

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2009-010/CT

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

RESPONDENT: Councillor Mary Jones

RELEVANT AUTHORITY(IES): City and County of Swansea

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 commenced by the Case Tribunal at 10.00am on Tuesday 27 October 2009 in the Port Eynon Suite, Marriott Hotel, Maritime Quarter, Swansea. The Case Tribunal adjourned the hearing on 27 October until 21 December 2009 when it reconvened at the same venue. The hearing was open to the public.

1.3 Cllr Mary Jones attended and was represented by Mr Peter Keith-Lucas, Bevan Brittan Solicitors, Bristol.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 10 July 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 Jones. The allegations considered by the Case Tribunal were that Cllr Jones had:

- a) breached the City and County of Swansea's 2002 Code of Conduct by: -
 - i. in her official capacity at a meeting of the Council's Cabinet on 3 April 2008 using her position improperly to confer on her husband an advantage; and
 - ii. failing to declare a personal interest and to withdraw from consideration of the nomination for Governor of Dunvant Primary School at the meeting of the Council's Cabinet on 3 April 2008.

- b) breached the City and County of Swansea's 2008 Code of Conduct by:

- i. failing to declare a personal and prejudicial interest in a matter relating to the governorship of Dunvant Primary School at a Cabinet meeting on 18 July 2008; and
- ii. failing to declare a personal and prejudicial interest and to withdraw from consideration of complaints against another Member at the Council's Standards Committee meeting on 22 December 2008.

2.1.2 Cllr Jones attended the Cabinet Meeting on 3 April 2008. One of the items on the Agenda was LEA Governor Panel Appointments. Mrs Lis Davies had been nominated by the LEA Governor Panel as governor for Dunvant Primary School. Cllr Jones' husband had also applied. At this Cabinet Meeting the Leader stated that there were concerns regarding Mrs Davies' nomination and the Cabinet decided that the nomination of governor of Dunvant Primary School be referred back to the LEA Governor Panel for further consideration. Cllr Jones did not declare an interest, nor did she withdraw. She had sought the advice of the Council's Monitoring Officer on the matter and had been advised that she did not have a personal interest in the governor appointments which were being discussed at this Cabinet Meeting.

2.1.3 On 1 July 2008 the LEA Governor Panel met but did not reach a decision about the nomination of a governor for Dunvant Primary School. It was recommended that the vacancy be re-circulated to Councillors for the next LEA Governor Panel meeting. Such recommendation was approved by the Cabinet meeting on 18 July 2008. Cllr Jones attended that meeting. She did not declare an interest, but she withdrew when the matter was considered. By now, Cllr Jones' husband was a member of the Council, having been elected on 1 May 2008. Applications for vacant governor positions are considered on the basis of the following criteria, in order of priority: -

- Council members representing Wards in the school's catchment area;
- Other Council members;
- Persons who, in the opinion of the Panel, would contribute effectively to the school in terms of skill and experience.

2.1.4 In September 2008 the Governor Panel recommended that Cllr Jones' husband be approved as governor of Dunvant Primary School and the Cabinet approved that nomination on 13 October 2008. Cllr Jones declared a personal interest and withdrew.

2.1.5 The Council's Standards Committee met on 22 December 2008 to consider a complaint made by Mrs Lis Davies about Cllr Speht. Cllr Jones was a member of the Standards Committee and took part in this meeting. Cllr Speht admitted breach. The Standards Committee decided that no action be taken against him. Cllr Jones did not declare an interest nor withdraw.

2.1.6 On 26 August 2008 Mrs Davies made a complaint to the Public Services Ombudsman for Wales that by her actions in the Cabinet Meeting on 3 April 2008, Cllr Jones had breached the Council's Code of Conduct. On 20 January 2009 Mrs

Davies made a further complaint that she considered it inappropriate that Cllr Jones had taken an active part in the Standards Committee proceedings and decision on 22 December 2008 when she was "under investigation by the Ombudsman's Officer" and as she had "political allegiance" to Cllr Speht.

2.2 The Respondent's Written Response to the Reference

2.2.1 Patrick Arran, Solicitor with the City and County of Swansea, on behalf of Cllr Jones, commented on the following matters referred to by paragraph numbers of the Ombudsman's report:

- a) **Paragraph 15** – The wording does not accurately set out the situation here.
- b) **Paragraph 18** – The word "discussed" gives the impression that there was a debate which was not the case.
- c) **Paragraph 21** – It is incorrect to state that the Governor Panel reconsidered Mrs Davies' and Mr Jones' applications on 1 July 2008. It gives the misleading impression that Mr Jones had another opportunity to be considered for the position as a direct result of the Cabinet decision of 3 April 2009. This was not the case.
- d) **Paragraph 54** – The reasons that Cllr Jones took advice from the Monitoring Officer were because of the enmity that she believed that Mrs Davies harboured against her and that her husband had put his name forward to be considered.
- e) **Paragraph 65** – Cllr Jones did not declare an interest because the Monitoring Officer had advised her that she did not have one and she had no reason to and indeed did not, question his advice.
- f) **Paragraph 87** – The Minutes demonstrate that Cllr Speht had admitted breach and the only issue was sanction.
- g) **Paragraph 91** – This reference is factually incorrect. Only Mrs Davies' nomination would be reconsidered.
- h) **Paragraph 106** – Cllr Jones was concerned because of the situation regarding Mrs Davies. Given the propensity for complaint by Mrs Davies, she wanted to ensure that she was acting appropriately at all times. It is unfair for the Ombudsman to suggest that consideration should have been given to whether there was some advantage to her husband in her taking part in the decision. This would, require a level of analysis and attention over and above what is expected of a Member under the Code.
- i) **Paragraph 107** – It is an objective test. However, it is taking the test too far to suggest that Cllr Jones should have appreciated the alleged indirect benefit which was, in the Ombudsman's mistaken view, conferred on Mr Jones. This conclusion is based on an erroneous factual finding. It was not

the case that if Mrs Davies' application was not approved Cllr Jones' husband would "again be eligible to be considered for the post". The Ombudsman has fallen into error by saying that it was not too far removed.

- j) **Paragraph 108** – This paragraph is a continuation of the erroneous assumption.
- k) **Paragraph 109** – This paragraph and view point is based on and a perpetuation of a misunderstanding of the factual scenario. It is unusual and undesirable for the Ombudsman to make such a pointed and direct criticism of a serving Monitoring Officer. No comment is made of Cllr Jones's detailed letter dated 8 January 2009. The arguments contained within that letter are adopted herein. The Ombudsman has erred in finding that there is evidence to suggest that Cllr Jones breached Paragraph 7(a) and 16(3) of the 2002 Code on the basis that she failed to declare a personal interest. It is illogical to confuse the failure to declare a personal interest with the quite specific requirements of Paragraph 7 of the 2002 Code. This is a free-standing paragraph designed to deal with mischief or corruption and/or nepotism. It is incorrect to say that this paragraph is engaged as a result of a failure to declare a personal interest. This paragraph requires a positive mental element to be established in that the Member must consciously decide and intend to use their position to confer a benefit. Cllr Jones could not, on any analysis, have intended to abuse her position in such a way as to engage Paragraph 7 and neither do her actions support the proposition that she had in some way thought this through to achieve such an end. It was impossible to achieve the conferring of any benefit on Mr Jones because the LEA Governor Panel would not have reconsidered his application in any event. If Cllr Jones had intended to improperly abuse her position, why would she have sought advice from the Monitoring Officer? Cllr Jones has made her position very clear in her letter of 8 January 2009 and her recollection and position has been consistent throughout, but the Ombudsman has singularly failed to pay any or any adequate regard to this letter. Paragraph 16(3) is only engaged when a Member has a personal interest in the matter. No specific paragraph in relation to interest has been identified or alleged in the Report. There is no evidence to suggest that Cllr Jones had a personal interest in any event. Paragraph 16 is not engaged by any alleged breach of Paragraph 7. Therefore as a matter of logic and construction, Cllr Jones cannot be in breach of this paragraph of the Code.
- l) **Paragraph 112** – As a matter of principle Part 2 of the 2008 Code stipulates when the Code applies. It is a trite point that the purpose of the Code is to ensure that elected Members do not seek to influence or take part in decisions taken by the Council where they are not entitled to do so. Therefore it is pertinent to point out that Paragraph 2 of the Code sets out the situation in which Members must observe the Code of Conduct. The obvious point to make, and this is accepted by the Ombudsman, is that Cllr Jones absented herself from the meeting whilst the item in relation to Dunvant Primary School was considered. It cannot be said that Cllr Jones was conducting business or present at a meeting when this item was being

considered. Both of these requirements mean physical presence and active participation. Therefore it cannot be the case that a councillor is in breach of the Code of Conduct when they leave a meeting prior to the consideration of an item of business where they may have had an interest to declare. It is submitted that to take such an approach would be to incorporate something into the Code which is not there.

- m) **Paragraph 113** – Without prejudice to the preceding paragraph the unchallenged evidence is that Cllr Jones did not declare an interest because she did not consider, having taken previous legal advice, that she had an interest to declare. She has provided a reasonable and acceptable explanation as to why she left the meeting. The Ombudsman seems to have reached a conclusion on the basis that it is his view that the 2008 Code of Conduct "only requires Members to leave the room if they consider they have a personal and prejudicial interest in the matter". This is a wholly artificial and unsustainable approach to take.
- n) **Paragraph 114** – The matters referred to from this paragraph onwards are extremely concerning for a number of reasons. Firstly, there are wide ranging implications for all Local Authority Officers and Members. One could understand the situation where a Member had particular animosity towards a particular person, however, it has to be stretching the ambit of the Code to the limit to find that Member must declare an interest in respect of a person that has animosity towards them. The Code does not and should not contemplate this type of scenario. The Ombudsman has found no evidence that Cllr Jones has any form of animus towards Mrs Davies. There is clear evidence that the same cannot be said for Mrs Davies. If it were the case that every Member involved in a decision regarding Mrs Davies had to declare an interest, then quite frankly the executive system would be inoperable! The Ombudsman fails to identify which paragraph of the Code of Conduct would provide that Cllr Jones should declare a personal interest in these circumstances. Once again the Ombudsman has misdirected himself by firstly applying a hybrid of bias and Paragraph 12 of the Code, instead of considering whether a personal interest existed at all. This is not an appropriate approach. One must look to the Code to establish whether, on an objective view point, there is a personal interest and only if that question is answered in the affirmative, does one then move on to consider whether there is a prejudicial interest. The issue of bias is a matter of common law which is independent of the Code of Conduct and cannot be imputed into it.
- o) **Paragraph 115** – The Ombudsman makes statements of alleged established fact or opinion which have no evidential basis or any foundation within the Code of Conduct. There is no evidence that Cllr Jones had acted improperly. Issues of animosity and bias are inextricably linked, however, and this is a rudimentary point, just that it is not within the Code. The Ombudsman has taken the Monitoring Officer's advice out of context. The Standards Committee acts in a quasi judicial capacity and therefore issues of predetermination and bias are highly relevant. The Ombudsman seems to have taken a brief note provided by the Monitoring Officer as evidence of

his opinion. It is unfortunate that the Ombudsman failed to interview the Monitoring Officer to clarify these remarks before setting them out as definitive authority for a proposition. There is no legal basis for the Ombudsman to suggest that Cllr Jones or indeed any councillor has to declare a personal interest where a member of the public has animosity towards them. This would be an unlawful extension and/or interpretation of the Code. The Ombudsman demonstrates confusion between personal interest under the Code and a common law rule against bias.

- p) **Paragraph 116** – It is submitted that the approach of the Ombudsman here is illogical. The Ombudsman bases his finding of a breach under Paragraph 7(a) and 16(3) of the 2002 Code on a failure to declare an interest in respect of Mrs Davies. It is submitted that this is conceivably because there is nothing in either Code which contemplates this situation - and rightly so in my submission. It is denied that there is a breach of the Code as alleged or at all for the reasons sent out in Paragraph 109 above. This finding is even more illogical on the basis that Paragraph 7 is predicated on an intention to abuse one's position, yet the Ombudsman has clearly stated that he finds Cllr Jones in breach solely on the assumption that she had a personal interest. This cannot and should not be relied upon as evidence of breach of Paragraph 7.
- q) **Paragraph 119** – For the reasons set out above in relation to Paragraph 114, Cllr Jones did not and could not breach the Code of Conduct and she did not have a personal interest which she should have declared. Once again the Ombudsman applies the wrong test by considering a hybrid of prejudicial interest and bias, before establishing whether any personal interest exists. This is an incorrect approach on the basis that one has to consider the personal interests first and then move on to consider whether that interest is prejudicial. The common law rule against bias is a different issue but is not contemplated within the Code of Conduct.
- r) **Paragraph 120** – It is inconceivable that Paragraph 10(2)(c)(1) is engaged in these circumstances. There is no logical nexus between the unsubstantiated opinion that "her presence may have given the impression that she was in a position to disadvantage Mrs Davies as one of the complainants against Cllr Speht" and the only possible literal construction of the paragraph said to have been breached by the Ombudsman. Furthermore the Ombudsman does not set out with sufficient precision how this paragraph is said by him to apply in the circumstances.
- s) **Paragraph 121** – The Ombudsman says, having made a very wide ranging and impermissible finding, that each situation will need to be assessed on its merits. This ignores the fundamental issue raised by the findings, ie. that an elected Member should declare a personal and probably prejudicial interest when a member of the public has a particular animosity towards them. This cannot be what the Code is intended to address. There is no mischief here that the Code can deal with in its current format. It is extremely dangerous to apply such an interpretation into a clear and prescriptive document. This has implications for Local Government generally. It introduces a completely

unnecessary and unwarranted level of uncertainty for Officers and elected Members.

- t) **Generally** – This case raises important issues of principle and policy - what is the effect on a Elected Member actively seeking and following reasonable legal advice from a Monitoring Officer prior to concluding whether they have an interest to declare; does this provide exoneration or mitigation?; As a collateral issue, how can a Member be in breach of the Code notwithstanding the taking of legal advice yet also be in breach for failing to follow the advice. Such a situation must be perverse?

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 8 September 2009, the Ombudsman responded to Patrick Arran's written representations to the Case Tribunal as follows:

- a) **Paragraph 15** – This paragraph is unchanged from the draft Report - no request was received to amend it. This paragraph includes a factual description of the procedure.
- b) **Paragraph 18** – This paragraph is unchanged from the draft Report - no request was received to amend it. There is no implication that "a debate" occurred. The statement "the Leader made the decision that the matter would be referred back to the Governor Panel" is incorrect. "Cabinet" made the decision.
- c) **Paragraph 21** – There was no request from the Respondent to delete the reference to Mr Jones in this paragraph of the draft Report. The potential was created for allowing the previous unsuccessful applicants to be reconsidered for the governor post. Cllr Jones knew her husband was an applicant for the post at the time of the Cabinet Meeting on 3 April 2008. Had Cabinet approved the nomination of Mrs Davies at its meeting on 3 April 2008, that would have been an end to the matter. Taking a step other than approval, a step to which Cllr Jones was party, left the door ajar for Mr Jones to be nominated.
- d) **Paragraph 54** – This paragraph is unchanged from the draft Report - no request was received to amend it. This paragraph is quoted directly from Cllr Mary Jones' letter of 8 January 2009. It is not for the Ombudsman to expand and contextualise Cllr Jones' evidence.
- e) **Paragraph 65** – This paragraph is unchanged from the draft Report - no request was received to amend it. This paragraph is quoted directly from Cllr Jones' letter of the 22 January 2009.
- f) **Paragraph 86** – This paragraph is unchanged from the draft Report - no request was received to amend it. This paragraph is a summary of Cllr Jones's comments in her interview.

- g) **Paragraph 91** – This paragraph is a summary of the content of the Deputy Monitoring Officer's letter to the Ombudsman of 17 June 2009. The statement said to be inaccurate is a direct quote.
- h) **Paragraph 106** – It is considered beyond question that, in the circumstances pertaining at the time of the Cabinet Meeting on 3 April 2008, it was clear that Cllr Jones should have declared an interest and not participated. To contend that that would require a level of analysis over and above what is expected under the Code, is untenable.
- i) **Paragraph 107** – The failure to approve the appointment of Mrs Davies resulted in a further opportunity for Mr Jones.
- j) **Paragraph 108** – See above response to Paragraph 107. The apparent suggestion that bias and/or apparent bias is not relevant to the question of whether there has been a breach of the Code, is untenable.
- k) **Paragraph 109** – The reference to Paragraph 72 is not understood. The apparent suggestion that a Monitoring Officer is immune from criticism in respect of wrong advice is erroneous. The Ombudsman takes issue with the Respondent's response generally. The Ombudsman had regard to all the evidence and to the representations from Cllr Jones, including her letter of 8 January 2009. The Respondent's response is based on a flawed understanding of the relevant provisions of the Code.
- l) **Paragraph 112** – This response misses the point. The finding by the Ombudsman is not that Cllr Jones failed to withdraw from the meeting, but that she failed to declare an interest.
- m) **Paragraph 113** – The test is objective. On any reasonable basis Cllr Jones had such an interest.
- n) **Paragraph 114** – The Ombudsman takes issue with the Respondent's response generally. The finding made by the Ombudsman relates to a failure to declare an interest and to withdraw from a meeting of the Standards Committee. The test is objective. The apparent suggestion that bias and/or apparent bias are irrelevant to whether Cllr Jones should withdraw is untenable.
- o) **Paragraph 115** – The Ombudsman takes issue with the response to Paragraph 115 generally. The question of "personal interest" and the relevance of bias and/or apparent bias is dealt with above. The Ombudsman notes that the Respondent appears to accept that bias and/or apparent bias is relevant to the proceedings of the Standards Committee, but, apparently not otherwise. That distinction is unsustainable. The Monitoring Officer was initially asked for relevant information on 30 September 2008. In response, the minutes of the Cabinet Meeting on 3 April 2008 were provided. The Investigating Officer became aware, from Cllr Jones' letter of 8 January 2009 that she had sought advice from the Monitoring Officer. The Investigating Officer wrote to the Monitoring Officer

on 9 January 2009 seeking clarification of that advice. The Monitoring Officer's reply of 26 January 2009 is at Appendix H1. The evidence was accepted at face value. As no date or details of the advice was recorded, it appeared futile to question the Monitoring Officer about it any further.

- p) **Paragraph 116** – A personal interest existed and Cllr Jones failed to declare that interest in breach of the Code. It is not suggested by the Respondent that she declared an interest. The only question is whether she had such an interest. She plainly did.
- q) **Paragraph 119** – The Respondent's response to Paragraph 119 is flawed for the reasons given above.
- r) **Paragraph 120** – Cllr Jones contributed to the decision that no sanction was to be imposed. Mrs Davies had complained about them both to the Ombudsman. Cllr Jones was in a position to disadvantage Mrs Davies, who wanted a sanction to be imposed on Cllr Speht. That was sufficient to give rise to an obligation on Cllr Jones to declare an interest and withdraw from consideration of the question of the sanction to be imposed.
- s) **Paragraph 121** – Each situation should be assessed on its own merits. Cllr Jones has taken great pains to draw the Ombudsman's attention to numerous examples of Mrs Davies' animosity towards her. She evidently considers such animosity to be significant. The Ombudsman agrees. For that reason he considers Cllr Jones should be seen to distance herself from any matters "substantially" involving Mrs Davies. The approach that the Ombudsman has taken is a principled approach applied to the facts of a particular case. The apparent contention that a finding of a breach of the Code will cause "...completely unnecessary and unwarranted level of uncertainty for Officers and Elected Members alike..." provides no basis for not upholding that principled approach.
- t) **Generally** – The Ombudsman views acting in accordance with "reasonable legal advice" as mitigation, but doesn't concede that the legal advice in question was reasonable. The Monitoring Officer advises Members that the final decision on matters of interest is for them to make. The obligation is to "have regard" to Officer advice, there is no obligation to follow it.

3. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales

3.2 Mr Tony Childs represented the Ombudsman and made the following submissions in relation to the Ombudsman's Report.

The Cabinet Meeting on 3 April 2008, breach of Paragraph 7(a) and 16(3) of the 2002 Code: -

3.3.1 Cllr Jones was present at this meeting. The Leader recommended that the nomination in relation to Dunvant Primary School be referred back to the LEA Governor Panel and that was the Cabinet's decision. It is undisputed that Cllr Jones participated in that decision, that she had undertaken to be bound by the Code of Conduct and that she was undertaking the role of Member at that Cabinet Meeting.

3.3.2 Cllr Jones' husband was a candidate for nomination of governor to Dunvant Primary School. Had the Cabinet accepted the LEA Governor Panel's recommendation of Mrs Lis Davies, such nomination would have been carried and Mr Jones would have been unsuccessful. As it transpired, the Cabinet's decision allowed Mr Jones a second chance. He still had the opportunity of being considered.

3.3.3 The Ombudsman found that the Cabinet's decision created an advantage for Mr Jones, namely he could still be considered. His wife, Cllr Jones, participated in that decision and accordingly Cllr Jones breached Paragraph 7(a) of the 2002 Code which states "Members must not in their official capacity or otherwise use their position improperly to confer on or secure for any person and in particular their family, friends or those with whom they have a close personal association an advantage or disadvantage or to secure an advantage for themselves".

3.3.4 In accordance with Paragraph 10 of the 2002 Code, it is a Member's personal responsibility and duty to consider whether they have a personal interest. It is for the Case Tribunal to determine whether Cllr Jones had a personal interest. "Personal interest" is defined in Paragraph 11 of the 2002 Code. In this case, was the Cabinet's decision likely to benefit or disadvantage Cllr Jones or her husband and there is only one answer to that question, namely "yes". Cllr Jones' husband gained an advantage in that he remained a candidate as a governor and indeed ultimately was successful. That would not have happened had the Cabinet approved Mrs Davies' nomination. Mr Jones' prospects of being elected as a Member are not relevant. His success in being appointed a governor was due in part to the Cabinet's decision on 3 April 2008 in which his wife, Cllr Jones, participated.

3.3.5 Paragraph 16(3) of the 2002 Code states "A member who has a personal interest in a matter which is not specified in paragraphs 12, 13 or 15 above and who attends a meeting of the authority at which the matter is discussed, must disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. Members disclosing an interest must enter the agenda number of the matter on the form supplied by the Monitoring Officer at each meeting. If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the member's ability to act purely on the merits of the case and in the public interest if that member were to take part in the discussion of that matter, the member must also withdraw from consideration of the matter at that meeting unless granted dispensation by the authority's standards committee".

3.3.6 The obligation to declare a personal interest arises when the matter becomes apparent. This is not an allegation that Cllr Jones was biased. The issue is what would a reasonable member of the public think. That is the decision which the Case Tribunal must reach. The Case Tribunal must be the reasonable member of the public. It cannot be right for Cllr Jones to have participated in a matter involving her husband. She had a personal interest which she should have declared and she should also have withdrawn. As she failed to declare a personal interest and as she failed to withdraw, she has breached Paragraph 16(3) of the 2002 Code.

3.3.7 In accordance with Paragraph 20 of the 2002 Code, it is a Member's personal responsibility to decide whether they have a personal interest such that they should disclose it. It follows that the decision whether or not to withdraw is also a personal responsibility of the Member and cannot be delegated to a legal advisor. In this case, the advice given to Cllr Jones was oral, undated and unrecorded. The basis of the advice given to Cllr Jones in this case was that she had no interest to declare because the appointment of governor would not default to her husband if Mrs Davies' nomination were not approved by the Cabinet. This applies the wrong test. The correct test is the objective test, namely how would it look to a reasonable member of the public. The advice given also fails to address the effect of a decision to refer back the nomination, which was that Mr Jones would remain eligible. The advice was not reasonable. It was untenable, it was plainly wrong.

3.3.8 Cllr Jones has given reasons why she did not have a personal interest. She says that it is the LEA Governor Panel not that Cabinet which makes the decision about governor appointment. It is however clear that the Cabinet plays a part in the decision as indeed it did on this occasion. Cllr Jones has said even if the Cabinet were in a position to have benefited her husband, it would not have been to a greater extent than any other tax payer, because anyone could put themselves forward as a potential candidate. In this case, however, it is clear that Cllr Jones knew that her husband was one of a small number of persons who had applied for nomination and it is a matter of fact that he was indeed being considered and further, as a result of the Cabinet's decision on 3 April, was in a position to be considered again and was indeed considered again. Cllr Jones has said that it was not reasonably foreseeable at the time that her husband would become an elected member. This is irrelevant. Cllr Jones has said she did not need to declare an interest because her husband was not the LEA Governor Panel's nomination for approval, accordingly it was Mrs Davies' nomination not her husband's that was being considered. This fails to take into account the outcome of a decision by the Cabinet not to approve Mrs Davies' nomination, namely that her husband could be reconsidered and would accordingly have a second chance.

3.3.9 The matter was of concern to Cllr Jones. This is evident from the fact that she sought advice from the Monitoring Officer. She was in doubt, in which case the dispensation regulations enabled her to seek a dispensation, which she did not do.

The Cabinet Meeting on 18 July 2008, breach of Paragraph 11(1) of the 2008 Code of Conduct : -

3.4 Paragraph 11(1) of the 2008 Code states "Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent".

3.4.1 Cllr Jones was present at this meeting and again it is common ground that she had undertaken to be bound by the 2008 Code of Conduct and that she was undertaking the role of Member at the meeting. It is undisputed that she made no declaration of interest but that she withdrew when the matter of governorship of Duvant Primary School was considered. The issue is therefore did she have a personal and prejudicial interest which she should have declared.

3.4.2 By now Cllr Jones' husband was not only still a candidate, but a strong candidate in the light of the criteria applied in order of priority for governor selection, as he was now a councillor. In relation to Duvant Primary School, the LEA Governor Panel recommendation, before this Cabinet Meeting, was that the vacancy be re-circulated to councillors. Such recommendation was approved by the Cabinet at this meeting.

3.4.3 Cllr Jones clearly had a personal interest within the definition of Paragraph 10(2) of the 2008 Code. The decision of the Cabinet obviously affected her husband's wellbeing. Cllr Jones also had a prejudicial interest within the definition of Paragraph 12(1) of the 2008 Code. The test is objective, namely what would the reasonable man think. In short the reasonable man would not think that Cllr Jones should be involved in any decision relating to her husband as her judgement might be prejudiced because of that relationship.

3.4.4 Cllr Jones' husband, Cllr Jeff Jones, clearly accepts that he had a personal and prejudicial interest in the matter of the governorship of Duvant Primary School, following his election as a councillor. It follows from this that Cllr Jones, by virtue of her husband's acceptance of that fact, also has such interest. Cllr Jones' withdrawal from this meeting is significant. It must have been because she knew she had a personal and prejudicial interest.

3.4.5 The same points made in relation to the meeting on 3 April 2008 apply to this meeting.

3.4.6 Cllr Jones has clearly breached Paragraph 11(1) of the 2008 Code of Conduct.

The Standards Committee Meeting on 22 December 2008, breaches of Paragraphs 11(1) and 14(1)(a) of the 2008 Code of Conduct :-

3.5.1 The decision to be made and indeed made at this meeting was whether to impose a penalty on Cllr Speht and if so, what. The Standards Committee

accordingly was exercising a semi judicial function. Cllr Jones was a member of the Standards Committee and attended this meeting and took part in the decision, which was not to impose a penalty. Again, it is common ground that Cllr Jones had undertaken to observe the 2008 Code of Conduct and that she was involved in council business.

3.5.2 It is significant that the complainant against Cllr Speht, was Mrs Lis Davies. By Cllr Jones' own evidence, there was a history of "malicious complaints" and "profound enmity" by Mrs Davies. She had referred to elected members of the Council as "ugly money-sucking wasters".

3.5.3 The objective test applies. How can it be said that the objective onlooker would think that Mrs Davies' complaint would be considered fairly. It would appear to the objective onlooker that there was a personal and prejudicial interest and that Cllr Jones should not therefore have taken part. An objective onlooker might even think that Cllr Speht was given no sanction because Mrs Davies was the complainant or in view of Mrs Davies' behaviour towards her, that it would be in Cllr Jones' interests that Mrs Davies' complaint was not upheld. They were adversaries and the history of hostility between the two women was such that the reasonable man would conclude it would affect Cllr Jones' judgement whatever the reality of the situation, in that there is no allegation of bias, but it looks that way. The advice given by the Monitoring Officer on the matter was correct, namely "Members not have an interest by virtue of a colleague unless a degree of animosity/friendship". There was animosity here. In the light of all this, Cllr Jones breached Paragraphs 11(1) and 14(1)(a) of the 2008 Code of Conduct.

3.6 The following authorities were provided : -

3.6.1 Murphy v Ethical Standards Officer of the Standard Boards of England (2004) EWHC2377(Admin) - in relation to the definition of "wellbeing".

3.6.2 R v Kirklees Metropolitan Borough Council ex parte Beaumont and Others QBD 28-07-2000 - in relation to the interpretation of "interest".

3.6.3 Porter v McGill House of Lords 2001 - in relation to "appearance of bias".

3.6.4 Lawal v Northern Spirit Limited (2003) UKHL35 - in relation to "unconscious bias".

3.6.5 R v Hendon Rural District Council ex parte Chorley KBD1993 - in relation to "participation".

Cllr Mary Jones

3.7 Cllr Jones gave the following information on oath in response to questions asked by her Representative Mr Peter Keith-Lucas: -

3.7.1 As a matter of simple fact the decision of the Cabinet Meeting on 3 April 2009 was not an approval or a rejection, it was a referral back and did not confer any advantage on her husband.

3.7.2 In relation to the Cabinet Meeting on 18 July 2008 she had a personal and prejudicial interest. She spoke again to the Monitoring Officer about the matter as she did not feel comfortable. She left the room when the matter of the governorship of Dunvant Primary School was discussed.

3.7.3 At no time did she have any ill feeling or malice towards Mrs Lis Davies.

3.7.4 Cllr Jones gave the following information in response to questions asked by the Ombudsman's representative, Mr Tony Childs: -

3.7.4.1 At the time of the Cabinet Meeting on 3 April 2008 she knew that her husband had applied to be a governor of Dunvant Primary School. Neither she nor her husband had an interest in the matter. Her husband was not discussed. The decision was not to approve or refuse the nomination, it was simply to refer the matter back for "more information".

3.7.4.2 The reason why she asked the Monitoring Officer for advice was because Mrs Davies had made complaints and because her husband was on the "waiting list" for governorship of Dunvant Primary School. She asked the Monitoring Officer whether she had an interest and he advised she did not as her husband was not being discussed. She considered the advice given by the Monitoring Officer and accepted it.

3.7.4.3 The initial recommendation of the LEA Governor Panel was the appointment of Mrs Lis Davies, but in the interim other things had happened. Had the recommendation been approved Mrs Davies would have been appointed but vacancies arise all the time and her husband could have remained on the "waiting list". The decision made by the Cabinet on 3 April 2008 did not affect her husband.

3.7.4.4 Her husband had become an elected Member on 1 May 2008. He had not "pursued" his application for governorship; he had simply stayed on the waiting list. His election as a Member made him a strong candidate for governorship, but she did not know who was on the waiting list, there could well have been other elected Members.

3.7.4.5 At the time of the meeting on 18 July 2008 her husband was a strong candidate for governorship and this was why she took further advice from the Monitoring Officer and left the room when the matter was discussed at that meeting. She had not declared a personal and prejudicial interest because the discussion was not to do with any actual filling of the vacancy for governorship.

3.7.4.6 In relation to the Standards Committee Meeting on 22 December 2008, Cllr Speht had accepted that he was in breach of the Code of Conduct, so the only decision for the meeting was sanction.

3.7.4.7 She had not asked the Monitoring Officer for advice about participating in the meeting. Members had asked for clarification as some of them were in the original Planning Meeting from which Mrs Davies' complaint arose. Mrs Davies was not the only complainant.

3.7.4.8 She did not attach any significance to her description of Mrs Davies as a "malicious complainant" nor to having said that Mrs Davies displayed "personal enmity" towards her. It was a matter of fact that Mrs Davies complained all the time. She did not attach significance to the remarks made by Mrs Davies nor to Mrs Davies' complaints about her. These sorts of things "go with the job".

3.7.4.9 She did not accept that a member of the public might not see it that way and in any event "it's me we are taking about not everybody else" and she has no malice or ill feeling towards Mrs Davies.

4. FINDINGS OF FACT

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

4.1.1 Cllr Jones is an elected member of the Council of the City and County of Swansea.

4.1.2 Cllr Jones has signed an undertaking to accept the members' Codes of Conduct 2002 and 2008.

4.1.3 Mrs Lis Davies and Mr Jeff Jones both applied for the vacant governor position at Duvant Primary School in February 2008.

4.1.4 Mr Jeff Jones is Cllr Jones' husband.

4.1.5 On various occasions Mrs Lis Davies has complained about Cllr Jones' conduct.

4.1.6 Cllr Jones perceives a degree of animosity and personal enmity towards her by Mrs Lis Davies and perceives Mrs Davies to be a malicious complainant.

4.1.7 On 4 March 2008 the Governor Panel recommended to Cabinet that Mrs Davies be appointed as governor to Duvant Primary School.

4.1.8 The appointment of governor to Duvant Primary School is noted in the Minutes of the Cabinet meetings held on 3 April and 18 July 2008.

4.1.9 At the meeting on 3 April 2008 the Cabinet did not approve the Governor Panel's recommendation to appoint Mrs Davies to the vacant governor position and referred the matter back to the Governor Panel.

4.1.10 Cllr Jones participated in the Cabinet Meeting on 3 April 2008 and was party to the Cabinet's decision to refer back to the LEA Governor Panel, Mrs Davies' nomination.

4.1.11 Mr Jeff Jones was elected as a member of the Council on 1 May 2008.

4.1.12 At the Cabinet Meeting on 18 July 2008 the Community Leadership and Democracy Cabinet Member reported in relation to the vacant governorship of Dunvant Primary School that the Governor Panel had been unable to come to a decision. There was no recommendation from the Panel regarding the vacancy and it recommended that the vacancy be re-circulated to Councillors. The Panel's recommendation for recirculation was approved by the Cabinet.

4.1.13 In September 2008 the Governor Panel recommended that Cllr Jeff Jones be approved as a governor of Dunvant Primary School.

4.1.14 At the meeting on 13 October 2008 the Cabinet approved Cllr Jeff Jones' nomination to the governor position at Dunvant Primary School.

4.1.15 Cllr Jones attended the Cabinet meetings on 3 April 2008 and 18 July 2008.

4.1.16 The Council's Monitoring Officer advised Cllr Jones that she did not have a personal interest in the governor appointments which were being discussed at the Cabinet meeting on 3 April 2008.

4.1.17 In the Cabinet meetings on 3 April 2008 and 18 July 2008 Cllr Jones did not declare an interest in relation to the matter of governorship of Dunvant Primary School.

4.1.18 At the meeting on 3 April 2008 Cllr Jones remained in the room throughout.

4.1.19 At the Cabinet meeting on 18 July 2008 Cllr Jones withdrew from the meeting when the matter of the governorship of Dunvant Primary School was considered.

4.1.20 The Council's Standards Committee met on 22 December 2008 to consider the Public Service Ombudsman's Report on a complaint made by Mrs Davies against Cllr Speht.

4.1.21 Cllr Jones was a member of the Council's Standards Committee at the time.

4.1.22 The transcript of the advice given by the Council's Monitoring Officer at the Standards Committee meeting on 22 December states: *"Members not have an interest by virtue of a colleague unless a degree of animosity/friendship."*

4.1.23 Cllr Jones was present at the Standards Committee meeting on 22 December 2008 and did not declare an interest nor withdraw.

4.1.24 The Standards Committee found a breach of the Code by Cllr Speht but that no action be taken against him.

4.2 There were no disputed material facts.

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 The submissions made on behalf of Cllr Jones by Mr Peter Keith-Lucas are annexed to this Decision Report, marked Annex A.

5.2 The Ombudsman's Report/Submissions

5.2.1 In relation to the Cabinet Meeting on 3 April 2008 the Ombudsman's representative, Mr Tony Childs, made the following submissions: -

5.2.1.1 This an "open and shut case". The position is clear. The agenda item was approval of the LEA Governor Panel's nomination of Mrs Lis Davies as governor of Duvant Primary School. Cllr Jones' husband was also a candidate. It is obvious that Cllr Jones had an interest in the outcome of the Cabinet's decision and by participating in the decision not to endorse the recommendation, she gained an advantage for her husband. Had the Panel's recommendation been accepted the vacancy would have been filled by Mrs Davies and Mr Jones would not have had a second chance. The Cabinet's decision allowed him a second chance. There is no reasonable basis to say that the decision in which she participated, did not gain an advantage for her husband. It is not suggested that Cllr Jones was aware of all of this or that she acted deliberately to gain an advantage for her husband, but there is the appearance of bias. She should have declared an interest and she should have withdrawn.

5.2.1.2 The Respondent submits an argument for a subjective test, namely what did Cllr Jones actually anticipate. That would be difficult to ascertain, but in any event the test is and must be an objective test. A subjective test would allow even the very best of councillors to decide whether or not they are in breach of the Code and such position would drive a coach and horses through the Code and its objectives.

5.2.1.3 The Respondent's submissions for an objective¹ test depart from Murphy, Porter -v- McGill and Lawal. It is always an objective test and that is clear regardless of the different language used in the two Codes. That Cllr Jones says she did not anticipate any benefit to her husband is nothing to the point. He received benefit in that he was reconsidered and in fact ultimately appointed as governor. The certainty or even the probability or likelihood of his being appointed is beside the point; the point is the Cabinet's decision allowed him a second chance. As a result of that decision he was reconsidered and in fact ultimately appointed. Having that second chance was significant. It is not useful to speculate as to what the LEA Panel might or could have done and what might have resulted; we know what happened - Cllr Jones' husband was reconsidered and ultimately appointed and that came about as a result of the decision in the Cabinet Meeting on 3 April 2008 in which Cllr Jones participated.

¹ This should read "subjective".

5.2.1.4 Cllr Jones' reliance on the legal advice which she received is not relevant as to whether or not she has breached the Code. It is relevant to mitigation. However, it is significant, as to breach, that she sought legal advice. It was because she had concerns about whether or not she had an interest. It is incorrect for the Respondent to submit that even if Cllr Jones had a personal interest it was not such as to affect her ability to act impartially and in the public interest. The question is not one of actual bias, but of apparent bias. In other words how would this look to an informed bystander?

5.2.1.5 It is not relevant how the other councillors thought or behaved. The question is how did Cllr Jones behave and whether she breached the Code.

5.2.1.6 The purpose of the Code is to uphold proper standards. The interpretation of acting "properly" surely includes not participating in a matter in which you should not participate. It certainly goes wider than motivation. The argument put forward by the Respondent about "remoteness" is untenable and in any event, the issue of remoteness should not influence the Tribunal's decision.

5.2.1.7 The Respondent's submissions on guidance from the Standards Board of England should be approached with caution, but in any event the test laid down is satisfied. The Ombudsman has not applied the wrong test, he has used the objective test and properly applied it.

5.2.1.8 It is clear that Cllr Jones has breached Paragraphs 7(a) and 16(3) of the 2002 Code.

5.2.2 In relation to the Cabinet Meeting on 18 July 2008 the Ombudsman's representative, Mr Tony Childs, made the following submissions: -

5.2.2.1 Much of the submissions made in relation to the Meeting on 3 April 2008 apply equally here. This time Cllr Jones withdrew when the matter of the governorship of Duvant Primary School was considered. She did not however comply with the requirement to disclose her interest.

5.2.2.2 As to the timing of a disclosure, the test is simple and should not cause any difficulty. An interest has to be disclosed before or at the consideration of the matter when the interest becomes apparent. In this case Cllr Jones clearly withdrew as she considered she had an interest, at that point the interest clearly was apparent to her. She should have declared her interest before withdrawing. It is clearly a requirement that the reason for withdrawal must be given so that the nature of the interest can be noted.

5.2.2.3 The Tribunal has jurisdiction to consider all matters at the Tribunal's discretion. Cllr Jones has been given full opportunity to make representations on all relevant issues.

5.2.2.4 "Wellbeing" has a wide definition, see Murphy.

5.2.2.5 Cllr Jones is in breach of the Code.

5.2.3 In relation to the Standard's Committee Meeting on 22 December 2008 the Ombudsman's representative, Mr Tony Childs, made the following submissions -

5.2.3.1 One of the complainants against Cllr Speht was Mrs Lis Davies. She had made derogatory remarks about elected Members of the Council, including Cllr Jones. She had also made complaints about Members including Cllr Jones. Cllr Jones by her own admission perceives Mrs Davies to be a malicious complainant and as displaying personal enmity towards her. In the light of all this would it appear that Cllr Jones could objectively hear a complaint by Mrs Davies? The answer is plainly "no".

5.2.3.2 The test is an objective test. It is not whether Cllr Jones was actually or consciously influenced by this background. It is whether she would appear to a well informed objective bystander to be influenced. It would appear to such bystander that she could subconsciously have been influenced. It may not appear appropriate that no sanction was imposed by the Standards Committee.

5.2.3.3 The "flood gates" argument should not influence the Tribunal's decision. The facts of this particular case are unusual.

5.2.3.4 The Respondent's submission that there was no disadvantage to Mrs Davies is untenable. She had made a complaint, there was a finding of breach and a sanction exercise followed. She had the right to a fair hearing, ie. no perceived bias. Appearances really do matter.

5.2.3.5 The Code should be interpreted in its widest sense and mindful of its purpose, which is maintaining standards in public life.

5.2.3.6 Cllr Jones is in breach of the Code.

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 the City and County of Swansea's Codes of Conduct.

5.3.2 Paragraph 7(a) of the 2002 code of conduct states: "*[Members:] must not, in their official capacity or otherwise, use their position improperly to confer on or secure for any person and in particular their family, friends or those with whom they have a close personal association an advantage or disadvantage or to secure an advantage for themselves*".

5.3.3 The Case Tribunal found that by her participation in the decision of the Cabinet on 3 April 2008 Cllr Jones used her position as Member improperly to confer on or secure for her husband an advantage in breach of Paragraph 7(a) of the 2002 Code.

5.3.3.1 The appointment of governor to Dunvant Primary School involved Cllr Jones' husband and Mrs Lis Davies. Both had applied for the position. Both had been considered by the LEA Governor Panel. The agenda item at the meeting on 3 April 2008 was approval of the LEA Governor Panel's nomination, namely Mrs Davies. The decision made by the Cabinet was neither an approval of her nomination nor an outright rejection. It was to refer the matter back to the LEA Governor Panel for consideration. Undoubtedly the effect of that decision was that Mr Jones and presumably Mrs Davies remained a candidate. Mr Jones would not have remained a candidate had the Cabinet approved Mrs Davies' nomination. Accordingly the Cabinet's decision, in which Cllr Jones participated, conferred upon her husband benefit or advantage, namely the opportunity to be reconsidered.

5.3.3.2 The Tribunal accepts that there is no evidence of any deliberate intention or motive on the part of Cllr Jones to benefit or gain advantage for her husband (nor to disadvantage Mrs Davies). However the interpretation of "improperly" is wider than that. It includes participating in the decision. In this case it was not "proper" for Cllr Jones to have taken any part in the decision. It involved her husband. It also involved Mrs Davies who, according to information given by Cllr Jones to the Ombudsman's investigating officer, she regarded as displaying "personal enmity" towards her and as a "malicious complainant". Cllr Jones described Mrs Davies as someone who frequently complains and makes referrals to the Ombudsman, about Members. Cllr Jones said she, along with some ten or so other Members, are constantly targeted and that Mrs Davies' animosity is well known. Cllr Jones had provided examples such as an interview by the Council's Auditors, Price Waterhouse Coopers, and a review of her expenses claim following a complaint by Mrs Davies in December 2007 (there was no foundation to the complaint and Cllr Jones was fully vindicated) and an election leaflet in March 2008 where Cllr Jones and other Members pictures appeared with a sketch of a bomb, describing them as "ugly money sucking wasters" which was attributed to Mrs Davies.

5.3.4 Paragraph 16(3) of the 2002 code of conduct states: *"A member who has a personal interest in a matter which is not specified in paragraphs 12, 13 or 14 above and who attends a meeting of the authority at which the matter is discussed must disclose the existence and nature of the interest at the commencement of that discussion or when the interest becomes apparent. Members disclosing an interest must enter the agenda number of the matter on the form supplied by the Monitoring Officer at each meeting. If that personal interest is such that a member of the public might reasonably conclude that it would significantly affect the member's ability to act purely on the merits of the case and in the public interest if that member were to take part in the discussion of that matter, the member must also withdraw from consideration of the matter at that meeting unless granted dispensation by the authority's standards committee."*

5.3.5 The Case Tribunal found that Cllr Jones had a personal interest in the agenda item relating to the governorship of Dunvant Primary School before the Cabinet Meeting on 3 April 2008, by virtue of the fact that it involved her husband and Mrs Davies. The involvement of either gives rise to a personal interest because of the relationship Cllr Jones had with each - one was her husband; the other was someone with whom there was a relationship of animosity (on the part of

Mrs Davies) which the Tribunal found amounted to "a close personal association" within the definition, spirit and intention of the 2002 Code. This includes someone with whom there has been a dispute and someone a member of the public might think the Councillor would be prepared to disadvantage. Paragraph 10(1) of the 2002 Code requires Members, in all matters, to consider whether they have a personal interest and whether the Code requires disclosure. Paragraph 10(2) specifies matters for which Members must regard themselves as having a personal interest but this is not an exhaustive list and does not negate the duty under Paragraph 10(1). The Tribunal accepts there was no evidence of any ill-will displayed by Cllr Jones towards Mrs Davies but her unilateral antagonism towards Cllr Jones is sufficient, on the objective test which applies, to give rise to a personal interest.

5.3.5.1 The Tribunal has considered the submissions made by Cllr Jones' representative that Paragraph 11 of the 2002 Code applies a subjective test and that the wording of the Code should be literally or narrowly interpreted in determining whether there is a personal interest. The Tribunal is not convinced by this argument. It cannot be right to say that a councillor who honestly and genuinely does not anticipate that a decision might provide benefit to her husband, has no personal interest. It would follow, however wrong, mistaken or unreasonable was such genuine and honest lack of anticipation, there would be no personal interest. That cannot be right, where there has plainly been advantage or benefit to the Member's husband. The test must be an objective test in order to achieve the objective of the Code, which is to uphold standards in public life. The Tribunal also rejects the "remoteness" argument, and incidentally, considers that it was actually reasonably foreseeable in these circumstances that the Cabinet's decision might reasonably be regarded as likely to benefit Mr Jones.

5.3.5.2 Having found that Cllr Jones had a personal interest, the Tribunal then considered whether it was also "prejudicial", ie. such that a member of the public might reasonably conclude that it would significantly affect Cllr Jones' ability to act purely on the merits of the case and in the public interest if she were to take part in the discussion of the matter, and accordingly whether she should have withdrawn from the discussion. The Tribunal has seen no evidence that Cllr Jones did not act impartially, but the test is not subjective. It is an objective test - what would the well informed objective bystander make of it? The decision of the Cabinet on 3 April 2008 involved both Mr Jones and Mrs Davies. The Case Tribunal believes that the involvement of Cllr Jones' husband or Mrs Davies (in the light of the history and background between the two women) would satisfy the objective test, ie. a member of the public might reasonably conclude that such factors would significantly affect Cllr Jones' ability to act purely on the merits of the case and in the public interest. Accordingly, she should have withdrawn.

5.3.6 Paragraph 11(1) of the 2008 code of conduct states: *"Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent."*

5.3.7 In evidence, Cllr Jones said she had a personal and prejudicial interest. The Case Tribunal found that Cllr Jones had a personal interest in the matter of the agenda item before the Cabinet on 18 July 2008 relating to the governorship of Dunvant Primary School by virtue of the fact that it involved her husband. At the time of this meeting there was no nomination for governorship of Dunvant Primary School. The agenda item was approval of the LEA Governor Panel's recommendation that the vacancy be recirculated amongst councillors. Cllr Jones' husband remained a candidate for the governorship and by now he was a councillor. The Cabinet's decision might reasonably be regarded as likely to affect his "wellbeing". It is common ground that "wellbeing" has a broad definition. Cllr Jones should have declared the existence and nature of her interest before or at the commencement of the consideration of the matter or when her interest became apparent.

5.3.7.1 The wording of Paragraph 11(1) of the 2008 Code is clear and the Tribunal cannot see that it gives rise to any practical difficulties - when a councillor has a personal interest in any business or his/her Authority and attends a meeting at which that business is considered, the councillor must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration or when the interest becomes apparent. There is no discretion about disclosing a personal interest and it must be made orally to the meeting where the business giving rise to the personal interest is considered. Simply withdrawing without firstly orally declaring the existence and nature of the personal interest does not satisfy this paragraph of the Code. In practical terms, in order to comply with the spirit and intention of the Code, the personal interest, surely, must be declared at the earliest opportunity after the interest becomes apparent. This of course will depend upon the particular circumstances, including matters such as the background/history of the matter, the wording of the agenda item and the normal practice of the Authority concerned. It is a matter of common sense, so for example, where the background/history and/or the wording of the agenda item makes the interest apparent at the start of the meeting, that is when the interest should be orally disclosed, especially if it is the normal practice of the Authority to set time aside at the start of the meeting to take declarations of personal interest. There may be some instances when the existence and nature of the interest does not become apparent until the commencement of the consideration of the matter (or indeed occasionally, well into the consideration of the matter). In those cases the declaration must be made when it becomes apparent. In the particular instance of the cabinet meeting on 18 July 2008 the existence and nature of Cllr Jones' interest in the agenda item relating to the governorship of Dunvant Primary School was apparent from the beginning of the meeting in the light of the background/history (governorship of Dunvant Primary School had previously been discussed at cabinet meetings attended by Cllr Jones and she knew her husband had applied for governorship); it was also apparent from the wording of the agenda item which was "Approval of the LEA Governor Panel's recommendation that the vacancy be recirculated amongst councillors" (Cllr Jones' husband was a councillor). As it was the usual practice of this Authority to take declarations of personal interest at the start of meetings, it is fair to say that Cllr Jones should have declared at the start of the meeting. Certainly she should have declared her interest, at the latest, before withdrawing, for on her own evidence, she withdrew for the reason that she had a personal (and

prejudicial) interest in the matter. There is no requirement for a declaration of personal interest by a councillor who does not attend a meeting where the business in which he/she has a personal interest is considered nor where he/she does not attend that part of the meeting where such business is considered and concluded because he/she arrives late, nor if he/she has left that part of the meeting but if, and only if, in those circumstances the interest was not apparent before departure and the matter was considered and concluded during the absence. None of this applies to the cabinet meeting on 18 July 2008 as Cllr Jones was present from the start, her interest was apparent from the start and she withdrew specifically for the reason that she had a personal (and prejudicial) interest. Although she withdrew when the matter was discussed and did not participate in the discussion or decision at all, she breached this paragraph of the Code by failing to declare her personal interest. It is imperative, where there is an interest, its existence and nature are disclosed and a withdrawal does not satisfy that requirement. A failure to disclose means there is no record of the existence and nature of the interest nor, if a withdrawal follows, the reason for it.

5.3.7.2 The Tribunal did not consider it actually necessary to consider, in relation to breach of Paragraph 11(1) of the 2008 Code, whether Cllr Jones' interest was also prejudicial, namely to consider whether she needed to withdraw. It is an undisputed fact that she withdrew and Cllr Jones confirmed in oral evidence that her interest was personal and prejudicial. The issue here was failure to declare her interest. Nevertheless, for completeness her interest was also prejudicial. It involved her husband, in which case a reasonable member of the public might think that Cllr Jones should not be involved as her judgement might be prejudiced because of their relationship of husband and wife.

5.3.8 Paragraph 11(1) of the 2008 Code is as stated in point 5.3.6 above. Paragraph 14(1)(a) of the 2008 Code of Conduct states: -*"Subject to sub-paragraphs (2), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee.....(a) withdraw from the room, chamber or place where a meeting considering the business is being held..."*

5.3.9 The Tribunal found that Cllr Jones had a personal interest in the Standards Committee Meeting on 22 December 2008 because its decision (what sanction to impose on Cllr Speht) might reasonably be regarded as affecting the "wellbeing" of Mrs Davies, someone with whom Cllr Jones had a "close personal association". Cllr Jones should have declared the existence and nature of her interest before or at the commencement of the consideration of the matter or when her interest became apparent.

5.3.10 A broad interpretation of "wellbeing" and "close personal association" applies. Anything that could affect quality of life positively or negatively is likely to affect wellbeing. "Close personal associate" includes someone with whom there has been a dispute and someone a reasonable member of the public might think a Member would be prepared to disadvantage. Paragraph 10 of the 2008 Code requires Members in all matters, to consider whether they have a personal interest and whether the Code requires disclosure. Paragraphs 11 to 14 specify matters for which Members must regard themselves as having a personal interest but

these are not exhaustive and do not negate the duty under Paragraph 10. Again Mrs Davies' unilateral animosity is sufficient to amount to a personal interest within the definition, spirit and intention of the 2008 Code. The test is objective.

5.3.11 The Tribunal found that Cllr Jones' interest was also prejudicial. There is no evidence that Cllr Jones' participation in the Standard Committee's decision was actually or consciously affected by the animosity displayed against her by Mrs Davies (as previously described) but the test is objective. On that basis it may look as though the relationship would affect Cllr Jones' objectivity. A member of the public with knowledge of the relevant facts would reasonably regard the relationship as so significant as to be likely to prejudice her judgement of the public interest. The member of the public might think it looked as though the complaint had not been handled objectively by Cllr Jones because the complainant was Mrs Davies - a frequent and "malicious complainant" who displayed "animosity" and "personal enmity" towards Cllr Jones as previously described.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 The submissions made on behalf of Cllr Jones by her representative Mr Peter Keith-Lucas are annexed to this Decision Report, marked Annexe B.

6.1.2 The Tribunal heard from Mrs Jennifer Rayner, former councillor Gerald Clement, JP and Councillor Chris Holley, Leader of the Council as to Cllr Jones' character and two other written character references were handed in to the Tribunal.

6.2 The Public Services Ombudsman for Wales' Submissions

6.2.1 The Ombudsman made no submissions.

6.3 Case Tribunal's Decision

6.3.1 The Tribunal considered all of the facts of the case, the submissions made by Mr Peter Keith-Lucas and the character references.

6.3.2 The Tribunal is satisfied that Cllr Jones did not deliberately set out to benefit or disadvantage anyone; nor was she actually biased; nor did her participation in any of the meetings actually influence any of the decisions made; nor did she deliberately breach the Codes.

6.3.3 Cllr Jones has not previously breached the Codes and she provided assurances that it will not happen again. Her character referees spoke of the care and caution she normally takes to follow the Code, to seek advice and always to act and be seen to be acting properly. Accordingly the Tribunal was satisfied that this was an isolated incident, uncharacteristic of Cllr Jones and was not concerned that it needed to take steps to prevent future breaches which it considered unlikely.

6.3.4 The Tribunal has given credit for Cllr Jones' good record of service and commitment as a councillor and to the community as spoken of by her referees.

6.3.5 The Tribunal accepts that Cllr Jones genuinely, but mistakenly, believed that her actions did not amount to a breach of the Code and is prepared to accept this as an explanation for why she challenged the investigation and the Tribunal's findings to the very end.

6.3.6 The Tribunal is very mindful of the fact that Cllr Jones sought the advice of the Monitoring Officer and that she followed the advice he gave. His advice was wrong. Cllr Jones has at no time blamed him. She has, as indeed she must, under the Code, accepted personal responsibility for her decisions and actions. Clearly Cllr Jones is and was, in this case, guided by the Monitoring Officer's advice. In this instance, had correct as opposed to incorrect advice been given and followed, then Cllr Jones' decisions and actions would not have been in breach of the Code.

6.3.7 The Tribunal had some sympathy for Cllr Jones and her colleagues who constantly find themselves the subject of Mrs Davies' frequent complaints.

6.3.8 In the particular circumstances of this case and especially in view of the strong mitigating factors, the Tribunal decided unanimously that it was not appropriate, necessary or desirable to disqualify, suspend or partially suspend Cllr Jones.

6.3.9 The City and County of Swansea and its Standards Committee are notified accordingly.

6.3.10 The Respondent has the right to seek leave of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal. The Case Tribunal issued a direction on 11 January 2010, in exercise of its powers under Civil Procedure Rule 52.4 that the time for filing a notice of appeal to the High Court shall be no later than 28 days from the respondent's receipt of this Decision Report.

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

Date 27.01.10

Christine Jones
Panel Member

Ian Blair
Panel Member