



## **DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/001/2014-015/AT

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

**APPELLANT:** Community Councillor Lino Scaglioni

**RELEVANT AUTHORITY:** Sully and Lavernock 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 Scaglioni against the decision of the Vale of Glamorgan Standards Committee that he had breached the Sully and Lavernock Community Council's code of conduct and should be suspended for six months.

1.2 In accordance with Cllr Scaglioni's wishes, the Appeal Tribunal determined its adjudication by way of written representations at a meeting on Thursday 25 January 2015 at the Tribunal Office, Spa Road East, Llandrindod Wells. The hearing was not open to the public.

#### **2. Appeal Against Decision of Standards Committee**

2.1 In a letter dated 8 September 2014, the Adjudication Panel for Wales received an appeal from Cllr Scaglioni against the determination of the Vale of Glamorgan Standards Committee on 31 July 2014 that he had breached Sully and Lavernock Community Council's code of conduct and should be suspended for six months.

2.2 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.

2.3 The allegations were that Cllr Scaglioni had breached paragraphs 4(b) and 6(1)(a) of Sully and Lavernock Community Council's code of conduct by failing to show respect and consideration to Cllr Mahoney. Cllr Scaglioni was alleged to have sent emails that referred to Cllr Mahoney in derogatory terms to other members of the community council and a member of the public. It was also alleged that his conduct brought his office into disrepute.

2.4 Cllr Mahoney complained to the Ombudsman that Cllr Scaglioni had sent emails that were offensive and constituted a personal attack. He also said that Cllr Scaglioni had prevented him from contacting the clerk to the council thereby preventing him from carrying out his duties as a community councillor.

2.5 At a hearing of the Standards Committee in which Cllr Scaglioni participated fully, he conceded that with hindsight he may have re-worded the emails but he did not accept that he had breached the code. Cllr Scaglioni explained to the hearing the context in which the emails had been sent and the particular friction caused by Cllr Mahoney.

2.6 The Standards Committee found that Cllr Scaglioni had breached paragraphs 4(b) and 6(1)(a) of the code on the basis that his emails made inappropriate and personal comments and he was suspended for 6 months and required to undergo training.

2.7 Cllr Scaglioni appealed the decision of the Standards Committee on the basis that it failed to give sufficient weight to the evidence that the emails were sent from a private email address and in his capacity as a private citizen. That the Standards Committee failed to give sufficient weight to the continuous provocation and inappropriate behaviour of Cllr Mahoney and that there was no evidence Cllr Scaglioni had acted inappropriately in relation to Cllr Mahoney in formal council proceedings or correspondence. He also submitted that the sanction imposed was disproportionate in the circumstances especially when comparing this to other similar cases. He also said that the Ombudsman had said no further action should be taken.

### **3. The Ombudsman and Monitoring Officer's Written Response to the appeal.**

3.1 In a letter dated 27 October 2014 the Ombudsman stated that it was the Ombudsman's initial view that a breach may have occurred but that it would not result in a sanction. In accordance with existing procedure the monitoring officer was consulted and it was her view that a sanction could be imposed and therefore the matter was referred for consideration by the Standards Committee.

3.2 It was confirmed that the Ombudsman was not involved in the discussions on breach or sanction and this was a matter for the Standards Committee. The Ombudsman was not able to comment on the weight attached to evidence or why the sanction was felt appropriate.

3.3 In a comprehensive document submitted to the APW the monitoring officer said in summary that the all the evidence was considered and the determination and sanction imposed should be upheld.

## **4. FINDINGS OF FACT**

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

4.1.1 Cllr Scaglioni was Chairman of Sully Community Council.

4.1.2 Sully Community Council changed its name to Sully and Lavernock Community Council in January 2013.

4.1.3 Cllr Scaglioni sent emails dated 25/09/12, 13/12/12, 18/12/12 and 04/01/13 that contained comments about Cllr Mahoney.

4.1.4 At a hearing of the Standards Committee on 31 July 2014 it was found that the emails referred to in 4.1.3 above were inappropriate and a breach of paragraphs 4(b) and 6(1)(a) of the Sully and Lavernock Community Council code of conduct.

4.1.5 As a result of those findings Cllr Scaglioni was suspended from being a member of Sully and Lavernock Community Council for a period of six months and required to attend a training session regarding the Members code of conduct.

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

4.2.1 Whether the emails of 25/09/12, 13/12/12, 18/12/12 and 04/01/13 were sent in a personal or private capacity.

4.2.2 Whether any of the emails contained comments that were political in nature and thereby attract enhanced protection under Article 10 of the European Convention on Human Rights.

4.2.3 Whether any of the emails contained an attack on the reputation or rights of Cllr Mahoney.

4.2.4 Whether the sanction imposed by the Standards Committee was proportionate and appropriate in all the circumstances.

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

4.3.1 With regard to the email of the 25 September 2012 the Tribunal noted that the email was sent from the Sully Residents Association email account but that it was sent only to Cllr Mahoney, it was marked "SLRA Private" and begins, "Kevin" and is signed "Lino". It appears that Cllr Mahoney asked Cllr Scaglioni at a meeting what he had done for Sully. Cllr Scaglioni was giving his response in a list of things he had achieved. The email concludes, "What have you achieved, apart from shooting your mouth off NOTHING. Take notice I will have nothing to do with you henceforth. Do not reply to this email as it will be binned unread. I consider you an unruly loudmouth with nothing to offer." In all the circumstances the Tribunal were satisfied that this email was sent in a private capacity.

4.3.2 With regard to the email of the 13 December 2012 the Tribunal noted that this email was also sent from the Sully Residents Association email account but was sent to a number of members of the council. It begins "Councillor Mahoney" and is signed "Lino Scaglioni". The email refers to conduct of council business. The email confirms that Cllr Scaglioni has instructed the clerk to accept no more emails from Cllr Mahoney because of his "sarcastic and belligerent remarks" and to "ignore any comments you may have....until you have learned how to behave and

conduct yourself in a correct manner befitting a councillor”. In these circumstances, because it was widely circulated to other council members used the term councillor when referring to Mr Mahoney and was directly about council matters the Tribunal were satisfied that this was sent in an official capacity.

4.3.3 With regard to the email of the 18 December 2012 again the email is widely circulated to members of the council and is entitled “Shower Heads – a seasonably light-hearted assessment of the situation.” The email suggests that Cllr Mahoney should have been aware of the condition of the showers in the rugby club having been a member for some time. It suggests that Cllr Mahoney had “soap in his eyes” or showered with his “eyes closed dreaming up a victim and the wording for his next attack”. It suggests that when the new shower heads are fitted Cllr Mahoney could demonstrate why he failed to notice by taking a shower in front of them. It refers to council business and although intended to be tongue in cheek the Tribunal were persuaded that this was sent in an official capacity.

4.3.4 With regard to the email of 4 January 2013 the Tribunal noted that it was a private exchange between two individuals. It was sent from the Sully Residents Association email account and is signed off “Lino”. The email is a personal view of Cllr Mahoney, “The other guy spends his time attacking the clerk, the councillors, and being obstructive, rude and useless.” There was nothing in the content of the email that the panel considered could be seen to suggest that Cllr Scaglioni was writing in any official capacity. In the circumstances the Tribunal considered this email to have been sent in a personal capacity.

4.3.5 The Panel next considered whether any of the emails contained comments that were political in nature and thereby attracted enhanced protection under Article 10 of the ECHR such that a finding of breach might be considered disproportionate. The Panel concluded that the comments in the email to Cllr Mahoney dated 25 September 2012 did contain political comments about Cllr Mahoney’s abilities and achievements as a councillor. Similarly the email of the 4 January 2013 to a member of the public also contained political comment about Cllr Mahoney’s conduct as a councillor. The Tribunal considered that in this context these comments did attract enhanced protection and a finding of breach would be disproportionate.

4.3.6 The emails of 13 December 2012 and the 18 December 2012, although sent in an official capacity did not, in the view of the Tribunal contain any political comment about Cllr Mahoney and therefore did not attract enhanced protection.

4.3.7 The Tribunal considered that all of the emails contained an attack in some form or another on the rights and reputation of Cllr Mahoney. The email of the 25 September 2012 accused Cllr Mahoney of having “nothing to offer”. The email of the 13 December 2012 advised Cllr Mahoney and other members of the council that no more emails to the clerk would be accepted until “you have learned how to behave and conduct yourself in a correct manner befitting a councillor”. The email of the 18 December 2012 exposed Cllr Mahoney to ridicule and the email of the 4 January 2013 accused Cllr Mahoney of being “useless”.

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

5.1 The Tribunal considered the emails very carefully both individually and collectively. With regard to the email of 25 September 2012 the Tribunal considered that this was Cllr Scaglioni's personal view of Cllr Mahoney based on his experience. The Tribunal considered that although the tone of the email was confrontational it was not abusive. The Tribunal noted that Cllr Mahoney was also a county councillor as well as a community councillor and should be used to confrontational exchanges of views. The Tribunal also had in mind Article 10 of the ECHR given its earlier finding that the email contained political comment. In all the circumstances the Tribunal concluded that the email did not fail to show respect and consideration to Cllr Mahoney and did not bring his office or authority into disrepute.

5.2 The email of 13 December 2012 was understood by Cllr Mahoney to be a ban on him communicating with the clerk to the council and therefore being unable to discharge his duties. The Tribunal considered the content of the email and noted that it referred only to him sending emails to the clerk. Cllr Mahoney was not restricted in any other way from participating in council matters. It appears that the email was sent in response to an email from Cllr Mahoney that contained "sarcastic and belligerent remarks". Although the Tribunal has not had sight of this email it is not disputed that Cllr Mahoney could sometimes be "difficult" and that Cllr Scaglioni has sought advice from the monitoring officer about the situation. In all the circumstances the Tribunal concluded that this email did not amount to failing to show respect and consideration to Cllr Mahoney and was a genuine attempt to protect the clerk to the council from what was considered to be inappropriate emails. The Tribunal considered that given this finding it could not be said that Cllr Scaglioni had brought his office or authority into disrepute.

5.3 The email of the 18 December 2012 that was entitled "Shower Heads – a seasonably light-hearted assessment of the situation" that was sent around the Christmas period makes Cllr Mahoney a figure of fun. The Tribunal concluded that it was not sent maliciously to undermine Cllr Mahoney although it may have had that effect. The Tribunal considered that it was sent in an attempt to make light of the situation and Cllr Mahoney was included in its circulation which suggests that Cllr Scaglioni did not intend it to be malicious or offensive. Looking at the email in context the Tribunal did not consider that it amounted to failing to show respect and consideration to Cllr Mahoney. The Tribunal recognised that Cllr Mahoney might have been offended by the email but it did not consider that it was sufficiently offensive to amount to a breach of the code. The Tribunal considered that given this finding it could not be said that Cllr Scaglioni had brought his office or authority into disrepute.

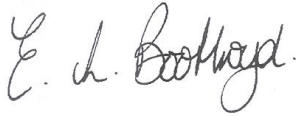
5.4 With regard to the email of 4 January 2013 sent to a member of the public the Tribunal was reminded of its earlier finding that this contained political comment and was sent in a private capacity. Nevertheless the Tribunal did not consider that the email was inappropriate or offensive and it was Cllr Scaglioni's view of Cllr Mahoney based on his experience. In all the circumstances the Tribunal concluded that the email did not fail to show respect and consideration to Cllr Mahoney and did not bring his office or authority into disrepute.

## **6 Appeal Tribunal's Decision**

6.1 On the basis of the findings of fact, the Appeal Tribunal found by a unanimous decision that there was not a failure to comply with the Sully and Lavernock Community Council's code of conduct.

6.2 The Appeal Tribunal accordingly decided by unanimous decision to overturn the determination of Vale of Glamorgan Standards Committee that Cllr Scaglioni had breached Sully and Lavernock Community Council's code of conduct.

6.3 The Sully and Lavernock Community Council and its Standards Committee are notified accordingly.



Signed:  
Emma Boothroyd  
Chairperson of the Appeal Tribunal

Date: 10 March 2015

Colin Evans  
Member

Ian Blair  
Member