

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/005/2007-08/CT

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

**RESPONDENT:** Councillor Barry Owen

**RELEVANT AUTHORITY(IES):** Conwy 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 commencing at 10.00 am on Tuesday 11 March 2008 and continuing on Wednesday 12 March 2008 at the St Georges Hotel, Llandudno, Conwy. The hearing was open to the public.

1.3 Cllr Barry Owen attended and was assisted by Cllr Ronald Hughes.

**2. PRELIMINARY DOCUMENTS**

**2.1 Reference from the Public Services Ombudsman for Wales**

2.1.1 In a letter dated 24 October 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 Owen. The allegations were that Cllr Owen had breached Conwy County Borough Council's Code of Conduct by using his position improperly to assist his son and daughter-in-law in matters relating to a complaint against their neighbours, that he failed to show respect and consideration in his dealings with Council staff and attempted to compromise their impartiality, that he disclosed confidential information and that his behaviour brought the office of member of the authority into disrepute.

**2.2 The Councillor's Written Response to the Reference**

2.2.1 Cllr Owen denied the allegations and referred to his reputation for honesty, integrity and transparency. He stated that his family had not benefited from his involvement. He had always acted with utmost respect to all officers within the

Authority. He commented on a number of the paragraphs in the Ombudsman's report. He maintained that he had only had one telephone conversation with Deborah Dodd. He denied her version and stated that there were no credible witnesses to the conversation. Much of the information relied upon by Deborah Dodd came to her from Emyr Hughes. It was possible that the officer may have distorted information for his own reasons. He was critical of how the Authority had dealt with Family X. He said that Deborah Dodd's evidence may be affected by the fact she had a supervision role for Family X.

### **2.3 The Ombudsman's Written Representations**

2.3.1 In an attachment to an electronic mail ("e-mail") message dated 22 February 2008, the Ombudsman emphasised that he stood by the facts as outlined in his report. The fact that Cllr Owen's family had not benefited was not the central issue. Cllr Owen was using his position as a member to assist his family in getting the Council to rehouse Family X. Deborah Dodd's version of the telephone call was supported by a note made promptly. The Ombudsman responded to other points raised by Cllr Owen.

## **3. ORAL SUBMISSIONS**

3.1. The Case Tribunal heard oral evidence and/or submissions as follows.

### Ms Deborah Dodd

3.2.1 Ms Dodd gave evidence that she was employed by Conwy County Borough Council as a Housing Support Officer at the time. She was involved with providing support to Family X. The family were moved into a property adjacent to the home of Cllr Barry Owen's son and daughter-in-law. Ms Dodd had submitted a complaint to the Public Services Ombudsman for Wales on 19 July 2006.

3.2.2 Complaints had been made as to the conduct of Family X immediately after the family had moved in. She was aware from e-mails that Cllr Owen was contacting officers of the Council.

3.2.3 The only occasion when she spoke to Cllr Owen on the telephone was on 22 June 2005. She got back to the office and found a message from "Mr Owen" who she thought was Cllr Owen's son. On telephoning the number she discovered it was Cllr Owen. She prepared a typed note immediately after the conversation. She was upset by the tone of Cllr Owen. She felt that he had intimidated her and that his voice was raised during the telephone conversation. He had asked her personal details in respect of Family X and she had stated that she could not reveal any information due to confidentiality. The conversation lasted some 10 minutes. At the end of the conversation she was shocked. She does not often have dealings with elected members. There was a person in the office who could see that she was upset. She typed up a note of her recollection of the conversation immediately. Her colleague also typed up a small note.

3.2.4 She discussed it with her line manager and matters were referred to the Director of Social Care and Housing. A meeting took place the same day as to whether Ms Dodd was going to make a formal complaint. She decided against a formal complaint at that time and was reassured that an appropriate letter would be sent to Cllr Owen. She maintains that during the call Cllr Owen failed to show her respect and consideration, attempted to compromise her impartiality by asking for confidential information and used his position as a member improperly to secure an advantage for his family. She also believed that he had made improper use of the Council's resources (namely her time in dealing with his request for confidential information) for the benefit of his family.

3.2.5 She was aware of complaints regarding Family X made after 22 June by Cllr Owen to Council officials. For example, she recalls a complaint that the police had been called to the property when in fact it was only an ambulance. She received a telephone call on 13 October 2005 from Mrs X complaining that information had been revealed concerning letters of support for Family X which had been delivered to the Council. She became aware that this information may have been revealed at a seminar on the previous day.

3.2.6 Ms Dodd was also concerned that an elected member was making allegations against her. She had had no direct involvement in the collection of letters of support, but was present at one visit to the family home when a neighbour stated that not everybody wanted Family X evicted. This neighbour had stated that she wanted to start a petition or write a letter. Ms Dodd had commented that she could see no harm in that. She specifically denied that she had been the instigator of any of the letters of support. She wanted people to "back off" and "give Family X a chance". She was not aware that noise-monitoring equipment had been installed at the Owen family's home and had not tipped off Family X as to its installation, as was alleged by Cllr Owen. She had attended the home on 26 January 2006 in order to visit the children as her involvement with the family was coming to an end. She was upset at the allegations made against her by Cllr Owen.

3.2.7 Upon questioning on behalf of Cllr Owen, she accepted the only time she had spoken to Cllr Owen on the phone was on 22 June. There had been a brief meeting in the garden of the property. She denied being the instigator of any petition or letter. She had not gone to neighbours seeking letters of support. She had no knowledge of allegations against the family, which were maintained by Cllr Owen to be true. She had brought the complaint because she was concerned about allegations made against her and wanted a public retraction.

3.2.8 Deborah Dodd was re-called to clarify an issue arising from her typed note of 22 June 2005. She was adamant, notwithstanding that the note commenced "Telephone call received from Councillor Barry Owen", that she had returned to her office to find a note to ring Mr Owen and that the conversation arose when she had telephoned Cllr Owen. Her typed note was worded in such a way as to reflect the fact that he had prompted the telephone call by telephoning and leaving a message.

### Mr Emyr Hughes

3.3.1 Mr Hughes was an Estate Officer for Conwy County Borough Council. He manages Council properties within a particular area. His responsibilities include matters relating to anti social behaviour. He has known Cllr Owen for a number of years and they have enjoyed a good working relationship. Cllr Owen contacted him regarding allocations of property within his ward area. Emyr Hughes had a works mobile telephone number which was his only telephone during the relevant period. His mobile telephone number is available to ward members and work colleagues.

3.3.2 He was aware of the allocation of a property to Family X. He received his first telephone call from Cllr Owen whilst he was on holiday on 31 May 2005. Cllr Owen raised concern as to noise and nuisance at the property of Family X that was waking up Cllr Owen's grandchildren. The property was not within Cllr Owen's Ward.

3.3.3 He received a second telephone call on 7 June 2005. He wrote an e-mail which confirms that Cllr Barry Owen had complained about noise at 3.15 am at the property and states that his family were "at the end of their tether and if no action is taken by the Council they will take the law into their own hands". He received further telephone calls from Cllr Owen on 10 June and 13 June. He attended at the property on 10 June and spoke to Cllr Owen.

3.3.4 He was not aware of a letter being sent to Cllr Owen by the Deputy Monitoring Officer on 22 June 2005. He received further telephone calls on 6 and 18 July, and 12, 17 and 22 August 2005. These were telephone calls from Cllr Owen complaining about Family X and asking why Cllr Owen's family were not being supported. On 22 August 2005 Mr Hughes received a telephone call at 6.30 pm. Cllr Owen was agitated and said that his family had had enough and that he wanted Emyr Hughes to visit the family there and then. Mr Hughes agreed to telephone Cllr Owen's son. He felt he was being browbeaten. He did not mention this at the time. He felt that there was pressure on him to do something about the problems. Cllr Owen wanted immediate action and felt that his family were not getting any attention, in contrast to that being provided to Family X. Whilst he understood Cllr Owen's concern as a father and grandfather, Cllr Owen was putting pressure on him because he was an elected councillor.

3.3.5 Mr Hughes attended the seminar on anti social behaviour on 12 October 2005. In the afternoon the delegates broke up into working groups. Dave Wainwright, another Council employee was in his group. Cllr Barry Owen, together with Cllrs Evans and Squire were also in the group. Cllr Owen brought up Family X. Mr Hughes was surprised and shocked that a live case was being discussed. Cllr Owen mentioned that there was a substantial amount of letters opposing the tenancy. Dave Wainwright indicated that there were also letters of support for the family. Mr Hughes felt that Cllr Owen was undermining the efforts of officers. He spoke to Dave Wainwright about his concerns at the end of the meeting.

3.3.6 On 13 October Mr Hughes became aware that Mrs X was complaining that information as to letters of support had been released. Mrs X had assumed that Council officials had divulged this information. He assumed, given the coincidence of timing (i.e. the information released the next day after the seminar), that Cllr Owen had released this information. He did not have any direct evidence.

3.3.7 On 18 November he received a further telephone call from Cllr Owen making complaints as to the behaviour of Family X and in particular that the police and an ambulance had been called to the house. It later transpired that only an ambulance had been called. His e-mail which begins "Here we go again" probably refers to the fact that the matter is in relation to Family X. He believes there may have been other telephone calls between August and November 2005 but he had not made any record. He was concerned there appeared to be more activity in Mrs X's house including police involvement.

3.3.8 He received further telephone calls from Cllr Owen making complaint as to the conduct of Family X on 5 December 2005, 21 December 2005, 4 January 2006, and 30 January 2006.

3.3.9 Noise monitoring equipment was installed Cllr Owen's family's home in January. He was one of a limited number of people who knew that this exercise was being undertaken. No issues of concern arose from the noise monitoring exercise and the equipment was removed at the request of the Owen family. He was adamant that Cllr Owen in a telephone conversation on 15 February 2006 had accused Ms Dodd of "tipping them [Family X] off". It was a serious allegation to make and not appropriate for a person in an elected post. However, it was not for him as an employee to comment on the manner in which Cllr Owen behaved. Senior management had asked him whether he wished to complain about the out of hours calls. He did not wish to complain because he had to have a working relationship with Cllr Owen and did not want to make waves, but he felt that a complaint might have been justified.

3.3.10 In questioning, it was put to Mr Hughes that on 31 May 2005 Cllr Owen was in Aberystwyth. He recalled the telephone call to have been on the Tuesday. He refuted totally the suggestion that there was no conversation in the group at the seminar relating to Family X. He was adamant that Dave Wainwright had revealed the fact of there being letters of support in response to the statement by Cllr Owen. He had not seen the letters of support and could not comment on whether their existence was common knowledge.

3.3.11 He said that Cllr Owen had apologised for his error as to the name of one of the children of Family X. He stands in awe of councillors and had a good rapport with Cllr Owen. He saw no reason to put himself through the complaint procedures. It was true that others were concerned about him. He had sympathy for the position of Cllr Owen who was responding to a family issue.

3.3.12 Mr Hughes agreed with the sentiment in the letter from the Deputy Monitoring Officer to Cllr Owen that elected members "sometimes failed to fully appreciate the powerful position they occupy when dealing with members of staff and that staff at all levels within the Authority can feel easily intimidated by elected

members, even when the member indicates that he is acting in a personal capacity and not in their capacity as member”.

### Mr David Wainwright

3.4.1 In 2005 Mr Wainwright was the Area Housing Manager which included the ward in which Family X were allocated a tenancy.

3.4.2 He had no direct conversations with Cllr Owen as to concerns in respect of Family X's occupancy. He was aware from e-mails received that Cllr Owen was discussing the matter with other Council employees. Family X was a high profile case because there had been issues as to their initial allocation of Council property.

3.4.3 He attended a seminar on 12 October 2005 to discuss anti social behaviour. The seminar broke into working groups and he was in the same group as Emyr Hughes, Cllr Evans, Cllr Squire and Cllr Owen. There were also a number of tenants from various wards in the group. Cllr Squire asked Cllr Owen to comment on the case of Family X. He was surprised that live cases were being discussed. The seminar was not the place to discuss those concerns. He felt ambushed by Cllr Owen on the Family X issue. He stated that he would not answer questions of the nature Cllr Owen was putting to him. Cllr Owen stated that a number of persons had written giving evidence against Family X. He replied indicating the Council had also received letters of support for Family X. Cllr Owen appeared to be surprised. He felt harassed at the end of the group session and uncomfortable that Family X had been raised. He mentioned it to the Council's solicitor on leaving the seminar.

3.4.4 On the next day he received a call from Mrs X complaining that information had been disclosed as to letters of support at a meeting. She was very upset. He denied there had been any detailed disclosure. She stated that someone was walking round with a clipboard canvassing views and that it was now common knowledge that there were letters of support. Mr Wainwright felt upset at this information.

3.4.5 He was referred to e-mails where he had expressed concern that Cllr Owen was preventing the Council from effectively supporting the tenancy of Family X. He had mentioned that the family were not in Cllr Owen's ward, but that his interest was motivated by family connections. He had been told by others that Emyr Hughes was feeling distressed as to what was happening. He had asked Emyr Hughes whether he was prepared to continue with dealing with the Family X case.

3.4.6 Mr Wainwright was aware that there were concerns as to the initial allocation to Family X. Councillors had not been consulted prior to the allocation. He denied that the discussion as to letters of support in respect of Family X had been after the group session had concluded. He had disclosed the fact of letters of support in response to Cllr Owen's assertion that there were letters against the family. He did not disclose the names or addresses of any of the people who had written letters of support. Mr Wainwright had not liaised directly with the parties.

### Cllr Barry Owen

3.5.1 Cllr Owen maintained that he would often speak to Council official, Mr Emyr Hughes outside office hours. There would be discussions on general matters and he would on occasions raise issues relating to his son and daughter-in-law. He never had a complaint from Emyr Hughes that he was telephoning him. He had received training on the Code of Conduct. He was aware of the Officer/Member Protocol and had never had any strong words with any officers of the Council.

3.5.2 His telephone records indicated that he had telephoned Mr Hughes on 1 June 2005 and not on 31 May 2005. The conversation was at 21.06 and had lasted 44 seconds. He believes that he left a message. He was in Aberystwyth with his grandchildren on 31 May 2005.

3.5.3 Cllr Owen had spoken to Emyr Hughes on 7 June 2005 and the conversation according to his telephone records lasted 7 minutes. He denied the version of the telephone conversation as noted in Emyr Hughes's e-mail of 7 June, namely that if the Council did not take action "they will take the law into their own hands". He would never use such a phrase but accepted that if it had been said it could amount to harassment. He accepted that he had telephoned Emyr Hughes on both 10 and 13 June 2005. He could well have said that his family were the victims. He had been present at the property when Emyr Hughes had attended on 10 June. He did not threaten to "bypass a Council official" during the telephone conversation of 13 June. His telephone records showed that he had initially telephoned Emyr Hughes at 9 am on 13 June, but was unable to speak to him. He telephoned him back at 9.30 am and spoke to him for 2 minutes. He has never been disrespectful of any officers.

3.5.4 He spoke to Deborah Dodd on 22 June 2006. His recollection was that he telephoned her after his son had spoken to him. His son was not satisfied with the position. His main concern was to ensure that a phrase used by one of the children should not cause his own family concern. He may have mentioned that he had stayed at the property one evening and that it was quiet. He may have suggested that it was quiet due to the involvement of another Council agency. He did ask whether his family should be concerned about Family X. He stated that Ms Dodd "was sitting on the fence". He viewed it as a normal conversation and had no reason to believe that Deborah Dodd would be upset by the telephone call. He disputed the version of the telephone call put forward by Deborah Dodd and disputed also her typed note of the conversation. He did not believe his family in any way had benefited by his actions. He just wanted Council officials to know what was going on. He had in other cases sought to request action from Council officials. He has never spoken badly to any officer of the Council.

3.5.5 Cllr Owen accepted that he had received a letter from the Deputy Monitoring Officer reminding him of the Code of Conduct and of the Officer/Member Protocol. He denied however that he had ever bullied or harassed any Council official. He had invited the Council to refer the matter to the Standards Committee or the Ombudsman. The response he had received was that the Council official did not wish to pursue a complaint.

3.5.6 Cllr Owen accepted that there were a number of subsequent telephone calls to Emyr Hughes as outlined in his evidence. He did not recall telling Emyr Hughes on 22 August 2005 that he needed to “go and sort matters out there and then”. He would rather think that he was telephoning Emyr Hughes as a friend. He felt that he had a rapport with Emyr Hughes. He was getting frustrated with the position. He would attend his son’s property most evenings to see his grandchildren. His son was capable of telephoning the Council to make complaint, but he felt he could get a quicker response. As a councillor he had an opportunity of phoning direct. He would hope that he had not put Council officials under pressure. He accepted that he had made a wrong assumption as to an incident involving the identity of the daughter of Family X. He had telephoned Emyr Hughes back to apologise. He disputed however the summary of the telephone conversation for 21 December 2005. His son and daughter-in-law at that time had lost all faith in the Council and were looking to sell their property. He did not demand to know from Emyr Hughes how much the Council’s involvement with Family X had cost. If he had asked he accepted that it would amount to harassment of an official.

3.5.7 He found it a significant coincidence that noise-monitoring equipment was installed on the same day as a letter had been received from the Ombudsman’s office indicating an investigation of maladministration on the part of the Council. He denied accusing Deborah Dodd of “tipping off” Family X as to noise monitoring. He disputed the evidence of Emyr Hughes on this point.

3.5.8 He attended the seminar on 12 October 2005. Family X was not mentioned in the group discussions. There was a short conversation at the end of the seminar as to letters of support. He did not inform his family that there were letters of support in favour of Family X. It was common knowledge as to their existence. He denied his conduct amounted to a breach of the Code of Conduct.

3.5.9 Cllr Owen was re-called to give evidence where he confirmed his recollection was that he had telephoned Deborah Dodd and spoken to her direct on 22 June 2005. He did not have telephone records for that date and believed that he may have made the call from a landline.

#### Cllr Michael Priestley

3.6.1 Cllr Priestley gave evidence as to the good works carried out by Cllr Barry Owen. He had never witnessed Cllr Owen dealing with officers of the Council in any abusive manner. Cllr Priestley would telephone Council officials out of hours. He recalls telephoning one officer when he was on leave. Upon questioning he stated that if he dealt with a matter involving his family he would take advice from Council officials. He would not get involved if it was contentious or a breach of the Code. It was put to him that one of the phrases used by Cllr Owen was that if the Council did not act people would “take the law into their own hands”. He did not want to comment on that phrase but he would not say it to an officer.

#### Cllr John Maclennan

3.7.1 Cllr Maclennan queried why the case had been brought against Cllr Barry Owen. As councillors, they are expected to represent anyone without fear or

favour. Cllr Owen, in his view, would have reacted the same way for anybody including his family. Cllr Owen was asked not to be present at a particular meeting as it related to his family. Cllr Maclennan was aware that Cllr Owen was telephoning the Council but not individual officers in respect of his son. He maintained Cllr Owen would always attempt to get a resolution of problems irrespective of whether it involved his family. Cllr Maclennan would telephone Council officials outside of hours.

3.7.2 Letters of support for Cllr Barry Owen were admitted by the Case Tribunal from Denise Idris Jones and Cllr Bob Squire.

### Cllr Barry Owen

3.8.1 Cllr Owen made the following oral submissions.

3.8.2 It was submitted there was no case for Cllr Owen to answer. Deborah Dodd chose not to make an initial complaint. There was only one telephone conversation with her on 22 June. The letter from the Council subsequently indicated she did not wish to make a complaint. Four or five people work with Deborah Dodd and it was strange that the only person who was willing to make a statement in support was a person who is not now in the Country. It was submitted that it was extremely strange that nobody else had heard the conversation of 22 June 2005.

3.8.3 Subsequent events prove that the Council should have taken action against Family X earlier.

3.8.4 There was evidence that Deborah Dodd had approached residents with regard to letters of support. There was no contact between Cllr Owen and Deborah Dodd from 22 June to the date of the complaint.

3.8.5 Emyr Hughes and Cllr Owen were friends. This was the reason for regular contact.

3.8.6 Neither Cllr Owen nor his family had gained by his actions. Cllr Owen had not put any pressure on the Housing Officer as decisions were made at a higher level.

3.8.7 It was submitted that no information was revealed at the Housing Seminar. Any discussion was not in the group session but at the end of the seminar. The letter from Cllr Squire confirmed no discussion had taken place.

3.8.8 Cllr Owen felt that people were putting pressure on Council officials to make complaints.

3.8.9 In addition to considering the Code of Conduct consideration should also be given to a "Code of Common Sense". Cllr Owen was in an invidious position trying to do the best for his family. He felt extremely frustrated at the lack of support provided to his family. He was being made a scapegoat.

Ms Catherine Crompton, representing Public Services Ombudsman for Wales

3.9.1 The report contained the evidence as to the facts of the case. The Ombudsman stands by the points as to the issues and facts outlined in the report. There were however points of clarification.

3.9.2 There is a note made immediately by Deborah Dodd regarding the telephone conversation of 22 June 2005 (page B92). There is also a note of a colleague. The Case Tribunal should give appropriate weight to those notes.

3.9.3 Deborah Dodd confirmed that she was not involved in soliciting letters of support (page B406). She also confirmed this point in evidence. Deborah Dodd had also outlined (B171) the reasons why she had not pursued a complaint immediately. She was not party to the subsequent correspondence sent by the Monitoring Officer. The role of the Ombudsman was to consider actions taken by Cllr Barry Owen and not other issues relating to the management of the tenancy.

3.9.4 Emyr Hughes had given evidence as to the effect of the pressure that was undoubtedly put upon him by Cllr Owen. Cllr Owen had access to Emyr Hughes as a result of being an elected member. In his statement he confirmed that he had not volunteered information as to Family X as suggested by Cllr Owen. Clear evidence was given by David Wainwright of his recollection of the events at the seminar and that he felt ambushed by Cllr Owen. E-mails were written contemporaneously and his account of the seminar was written up within 24 hours. Cllr Squire, in his letter, indicated that he could "not recall" the matter being raised at the seminar. The Ombudsman would submit it was reasonable to infer from the evidence as to events at the seminar and the response of Mrs X on the following morning that information had been released by Cllr Owen. Cllr Owen, in the view of the Ombudsman, had told family members following the seminar as to the letters of support.

3.9.5 As to the noise monitoring issues, at interview, Cllr Owen had stated that he felt it was a coincidence that the equipment was installed the same day as the Council was notified of the Ombudsman's decision to investigate a complaint. Cllr Owen, in his interview, stated that he had seen Deborah Dodd's car outside the property. He stated in interview that if he had made such a comment that it was in a flippant way.

3.9.6 There was plenty of evidence that Cllr Owen's fellow councillors had advised him not to become involved in matters relating to his family.

#### **4. FINDINGS OF FACT**

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

4.1.1 Cllr Owen was an elected member for the Marl ward of Conwy County Borough Council at the material time.

4.1.2 Cllr Owen gave a written undertaking to observe the Council's code of conduct on 14 June 2004.

4.1.3 Cllr Owen's son and daughter in law (referred to in the Ombudsman's report as "Mr and Mrs O") owned and occupied a property in the Pensarn ward area of the Council.

4.1.4 In May 2005, the Council allocated the tenancy of the semi-detached property adjoining that of "Mr and Mrs O" to a family referred to in the Ombudsman's report as "Family X".

4.1.5 Between June 2005 and February 2006, Cllr Owen was in contact with various officers and members of the Council regarding "Family X's" occupancy of their property and its impact on his son's family.

4.1.6 Cllr Owen attended a seminar on antisocial behaviour on 12 October 2005.

4.2 The Case Tribunal identified at the directions hearing the following **disputed** material facts:

4.2.1 Whether Cllr Owen's contact with officers of the Council during this time amounted to harassment.

4.2.2 Whether Cllr Owen attempted to compromise the impartiality of officers of the Council in the way in which they were dealing with "Family X" and related complaints.

4.2.3 Whether Cllr Owen disclosed to a third party information of a confidential nature, including information obtained at the seminar on antisocial behaviour on 12 October 2005.

4.2.4 Whether Cllr Owen accused Ms Dodd of alerting "Family X" to the installation of noise monitoring equipment in the home of "Mr and Mrs O".

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

4.3.1 The Case Tribunal limited its findings of facts specifically to its remit, which is the consideration of the complaint against Cllr Barry Owen. The Case Tribunal is not making any findings of facts as to Family X or the administration of any tenancy by Conwy County Borough Council.

4.3.2 Cllr Owen contacted council officials by telephone on the following dates to discuss issues relating to his son and daughter-in-law and Family X:

31 May 2005

7, 10, 13 and 22 June 2005

6 and 18 July 2005

12, 17 and 22 August 2005

18 November 2005

5 and 21 December 2005

4 and 30 January 2006

8 February 2006 (B221) – telephoned Deputy Monitoring Officer to relay information.

15 February 2006 (B186)

4.3.3 In coming to the above findings the Case Tribunal relies upon the written evidence of Emyr Hughes, Deborah Dodd and Iwan Davies. The Case Tribunal also relies upon the statements of Cllr Owen and the contents of e-mails written at the time. The Case Tribunal is satisfied, based upon evidence of Emyr Hughes, that the first call was made by Cllr Owen on 31 May 2005.

4.3.4 Many of the telephone calls were outside office hours. All of the telephone calls, save for the calls on 22 June 2005 and 8 February 2006, were telephone calls between Cllr Owen and Emyr Hughes the Estates Officer.

4.3.5 The telephone calls were made by Cllr Owen in his role as an elected member. The Case Tribunal relies upon the evidence of Emyr Hughes, Deborah Dodd and Cllr Owen in coming to this finding. The Case Tribunal notes the admission by Cllr Owen that he was telephoning as an elected member. His evidence to the Case Tribunal was that he had direct access to officials because he was an elected member. Cllr Owen also accepted this fact during his interview with the Ombudsman (B262).

4.3.6 The Case Tribunal was satisfied that the Deputy Monitoring Officer of Conwy County Borough Council sent a letter on 22 June 2005 to Cllr Barry Owen warning him as to his conduct. The letter emphasised the powerful position that elected members occupy when dealing with members of staff and that staff can feel easily intimidated by elected members.

4.3.7 The Case Tribunal found that Cllr Owen replied by a letter dated 5 July 2005 taking exception to the allegation and inviting a referral to the Ombudsman.

4.3.8 The Council responded on 8 July stating that the officer did not intend to make a formal complaint. The Case Tribunal accepts the evidence of Deborah Dodd. She did not wish to pursue the matter further at that stage on the basis of the assurance that a letter had been sent warning Cllr Owen as to his conduct.

4.3.9 The letter of 8 July did not, in the view of the Case Tribunal, release Cllr Owen from his obligations to comply with the Code of Conduct.

4.3.10 The letter of 8 July 2005 did not prevent Deborah Dodd or any other party from making a complaint at a later date.

4.3.11 The Case Tribunal found that Cllr Owen had failed to acknowledge or show any insight into his conduct up to and including 22 June 2005. The Case Tribunal found that Cllr Owen's conduct in contacting elected officers had continued beyond the date of the letter.

4.3.12 It is necessary for the Case Tribunal to make certain findings on the contents of specific calls:

- a) 7 June 2005 – The Case Tribunal finds that Cllr Owen stated in the telephone call that his family was at the end of their tether and that, if no action was taken by the Council, people will take the law into their own hands. In his evidence to the Case Tribunal, Cllr Owen had denied that this was what was said. However, in his interview with the Ombudsman (B263), Cllr Owen accepted that this may have been the gist of the telephone call. Emyr Hughes had been consistent in his recollection and his evidence is supported by an e-mail which he sent within 30 minutes of the conversation on 7 June 2005 (B85).
- b) 13 June 2005 – Cllr Owen by his own admission was seeking to contact Emyr Hughes at 9.00 am on a Monday morning. The Case Tribunal finds that a telephone conversation subsequently took place at approximately 9.30 am. During this conversation Cllr Owen threatened to circumvent an official of the Council. The Case Tribunal prefers the evidence of Emyr Hughes on this point. Emyr Hughes is supported by an e-mail sent within an hour of the telephone conversation. The Case Tribunal finds it inconceivable that Emyr Hughes would fabricate such evidence.
- c) 22 June 2005 – The Case Tribunal finds that a telephone conversation between Deborah Dodd and Cllr Owen took place on this date. Cllr Owen, on his own admission, accepted that he had initiated the telephone call to Deborah Dodd. The telephone call was in respect of Family X. Deborah Dodd was aware that in addition to Cllr Owen being an elected member he was the father/father-in-law of neighbours to Family X. The Case Tribunal prefers the evidence of Deborah Dodd as to the contents of the telephone call. A note of the conversation she typed the same day supports her. She was consistent in her evidence as to the content of the call. A note from a work colleague confirms a conversation took place and what was said in part by Deborah Dodd. The work colleague has not been called to give evidence and therefore has little evidential value. The Case Tribunal however is satisfied that:
- i. Cllr Owen adopted a hostile attitude to Deborah Dodd.
  - ii. Cllr Owen asked Deborah Dodd to release confidential information.
  - iii. Deborah Dodd was upset at the end of the telephone conversation.

Deborah Dodd was so concerned at the end of the conversation that she met with Bethan Jones, Director of Social Services and Housing. Bethan Jones confirms this in a witness statement. Deborah Dodd confirmed on the same day that she felt under pressure from Cllr Owen.

- d) 22 August 2005 – This was a telephone call made outside office hours by Cllr Owen to Emyr Hughes. Emyr Hughes is consistent in his evidence that Cllr Owen demanded he contact his son “there and then”. This, in part, is supported by a note of a telephone conversation which Deborah Dodd had with Emyr Hughes (B118) on the same evening. Cllr Owen in his evidence and in his interview with the Ombudsman (B326/327) was evasive as to

whether he had attended his son's property, had taken the telephone from his son whilst he was talking to Emyr Hughes and put the telephone down. The Case Tribunal prefers the evidence of Emyr Hughes that, whilst talking to Cllr Owen's son, Cllr Owen took the phone from his son, shouted at Emyr Hughes and abruptly brought the call to an end.

- e) 15 February 2006 – Emyr Hughes gave evidence that during this telephone call Cllr Owen accused Deborah Dodd of “tipping off” Family X as to the installation of noise monitoring equipment. There is no contemporaneous note. However, Emyr Hughes has been consistent and credible that Cllr Owen made this statement. He conveyed this allegation to Deborah Dodd who noted it in a letter, 2 days later. Cllr Owen did acknowledge in his interview with the Ombudsman that he may have said that he saw Deborah Dodd's car at the property on the relevant date. He stated that it was a flippant remark. However, Emyr Hughes is adamant that it was a substantive accusation. The Case Tribunal finds that on 15 February 2006 Cllr Owen accused Deborah Dodd of informing Family X as to noise monitoring equipment. This was an accusation made in a telephone conversation between Cllr Owen and Emyr Hughes.

4.3.13. The Case Tribunal finds that Cllr Owen was warned not to contact Council officials directly on matters relating to his family. The occasions included:

- i. The telephone call in June 2005 from Iwan Davies to Cllr Owen.
- ii. The letter from Iwan Davies dated 22 June 2005, which was written by Mr Davies in his capacity as Deputy Monitoring Officer.
- iii. Cllr Ronnie Hughes (B223) asked Cllr Owen to avoid direct involvement because of the close family connection. Cllr Hughes stated that Cllr Owen should use other councillors to assist.
- iv. Cllr McLennan had asked him not to attend meetings on the issue and was concerned that Cllr Owen had contacted Emyr Hughes and Deborah Dodd (B234).
- v. Cllr Phillip Evans had advised Cllr Owen to ask another councillor to deal with the matter because of “obvious difficulties he had in terms of the Code of Conduct”.

4.3.14 The Case Tribunal rejects the submission by Cllr Owen that his discussions with Emyr Hughes were general in nature. The Case Tribunal finds on the dates noted that Cllr Owen deliberately contacted Emyr Hughes as an elected member, and on 22 June 2005 Deborah Dodd, in order to bring pressure to bear upon them as Council officials over issues relating to his family.

4.3.15 The conduct of Cllr Owen was a persistent course of conduct over 6 months intended to bring undue pressure upon Council officials.

4.3.16 Whilst the Case Tribunal acknowledges Cllr Owen's primary motivation appertained to the welfare of his family, this fully clouded his judgement as to his duties under the Code of Conduct. He was blind also to the effect that his conduct was having upon Council officials. Any reasonable person would have been aware

of the effects of such conduct upon those employees. His conduct amounted to harassment of Council officials.

4.3.17 By his actions Cllr Owen sought to compromise the impartiality of officers of the Council. It is irrelevant that his family did not gain by his interventions. His purpose in contacting the officers was to obtain immediate action in relation to his son and daughter-in-law, who were direct neighbours of Family X.

4.3.18 The Case Tribunal finds the following in respect of the seminar held on 12 October 2005:

- i. Cllr Owen was present in a discussion group containing also Cllrs Squire and Phillip Evans, Emyr Hughes and Dave Wainwright. The case of Family X was introduced during the group discussions. As a result of comments made by Cllr Owen, Dave Wainwright revealed that there had been letters of support for Family X. He did not reveal any names. The information revealed was confidential information.
- ii. Family X complained on 13 October 2005 that there had been disclosure of the fact of letters of support.

4.3.19 Whilst Emyr Hughes and Dave Wainwright differed on the precise juncture at which mention was made of Family X, they were consistent that mention of Family X took place during the working group. Dave Wainwright had revealed the fact of letters of support in response to a comment by Cllr Owen. Emyr Hughes and Dave Wainwright were consistent throughout on this point. There were others present at the group who were apprised of this information. Cllr Owen denied revealing information from the seminar to his family. There is a strong coincidence that issues arose early the following morning in respect of the letters of support. However the Case Tribunal finds, on a balance of probabilities, insufficient evidence to satisfy itself that Cllr Owen had disclosed confidential information.

4.3.20 The Case Tribunal gave consideration to the denial of events at the seminar by Cllr Owen. Whilst this conflicted with the Case Tribunal's findings as to the timing of the disclosure of information, it is not sufficient for the Case Tribunal to draw the inference that Cllr Owen's denial of release of confidential information to his family was proved on a balance of probability.

## **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 There were no submissions by Cllr Owen in respect of whether findings of fact amounted to breach of the Code.

## **5.2 The Ombudsman's Report**

5.2.1 The Ombudsman had no further submissions to those contained in his report.

## **5.3 Case Tribunal's Decision**

5.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was not a failure to comply with Conwy County Borough Council's code of conduct as follows:

5.3.2 Paragraph 5(a) of the Code of Conduct states "*[Members:] must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so.*"

5.3.3 The Case Tribunal found that there was insufficient evidence to substantiate the allegation of a breach.

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

5.3.5 Paragraph 4(a) of the code of conduct states "*[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, religion or social class and show respect and consideration for others.*"

5.3.6 The Case Tribunal found that Cllr Owen failed to show respect and consideration for others. His persistent conduct in dealings with council officials amounted to harassment.

5.3.7 Paragraph 4(b) of the code of conduct states "*[Members of the authority:] must not do anything which compromises, or which is likely to compromise, the impartiality of the authority's employees.*"

5.3.8 The Case Tribunal found that Cllr Owen, by his actions, sought to compromise the impartiality of the authority's employees in relation to Family X.

5.3.9 Paragraph 6(1)(b) of the Code of Conduct states "*[Members:] must not in their official capacity or in private life behave in a manner which could be reasonably regarded as bringing the office of member or the authority into disrepute.*"

5.3.10 The Case Tribunal found that Cllr Owen, by the accumulative nature of his dealings with council officials and the making of a false allegation regarding a council official as to the installation of equipment in a property, had brought the office of member into disrepute.

5.3.11 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 an advantage or disadvantage”.

5.3.12 The Case Tribunal found that Cllr Owen had improperly promoted, as an elected member, the interests of his own family.

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

### **6.1 The Respondent’s Submissions**

6.1.1 It was submitted on his behalf it was difficult to distinguish between acting as a concerned father or as a councillor. Cllr Owen apologised to Emyr Hughes if he had caused him distress. Since the allegations were made Cllr Owen has acted as Vice Chair of the Licensing Committee. His conduct should be viewed as an isolated event. His judgement was clouded because of family involvement. Character evidence had been presented. He is a Chair of Governors. He has represented his community since 1999. He regrets his actions and will provide every assurance that it will not occur again.

### **6.2 Case Tribunal’s Decision**

6.2.1 The Case Tribunal considered all the facts of the case and in particular it noted that it could impose the following sanctions:

- a) A reprimand
- b) Suspension or partial suspension up to 12 months, or
- c) A disqualification up to 5 years.

6.2.3 The allegations were serious allegations that included harassment of Council officials. Cllr Owen’s conduct compromised the impartiality of Council employees. Council employees have an extremely difficult task in dealing with members of the public. The duties and responsibilities of Council officials were hindered in this case by the conduct of Cllr Owen.

6.2.4 The Case Tribunal noted Cllr Owen’s apology to Emyr Hughes, but did note the lack of any apology to Deborah Dodd.

6.2.5 The Case Tribunal gave serious consideration to disqualification. There exist aggravating features which could have justified disqualification. Those included:

- i. An attempt to provide gain for his family.
- ii. The blatant disregard of advice given to him.
- iii. The serious undermining of Council officials.
- iv. Persistent breaches of the Code.
- v. His failure to acknowledge the effects of his criticism on Deborah Dodd.
- vi. Lack of insight into the effect of his conduct and its effect in undermining officials, in particular Deborah Dodd.

6.2.6 The Case Tribunal gave regard also to mitigating factors which included:

- i. Good record of service of Cllr Owen to the community.
- ii. No record of other breaches.
- iii. No suggestion of financial gain.
- iv. The dilemma he faced, which included concern as to his family, notwithstanding the advice given to him (and which he should have heeded) to allow other councillors to raise his family's concerns.
- v. The complaints and issues in the case have been hanging over Cllr Owen since July 2006.

6.2.7 The Case Tribunal also has to have regard to the fact that a disqualification at this point in time would result in Cllr Owen not being able to stand as a councillor in the forthcoming elections. The effect of this would be consistent with a disqualification for 4 years. In the view of the Case Tribunal this would be a disproportionate penalty.

6.2.8 The Case Tribunal, having regard to all the factors, concluded by unanimous decision that Cllr Owen should be suspended from acting as a member of Conwy County Borough Council for a period of 12 months or, if shorter, the remainder of his term of office.

6.2.9 Conwy County Borough Council and its Standards Committee are notified accordingly.

6.2.10 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.....  
Mr Hywel James  
Chairperson of the Case Tribunal

Date...15 April 2008....

Mr Ian Blair  
Panel Member

Ms Juliet Morris  
Panel Member