

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/012/2010-011/A

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Philip J Seabourne

RELEVANT AUTHORITY: Torfaen County Borough Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Philip Seabourne against the decision of Torfaen County Borough Council's Ethics and Standards Committee that he should be censured, having been found by the Committee to have breached the Authority's code of conduct.

1.2 A hearing was held by the Appeal Tribunal commencing at 10.00 am on Friday 14 October 2011 at the Hilton Hotel, Chepstow Road, Newport. The hearing was open to the public.

1.3 Cllr Seabourne attended and was represented by Mr Nicklaus Thomas-Symonds, Barrister.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 By way of an email from Cllr Seabourne dated 25 March 2011 and subsequent email dated 19 July 2011 from solicitors acting on his behalf, the Adjudication Panel for Wales received an appeal against the determination of Torfaen County Borough Council's Ethics and Standards Committee on 10 March 2011 that he should be censured for having been found to have breached the Council's code of conduct.

2.1.2 The Standards Committee's determination followed its consideration of a report by the Public Services Ombudsman for Wales ("the Ombudsman") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000 and the 'Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.'

2.1.3 In summary, the breaches found by the Ethics and Standards Committee on 10 March 2011 were that:

- i. Cllr Seabourne had failed to maintain accurate records of his appointments and interests in the statutory register, in breach of paragraphs 15(1) and 15(2) of the code of conduct;
- ii. Cllr Seabourne failed to declare a personal and prejudicial interest on 27 November 2008 when completing a Small Scheme Application requesting that a payment of £200 be made to Torfaen Access Coalition when he was Chair of the Coalition, in breach of paragraphs 11(2)(a) and 14(1)(d);
- iii. Cllr Seabourne failed to declare a personal interest on 22 September 2009 when completing a Small Scheme Application requesting that a payment of £500 be made to Fairwater Comprehensive School when he was an LEA appointed governor of the School, in breach of paragraphs 11(2)(a) and 14(1)(d); and
- iv. Further in respect of the donation to Fairwater Comprehensive School, Cllr Seabourne failed to declare a personal and prejudicial interest in that his wife was the Chair of governors at the School at the time of the donation, in breach of paragraphs 11(2)(a) and 14(1)(d).

2.1.4 The breaches as found were not disputed by Cllr Seabourne.

2.1.5 Following the decision by the Ethics and Standards Committee, the Ombudsman received a further complaint that Cllr Seabourne had misled that Committee when he stated that the information about his interests was on his website. This was not in fact the case at the time of the Committee hearing as that information was not placed on the website until 14 October 2009. This was not known to the Ethics and Standards Committee at the time and was not, therefore, subject to its consideration. The Ombudsman brought the matter to the attention of the Appeal Tribunal in the context of Cllr Seabourne's Appeal.

2.2 The Appellant's Written Response

2.2.1 Cllr Seabourne contended that he had submitted an earlier declaration of interests form on 14 October 2009 which was not placed before the Ethics and Standards Committee.

2.2.2 Cllr Seabourne contended that he had never told the Ethics and Standards Committee that the information had always been available on the website. Cllr Seabourne contended that, when he wrote to the Ombudsman and gave evidence to the Committee, he stated that the information was "currently" on his website which was correct.

2.3 The Ombudsman's Written Representations

2.3.1 In letters dated 8 July and 8 August 2011 the Ombudsman submitted that it was clear that the decision of the Ethics and Standards Committee was not based solely on whether Councillor Seabourne had declared his interests as Chair of Torfaen Access Coalition, Governor of Fairwater Comprehensive School and his wife's Governorship of Fairwater Comprehensive School in 2009. It was also concerned with a failure to declare these interests in 2008 as well as on the forms nominating Torfaen Access Coalition and Fairwater Comprehensive School for a donation from his small schemes allowance. In addition it was submitted that, when Cllr Seabourne signed the form nominating Fairwater Comprehensive School, he signed a declaration confirming he had no personal interest when this was not in fact the case.

3. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales/Monitoring Officer

3.2 The Ombudsman repeated its position in oral submissions that it considered that the breaches as a whole, even with the additional evidence of the 14 October 2009 declaration of interests, still merited a censure. The Ombudsman accepted that the declaration of interests had not reached its office and therefore was not considered by the Ethics and Standards Committee. It did not dispute that Cllr Seabourne had made this declaration.

3.3 The Ombudsman made no submissions on the additional complaint beyond bringing the matter to the attention of the Tribunal.

Cllr Philip Seabourne

3.4 Cllr Seabourne confirmed in evidence that, with regard to his declaration of interests dated 14 October 2009, it had been made following a conversation with a fellow councillor and was in no way prompted by the complaint made against him. Cllr Seabourne confirmed on oath that he had no knowledge of the complaint at the time the declaration was made and that he had been keen to update the register of his own volition. Cllr Seabourne confirmed on oath that he was in no way trying to mislead the Ethics and Standards Committee as to when the information about his interests had become available on the website and had in no way suggested that it was created before 14 October 2009.

3.5 Cllr Seabourne stated that he had raised the matter of the 14 October declaration with Linda Willis the Monitoring Officer and the Ombudsman at the hearing in front of the Ethics and Standards Committee. Cllr Seabourne stated in evidence that he was not trying to conceal his interests.

4. FINDINGS OF FACT

4.1 The Appeal Tribunal noted the findings of fact found by the Ethics and Standards Committee as reported in its 'Record of Decision' dated 10 March 2011 and as set out in the report of the Ombudsman dated 3 December 2010.

4.2 The **undisputed** material facts as found by the Ethics and Standards Committee were:

4.2.1 Cllr Seabourne signed the code of conduct for Members on 4 June 2004.

4.2.2 Cllr Seabourne signed the code of conduct for Members on 6 May 2008.

4.2.3 Torfaen County Borough Council had given Cllr Seabourne £2000 to award to small schemes within the Torfaen County Borough Council area and benefit the community.

4.2.4 The application forms for donations made from the small scheme fund changed in November 2008 and councillors were expected to sign a declaration confirming that they have no personal interest in the scheme.

4.2.5 Torfaen Access Coalition is a consultative group that comes together to support the Council in formulating its Disability Equality Scheme and to highlight disability access issues in Torfaen.

4.2.6 Cllr Seabourne had been a member of Torfaen Access Coalition since approximately 2001, and up until his resignation in 2010 he was the chairman of the organisation. Cllr Seabourne did not receive any payment for the work undertaken for the Torfaen Access Coalition.

4.2.7 Cllr Seabourne has been a Local Education Authority nominated governor of Fairwater Comprehensive School since 7 June 2006.

4.2.8 Mrs Seabourne has been a governor of Fairwater Comprehensive School since 18 March 1997.

4.2.9 Cllr Seabourne and Mrs Seabourne were both members of Torfaen Swim Squad.

4.2.10 Neither Cllr Seabourne nor Mrs Seabourne had been associated with the Gwent Dolphins swimming club.

4.2.11 On 15 July 2004, Cllr Seabourne declared his interest in Torfaen Swim Squad on the Register of Member's interests.

4.2.12 On 10 May, Cllr Seabourne donated £100 to Fairwater Comprehensive School.

4.2.13 On 28 March 2006, Cllr Seabourne donated £200 to Torfaen Swim Squad.

4.2.14 On 28 March 2006, Cllr Seabourne donated £200 to Fairwater Comprehensive School.

4.2.15 On 15 March 2007, Cllr Seabourne donated £200 to Fairwater Comprehensive School.

4.2.16 On 14 May 2008, Cllr Seabourne completed the Register of Member's Interests; Cllr Seabourne did not make any reference to Fairwater Comprehensive School, Torfaen Access Coalition or the Torfaen Swim Squad.

4.2.17 On 27 November 2008, Cllr Seabourne donated £200 to Torfaen Access Coalition.

4.2.18 On 22 September 2009, Cllr Seabourne donated £200 to Torfaen Swim Squad.

4.2.19 On 22 September 2009, Cllr Seabourne donated £500 to Fairwater Comprehensive School.

4.2.20 On 20 October 2009, Cllr Seabourne amended the Register of Member's Interests. The amendment did not include Cllr Seabourne's association with Fairwater Comprehensive School or his Chairmanship of Torfaen Access Coalition. Additionally, Cllr Seabourne did not declare his wife's association with Fairwater Comprehensive School.

4.2.21 On 13 January 2009, Mrs Seabourne made a complaint to the Ombudsman about two members of Torfaen County Borough Council. Mrs Seabourne complained that Cllrs Hanes and Lewis had failed to declare personal and prejudicial interests when making donations to WeCan Ltd from their small schemes allowance.

4.3 The **disputed** material facts as found by the Ethics and Standards Committee were:

4.3.1 Did Cllr Seabourne have a declarable interest in the donations he made to Torfaen Access Coalition from his small schemes fund after 6 May 2008?

4.3.2 Did Cllr Seabourne have a declarable interest in the donations he made to Fairwater Comprehensive School from his small schemes fund prior to 6 May 2008?

4.3.3 Did Cllr Seabourne have a declarable interest in the donations he made to Fairwater Comprehensive School from his small schemes fund after 6 May 2008?

4.3.4 Did Cllr Seabourne have a declarable interest in the donations he made to Torfaen Swim Squad from his small schemes fund?

4.3.5 Did Cllr Seabourne have a declarable interest in the donations he made to Gwent Dolphins from his small schemes fund?

4.4 The Ethics and Standards Committee's findings in respect of the disputed facts were:

4.4.1 In respect of 4.3.1 and 4.3.3, the Committee found that Cllr Seabourne had declarable interests in relation to donations to Torfaen Access Coalition and Fairwater Comprehensive School after 6 May 2008.

4.4.2 In respect of 4.3.2, 4.3.4 and 4.3.5, the Committee found there were no declarable interests in relation to donations to Fairwater Comprehensive School prior to 6 May 2008 or to donations made to Torfaen Swim Squad and Gwent Dolphins.

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

5.1 As the appeal was confined only to the sanction imposed by the Ethics and Standards Committee, it was not necessary for the Appeal Tribunal itself to determine whether the facts amounted to a breach of the code of conduct.

5.2 The Appeal Tribunal noted the Committee's findings of breaches of paragraphs 15(1), 15(2), 11(2)(a) and 14(1)(d), as summarised at paragraph 2.1.3 above.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Appellant's Submissions

6.1.1 Cllr Seabourne contended that the fact that the additional declaration of interests was submitted before the complaint to the Ombudsman was made and that this was not before the Ethics and Standards Committee was an additional point of mitigation. In addition it was submitted that Cllr Seabourne's ill health and the adverse publicity that had surrounded this matter brought the case from one meriting censure to one meriting no further action.

6.1.2 With regard to the additional complaint it was submitted that Cllr Seabourne had not misled the Ethics and Standards Committee and had been consistent in his explanations. It was submitted that this was not a further aggravating factor.

6.2 The Ombudsman's Submissions

6.2.1 The Ombudsman accepted that the additional declaration of interests dated 14 October 2009 did not reach his office during the investigation and it was not before the Ethics and Standards Committee or in the bundle. Nevertheless, the Ombudsman's submission was that the alleged breaches were so serious that, even with the document, a referral to the Standards Committee would have been made as the expectation was that the case merited at the very least a censure.

6.2.2 With regard to the additional complaint the Ombudsman submitted that this was a matter for the Tribunal and made no further representations on the matter.

6.3 Appeal Tribunal's Decision

6.3.1 The Appeal Tribunal considered all the facts of the case and in particular considered the matter in the light of the additional declaration of interest form which was not before the Ethics and Standards Committee. The Appeal Tribunal considered the arguments put forward by Cllr Seabourne in writing and also by way of submissions. The Appeal Tribunal took into account the submissions made by the representative of the Public Service Ombudsman for Wales on the issues raised by Cllr Seabourne on Appeal.

6.3.2 With regard to the additional complaint that Cllr Seabourne had misled the Ethics and Standards Committee, the Tribunal was satisfied, on the basis of the evidence given by Cllr Seabourne, that he had not misled the committee and had not, either in correspondence or otherwise, suggested that the information regarding his interests was on his website prior to 14 October 2009. On that basis the Tribunal was satisfied that there was no additional aggravating factor to weigh into the balance.

6.3.2 The Tribunal accepted that Cllr Seabourne had updated his Declaration of Interests on 14 October 2009 and that this did alter the balance of aggravating and mitigating factors considered by the Ethics and Standards Committee. This was not so substantial an alteration, however, as to lessen the seriousness of the breaches of the Code and, therefore, the need for censure. The Tribunal took into account the number of breaches found by the Committee and, in particular, the delay by Cllr Seabourne in updating the register. In addition the Tribunal noted that Cllr Seabourne had signed a declaration that he had no interest when this was not the case. The Tribunal was satisfied in all the circumstances that a censure was an appropriate sanction.

6.3. The Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of the Ethics and Standards Committee that Cllr Seabourne should be censured.

6.3. Torfaen County Borough Council its Ethics and Standards Committee are notified accordingly.

Signed.....
Emma Boothroyd
Chairperson of the Appeal Tribunal

Date December 2011.....

Colin Evans
Panel Member

Juliet Morris
Panel Member