

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/007/2006-07/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE
CODE OF CONDUCT**

RESPONDENT: Councillor David Sylvester

RELEVANT AUTHORITY(IES): Sully 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 The Case Tribunal met at 12.00 on Wednesday 24 October 2007 at the Ramada Swansea Hotel, Phoenix Way, Swansea. In accordance with the Respondent's wishes, and in exercise of its powers under the relevant regulations, the Case 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 16 February 2007, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr David Sylvester. The allegations were that Cllr Sylvester had breached Sully Community Council's code of conduct by attempting to gain a fellow councillor's support through unpleasant bullying tactics and so failing to show respect and consideration for that councillor; and that he behaved in a manner likely to bring the office of member into disrepute.

2.2 The Councillor's Written Response to the Reference

2.2.1 In a letter to the Adjudication Panel for Wales dated 9 May 2007, Cllr Sylvester's solicitor confirmed that Cllr Sylvester accepted that:

- i. he failed to show respect and consideration for Cllr Malcolm Davies, as required by paragraph 4(a) of the Council's code of conduct; and
- ii. by accepting that fact, Cllr Sylvester also accepted that he behaved in a manner which could have brought the office of member into disrepute, contrary to paragraph 6(1)(b) of the code.

2.2.2 In commenting on the Ombudsman's report in that letter, Cllr Sylvester's solicitor asked the Case Tribunal to accept Cllr Sylvester's proposition that a telephone call which he was alleged to have made to Cllr Davies did not take place. He submitted that if a telephone call had taken place, it was questionable why Cllr Sylvester would then commit his thoughts to writing. There was no mention of the telephone call in the subsequent letter that he sent to Cllr Davies on 30 September 2005. Cllr Sylvester did, however, accept that the letter was misjudged and inappropriate.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman submitted further written representations as an attachment to an electronic mail message dated 3 August 2007.

2.3.2 In those representations, the Ombudsman submitted that there was significant indirect evidence that the telephone call between Cllr Sylvester and Cllr Davies took place. The Ombudsman invited the Case Tribunal to consider the following facts:

- i. In his initial written response to the allegation to the Ombudsman dated 5 January 2006, Cllr Sylvester made two references to a telephone call to Cllr Davies, in which he referred to HM Inland Revenue and Customs in the context of a certain payment.
- ii. Cllr Davies made a written account of the telephone call soon after it took place, namely, in his letter and allegation form dated 5 October 2005.
- iii. Cllr Sylvester's letter of 30 September 2005 contained references to the "£200 owed to the club..." and the "paid commission of £30".
- iv. At interview, Cllr Sylvester simply said that he was unable to recall the telephone conversation; he did not say that it did not take place. In commenting on the draft factual part of the Ombudsman's report, he did not refer to the telephone call at all and did not challenge Cllr Davies' version of events.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following **undisputed** material facts:

3.1.1 At the material time, Cllr Sylvester was a member of Sully Community Council. He was also a member of the Council's Playing Field Working Group and Chairman of Sully Centurions Cricket Club.

3.1.2 Cllr Sylvester gave a written undertaking to observe the Council's code of conduct on 22 June 2004.

3.1.3 At the material time, Cllr Malcolm Davies was also a member of Sully Community Council.

3.1.4 On 30 September 2005, Cllr Sylvester wrote a personal letter to Cllr Malcolm Davies.

3.2 The Case Tribunal found the following **disputed** material facts:

3.2.1 Cllr Sylvester did not accept that he made a telephone call to Cllr Davies at 9.45 am on 29 September 2005. Cllr Davies alleged that in the telephone call, Cllr Sylvester stated words to the effect that "unless he [Cllr Davies] withdrew his name from a motion to be put before the Community Council on 3 October 2005 he [Cllr Sylvester] would take steps to commence county court proceedings against him to recover £30 commission paid to him in respect of a sponsor of the cricket programme brochure whose cheque for £200 had not been honoured.' He also said that "he would report the commission payment to the Inland Revenue as a non-receipted transaction." Cllr Davies says that during the telephone call Cllr Sylvester was quite "aeriated".

3.2.2 The offer of a job in Cllr Sylvester's letter had to be seen in the context of a personal communication between friends.

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

3.3.1 When Cllr Sylvester was interviewed by the Ombudsman's Investigating Officer on 8 June 2006, he initially stated that he could not recall making a telephone call to Cllr Davies which involved a conversation concerning the forthcoming meeting of the Council, the dishonoured cheque, the Inland Revenue and the Cricket Club. He went on to admit mentioning the Inland Revenue during the course of a telephone call.

3.3.2 In a letter from Cllr Sylvester's solicitor dated 9 May 2007 the tribunal was asked to find that the telephone call and its content did not take place.

3.3.3 The Case Tribunal was satisfied as a matter of fact that the telephone call did take place and referred to all of the matters set out above. Cllr Davies documented the content and nature of the telephone call in a paper to be placed before the Council for consideration at its meeting on 4 October 2005. Cllr Davies also subsequently obtained a further cheque from the sponsor which he delivered to Cllr Sylvester's home. In his initial written response to the Ombudsman, Cllr Sylvester acknowledges that a telephone conversation took place between him and Cllr Davies in which mention was made of HM Inland Revenue and Customs.

The Tribunal is satisfied that Cllr Davies' version of events did in fact take place as Cllr Davies has stated in the evidence submitted to the Tribunal.

3.3.4 The Case Tribunal was satisfied that the letter sent by Cllr Sylvester to Cllr Davies concerned Council business and involved the inducement of a job offer.

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 Through his solicitor's letter of 9 May 2007, Cllr Sylvester confirmed that he accepted that he had failed to comply with Sully Community Council's code of conduct.

4.2 The Ombudsman's Report

4.2.1 It was contended that Cllr Sylvester attempted to gain Cllr Davies' support by unpleasant bullying tactics and, thus, failed to show respect and consideration as required by paragraph 4(a) of the code; and that Cllr Sylvester behaved in a manner likely to bring the office of member into disrepute, contrary to paragraph 6(1)(b) of the code.

4.3 Case Tribunal's Decision

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Council's code of conduct as follows:

4.3.2 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 for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others."*

4.3.3 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 or the authority into disrepute."*

4.3.4 The Case Tribunal found that Cllr Sylvester was in breach of both paragraphs 4(a) and 6(1)(b). The Case Tribunal accepted the Ombudsman's view that: "Councillor Sylvester's membership of the Cricket Club is a personal interest within the meaning of paragraph 14(a) of the code of conduct, given the cricket club's use of the recreation field and sports pavilion managed by the Community Council. The cricket club is also a "person" with whom Councillor Sylvester has a close personal association as mentioned in paragraph 7 of the code of conduct. Clearly, Councillor Sylvester was anxious to remain on the Playing Field Working Group and sought to lobby Councillor Davies and other members to support him.

He was entitled, within reason, to do so. Councillors are often keen to serve on particular committees of their Council, and may legitimately seek to persuade other Councillors to support them. However, I consider the nature of Councillor Sylvester's approaches to Councillor Davies, in both the telephone call and the letter, to be inappropriate and unethical. Councillor Sylvester has said that his letter was a private letter to a friend.....his only purpose in sending the letter was to persuade Councillor Davies to support him in remaining as a member of the Working Group. The letter thus clearly related to Councillor Sylvester's role as a councillor and the code of conduct therefore applied to it, and also the telephone call which Councillor Sylvester denies making.....he indicated his intention to sue Councillor Davies regarding the £30 commission paid to Councillor Davies for securing a sponsorship for the cricket club programme and also report him to the Inland Revenue unless Councillor Davies agreed to support him in remaining on the Working Group. Although the threats themselves may be thought to be trivial in substance, threats they clearly were. I can well understand that Councillor Davies found it unpleasant and upsetting to be threatened in this way. The offer of employment was also clearly linked to the question of Councillor Davies' support for the proposed motion, and in my view amounted to an inappropriate inducement which was again calculated to influence Councillor Davies' judgement in the matter. Furthermore, the final sentence of his letter to Councillor Davies implies benefits for himself, Councillor Davies and the Community Council if Councillor Davies "played ball".

4.3.5 The Case Tribunal shared the Ombudsman's view that Cllr Sylvester attempted to gain Cllr Davies' support by unpleasant tactics and bullying.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

5.1.1 In his written representations, Cllr Sylvester's solicitor contended that he had been a member of the Council for approximately 17 years. Virtually the whole of that time he had also been Chairman of Sully Centurions Cricket Club and a member of the Council's Playing Field Working Group. Everyone in the community and the council had always known of his involvement in these activities. It was expertise in relation to sport that led him to being a member of the Working Group. It was only because of internal wrangling with the Council that his role upon the Working Group was called into question.

5.1.2 Cllr Sylvester's intention was not one of self-interest, but to lend his expertise to the Playing Field Working Group, which he had done over many years. He had become a councillor in no way for personal gain, but in order to develop and promote the village of Sully. In his various roles, he had been Chairman of the Cricket Club when it had won the England and Wales Cricket Board Village Cup competition at Lords, which helped to promote Sully in a positive light.

5.1.3 In relation to the matters that he accepted were inappropriate, Cllr Sylvester offered his apology both to Cllr Davies and to the Case Tribunal for the nature of the comments that he had made and the offence that they had caused. He asked

that a degree of leniency be shown, in order that he could continue to serve the community in which he lived, taking on board the lessons learnt by this experience.

5.2 Case Tribunal's Decision

5.2.1 The Case Tribunal considered all the facts of the case and in particular the detailed and cogent submissions made on his behalf in his solicitor's letter dated 9 May 2007.

5.2.2 The Case Tribunal was aware of the outcome of Cllr Sylvester's appearance before the Vale of Glamorgan Council's Standards Committee on 18 October 2007 which resulted in his being suspended from being a member of Sully Community Council of a period of 3 months. The members of this Tribunal, in reaching their decision, took no account of those proceedings or of the penalty imposed by the Standards Committee.

5.2.3 The Case Tribunal concluded by unanimous decision that Cllr Sylvester should be suspended from acting as a member of Sully Community Council for a period of 6 months or, if shorter, the remainder of his term of office.

5.2.4 Sully Community Council and the Vale of Glamorgan Council Standards Committee are notified accordingly.

5.2.5 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...24 October 2007...

Mr Stewart Sandbrook-Hughes
Chairperson of the Case Tribunal

Mr Ian Blair
Panel Member

Ms Juliet Morris
Panel Member