

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2008-09/CT

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

RESPONDENT: Councillor Nigel Daniels

RELEVANT AUTHORITY(IES): Blaenau Gwent 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 10.00am on Monday 11 May and continuing on Tuesday 12 May 2009 at The Holiday Inn Hotel, The Coldra, Newport. The hearing was open to the public.

1.3 Cllr Daniels attended and was represented by Andrew Campbell, Solicitor, BEHR & Co Solicitors, Brynmawr, Blaenau Gwent.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 10 February 2009, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Daniels. The allegations were that Cllr Daniels had breached Blaenau Gwent Borough Council's Code of Conduct by failing to show respect and consideration towards an officer of the Council; that he did something which compromised, or which was likely to compromise the impartiality of an employee of the Council; and behaved in a manner which could be reasonably regarded as bringing the office of member into disrepute during a portfolio meeting.

2.1.2 At the material time, Cllr Daniels was Deputy Leader of the Council and had executive responsibility for Governance and Resources. An officer of the Council (Tracey Jukes) alleged that Cllr Daniels failed to observe the Council's relevant code of conduct when he "bullied and intimidated" the officer during a telephone call on 17 April 2007, at a portfolio meeting on 18 April 2007 and at a further

meeting on 25 April 2007. The Ombudsman's report identified occasions other than the above dates on which Cllr Daniels may have failed to comply with the code of conduct. This was presented as contextual evidence of a pattern of conduct contrary to the code.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Daniels' Solicitor, in his letter of 5 March 2009, commented on the following matters, referred to by paragraph numbers of the Ombudsman's report:

- a) **Paragraph 1 ("the Allegation")** – No dispute
- b) **Paragraphs 2-4 ("Legal Background")** – No dispute on this but submitted that in the circumstances, as they have turned out, the sole part of the Code that is relevant is 4(a).
- c) **Paragraphs 6-17 ("the Investigation")** - No dispute on the facts stated in so far as Cllr Daniels is in a position to have knowledge of them. Pointed out that almost no detail is given paragraph 9 as to how the witness statements were obtained or who wrote them up and no information as to how the officers (other than those present at the meeting on 18 April 2007) were selected for interview, who interviewed them, who wrote up the statements and whether or not, if there was an interviewing officer, he or she had a standard set of questions to be asked. Submitted, that the form of the statements strongly suggest that the majority of them were either drafted or redacted by a single individual, although there is also a clearly identifiable group apparently prepared by someone else.
- d) **Paragraphs 18-24 ("Events leading to the Allegation")** - No dispute.
- e) **Paragraphs 25-162** - These are neither material facts or analyses, rather they are the Ombudsman's paraphrasing of material presented elsewhere in the report.
- f) **Paragraph 163 ("Undisputed Facts")** - No dispute as to these facts as such but the final sentence of Paragraph 163.5 is phrased so as to suggest that Julie Jefferies was apologising about the behaviour of Cllr Daniels, whereas she was apologising for the necessity of her having to inform Cllr Daniels about the training, not what he had said in the phone call.
- g) **Paragraphs 164-167 ("Disputed Facts")** - In the circumstances these paragraphs are not relevant to the complaint as referred to the Panel. Excepted that paragraph 164 (relating to the telephone call on 17 April 2007) and paragraph 166 (relating to the Portfolio Meeting on 18 April 2007) accurately and properly reflect the question for determination.
- h) **Paragraphs 168-180 ("Analysis of Conflicting Evidence")** - Paragraphs 168 and 169 analyse the evidence in relation to the phone call. Submitted that the Ombudsman places undue weight on the "phone call" sent by

Tracey Jukes afterwards and on the evidence of Mark McIntyre as to her state of mind immediately following the relevant phone call. Submitted that Tracey Jukes being undoubtedly upset was entirely compatible with her realisation of the seriousness of the error which she had made in arranging training as spotted by Julie Jefferies who then appropriately informed Cllr Daniels, which lead to the phone call. Cllr Daniels accepts that he made an inappropriate reference to an officer who had left the Council (Viv Pearson) but this does not relate to lack of respect and consideration to Tracey Jukes.

Submitted it is wholly inappropriate for the Ombudsman to place lesser weight on the evidence of Julie Jefferies because her statement was made some 18 months after the event in question. The conduct of the investigation was entirely in the hands of the Ombudsman who appears not to have asked a key witness the relevant question until some 18 months after the event. Submitted that Julie Jefferies' further statement appears cogent and balanced and had the relevant phone call appeared inappropriate to her at the time she would have remembered it well.

Submitted that Mark McIntyre has no evidence to give as to the content of the phone call itself, only as to the state of mind of Tracey Jukes thereafter and hence the value of his evidence is limited.

The final sentence of paragraph 169 does not appear to come to any conclusion other than that there is evidence to indicate that there may have been disrespect and lack of consideration. This is in contrast to the clear (albeit disputed) conclusion at the end of paragraph 169.

- i) **Paragraphs 171-179** - these discuss the evidence in relation to the meeting on 18 April 2007. There is reference to "reasonable member of the public" or "objective" test used by the Standards Board for England, commonly known as the Clapham Omnibus Test. Accepted that an objective test is required. Submitted it is open to discussion in relation to employment and professional regulation, whether the appropriate touchstone is "a reasonable member of the public" as opposed to "a reasonable member of the trade or profession of the parties involved". Submitted, the Ombudsman despite having correctly stated the test as he sees it, then fails to apply it in that he places considerable weight on the evidence given by the officers at that meeting, which is somewhat from an "objective" test. Further a considerable number of the 18 witness statements in which Cllr Daniels behaviour was stated as being inappropriate, do not specifically address the specific question of whether he showed lack of respect or consideration to Tracey Jukes. Accepted that in paragraph 175 the Ombudsman has extracted from the 26 relevant witness statements the opinion of certain of the officers present who undoubtedly thought that what Cllr Daniels said and the way he said it was not showing appropriate respect and consideration for Tracey Jukes. However submitted, overall, there is a great diversity of opinion, both as to what precisely was said and the manner of it being said and the Ombudsman comes to no coherent conclusion on this. Further submitted that in his investigation the Ombudsman failed to pay adequate attention to the precise circumstances of the meeting (eg. where equipment was placed,

where people were sitting, etc). The meeting ran into problems because Tracey Jukes was making a presentation that was inappropriately technical and detailed, Cllr Daniels as chair of the meeting had an obligation to interrupt her presentation and intervene in order to deal with discontent which he could hear being expressed and the situation was then exacerbated by a difference of understanding between him and Mr Pearce. Accepted that as a consequence Cllr Daniels may have engaged inappropriately with Tracey Jukes, but it is denied that in doing so he showed disrespect or lack of consideration for her. The bulk of the evidence suggests that following the discussion between Cllr Daniels and Mr Pearce the remainder of the meeting went ahead uneventfully.

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 19 March 2009, the Ombudsman responded to Cllr Daniels' written representations to the Case Tribunal as follows:

- a) **Paragraphs 2-4** - Nothing to add
- b) **Paragraphs 6-17** - The investigation was conducted in accordance with the Ombudsman's established procedures. Mrs Catherine Crompton was the lead investigator and undertook the investigation under the direction of the Investigations Team Manager, the Director of Investigations and the Ombudsman. In view of the number of witnesses, she was assisted by a team of investigators to undertake the interviews. Each investigator wrote up the statements of the witnesses he/she had interviewed. The interviewing investigators prepared for the interviews but did not work to a standard set of questions. It has been explained to Cllr Daniels' Solicitors in earlier correspondence how the witnesses were selected for interview. Some of those present at the meeting referred to in the complaint referred to other incidents and witnesses (such as the Chief Executive) which were followed up. Other persons came forward with information. Letters were sent to those who appeared to have relevant information, requesting details. Statements were not obtained from everyone who came forward. Statements were not obtained from those whose information was not considered to be relevant because, for example, it related to events which pre-dated the Ombudsman's jurisdiction, or was not substantiated, or because the individuals decided to withdraw it on being advised that they may be called to give evidence. Cllr Daniels was sent copies of all of the information and the evidence on which the Ombudsman had relied. Paragraph 12 of the report explains clearly how the evidence relating to the other occasions referred to in the statements had been taken into account by the Ombudsman.
- c) **Paragraphs 25-162** - Noted. This part of the report comprises a narrative of the events leading to the complaint.
- d) **Paragraph 163** - There is no dispute that Julie Jefferies telephoned Mrs Jukes to apologise and it is not accepted that the statement to this effect in

this paragraph is "grossly misleading". Both versions of events are set out in the body of the report in a balanced way.

- e) **Paragraphs 164-167** - Noted.
- f) **Paragraphs 168-169** - Tracey Jukes sent an email (rather than a phone call) after receiving the call from Cllr Daniels and presumably Cllr Daniels' submissions relate to the email. There is ample evidence to indicate that Tracey Jukes was upset by the tone and manner in which Cllr Daniels conducted the call. There is no evidence to indicate that she was upset by any realisation on her part that she had made a serious error. The evidence indicates that delivering training was part of her remit. There is no evidence in the statements of either Mark McIntyre or John Pearce to indicate that Tracey Jukes had made a serious error.

Julie Jeffries version of the telephone call is of course relevant. However it is not supported by any written record made at the time or soon afterwards, whereas Tracey Jukes sent an email containing an account of the call to her superior officers within the hour and discussed it with Mark McIntyre the same afternoon. Julie Jefferies says she did not make a point of listening to the call as she was working at her desk and at one point went into the adjoining office.

- g) **Paragraphs 171-179** - It is not accepted that the correct objective test has not been applied. The fact that all those present at the meeting were officers (apart from Cllr Daniels) does not rule out their ability to form a reasonable and objective view. The fact remains that on the evidence of those present, most came to the conclusion that Cllr Daniels' conduct on this occasion was improper and unacceptable. The witnesses have used their own words to describe Cllr Daniels' conduct and it is for the Tribunal at the end of the day to determine whether, having regard to all they say as well as the evidence about the other incidents, whether Cllr Daniels' conduct on this occasion was disrespectful and inconsiderate towards Tracey Jukes, such as to amount to a breach of the Code of Conduct. It is inevitable that 26 officers present at the meeting will have their own individual recollections of what transpired, which is why it was considered important to present the evidence of all present and it is entirely reasonable and proper to assess where the weight of evidence lies. The fact remains that the majority of those present consider that Cllr Daniels' conduct was improper and unacceptable.

According to the evidence the portfolio meetings were convened and chaired by Cllr Daniels and there is ample evidence in the report regarding the form and conduct of the meetings. Witnesses expressed concern about the meetings to the extent that several managers considered it necessary to avoid exposing some of their more junior staff to the meetings because of the way in which they were conducted by Cllr Daniels. If the room was crowded because of the numbers attending, this would not excuse the nature of Cllr Daniels' response to Mrs Jukes and her presentation on this occasion which, on the evidence, was disrespectful and unacceptable. Cllr

Daniels' view that the content of the presentation was inappropriately technical is not shared by all the witnesses.

3. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales

3.2 Mr Gwydion Hughes appeared to present the Ombudsman's Report. Tracey Jukes' allegations are set out in her letter dated 8 June 2007 to the Ombudsman. Tracey Jukes referred to a number of incidents when she felt "bullied and intimidated" giving rise to the possibility of various breaches of the Code of Conduct during the events, as described, on 17, 18 and 25 April 2007. The relevant paragraphs of the Code of Conduct are 4(a), 4(b) and 6(1)(b).

The allegations made by Tracey Jukes raised the possibility of other breaches of the Code of Conduct by Cllr Daniels on other occasions and the Ombudsman commenced an investigation into specific and wider allegations and Cllr Daniels was notified. The investigation was unusually lengthy, due to the number of witnesses. Statements were obtained from all 26 persons present at the meeting on 18 April 2007 and the statements are in the Tribunal bundle. Some of these statements make reference to other occasions when Cllr Daniels' conduct may have amounted to a breach of the Code of Conduct and statements were obtained from other persons who may have had some knowledge about such incidents. Those statements are also in the Tribunal bundle.

The Ombudsman considered his approach to these other witnesses. It would have been artificial to ignore the information they had given, but individual investigations might have been disproportionate. The Ombudsman decided to take the information into account as contextual evidence to the specific allegations made by Tracey Jukes.

Cllr Daniels has had access to all of the evidence gathered by the Ombudsman and took up the opportunity of interview, a transcript of which is in the bundle.

The Ombudsman considered all of the information including Cllr Daniels' interview and written answers to questions asked. The Ombudsman's conclusions are set out in Item B73 of the bundle which forms part of the Ombudsman's Report. The Ombudsman concluded: -

- There is insufficient evidence to support a finding that Cllr Daniels breached paragraph 4(b) of the Code during the telephone call to Mrs Jukes on 17 April 2007.
- There is no evidence to support a breach of paragraph 6(1)(b) of the Code.

- There is evidence to support a finding that Cllr Daniels manner and comments during the telephone call to Mrs Jukes on 17 April 2007 indicates a prima facie case of paragraph 4(a) of the Council's Code of Conduct.
- There is evidence to support a finding that Cllr Daniels' actions during the Portfolio meeting on 18 April 2007 indicate a prima facie breach of paragraph 4(a) of the Code of Conduct.
- The Ombudsman considered that Tracey Jukes' allegations alone were serious enough for the matter to be referred to the President of the Adjudication Panel for Wales but more so in the light of the contextual information, as previously referred to.
- The Ombudsman weighed up the evidence given by the 24 witnesses who attended the Portfolio meeting on 18 April 2007. 16 of these used the word "inappropriate" to described Cllr Daniels' behaviour at that meeting. Clearly the objective test applies but it remains the case that two thirds of the persons at that meeting found his behaviour inappropriate and this influenced the Ombudsman's findings.

Mrs Julie Jefferies

3.3 Mrs Jefferies took the Oath. She read her statement dated 9 April 2008, her further statement dated 14 October 2008 and confirmed their accuracy as a record of her recollection of the events.

As to the 17 April 2007 - Cllr Daniels had come to her office in the afternoon when she had told him Tracey Jukes intended to provide training for scrutiny members and they agreed this may cause difficulties between scrutiny members and executive members. Cllr Daniels then used the telephone in her office to call Tracey Jukes. She overheard most of his side of the conversation as she continued to work at her desk in the office. She could not remember anything Cllr Daniels said. She was not paying attention to the conversation. She left the office briefly to go into an adjacent room. She could not remember anything unusual about the conversation. She could not recall Cllr Daniels shouting. Had he shouted she would have heard and would have remembered. Cllr Daniels was not angry, he was disappointed. He often made calls from her office and this was just another telephone call. When Cllr Daniels left her office she telephoned Tracey Jukes and apologised. She could not remember what she had said. She was not apologising for anything Cllr Daniels had said nor his manner. She apologised in case Tracey Jukes thought she had been "stirring things up", she did not want Tracey Jukes to think she had meant to get her into trouble. She did not end the conversation abruptly. Cllr Daniels did not return to her office whilst she was speaking to Tracey Jukes nor subsequently, so far as she could recall. She was not aware that Tracey Jukes had sent an email to Mark McIntyre.

As to the 18 April 2007 - Julie Jefferies was present at the Portfolio meeting. Cllr Daniels did not behave inappropriately. There was some discontent during the presentations given by Natalie Taylor and Tracey Jukes because of lack of

handouts and the technical nature of the presentations. When Cllr Daniels raised a question during Tracey Jukes presentation, John Pearce intervened and there was a challenging discussion between the two gentlemen. She could not remember what was said by them. Cllr Daniels appeared frustrated and bemused or baffled. Tracey Jukes continued with her presentation. It was an ordinary Portfolio meeting but portfolio meetings can be challenging. Cllr Daniels has a habit of playing with his pen and shuffling. These are mannerisms and are not indicative of his mood. He does not huff and puff. As to the weight of evidence of those present at the meeting, it is a matter of perception and whilst Tracey Jukes may have been offended by Cllr Daniels' conduct, it did not offend her and four persons at the meeting did not consider Cllr Daniels' conduct to have been inappropriate.

As to 25 April 2007 - Julie Jefferies was not present at the meeting.

Generally - There had been occasions in the past when she had not felt comfortable. She had been the subject of "verbal lashings" but she had normally just accepted it and dealt with it. On one occasion, however, she had been upset to the point of tears and went straight to the Leader's office—where Cllr Daniels was also present—to try to get the matter sorted. She accepted that perhaps she should have gone to her own line managers in the first instance but on this occasion, and because she was so upset, she had gone to the Leader's office because it was near. She has a close working relationship with the leadership in general but her relationship with Cllr Daniels was no closer than with any other member. She is impartial. She is not a favourite of Cllr Daniels and whilst she is aware of gossip about favouritism, she does not believe Cllr Daniels has favourites. Cllr Daniels is absolutely supportive of staff and complimentary about their efforts and she cannot recall any inappropriate conduct by him. Even against the information obtained by the Ombudsman, Cllr Daniels' behaviour is not aggressive.

Mrs Tracey Jukes

3.4 Mrs Jukes took the Oath. She read her statement dated 1 May 2008 and confirmed its accuracy as a record of her recollection of the events.

As to the 17 April 2007 - evidently from the tone and level of his voice Cllr Daniels was very angry right from the start of the conversation. His opening line was "What gives you the right to authorise training...". She apologised repeatedly, not for anything she had done, but in an attempt to defuse the situation and to calm him down, but he remained angry throughout the conversation. Cllr Daniels accused her of organising training for scrutiny members but not executive members. Cllr Daniels made reference to Viv Pearson during the call and the significance of this was rumours she had heard of their poor relationship. She had subsequently received a telephone call of support from Viv Pearson. She could not recall how the telephone conversation with Cllr Daniels ended except on the note that she was not to organise training for scrutiny members. She considered she had received a dressing-down from Cllr Daniels. She had never been treated in this way before and was very shocked. Cllr Daniels' manner was inappropriate and she felt intimidated. She considered she was visibly upset. Natalie Taylor was in her office at the time. Her impression of Julie Jefferies apology was that she was

apologising for Cllr Daniels' behaviour. However although it had not occurred to her at the time, she agreed that Julie Jefferies' explanation of the apology was another possibility. She could not recall precisely what Julie Jefferies had said apart from her saying "sorry" and her call had ended abruptly from which she assumed Julie Jefferies had been interrupted by Cllr Daniels returning to her office. She went to speak to Mark McIntyre immediately and sent him an email the same afternoon. She confirmed the accuracy of the email as a record of the telephone conversation between her and Cllr Daniels and as to how she felt at the time and she still felt the same way.

As to 18 April 2007 - Cllr Daniels started displaying familiar signs of agitation during Natalie Taylor's presentation and these continued during her presentation. He was becoming angry. He was red in the face, tapping his pen and throwing it on the table. He interrupted the presentation with a question about the Corporate Improvement Plan and he was shouting. He was very, very angry. The presentation was cut short by Cllr Daniels. John Pearce intervened and there was a heated exchange between him and Cllr Daniels. She felt Cllr Daniels anger had been directed at her personally. She was shocked and upset, she felt bullied and intimidated. Some officers asked her if she was alright. She spoke to Mark McIntyre and told him she was not prepared to be treated in this way by Cllr Daniels.

As to 25 April 2007 - She spoke only on a couple of occasions at this meeting. Cllr Daniels was dismissive of her by his body language. During this meeting she came to the conclusion that the matter would not be resolved in which case it might impact on her prospects and career within the Authority. She was dubious of the support she would receive. She decided to pursue the matter further and wrote to Mark McIntyre the following day to inform him of her decision. Had Cllr Daniels apologised to her for his conduct on 17 and 18 April she would not have taken the matter any further. She did not consider it feasible that Cllr Daniels could not have appreciated how his conduct on 17 and 18 April had upset her.

Generally - She had no particular expectations of how Mark McIntyre and John Pearce would deal with her complaints about Cllr Daniels behaviour on 17 and 18 April. She did not know whether they had discussed her complaint about the telephone call and the email with him before 18 April or afterwards. She did not know whether they had specifically discussed his conduct towards her at the meeting on 18 April afterwards. When she spoke to Mark McIntyre following each occasion he had said he would support her. After 26 April she was informed that her recourse was a complaint to the Ombudsman. She had felt "side lined" by some officers after making her complaint to the Ombudsman. Cllr Daniels had a "clique of favourites". Some members of staff were fearful of losing their jobs. The Union Representative, Joan Davies, approached her to offer support and provided support. Prior to 17 April 2007 she received no indication at all that Cllr Daniels had any concerns about the way she was doing her job. She had been with the Authority only some three months at the time. She had no problem at all with Cllr Daniels raising any matters of concern with her, but in an appropriate and professional manner.

Mr John Pearce

3.5 Mr Pearce took the Oath. He read his statement dated 12 May 2008 and confirmed its accuracy as a record of his recollection of the events.

As to 17 April 2007 - He received a copy of the email that afternoon or the following day prior to the Portfolio meeting on 18 April and spoke to Mark McIntyre. They both took the email seriously and if anything inappropriate had taken place they would take action to prevent any further instance. He had been concerned with the content of the email and concerned that something inappropriate had taken place, although they only had Tracey Jukes' side of the story. They agreed he would intervene if needs be during the Portfolio meeting the next day. He did not have the opportunity to speak to Cllr Daniels about the email before the Portfolio meeting on 18 April.

As to 18 April 2007 - Cllr Daniels is normally a very robust and challenging individual but on this occasion it was more than that. His behaviour was inappropriate, he overstepped the mark and he intervened for that reason. Cllr Daniels failed to show appropriate respect towards Tracey Jukes and behaved in a way which brought the office of Member into disrepute. Cllr Daniels did not behave in a way which compromised Tracey Jukes' impartiality. The complaint made in the email and his intervention were connected. He intervened to protect Tracey Jukes and to keep the meeting constructive. He and Cllr Daniels had a heated but controlled exchange and he spoke to him after the meeting when he told Cllr Daniels he had overstepped the mark. He did not make specific reference that it was in relation to his conduct towards Tracey Jukes at the meeting and he did not mention the telephone conversation or the email. Cllr Daniels has certain mannerisms when he is agitated. He taps his pen he huffs and puffs and makes negative verbal interjections.

As to 25 April 2007 - Cllr Daniels conducted himself perfectly well. Bearing in mind what had happened on 18 April and the email, he would have noticed anything untoward.

Generally - Cllr Daniels is a committed individual. Cllr Daniels' behaviour has an impact on others. He is a demanding, challenging and robust individual. John Pearce is not aware of any culture of fear, although it may exist. He is aware of talk about favouritism but was not aware of anything specific. Favouritism is part of human nature and not necessarily a cause for concern. John Pearce had not had to intervene previously in relation to Cllr Daniels' behaviour with other staff.

Mr Mark McIntyre

3.6 Mark McIntyre affirmed. He read his statement dated 12 May 2008 and confirmed its accuracy as a record of his recollection of the events.

As to 17 April 2007 - Tracey Jukes came to see him that afternoon. She was clearly upset and unhappy following a telephone call she had received from Cllr Daniels. He then received her email, which was consistent with what she had said to him that afternoon. He took the email seriously and acted upon it. The email and the conversation with Tracey Jukes were serious enough in themselves to

warrant action and he also took into account Cllr Daniels' reputation, rumours and perceptions about his behaviour. He spoke to John Pearce and they agreed John Pearce would intervene if necessary in the Portfolio meeting on 18 April. He anticipated some "knock on effect" from the telephone conversation between Cllr Daniels and Tracey Jukes. He did not speak to Cllr Daniels before the Portfolio meeting and did not have the opportunity to discuss the email with him. This was the first occasion he had received a complaint of this nature and he took the advice of the Monitoring Officer as to how it should be dealt with. He was advised by the Monitoring Officer that a complaint to the Ombudsman is the course of action open to an officer wishing to complain about a member. He was supportive to Tracey Jukes within available procedures.

As to 18 April 2007 - Cllr Daniels was displaying his unhappiness through his body language. He was tapping his pen, twitching, showing lack of interest. Cllr Daniels intervened during Tracey Jukes' presentation. He made negative and dismissive comments which were unnecessary and disrespectful. There is a place where a robust challenge can be expected, but Cllr Daniels' behaviour went beyond that. It would have been unacceptable to anyone. His behaviour was unprofessional and deliberately intended to make Tracey Jukes feel uncomfortable. It was personal and specific to Tracey Jukes. If Cllr Daniels was not aware of the effect of his behaviour on Tracey Jukes, it was nevertheless still unreasonable. John Pearce intervened and there was a frank and heated exchange between the two gentlemen. He is aware that John Pearce spoke to Cllr Daniels afterwards about his inappropriate behaviour at the meeting. Mark McIntyre spoke to Tracey Jukes after the meeting to express his continuing support for her.

As to 25 April 2007 - He did not pick up on anything specific and did not notice anything in particular. Had anything untoward happened he would have stepped in. Possibly Tracey Jukes was more sensitive than the others at the meeting.

Generally - There had been other occasions when Mark McIntyre had felt uncomfortable about Cllr Daniels' behaviour but he could not recall witnessing anything like that directed at Tracey Jukes. He is aware of anecdotes about a culture of fear at Portfolio meetings centred around Cllr Daniels' behaviour. He is aware of rumours and perceptions that Cllr Daniels has favourites. He has no reason to doubt anything Tracey Jukes has said.

Mrs Bernadette Elias

3.7 Bernadette Elias was sworn. She read her statement dated 30 May 2008 and confirmed its accuracy as a record of her recollection of the events and so far as she recalled them.

As to 17 April 2007 - She was on leave and did not receive a copy of the email that day. She could not recall precisely when she had received it, it would have been after 18 and before 25 April. She spoke to Tracey Jukes, John Pearce and Marc McIntyre on her return from leave and was comfortable that they were dealing with the matter.

As to 18 April 2007 - She was on leave.

As to 25 April 2007 - She had not mentioned this meeting in her statement. She had only a vague recollection of it and could not remember anything specifically.

Generally - In her statement Bernadette Elias states she is not a favourite of Cllr Daniels. As she recalls this was in response to a direct question by the Ombudsman's investigator. She presumes there are some issues to do with favouritism giving rise to such a question. There may well be a perception in the Authority that Cllr Daniels has favourites and that she is a favourite. . In her personal experience she has not had any issues in relation to her dealings with Cllr Daniels or any other members. She did not think she had personally heard Cllr Daniels use the sort of language ("pedestals", "ivory towers") used by some witnesses in their statements.

Mr Robin Morrison

3.8 Robin Morrison took the Oath. He read his statement dated 4 June 2008 and confirmed its accuracy as a record of his recollection of the events.

He had not received a formal written complaint about Cllr Daniels' conduct towards Tracey Jukes. He was aware, informally, of complaints by Tracey Jukes and had confidence in his officers' ability to deal with it. Only when he received a letter from the Ombudsman was he aware of a formal complaint. He had not received any written complaints about Cllr Daniels. He was aware that people used to complain about him verbally and that line managers used to deal with such matters. He issued a statement on bullying and harassment in response to staff concerns. He had a professional relationship with Cllr Daniels since 1 April 1996. In the main Cllr Daniels treated officers with respect and held them in highest regard.

He described Cllr Daniels as a senior politician and complimented the work he had undertaken in improving the Local Authority, stating that what had been achieved would not have been achieved without his input. He described Cllr Daniels as committed and driven, on occasions "bad tempered". His behaviour on some occasions was unacceptable. There had been occasions when he had tackled Cllr Daniels about his behaviour. There have been very challenging times for the Local Authority.

Cllr Nigel Daniels

3.9 Cllr Daniels was sworn. Cllr Daniels made the following oral submissions:

Cllr Daniels referred to the details answers he had previously given to the Ombudsman's investigator as contained in the Tribunal Bundle and confirmed their accuracy.

He described medical conditions which affect his body language. He suffers from a prolapsed disc which makes it difficult for him to remain in one position. His red face is accounted for by high blood pressure, for which he is on medication. Other officers are not aware of these conditions and are not aware of their effect, as described, on his body language. If he huffs and puffs he is not aware of it, it is

involuntary. He has a habit of playing with his pen. These are not deliberate signs of annoyance and have not been drawn to his attention prior to these investigations. He was not aware that his body language could be adversely perceived.

He first met Tracey Jukes in person not long after she was appointed, probably on 5 April 2007.

He has never used the phrase "knocking officers off their pedestals". He may have used the word "pedestal" in the context or perception of "elitism" amongst officers, for example they write reports which are designed to baffle individuals and, with their level of knowledge, may feel important. He simply wishes to attempt to stop people standing on "pedestals" in order to get an equitable level of understanding.

Reference to his use of words such as "religious sect" or "religious cult" are a myth. He has never used words such as these in a derogatory way.

As to the 17 April 2007 - He went to see Julie Jefferies in her office in the afternoon and was informed that Tracey Jukes intended to arrange training for scrutiny members fairly imminently. Such training could not be done without the involvement or approval of the executive members. He was concerned this might cause difficulties. He telephoned Tracey Jukes from Julie Jefferies office. The purpose of the telephone call was to ascertain who had authorised the proposed training and whether it was intended to give training to scrutiny members. It was not a long call. He was calm and certainly not angry. He did not give Tracey Jukes a "dressing down". He was a little frustrated because it would be insensitive to sanction training only for scrutiny Members. It is important to "keep the ship stable" from a political prospective as there is immense tension between executive members and scrutiny members, who respectively attempt to usurp each other. He totally agreed with training being provided, but equally available to all. Cllr Daniels could not recall precisely anything he had specifically said to Tracey Jukes during the telephone call. He did not get an answer from her as to who had agreed the proposed training. He made the point to her that such training could not be done without the involvement or approval of executive members. He recalled Tracey Jukes apologising. The call ended by his saying "we will have to take this further with Mark McIntyre and John Pearce". There was nothing about the call that could have upset Tracey Jukes. He confirmed he had made reference to Viv Pearson during the telephone call. Much had been made about the "supposed bad relationship" between them and "anecdotally" Mrs Pearson appeared to "lean more towards the scrutiny process at the expense of the executive". He accepted that the reference to Viv Pearson during the telephone conversation had been inappropriate as she was a former employee of the Local Authority and he had apologised for the reference. Only when he received the documentation from the Ombudsman's office did he appreciate that his reference to Viv Pearson was "not right". He left Julie Jefferies office immediately after ending the telephone call. He did not hear Julie Jefferies telephoning Tracey Jukes. The first he knew about the email and Tracey Jukes' complaint about the telephone call was when he received correspondence from the Ombudsman.

As to 18 April 2007 - John Pearce had the opportunity of speaking to him prior to the meeting but did not. He was not aware that Tracey Jukes had been upset by his telephone call. Prior to the meeting he was not aware that Tracey Jukes (or Natalie Taylor) were giving presentations and he did not know what the agenda was. He interrupted during Natalie Taylor's presentation because there were no handouts. Natalie Taylor appeared nervous. He had difficulty reading the screen during the presentation. Tracey Jukes is highly competent, a technically gifted officer and technically the presentation was good. The presentation was, however, over technical and Tracey Jukes was "losing" some of the audience. During the meeting he asked whether everybody was comfortable with the presentation and whether they all understood it and he received no response. Tracey Jukes started to talk about the Corporate Improvement Plan, saying it would shortly be drawn up and ready for scrutiny. Mark McIntyre reminded her on a couple of occasions to say "and the executive". He suggested that Tracey Jukes' presentation should stop so that the Corporate Improvement Plan could be discussed as it was very important and had to be processed properly. He could not think of anything he had said or done which might have upset anyone. John Pearce had intervened when Cllr Daniels stated he had not seen any Corporate Improvement Plan at that stage, stating he had and the exchange between them centred around that. Cllr Daniels recalls stating at the meeting "...Tracey please don't take this personally, its not aimed at you..". If she was upset he assumes she thought his comments were aimed at her personally. The conversation between him and John Pearce during the meeting was "silly". It wasn't getting anywhere.

Following the meeting he went to John Pearce's office. John Pearce told him he though he had gone a bit too far at the meeting. He apologised to John Pearce if he had caused him any offence. He did not leave the meeting with John Pearce with any impression at all that there were any matters to do with Tracey Jukes which he needed to resolve.

As to 25 April 2007 - Tracey spoke on one or maybe two occasions. He did not make any great contribution to the meeting. He complimented Tracey Jukes on one occasion. He was not aware of any unhappiness or discontent.

The letter from the Ombudsman relating to Tracey Jukes' complaint came like "a bolt out of the blue". He was shocked and stunned and totally unaware of any incidents.

He found it hard to accept that no senior officer felt the need to raise the matters with him. If Tracey Jukes was under the impression that John Pearce had spoken to Cllr Daniels about her complaints, he had not done so and if she was expecting an apology, he was not aware of that. Had officers contacted him about Tracey Jukes' complaints about the telephone conversation or her complaints about his behaviour at the meeting, he was have explained himself to the effect that no offence was intended and he would have apologised to them if any offence had indeed been caused. Cllr Daniels did not accept that he failed to show proper respect and consideration to Tracey Jukes, nor that he had brought her impartiality into question, nor that he had brought the office of member into disrepute. The events involved only officers no one else.

3.10 Cllr Daniels' representative made the following oral submissions in relation to findings of disputed material facts: -

There is no evidence to support a finding of Cllr Daniels having bullied and intimidated Tracey Jukes.

It is accepted that Tracey Jukes was genuinely upset by Cllr Daniels' behaviour and that she was not acting in bad faith.

What Cllr Daniels said on 17 and 18 April is unclear. None of the witnesses, including the complainant, could narrate or remember the precise words which were used.

When Cllr Daniels gave evidence he came across as truthful and passionate. He could remember what he had said.

It is a matter of interpretation and perception whether Cllr Daniels' body language and tone of voice amounted to bullying, intimidation or even inappropriate behaviour.

In relation to the meeting on 25 April 2007, Tracey Jukes referred only to Cllr Daniels' body language. It would have to have been extreme to amount to bullying, intimidation or even inappropriate behaviour. Three other people in the room on that day were aware of the complaints made by Tracey Jukes in relation to 17 and 18 April and would have been sensitive to any vibes. Accordingly, had there been any intimidation, bullying or negative body language, at least one of them would have noticed. If the Panel were to find no inappropriate behaviour on the part of Cllr Daniels on 25 April, that would call into question whether Tracey Jukes had appropriately judged the implications of Cllr Daniels' body language and tone of voice on 18 April and particularly on 17 April, in relation to which Cllr Daniels is assisted by Julie Jefferies, who remembered nothing untoward. Had Cllr Daniels spoken to Tracey Jukes as she suggests, that would have stuck in Julie Jefferies' mind.

In relation to Julie Jefferies' apology, if the Panel does not accept her explanation, that would be tantamount to a conclusion that she had lied on oath.

In relation to the email, this has increased credibility as it was sent contemporaneously, but it is merely an account of Tracey Jukes' recollection. It is accepted that it corroborates her evidence.

As for John Pearce's intervention at the meeting on 18 April, this related to confusion about the Corporate Improvement Plan.

"Bullying and intimidation" suggest intense and sustained behaviour to considerably greater degree than the evidence suggested.

Cllr Daniels' behaviour was not inappropriate, but it is accepted that the majority of the people at the meeting on 18 April thought otherwise.

Mr Gwydion Hughes

3.11 Mr Hughes made the following submissions in relation to findings on relevant disputed facts: -

The Panel will be aware of the Ombudsman's stance in relation to the meeting on 25 April (no evidence to support inappropriate behaviour on the part of Cllr Daniels at that meeting).

There is a dramatic contrast in evidence relating to the telephone call on 17 April 2007. It may be helpful in deciding on the disputed facts relating to the telephone call, that the Panel considers the evidence relating to the meeting on 18 April firstly and considers the other supplementary or contextual evidence of Cllr Daniels behaviour at various times.

Tracey Jukes' evidence about the telephone call is supported to some extent by the statement of Natalie Taylor, by her contemporaneous oral complaint to Mark McIntyre and by her contemporaneous email. In contrast, Cllr Daniels states that nothing happened to warrant Tracey Jukes' response and that he has no idea why she responded in the way she did. Cllr Daniels' evidence in relation to the telephone call borders on the credible.

In relation to the meeting on 18 April evidence of the vast majority of the persons present at that meeting supports a finding of inappropriate behaviour, to such extent that John Pearce intervened. In fact, some of the language used by the majority of the witnesses supports a finding of bullying and intimidation.

4. FINDINGS OF FACT

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

4.1.1 At the dates of the events giving rise to Tracey Jukes' complaints (i.e. 17 April, 18 April and 25 April 2007) Cllr Daniels was a Member of Blaenau Gwent County Borough Council, was Deputy Leader of the Council and had executive responsibility for the Council's Governance and Resources affairs.

4.1.2 On 14 November 2001 Cllr Daniels signed an undertaking to observe the Council's Code of Conduct.

4.1.3 The Council embarked on improvements, questioning and challenging the way in which it delivered services at all levels, following adverse reports by its external regulators.

4.1.4 As Deputy Leader, Cllr Daniels had a prominent role in bringing about changes required to address the problems identified by its external regulators.

4.1.5 Cllr Daniels convened weekly Portfolio meetings which included items such as briefings on matters such as developments and new policies being worked on by officers; test runs of future presentations by officers, etc.

4.1.6 Tracey Jukes is an officer of the Council. She is the Corporate Performance Improvement Manager in the Corporate Governance Directorate.

4.1.7 Tracey Jukes' responsibilities included providing training to council officers and members in respect of the Council's performance management framework.

4.1.8 On 17 April 2007, in Julie Jeffries' office, Cllr Daniels made a telephone call to Tracey Jukes to discuss future training.

4.1.9 During the telephone conversation Cllr Daniels mentioned Vivienne Pearson.

4.1.10 Following the telephone call Julie Jeffries telephoned Tracey Jukes and provided an apology.

4.1.11 On 17 April 2007, at 15.17 hours, Tracey Jukes sent an email to Mark McIntyre, the subject of which was the telephone call she had received from Cllr Daniels.

4.1.12 A Portfolio meeting was held on 18 April 2007 during which presentations were given by Natalie Taylor and Tracey Jukes.

4.1.13 John Pearce intervened during the Portfolio meeting on 18 April 2007.

4.1.14 There was an exchange between Cllr Daniels and John Pearce at the Portfolio meeting on 18 April 2007 and the two men concluded their discussion elsewhere after the meeting.

4.1.15 A meeting was held on 25 April 2007.

4.1.16 On 26 April 2007, following the previous day's meeting, Tracey Jukes wrote to Mark McIntyre to inform him of her decision to issue a formal complaint against Cllr Daniels.

4.1.17 Tracey Jukes wrote to the Ombudsman on 8 July 2007 complaining of "a number of recent incidents when I have felt bullied and intimidated by the Deputy Leader of the Council, Cllr Nigel Daniels".

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

4.2.1 In relation to the telephone call on 17 April 2007:

- (a) By his tone and/or manner and/or comments during the telephone call, Cllr Daniels bullied and intimidated Tracey Jukes or conducted himself inappropriately.

- (b) The nature and purpose of Julie Jeffries' apology to Tracey Jukes immediately after the telephone call.
- (c) The accuracy of the email sent by Tracey Jukes to Mark McIntyre on 17 April 2007 as a record of the telephone call.

4.2.2 In relation to the Portfolio meeting on 18 April 2007:

- (a) By his conduct at the meeting Cllr Daniels bullied and intimidated Tracey Jukes or conducted himself inappropriately.
- (b) The nature and purpose of John Pearce's intervention at the meeting.
- (c) The nature of the exchange between John Pearce and Cllr Daniels at the meeting

4.2.3 In relation to the meeting on 25 April 2007, by his conduct at the meeting, Cllr Daniels bullied and intimidated Tracey Jukes or conducted himself inappropriately.

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

- 4.3.1 a) By his tone, manner and comments during the telephone call on 17 April 2007 Cllr Daniels intimidated Tracey Jukes and conducted himself inappropriately. Only the parties to the telephone call (namely Cllr Daniels and Tracey Jukes) have direct knowledge about the telephone call and their respective version is completely different. Cllr Daniels could not recall with any certainty anything said. Tracey Jukes in her statement and in oral evidence, stated that Cllr Daniels opening remark was "What gives you the right to authorise training.....". Cllr Daniels stated in oral evidence that the purpose of his call was to ascertain who had authorised the proposed training and whether it was intended to give training to scrutiny Members. He also said it was insensitive to give training to executive but not scrutiny Members and that he was a little frustrated. In oral evidence Cllr Daniels spoke passionately about keeping the ship stable from a political perspective and the immense tension between these respective Members. Cllr Daniels accepted that Tracey Jukes was upset by the telephone call but said there was nothing about the call that could have upset her. He accepted, on reflection that he had made an inappropriate reference to Viv Pearson. He recalled ending the call by saying "We will have to take this further with Mark McIntyre and John Pearce". The Tribunal decided, in this light, that it was improbable that Cllr Daniels was calm during the telephone call.

In her statement Natalie Taylor recalls Tracey Jukes telling her immediately after the telephone call that she had received her first telling off from Cllr Daniels and that Tracey Jukes was visibly upset. Neither the Tribunal nor Cllr Daniels called Natalie Taylor to give evidence and her evidence was not tested, but the Tribunal had no reason to doubt the truth of her statement as a reasonably accurate record of her recollection of the event.

Cllr Daniels' evidence is supported somewhat by the statement and oral evidence of Julie Jefferies who could not remember anything unusual about

the telephone call and she confirmed she did not recall Cllr Daniels shouting and had he done so she would remember. The Tribunal considered that Julie Jeffries' evidence was helpful to its decision on this particular disputed fact. Immediately following the telephone call, after Cllr Daniels left her office, Julie Jeffries telephoned Tracey Jukes to apologise. Whatever the reason for the apology, the Tribunal decided had there been nothing inappropriate about the telephone call Julie Jeffries would not have felt the need to apologise at all (whether personally or on behalf of Cllr Daniels). Furthermore the Tribunal decided that Julie Jeffries' recollection of the event may have been subjective and personal and probably coloured by her long and good working relationship with Cllr Daniels. In contrast to the weight of evidence, both oral and in the Tribunal bundle, Julie Jeffries could not recall any occasion when Cllr Daniels had behaved inappropriately and on occasions when she had been reduced to tears she had "dealt with it" and sought the assistance of the leadership (at that time Cllr Daniels).

All statements were made a year or so after the event. Immediately after the telephone call Tracey Jukes went to find Mark McIntyre to complain about Cllr Daniels tone, manner and comments during the telephone call and sent him an email that afternoon. Mark McIntyre confirmed in his statement and in oral evidence that Tracey Jukes was upset and that her email was consistent with what she had said to him when they had met that afternoon. Both Mark McIntyre and John Pearce took the email seriously and acted upon it immediately. The email is a contemporaneous record of Tracey Jukes' response to the telephone call. In the email she described Cllr Daniels as "evidently very angry" and says he did not calm down at any point. She says she received "a dressing down in anger" and that he said if anything she was doing had a political element she had to speak to him.

The Tribunal decided that Tracey Jukes would not have responded as she did unless Cllr Daniels had conducted himself inappropriately during the telephone call and on the basis of the content of the email, concluded that Cllr Daniels intimidated her.

- 4.3.2 b) Julie Jeffries apologised to Tracey Jukes immediately after the telephone call in case Tracey Jukes thought she had been stirring things up" and she did not want Tracey Jukes to think she had meant to get her into trouble. The Tribunal accepted Julie Jeffries' oral evidence to that effect. Tracey Jukes had been under the impression that the apology was for Cllr Daniels' behaviour during the telephone call, as stated in her statement and confirmed by her in oral evidence. However, she accepted, in oral evidence, that Julie Jeffries' explanation of the apology was a possibility. The Tribunal also decided it was improbable that any apology would have been made unless Cllr Daniels conducted himself inappropriately during his telephone call to Tracey Jukes.
- 4.3.3 c) The email is a reasonably accurate record of the telephone call. It is the only contemporaneous, written account of the telephone call. In oral evidence Tracey Jukes confirmed it was an accurate record of the telephone call. Mark McIntyre in oral evidence confirmed that the email was in

accordance with the oral information given to him by Tracey Jukes immediately after the telephone call between her and Cllr Daniels. Mark McIntyre also confirmed in oral evidence he had no reason to doubt anything which Tracey Jukes had said. Cllr Daniels could not, in oral evidence, recall with any certainty anything he had actually said to Tracey Jukes during their telephone call. On the basis of all the evidence, the Tribunal found nothing to support any finding other than that the email was a reasonably accurate contemporaneous written record of the telephone call and the Tribunal was satisfied that was the case.

- 4.3.4 a) By his conduct at the Portfolio meeting on 18 April 2007, Cllr Daniels intimidated Tracey Jukes and conducted himself inappropriately. The Tribunal bundle contains a statement from all persons who attended the meeting and (apart from Cllr Daniels himself) only 4 say, in essence, that Cllr Daniels did not conduct himself inappropriately. The overwhelming weight of evidence is to the effect that Cllr Daniels conducted himself inappropriately and 8 of the persons use the word "inappropriate" to describe Cllr Daniels' behaviour at this meeting. The other witnesses use stronger language to describe Cllr Daniels' behaviour such as "intimidation" "forcible" "heckled" "rude" and "confrontational" and several witnesses say they were glad not to have been in Tracey Jukes' shoes on that day and felt uncomfortable. The Tribunal gave considerable weight to the oral evidence of both Mark McIntyre and John Pearce, which was consistent with the information contained in their statement. John Pearce stated in oral evidence that Cllr Daniels failed to show appropriate respect towards Tracey Jukes and behaved in a way which brought the office of member into disrepute. Mark McIntyre stated in oral evidence that Cllr Daniels' behaviour went beyond a robust challenge and would have been unacceptable to any one, it was unprofessional and deliberately intended to make Tracey Jukes feel uncomfortable and was personal and specific to her. He considered Cllr Daniels' behaviour unreasonable, regardless of whether Cllr Daniels was aware or not of the effect of such behaviour on Tracey Jukes. It was also the case that Mark McIntyre and John Pearce had agreed, before the meeting that John Pearce would intervene if Cllr Daniels displayed any inappropriate behaviour towards Tracey Jukes and he did indeed intervene at the meeting for that reason. The Tribunal also gave consideration as contextual evidence, to the statements in the Tribunal bundle of persons who had not been present at that meeting, but who gave information of their experience of inappropriate behaviour by Cllr Daniels on other occasions over several years prior to these events. Against all of the evidence, the Tribunal could not accept that Cllr Daniels recollection of this meeting accurately represented what actually happened. The Tribunal was in no doubt whatsoever that Cllr Daniels intimidated Tracey Jukes and conducted himself inappropriately in the Portfolio meeting on 18 April 2007.
- 4.3.5 b) The nature and purpose of John Pearce's intervention at the Portfolio meeting on 18 April 2007 was to protect Tracey Jukes and to keep the meeting constructive. The Tribunal decided that the only person who could state as a fact the nature and purpose of his intervention was John Pearce himself. In oral evidence John Pearce stated that he intervened to protect

Tracey Jukes and to keep the meeting constructive. It was also the case, on the evidence of both John Pearce and Mark McIntyre, that they had agreed in advance that John Pearce would intervene if needs be or necessary and such agreement was reached as a direct result of Tracey Jukes' email, which of course complained of previous inappropriate behaviour on the part of Cllr Daniels, namely the telephone call the previous day. In oral evidence John Pearce confirmed his intervention was directly related to the email.

4.3.6 c) The precise nature of the exchange, namely exactly what was said, between John Pearce and Cllr Daniels at the Portfolio meeting on 18 April 2007 is somewhat unclear, except to say that the Tribunal was satisfied on the balance of probabilities that it resulted from Cllr Daniels' treatment of Tracey Jukes and was to do with the Corporate Improvement Plan. Having weighed up all of the evidence the Tribunal was satisfied that it was not a polite conversation and in all probability was a heated exchange of words and that it continued after the meeting when, according to the evidence of both John Pearce and Cllr Daniels, John Pearce told Cllr Daniels that he had overstepped the mark or gone a bit too far at the meeting.

4.3.7 Cllr Daniels did not, at the meeting on 25 April 2007, bully or intimidate Tracey Jukes, nor conduct himself inappropriately. Apart from Tracey Jukes none of the persons at this meeting (Cllr Daniels, John Pearce, Mark McIntyre and Bernadette Elias) recalled either in their statements or in oral evidence, anything untoward about this meeting, nor about Cllr Daniels' behaviour. Tracey Jukes' complaint about Cllr Daniels' behaviour at this meeting was specific to his body language towards her, which she described as dismissive. All persons at this meeting were aware of the complaint made by Tracey Jukes about the telephone call and all (apart from Bernadette Elias) had witnessed Cllr Daniels behaviour at the Portfolio meeting on 18 April. Accordingly the Case Tribunal considered it reasonable to expect at least one or more of those persons to have been perceptive of any repetition, but no one picked up on anything untoward on the part of Cllr Daniels. The Tribunal considered that it may possibly have been the case that Tracey Jukes may have expected, at this meeting, some gesture of conciliation on the part of Cllr Daniels or an apology. Indeed in her statement and in oral evidence Tracey Jukes said had she received an apology from Cllr Daniels she would not have taken the matters any further. The Case Tribunal consider it may well have been the case the Tracey Jukes was sensitive to even the slightest bodily gesture by Cllr Daniels, but on the evidence could find nothing to support a finding of bullying or intimidation by Cllr Daniels at this meeting, nor anything amounting to actual inappropriate behaviour.

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 Cllr Daniels' representative conceded that a finding of intimidation on the part of Cllr Daniels must amount to a failure to comply with Paragraph 4(a) of the

Code of Conduct, during the telephone call on 17 April 2007 and at the Portfolio meeting on 18 April 2007.

5.1.2 As the Tribunal had found that Cllr Daniels had not, during the meeting on 25 April 2007 bullied or intimidated Tracey Jukes or otherwise conducted himself inappropriately, there could be no finding of any breach of any paragraph of the Code of Conduct in relation to the meeting on that date.

5.1.3 On the basis of the evidence and on the Tribunal's finding of fact, there is nothing to support a finding of breach of Paragraph 4(b) of the Code of Conduct. There is nothing to suggest that Tracey Jukes impartiality was compromised in any way or that Cllr Daniels' behaviour influenced her future conduct or decisions.

5.1.4 In relation to Paragraph 6(1)(b) of the Code of Conduct, the interpretation of "bringing the office of member into disrepute" suggests knowledge of the events, in this case Cllr Daniels' conduct, by the public at large. In this case nothing that happened went beyond the confines of staff and members of the Local Authority. Accordingly Cllr Daniels had not anything which had brought the office of member or the Local Authority into disrepute.

5.2 The Ombudsman's Report

5.2.1 It was contended by Mr Gwydion Hughes that Cllr Daniels' conduct amounted to a breach of Paragraphs 4(a) and 6(1)(b) of the Code of Conduct.

5.2.2 The appropriate test in relation to Paragraph 6(1)(b) of the Code of Conduct is "what would a reasonable member of the public think" if they were aware of the facts. The Code of Conduct should not be construed in the narrow way submitted by Cllr Daniels' representative.

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 a failure to comply with Blaenau Gwent County Borough Council's code of conduct.

5.3.2 Paragraph 4(a) of the code of conduct states that *"[Members:] 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"*.

5.3.3 The Case Tribunal found that Cllr Daniels failed to show respect and consideration. The manner of the telephone call to Tracey Jukes on 17 April 2007 and his behaviour in a Portfolio meeting the follow day were intimidating and inappropriate. The Case Tribunal agreed entirely with the opinion of Cllr Daniels' representative that intimidating behaviour must amount to failure to show respect and consideration.

5.3.4 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”*].

5.3.5 The Case Tribunal found that Cllr Daniels, in behaving the way he did in the Portfolio meeting on 18 April, brought the office of member into disrepute. The Case Tribunal accepted Mr Gwydion Hughes' opinion as to how this paragraph of the Code should be construed and the test which should be applied in determining whether or not there was a breach. One of the functions of the Tribunal is to uphold standards of behaviour of members of local administrative authorities and the Case Tribunal is robustly of the opinion that this must include the public's perception. The Case Tribunal did not accept an argument to the effect that so long as incidences of inappropriate conduct are within the knowledge of members and officers only it does not bring the office of member or the authority into disrepute. Members are expected to conduct themselves in an appropriate manner, namely so as not to bring the office of member or the authority into disrepute, within the confines of the Council Building, regardless of whether such conduct is within or is likely to become within the public domain. The Case Tribunal found had a reasonable member of the public been aware of Cllr Daniels' conduct, such person would have regarded such behaviour as bringing the office of member into disrepute.

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

5.3.7 The Case Tribunal found that there was no evidence to substantiate a breach of this paragraph in that there was nothing to suggest that anything Cllr Daniels had said or done had influenced any decisions or conduct on the part of Tracey Jukes as an officer of the Local Authority.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Daniels contended that the Tribunal should take into account the following:

6.1.2 There were two incidents of brief duration, rather than a sustained campaign of intimidation or lack of respect for any officer. The events of 18 April 2007 followed on from the events of 17 April 2007.

6.1.3 The undisputed evidence about Cllr Daniels' behaviour on 17 April 2007 was not brought to his attention, even though two senior officers were aware of it and saw potential for future behaviour of the same type. The meeting on 18 April 2007 proceeded without Cllr Daniels being given any warning or indication to be careful of his conduct.

6.1.4 Whilst it is accepted that an objective test must be applied in determining reasonableness of behaviour, it remains the case that Cllr Daniels was oblivious that his behaviour had caused any offence.

6.1.5 Cllr Daniels' actions were not deliberate.

6.1.6 Cllr Daniels did not gain personally nor was there any party political advantage.

6.1.7 If Cllr Daniels overstepped the mark by his conduct, his motivation was the good of his Authority, his electorate and his Ward, which had always been his motivation behind all his actions.

6.1.8 Most witnesses have spoken of Cllr Daniels consistent drive and determination.

6.1.9 He is a longstanding councillor, since 1991.

6.1.10 Despite the contextual evidence of Cllr Daniels' conduct in the past, no formal complaint has ever been made to his Standards Committee nor to the Ombudsman, in which case he has an unblemished record extending to 18 years.

6.1.11 The key role Cllr Daniels played in relation to the Intervention Board and the very survival of the Local Authority.

6.1.12 Cllr Daniels accepts his actions were wrong, but they were the product of a driven and committed individual to drive on necessary changes.

6.1.13 Cllr Daniels was not necessarily aware of or sensitive to the effect of his actions on others.

6.1.14 As a general rule Cllr Daniels had respect for councillors and officers.

6.1.15 The events were transitory in nature.

6.1.16 Tracey Jukes took effective and immediate steps to protect herself.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case including the submissions made by Cllr Daniels' representative, on action to be taken.

6.2.2 The Case Tribunal gave due consideration to Cllr Daniels' long service and prominence as a member of the Local Authority. The Case Tribunal had no doubt whatsoever about his commitment to the best interest of the Council and that this was his driving force and motivation for his actions. The Case Tribunal also gave due consideration to his good character and previous record in that no previous complaint had been made to the Ombudsman.

6.2.3 The Case Tribunal was mindful of Cllr Daniels' persistent denial of the facts, despite clear evidence to the contrary and his continued challenge to the investigation and the adjudication to the very end. It is also the case that there was evidence of persistent inappropriate behaviour on the part of Cllr Daniels on numerous occasions during past years and of his failure to address his behaviour even when drawn to his attention. The Tribunal also struggled to believe that Cllr Daniels actually had no idea of the effect of his behaviour on others, especially as it was, on more than one occasion, drawn to his attention by different people.

6.2.4 Failure to show respect and consideration to a relatively junior officer who had not long been in post and behaviour which brings the office of member or the Authority into disrepute are serious breaches of the Code of Conduct. However, the Case Tribunal concluded that on these occasions they fell short of the need to disqualify. These being serious breaches, a warning as to future conduct is entirely out of the question, especially as the Tribunal had no great confidence that a warning would satisfactorily serve the purpose of preventing any future repetition.

6.2.5 The Case Tribunal having consider all matters believes a period of suspension of 9 months is appropriate. The Case Tribunal decided, unanimously, that Cllr Daniels should be suspended from acting as a member of the Blaenau Gwent County Borough Council for a period of 9 months or if shorter, the remainder of his term of office.

6.2.6 Blaenau Gwent County Borough Council Standards Committee is notified accordingly.

6.2.7 The Respondent has the right to appeal to the High Court against the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal. It is the Adjudication Panel for Wales' understanding that a notice of appeal to the High Court should be made within 28 days of either the date of notification of the Case Tribunal's decision or the Respondent's receipt of the reasoned decision, if later.

Signed.....
Helen Cole
Chairman of the Case Tribunal

Date.....

Juliet Morris
Panel Member

Ian Blair
Panel Member