

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/009/2012-013/A

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

**APPELLANT:** Councillor John Cooper

**RELEVANT AUTHORITY:** Mumbles Community Council

**1. INTRODUCTION**

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Cooper against the decision of the City and County of Swansea's Community and Town Council's Standards Sub-Committee ("the Standards Committee") that he had breached Mumbles Community Council's code of conduct and should be suspended from being a member of Mumbles Community Council for a period of 18 weeks.

1.2 A hearing was held by the Appeal Tribunal at 10.00am on Wednesday 15 May 2013 at the Village Hotel, Swansea. The hearing was open to the public.

1.3 Cllr Cooper attended and was unrepresented.

**2. PRELIMINARY DOCUMENTS**

**2.1 Appeal Against Decision of Standards Committee**

2.1.1 In an e-mail dated 3 January 2013, the Adjudication Panel for Wales received an appeal from Cllr Cooper against the determination of "the Standards Committee" on 30<sup>th</sup> November 2012 that he had breached Mumbles Community Council's code of conduct and should be suspended from being a member of Mumbles Community Council for a period of 18 weeks.

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 section 71(2) of the Local Government Act 2000.

2.1.3 The allegations were that Cllr Cooper had breached Mumbles Community Council Code of Conduct by making misleading statements about his personal

assets to an Employment Tribunal when that Tribunal was considering his liability for costs.

2.1.4 It was alleged that in failing to declare the extent of his assets Cllr Cooper had misled the Employment Tribunal about his ability to pay any costs awarded against him.

## **2.2 The Appellant's Response**

2.2.1 Cllr Cooper denied that he had misled the Employment Tribunal and stated that he was never directly asked if he owned another property. He said that as far as he was concerned the other property was not an asset because it was in negative equity. At the time of the Employment Tribunal, the money he received in damages from a successful negligence case was by no means certain. As far as he was concerned when giving evidence, the case was dormant and unlikely to succeed.

2.2.2 Cllr Cooper commented on the Ombudsman's report and stated in summary that he had never received the appropriate guidance or training on the Code of Conduct at the time of his appointment. He stated that the Ombudsman had not seen all of the relevant documents and referred to another bundle of documents that he wanted the Tribunal to consider.

2.2.3 Cllr Cooper contended that because the other flat he owned was in negative equity it was not an asset by his definition and he did not have to disclose it. He explained that he was never asked about it directly only in the generic "do you have any other assets?" question.

2.2.4 Cllr Cooper stated that he had been involved in a campaign to improve training at the Council and he had a number of documents and witnesses that would confirm the position.

2.2.5 Cllr Cooper did not accept that he had misled the Ombudsman's investigator in his responses regarding the Evening Post article and said that there were two articles and the reporter had given an incomplete response to the Ombudsman.

## **2.3 The Ombudsman's Written Representations**

2.3.1 In a letter dated 11 February 2013 the Ombudsman responded that in investigating the original complaint a pattern of conduct by Cllr Cooper had emerged which it was relevant to include in the report. The Ombudsman responded that Cllr Cooper had provided no evidence to support his contention that he had been blocked in his attempts to improve training at the Council and Cllr Erasmus evidence had no bearing on the issues in dispute.

## **3. PRELIMINARY ISSUES**

3.1 In his written submissions to the Case Tribunal, Cllr Cooper states that the Employment Tribunal proceedings were a civil matter unrelated to his role as a

councillor, which he contends falls outside the remit of the paragraph 6(1)(a) of the code of conduct. His primary submission was that the Code did not apply to conduct in his private capacity. He referred to the cases of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin) and *Fareham v Hull City Standards Committee* LGS/2012/0577. He submitted that any Code that purported to apply to his conduct in a private capacity was ultra-vires. He therefore invited the Tribunal to find that the Standards Committee and this Tribunal had no jurisdiction to impose any sanction.

3.2 In an e-mail dated 9 May 2013 Cllr Cooper made a request for the public to be excluded from the hearing and this request was repeated at the Tribunal. Cllr Cooper submitted that having the hearing open to the public would prevent the witnesses from speaking freely and there were sensitive matters raised in the proceedings which should be heard in private. He submitted that the issues raised in this case related to other Councillors and other investigations and that these proceedings should be heard in private. He submitted that he could not speak freely about these matters when the hearing was open to the public.

3.3 At the hearing Cllr Cooper made reference to an error in the undisputed facts that he had attended training on the code of conduct in July 2012.

3.4 Katrin Shaw, Investigation Manager, PSOW submitted in relation to the preliminary issues that Cllr Cooper was mistaken in his understanding that the Code did not apply to actions in his private capacity. She submitted that a statutory instrument amended the legislation in Wales specifically to cover conduct in a private capacity which may bring the office or authority into disrepute. This is different to the position in England. It was her submission that the law was clear and that the case law produced by Cllr Cooper was not relevant to cases in Wales. She explained that following the *Livingstone* judgement it was the intention of Welsh Government to ensure that the Code applied to Councillors in their private capacity where the conduct was liable to bring the office or authority into disrepute.

3.5 She further submitted that it would not be appropriate for the public to be excluded from the hearing and that there was a public interest in the transparency of these proceedings. It was her submission that Cllr Cooper had not demonstrated any reason why proceedings should be in private. The matters he was referring to related to other Ombudsman investigations that were not relevant to this appeal.

#### **4. Decision on Preliminary Issues.**

4.1 The Tribunal considered the submissions carefully and decided that the Code did apply to Cllr Cooper in his private capacity as the breach alleged was that of bringing the office or authority into disrepute pursuant to paragraph 6(1)(a) of the Code.

4.2 The Tribunal agreed with the analysis of Ms Shaw that the January 2008 amendment to the Local Government Act 2000 made the position clear and the April 2008 Code of Conduct was lawful. The fact that Cllr Cooper was, in his submission, not aware of its provisions was irrelevant.

4.3 The Tribunal noted Cllr Cooper's submissions regarding proceeding in private but nevertheless concluded that it was in the interests of justice that proceedings were heard in public. It was important that there is transparency in public life and that public confidence in the process is maintained. The Tribunal did not consider that Cllr Cooper had adequately demonstrated the necessity to have the proceedings heard in private. It did not consider that the investigations into other members of the council had any bearing on the issues before it. However if issues arose during the course of the hearing that needed to be heard in private the Tribunal would consider the matter further.

## **5. ORAL SUBMISSIONS**

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

### Public Services Ombudsman for Wales

5.2 With regard to the disputed facts Ms Shaw submitted that the judgement of the Employment Tribunal was clear and Judge Ferris' decision was a formal record of those proceedings. This judgement demonstrated that Cllr Cooper had made misleading statements. With regard to the other issues of making misleading statements to the Ombudsman's investigator she helpfully clarified that these were very much side issues but that they were relevant to bring to the attention of the Standards Committee within the report. In her submission there was no evidence to demonstrate that Cllr Cooper had been involved in a campaign to improve training and indeed had turned down training on the Code to attend a French class.

### Witness – Cllr Pamela Erasmus

5.3 Cllr Pamela Erasmus gave evidence on the issue of the training plan. She confirmed that Cllr Cooper had campaigned very hard to progress training within the council but this had been sneered at and blocked by the other members of the council. She said in her evidence that Cllr Cooper had tried to get training moved to another committee in order to progress matters. Although there was no minute of Cllr Cooper's efforts she said that she was very much aware of his campaign and the difficulties that this brought him when other members of the council disagreed.

### Cllr Cooper

5.4 Cllr Cooper made the following oral submissions:

5.4.1 That, in any event, he was never provided with any training on the Code and the only papers he had in his possession did not make it clear that it applied to him in his private capacity. He submitted that he could not be "hung" for something of which he was not made aware.

5.4.2. That he disagreed with the judgement in the Employment Tribunal case as was his right. He submitted that he did not fail to disclose his assets as the flat he owned was in negative equity and the rent was being paid directly to the bank to discharge the mortgage liability. He contented that this was therefore not an asset.

He submitted that at the time he gave the evidence to the Employment Tribunal he was not in a position to pay more than £1000. He submitted that he was cut short in explaining his position and told only to answer the questions put to him and therefore he did not disclose the interest in the flat as he did not consider it was an asset.

5.4.3 That the negligence case in which he was involved had effectively stalled at the time of the employment hearing. He submitted that it was by no means certain that he would be successful and the other side had refused to negotiate. It was only following the Employment Tribunal that things took a rapid change in his favour. Cllr Cooper submitted that he did not consider that he would get anything from the case at the time of giving his evidence.

5.4.4 That although he did not agree with the Employment Tribunal he was in a position to pay the increased costs at that stage and although he tried to appeal the decision he was out of time.

5.4.5 That he had been involved in a campaign to improve training that had been blocked. He referred the Tribunal to the Mumbles' Community Plan which he submitted was part of his efforts to get the training issue referred to his committee so that he could make progress with it. He submitted that there were no minutes of this because of the situation at the council and it having to be very much a behind the scenes campaign.

5.4.6 That, with regard to the issue of the Evening Post article, when he contacted the paper he was under the impression that the article was ready for publication and could not be changed. He submitted that he later provided his version of events which formed the basis of a subsequent article. Cllr Cooper said that he had not read the article and was not aware that his comments had been incorporated and therefore he had not misled the Ombudsman's investigator when he said that he had had no opportunity to comment.

## **6. FINDINGS OF FACT**

6.1 The Appeal Tribunal found the following **undisputed** material facts:

6.1.1 Councillor Cooper has been a Councillor since July 2008; he signed his Declaration of Acceptance of Office on 7 July 2008 and had attended training on the Code in July 2012.

6.1.2 Councillor Cooper was dismissed by his employer in December 2007; he subsequently commenced an unfair dismissal case with the Employment Tribunal Service. The Employment Tribunal dismissed Councillor Cooper's unfair dismissal case.

6.1.3 On 2 August 2010, Councillor Cooper gave evidence on oath to the Employment Tribunal that his only asset was a small leasehold flat with a mortgage.

6.1.4 Following that evidence given by Mr Cooper the Tribunal reached a decision that Councillor Cooper must pay £1000 as a contribution towards his ex-employer's costs.

6.1.5 On 3 September 2010, Councillor Cooper was directed to produce information about all his other assets.

6.1.6 In its judgement, issued after a hearing on the 17 December 2010, the Tribunal said that Councillor Cooper's failure to disclose all his assets to the Tribunal on 2 August 2010 was a significant failure.

6.1.7 Councillor Cooper was subsequently ordered to pay £10,000 towards his ex-employer's costs.

6.2 The Appeal Tribunal found the following **disputed** material facts:

6.2.1. Did Councillor Cooper make misleading statements to the Employment Tribunal; and if so, could his conduct reasonably be regarded as bringing his office or authority into disrepute?

6.2.2 When did Councillor Cooper speak to the South Wales Evening Post newspaper reporter?

6.2.3 Was/is Councillor Cooper involved in a campaign to establish/improve training on the community council and, if so, when did his involvement start.

6.3 The Appeal Tribunal found the following in respect of the disputed facts:

6.3.1 The Tribunal considered that Cllr Cooper did make statements to the Employment Tribunal that were misleading. Although Cllr Cooper contended that he did not consider his statements were misleading the Tribunal prefer the findings that were made in the Employment Tribunal that Cllr Cooper had made significant failings in his failure to disclose his assets.

6.3.2 The same judge was involved in both hearings at the Employment Tribunal and was able to assess the questions put to Cllr Cooper and evaluate the answers he gave to those questions. Cllr Cooper put the same argument to the Employment Tribunal regarding his failure to disclose his interest in Highbury House as he has put forward today and the Employment Tribunal rejected that argument.

6.3.3 The Tribunal also rejected the explanation for the failure to disclose and it did not consider that there was any evidence to suggest that the conclusion to which the Employment Tribunal had come was wrong.

6.3.4 In particular the Tribunal took into account the comment at paragraph 17 of the Employment Tribunal judgement *"The questions put to him should have elicited the information which we now have before us."* and that the failings were *"significant failings"*.

6.3.5 The Tribunal noted that Cllr Cooper had taken information regarding the value of Highbury House including a valuation to the Employment Tribunal hearing. This made it clear in the Tribunal's view that he expected to be asked about it and considered it was relevant to the issue of costs. Cllr Cooper's failure to disclose this asset in the Tribunal's view was in an attempt to mislead the Employment Tribunal about his financial position.

6.3.6 In all the circumstances the Tribunal concluded that the statements to the Employment Tribunal were misleading.

6.3.7 With regard to Cllr Cooper's contact with the South Wales Evening Post reporter the Tribunal is satisfied that he spoke to the reporter on the day of publication and that he was able to provide comments before the article was published. The Tribunal can find no evidence to support Cllr Cooper's assertion that he was not given an opportunity to comment on the article as he considered it was "set" and could not be changed.

6.3.8 Cllr Cooper accepts in his written response to the Ombudsmen that he made a mistake regarding his comments. He said to the Tribunal in evidence, initially, that he had never read the article but conceded in cross-examination that he had read some of it. In all the circumstances the Tribunal considers that his comment to the Ombudsman was incorrect. The Tribunal shared the concern of the Ombudsman that Cllr Cooper's comments do not stand up to scrutiny.

6.3.9 With regard to the campaign to instate training, the Tribunal noted that the Ombudsman stated in his report that there was no evidence produced to support Cllr Cooper's statements that his training campaign had been blocked. The Tribunal agreed that there was nothing in the documents that supported this assertion by Cllr Cooper. Nevertheless the Tribunal considered the evidence of Cllr Erasmus on this issue. She stated that Cllr Cooper had tried very hard during the time she had worked with him to improve training at the Council. The Tribunal accepted her evidence and therefore concluded that Cllr Cooper had not misled the Ombudsman about this aspect.

## **7. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

### **7.1 The Appellant's Submissions**

7.1.1 Cllr Cooper submitted that he had not misled the Employment Tribunal and did not accept the findings that had been made. He repeated his submissions that he did not consider that the Code applied to conduct in his private capacity.

7.1.2 Cllr Cooper submitted that he had never had any adverse comment about the matter and he had been re-elected. Cllr Cooper stated that he could not see how he had brought the authority or office into disrepute.

### **7.2 The Submissions on behalf of the Ombudsman**

7.2.1 It was contended that a councillor's behaviour is subject to greater scrutiny and that Cllr Cooper's conduct could have been seen to have been dishonest and deceitful by anyone reading the articles. The article mentioned that Cllr Cooper was a Community Councillor in the Mumbles and this connection had a damaging effect on the reputation of that authority. Ms Shaw submitted that Cllr Cooper was obliged to abide by the Code and should have taken steps to familiarise himself with his obligations.

### **7.3 Appeal Tribunal's Decision**

7.3.1 On the basis of the findings of fact, the Appeal Tribunal found by a unanimous decision that there was a failure to comply with Mumbles Community Council code of conduct.

7.3.2 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".

7.3.3 The Appeal Tribunal was satisfied that the finding of fact that Cllr Cooper had made misleading statements to the Employment Tribunal did amount to a breach of paragraph 6(1)(a) of the Code.

7.3.4 The Tribunal considered that the findings made by the Employment Tribunal that Cllr Cooper had failed to disclose assets and the subsequent article in the South Wales Evening Post was liable to bring the office of Community Councillor and Mumbles Community Council into disrepute.

7.3.5 The Tribunal did not accept Cllr Cooper's submissions that the Code did not apply in these circumstances. The document presented by Cllr Cooper at the hearing makes this position clear and refers to the Code of Conduct 2008 and when the Code applies. Page 4 of that document explicitly states that in relation to conduct liable to bring the office or authority into disrepute the Code applies at all times. The Tribunal did not consider that Cllr Cooper should have been in any doubt about what was required of him. The Tribunal made a decision as a preliminary issue that the Code was engaged.

7.3.6 It was the intention of Welsh Government to ensure that the legislation was changed following the decision by the court in the case of Livingstone to ensure that the Code applied to conduct in a councillor's private capacity where that conduct was liable to bring the office or authority into disrepute. The fact that Cllr Cooper was found to have failed to disclose assets in Employment Tribunal proceedings in order to minimise his liability for costs, is conduct which calls into question his integrity and credibility and, thereby, that of the council of which he is a member.

7.3.7 The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of the Standards Committee that Cllr Cooper had breached Mumbles Community Council's Code of Conduct.



## **8. SUBMISSIONS ON ACTION TO BE TAKEN**

### **8.1 The Appellant's Submissions**

8.1.1 Cllr Cooper called Cllr Erasmus to give evidence about his character. Cllr Erasmus in her evidence explained that Cllr Cooper had a strong sense of right and wrong and was an old-fashioned councillor. Cllr Erasmus explained that things had been made very difficult for Cllr Cooper but nevertheless he had continued to do his best on the council in spite of a lack of training. Cllr Erasmus gave evidence that she had never seen the newspaper article and she had heard no comments about it. After reading the article she said that she did not think it was a fair system that was in place and Cllr Cooper had been the victim of a nasty and targeted campaign. In her view the matter was over and Cllr Cooper should be given the opportunity to move on and not have to face the same allegations over again.

8.1.2 Cllr Cooper submitted that he did his work to the best of his ability. He submitted that the newspaper article had not been the subject of any adverse comment to him. He submitted that the sanction of suspension would be detrimental to the work he was doing at the council. He submitted that he had paid the costs and worked hard ever since. He submitted that the issue of his involvement in training had been a slur and the Tribunal had recognised his work in this area.

### **8.2 Submissions on behalf of the Ombudsman**

8.2.1 Ms Shaw submitted that 6(1)(a) is one of the most serious breaches. She submitted that Cllr Cooper had challenged matters to the very end and his attitude did not demonstrate any acknowledgement or acceptance that his conduct was in breach of the Code. Ms Shaw submitted Cllr Cooper had been offered training on the Code and he had not made himself aware of his obligations. She submitted that the Standards Committee was in place to maintain local standards and they had considered an 18 week suspension appropriate. Ms Shaw submitted that the sanction should remain the same.

### **8.3 Appeal Tribunal's Decision**

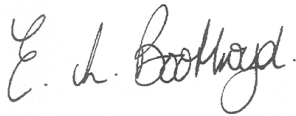
8.3.1 The Appeal Tribunal considered all the facts of the case in reaching a decision on sanction. In particular the Tribunal has had regard to Cllr Cooper's previous record of good service and the high regard in which Cllr Erasmus held him and his work at the Council. The Tribunal has had regard to Cllr Cooper's mistaken belief that the Code did not apply to conduct in his private capacity and that he had not attended any training on the Code.

8.3.2 The Tribunal had nevertheless made a finding that Cllr Cooper had brought his office and authority into disrepute by his actions and the public are entitled to expect a higher standard of behaviour from elected members. The Tribunal considered the breach to be serious in that Cllr Cooper had sought to mislead an Employment Tribunal and this went to the heart of his integrity.

8.3.3 The Tribunal noted that Cllr Cooper had provided no apology and did not recognise that his behaviour fell below the standards expected of him.

8.3.4 In view of all these considerations, the Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of the Standards Committee and that Cllr Cooper should be suspended from being a member or co-opted member of Mumbles Community for a period of 18 weeks. The Tribunal considered that this was an appropriate and proportionate sanction to mark the seriousness of the breach and maintain public confidence in standards in public life.

8.3.5 Mumbles Community Council and City and County of Swansea Standards Committee are notified accordingly.



Signed:

Date: 10/06/2013

Emma Boothroyd  
Chairperson of the Appeal Tribunal

Ian Blair  
Panel Member

Juliet Morris  
Panel Member