

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

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

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Former Councillor Philip Fowlie

RELEVANT AUTHORITY(IES): Isle of 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 The Case Tribunal determined its adjudication by way of written representations at a meeting on Monday 27 September 2010 at the Castell Malgwyn Hotel, Llechryd, Cardigan.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 3 February 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against (now) former Cllr Fowlie. The allegations were that Cllr Fowlie had breached the Council’s Code of Conduct by misrepresenting the content of conversations with the Wales Audit Office and the Council’s Monitoring Officer in a subsequent interview with the press; and by refusing to provide the Council’s Corporate Information Officer with information when requested to do so.

2.1.2 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 Fowlie did not seek to challenge the findings of the Ombudsman’s report.

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 18 March 2010, the Ombudsman noted that Cllr Fowlie accepted the facts and conclusions of his report and offered no further representations.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal did not receive oral submission.

4. FINDINGS OF FACT

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

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

4.1.2 Cllr Fowlie gave a written undertaking to observe the Council's Code of Conduct on 1 May 2008.

4.1.3 On 12 February 2009, Cllr Fowlie sent to Cllr Cliff Everett an email stating "Following conversations with Mr Alan Morris of the Wales Audit Office, I have been advised not to proceed at the present moment with the scheduled meeting for Wednesday, 18 February, 2009. I shall keep you informed of progress."

4.1.4 On 13 February 2009, Mr Alan Morris sent an email to Cllr Fowlie clarifying that he had provided no such advice.

4.1.5 In an article which appeared in the Daily Post on 27 February 2009, Cllr Fowlie was quoted as saying that he had received advice from the Deputy Monitoring Officer not to proceed with the Audit Committee meetings and that he was awaiting further advice from the Welsh Local Government Association.

4.1.6 On 2 March 2009, the Deputy Monitoring Officer wrote to Cllr Fowlie clarifying the advice that he had provided and denying that this was against participating in meetings relating to the Wales Audit Office's Annual Letter.

4.1.7 Cllr Fowlie did not at the time withdraw, correct, amend, or explain the comments that he had made in his email or the quotations attributed to him in the article in the Daily Post.

4.1.8 On 18 December 2008, Cllr Fowlie wrote to the Wales Audit Office setting out the Executive's response to its draft Annual Letter.

4.1.9 In separate letters dated 23 January 2009, the Council's then Managing Director and the Corporate Information Officer wrote to Cllr Fowlie requesting a copy of his letter to the Wales Audit Office.

4.1.10 On 3 February 2009, Cllr Fowlie replied to the Council's Managing Director and suggested that it would be possible to supply a copy of the letter in exchange

for a copy of the Corporate Management Teams' response to the Wales Audit Office's draft Annual Letter.

4.1.11 Also on 3 February 2009, Cllr Fowlie replied to the Corporate Information Officer suggesting that the letter might be covered by an exemption under the Freedom of Information Act and disclosure should be sought from the Wales Audit Office.

4.1.12 In a response dated 5 February 2009, the Corporate Information Officer requested access to the letter in order to ensure the Council's compliance with the relevant legislation. The Corporate Information Officer advised that the law required the Council to respond to the request for disclosure of the letter within 20 working days (ie by 19 February 2009).

4.1.13 In a response dated 11 February 2009, Cllr Fowlie repeated that the letter was now in the ownership of the Wales Audit Office. He also expressed concern to protect the Council and individuals, and that there might be issues in the letter that fell within the Data Protection Act.

4.1.14 Cllr Fowlie received further correspondence (a letter dated 13 February) from the Managing Director and (a letter dated 26 February) from the Information Officer setting out the Council's obligations under the Freedom of Information Act and the Data Protection Act, the obligation upon him to provide a copy of the letter and the consequences if this was not done.

4.1.15 On 9 April 2009, Cllr Fowlie provided a copy of the letter to Cllr Charlton.

4.1.16 On 29 June 2009, the Information Commissioner's Office concluded that it would not issue a formal decision notice as the letter had now been provided, but did express concern at Cllr Fowlie's non-cooperation and that the case had been noted as a non-compliance with further intervention possible in the event of recurrence.

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 Fowlie made no submissions as to whether there had been a breach of the Council's Code of Conduct.

5.2 The Ombudsman's Report

5.2.1 It was contended that Cllr Fowlie intentionally misled Cllr Everett and the general public in an email dated 12 February and newspaper interview on 27 February 2009. Whilst Anglesey County Council was experiencing particularly challenging times and although Cllr Fowlie was suffering poor health, these factors do not excuse his behaviour.

5.2.2 The Ombudsman was not persuaded that this was nothing more than a chain of unfortunate misunderstandings. On the contrary, the Ombudsman

concluded that Cllr Fowlie deliberately attempted to mislead as evidenced by his failure to attempt to correct any misrepresentation. The Ombudsman concluded that Cllr Fowlie's motivation was political.

5.2.3 It was contended that the explanations given by Cllr Fowlie for failing to provide the information were erroneous and unsupported in law. Further that it was a wilful act was a decision taken in the clear knowledge that it was likely to represent a breach of the Code of Conduct.

5.2.4 It was contended that Cllr Fowlie's conduct not only brought his office into disrepute, but also brought the Council into disrepute as it resulted in an adverse finding against the Council from the Information Commissioner.

5.2.5 The Ombudsman also contended that there was persuasive evidence of a sustained and determined political agenda on Cllr Fowlie's part and a recurrent pattern of behaviour, and, that the complaints should be considered in a most serious light.

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.

5.3.2 Paragraph 5(b) of the Code of Conduct states "*You must not prevent any person from gaining access to information to which that person is entitled by law.*"

5.3.3 The Case Tribunal found that, following a formal Freedom of Information Act request, Cllr Fowlie refused to provide the Council's Corporate Information Officer with a copy of a letter he had written to the Wales Audit Office on behalf of the Council Executive.

5.3.4 Paragraph 6(1)(a) of the Code of Conduct states "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"

5.3.5 The Case Tribunal found that Cllr Fowlie, by failing to provide the information requested, and through his misrepresentations as alleged, brought his office and the authority into disrepute.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Fowlie contended that this had been a very difficult time within the Council. There was a general climate of lack of co-operation, in particular between the governing Executive and the management team.

6.1.2 He could not remember having received training, although he would not dispute records that showed that he had.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case, the representations made by Mr Steve Thomas, Chief Executive, Welsh Local Government Association, concerning Cllr Fowlie's health problems and the medical evidence supplied. The Case Tribunal recognises that the Council faced particularly challenging times which it now seeks to put behind it.

6.2.2 The Case Tribunal gives Cllr Fowlie credit for not challenging the Ombudsman's findings.

6.2.3 The Case Tribunal accepts in its entirety the Ombudsman's conclusions as to the seriousness of the breaches and notes that no apology has been forthcoming. Whilst Cllr Fowlie has now stood down as a member of the Council, the reason offered is not contrition but his medical condition. It is also the case that Cllr Fowlie was the Leader and an experienced member of the Council. He had also received training on more than one occasion on the Code of Conduct, Data Protection and Freedom of Information.

6.2.4 But for Cllr Fowlie having this month stood down, a suspension of 12 months would have been the sanction imposed by the Case Tribunal. However, the Adjudication Panel's sanctions guidance provides that "...disqualification may be appropriate where the respondent is no longer a member in circumstances where, had he or she been a member, suspension would otherwise have been the likely sanction."

6.2.5 The Case Tribunal concluded by unanimous decision that Cllr Fowlie should be disqualified for 12 months from being or becoming a member of the Isle of Anglesey County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

6.2.6 The Isle of Anglesey County Council and its Standards Committee are notified accordingly.

6.2.7 The Respondent has the right to seek the permission 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...27 September 2010...

Colin Evans
Panel Member

Juliet Morris
Panel Member