduct.

3.3. The Case Tribunal Found The Following In Respect Of The Disputed Facts:

3.3.1. The Case Tribunal Found By A Majority Decision That Councillor Baccara Did Not In The Letter To The Court Emphasise His Position As A Councillor. Although In The Letter, Councillor Baccara Had Described Himself As A Councillor, He Had Also Described Himself As A School Governor, A Postmaster, A Lead Member Of The Community Halls And As An Outstanding Member Of The Community. He Had Not Placed Any Particular Emphasis On His Being A Councillor. It Is Also The Case That The Letter Was Written On Personal Notepaper, As Opposed To Council Notepaper, And Ended "Paul Baccara" As Opposed To Councillor Paul Baccara.

3.3.2. The Case Tribunal Found By A Majority Decision, For The Above Reasons, That Councillor Baccara Did Not Emphasise His Position As A Councillor In Order To Confer Upon Or Secure Advantage For A Member Of His Family. It Was Also The Case That There Was No Evidence Of Any Advantage Having Been Obtained As A Result Of Councillor Baccara Having Described Himself As A Councillor In The Letter To The Court.

3.3.3. The Case Tribunal Found By Unanimous Decision That Councillor Baccara Failed To Treat The Second Complainant With Respect And Consideration By Sending Her The Third Email. He Admitted That It Was Upsetting And Wholly Inappropriate. It Contained Language And Comments Which Were Threatening, Insulting, Insensitive, Aggressive And Offensive. It Was Sent Late At Night.

Councillor Baccara Had Already Previously Responded In An Appropriate Way So That Any Further Communication Was Wholly Unnecessary, Inappropriate And Unsolicited. The Sending Of The Email, Its Tenor And Content Displayed An Unacceptable Lack Of Judgement And Loss Of Control On The Part Of Councillor Baccara.

3.3.4. The Case Tribunal Found By Unanimous Decision That Driving With Excess Alcohol Is A Criminal Offence By Statute.

3.3.5. The Case Tribunal Found By Unanimous Decision That Councillor Baccara Did Not Fail To Familiarise Himself With The Code Of Conduct. The Only Suggestion Of His Failure To Do So Was His Own Admission In A Part Of His Tape Recorded Interview With The Investigating Officer That He Did Not Remember Signing It, That He Had Never Seen It Before, That He Was Not Familiar With It And That He Had Not Received Any Guidance On His Role As Elected Member. The Case Tribunal Accepted Councillor Baccara's Representations In His Written Response That He Had Read And Was Fully Conversant With The Code, As This Was Supported By Examples In Other Parts Of His Tape Recorded Interview, And That He Was Generally Familiar With The Code And With The Behaviour Expected Of An Elected Member.

#### **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

##### 4.1. The Respondent's Submissions

4.1.1. In His Letter To The Tribunal Dated 8 December 2005, Councillor Baccara Stated That He Realised That The Events Could Lead The Tribunal To Believe That He Was Not A Competent Councillor And That He May Have Brought The Office Of Member Into Disrepute.

##### 4.2. The Ombudsman's Report

4.2.1. It Was Contended That Councillor Baccara Wrote A Letter To The Court In Support Of A Family Member And In That Letter Emphasised His Position As A Councillor In Order To Lend Weight To What He Said In The Letter, Thereby Seeking To Confer Advantage For A Family Member In Breach Of Paragraph 7(A) Of The Code Of Conduct.

4.2.2. It Was Contended That The Content Of Councillor Baccara's Email Was Aggressive And Offensive, Highly Inappropriate, Unnecessary And Threatening, Thereby Failing To Show Respect And Consideration For The Recipient In Breach Of Paragraph 4(A) Of The Code Of Conduct. It Was Also Conduct Which Could Be Reasonably Regarded As Bringing The Office Of Member Into Disrepute In Breach Of Paragraph 6.1(B) Of The Code Of Conduct.

4.2.3 It Was Contended That Councillor Baccara's Conviction For Driving With Excess Alcohol Is A Criminal Conviction, Thereby A Breach Of Paragraph 6.1(A) Of The Code Of Conduct.

4.2.4. It Was Contended That Councillor Baccara's Failure To Familiarise Himself With The Code Of Conduct With Which He Had Undertaken To Comply Could Reasonably Be Regarded As Conduct Bringing The Office Of Member Into Disrepute, Thereby Breaching Paragraph 6.1(B) Of The Code Of Conduct.

#### 4.3. Case Tribunal's Decision

4.3.1. On The Basis Of The Findings Of Fact, The Case Tribunal Found By A Majority Decision That Councillor Baccara Did Not Fail To Comply With Paragraph 7(A) Of The Relevant Authorities' Codes Of Conduct.

4.3.2. Paragraph 7(A) Of The Code Of Conduct States That “[Members:] Must Not In Their Official Capacity Or Otherwise Use Their Position Improperly To Confer On Or Secure For Any Person And In Particular Their Family, Friends Or Those With Whom They Have A Close Personal Association An Advantage Or Disadvantage Or To Secure An Advantage For Themselves;”.

4.3.3. The Case Tribunal Found That Councillor Baccara In The Letter To The Court Described Himself As A Councillor In Order To Explain His Occupation And Standing. He Also Described Himself As A School Governor, A Postmaster And A Lead Member Of The Community Hall, Making No Particular Emphasis. He Also Disclosed His Family Relationship And That His Opinion May Be Biased Because Of That Relationship. There Was No Evidence Of Any Advantage Or Benefit.

4.3.4. On The Basis Of The Findings Of Fact, The Case Tribunal Found By Unanimous Decision That Councillor Baccara Failed To Comply With Paragraph 4(A) Of The Relevant Authorities' Codes Of Conduct.

4.3.5. Paragraph 4(A) Of The Code Of Conduct States That “[Members Of The Authority:] Must Carry Out Their Duties And Responsibilities With Due Regard To The Need To Promote Equality Of Opportunity.... And Show Respect And Consideration For Others;”.

4.3.6. The Case Tribunal Found That Councillor Baccara Failed To Show Respect And Consideration To The Recipient Of The Email As Its Content Was Aggressive, Upsetting And Threatening And Because Sending It Was Wholly Unnecessary, Inappropriate And Unsolicited In The Circumstances.

4.3.7. On The Basis Of The Findings Of Fact, The Case Tribunal Found By Unanimous Decision That Councillor Baccara Failed To Comply With Paragraph 6.1(A) Of The Relevant Authorities' Codes Of Conduct.

4.3.8. Paragraph 6.1(A) Of The Code Of Conduct States That “[Members:] Must Not In Their Official Capacity Or Otherwise Commit A Criminal Offence Or Cause One To Be Committed.”

4.3.9. The Case Tribunal Found That The Conviction For Driving With Excess Alcohol Is A Conviction For A Criminal Offence.

4.3.10. On The Basis Of The Findings Of Fact The Case Tribunal Found By

Unanimous Decision That Councillor Baccara Had Breached Paragraph 6.1(B) Of The Code Of Conduct.

4.3.11. Paragraph 6.1(B) Of The Code Of Conduct States That “[Members:] Must Not In Their Official Capacity Or Otherwise Behave In A Manner Which Could Be Reasonably Regarded As Bringing The Office Of Member Into Disrepute.”

4.3.12. The Case Tribunal Found That Councillor Baccara's Third Email Was Wholly Unnecessary And Inappropriate And That Its Content And Tenor Were Aggressive Threatening And Upsetting. In Sending It, Councillor Baccara Displayed A Lack Of Judgement And A Loss Of Control In His Dealings With A Member Of The Public, Such Behaviour Falling Far Short Of That Reasonably Expected From An Elected Member.

4.3.13. On The Basis Of The Findings Of Fact, The Case Tribunal Found By Unanimous Decision That Councillor Baccara Did Not Additionally Breach Paragraph 6.1(B) Of The Code Of Conduct, In That The Case Tribunal Accepted That He Had Read The Code Of Conduct And Was Generally Familiar With Its Content.

## **5. SUBMISSIONS ON ACTION TO BE TAKEN**

### **5.1. The Respondent's Submissions**

5.1.1. Councillor Baccara Contended In His Letter To The Tribunal Of 8 December 2005 That:

A) At The Time Of The Events He Was Taking Medication And Suffering From Various Medical Conditions. He Has Since Sought Treatment And Successfully Addressed Them.

B) He Was Genuinely Sorry For His Totally Inappropriate Approach In The Communication To The Court. He Did Not Set Out To Gain Any Advantage For His Family And No Advantage Was Gained. He Truly Believed He Had Made His Position Clear In The Letter To The Court.

C) He Understood Why The Recipient Of The Email Was Upset By It And Was Extremely Sorry For His Inappropriate Action In Sending The Email. He Had No Recollection Of Sending The Email Due To His Medical Condition. In Order To Avoid Any Future Inappropriate Correspondence, He Now Had A Checking Process In Place.

D) Following The Conviction For Driving With Excess Alcohol, He Was Profoundly Ashamed And Sorry And Had Offered His Resignation As A Councillor, Which Was Refused. The Conviction Was Widely Reported In The Press And No Complaints Were Received From The Public And No Action Was Taken Against Him By Fellow Councillors Or The Standards Committee. He No Longer Drank Any Alcohol Whatsoever.

E) He Wished To Be Allowed To Continue With His Work In The Community By Remaining As A Councillor And This In Turn Would Provide Him With A Focus And

Goals In His Life. Whilst He Accepted That He Had Made Some Terrible Mistakes For Which He Was Truly Sorry, Mortified And Remorseful, He Believed He Had Also Done Very Good, Productive, Beneficial And Meaningful Work For His Community. He Worked Fulltime As A Councillor And Enjoyed The Overwhelming Support Of His Community.

5.1.2. In His Letter To The Tribunal Dated 25 July 2006, Councillor Baccara Contended:

A) That Medical Evidence Was To Be Forthcoming.

B) It Was Over 14 Months Since The Complaints Were Made And That Period Of Time Had Been A Great Strain And Stress Upon Him. During That Time He Had Undertaken His Duties As A Councillor With Integrity Diligence And Without Cause For Concern To The Electorate And Fellow Members.

5.2. Case Tribunal's Decision

5.2.1. The Case Tribunal Considered All The Facts Of The Case And In Particular:

A) The Number And Nature Of The Breaches. There Were Three Breaches In All And The Case Tribunal Was Concerned That Each Related To A Separate Incident And Complainant. Breaches Of Paragraphs 4(A) 6.1(A) And 6.1(B) Are Viewed With Seriousness And Can In Certain Circumstances Merit A Disqualification Or A Suspension. In This Case, In View Of The Number And Nature Of The Alleged Breaches, The Ombudsman Cast Doubt On Councillor Baccara's Fitness To Serve In The Office Of Member. The Case Tribunal, However, Had Additional Relevant Information, Which Was Not Available To The Ombudsman Or His Investigating Officers.

B) The Considerable Number Of Letters In Support Of Councillor Baccara And Testimonials For Him Received From A Broad Cross-Section Of The Public. Some Twenty Letters Were Received In All And These Spoke Very Highly Of Councillor Baccara, Of His Hard Work And Dedication And Expressed The Wish That He Should Continue As A Councillor. He Is Evidently Much Valued And Respected By His Constituents, His Fellow Councillors And Generally.

C) The Information Given By Health Professionals. These Support Councillor Baccara's Submissions As To His Health At The Time Of The Breaches And The Current Situation.

D) Councillor Baccara's Submissions In Mitigation. The Case Tribunal Accepted That At The Time These Breaches Were Committed, He Was Unwell And That His Medical Condition Affected His Judgement And Conduct. The Case Tribunal Also Accepted That This Is The Link Between These Breaches In An Otherwise Unblemished Career As A Councillor. Credit Is Given For Councillor Baccara's Apologies, Remorse And Contrition And For All His Efforts To Accept And Address His Medical Condition With A View To Full Recovery And Also His Efforts To Put Safeguards In Place Against Any Situation Which Might Give Rise To Any Further Complaints. The Case Tribunal Also Accepted That The Matter Has Been Ongoing



For Some Time And That The Investigations And The Tribunal Proceedings Have Been Stressful For Councillor Baccara.

E) Councillor Baccara's Co-Operation With The Tribunal.

F) The Case Tribunal's Function To Uphold Standards In Public Life. In This Respect, The Case Tribunal Would Have Considered A Lengthy Suspension Or A Period Of Disqualification If It Were Not For The Overwhelming Mitigating Factors.

5.2.2. The Case Tribunal, Therefore, Concluded By Unanimous Decision That Councillor Baccara Should Be Suspended From Acting As A Member Of The Relevant Authorities For A Period Of Two Months Or, If Shorter, The Remainder Of His Term Of Office.

5.2.3. Rhondda Cynon Taf County Borough Council, Llantrisant Community Council And The Relevant Standards Committee Are Notified Accordingly.

5.2.4. 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.....  
2006...

Date...13 September

Helen Cole

Chairperson Of The Case Tribunal

Colin Evans

Panel Member

Juliet Morris

Panel Member