

PANEL DYFARNU CYMRU ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/008/2010-011/CT

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

RESPONDENT: Councillor Eng Klaus Armstrong-Braun

RELEVANT AUTHORITIES: Saltney Town Council and Flintshire 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 A hearing was held by the Case Tribunal on Tuesday 24 January 2012 and continued on 25, 26 and 27 January 2012 at the Beaufort Park Hotel, Mold, Flintshire. The hearing was open to the public.

1.3 Cllr Armstrong-Braun attended and was assisted by Mr Colin Barber.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 28 January 2011, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Armstrong-Braun. The allegations were that Cllr Armstrong-Braun had acted inappropriately during Council meetings; caused distress to another person; failed to account for his mayoral allowance and disclosed confidential information and that in respect of both Saltney Town Council and Flintshire County Council his conduct had brought his office and the authorities into disrepute.

2.1.2 The original complaint had been lodged on behalf of councillors of Saltney Town Council by the Town Clerk on the 12 January 2009. It was alleged that, while Mayor, Cllr Armstrong-Braun had referred to Saltney as a "backwater", publicly accused a fellow member of being a hypocrite, moral degenerate and a coward and referred to other members as wild bison and spoiled brats, and improperly contacted the widow of a former Mayor regarding a mayoral allowance.

Further complaints were received on 3 and 9 June 2009 from Cllrs Ann Lloyd and Veronica Gay that Cllr Armstrong-Braun had breached the confidentiality of a private meeting and wrongly accused them of making derogatory remarks about the town's secondary school.

2.1.3 During investigation, the Ombudsman became aware of further possible breaches of the code, namely that Cllr Armstrong-Braun had failed to account for his expenditure of his mayoral allowance and then failed to comply with a Town Council motion requiring him to so account.

2.2 The Respondent's Written Response to the Complaint and Reference

2.2.1 Cllr Armstrong- Braun was invited by the Ombudsman to submit representations on the original complaints and subsequently on the Ombudsman's report. He sent seven responses to the Ombudsman between 10 October and 2 November 2010 which in summary made the following points:-

- a) He disputed the lawfulness of the Ombudsman's investigation and said that his human rights and rights to natural justice had been contravened.
- b) He criticised other councillors and alleged that the difficulties in meetings were caused by their behaviour. He said that he had at all times acted properly in conducting meetings and that the Town Clerk had supported the unlawful conduct of other members. He referred to the video recording of the meeting on 19 November 2008 as demonstrating inappropriate conduct by other members. He said that the complainants were misusing the complaints process for political gain.
- c) He said that when he spoke to Mrs Hettie Wilson he had done so as a friend and not as a councillor. He accused other councillors of telling lies.
- d) He said that he had no regrets about making comments about other members as reported as they were a true reflection of the behaviour of those members.
- e) So far as the mayoral allowance was concerned he was not bound by the Standing Orders of the Council as he became entitled to it in May on his election. He therefore had no obligation to account for any expenditure of the allowance. He submitted that the complaint was vexatious.
- f) In relation to the complaints made by Cllrs Gay and Lloyd he disputed that the meetings were confidential and he was protected as a whistleblower in reporting what he considered to be false allegations.

2.2.2 Cllr Armstrong- Braun was then asked to submit a formal written response to the reference by the Ombudsman to the Adjudication Panel. He did so on the 24 March 2011. Matters commented on by him were as follows;

- a) He complained that the Ombudsman had made personal remarks about him during the course of the investigation.

- b) He disputed the Ombudsman's contention that as a high profile councillor he was also in breach of Flintshire County Council's code of conduct. He referred to a letter from the County's Monitoring Officer stating that he "was not acting for the county council".
- c) He said that the Ombudsman should investigate each matter separately and not use a pattern of behaviour to assert a breach of the code.
- d) Cllrs Gay and Crawford were deliberately disruptive and sought to force him to resign and other members failed to observe standing orders.
- e) The Ombudsman had stated that he should have regard to the advice of the Town Clerk but on a number of other occasions Cllr Armstrong-Braun believed the clerk had failed to provide appropriate advice.

2.3 The Ombudsman's Written Representations

2.3.1 The Ombudsman's response was lodged on 29 July 2011 as follows:-

- a) Councillor Armstrong-Braun should specify the "personal" remarks he objects to. His extensive submissions on the evidence were summarised in the report and he did not object to this summary when the draft report was sent to him. Nor did he at that stage raise any issues about questions which he says he asked. The video recording is referred to in paragraph 80 of the report, and the Ombudsman's analysis of the evidence (including video evidence) and his conclusions are clearly explained in the report.
- b) The Ombudsman's reasons for his conclusions are contained in paragraph 333 of the report. The Tribunal's attention is drawn to paragraph 2(1)(d) of the Town Council's code of conduct which requires Cllr Armstrong-Braun to observe the code not only in relation to Town Council matters, but "at all other times and in any other capacity in respect of conduct in paragraphs 6(1)(a) and 7". As Mayor Cllr Armstrong-Braun occupied a high profile role on the Town Council. The evidence is that he sought publicity in the local press, so raising his profile further. The letter from Barry Davies has not been provided.
- c) Cllr Armstrong- Braun has not given reasons for his objection. The Ombudsman's reason for his approach, including the relevance of the evidence referred to, are explained in paragraph 22 of his report.
- d) Cllr Armstrong-Braun's earlier (and similar) submissions regarding Cllrs Gay and Crawford are summarised in the report – see paragraph 238, and the Ombudsman's finding is explained at paragraph 311.
- e) The Ombudsman does not consider the advice on these matters as relevant. The report is concerned with Cllr Armstrong-Braun's response to the clerk's advice at the meeting on the 9 July 2008.

2.3.2 The Ombudsman made further comments that he did not consider the actions of a newly appointed member who was not present at any of the meetings referred to in the complaint are relevant to the current proceedings. The conduct of other members during meetings was considered in paragraph 300 of the report. The Ombudsman does not consider that decisions on complaints by Cllr Armstrong-Braun against other members of the Town Council are relevant, as each complaint is considered on its individual merits.

2.4 Application for adjournment of the hearing

2.4.1 The Case Tribunal were notified on 23 January 2012 of an application lodged by legal advisors to Cllr Armstrong-Braun to adjourn the hearing. Two letters were received – one on 20 January at 4.35pm after close of business and a second on 23 January at 10.00. Both submissions taken together argued that the hearing should be adjourned for the following reasons:-

- a) to enable the councillor to pursue an application for an indemnity from Flintshire County council to enable him to be legally represented.
- b) that legal representation was required as the case had been listed for four days with a number of witnesses and that Cllr Armstrong-Braun did not wish to represent himself.
- c) that there were complex matters of law to be considered in respect of Articles 6 and 10 of the ECHR.
- d) that the Adjudication Panel granted a similar application in another case involving a local councillor and there was a precedent.

2.4.2 Before coming to a decision the Case Tribunal sought information from Flintshire County Council concerning their indemnity scheme and whether Cllr Armstrong-Braun's application had been considered. The Tribunal were advised that the application fell outside of the council's scheme and was rejected. The Tribunal also sought the views of the Ombudsman.

2.4.3 The Case Tribunal carefully considered all the relevant matters and decided to refuse the application for the following reasons:-

- a) Any adjournment application must be considered on the merits of the particular case. Having agreed an adjournment in one case does not set a precedent, particularly if the facts are different. Cllr Armstrong-Braun had been advised by the previous and present Monitoring Officer of Flintshire County Council that he did not fall within the remit of their scheme. On the facts at the time of the Tribunal's consideration he had no realistic prospect of obtaining an indemnity. Thus there is no justification to adjourn on this basis.
- b) The second and more substantive argument related to whether Cllr Armstrong-Braun would have a fair and transparent hearing without the

opportunity of legal representation. The Case Tribunal considers matters of considerable import for local democracy. However this is done on an inquisitorial rather than an adversarial basis. Cllr Armstrong-Braun had been on notice of the complaints, and in receipt of the Ombudsman's report for almost 12 months. He had received regular communication from the Adjudication Panel, including the Directions Notice sent on the 13 December 2011 and had had every opportunity to prepare his case and seek advice. The hearing had been listed for four days precisely to give him time to set out his arguments. Further it is the role of the Chair of the Tribunal to assist unrepresented respondents and to ensure that all relevant legal matters are properly addressed. The Ombudsman was also not legally represented.

- c) The Case Tribunal had regard to the prejudice both to the respondent and to other interested parties. They were mindful that there had already been unavoidable delays to the case which involved matters that took place in 2008/2009. Complainants and witnesses also had a justifiable expectation that matters would be resolved without any further delay.
- d) Finally they took into account the likely waste of public funds caused by an adjournment at such short notice and considered that Cllr Armstrong-Braun had not acted reasonably in seeking such an adjournment within twenty four hours of the hearing.

3. ORAL SUBMISSIONS

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

Public Services Ombudsman for Wales

3.2 Ms Catherine Crompton, the Ombudsman's representative, summarised the investigation and conclusions by reference to the Ombudsman's report. She confirmed that although the original complaint referred to Saltney Town Council, that Flintshire County Council were notified of the potential extension of the scope to Cllr Armstrong-Braun's role as a county councillor. She made particular reference to the following paragraphs within the code of conduct;

- a) Para 6(1)(a). Whether there was a breach was an objective test. There was substantial cumulative evidence of Cllr Armstrong-Braun's behaviour at Town Council meetings, including comments he had made to warrant a finding on this ground.
- b) Para 8(a). Elected members are required to have regard to officer advice. The evidence indicates that Cllr Armstrong-Braun had not adhered to the code on a number of occasions.
- c) Paras 4(b)/4(c). The evidence was that Cllr Armstrong-Braun had acted in his capacity as an elected member when he spoke to Mrs Hettie Wilson.

- d) Paras 7(b)/6(1)(a). The Town council approved a new standing order on mayoral allowances on 9 July 2008 after Cllr Armstrong-Braun was elected as mayor. He was present at that meeting. The allowance was approved for payment on 9 July. The Ombudsman has found it difficult to understand Cllr Armstrong- Braun's failure to comply with the standing order and to account for his expenditure.
- e) Para 5(a). Again the test is objective – whether matters could “reasonably be regarded as confidential”. The weight of the evidence, including written records, led the Ombudsman to conclude that confidential information had been communicated.

3.3 The Ombudsman accepted the undisputed facts as set out in the listing direction. So far as the disputed facts were concerned the following points were made. In considering the conduct of meetings it is necessary to consider the totality of evidence including the history of personal animosity the behaviour of the other members and their relative lack of experience. These may be mitigating factors but Cllr Armstrong-Braun had a significant role. Did he bring these events on his own head? He was an experienced councillor and guidance was available to him. The various statements of the other councillors indicated that they found his behaviour unacceptable. So far as his contact with Mrs. Wilson was concerned he may not have been explicitly authorised but he used his position as an elected member and only had information because he was a councillor. In approaching evidence on the Mayoral allowance regard should be had to the principles of public life and obligations to demonstrate stewardship and accountability.

3.4 On cross-examination the Ombudsman's representative confirmed that consideration had been given to offering a personal interview to Cllr Armstrong-Braun but that it was not considered a good use of resources.

Mr Alan Thorniley

3.5. Mr. Thorniley confirmed in his evidence that as Town Clerk he had been instructed by motion of the council to lodge a series of complaints about Cllr Armstrong-Braun. He indicated that he had nothing to add to his original letter and witness statement which he confirmed to be a true account.

3.6. Under cross-examination he confirmed that the previous Mayor and Cllr Armstrong-Braun were good friends. He took up his own position as Town Clerk at the same time as the councillor became Mayor. He was unaware of the previous history of the Town Council and so dealt with issues at face value. He confirmed that the council's Standing Orders were reviewed by him including those relating to mayoral allowances as these were non-existent when he first became Town Clerk. He used the Standing Orders recommended by One Voice Wales as a template. He accepted that it was the role of the Mayor to interpret the Standing Orders and chair the council meetings. However he believed Cllr Armstrong-Braun to be wrong when he stated meetings could not take longer than two hours, and so advised him. He had never seen an elected member acting the way he did in meetings. He instituted an informal chair's briefing in an attempt to pre-empt

difficulties at public meetings. But Cllr Armstrong-Braun on one occasion lost his temper and would not take advice and had to be asked to leave Cllr Lloyd's house. He was aware that Cllr Crawford had contacted the police about Cllr Armstrong-Braun's claim for expenses. He himself had no particular problem with Cllr Armstrong-Braun collecting mail and thought the police referral unnecessary. He believed the sensitivity about financial matters in the Council had arisen because of previous queries about the Town Council accounts in the previous year and concerns raised by auditors. He did not believe there to be a campaign against Cllr Armstrong-Braun by any of the town councillors, although there was a great deal of animosity between Cllr Crawford and Cllr Armstrong-Braun.

Cllr Veronica Gay

3.7 Cllr Gay confirmed that she had made a separate complaint with Cllr Lloyd concerning the disclosure of inaccurate and confidential information arising from a Town Council workshop. She confirmed the accuracy of her statement given to the Ombudsman. She said that although she had not voted for Cllr Armstrong-Braun as Mayor she had initially supported him in the role, and he had majority support from other councillors.

3.8 Under cross-examination she confirmed that she was present when Cllr Armstrong-Braun had described Saltney as a 'backwater'. She believed Saltney to be a warm community and his comments were derogatory and inappropriate. She considered it quite right that the council had asked him to apologise and he had refused to do so. She was present at the council meeting when Cllr Armstrong-Braun's mileage claim (for £17) was discussed. She was not part of the group that referred matters to the police and did not think it the right course of action. She attended the meeting on 27 March 2009 believing it to be a 'blue sky' workshop and not a formal minuted meeting of the Town Council, and that matters discussed were confidential. The workshop leader Victoria Evans was the only person who made a record of the meeting. Cllr Armstrong-Braun's letter to the secondary school headmaster was not an accurate representation of what she had said. She had never met the headmaster and made only general comments about the school during the workshop. She was sure that all attendees at the workshop considered it to be a confidential meeting. She was embarrassed and distressed by the letter.

Cllr Ann Lloyd

3.9. Cllr Lloyd confirmed that she had made a separate complaint with Cllr Gay concerning the disclosure of inaccurate and confidential information arising from the Town Council workshop and she confirmed the accuracy of the statement given to the Ombudsman. She had supported Cllr Armstrong-Braun and had stood for election to the Town Council and for Deputy Mayor after being encouraged by him to do so. She had voted for him as Mayor and considered herself to be a supporter. She was therefore very upset when he made the comment that Saltney was a 'backwater'. She considered the remark to be disparaging to the town. She took 'backwater' to mean rundown and it was not fair comment. She was also present during the council meeting when there was an altercation between the mayor and other councillors. A lot of the council meetings were heated. She could only recall four meetings not disrupted by argument. Most were pandemonium.

She had heard the Mayor describe another councillor as morally degenerate. With the Town Clerk she had tried to help advise Cllr Armstrong-Braun at a pre-council briefing but he had become agitated and lost his temper and had to be asked to leave her house. She was particularly upset by his treatment of Mrs. Wilson and his failure to apologise to her when asked to do so by the council.

3.10 Under cross-examination she confirmed that about six participants attended the workshops in March 2009. There were two meetings. Cllr Armstrong-Braun had been at both although she was not sure whether he was present at the beginning of the first meeting. The workshop facilitator Vicki Evans set out the ground rules – free and open discussion on the basis that it was confidential. Any proposals would become public when sent out for public consultation. She was very concerned to receive a letter from the headmaster of the local secondary school. She understood that Cllr Armstrong-Braun had written to him alleging that both she and Cllr Gay had criticised the school, which she disputed entirely. The matter had caused her considerable distress and embarrassment.

Mrs Victoria Evans

3.11 Mrs. Evans confirmed the accuracy of her statement to the Ombudsman. She had considerable experience of working with councillors and had facilitated many workshops similar to the one she had organised for Saltney Town Council. She confirmed that she had been the facilitator for the workshop in March 2009 and had outlined ground rules for the workshop. She could not recall whether she had specifically used the term confidential but she was certain that everyone attending was clear that the discussions were held in private to facilitate open and honest exchange of views. She made a record of the workshop. This was appended to her original statement. This written record does not include any disparaging or critical comments about the secondary school by any councillors, and specifically by councillors Gay and Lloyd. She had never experienced any problems with other workshops of participants not respecting the ground rules and breaching confidentiality. She believed Cllr Armstrong-Braun did have an understanding of the basis on which discussions were held.

Mrs Hettie Wilson

3.12 Mrs. Wilson confirmed the accuracy of her statement to the Ombudsman. In her oral evidence she explained that her husband had been a previous Mayor of Saltney Town Council and had received a sum of £500 as an allowance. Upon the death of her husband Mrs. Wilson returned the balance of the allowance - £200 to the then Town clerk on 27 December 2007 and received a receipt. She also accounted to the council for the £300 spent by her late husband which had been given to various community groups.

3.13 Under cross-examination Mrs. Wilson denied that Cllr Armstrong-Braun was a friend of her husband. She said he was an acquaintance. He had attended her husband's funeral as had many other councillors. He had not given her a lift to the funeral. She was taken by Cllr Walker. He used to call her on the telephone intermittently always to ask questions. He came to see her a few times before the funeral. She was well able to conduct the arrangements and he did not help her –

he just asked questions. On the evening in question he "rang me at 9.45pm". She was not used to telephone calls at that time. He said "they were querying her husband's expenses". She rang back at 10.05pm to provide the details she had given to the previous Town Clerk. She was very upset by the 'phone call since it seemed to cast a shadow on her husband's reputation. She believed he was ringing in his capacity as Mayor and was querying the money. He gave her the impression he was asking on behalf of the Council. She spoke to a couple of other councillors including Cllr Walker who said he would sort out the issue. She went to the next council meeting and spoke about the conversation. She thought that most councillors did not understand why Cllr Armstrong-Braun had contacted her. All she wanted was for him to apologise for ringing her about her late husband's allowance, but he refused to do so causing her considerable distress. She then went to the following ten meetings and sat in the public gallery. She observed his conduct at the council meetings and said that he was always waving his hands and standing up and having arguments. He consistently refused to apologise to her despite her obvious distress.

Cllr Richard Lloyd

3.14 Cllr Lloyd confirmed the accuracy of his statement to the Ombudsman and indicated that he had nothing further to add. He had initially supported Cllr Armstrong-Braun; had delivered leaflets for him; and had proposed him for Mayor.

3.15 After Cllr Armstrong-Braun became Mayor, meetings became heated, there was a lot of animosity particularly between Cllr Armstrong-Braun and Cllr Crawford. The Town Clerk and the Deputy Mayor had tried to help Cllr Armstrong-Braun but he would not listen to any advice and became agitated and shouted that he would not take advice, his mind was set.

3.16 He confirmed that there had been an exchange of words between Cllr Armstrong-Braun and Cllr Crawford and that Cllr Armstrong-Braun had called Cllr Crawford a hypocrite, a moral degenerate and a coward. He confirmed that Cllr Armstrong-Braun had refused to apologise to Mrs Hettie Wilson. He could not recall if he voted to contact the police but thought that it was the right thing to do at the time.

3.17 There was never any campaign against Cllr Armstrong-Braun.

Councillor Armstrong-Braun.

3.18 Cllr Armstrong-Braun gave evidence having heard the evidence from other witnesses and concentrated on the disputed facts of the case.

3.19 He acknowledged that he was one of the most experienced councillors elected in 2008 and had stood for the post of Mayor. He was elected on a majority of nine votes to four. He had modelled his style of chairing meetings on a previous Mayor Cllr Wilson who had chaired meetings strictly. He wished to emulate Cllr Wilson and he had sought advice from others but felt he had been left in the wilderness.

3.20 He said there had been a history of difficulties in the previous Town Council and people had taken sides – he believed that there was a campaign against him orchestrated by Cllr Crawford. He accepted that there had been arguments at council meetings but blamed this entirely on other councillors who did not follow Standing Orders, or listen to him. He denied calling Cllr Crawford a moral degenerate in a public meeting.

3.21 He did not deny that he had made the comments reported in the local press that described Saltney as a backwater, but he was just repeating what other residents had said to him. He said he wanted to change the way the Council was run and that the “backwater” comment was a legitimate political comment and that the council’s request for an apology was not justified.

3.22 He confirmed that he had not accepted the advice of the Town Clerk on 9 July 2008. He believed that meetings could not last for more than 2 hours without a break. He was not seeking to close the meeting entirely but to have a comfort break as there were still 8 items to be heard. He remained of the view that he had acted properly and that as Mayor it was for him to interpret the rules and that he could call for a break without the permission of the council.

3.23 At the 10 September meeting he accepts that he called Cllr Crawford a hypocrite and a coward but denies using the words “morally degenerate”. He said that he made the comments in the heat of the moment as a response to Cllr Crawford saying he was “Just like Hitler, a dictator”.

3.24 He said that he had contacted Mrs. Wilson as a friend having overheard a conversation between the Town Clerk and councillor Crawford. He did not dispute that he had used the words as stated by her. He continued to refute any need for him to apologise to her because of the distress his telephone contact had caused despite being given an opportunity to do so.

3.25 He said that he did not consider the meeting of the Business Task Group to be confidential and that there was a strict procedure on confidentiality in Saltney Town Council. He said that no one had said the meeting was confidential. He said that Cllrs Lloyd and Gay were disparaging about the school. Cllr Lloyd had said that the school had very poor results and Cllr Gay stated that the school had a very bad reputation and that the Head Teacher had said so. Saltney High School has a very good reputation. He wanted to check with the school if there were any problems, he wanted the Head Teacher’s view.

Anwen Jones (Acting Monitoring Officer, Flintshire County Council)

3.26 The Case Tribunal invited the Monitoring Officer to provide information and evidence on three matters; namely what advice had been sought and provided to Cllr Armstrong-Braun by Flintshire officers concerning his role as mayor of the Town council, whether any training had been provided to the Town Council as a result of the video recording of the meeting in 2008, and whether Cllr Armstrong-Braun’s conduct as a Saltney Town Councillor had impacted on his role as a county councillor and placed him in breach of the Flintshire County Council code of conduct.

3.27 The Monitoring Officer said that she was not in post at the time of the incidents that were the subject of the complaints. She had been in post since July 2011. She was unfamiliar with the file and could not find any record of advice provided to Cllr Armstrong-Braun. She had not provided any advice but other colleagues may have. She did not believe that any further training or advice had been provided to the Town Council. It was her view that Cllr Armstrong- Braun's conduct had not reflected on Flintshire County Council or on his conduct as a county councillor. The issues solely concerned Saltney Town Council. She confirmed that there were no other matters of concern that had been reported to her about Cllr Armstrong-Braun's conduct.

Peter Evans (Solicitor, Flintshire County Council)

3.28 Mr Evans assisted the Case Tribunal by confirming that Cllr Armstrong – Braun regularly sought advice from him which he provided verbally but this was about county council matters. It was unlikely that he would have given any advice about the Town Council.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following undisputed material facts:

Undisputed Facts

4.1.1 Cllr Armstrong-Braun is a member of Saltney Town Council and Flintshire County Council.

4.1.2 Cllr Armstrong-Braun signed an undertaking to observe the Code of Conduct of Saltney Town Council on 14 May 2008.

4.1.3 Saltney Town Council's Code of Conduct at the material time was adopted on 21 May 2008, to take effect from 1 June 2008.

4.1.4 Cllr Armstrong-Braun signed an undertaking to observe the Flintshire County Council's Code of Conduct on 8 May 2008.

4.1.5 Flintshire County Council's Code of Conduct was adopted on 8 April 2008, to take effect from 2 May 2008.

4.1.6 Cllr Armstrong-Braun attended training for members on Standards and Ethics on 3 June 2008 and an update of the Members' Code of Conduct on 17 December 2008.

4.1.7 Cllr Armstrong-Braun was Mayor of Saltney Town Council from 14 May 2008 to 13 May 2009.

4.1.8 Cllr Armstrong-Braun was present at meetings of the Town Council on 14 May, 18 June, 9 and 16 July, 10 and 17 September, 8 October, 19 November and

10 December 2008 and 28 January, 11 February, 11 March, 8 April and 8 July 2009.

4.1.9 At a meeting of Saltney Town Council on 18 June 2008 Cllr Armstrong-Braun said he wanted “to get Saltney on the map and known as a council – like Connah’s Quay – not a backwater”. He refused to withdraw the remark when requested by other members.

4.1.10 On 27 June 2008 his comment about Saltney was reported in the Chester Chronicle. He was also quoted as saying that he did not think Saltney was a backwater.

4.1.11 At the Town Council’s meeting on 9 July 2008 Cllr Armstrong-Braun declared an adjournment despite a decision of the majority of Members to continue the meeting and the advice of the Town Clerk that it was not illegal for the meeting to continue beyond two hours.

4.1.12 An article appeared in the Flintshire Evening Leader on 11 September 2008 which referred to Cllr Armstrong-Braun’s comments about the length of meetings, the Town Clerk’s advice and his decision to close the meeting.

4.1.13 At a meeting of the Town Council on 10 September 2008 he refused to leave the chamber when a motion of no confidence in him was being debated, but vacated the chair in favour of the Deputy Mayor.

4.1.14 At the meeting on 10 September 2008 he referred to a former member of the Town Council as being a “hypocrite”, “morally degenerate”, and a “coward”.

4.1.15 On resuming the chair at the meeting of 10 September 2008 he declared the meeting closed before the completion of the business on the agenda.

4.1.16 The meeting on 10 September 2008 was described as “explosive and chaotic” in an article which appeared in the Flintshire Evening Leader on 11 September 2008.

4.1.17 Following his resignation as Mayor and a member of the Town Council, (the now late) former Cllr Frank Wilson returned £200 (being the unexpended residue of his mayoral allowance) to the Town Council. The return of the money and its subsequent disbursement to his successor was not entered in the Town Council’s accounts.

4.1.18 Cllr Armstrong-Braun approached subsequently approached Mrs Hettie Wilson and spoke to her about the return of the allowance awarded to her late husband.

4.1.19 Cllr Armstrong-Braun later refused to apologise to Mrs Wilson as requested by the Town Council.

4.1.20 Cllr Armstrong-Braun claimed expenses in respect of journeys to collect the Town Council's mail from the former Town Clerk's daughter's address. He was not reimbursed his expenses.

4.1.21 At the instigation of then Cllr William Crawford, the Town Council resolved on 10 December 2008 that the North Wales Police be asked to investigate a complaint regarding Cllr Armstrong-Braun's expenses. The Police advised the Town Council on 8 January 2009 that no criminal offences had been committed and the matter was closed.

4.1.22 Cllr Armstrong-Braun had referred to the Members of the Town Council as "wild bison and spoiled brats" as reported in an article which appeared in the Flintshire Evening Leader on 20 November 2008.

4.1.23 The Town Council's action in arranging for its meeting on 10 December 2008 to be video recorded was the subject of articles which appeared in the Flintshire Evening Leader on 1 December 2008 and The Standard on 4 December 2008.

4.1.24 Cllr Armstrong-Braun has not disputed the statements in those press articles which referred to his action in adjourning the meeting in July "even though the majority of members wanted to continue" and to the "chaotic meeting in September" when he "refused to stand down despite councillors passing a vote of no confidence in him".

4.1.25 The video recording depicts the Town Council's meeting on 10 December 2008, including an exchange with former Cllr Crawford when Cllr Armstrong-Braun threatened to abandon the meeting.

4.1.26 On 9 July 2008 the Town Council resolved that the Mayor's allowance be used only for the betterment of the people of Saltney and that the Mayor should account for the expenditure of the allowance at the end of the term of office and return any unspent funds.

4.1.27 On 14 May 2008 Cllr Armstrong-Braun was elected Mayor of Saltney. At their meeting on 16 July 2008, the Town Council resolved to allocate Cllr Armstrong-Braun an allowance of £500 and a cheque was handed to him at the end of the meeting.

4.1.28 Cllr Armstrong-Braun declined to provide details of his expenditure of the allowance when asked to do so at meetings of the Town Council on 11 March and 8 April 2009 and invited the Council to take legal action if they wanted to know where the money had been spent.

4.1.29 At the end of his Mayoral term, Cllr Armstrong-Braun declined to account to the Town Council for his expenditure of the allowance or to return any unspent amounts despite being asked to do so in writing by the Town Clerk on 21 May and 20 November 2009.

4.1.30 Cllr Armstrong-Braun was reported in articles which appeared in the Flintshire Evening Leader on 15 April 2009 and The Standard on 23 April 2009 as saying “I’ve got all of the receipts but I’m not going to be harassed or bullied. I’ve given a lot of the money to charity, but it’s nothing to do with them. I’m not saying how much I spent or what I spent it on. They can take me to court if they want”.

4.1.31 Cllr Armstrong-Braun was a member of the Town Council’s task group appointed to work on the preparation of the Town Council’s Business Plan. Cllrs Veronica Gay and Ann Lloyd were also members of the task group.

4.1.32 Cllr Armstrong-Braun attended meetings of the task group in his capacity as a councillor on 14 and 28 March 2009.

4.1.33 On 27 March 2009, Cllr Armstrong-Braun wrote a letter to the Head Teacher of St David’s High School, Saltney in which he stated that at “a Saturday special meeting....Cllr Ann Lloyd stated that [the school] has very poor results and Cllr Veronica Gay.....said [the school] has a very bad reputation. The Head Teacher said so”.

4.1.34 From May 2008 onwards, Cllr Armstrong-Braun was a Governor of St David’s High School.

4.1.35 Cllr Gay had opposed nominations made by Cllr Armstrong-Braun for vacant Governor posts at the school on the grounds that she wished to be a Governor.

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

4.2.1 Did Cllr Armstrong-Braun ignore the Town Clerk’s advice at the meeting on 9 July regarding the length of the meeting?

4.2.2 There were factors that had an impact on how the meetings of the Town council were conducted by Cllr Armstrong-Braun.

4.2.3 Was there a campaign orchestrated by Cllrs Gay and Crawford aimed at securing Cllr Armstrong-Braun’s suspension as a member during his term of office or his defeat in the 2012 elections?

4.2.4 Was Cllr Armstrong-Braun acting in his official capacity when he approached Mrs Hettie Wilson?

4.2.5 What were his comments to Mrs Wilson?

4.2.6 Did the Council’s standing orders regarding the mayoral allowance as approved on 9 July apply to the allowance awarded to Cllr Armstrong-Braun in May 2008? When was the allowance paid to Cllr Armstrong-Braun?

4.2.7 Was Cllr Armstrong-Braun’s refusal to account for the expenditure of the mayoral allowance contrary to the requirements of the Town Council?

4.2.8 Were the meetings of the Business Task Group on 14 and 28 March 2009 to discuss the preparation of the business plan confidential?

4.2.9 Was Cllr Armstrong-Braun authorised to disclose information which he had obtained during the meeting on 14 March to the Headmaster of St David's High School?

4.2.10 At the meeting of the Business Task Group on 14 March 2009 did Cllrs Veronica Gay and Ann Lloyd make derogatory remarks about St David's high School?

4.2.11 Did Cllr Armstrong-Braun make the remarks about Salney as a backwater as reported in the Chester Chronicle?

4.2.12 Did Cllr Armstrong-Braun use the word "moral degenerate" at the council meeting on 10 September 2008?

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

4.3.1 The Case Tribunal found that Cllr Armstrong-Braun had ignored the advice of the Town Clerk at the meeting on 9 July 2008 and indeed on a number of other occasions. Cllr Armstrong –Braun did not dispute the evidence given by Mr Thorniley but sought to justify his refusal to accept the advice. The Case Tribunal were not persuaded by these arguments and found that the Town Clerk's advice was correct and that Cllr Armstrong-Braun should reasonably have had regard to the advice.

4.3.2 The Case Tribunal had regard to the statements of evidence in the Ombudsman's report and heard oral evidence from the Town Clerk Mr Thorniley, Cllrs Gay and Lloyd, Mrs Hettie Wilson and from Cllr Armstrong-Braun himself on how meetings were conducted. There is no doubt that there was a clash of personalities, particularly with Cllr Crawford, much of which related to historical events in the previous council. It is reasonable to conclude that this did have an impact on meetings.

4.3.3 However there was no evidence to suggest a campaign against the Mayor. There was in fact compelling evidence that at the start of his mayoralty Cllr Armstrong-Braun had the support of the majority of councillors and many of his fellow councillors sought to help him in addressing difficulties that he faced in the council meetings.

4.3.4 The Tribunal considered that Cllr Armstrong-Braun was acting in an official capacity when he spoke to Mrs Hettie Wilson. She gave very clear evidence that she believed him to have approached her as Town Mayor, and that he was referring to council matters relating to her late husband's mayoral allowance. She was a very credible witness. She was clear that the words used were "the council were querying the balance of Frank's allowance." He referred to "they" in the conversation. She confirmed this statement in oral evidence and did not waver under cross-examination. It was very clear that the incident had caused her significant distress. Cllr Armstrong-Braun did not dispute the conversation or the

words. The Case Tribunal were satisfied on the evidence before them that he had no authority to contact her, and that he had consistently refused to apologise to her for the anxiety and worry she had suffered.

4.3.5 There was no dispute in evidence about the chronology of the decisions made by the Town Council concerning the Mayoral Allowance. Cllr Armstrong-Braun became entitled to the allowance on his election in May 2008. The Town Council amended their Standing Orders on 9 July 2008 and the minutes of the Council meeting of 17 July 2008 record that payment of the allowance was approved on that date. Cllr Armstrong-Braun advanced no reasonable evidence or argument to support his contention that he was not bound by the relevant Standing Order.

4.3.6 The new Standing Order 40 made it explicit that the allowance was paid to the Mayor to be used at his discretion for the direct betterment of the residents of Saltney. At the end of the term of office the Mayor is required to account to the council for the spending of the allowance and any funds not spent are to be returned. The minutes of the Council show that they resolved at their meeting on the 8 April 2009 that Cllr Armstrong-Braun should comply with this requirement. He also received a formal request from the Town Clerk. His refusal to so do was in breach of Standing Order 40 and the motion of the council.

4.3.7 The Case Tribunal heard no evidence that the attendees of the Business Task Group on 14 and 28 March 2009 were explicitly told that the meeting was confidential. However based on the evidence of Victoria Evans, Cllr Gay and Cllr Ann Lloyd it was reasonable to conclude that participants did understand that discussions were to be confidential and not disclosed to a third party because ground rules were agreed at the beginning of the workshop to ensure a frank and open exchange of ideas without inhibition.

4.3.8 In the light of the Case Tribunal's findings in 4.3.7, it is clear that Cllr Armstrong-Braun had no authorisation to disclose information to the Headmaster of St David's High School. The Case Tribunal did not accept Cllr Armstrong's explanation for his actions that he had a duty to tell the headmaster.

4.3.9 Both Cllrs Gay and Lloyd denied in their oral evidence making any derogatory remarks about the school. Victoria Evans had no recollection of such comments and her written notes which are the only contemporaneous record of the meetings does not include any such comments. Cllr Armstrong-Braun did not provide any evidence to support his account. The tribunal therefore finds on the balance of the evidence that no derogatory comments were made.

4.3.10 All of the councillors who were present at the meeting of the Town Council on 18 June 2008 confirm the accuracy of the report in the Chester Chronicle that Cllr Armstrong-Braun had described Saltney as a backwater. He did not dispute that he had made the statement.

4.3.11 Cllr Ann Lloyd gave evidence that she had heard Cllr Armstrong-Braun refer to another councillor as a moral degenerate during a council meeting. The Case Tribunal also had regard to his own written response to the Ombudsman on 3

November 2011 where he said “I do not regret making the remark ..morally degenerate as it was correct”. The case Tribunal were satisfied that he had made this statement.

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 Armstrong-Braun was supported by Mr Colin Barber who made the following submissions on his behalf:-

- a) Cllr Armstrong- Braun believes that his conversation with Mrs Hettie Wilson was misunderstood. He had no wish to cause her distress and has drafted an apology which he handed to the clerk to the Tribunal.
- b) So far as issues relating to the mayoral allowance were concerned he still had great difficulty in accepting that he had an obligation to account for his expenditure. He had spent it entirely on community matters and believed he was acting properly.
- c) He believed his comments on Saltney as a backwater were fair comment in the context of the meeting and not disrespectful.
- d) He now accepted that he should have listened to the advice of the Town Clerk at the meeting in July 2008.
- e) He did not dispute that council meetings had been difficult. He was provoked but does regret any intemperate words that he spoke. He remains firmly of the view that there was a campaign against him which made his term as mayor very difficult.

5.2 The Ombudsman’s Report

5.2.1 The Ombudsman’s representative referred to the conclusions in his report and said that on the basis of the findings of fact the code of conduct had been breached. Clearly this period was a difficult time for the council. There had been problems with the accounts and auditors in previous years and in 2008 they had new councillors and a new clerk. However Cllr Armstrong-Braun was an experienced councillor who could and should have overcome these difficulties.

5.2.2 There was evidence of some animosity but none of a campaign against him. Cllr Armstrong-Braun had used words such as moral coward and hypocrite in a scathing attack on another councillor. This went far beyond the “rough and tumble” of political exchange.

5.2.3 He had approached Mrs Wilson in his official capacity and caused her distress. He had failed to properly account for the mayoral allowance and failed to

heed the advice of a council officer, namely the Town Clerk. He had breached the confidentiality of a council meeting.

5.2.4 She also submitted that taking all of these matters into account that Cllr Armstrong-Braun was in breach of the code of conduct in respect of his office as a Flintshire County Councillor.

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 in respect of Flintshire County Council there had not been a failure to comply with paragraph 6(1)(a) of the authority's code of conduct.

5.3.2 The Case Tribunal found by a unanimous decision that there had not been a failure to comply with paragraph 7(b) of Saltney Town Council's code of Conduct which states "*You must not use or authorise others to use the resources of your authority imprudently; in breach of your authority's requirements; unlawfully*".

5.3.3 The Case Tribunal found that Cllr Armstrong-Braun did fail to comply with Saltney Town Council's code of conduct as follows.

5.3.4 Paragraph 6(1)(a) of the code of conduct states that "*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 Armstrong-Braun, when Mayor, had made inappropriate remarks about Saltney namely describing it as a backwater and had subsequently refused to withdraw his remarks; he adjourned the council meeting on 9 July 2008 contrary to the decision of the Town Council; he decided to prematurely close the meeting on 10 September 2008; he was abusive and discourteous to the Town Clerk and Deputy Mayor at the agenda meeting held on 9 September 2008; he referred to members as "wild bisons and spoilt brats"; he persistently refused to comply with the council's own standing orders and motions; all of which exhibited a pattern of behaviour which was reported in the press and undermined the reputation of both the council itself and fellow councillors.

5.3.6 Paragraph 8(a) of the code of conduct states that "*you must when participating in meetings or reaching decisionshave regard to any relevant advice provided by your authority's officers*"

5.3.7 The Case Tribunal found that Cllr Armstrong-Braun ignored the advice of the Town Clerk when he sought to close the meeting on 9 July 2008. Additionally he ignored the advice of the Town Clerk at the pre-agenda meeting on 9 September 2008. He also ignored the advice of the Town Clerk concerning his obligation to account for his Mayoral allowance in accordance with Standing Order 40 of the Council's procedure rules as set out in the letter dated 20 November 2009 from the Town Clerk to him.

5.3.8 Paragraph 4(b) of the code of conduct states that "*You must show respect and consideration for others*".

5.3.9 The Case Tribunal found that Cllr Armstrong-Braun had breached this paragraph both in the inappropriate conversation that he had with Mrs Hettie Wilson on 6 September 2008, and his persistent failure to recognise her distress and provide an apology to her as requested by her and required by Saltney Town Council. He also described his fellow councillors as “wild bisons and spoilt brats”. He also persistently ignored the decision and resolutions of the Town Council which directly affected him, demonstrating no respect for his fellow councillors. In his letter to the Head Teacher of the local Secondary School he attributed completely inaccurate remarks to his fellow Councillors Veronica Gay and Ann Lloyd which had the potential to damage their reputation.

5.3.10 Paragraph 4(c) of the Code of Conduct states that “*You must not use bullying behaviour or harass any person*”.

5.3.11 The Case Tribunal found that Cllr Armstrong-Braun had exhibited bullying behaviour towards the Town Clerk both during council meetings and in general communications with the Town Clerk.

5.3.12 Paragraph 5(a) of the Code of Conduct states that “*You must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature.....*” .

5.3.13 The Case Tribunal found that Cllr Armstrong-Braun had written a letter to the Head Teacher of the local Secondary School in breach of the decision of the Town Council’s task group that their meetings on 14 and 28 March 2009 were to be held in confidential session and that any matters shared in those meetings should not be shared with third parties.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent’s Submissions

6.1.1 Mr Colin Barber spoke on behalf of Cllr Armstrong-Braun. He said that the incidents which had led to the complaints and the investigation had occurred some three years ago. The year of Cllr Armstrong-Braun’s mayoralty should have been the happiest time of his public service. Instead it had been a nightmare. He had been subject to shame and ridicule. He was particularly anxious that these matters should not affect his position on Flintshire County Council.

6.1.2 Mr Barber said he had known Cllr Armstrong-Braun for three years in a personal capacity through the local History Society. He described him as an exemplary member – a “foot soldier” with a talent for communicating with young people. He was aware of the amount of work he has done for the town and community. He was known as the guy who sticks up for the people and underprivileged. Since stepping down as Mayor there have been no further difficulties. He can be abrasive but he is seventy one. This case has led to public exposure and criticism and is a poor reward for the contribution he has made in the past as an elected councillor.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case and came to the following decision.

6.2.2 Any action taken by the Case tribunal must be directed towards the upholding and improvement of standards of conduct expected of elected members of Saltney Town Council. Cllr Armstrong-Braun was concerned about the impact this hearing would have on his position on Flintshire County Council as he said this was more important. In fact the same standards of conduct are expected at all levels of local government. As a public servant his actions were subject to a greater scrutiny than those of an ordinary member of the public, and as Mayor and first citizen of the town the public were entitled to expect him to exhibit the highest standards of behaviour. It was therefore a matter of grave concern that the Case Tribunal found that he breached so many of the requirements of the code of conduct repeatedly and over a substantial period of time.

6.2.3 When he was elected as Mayor Cllr Armstrong-Braun said in evidence that he had high aspirations to lead the Council. In May 2008 he had the support of the majority of the Saltney councillors and the goodwill of the Town Clerk. Despite the Council having experienced some difficulties in the preceding year he started with a clean sheet. It is therefore unbelievable that within a matter of weeks he had caused such difficulties that there were numerous motions of censure and the support of fellow councillors turned to frustration and despair. Cllr Armstrong-Braun had a particular responsibility as an experienced councillor to offer leadership. Instead he became embroiled in a series of personal conflicts with other local councillors and lost perspective of his responsibilities.

6.2.4 It was concerning to hear evidence of a pattern of behaviour where he seemed incapable of accepting any personal responsibility for the problems in meetings. In particular his failure to appreciate the distress caused to Mrs Wilson was shocking. Even the apology lodged with the Case Tribunal during the course of the hearing was limited and was not directed to her.

6.2.5 The Case Tribunal has given consideration to the issues raised in respect of his right to a fair hearing and right to free expression (as set out in Articles 6 and 10 of the ECHR). They were satisfied that despite the fact that Cllr Armstrong-Braun had not been interviewed formally by the Ombudsman that he had had every opportunity of submitting evidence during the investigation. At the hearing he also had a further opportunity of presenting his case and challenging witnesses. The Case Tribunal did not consider that he had suffered any prejudice. Neither did they consider that the words or comments made by Cllr Armstrong-Braun constituted legitimate political expression which would have attracted a higher level of protection.

6.2.6 The Case Tribunal considered that Cllr Armstrong-Braun had failed to uphold many of the principles of public life and in the course of his submissions it was clear that he still failed to accept the Case Tribunal's findings of fact. In coming to its decision the Case Tribunal gave careful consideration to their own

guidelines on sanctions and had particular regard to the serious effect his conduct had on his office as councillor and Mayor.

6.2.7 The Case Tribunal concluded by unanimous decision that Cllr Armstrong-Braun should be suspended from acting as a member of Saltney Town Council for a period of 12 months or, if shorter, the remainder of his term of office.

6.2.8 The Flintshire County Council Monitoring Officer and its Standards Committee, and the Town Clerk of Saltney Town Council are notified accordingly.

6.2.9 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.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal makes the following recommendation to the Saltney Town Council: that it should seek advice and further training on the code of conduct for all members following the elections in May 2012 from the relevant authority (Flintshire County Council, Monitoring Officer).

Signed.....

Date.....

Kate Berry

Chairperson of the Case Tribunal

Christine Jones
Panel Member

Colin Evans
Panel Member