

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2010-011/CT

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

RESPONDENT: Councillor Aled Morris Jones

RELEVANT AUTHORITY(IES): Anglesey County 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 In accordance with Cllr Jones' wishes, the Case Tribunal determined its adjudication by way of written representations at a meeting on Thursday 5 August 2010 at the Halliwell Centre, Trinity University College.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 27 April 2010, 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. It was alleged that Cllr Jones had breached Anglesey County Council's Code of Conduct when chairing a meeting of the Council on 5 March 2009 by failing to allow the Monitoring Officer to provide legal advice requested by members.

2.1.2 During the investigation, the Ombudsman became aware of a further potential failure to observe the Code of Conduct. This was that Cllr Jones failed to have regard to the advice of the Monitoring Officer when chairing a meeting of the Council on 27 March 2009. The Ombudsman took the view that the evidence did not support that complaint. However, Cllr Jones was notified by the Case Tribunal that it would consider both allegations.

2.1.3 The circumstances leading to the alleged breaches are evident from the findings of fact.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Jones did not seek to challenge the findings of the Ombudsman's report and accepted that he had breached the Council's Code of Conduct at the meeting on 5 March 2009. In relation to the alleged breach on 27 March 2009, Cllr Jones said that he decided to chair the meeting because it enabled him to "redress the less than satisfactory events of the 5th of March Council meeting" and he had sought a second opinion from the Welsh Local Government Association.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal did not receive oral submissions.

4. FINDINGS OF FACT

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

4.1.1 At the material time, Cllr Jones was a member of Anglesey County Council.

4.1.2 Cllr Jones gave a written undertaking to observe the Council's code of conduct on 2 May 2008.

4.1.3 Cllr Jones Chaired the meeting of the Council on 5 March 2009.

4.1.4 Cllr Jones did not allow the Monitoring Officer to give legal advice during the debate that followed a Wales Audit Office presentation on its Annual Letter to the Council, on a closure motion and move to vote.

4.1.5 Cllr Jones Chaired the Council meeting on 27 March 2009.

4.1.6 In a letter dated 24 March 2009, the Monitoring Officer advised Cllr Jones not to chair the meeting of the Council on 27 March 2009; Cllr Jones also sought advice on the matter from the Welsh Local Government Association.

4.1.7 Cllr Jones initially relinquished his position as Chair, but resumed the role following debate in the chamber regarding his position, chaired the debate on the Annual Letter and took part in the vote at the conclusion of the debate.

4.1.8 On 10 December 2009, Cllr Jones made a personal statement of apology to the full Council; he also apologised in person and in writing to the Monitoring Officer for any distress his conduct had caused her.

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 No further written submissions were made in relation to the Ombudsman's findings in respect of the meeting on 5 March 2009.

5.1.2 In relation to the meeting on 27 March, Cllr Jones said, in a letter dated 15 October 2009 to the Ombudsman, that he relinquished the Chair in order for the members to discuss whether he should Chair the meeting or not. He had obtained separate advice from the Welsh Local Government Association, which had received a copy of Ms Ball's letter. The Association advised to the effect that it was his decision to Chair or not. He also submitted that it was at the Council's request that he return to the Chair and he was called back into the chamber. He had considered the Monitoring Officer's letter of advice and given it due consideration along with the verbal advice received from the Welsh Local Government Association.

5.2 The Ombudsman's Report

5.2.1 In relation to the meeting on 5 March 2009, it was contended that the evidence supports the conclusion that Cllr Jones heard at least one request by councillors for advice from the Monitoring Officer. On the balance of probabilities, the Ombudsman concluded that Cllr Jones deliberately prevented the Monitoring Officer from providing advice when she intervened to express her grave concerns and failed to have any regard to the limited advice that she was allowed to offer. Therefore, there is compelling evidence of a breach of paragraph 8 of the Code of Conduct.

5.2.2 In relation to the meeting on 27 March 2009, the Ombudsman found that Cllr Jones had not followed the advice given by the Monitoring Officer. The Ombudsman concluded that it may have been a case of disagreeing with advice as opposed to failing to have regard to it, if Cllr Jones had reached a rational and reasoned conclusion not to exclude himself from the Chair.

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 Council's code of conduct at both meetings.

5.3.2 Paragraph 8(a)(iii) of the Code of Conduct states that '*You must – (a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by -..... (iii) the authority's monitoring officer;.....*'

5.3.3 The Case Tribunal found that Cllr Jones did not allow the Monitoring Officer to give legal advice at the meeting of 5 March 2009 during the debate that followed

the Wales Audit Office's presentation on its annual letter to the Council, on a closure motion and moved to vote.

5.3.4 The Case Tribunal found that Cllr Jones' actions at the meeting on 27 March 2009 were contrary to the advice given by the Monitoring Officer. From previous cases, there is precedent that to "have regard" means following the advice received from the Monitoring Officer unless there is good reason not to do so, for example, if the advice is clearly incorrect. Cllr Jones' decision not to exclude himself from the Chair was not rational or reasoned. The Monitoring Officer's advice was correct in this instance and Cllr Jones seems to have been guided by the Welsh Local Government Association and his fellow members, rather than the Monitoring Officer who has a formal role to provide advice to members.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Jones contended that it had been very difficult for him to conduct his role as Chair of Anglesey County Council during his year of office and provided the Case Tribunal with materials and items in support of such contention. Cllr Jones accepted full responsibility for his actions and did not seek to shift responsibility to others.

6.1.2 He has expressed genuine remorse for the events on 5 and 27 March 2009 and has apologised to the Council and, in particular, to the Monitoring Officer who has accepted his apology.

6.1.3 Cllr Jones said that the manner in which he had approached the meeting on 5 March 2009 was intended to mitigate potential damage to the Council. He had faced personal hostility, the level of which made him unable to adapt to the circumstances in the Chamber.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case, the Respondent's submissions in mitigation, the representations by Steve Thomas, Chief Executive, Welsh Local Government Association, David Bowles, Interim Managing Director, Anglesey County Council and others, which place the matter in context and provide character references. The Case Tribunal gives Cllr Jones credit for acknowledging a breach of the Code of Conduct, for apologising and accepting responsibility for his actions rather than seeking to blame anyone else. The Case Tribunal also gives credit to Cllr Jones for his previous good service. It is evident from all of the information before the Tribunal that Anglesey County Council was experiencing particularly challenging times and is now seeking to put those behind it. It is also evident that Cllr Jones had to function in the face of personal hostility.

6.2.2 The Case Tribunal concluded by unanimous decision that Cllr Jones should be suspended from acting as a member of the Council for a period of 4 months or,

if shorter, the remainder of his term of office, with effect from Monday 9 August 2010.

6.2.3 Failing to have regard to the advice of the Monitoring Officer is a serious matter. From previous cases there is precedent that to “have regard” means following the advice received, unless there is good reason for not doing so, for example if the advice is clearly incorrect. In this case, Cllr Jones disregarded the Monitoring Officer’s advice on more than one occasion and at the time appears to have shown little respect for her function. But for the factors stated above, the Tribunal would have been minded to impose a longer period of suspension upon Cllr Jones.

6.2.4 Anglesey County Council and its Standards Committee are notified accordingly.

6.2.5 The Respondent has the right to seek the 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.

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

Date...5 August 2010.....

Colin Evans
Panel Member

Juliet Morris
Panel Member