

PANEL DYFARNU CYMRU ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/004/2007-08/CT

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

RESPONDENT: Former Councillor Ian Tuck

RELEVANT AUTHORITY(IES): Merthyr Tydfil 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 The Case Tribunal met at 10.30am on Friday 14 December at the Grand Hotel, Swansea. In accordance with former Cllr Tuck's wishes, 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 30 July 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 Tuck. The allegations were that then Cllr Tuck had breached Merthyr Tydfil County Borough Council's Code of Conduct in that:

- i. His behaviour at a fact-finding site visit by the Council's Planning and Regulatory Committee on 11 October 2006 could be reasonably regarded as bringing the office of member and the Council into disrepute.
- ii. He used his position as a member of the Planning and Regulatory Committee improperly to secure an advantage for himself and his father at the meeting on 11 October 2006 meeting.

- iii. At the meeting, the respondent did not adequately declare a personal interest and did not withdraw.

2.2 The Councillor's Written Response to the Reference

2.2.1 The Tribunal received an email from former Cllr Tuck dated 24 October 2007.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. FINDINGS OF FACT

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

3.1.1 At the material time, Cllr Tuck was a member of Merthyr Tydfil County Borough Council and its Planning and Regulatory Committee.

3.1.2 Cllr Tuck gave a written undertaking to observe the Council's code of conduct on 16 June 2004.

3.1.3 At the material time, Cllr Tuck lived at "Y Goedwig", Cardiff Road, Edwardsville, Treharris, CF46 5NB.

3.1.4 At the material time, Cllr Tuck's father owned land adjacent to Cllr Tuck's property at "Y Goedwig".

3.1.5 Cllr Tuck and his father had been involved in protracted and ongoing negotiations with Merthyr Tydfil County Borough Council on several planning issues relating to land and dwellings at, and adjacent to, "Y Goedwig" over a period of time.

3.1.6 Cllr Tuck was present, and declared an interest in relation to these planning matters, at a meeting of the Planning and Regulatory Committee on 27 September 2006.

3.1.7 Cllr Tuck was present at a site visit by the Planning and Regulatory Committee to inspect works to trees at or around "Y Goedwig" on 11 October 2007.

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

3.2.1 Whether Cllr Tuck had received training in the provisions of the code of conduct?

3.2.2 Whether the Chair of the Planning and Regulatory Committee asked for declarations of interest at the commencement of the site visit on 11 October 2007?

3.2.3 Whether Cllr Tuck understood his obligations in relation to the code of conduct at the site visit?

3.2.4 What in fact occurred at the site visit?

3.2.5 Whether Cllr Tuck's presence, actions and comments at the site visit amounted to a breach of the code of conduct?

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

3.3.1 All members of the Council received an induction pack when making their declarations of acceptance of office, which included a copy of the members' code of conduct. Cllr Tuck attended a briefing session on the code on 16 June 2004. When interviewed by the Ombudsman' Investigating Officer on 19 April 2007, Cllr Tuck accepted that he had attended a meeting in the Chief Executive's Suite. The Case Tribunal was satisfied that this meeting took place and was to explain the code of conduct.

3.3.2 The Agenda for the site meeting by the Planning and Regulatory Committee on 11 October 2006, at item 2, included 'Declarations of Interest'.

3.3.3 The Case Tribunal was not satisfied that a formal oral request for declarations of interests was made at the meeting.

3.3.4 Cllr Tuck submitted that he was confused as to his status at the meeting and believed that he was attending as a private individual. However, others present were clearly of the view that he was present in his capacity as a councillor. At interview, he acknowledged that he was wearing two hats: one as a private individual supporting his father; and second as the local member. The Tribunal was satisfied that on 3 prior occasions Cllr Tuck had declared an interest at Council meetings when appropriate. He therefore understood when it was necessary to make a declaration. It should have been apparent to him on 11 October 2006 that he should have declared an interest prior to commencement of the site visit.

3.3.5 The Tribunal found that at the site meeting the following occurred:

- i. In excess of 40 people attended the site meeting, including Cllr Tuck, his father and other Council members.
- ii. The site meeting commenced on the public highway adjacent to Cllr Tuck's father's land at Cardiff Road, Treharris.
- iii. Cllr Tuck and his father remained on their land.
- iv. The meeting was opened by Cllr D Games. After some time, Mr Graham Tuck invited the councillors and officers that attended the meeting on site to view the land.
- v. Cllr Tuck participated in the site meeting.

- vi. When the site meeting came to an end, Cllr Tuck appeared uncertain as to whether he should have declared an interest, because the visit involved his father's land.

3.3.6 The meeting was conducted in an open and participative manner with many people vociferously expressing their views. In attending the meeting, Cllr Tuck was under an obligation to declare an interest because it involved his father's land, which was subject to a number of planning applications. During the course of the meeting he took part in the site visit and in the latter part of the meeting told others he was unsure whether or not he should have declared an interest. Cllr Tuck was challenged during the course of the meeting as to his status, to which he replied that he was "wearing two hats".

3.3.7 Whether Cllr Tuck was present as a private individual or as a member of the Planning and Regulatory Committee he should have made his position clear at the outset of the meeting. By not doing so, the Tribunal was satisfied that he was present as a member of the Council. In not making the position clear, his behaviour was reprehensible.

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 These were made in former Cllr Tuck's email of 24 October 2007. He stated that the land in question belonged to his father not himself. He believed that he had a right to be present at meetings held at his home. He disputed whether the land in question was subject to Tree Preservation Orders. He contended that he did make a declaration of interest at the outset of the site meeting.

4.2 Case Tribunal's Decision

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

4.2.2 Paragraph 6(1)(b) of the Code of Conduct states "*[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.*"

4.2.3 Paragraph 7(a) of the Code of Conduct states "*[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.*"

4.2.4 Paragraph 16(2) of the Code of Conduct states "*A member who has a personal interest in a matter specified in paragraphs 13 or 14 above and 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. In such a case, that member must withdraw from consideration of the matter unless granted a dispensation by the relevant standards committee.”

4.2.5 The Tribunal was satisfied that Cllr Tuck had a personal interest which should have been declared at the site meeting on 11 October 2006, pursuant to paragraphs 11(a) and 13(f) of the code of conduct. He and his father had collectively made a multitude of planning applications, which in the long term would have benefited them both. His presence with his father would have been viewed as a demonstration of support for his father throughout the meeting. Cllr Tuck was in breach of paragraph 7(a) of the code of conduct in misusing his position as a member of the Planning and Regulatory Committee to secure an advantage for his father at the meeting.

4.2.6 The Tribunal was satisfied that he did not adequately declare his interest at the meeting and did not formally withdraw from the meeting and was in breach of paragraph 16(2) of the code of conduct. As a consequence of the findings above the Tribunal was satisfied that he was in breach of paragraph 6(1)(b) of the code by not making his position clear at the outset and by virtue of his participation throughout the site visit he brought the office of member and the Council into disrepute.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

5.1.1 Former Cllr Tuck contended that the Tribunal should take no action.

5.2 Case Tribunal's Decision

5.2.1 The Case Tribunal considered all the facts of the case and in particular the email dated 24 October 2007 and had at the forefront of their mind that former Cllr Tuck had resigned from office, had emigrated and had no desire to stand as a local government councillor or other public office.

5.2.2 The Case Tribunal concluded by unanimous decision that, taking into account the written submissions to the Tribunal received by email dated 24 October 2007, Cllr Tuck should be disqualified for 12 months from being or becoming a member of Merthyr Tydfil County Borough Council or of any other relevant authority within the meaning of the Local Government Act 2000.

5.2.3 Merthyr Tydfil County Borough Council and its 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.....

Date...14 December 2007...

Mr Stewart Sandbrook-Hughes
Chairperson of the Case Tribunal

Mr Colin Evans
Panel Member

Ms Juliet Morris
Panel Member