

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/008/2012-013/CT

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

RESPONDENT: Former Councillor David Evans

RELEVANT AUTHORITY: Ceredigion 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 In accordance with former Cllr Evans' wishes, and exercise of its powers under paragraph 3(3) of the schedule to the Adjudications by Case Tribunals and interim Case Tribunals (Wales) Regulations 2001, the Case Tribunal determined its adjudication by way of written representations at a meeting on Friday 12 July 2013 at the Holiday Inn, Cardiff City Centre.

2. PRELIMINARY DOCUMENTS

2.1 The Case Tribunal considered the following documentation:

- a. The Public Services Ombudsman for Wales' ("the Ombudsman") Report dated 3 January 2013 and the Appendices thereto;
- b. Ceredigion County Council's Complaints Panel Decision Notice dated 14 December 2011;
- c. Record of Tape Recorded Interview conducted at Aberystwyth Police Station on 25 November 2011;
- d. Letter dated 19 June 2013 from AgriAdvisor, solicitors to former Cllr Evans and attached witness statement of former Cllr Evans dated 18 June 2013.

2.1.1 In a letter dated 3 January 2012, the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against Mr Evans. The allegations were that Mr Evans had breached Ceredigion County Council's Code of Conduct by claiming expenses he was not entitled to and had gained a financial advantage by over-stating his mileage and subsistence claims over a period of 11 years.

2.1.2 On 2 November 2011, Mr Ray Daniel, a member of the public made a complaint to the Ombudsman alleging that Mr Evans had failed to observe the

Council's Code of Conduct by systematically over-claiming mileage expenses over a period of 11 years.. As a result of his allegations, the matter was initially investigated by the Council, who subsequently referred the matter to the Police and the Ombudsman. Following advice from the Crown Prosecution Service, the Police decided no further action be taken against Mr Evans. Although not specifically relevant to the allegations against Mr Evans being determined by the Case Tribunal, it must be mentioned that the Case Tribunal is cognisant that Mr Daniel raised concerns about the expense claims of other councillors.

2.2 The Respondent's Written Response to the Reference

2.2.1 By letter dated 10 December 2012, AgriAdvisors wrote to the Ombudsman on behalf of their client, Mr Evans, and gave their comments on the Ombudsman's draft report. The Ombudsman responded to the representations made on behalf of Mr Evans on 15 March 2013.

2.2.2 AgriAdvisors made further representations to Case Tribunal by letter dated 19 June 2013.

3. FINDINGS OF FACT

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

3.1.1 Mr Evans was a member of Ceredigion County Council ('the Council')

3.1.2 The Council adopted a Code of Conduct for its members as required by the Local Government Act 2000.

3.1.3 On 13 December 2001, 16 June 2004 and 9 May 2008 Mr Evans gave undertakings that he would abide by the Code of Conduct.

3.1.4 The Council operated a Members Allowances Scheme ("the Scheme") which allowed for members to claim reimbursement of allowable expenses incurred whilst carrying out approved duties.

3.1.5 On 26 February 2004 the Council considered and then adopted a revised members' scheme for 2004/05 providing for the chairman and vice-chairman's allowances to be increased to include an amount equivalent to that previously claimed by post-holders as travel expenses. Following adoption of the Scheme, the chairman and vice-chairman would then not be eligible to claim travel expenses when undertaking those duties since a sum for travel expenses was included in the allowance. Mr Evans was present at that meeting.

3.1.6 From 2004/05 to 2011/12 Mr Evans was present at the meetings when the Council considered the Director of Finance's annual reports on the Scheme.

3.1.7 Mr Evans has accepted that the minutes of the meetings record that he was present when the Scheme was discussed and that he was provided with the Scheme documents as part of Agendas and Minutes of the Meetings.

3.1.8 Mr Evans submitted claim forms under the Scheme between May 1999 and February 2012 that did not comply with the Scheme.

3.1.9 In May 2004 Mr Evans was nominated to the role of Chairman of the Council.

3.1.10 On 27 January 2005 Mr Evans travelled to a seminar to Dublin and submitted a claim for expenses incurred during the trip. The form was marked 'chairman' by Mr Evans and included a claim of 110 miles for a car journey. Mr Evans has since admitted that he did not travel by his own car but took a train or taxi to the meeting location.

3.1.11 On 15 November 2007 Mr Evans travelled to Belfast to attend a conference. He submitted an expenses claim for the visit which included a mileage claim for his Daihatsu vehicle. However, the mileage claim was supported by a parking reservation receipt for a Ford Focus. It was also supported by a hotel bill which included £76.30 for a restaurant charge; and a flight booking for 2 persons. Mr Evans has admitted he did not take his car to Belfast but flew there from Cardiff Wales Airport. He has further admitted that the restaurant charge was for a meal taken by Mr Evans and his wife.

3.1.12 During the Council and Police interview, Mr Evans said he claimed mileage as if he made the journey by car. He further stated that he thought it was acceptable to claim mileage for a car journey when he had actually travelled by taxi or train. He thought that this was the standard procedure.

3.1.13 On 10 February 2011 the Council requested Mr Evans to repay £5,100.42 of expenses that he had over-paid and he promptly repaid this amount on 14 February 2011.

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

3.2.1 It is disputed that Mr Evans was aware or had been made aware that he should not have claimed travel expenses when he became Chairman of the Council.

3.2.2 It is disputed that Mr Evans received the letter dated 12 July 2004 which outlined the Members Allowances Scheme.

3.2.3 It is disputed that it is unacceptable to submit mileage claims for a journey undertaken by taxi or train.

3.2.3 It is disputed that Mr Evans knowingly or dishonestly claimed expenses to which he was not entitled or that he knowingly or dishonestly over-claimed expenses.

3.2.4 It is disputed that Mr Evans knowingly or dishonestly claimed expenses to which he was not entitled when he made the trip to Belfast.

3.2.5 It is disputed that Mr Evans deliberately or knowingly over-claimed mileage expenses on claim forms he submitted.

3.2.6 It is disputed that Mr Evans was responsible for claim forms he had completed but not signed.

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

3.3.1 In May 2004 Mr Evans was appointed chairman of the Council.

3.3.1.1 On 12 July 2004, following his appointment, the Director of Finance wrote to Mr Evans congratulating him on his appointment and advising him of the allowances that he was now entitled to as chairman.

3.3.1.2 The letter stated:

“The personal allowance is intended to meet any expenses incurred as a result of you holding office of chairman of the Council. You are advised to maintain a record of all expenses incurred and make a claim for a reduction in your tax liability to the Inspector of Taxes.

Travelling expenses for journeys to meetings, seminars and conferences etc can be claimed in the usual manner for those approved duties which the Council has formally resolved that you should attend. All other travelling expenses should be met from the personal allowance or the special allowance mentioned above.”

3.3.1.3 The Scheme for allowances and expenses had been approved at a Council meeting (para 447 of minutes) held on 26 February 2004, at which Mr Evans was present. The Scheme provided for the Chairman’s allowance to include an amount equivalent to that previously claimed by post-holders as travel expenses. Put simply travel expenses were included in the Chairman’s allowance.

3.3.1.4 Mr Evans when interviewed by the Ombudsman and the Police advised that he had no recollection of receiving the letter, dated 12 July 2004 from the Director of Finance. However, he was unable to explain when interviewed by the Ombudsman, why during the Police interview and in his written response dated 2 July 2012, he had said he had followed the advice contained in the letter dated 12 July 2004. It is apparent from his statements that he did receive the letter.

3.3.1.5 In his written response dated 2 July 2012, Mr Evans stated “I accept that I am responsible for completing the claim form.”

3.3.1.6 The declaration on claim forms states that the claimant confirms that: -

“I have actually paid the fares and other payments shown on the claim form and the amounts claimed are in accordance with the approved rates. The above statements are correct.”

3.3.1.7 Mr Evans has sought to attribute responsibility for any errors or inconsistency in claim forms he has submitted to not being advised on the appropriate Scheme rules by Council staff; not understanding the Scheme rules; and officers of the Council being ultimately responsible for the accuracy of claims made since in effect they would be the final arbiters of them.

3.3.1.8 In his witness statement dated 18 June 2013, Mr Evans states that he denies seeing the letter of 12 July 2004, but confirmed that he had been present at meetings which discussed the Members Allowance Scheme. He further states that since at that time he was not 'contemplating' being a chairman of the Council that would excuse him from being aware of the relevant provisions. He went further and stated that he was not aware of the change in policy in relation to the Chairman's allowance and that he relied on Council officers' knowledge of the Members Allowance Scheme to ensure that they only completed and authorised relevant claims in accordance with the Scheme.

3.3.1.9 Such contentions are not supportable and the Case Tribunal rejects them.

3.3.1.10 Mr Evans was present at the Council meeting when the new Scheme was introduced and subsequent meetings when reports on the Scheme from the Director of Finance were presented. It was incumbent upon and indeed all councillors to understand the Scheme and comply with its rules.

3.3.1.11 Mr Evans following his appointment as chairman, began submitting two claim forms when making claims, one marked 'chairman'.

3.3.1.12 This was a clear acknowledgment by Mr Evans that he understood and acknowledged that his position with regard to making claims under the Scheme had changed. If he had any doubts about what he was entitled to claim in new role as chairman, he could have sought clear guidance from Council officials to ensure that claims he submitted met with the Scheme rules.

3.3.1.13 It is insufficient and unacceptable that Mr Evans should place the reliance he has sought on verbal advice allegedly given to him by Council officials. The claim form declaration makes clear that the claim included on the form is made in accordance with approved rates and contains a confirmation of acceptance of responsibility for the claim made by the claimant.

3.3.1.14 The Case Tribunal finds that Mr Evans knew of and / or was made aware of the Scheme and its rules. It was his sole responsibility to comply with them.

3.3.2 Mr Evans submitted mileage claims for journeys undertaken by taxi or train. During the Police interview, he stated that he thought it was acceptable to claim mileage for a car journey when he had actually travelled by taxi or train and he thought this was the standard procedure.

3.3.2.1 In respect of his visit to Dublin (27 January 2005) Mr Evans submitted a mileage claim for 110 miles noted as "Dublin – Greystone – Dublin".

3.3.2.2 During his Police interview, he admitted that he didn't get a receipt from the taxi driver and thought that was the standard procedure to take the mileage of the taxi journey and claim the mileage regardless of how the journey was undertaken. He later admitted that he flew to Dublin and therefore did not take his car. In his Police interview he admitted that he was not sure whether or not he had taken a train for part of the journey from Dublin to Greystone.

3.3.2.3 His explanation for claiming mileage instead of taxi or train fares was that he thought taxi drivers did not give receipts and that he thought it was just a payment for which he could make an expense claim. Mr Evans claim form for February 2009, by way of illustration, shows a claim for a train fare to London (£44.90) which indicates that Mr Evans understood that when he submitted a claim his claim should reflect the actual expense incurred.

3.3.2.4 To ascertain the mileage of a taxi journey, he must have requested the taxi driver to record the mileage. When making this request, he could easily have asked the driver if a receipt for the fare could be issued. It is irrelevant whether or not the mileage claim would have been less than a claim for the taxi. It is incumbent on an office holder to submit only claims that are accurate and properly reflect the expense and the mode of transport. The claimant cannot elect as in this case to claim for mileage when a taxi or train was used even if it results in a lesser cost. To be able to do so would make a mockery of, and compromise the integrity of, the expenses system, since reimbursement of expenses would not reflect the expense actually incurred.

3.3.3 On 15 November 2007, Mr Evans travelled to Belfast to attend a conference. He submitted an expenses claim for the trip and included a mileage claim for a return journey between his home and Cardiff Wales airport. The claim also included a mileage claim for a journey between Belfast Airport and the Ramada Hotel. He entered his Daihatsu vehicle on the claim form as the vehicle he used but the parking reservation receipt showed he had travelled in a Ford Focus and not a Daihatsu.

3.3.3.1 The claim also enclosed his hotel bill which included a restaurant charge of £76.30 and a flight booking for two passengers. Mr Evans later admitted that he did not take his car to Belfast but flew there with his wife.

3.3.3.2 During the Council interview, he said that he went to Belfast unaccompanied and that he did not buy a meal for anyone. He later admitted that his wife accompanied him. In his witness statement dated 18 June 2013, he explains this contradiction by stating that his response was to a question regarding his attendance at the Conference. The restaurant charge was for a meal taken by Mr Evans and his wife. He said he did not query the charge and had relied on the hotel staff to charge him correctly.

3.3.3.3 AgriAdvisors in their letter dated 19 June 2013 submitted that with regard to the issue of the correct vehicle being identified on claim forms, it was of no effect since the vehicles were in the same tax band and there would be no difference in the amount claimed. There was only room for one vehicle per monthly claim form. The current forms do not request vehicle make and model. The claim forms at the

relevant time, did require that the make, model and registration number of vehicle, if there was a mileage claim be included.

3.3.3.4 AgriAdvisors submission on this point is not accepted. Those claim forms required to be completed as stated and a claimant cannot unilaterally decide to circumvent or modify them. If more than one vehicle was used, then the claimant could and should use a separate form for each vehicle. To do otherwise would compromise the integrity of the expenses system.

3.3.3.5 In the record of Mr Evans interview with the Council dated 8 November 2011 (page 6 para 4) in response to the question what was the bill of £76.30 in respect of, Mr Evans replied stating:

‘There was nobody with me – it was a meal just for me. It does seem a lot. I definitely did not buy a meal for anybody else. What should I do, just put the restricted amount on the claim? How come others can pay for more expensive hotels?’

3.3.3.6 The Case Tribunal does not accept the explanations put forward by Mr Evans and his solicitor. It was incumbent on Mr Evans to make expense claims in accordance with the Scheme rules and truthfully. It is not acceptable for Mr Evans or any other councillor to use their discretion as to whether or not they claim mileage for a taxi or claim mileage when they did not use their vehicle at all.

3.3.3.7 The explanations given for the restaurant charge claim are not supportable. It was incumbent on Mr Evans to make sure that the cost of the meal for his wife was not included in his claim. He could easily have requested the restaurant staff to bill him separately for his wife’s meal. Even if he had overlooked this at the time they had their meal, on check out from the hotel, he was obliged to check the hotel bill before settlement. If he had done so, he would have noticed that the restaurant charge was for both his wife and himself. The amount of the charge should have triggered his enquiry to the fact that it was not for one meal.

3.3.3.8 It is irrelevant that Mr Evans was entitled to a per diem attendees allowance of £30.39, which he did not claim and that this should be taken into account.

3.3.4 Mr Evans was solely responsible for accurately completing his expense claim forms. Claim forms, as he should have been well aware, having been a councillor for many years, are required to be completed accurately and the declaration on them makes this clear. Mr Evans was only entitled to submit claims in accordance with the Scheme rules as they applied from time to time.

3.3.4.1 It was not open to Mr Evans to in effect vary the Scheme to suit himself or comply with the Scheme rules as he saw fit.

3.3.4.2 The explanations given by him for overstating mileage claims, claiming for mileage when a taxi or train was taken, claiming mileage when he did not use his car and failing to segregate his wife’s expenditure from his own were unconvincing and untenable. At best, it appears that Mr Evans had a casual

approach to making expense claims, understanding the Scheme and complying with its rules. It was open to him at all times to seek proper guidance on the Scheme rules to ensure his claims were in accordance with the Scheme. Mr Evans had a duty of care to do so and failed in this duty.

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

4.1 The Case Tribunal has considered carefully all the evidence presented to it and the submissions made.

4.2 The Case Tribunal found by unanimous decision that Mr Evans had failed to comply with the rules of the Scheme and had wrongly over claimed for mileage claims, claimed mileage claims when he had not used his vehicle, made mileage claims when he had used another mode of transport and wrongly included a restaurant charge for his wife in his own expenses.

4.3 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with Ceredigion County Council's Code of Conduct.

4.4 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."*

4.5 The Case Tribunal found that Mr Evans breached the code of conduct by over-stating mileage and subsistence claims and by doing so had brought his office and or authority into disrepute.

4.6 Paragraph 7(a) of the code of conduct states that *"You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage."*

4.7 The Case Tribunal found that Mr Evans breached the code of conduct by over-stating mileage and subsistence claims and as a result had improperly conferred or secured for himself an advantage.

4.8 Paragraph 9(a) of the code of conduct states that *"You must observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member."*

4.9 The Case Tribunal found that Mr Evans had failed to observe the authority's rules concerning expenses and as a result had breached the code of conduct by over-stating mileage and subsistence claims.

5. CASE TRIBUNAL DECISION

5.1 The Case Tribunal considered all the facts of the case and in particular the fact that Mr Evans had on demand, promptly repaid over-claimed expenses. The Case Tribunal also took into account the fact that the Council's procedures during the relevant period relating to councillors' expenses had on its own admission fallen short of the standard the public is entitled to expect.

5.2 The Case Tribunal concluded by unanimous decision that Mr Evans should be disqualified for 3 months from being or becoming a member of Ceredigion County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

5.3 Ceredigion County Council and its Standards Committee are notified accordingly.

5.4 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.

6. CASE TRIBUNAL RECOMMENDATIONS

6.1 The Case Tribunal noted the recommendations in Ceredigion County Council's Complaints Panel Decision Notice dated 9 December 2011 relating to the complaint made by Mr Ray Daniel.

6.2 The Case Tribunal endorses the Complaints Panel's recommendations relating to mechanisms put in place to ensure improvements to the expenses claim system and that appropriate guidance should be issued to Councillors and staff regarding expense claims and arrangements for regular and comprehensive audits of claim forms.

Prepared by Mr Gwyn Davies and signed in his absence by the Registrar to the Adjudication Panel

Mr Gwyn Davies
Chairperson of the Case Tribunal

Date...6 August 2013...

Mr Andrew Bellamy
Panel Member

Mrs Christine Jones
Panel Member

