

PANEL DYFARNU CYMRU ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBERS: APW/006/2010-011/CT (“Reference 1”)
APW/010/2010-011/CT (“Reference 2”)

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

RESPONDENT: Councillor Adam Brown

RELEVANT AUTHORITY(IES): Merthyr Tydfil County Borough Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal commencing at 09.00am on Wednesday 13 April 2011 at the Copthorne Hotel, Culverhouse Cross, Cardiff. The hearing was open to the public.

1.3 Cllr Brown attended and represented himself.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In letters dated 26 July 2010 and 5 January 2011, the Adjudication Panel for Wales received two separate referrals from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Cllr Brown. The allegations were that Cllr Brown had breached Merthyr Tydfil County Borough Council’s Code of Conduct by using the internet to publish inappropriate comments; misusing Council resources; breaking the Council’s Internet Security Policies; failing to show respect and consideration for others; disclosing a confidential letter; sending inappropriate emails; publishing a deliberately misleading press release; and, thereby, bringing the office of councillor and his authority into disrepute.

2.1.2 The circumstances leading to the complaints of alleged breach are evident from the undisputed material facts and the disputed material facts set out in section 4 of this Decision Report.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Brown made written submissions to the Case Tribunal prior to the hearing as follows:

Reference 1

- i. The length of time taken by the Ombudsman's investigation has completely weakened his defence as contact details for third parties are old and he no longer had or longer wished to maintain contact with some of those persons.
- ii. In relation to the posting to do with Amanda Knox, this occurred when he was watching television with former friends and working on his Council laptop at the same time. He left the room, leaving the laptop unlocked, and in his absence his then friends used it to make the posting. He knew nothing about it until the newspaper reporter asked him about it during a telephone interview.
- iii. The comments he made on Facebook about Irish people and Dublin were to do with a photograph of a time when he was visiting the city to watch a football match and to meet up with Irish friends. At the time there was banter between them as friends about the Welsh and the Irish. He was responding to banter made by his Irish friends about the Welsh.
- iv. His comments about housing benefit tenants were based on his own personal experience of such tenants and made to a member of the public who he was helping at the time. The comments were made in response to an enquiry by that person who asked if anyone had experience of letting out property to council tenants. He was relating his own personal experience of cost of disrepair and slow payment of rent by some local authorities. Cllr Brown said he had also informed the person concerned to check payment details with his own local authority.
- v. The media reports about his comments about Irish people and housing benefit tenants were completely inaccurate and he had asked for a retraction.
- vi. He was a new councillor; had received little training on the Code of Conduct and was very naive, especially in his dealings with the press.

Reference 2

- i. He had not signed Merthyr Valley Homes' Code of Conduct and was unaware of its provisions.
- ii. His disclosure was in the public interest.
- iii. In relation to the complaint about his email to Mrs Overbury, the offence taken was mutual and he had apologised immediately he knew she had been upset.
- iv. In relation to his comments about Cllr Thomas, again there was mutual offence and again he had apologised to Cllr Thomas. He believed his apology had been accepted and that the matter was closed a long time ago.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman made written submissions to the Case Tribunal in relation to "Reference 1" prior to the hearing as follows:

- i. The investigation was concluded in approximately ten months; that period included a period of delay due to Cllr Brown's failure to provide responses to specific questions and failure by Royal Mail to deliver recorded delivery mail to him. Cllr Brown was advised when notified of the complaint that he could make comments if he chose to.
- ii. Cllr Brown was present in the council meeting when the Information Security Policy was formally adopted; he signed a declaration which included the requirement that "members shall use all due diligence to ensure that the equipment remains safe and secure and shall take no actions or make any omissions which will jeopardize the safety and security of the equipment". In his first response to the Ombudsman Cllr Brown said he had not started the on-line poll about Amanda Knox. Upon being asked specifically "please tell me anything else and provide any other documents that you believe to be relevant to my investigation", Cllr Brown did not provide any of the details that he has now given (i.e. about his former friends having used his laptop, etc).
- iii. Cllr Brown had identified Mr Michael Foley as an Irish friend and had said that he had only Facebook contact details for him. The Facebook comments do not include entries from Michael Foley.
- iv. Cllr Brown was given the opportunity to provide contact details for the individual with whom he had been in correspondence about housing benefit tenants. He had not given any details.
- v. Martin Shipton (the other journalist involved in the publication of the press articles) confirmed in his statement that Cllr Brown had not asked for a retraction.

3. ORAL SUBMISSIONS

Public Services Ombudsman for Wales

3.1 Mrs Shaw made submissions as follows:

3.1.1 The Ombudsman relies on his report.

3.1.2 In relation to Reference 1, Cllr Brown accepts that he is in breach of paragraphs 7(b)(ii), 7(b)(v) and 7(b)(vi) of the Code of Conduct. The Ombudsman considers that by his actions Cllr Brown has also breached paragraphs 7(b)(i) and 7(b)(iv) by virtue of his excessive use, for both personal and private purposes, of council provided equipment.

3.1.3 Cllr Brown accepts that the on-line poll about Amanda Knox was set up using his council provided computer, user account and email address. Even if it is the case that others set up the poll, Cllr Brown is responsible. He was present at

various meetings when IT policies were discussed and revised; the parameters for use of council provided equipment were clear. The poll was in itself inappropriate, containing sexual content. It was all the more inappropriate being set up using council provided equipment. Cllr Brown is in breach of paragraphs 4(b) and 6(1)(a) of the Code of Conduct. In the latter case, he has brought disrepute upon his own office and also upon that of his Authority as the matter generated a great deal of publicity both at local and national level.

3.1.4 Whilst Cllr Brown can make whatever comments he wishes in his personal capacity, he cannot when acting in his official capacity nor if they bring his office or Authority into disrepute. The comments made by Cllr Brown about housing benefit claimants, Irish people in general and Amanda Knox, and also his emails to and about Cllr Thomas and to Mrs Overbury, were inappropriate and result in breaches of paragraphs 4(b) and 6(1)(a). It may very well have been the case that Cllr Brown considered his comments about Amanda Knox, housing benefit claimants and Irish people in general to have been made in a private capacity but that is not so; these comments were in the public domain and contain references to his being an elected member.

3.1.5 Cllr Brown was nominated by and represented his Authority on the Board of Merthyr Valley Homes. It is evident that he disclosed confidential information; the item was marked "confidential". There was no compelling reason at the time for the disclosure to have been made, in fact, to the contrary, this was a very sensitive time when Merthyr Valley Homes were seeking legal advice and seeking to resolve the matter in discussions with the Council. The disclosure could have had serious repercussions for both. As a member of both the Board and of the Authority, Cllr Brown had responsibilities to each and a key element of such responsibility was not disclosing sensitive and confidential information. Whilst Cllr Brown had raised his concerns directly with Jackie Bligh before disclosing the confidential information, as evidenced by his email to her, the email did not even suggest that he was going to disclose the information or "go public". Although Cllr Brown had not signed Merthyr Valley Homes' Code of Conduct he is most certainly bound by it; he had taken up his position and it is clear from paragraph 3(a) of the Council's Code of Conduct that his duty, first and foremost, was to Merthyr Valley Homes.

3.1.6 The press release issued by Cllr Brown following his departure from the Board of Merthyr Valley Homes is misleading; any reasonable person reading it would gather that he had withdrawn, whereas he had been removed by a resolution of the board. Critical references to accounting practices would also give rise to cause for concern or alarm in the public's perception, bringing the Authority into disrepute.

3.1.7 Cllr Brown's email to Mrs Overbury was in response to a perfectly appropriate email from her in which she merely stated facts and gave information about the Royal British Legion Parade. It was not addressed to Cllr Brown, but he responded and the tone of his response was unreasonable and inappropriate. It upset and distressed Mrs Overbury especially because it was copied to other members and senior officers. Perhaps Cllr Brown was frustrated, but it was inappropriate that he should take out his frustration on Mrs Overbury.

3.1.8 It is accepted that Cllr Brown apologised to Cllr Thomas; nevertheless his comments were inappropriate for an elected member and he used his council provided resources to make such comments and brought them into the public domain by making them on a public website. It is for the Tribunal to consider whether the email which Cllr Brown sent to Cllr Thomas crosses the line of acceptable behaviour; it certainly demonstrates a pattern of unacceptable behaviour on the part of Cllr Brown, namely sending/making inappropriate emails/website postings.

Cllr Adam Brown

3.2 Cllr Brown made the following oral submissions:

3.2.1 As one of the youngest members of his Authority he receives requests for help from a certain younger age group within the whole Borough, not just his Ward. This added workload explains his heavy use of council provided telephone resources.

3.2.2 The Amanda Knox poll was not set up by him nor can it be regarded as having been set up in his official capacity.

3.2.3 The comments he made about housing benefit tenants, Irish people and Cllr Thomas were made in a personal or private capacity, not in his official capacity.

3.3 Cllr Brown gave evidence under oath as follows:

3.3.1 Whilst he accepted that the Amanda Knox poll had been set up using his council provided equipment, others were responsible for it. He knew nothing about it until he was approached by a journalist and the subsequent reporting of the matter in the media did not reflect the comments he had made to the journalist. Only later did he discover that his then friends had created the poll. They had betrayed his trust. Owing to personal matters resulting in the friendships breaking down, Cllr Brown had felt it impossible to contact these former friends, but had done so lately with a view to establishing his defence; he provided correspondence from them confirming that they had set up the poll. Cllr Brown acknowledged that "without a doubt" the poll had affected his and his Authority's reputation; Cllr Brown was adamant that he had asked for a retraction and that his subsequent email to Martin Shipton was "tongue in cheek", made in a sarcastic fashion to indicate that the media report had not in fact put across his view in an accurate way.

3.3.2 Cllr Brown said he considered that communication between elected members and their electorate is an important issue and he was dedicated to exploring every avenue of communication, including the internet, public forums, social networking media and so on. He said that he was naive in failing to appreciate that comments made in such way come into the public domain at large. The comments made about housing benefit tenants were to a friend, a Mr Williams, who like himself is a fan of Cardiff City Football Club; he had been speaking about his own personal experience of housing benefit tenants, but conceded that he was giving advice as a councillor. His comments about Irish people were also of his own personal experience and merely banter with friends. Cllr Brown confirmed

that, "without a doubt", his reputation as a councillor and his Authority had been affected by such comments.

3.3.3 Cllr Brown said that, during his local surgeries, older members of the public had discussed rent options. One member of the public in particular was very angry about the matter, complaining that he was still paying for work carried out many, many years ago. Cllr Brown had agreed to take up the matter with Merthyr Valley Homes and had raised it on a number of occasions during the six months period prior to his "going public". Cllr Brown also disclosed that this was not the first time he had "tipped off" a journalist. He said that he had warned Merthyr Valley Homes on numerous occasions that he would go public. He said he was anxious to demonstrate to local residents that he was attempting to address their concerns and was robustly of the view that those concerned were stalling and attempting to 'brush things under the carpet'. He said that his duty of care is to the people of Gurnos Ward, generations of whom have been overcharged: "I was elected for them, not on some code". Cllr Brown conceded that "officially" he is in the wrong but still stood by his course of action and did not accept that this was an occasion when he was bound by a duty of confidentiality. He did not feel able to apologise for his actions. Cllr Brown confirmed that he had not given any thought to the effect that his disclosure would have on the negotiations between Merthyr Valley Homes and the local authority; he had given thought only to the residents who were being overcharged.

3.3.4 In relation to his email to Mrs Overbury, Cllr Brown said he had not much cared for her tone. He took his membership of the Royal British Legion very seriously; he had not received an invitation to the parade because the Council had suspended his email facilities. He had apologised and accepted that possibly his response to her was an overreaction and that she may have been offended or upset, but so was he. He had not meant any offence and was not aware that she had recently suffered a bereavement.

3.3.5 In relation to his comments about Cllr Thomas, Cllr Brown again repeated that modern day politics includes social networking so as to reach a far wider audience and that he tries to give as much information as possible as he can to the wider public. He acknowledged that, for those reasons, someone using such means of communication should be on their guard and he had learnt his lesson. Cllr Brown accepted that his comments were inappropriate and this was why he had apologised. He was of the understanding that his apology had been accepted and that the matter was at an end. Cllr Brown said that Cllr Thomas has complained about him to the Ombudsman on many occasions and on very minor issues. He was of the view that this all stemmed from his Freedom of Information Act request for details about Cllr Thomas' expenses claims. Cllr Brown's opinion was that Cllr Thomas feared a public backlash if full details of his expenses claims came into the public domain and was simply trying to deflect the situation. Cllr Brown believed that the complaint by Cllr Thomas to the Ombudsman about the Facebook comments is a typical example of this, especially as the matter was "dead and buried" as a result of an apology having been tendered and accepted a long time ago.

4. FINDINGS OF FACT

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

Reference 1

4.1.1 Cllr Brown is a member of Merthyr Tydfil County Borough Council and signed a declaration of acceptance of office on 7 May 2008, thereby undertaking to observe the Council's Code of Conduct.

4.1.2 Cllr Brown has been sent training material from three Code of Conduct training sessions arranged by the Council. He has not attended any of these training sessions.

4.1.3 On 4 August 2008, at 11.06, a posting attributed to Adam Brown with a photograph of "Cllr Adam Brown" adjacent to it appeared on Facebook. It stated "I hate Dublin and I hate the Irish. I should never had gone there in the first place".

4.1.4 A revised Information Security Policy introduced by the Council on 1 July 2009 was adopted by the Council in a full Council meeting attended by Cllr Brown on 22 July 2009.

4.1.5 On 20 August 2009, Cllr Adam Brown circulated an email entitled "Looking for Sponsorship for the Up and Coming General Election" requesting funding on behalf of UKIP in Merthyr. It included the comment "over the years there has been a running joke that Labour could put have a donkey with a red rosette as a candidate and still get in at Merthyr".

4.1.6 An article entitled "Councillor in hot water for laddish on-line remarks" appeared in the South Wales Echo. It reported that Cllr Adam Brown had posted a series of inappropriate comments and postings on a variety of internet sites, including a poll (with sexual content) about Amanda Knox.

4.1.7 On 25 August 2009, Cllr Brown emailed Martin Shipton of Media Wales Limited thanking him for "attempting to put my defence across" in a story that was published by the Western Mail that day.

4.1.8 On 25 and 26 August 2009 the main content of the South Wales Echo story was carried, in various forms, by several publications and associated internet sites including, for example, The Sun Newspaper and website, www.thesun.co.uk.

4.1.9 On 27 August 2009 an article entitled "It was laddish but I am only human" appeared in the Merthyr Express. This reproduced much of the information in the South Wales Echo article of 25 August 2009. It also gave details of the email posting made by Adam Brown on 4 August 2008 about Dublin and "the Irish".

4.1.10 On 15 January 2010 the Chief Executive of the Council, Mr A Neill, wrote to Cllr Brown advising him that his IT connection was being suspended as a result of the situation.

4.1.11 On 28 January 2010 a letter entitled "Bid to silence me will not work" written by Cllr Adam Brown appeared in the Merthyr Express.

4.1.12 Cllr Brown accepts that, by using the Council-provided user account to access the internet for personal use, he has failed to comply with the Council's Internet Security Policy and that he has also, thereby, breached paragraphs 7(b)ii and 7(b)vi of the Code of Conduct.

4.1.13 Cllr Brown accepts that, by using his Council-provided email account to circulate the email "Looking for Sponsorship.....", he has breached paragraph 7(b) of the Code.

4.1.14 Martin Shipton and Samantha Mendez, reporters for Media Wales Limited, have stated that Cllr Brown did not ask them to correct or retract any of the information that appeared in any Media Wales publication or on the website.

4.1.15 The BT bill relating to Cllr Brown's telephone usage triggered a systems alert when the IT Team were uploading the bill for payment. The alert indicated that Cllr Brown's telephone usage was higher than should reasonably be expected.

Reference 2

4.1.16 Cllr Brown is a member of Merthyr Tydfil County Borough Council and he signed a declaration of acceptance of office on 7 May 2008, thereby undertaking to observe the Council's Code of Conduct.

4.1.17 Cllr Brown has been sent training material from three Code of Conduct training sessions arranged by the Council. He has not attended any of these training sessions.

4.1.18 In a Facebook posting dated 20 July 2009 Adam Brown (referring to a fellow councillor) said "That Richard Thomas is a right tosser" and a photograph of Cllr Adam Brown accompanied the posting.

4.1.19 On 21 July 2009, as part of the same Facebook thread, Adam Brown also said that Cllr Thomas was a "middle class prat" and again a photograph of Cllr Adam Brown accompanied the posting.

4.1.20 On 5 August 2009, Cllr Brown emailed Cllr Thomas apologising for the postings.

4.1.21 On 17 March 2010, Cllr Brown sent an email to Cllr Thomas and copied it to several other councillors and officers.

4.1.22 Cllr Brown was nominated by the Council to serve as a member of the board of Merthyr Valley Homes.

4.1.23 In October 2009, Cllr Brown raised the issue of "rent options" with the Chief Executive of Merthyr Valley Homes.

4.1.24 In November 2009, Cllr Brown attended Merthyr Valley Homes training for all board members.

4.1.25 On 18 February 2010, the Chief Executive of Merthyr Valley Homes, Ms Bligh, wrote in confidence to the Chief Executive of the Council, Mr A Neill. On 22 February 2010, she emailed a copy of that letter to the board members of Merthyr Valley Homes. That email was entitled "Confidential - Letter to Alastair Neill" and the sensitivity was set to "confidential".

4.1.26 During a meeting with Ms Bligh and the Chairman of Merthyr Valley Homes, Mr D H Lewis, on 23 February 2010, Cllr Brown admitted that he had sent the above letter to the Merthyr Express and that he had done so because he felt that his duty as a local councillor over-rode his duty as a board member of Merthyr Valley Homes.

4.1.27 Information sourced from the above confidential letter appeared in an article written by Ian Caleb, senior reporter with Media Wales Limited, in the Merthyr Express on 25 February 2010.

4.1.28 On 11 March 2010, a further article entitled "Leaked information leads to Councillor losing place on Valley Homes Board" was published in the Merthyr Express. Cllr Brown confirmed that the comments attributed to him in that article were accurate.

4.1.29 On 16 March 2010, the board of Merthyr Valley Homes decided that Cllr Brown should be removed from the Board with immediate effect for a serious breach of confidentiality. The company secretary, Mr M Diamond, informed Cllr Brown of that decision on 16 March 2010.

4.1.30 In the period leading up to the May 2010 General Election, Cllr Brown issued a press release, which he subsequently repeated on a Facebook page, on a website and in his general election leaflet. It included the statement "...he recently had to withdraw from the Social Housing Board of Merthyr Valley Homes after exposing a flaw in accounting practices...".

4.1.31 As the result of separate allegations concerning his use of Council provided resources, Cllr Brown's access to Council provided IT systems, including his email account, were suspended on 15 January 2010.

4.1.32 On 9 March 2010, the secretary to the Mayor of the Council, Mrs J Overbury, emailed Cllr C Jones responding to a query from him about the number of councillors attending a forthcoming Welsh Guards Parade. She copied it to several councillors and officers, not including Cllr Brown.

4.1.33 On 9 March 2010, Cllr Brown emailed Mrs Overbury stating (with reference to her email, as above) "...I would appreciate it if future statements like that are kept to yourself and not advertised like this as they are clearly not true"; He copied it to the recipients of Mrs Overbury's email and to Cllr Neil Greer.

4.1.34 Cllr Brown emailed an apology to Mrs Overbury on 10 March 2010, which he copied to the Deputy Chief Executive of the Council, Mr Chapman.

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

Reference 1

4.2.1 Is Cllr Brown responsible for the online poll about Amanda Knox?

4.2.2 Did Cllr Brown ask the Media Wales Limited reporters, Martin Shipton and/or Samantha Mendez to retract or correct any information that appeared in any Media Wales publications or on the website?

4.2.3 Was Cllr Brown acting in an official capacity in relation to matters which are the subject of "Reference 1"?

4.2.4 Are the comments made by Cllr Brown about housing benefit claimants, Irish people in general and Amanda Knox, inappropriate?

4.2.5 Was Cllr Brown acting in his official capacity?

Reference 2

4.2.6 Was Cllr Brown's disclosure of the confidential letter justified?

4.2.7 In disclosing the confidential letter did Cllr Brown breach Merthyr Valley Homes' code of conduct for board members?

4.2.8 Was Cllr Brown's press release about his departure from Merthyr Valley Homes' board misleading?

4.2.9 Was Cllr Brown's email of 9 March 2010 to Mrs Overbury inappropriate?

4.2.10 Was Cllr Brown acting in an official capacity when making comments about Cllr Richard Thomas on Facebook?

4.2.11 Were Cllr Brown's comments on Facebook about Cllr Thomas disparaging?

4.2.12 Was Cllr Brown's email dated 17 March 2010 inappropriate?

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

Reference 1

4.3.1 It is an undisputed material fact that the on-line poll about Amanda Knox was set up using Cllr Brown's council provided laptop, internet access and referred to his council email address. It is noted that Cllr Brown has said that he did not personally set up the poll and that he knew nothing about it until sometime afterwards. The Case Tribunal finds that, when a council provides a member with

a laptop and other facilities for his use, the councillor must remain responsible for them and their use and that this is not a responsibility which can be delegated to others. Accordingly, Cllr Brown was responsible for the on-line poll about Amanda Knox.

4.3.2 Both Martin Shipton and Samantha Mendez have said that Cllr Brown did not ask them to retract or correct any information which appeared in any Media Wales publication or website. Cllr Brown did not ask the Tribunal to call Mr Shipton and/or Ms Mendez to challenge what they have said nor has he called them himself. The Case Tribunal has noted that Cllr Brown asserts that he spoke to Martin Shipton and asked for a retraction. There is no evidence of that telephone conversation such as a contemporaneous note or diary entry made by Cllr Brown or a follow up email referring specifically to such telephone call and request for a retraction. In view of Cllr Brown's normal means of communication and expressing his views one might reasonably expect there to have been an email or a posting on, say, Facebook, by Cllr Brown demonstrating his dissatisfaction with the way in which the media had represented him and demanding or making it clear that he had demanded a retraction; there is nothing of that nature. There is of course an email which Cllr Brown sent to Martin Shipton on 25 August; this may be regarded as a reasonably contemporaneous record of Cllr Brown's response to the publications and it may be regarded as 'tongue in cheek' or sarcastic as Cllr Brown asserts. However it does not ask for, nor make any reference to, a previous request for a retraction, nor can it reasonable be interpreted in that way. Having weighed the evidence before it, the Case Tribunal found insufficient evidence for it to reach a conclusion that Cllr Brown had made a request for a retraction or correction.

4.3.3 The Ombudsman's guidelines as to when an elected member must regard himself as acting in his official capacity are reasonably clear. In relation to the Amanda Knox poll and the comments posted by Cllr Brown about housing benefit claimants, the Case Tribunal finds that Cllr Brown was acting in his official capacity for the reason that he was using council provided equipment and his council provided email address, and therefore could reasonably be regarded as representing himself as a councillor. It was also the case that Cllr Brown confirmed in evidence that his comments about housing benefit tenants amounted to advice given in his role as a councillor. In relation to the comments made by Cllr Brown about Irish people, these were on Facebook from his personal computer and on his personal profile. The privacy setting restricted access to these postings to his Facebook friends. In the circumstances, the Case Tribunal is willing to accept that Cllr Brown was not acting in his official capacity when he made the comments about Irish people.

4.3.4 On the basis of the objective test which applies, the Case Tribunal is satisfied that the comments made by Cllr Brown about housing benefit claimants, Irish people in general and Amanda Knox, were inappropriate.

Reference 2

4.3.5 The letter which Cllr Brown disclosed was marked "confidential"; it related to a very sensitive matter, including financial issues, which were in the course of

being discussed between Merthyr Valley Homes and Merthyr Council with a view to resolving the matter. Cllr Brown did not seek or obtain any consent or authority to disclose the letter or any information contained in it and it is difficult to see how its disclosure had or would have had any benefit to the residents of his ward; the disclosure could in fact reasonably be regarded as counter-productive to the resolution process. The Case Tribunal finds that Cllr Brown disclosed confidential information without justification.

4.3.6 The Council's Code of Conduct makes it explicitly clear that when a member represents his Authority on another organisation, the member is bound by the latter's Code of Conduct. Merthyr Valley Homes' Code of Conduct clearly prohibits the disclosure of confidential information and accordingly the Case Tribunal finds that Cllr Brown breached Merthyr Valley Homes' Code of Conduct by disclosing the confidential letter.

4.3.7 The Case Tribunal finds that the press release, on the objective test which applies, suggests that Cllr Brown's departure from the Board of Merthyr Valley Homes was as a result of his own withdrawal or resignation. He was in fact removed from the Board by its resolution. Accordingly the Case Tribunal finds the press release to be misleading.

4.3.8 The Case Tribunal considers that the tone and content of the email sent by Cllr Brown to Mrs Overbury was an unnecessarily confrontational response to her reasonably worded email. In the circumstances of the matter, it was not an appropriate response and was made all the more inappropriate by the fact that Cllr Brown then copied it to other members and officers.

4.3.9 The Case Tribunal finds that the comments made by Cllr Brown on Facebook about Cllr Thomas were disparaging. By any standard, calling a fellow member "a middle class prat" and "a right tosser" cannot be regarded as being anything but disparaging.

4.3.10 The email which Cllr Brown sent to Cllr Thomas could be interpreted as failing to regard the matter of a complaint to the Ombudsman with the seriousness it merits and accordingly may be a little frivolous. However this, according to Cllr Brown, came against a background of numerous complaints made by Cllr Thomas about him to the Ombudsman. The email could have been better worded, in less personal terms, if indeed it was necessary for it to be sent at all. On balance the Case Tribunal finds the email to be no more than a little inappropriate.

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 The Ombudsman's Submissions

5.1.1 Mrs Shaw submitted that, in relation to the Amanda Knox poll and the comments about housing benefit claimants, because the Case Tribunal had found as a matter of fact that these were inappropriate and made by Cllr Brown in his official capacity, it follows there is a breach of paragraph 4(b) of the Code of

Conduct. On the basis of findings of fact and the evidence before the Tribunal, there is no breach of paragraph 4(a) of the Code of Conduct. On the basis of the findings of fact that Cllr Brown's inappropriate comments and internet postings brought his own office of member into disrepute and as they were widely publicised in the local and national media, they were potentially damaging to his Authority as a whole and thereby also brought the Authority into disrepute. As the Case Tribunal has found that the comments made by Cllr Brown about Irish people were not made in his official capacity, the only consideration of breach in that respect is of paragraph 6(1)(a); these comments were not as widely publicised as those about the Amanda Knox poll and those made about housing benefit claimants appearing only in the local media. There is not a strong case of these comments in themselves bringing Cllr Brown's office or his Authority into disrepute, nevertheless they add weight to the matters before the Tribunal. Cllr Brown has accepted misuse of his council resources in breach of paragraphs 7(b)(ii), 7(b)(iv) and 7(b)(vi) of the Code of Conduct; it is a matter for the Tribunal whether it finds it appropriate to make findings on similar facts in relation to breach of paragraphs 7(b)(i) and 79(b)(iv). On the basis of the facts those breaches are made out where Cllr Brown was acting in his official capacity.

5.1.2 As the Case Tribunal has found that Cllr Brown disclosed confidential information without authority or justification and in breach of Merthyr Valley Homes' Code of Conduct, it follows that he has also breached paragraph 3(a) of his Authority's Code of Conduct. It is self evident that he has also breached paragraph 5(a) of the Code of Conduct; Cllr Brown was representing his Authority on the Board of Merthyr Valley Homes and was therefore bound also by his Council's Code of Conduct. As the Case Tribunal has found that the press release was misleading, it follows that this brings his office, although not necessarily that of his Authority, into disrepute in breach of paragraph 6(1)(a). In view of the Case Tribunal's finding on fact about the email to Mrs Overbury, it is reasonable to conclude that Cllr Brown failed to show her respect and consideration in breach of paragraph 4(b). On the basis of the finding of fact and the evidence before the Tribunal, there is no breach of paragraph 4(d). As the Case Tribunal found that Cllr Brown was not acting in his official capacity when he made the disparaging comments about Cllr Thomas, the only finding of breach available in that respect is one of breach of paragraph 6(1)(a). The comments were in the public domain but it cannot be said that there is a strong case for a finding of breach. Finally in relation to the email sent by Cllr Brown to Cllr Thomas, the Case Tribunal found it a little inappropriate, in which case the boundary between showing respect and consideration may not have been crossed so as to amount to a breach of paragraph 4(b); it is a matter for the Tribunal.

5.2 The Respondent's Submissions

5.2.1 Cllr Brown accepted that, on the basis of the Case Tribunal's findings of fact he was in breach of paragraph 6(1)(a) of the Code of Conduct in relation to the poll about Amanda Knox. Cllr Brown contended that there was no breach of paragraph 4(b) of the Code of Conduct.

5.2.2 Cllr Brown accepted that he was in breach of paragraph 3(a) and 5(a) of the Code of Conduct.

5.2.3 Cllr Brown accepted that some of the things he had done made him look "silly personally" but it does not follow that they also necessarily brought his office or his Authority into disrepute.

5.3 Case Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that Cllr Brown failed to comply with Merthyr Tydfil County Borough Council's Code of Conduct in relation to Paragraph 3(a) of the Code of Conduct. Paragraph 3(a) states: *"Where you are elected, appointed or nominated by your authority to serve on another relevant authority or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that authority or body."* The Case Tribunal found that Cllr Brown failed to comply with the Code of Conduct of Merthyr Valley Homes. Whilst on the Board, representing the local authority, he disclosed confidential information to the press without authority or justification.

5.3.2 The Case Tribunal found no breach in relation to Paragraph 4(a) of the Code of Conduct which states *"You must carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion."*

5.3.3 The Case Tribunal found that Councillor Brown breached Paragraph 4(b) of the Code of Conduct, *"You must show respect and consideration for others"*, as a result of the inappropriate comments posted about Amanda Knox and Housing Benefit claimants. Inappropriate comments do not necessarily also amount to being disrespectful and inconsiderate, but in this case the nature of the inappropriate comments made crossed the line.

5.3.4 The Case Tribunal found no breach in respect of Paragraph 4(d) of the Code of Conduct which states *"You must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority."*

5.3.5 The Case Tribunal found that Cllr Brown breached Paragraph 5(a) of the Code of Conduct which states *"You must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorises to give such consent, or unless required by law to do so."* The Case Tribunal found that he had disclosed a confidential letter to the press without authority or justification.

5.3.6 The Case Tribunal found that Cllr Brown breached Paragraph 6(1)(a) of the Code of Conduct which states *"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."* The Case Tribunal found that the comments referred to above generated widespread media attention, reflecting badly on his office and on the authority, as did the actions which gave rise to breaches of paragraph 3(a) and 5(a).

5.3.7 The Case Tribunal found Cllr Brown in breach of Paragraph 7(b) of the Code of Conduct which states *“you must not use, or authorise others to use, the resources of your authority:*

- i. imprudently;*
- ii. in breach of your authority’s requirements;*
- iv. other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;*
- v. improperly for political purposes; or*
- vi. improperly for private purposes.*

The Case Tribunal found that Cllr Brown’s use of council provided laptop, internet access and email address was in breach of the above sub-paragraphs.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Ombudsman’s Submissions

6.1.2 Mrs Shaw submitted that, in his mitigation, Cllr Brown was a new and inexperienced member. The number of findings of bringing his office/Authority into disrepute, the failure to seek advice and attend training and his attempt to blame others, notably the press, are aggravating features. The main concern here is breach of confidential information which is very serious and the Tribunal should consider what confidence officers and members of his Authority can have in Cllr Brown in the future, especially in the light of his failure to apologise or recognise the seriousness of his action and the fact that he still appears to stand by what he did. Ultimately of course the matter of sanction is one for the Tribunal.

6.2 The Respondent’s Submissions

6.2.1 Cllr Brown thanked the Tribunal for the opportunity to present his case. He said that these complaints and the entire process had been an "emotional rollercoaster" and had taken its toll on him and his family. He said he felt he had definitely learnt a lot from the process.

6.2.2 In his mitigation, with particular reference to the reporting in the media, it had been selective and unbalanced and had not accurately represented the situation nor the information which he had given to the reporters. In relation to the comments which he had made in the emails to Cllr Thomas and Mrs Overbury, he had apologised for these immediately that he knew them to have caused offence. He said he accepts that sometimes he "crosses the line" but when it is drawn to his attention he will always apologise. His responses to Cllr Thomas and Mrs Overbury were passionate. In relation to the disclosure of confidential information, he had thought that he would have the protection of "whistle blowing". He had genuinely thought that the residents needed to know and had the right to know; he had genuinely felt that he was acting in their best interests.

6.2.3 Cllr Brown regards himself as a source of hope for the people of Gurnos. He described himself as "one of them"; he touched briefly upon his difficult and troubled past; he said he had striven to get where he is today by working hard and straightening himself out.

6.2.4 Cllr Brown said he will accept whatever penalty the Case Tribunal deems fit to impose upon him and directed the Case Tribunal to its sanction guidelines. Cllr Brown submitted that he considered he met 8 out of the 10 mitigating factors therein set out, including: a good service record; that he is a new and inexperienced councillor; that he is of previous good character; that he has recognised his failures and, as soon as they were drawn to his attention apologised immediately; that he has made certain admissions to the Ombudsman and also before the Tribunal today: and feels he has been reasonably co-operative with the Ombudsman's investigation and the Tribunal. He also said that he had genuinely felt that he was acting in the best interests of the public and that his actions towards Cllr Thomas had been provoked.

6.2.5 Cllr Brown praised the new Chief Executive, Mr Chapman, and felt that the guidance he was offering was invaluable to his ensuring future compliance with the Code of Conduct. He also felt Mr Chapman was a man he would be able to approach if he had any problem. Cllr Brown also said that he felt he had learnt by his mistakes; the whole experience had been frightening; he would not wish to put himself or his family through such a process again; he would be more careful in the future, making himself available for training and seeking the advice of the Monitoring Officer whenever in doubt. Cllr Brown also confirmed that he now understands the importance of confidentiality and assured the Tribunal that there would be no future breach of the Code.

6.3 The Monitoring Officer's Representation

6.3.1 Mr Chapman submitted that the matter of the breach of confidential information was of grave concern and inevitably the serious disrepute brought about by bad press locally and nationally had done no good at all for the Authority or its members.

6.4 Case Tribunal's Decision

6.4.1 The Case Tribunal considered all the facts of the case, the submissions and representations made by Cllr Brown and Mrs Shaw and its sanction guidelines. The Case Tribunal was also mindful of its function, namely to uphold and improve standards of conduct expected of members as part of the process of fostering public confidence in local democracy.

6.4.2 The Case Tribunal did not consider, in all the circumstances, that there were, in accordance with its sanction guidelines, factors which could reasonably justify a disqualification. The Case Tribunal considered whether suspending Cllr Brown would be an appropriate sanction, with reference to its sanction guidelines which indicate that a suspension may be appropriate where the circumstances are not so serious as to merit disqualification, but sufficiently grave to give rise to the need to reassure the public and impress upon the Respondent the severity of the

matter and the need to avoid repetition; factors which may lead to this option being, bringing the office of member or the Authority into disrepute and the likelihood of further failures in the future. The Case Tribunal also considered relevant aggravating and mitigating factors respectively as submitted.

6.4.3 The Case Tribunal did not consider it necessary to impose individual sanctions for the breaches of paragraphs 7(b)(i), 7(b)(ii), 7(b)(iv), 7(b)(v), 7(b)(vi) and 4(b) of the Code of Conduct. In relation to these breaches, the Case Tribunal is content that Cllr Brown has learnt his lesson and will be more careful and respectful in the future and that is what it reasonably expects. The Case Tribunal is mainly concerned about the disclosure of confidential information and how that brought Cllr Brown's office and that of his Authority into disrepute. Such matters are serious and go to the very heart of the high standards expected of those in public life.

6.4.4 The Case Tribunal is concerned that Cllr Brown may not have fully appreciated the gravity of the matter, especially the disclosure of confidential information and has concerns as to whether it will happen again especially in view of Cllr Brown's stance that he feels unable to apologise and still feels that he had acted in the best interests of the residents of his Ward, showing little regard for the Code of Conduct and his duties and responsibilities to his Authority.

6.4.5 The Case Tribunal gave every credit to Cllr Brown for achieving the honour of being an elected member and was in no doubt that he is committed to serving the residents of his Ward and the wider County Borough. Nevertheless it pointed out again that Cllr Brown also has obligations to the officers and other members of his Authority and must abide by the Code of Conduct. The Case Tribunal also applauded Cllr Brown's efforts to engage in a modern way with the wider public but, as he quite rightly said, engaging in that way with a wider audience carries with it certain risks. It is his responsibility to conduct himself appropriately and within the confines of the Code of Conduct.

6.4.6 It was evident to the Case Tribunal that Cllr Brown wishes to remain an elected member, in which case he must fully familiarise himself with the Code of Conduct, undertake appropriate training and reflect on his actions, including those of a relatively less serious nature which he has described as "laddish behaviour". "Laddish behaviour", inappropriate language and comments are incompatible with the standards of behaviour reasonably expected from people in public life of whom higher standards of behaviour, of course, are reasonably expected than of those who do not put themselves in the arena of public office.

6.4.7 The Case Tribunal decided by unanimous decision that Cllr Brown should be suspended from acting as a member of Merthyr Tydfil County Borough Council for a period of nine months or, if shorter, the remainder of his term of office, with effect from 13 April 2011. The Case Tribunal considers that this will give Cllr Brown the opportunity of reflecting on his conduct, familiarising himself with the Code of Conduct and seeking appropriate training and advice, thereby better equipping himself to resume his role of elected member following the period of suspension; the Case Tribunal also feels that such sanction is an appropriate course of action in order to ensure that there is no repetition of this sort of conduct

on the part of Cllr Brown and in the interests of upholding standards in public life and public confidence.

6.4.8 Merthyr Tydfil County Borough Council and its Standards Committee are notified accordingly.

6.4.9 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.....

Ian Blair
Panel Member

Juliet Morris
Panel Member