

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2012-013/AT

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

APPELLANT: Councillor Hefin Thomas

RELEVANT AUTHORITY: Isle of Anglesey County Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Hefin Thomas against the decision of the Isle of Anglesey County Council's Standards Committee that he had breached the authority's code of conduct and should be suspended for a period of 6 months.

1.2 A hearing was held by the Appeal Tribunal commencing at 10.00am on Thursday 11 October 2012 at the Tre-Ysgawen Hall Hotel, Capel Coch, Llangenfi. The hearing was open to the public.

1.3 Cllr Thomas attended and was represented by Mr Gareth Parry, Solicitor.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 In a letter dated 26 June 2012, the Adjudication Panel for Wales received an appeal on behalf of Cllr Thomas against the Isle of Anglesey County Council's Standards Committee's determination, on 12 June 2012, that Cllr Thomas should be suspended for a period of 6 months.

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 The Standards Committee found that Cllr Thomas had breached paragraph 6(1)(a) of the Council's code of conduct as a consequence of receiving a criminal

conviction for failing to declare his full income when applying for Incapacity Benefit, thereby bringing his office or authority into disrepute.

2.1.4 The breach, as found by the Standards Committee, was not disputed by Cllr Thomas.

2.2 The Appellant's Written Submissions

2.2.1 Cllr Thomas's solicitor, by letter dated 26 June 2012, appealed the decision of the Standards Committee on behalf of Cllr Thomas. The appeal relates solely to the sanction imposed by the Standards Committee. Cllr Thomas's solicitor made written submissions to support Cllr Thomas's appeal and these submissions can be summarised as follows:-

- i. Cllr Thomas admitted culpability for a criminal offence and self-referred the matter to the Monitoring Officer and the Ombudsman;
- ii. Cllr Thomas resigned from certain posts and issued a public apology for his actions;
- iii. Cllr Thomas co-operated fully with the Ombudsman's investigation and the Standards Committee's enquiry;
- iv. Cllr Thomas should receive some credit for his actions by receiving a reduction in the level of sanction ultimately imposed;
- v. Cllr Thomas would have received the same sanction if he had not co-operated and had not pleaded guilty to the criminal offence;
- vi. the sanction imposed by the Standards Committee ignores the reference in paragraph 44 of the Ombudsman's Report that account had been taken of the 'exceptional mitigation' put forward by Cllr Thomas, his solicitor and the Monitoring Officer on his behalf setting out his public apology; and
- vii. the Standards Committee's decision ignored and overrode the advice provided by the Monitoring Officer in her letter to the Ombudsman dated 25 October 2011 and was 'excessive, disproportionate and unreasonable.'

2.3 The Ombudsman's Written Representations

2.3.1 By letter dated 3 August 2012 addressed to the Adjudication Panel, the Ombudsman gave his response to the submissions made by Cllr Thomas as part of his appeal. The Ombudsman in his letter sought to clarify the events which led to his taking a 'provisional view' that a sanction was unlikely to be imposed in this case. That view was predicated at the commencement of the investigation on information provided to the Ombudsman at that time.

2.3.2 Subsequently, the Ombudsman received a letter dated 22 February 2012 from the Chairman of the Standards Committee which led to the matter being heard by the Standards Committee. The Ombudsman in that letter confirmed that

he "considers that the 6 month sanction imposed by the Standards Committee was not disproportionate in view of the circumstances of the case".

2.3.3 The Ombudsman's response to the representations put forward by Cllr Thomas in his appeal were attached to the Ombudsman's letter dated 3 August 2012 and can be summarised as follows:-

- i. factors in mitigation were properly taken into account and Cllr Thomas was given every opportunity at the Standards Committee hearing to comment and explain his position;
- ii. it was clear that the Standards Committee was not satisfied that the mitigation was either genuine or timely; for example, Cllr Thomas had resigned as Vice Chairman of the Planning Committee only a matter of days after taking on the role and that both of these events occurred after his criminal conviction;
- iii. the Standards Committee gave sound reasons for its position and was entitled to apply the sanction it considered appropriate;
- iv. the Standards Committee cast doubt on Cllr Thomas's honesty and transparency in dealing with the investigation and perceived a pattern of behaviour which had the theme of Cllr Thomas failing to declare full information when required to do so;
- v. Cllr Thomas had submitted erroneous and incomplete information relating to his previous disciplinary record and later verified this to be the case;
- vi. the timing of his declaration of the criminal prosecution was in doubt. The Standards Committee was not persuaded that Cllr Thomas raised the error of his claiming Incapacity Benefit in a timely manner. He was questioned about the time that had elapsed between the DWP first raising its concerns with him and the self-referral and this amongst other aspects cast doubt upon the sincerity of his contrition and the actions he took; and
- vii. Cllr Thomas explanations as to why he was confused about his pay slip and why he had not sought advice were unconvincing.

2.4 THE RESPONSE OF THE STANDARDS COMMITTEE

2.4.1. By letter dated 22 February 2012, the chairman of the Standards Committee Mr Michael Wilson after consulting with his vice chair and the Monitoring Officer wrote to the Ombudsman and expressed his concerns over the Ombudsman's draft report .

2.4.2 Those concerns can be summarised as follows:-

- i. Cllr Thomas's solicitor was mistaken to state that his client had only been referred once to the Standards Committee and the allegation against him was rejected. Cllr Thomas had been suspended for 2 months in March 2003 and also appeared before a Case Tribunal in June 2007 which found he had failed to declare an indirect commercial relationship. As a result he had partially breached the Code; and
- ii. Cllr Thomas failed to attend training sessions over a long period and his reliance on non-specific advice concerning taxation of his councillor allowances was erroneous. What may be perceived as opportunistic reliance on this information did not help the credibility of the councillor's mitigation. There were unexplained anomalies in the case and that, whilst significant credit should be given for the mitigation, there were also other issues that required closer consideration.

2.4.3 The Standards Committee also responded to Cllr Thomas's appeal and its response can be summarised as follows:-

- i. Cllr Thomas and his solicitor were under the misconception that the Ombudsman's preliminary findings were the end of the investigation. The preliminary findings were merely an assessment of the information provided by Cllr Thomas in his self-referral and his response to the Ombudsman's questions which were taken at face value. Further investigations were carried out and they resulted in a number of factors that had been put forward in mitigation being brought into question;
- ii. it was not accurate to state there was no determination by the Standards Committee which gave full consideration to all the facts. It was determined that the factors presented in mitigation were inaccurate and misleading;
- iii. Cllr Thomas did not disclose anything to the Monitoring Officer until after his conviction;
- iv. the Standards Committee considered it a serious case involving a criminal conviction which would normally be heard by the Adjudication Panel which has the authority to impose a greater sanction;
- v. Cllr Thomas did not promptly resign from the positions he held;
- vi. his monthly payslip clearly showed tax and NI deductions;
- vii. the Standards Committee did not believe his contrition was genuine;
- viii. Cllr Thomas was given every opportunity to substantiate his mitigation during the Standards Committee hearing but failed to do so. The mitigation did not stand up to scrutiny; and
- ix. reference to indemnities had no impact on the sanction that was imposed.

3. ORAL SUBMISSIONS

3.1 Miss Beverley Jones

3.1.1 The Appeal Tribunal heard submissions from Miss Beverley Jones, Senior Investigator, Public Services Ombudsman for Wales.

3.1.2 Miss Jones on behalf of the Ombudsman, confirmed that Cllr Thomas appeared in Hollyhead Magistrates Court on 12 April 2011 where he pleaded guilty to the charge of omitting to declare, on an application for Incapacity Benefit, that he was working which he knew to be the case. He was fined £750, ordered to pay £100 costs and £15 victim surcharge. The total overpayment relating to the offence was £7,726.25 which Cllr Thomas repaid in full. The periods of overpayment were 3 November 2005 to 2 May 2008 and 10 July 2008 to 24 January 2010.

3.1.3 Miss Jones said that there was a common theme in the case namely a failure on the part of Cllr Thomas to make full and honest declarations to public bodies. The Ombudsman had become concerned about incorrect statements that he had made and considered that the steps he had put forward in mitigation were neither significant nor genuine.

3.1.4 Miss Jones referred to the Ombudsman's letter dated 3 August 2012 to the Adjudication Panel. That letter clarified the events which led to the Ombudsman taking a provisional view that a sanction was likely to be imposed in this case. The letter also gave the Ombudsman's response to Cllr Thomas representation on his appeal.

3.1.5 The Ombudsman stated that he was satisfied the Standards Committee had given sound reasons for its position; robustly defended the right of the committee to apply the sanction it thought appropriate; accepted the view of the committee that Cllr Thomas' mitigation was not genuine or sincere and that actions taken appeared not to have been a timely response to the events.

3.1.6 The Standards Committee cast doubt on Cllr Thomas's honesty in dealing with these matters and engaging with the Ombudsman's investigation in a transparent manner. The Ombudsman concluded that a "perceived pattern of behaviour emerged which has the theme of Cllr Thomas failing to declare full information when required to do so".

3.2 Mr Michael Wilson

3.2.1 The Appeal Tribunal heard oral evidence from Mr Michael Wilson, the Chairman of the Standards Committee.

3.2.2 Mr Wilson told the Appeal Tribunal that the Standards Committee had considered the offence committed by Cllr Thomas to be one of the most serious that could be put before the Standards Committee since it related to a criminal conviction.

3.2.3 The Committee did consider the different sanctions that it could have

imposed but the factors of this case led the sanction to be at the higher end of the sanctions that could be imposed. The Standards Committee accepted that Cllr Thomas had self-referred the matter but his failure to provide various information and to take action in a timely manner outweighed that fact.

3.2.4 Mr Wilson confirmed that Cllr Thomas was given every opportunity to substantiate his mitigation during the Standards Committee hearing but failed to do so. His mitigation did not stand up to scrutiny.

3.2.5 Mr Parry referred to Mr Wilson's letter dated 22 February 2012 to Miss Beverley Jones, the Ombudsman's Investigating Officer and inferred to Mr Wilson that the opinions he made in that letter suggested that the decision of the Standards Committee was in some way pre-determined and implied bias on his part. This allegation was denied by Mr Wilson.

3.3 The Submissions of Mr Parry on Behalf of Cllr Thomas

3.3.1 Cllr Thomas did not give oral evidence before the Appeal Tribunal.

3.3.2 The following oral submissions were made by Mr Parry on his behalf:-

- i. Cllr Thomas admitted committing the offence and was prepared to stand up to scrutiny;
- ii. Cllr Thomas had been convicted on a narrow principle and had been given credit by the Magistrates court for taking the steps he had taken;
- iii. if a person admits liability and as a result avoids delays and costs that should be taken into account;
- iv. the offence committed by Cllr Thomas should be placed into context of other offences before the Tribunal;
- v. it was necessary for any sanction to be reasonable and proportionate;
- vi. the Magistrates Court accepted the lesser charge for which he had pleaded guilty;
- vii. the sanction imposed by the Standards Committee was excessive and disproportionate;
- viii. insufficient or no credit had been given for Cllr Thomas' acts of mitigation;
- ix. consideration should have been given by the Standards Committee to the fact that the offence committed by Cllr Thomas was committed in his personal capacity and not in his capacity as a councillor.

3.3.3 Mr Parry stated he did not intend repeating the arguments put forward in earlier written submissions on behalf of Cllr Thomas, but asked that they be taken into account and considered by the Appeal Tribunal.

3.4 Miss Lynn Ball

3.4.1 Miss Ball, Director of Legal and Committee Services / Monitoring Officer, Isle of Anglesey County Council made the following observations and representations to the Appeal Tribunal.

3.4.2 Miss Ball referred to Mr Wilson's letter of 22 February 2012, mentioned above, and the inference of predetermination and bias by the Standards Committee and Mr Wilson. Miss Ball stated unequivocally that neither the Committee nor Mr Wilson had pre-determined any of the issues or were biased.

3.4.3 Miss Ball produced to the Appeal Tribunal a copy of an attendance note she had made following a telephone call from Cllr Thomas on 13 April 2011. A copy of the note was given to Mr Parry on behalf of Cllr Thomas and its contents were not challenged by Mr Parry. The note confirmed that, following his criminal conviction the previous day, she advised Cllr Thomas to consider taking the following steps as soon as possible, namely: to issue a public apology; to stand down as Group Leader and to confirm that he would remain unaffiliated for the time being; to make enquiries of the Ombudsman as to whether or not he had breached the Code of Conduct; and, if so, to request the Ombudsman to investigate.

4. FINDINGS OF FACT

4.1 There were no disputed facts and the Appeal Tribunal was not required to make findings of fact given that the appeal was confined to the sanction imposed by the Standards Committee. The Appeal Tribunal considered all the documentation that had been presented to it and in particular the following documentation in making its determination:-

4.1.1 Report of the Ombudsman into the allegation against Cllr Thomas dated 21 March 2012.

4.1.2 Reasons for Standards Committee's decision on 12 June 2012.

4.1.3 Representations in support of the appeal submitted to the Appeal Tribunal by Cllr Thomas dated 28 June 2012.

4.1.4 Cllr Thomas's response to the material facts set out in the Ombudsman's / Monitoring Officer's report.

4.1.5 Response by the Standards Committee to Cllr Thomas' grounds for appeal.

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

5.1 The Appeal Tribunal noted the Standards Committee's finding of a breach of paragraph 6(1)(a) of the code of conduct.

5.2 Paragraph 6(1)(a) of the code of conduct states “ *you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*”.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Appellant’s Submissions

6.1.1 Mr Parry on behalf of Cllr Thomas contended, on the grounds stated above, that the sanction imposed by the Standards Committee was excessive and disproportionate and did not properly take into account and give due credit for the steps taken by Cllr Thomas in mitigation. As a consequence, a lesser sanction such as a censure or suspension for a lesser period should be imposed.

6.1.2 The thrust of the argument in support of this contention was that Cllr Thomas had self-referred his breach of the Code in a timely manner, had taken such steps as he could to mitigate the breach, had co-operated fully with the Ombudsman and Standards Committee and had made full disclosure to them of all relevant information when requested.

6.2 The Submissions of the Ombudsman and the Standards Committee

6.2.1 The Ombudsman in his letter to the Adjudication Panel dated 3 August 2012 made it clear that he considered “the 6 month sanction imposed by the Standards Committee was not disproportionate in view of the circumstances of this case”. The Ombudsman in that letter also clarified the events which led to the Ombudsman taking a provisional view that a sanction was unlikely to be imposed in this case.

6.2.2 The Ombudsman in his written response to the representations made by Cllr Thomas in his appeal accepted that the Standards Committee gave sound reasons for its decision and that it was entitled to apply the sanction it felt appropriate. The Ombudsman noted that the Standards Committee was concerned about the sequence of events leading to the conviction and why Cllr Thomas had been in any doubt about the status of his member’s allowances given that the information was available to him not least on his monthly payslip. The Ombudsman noted that the Standards Committee was not satisfied that the mitigation was either genuine or timely. An example of such doubts included the timing of his resignation as vice chair of the Planning Committee. The resignation took place only a matter of days after taking on the role. Both events occurred after his criminal conviction.

6.2.3 The Ombudsman disputed the view of Cllr Thomas that the Standards Committee did not take into account the factors put forward in mitigation or that they were not properly taken into account or that the Standards Committee was in any way biased.

6.2.4 The Standards Committee in its submissions stated that the factors presented in mitigation were inaccurate and misleading and in some cases disingenuous. Some examples of such behaviour referred to by the Standards

Committee, related to inaccurate information concerning Cllr Thomas' record of previous breaches of the Code and the claim by Mr Parry on behalf of Cllr Thomas that Cllr Thomas had disclosed his situation to the Monitoring Officer as soon as a conviction became likely. This was not true. Cllr Thomas disclosed his conviction after his court case.

6.2.5 The Standards Committee in its submissions also highlighted that Cllr Thomas did not resign from posts held in a timely manner having regard to the conviction or self-exempt himself from accepting any additional responsibilities until after the Council elections in May 2013.

6.2.6 The Standards Committee were of the view that every opportunity was given to him to substantiate his mitigation during the hearing but he failed to do so and his mitigation did not stand up to scrutiny. The Chairman of the Standards Committee Mr Michael Wilson confirmed this when he gave oral evidence under oath.

6.3 Appeal Tribunal's Decision

6.3.1 The Appeal Tribunal considered all the written and oral submissions submitted to it in this appeal. From those submissions and the evidence put before the Appeal Tribunal, it is clear that Cllr Thomas showed an unwillingness to be frank and showed a reluctance to provide full and accurate disclosure of information to those investigating the allegation unless and until pressed to do so.

6.3.2 It is significant that Cllr Thomas appears to have been unwilling or unable to learn any lessons from the fact that he was prosecuted in the Magistrates Court on criminal charges because of a failure to make full disclosure of his circumstances when making a claim for benefits. If he had learned from that experience, he should have realised that, in co-operating with the subsequent investigation by the Ombudsman and his appearance before the Standards Committee, it was his duty to provide full, carefully checked and accurate information so that there could be no possibility of misunderstanding and any doubts about his integrity could be assuaged.

6.3.3 It was also incumbent upon him to act in a way that members of the public and fellow councillors would consider to be exemplary, notwithstanding his criminal conviction. Instead his conduct had engendered doubts about his sincerity and the level of his contrition.

6.3.4 Mr Parry on behalf of Cllr Thomas made much of Cllr Thomas' self-referral and that considerable weight should be given to this. The Appeal Tribunal considers that any councillor finding himself in the circumstances that befell Cllr Thomas should ensure self-referral was made promptly and without hesitation. It is clear from the evidence that Cllr Thomas did not act promptly when he became aware of the prosecution and subsequent conviction. It would have been to Cllr Thomas's greater credit if he had disclosed the intended prosecution as soon as he received notice of it.

6.3.5 It is also clear from the evidence that inaccurate or misleading information

was provided by Cllr Thomas to the Ombudsman and to the Standards Committee. The Standards Committee was of the view that there was a perceived pattern of behaviour relating to a failure or unwillingness to provide full information.

6.3.6 Mr Parry was mistaken in submitting that Cllr Thomas would have received the same sanction if he had not co-operated and had not pleaded guilty to the criminal offence. It seems apparent to the Appeal Tribunal that Cllr Thomas on his own admission had no viable defence to the criminal charges and a conviction was inevitable. If Cllr Thomas had not self-referred the breach of the Code, an investigation would have followed in any event and may have resulted in a referral of the case by the Ombudsman to the Adjudication Panel for consideration by a 'Case Tribunal', not a Standards Committee of the Council. A Case Tribunal has greater powers of sanction than the Standards Committee.

6.3.7 The Appeal Tribunal has applied little weight to these submissions but has recognised and taken them into account. Cllr Thomas did plead guilty to the criminal offence and did self-refer. Appropriate credit must be given for these actions.

6.3.8 The Appeal Tribunal is satisfied that the Standards Committee gave Cllr Thomas every opportunity to substantiate his mitigation during the Standards Committee hearing. The Appeal Tribunal has duly considered the mitigation put to the Standards Committee and to the Appeal Tribunal. The Appeal Tribunal is satisfied that appropriate credit was given by the Standards Committee for the mitigation put forward by Cllr Thomas but that the mitigation was outweighed by other factors of the case including Cllr Thomas' credibility. The Appeal Tribunal is satisfied that the Standards Committee applied due proportionality having regard to all the facts in deciding on the sanction that should be applied to Cllr Thomas.

6.3.9 The Appeal Tribunal considers that the 6 month suspension imposed by the Standards Committee was not disproportionate in view of the circumstances of the case.

6.3.10 The Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of the Isle of Anglesey County Council's Standards Committee that Cllr Thomas should be suspended for 6 months.

6.3.11 The authority and its Standards Committee are notified accordingly.

Signed.....
Gwyn Davies
Chairperson of the Appeal Tribunal

Date.....2012

Juliet Morris
Panel Member

Andrew Bellamy
Panel Member