

Tribunal Reference Number: APW/005/2010-011/CT – Cllr P Heesom

Decision as to Sanction

1. Under the third stage in our proceedings we now consider the appropriate sanction to be imposed. We have delivered our Findings of Fact and on the basis of those findings have delivered a full decision as to breaches of the code of conduct in terms of the Respondent, Cllr Patrick Heesom. These were unanimous decisions of the Case Tribunal. We took into account the Respondent's Article 10 rights and whether the imposition of a sanction is a justifiable and proportionate interference with the Respondent's common law and Article 10 rights. We found 14 separate breaches, 5 breaches of the 2001 code, 9 breaches of the 2008 code. In terms of 3 of the breaches these related to the Head of Planning and Head of Housing appointment procedures where we concluded they were not covered by enhanced protection of Article 10. For the avoidance of doubt we confirm that given the nature of the conduct, that is failure to show respect to officers and, in terms of the Head of Planning, bullying of an officer, the imposition of a sanction did not breach the Respondent's Article 10 rights in any event. The events for which we found breaches cover the period February 2007 to February 2009.

2. In terms of particular breaches, we found 9 breaches of failing to show respect and consideration for others. One of those breaches involved 2 separate occasions, namely the 18 December 2008 and 25 February 2009. In terms of all of these breaches, with an exception as to part of the findings relating to the mutual exchange, they all related to failing to show respect to officers of Flintshire County Council. We found 3 occasions when the Respondent breached the code by being guilty of bullying behaviour. The 3 persons we found who were bullied by the Respondent were on the 7 November 2008 Susan Lewis, Director of Community Services; on the 4 July 2008 Dawn Evans a Senior Sheltered Housing Officer and in January and February 2009 Sharon Carney a HR Manager. The Respondent in terms of a mutual exchange between April and November 2007 breached the code by acting in a manner which compromised or was likely to compromise the impartiality of the Authority's employees and also behaved in a manner which could be reasonably regarded as bringing the office of the member or the Authority into disrepute. In terms of the breaches we outlined in full in our Findings of Fact the events which we found amounted to a breach.

3. These were summarised in part when we analysed whether the conduct amounted to a breach and when we balanced the Respondent's Article 10 rights. We do not intend to repeat those findings but adopt them in considering sanction. We have outlined the history of the Ombudsman's investigation following a referral to him in March 2009, we have also in previous decisions outlined in detail the history of proceedings once the Case Tribunal was established. We again do not intend to repeat such matters, save to note we have been required to sit a total of 58 days over a 2½ year period.

4. We heard from 48 witnesses. The Case Tribunal stood adjourned for a 12 month period due to the Respondent's ill health. The Respondent has throughout

vigorously contested the allegations made against him. When concern as to his conduct was raised at the time by the Chief Executive, by his Leader and other senior officers of the Council he did not accept in the main that he needed to modify his conduct. Following the referral to the Ombudsman he has continued to deny any wrong doing.

5. During the course of these proceedings, in addition to seeking to deny any wrong doing, he has attacked the honesty of a number of Flintshire County Council officers, both senior and junior, describing at least 6 of them as being “liars, fantasists or seriously deluded”. He contested the accuracy or truthfulness of at least 20 contemporaneous documents, all of which were written prior to any referral of a complaint to the Ombudsman. He further contested the truthfulness and accuracy of other documents which accompanied the referral letter. We refer to paragraph 1.52 of our Findings of Fact. Despite this evidence he sought to contest and it appears continues to challenge the evidence against him. As noted in paragraph 1.47 of our Findings of Fact the Respondent had a tendency to directly criticise the conduct and/or ability of witnesses who had given evidence against him and to allege witnesses were engaged in some form of conspiracy against him. The Respondent had an evasiveness to address specific events directly both in his written presentation of his evidence, by way of his written witness statement, and in his sworn oral evidence. We found in terms of the presentation of his evidence he was not full, frank and honest.

6. In our findings at paragraph 1.42 we accepted the Respondent is an experienced county councillor and that he works hard on behalf of his constituents. There was no suggestion that any of his actions were motivated by financial gain. The Respondent described himself as a 24/7 councillor who devoted almost his entire working day to council business, he had been described as one of the most intelligent and experienced council members. These points were reiterated in the submissions made by his Counsel. It was noted approximately 11 councillors across the political divide confirmed our findings. In addition they confirmed the willingness of the Respondent to assist and advise other councillors, reference was also made to supporting evidence as to the Respondent’s character given by 9 current or past officers. 2 constituents also gave evidence as to the Respondent’s good character. Some of the witnesses who have attended meetings over a significant period of time with the Respondent had not witnessed bullying or disrespectful behaviour, though stated the Respondent could ask challenging questions of officers and be forceful.

7. We heard from the Respondent’s partner, an experienced councillor in her own right, who stated she had never seen any traits of bullying in the Respondent’s character. The Respondent has not been the subject of any previous proceedings before his authority’s standards committee, or been the subject of any previous proceedings before the Adjudication Panel. It was submitted on his behalf that a suspension or disqualification would result in severe financial hardship; he would lose his allowance as a councillor. He had already, it was submitted, suffered significant financial loss as he had stood down from being an executive member of the council in March 2009 following the referral of the complaint to the Ombudsman. His health, it was submitted, had also suffered. If he was suspended or disqualified his electorate would be deprived of their chosen representative. He had been re-elected as a councillor for his ward in May 2012, during a period of time when the

Case Tribunal stood in abeyance as a result of the Respondent's ill health and his unfitness to attend to give evidence. At the time of considering sanction the Respondent's position is that he has been re-elected as a county councillor. We were referred by Counsel for the Ombudsman to two cases, Sanders v Kingston 2005 case and Mullaney v The Adjudication Panel for England a 2009 case. We were referred by Counsel for the Respondent to the section in the guidance concerning the position of a re-elected councillor. We were not specifically drawn to the cases by the Respondent, however we have given due consideration to both cases and the guidance. There is a divergence of views between the decision of Mr. Justice Wilkey as he then was in Sanders, who noted it was a very serious thing for a non elected body such as the Case Tribunal to disqualify from membership of a council a person who has been elected to that body by the electorate after the events complained of. The view noted is that the matter complained of was by inference considered by the electorate. In the case of Sanders the facts related to comments made by the councillor surrounding one issue.

8. In the case of Mullaney in 2009, which is after Sanders, Mr. Justice Charles noted in terms of the re-election of the councillor, "*in my judgment this is irrelevant, it cannot be known what effect if any the issues that are the subject of these proceedings had on voters. Also the primary and secondary legislation relating to the code envisages that the electorate might be deprived of the services of a councillor they have chosen*". We were not addressed by counsel the respondent as to the divergence of views of the High Court.

9. In our view the re-election of the Respondent is not wholly irrelevant, however each case is fact sensitive. In this case we are dealing not with one issue but a course of conduct over a 2 year period. The conduct which we have found to be breaches included the bullying of officers and interference in the housing allocation process. It is not known the extent to which the electorate would have been made aware of the full ambit and nature of the complaints. We accept by inference there would have been some local knowledge but as noted in Sanders it is not the case that re-election of the councillor would never entitle the case tribunal to disqualify. In the words of counsel for the Ombudsman re-election does not provide a councillor with absolution for any past mis-deeds.

10. We cannot ignore the fact that some of the breaches we have found arise out of the Respondent's attempt to drive a cart and horses through the housing allocation policy in an attempt to favour constituents in his ward. Further we cannot ignore the manner in which the Respondent has conducted these proceedings; we acknowledge some delay caused by the finalisation of the Ombudsman's report and by need for the Respondent to have time to consider further documentation. However the number and frequency of his applications, his insistence as to the number of witnesses he required to attend, his refusal to accept obvious facts in the face of clear and contemporaneous documentary evidence to the contrary and his wish to challenge every point whether central or peripheral to the facts in hand; all of this considerably extended the sitting time of the Case Tribunal.

11. Notwithstanding these points, we reached a point when the Respondent was due to give evidence in September 2011 and the case was due to be completed in Autumn 2011. The Case Tribunal was unable to sit between September 2011 and

September 2012 for this purpose on the basis of the Respondent being unfit to attend to give evidence for medical reasons. We know not the effect that the adjournment of the Case Tribunal proceedings for the 8 month period leading up to the election of May 2012 would have had on the electorate. It should be noted according to the medical report that during this period of time the Respondent was continuing to conduct council business. He was re-elected during a period of time when he was unfit to attend the Case Tribunal to give evidence. These are facts we cannot ignore in balancing Sanders and Mullaney.

12. We find that considering all of these factors this is a case where we are not de-barred from considering a disqualification notwithstanding the Respondent's re-election. The options we have in terms of sanction are firstly to take no action at all; secondly suspension or partial suspension; thirdly disqualification. Counsel for the Respondent did however in his submission on sanction urge us not to apply any of the sanctions provided by statute but to recommend a commendation to the Respondent for all of his hard work on behalf of his constituents.

13. We noted in our Findings of Fact that we found the Respondent had over the years worked hard on behalf of his constituents. The breaches we have found however are extremely serious breaches. The suggestion of a commendation or indeed in the words of his Counsel that "*we call it honours even*", which we interpret as being no action, reinforce our view that the Respondent continues to display a total lack of insight into the seriousness of his conduct and its effect on individuals and the good management of the council.

14. Our guidelines indicate suspension is appropriate where the circumstances are not so serious as to merit disqualification, but sufficiently grave to give rise to the need to reassure the public and impress upon the Respondent the severity of the matter and the need to avoid repetition.

15. We take into account that prior to 2007 no complaints of alleged breaches of the code of conduct had been made and there have been no fresh allegations since February 2009. However we have to balance this with the extent of the damage to the Authority, the number of breaches, their seriousness and the effect upon individuals within the Authority. In our view these factors make this a case where disqualification as opposed to suspension has to be considered.

16. Disqualification is the most severe of the sanctions available. The threshold for disqualification is a high one, our procedural guidelines set out a number of factors one or more of which may lead to disqualification. The relevant ones to consider in terms of our findings in the relevant paragraphs are b,c,d,e and g.

17. Paragraph b is where a Respondent has deliberately sought to misuse his position in order to advantage some other person. Paragraph c is where the respondent has deliberately failed to abide by the code of conduct (an example given is where there is a protest against legislation of which the code forms part). It is noted members of relevant authorities are expected to uphold the law. Paragraph d is repeated breaches of the code of conduct by a respondent. Paragraph e is misusing power within the authority and of public resources for political gain Paragraph g is bringing the authority seriously into disrepute.

18. To assist councillors the Adjudication Panel for Wales has published an appendix to the sanctions guidelines which set out possible relevant factors that may need to be taken into account in determining appropriate sanction.

19. The relevant mitigating factors noted in the guidelines are firstly an honestly held although mistaken view that the action concerned did not constitute a failure to follow the provisions of the code of conduct particularly where such a view has been formed after taking appropriate advice. We do not believe this applies in this case, the Respondent on a number of occasions was warned as to his conduct, for example in terms of criticism of Susan Lewis by the Chief Executive in March 2008, see paragraph 5.2 of our findings; in terms of his role in housing allocations in a letter 14 December 2006 see paragraph 2.6 of our findings. A second factor in considering mitigation is substantiated evidence that the member's actions have been affected by ill health. This does not apply in this case, no health problems at the times the breaches occurred were identified to us. Thirdly, previous record of good service, this is applicable to the Respondent with almost 30 years public service. Fourthly short length of service or inexperience in a particular role, that is not applicable in this case. Fifthly recognition by the member that there has been a failure to follow the code, cooperation in rectifying the effects of that failure, an apology to affected persons where that is appropriate, self reporting of a breach by the member. This factor is not applicable in this case. Sixthly cooperation with the investigating officer and standards committee and Adjudication Panel. The Respondent has engaged in terms of these proceedings. Seventhly compliance with the code since the events giving rise to the adjudication. This is applicable in this case with no breaches for a significant period of time since February 2009 to current date. Eighthly, actions which may have involved a breach of the code but which had some beneficial effects for the public interest. In our findings this is not applicable. Ninthly, provocation and tenthly heat of the moment such as a debate in council chamber, neither of those we believe are applicable.

20. In terms of the aggravating factors, firstly is deliberate personal or political gain for the member or others at public expense by exploiting the position as a member. We do not believe in accordance with our findings that there was any attempt by the Respondent to obtain personal financial gain, however there was in our view an attempt to obtain political gain. In terms of the mutual exchange he was seeking to curry favour with electors and contrary to the Authority's express decision was seeking to countermand the Authority's decision in favour of his constituents. In terms of the homelessness prevention interview he was seeking to circumvent procedure and influencing an officer by his failure to show respect in order to benefit a constituent. In terms of the 18 December 2008 he was seeking, by failing to show respect, to direct an officer to allocate properties contrary to the council policy in favour of constituents within his ward. Benefitting constituents could be said to be seeking political gain. The second factor is repeated breaches. There have been 14 breaches of the code of conduct over a 2 year period involving 9 different sets of circumstances. Thirdly, misusing powers or using public funds for political gain, this relates to point 1 in terms of aggravating features. Fourthly, actions which brought the council or public service into disrepute. We have found in terms of the mutual exchange that the Respondent's course of conduct brought his office and/or the Authority into disrepute. This was serious in that over an extended period of time he

made serious misrepresentations to a number of people and encouraged members of the public, namely council tenants, to act to their potential detriment. Dishonesty is the next factor, this is not in our view relevant though we note there were a number of misleading comments in terms of some of the breaches. Sixthly an intentional breach of the code; we concluded in respect of all breaches that the conduct of the Respondent was intentional. Seventhly, continuing to deny the facts despite clear contrary evidence, challenging the investigation and the adjudication to the end. In our findings we know of no clearer example of this factor being applicable. Not only is this true in terms of the Respondent's conduct before the Case Tribunal, but also during the course of the Ombudsman's investigation and also at the time in terms of his response to the most senior officers of the Authority. Eighthly, seeking unfairly to blame other people. Whilst he has not sought to transfer responsibility for his conduct to others he has however persistently accused a number of officers, at least 6, of deliberately lying and of creating false documentation. We cannot ignore the effect of this on those officers. Ninthly, persisting with the pattern of behaviour that involves repeated failure to abide by the provisions of the code. Tenthly, is failing to heed appropriate advice or warnings of previous findings of a failure to follow the provisions of the code. Looking at those together there is no evidence of any previous failures to follow the provisions of the code. Nine and ten however are applicable as we have outlined in our findings. The number of different incidents are numerous and there are repeated breaches over a 2 year period and a failure to adhere to words of caution given to him. It is a serious failure on behalf of the Respondent to appreciate the adverse effect his conduct was having on individuals and the good management of the Authority. The lack of insight into the adverse effect of his conduct appears to continue. We cannot but come to the finding that the Respondent believed in particular after the election of May 2008 that he was all powerful within the Authority to the extent that he felt he could behave as he wished in terms of officers. In our findings he was guilty of bullying 3 officers of the Authority. Susan Lewis was a director. We are in no doubt his conduct contributed significantly to her decision to seek early retirement. Two other junior officers suffered as a result of his bullying. In terms of approximately nine officers he on various occasions failed to show respect which again had an adverse effect. His involvement in housing matters went far beyond his remit as a councillor. He had been specifically warned as to the limit of his role but notwithstanding this he sought to influence officers to act contrary to the approved policy of the Authority in housing matters. Had officers so acted it would have had serious consequences.

21. In addition to all the factors in our guidelines we have regard to all the circumstances of the case. We have taken into account all of the positive testimonies given in terms of the Respondent from a cross range of councillors, officers and constituents. All noted the Respondent was an experienced councillor and extremely knowledgeable. These are factors however which would have given the respondent a greater insight into his conduct. The code of conduct exists to uphold standards in political life, the Respondent's conduct has seriously undermined those standards and public confidence. We therefore come to the conclusion that the high threshold required for disqualification for all the reasons given in our Findings of Fact has been crossed. A cumulative effect of the breaches could be said to have also brought the office of member of the Authority into disrepute.

22. We have had careful regard for the length of such a disqualification and the effect upon the Respondent and others. This is a case where based on the aggravating features the length of disqualification should be to the upper end of our maximum power of 5 years. Though we were not specifically addressed on the point by Counsel for either the Respondent or Ombudsman, we note as legislation currently exists the next local elections in Wales are due in 2016. Whilst in general terms such a fact is not highly relevant, our guidelines note there may be occasions when the timing of a Case Tribunal and the time when a disqualification might expire will result in the penalty having a disproportionate effect. Any disqualification beyond May 2016 could result in reality in the Respondent being disqualified for an additional 5 years, which in our view would be disproportionate.

23. Balancing all of the factors, including the Respondent's length of service, the age of the incidents and the fact of the Respondent's re-election we come to the conclusion that the appropriate length of disqualification is 2½ years.

24. In Counsel's address on sanction on behalf of the Respondent it was submitted that in some way we should delay the giving of our notice. We were not directed to any specific statutory provision within our powers which allow us to delay the giving of notice, or indeed to delay the commencement of any period of disqualification. We do not believe we have such a power. In any event it is not appropriate given the circumstances of the case and the seriousness of the breaches to delay the commencement of the period of disqualification.

25. Our finding by unanimous decision is that Cllr Heesom should be disqualified for 2 years and 6 months from being or becoming a member of Flintshire County Council or any other relevant authority within the meaning of the Local Government Act 2000 with effect from 19 July 2013.