



DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2014-015/AT

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

APPELLANT: Councillor Peter Rogers

RELEVANT AUTHORITY(IES): Isle of Anglesey Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Rogers against the decision of the Isle of Anglesey County Council's Standards Committee that he had breached the Isle of Anglesey code of conduct and should be suspended for a period of 1 month.

1.2 A hearing was held by the Appeal Tribunal at 10.00am on Thursday 10 September 2015 and Friday 11 September 2015 at the Llangefni County Court and Family Court, Glanhwfa Road, Llangefni. The hearing was open to the public.

1.3 Cllr Rogers attended and was represented by Mr John Stevenson.

1.3.1 On behalf of Cllr Rogers Mr Stevenson made an application for an adjournment of the hearing. He cited four reasons, namely that Cllr Rogers had been given insufficient notice of the hearing, that it was an inappropriate venue and would identify Cllr Rogers as a criminal, that Cllr Rogers had not had the facility to call witnesses, and that there were no translation facilities available.

1.3.2 The application was refused. The Tribunal Procedure Rules at para 4.37 provide for 7 days notice of an adjourned hearing. Cllr Rogers had been advised on the 24th August 2015 of the new hearing date, well within this timescale. The Tribunal was a judicial process and thus the County Court buildings were an appropriate venue. Cllr Rogers had been served with the bundle of court evidence on the 30th June 2015 and had had sufficient time to consider if he wished to call any additional evidence. Although translation facilities were not immediately available, the Registrar took immediate action to rectify this and the facilities would be available in time for the witness who had requested them.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 In a letter dated 15 January 2015, the Adjudication Panel for Wales received an appeal from Cllr Rogers against the determination of the Isle of Anglesey Standards Committee on 19 December 2014 that he had breached the Isle of Anglesey code of conduct and should be suspended for a period of 1 month.

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 allegations were: that Cllr Rogers had breached paragraphs 7(a), 10(1), 11(1), 11(2)(a), 11(2)(b), 14(1)(a) and 14(1)(c)-(d) of the Isle of Anglesey Council's code of conduct when communicating with officers of the Council about the sale a particular piece of land; that Councillor Rogers failed to declare a close personal association with the prospective purchaser of the land, Nigel Patrick Geal ("Mr Geal"); and that Councillor Rogers had misused his position of member to gain an advantage for the prospective purchaser.

2.1.4 The circumstances leading to alleged breach are set out in paragraph 4 below.

2.1.5 At a hearing of the Standards Committee on the 19th December 2015 at which Cllr Rogers participated, he made submissions that the allegations should be dismissed because of the Investigating Officer's involvement in a previous matter, the absence of some officer evidence, and Cllr Rogers concerns about the propriety of other Council actions.

2.1.6 The Standards Committee found that Cllr Rogers had acted in his official capacity and had a personal interest by virtue of his relationship with Mr Geal. In failing to declare this interest he had breached paragraphs 10(1), 11(1), 11(2)(a) and 11(4) of the code of conduct. The Committee suspended Cllr Rogers for two months, the term being reduced to one month due to mitigating factors.

2.1.7 Cllr Rogers appealed the decision on the grounds that he did not have a longstanding relationship with Mr Geal through business interests, and that he had not breached paragraph 11(2)(a) of the code. He also submitted that the suspension of 1 month did not properly take into account the harm done to himself and his family which followed the leaking of details of the matter to the press.

2.2 The Ombudsman's Written Representations

2.2.1 In a letter dated the 18th March 2015 the Ombudsman said that the Standards Committee determination on personal interests was based on a wider consideration than simply business association and arose because of social relationships, friendship and the marriage of Cllr Roger's and Mr Geal's respective children. Cllr Rogers did not explain why he believed that he did not have a

personal interest, despite having acknowledged this and apologised at the committee hearing. The Ombudsman considered that Cllr Rogers had misunderstood or misinterpreted the decision of the Standards Committee which did not imply that he had no personal interest to declare. His complaint about the leaking of information, and the conduct of the Investigating Officer, as well as his assertion that the original complaint was vexatious were relevant to sanction and not to a finding on breach.

3 ORAL SUBMISSIONS

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

3.2 Ms Annie Ginwalla on behalf of the Ombudsman

3.2.1 Ms Ginwalla summarised the Investigation Report and drew the Tribunal's attention to the relevant statements and to the conclusions set out on pages 17 – 24 of the Investigation Report. She emphasised that the obligation to consider the code rested with the member concerned and could not be discharged by an officer. She referred the Tribunal to the duty that a member has to consider whether they have an interest in all matters and at all relevant times. She asked the Tribunal to consider the findings of the report set out in paragraph 87 in considering whether Cllr Rogers had a personal and prejudicial interest.

3.3 Mr Dafydd Owen

3.3.1 Mr Owen confirmed his two written statements as a truthful account of the facts. He reconfirmed that his clients, the Housing Department, had instructed that the land should be sold for garden use only.

3.3.2 Responding to questions from Mr Stevenson he said selling the plot as garden land affected the value. He provided a second statement to clarify the outcome of the meeting on the 4th June which he felt had been a positive one. He did not know Cllr Rogers personally but did know Mr Geal's daughter from school and was aware of the marriage and the relationships between the families. He said that it was not his responsibility to challenge a councillor but he had told his line manager after the meeting about their relationship. Initially he thought Cllr Rogers was just trying to get things moving but Cllr Rogers then progressed to trying to influence officers to change the terms and conditions of the sale.

3.4 Mr Dylan Edwards

3.4.1 Mr Edwards confirmed that his two written statements were a truthful account of the facts. He recalled two main issues at the meeting on the 4th June: clarifying that the land was sold for garden use only, and identifying boundary responsibilities. Mr Geal said that he wished to develop the site and was advised that he would have to seek planning consent. The guide price in the tender pack reflected the restriction on garden use. If there was no such restriction the value would have increased to £60000. He e-mailed Mike Barton and set out his recollection of the meeting. He did not agree an overage clause in the meeting.

3.4.2 Responding to questions from Mr Stevenson he confirmed that as the Principal Valuation Officer he was responsible for managing the Council's property

on land sales. The Council gave a guide price in the tender pack. It was a small parcel of land to be sold with restrictions and valued at less than £10000. If the value was greater than this the land would be sold on the open market. He was not aware of the relationship between Cllr Rogers and Mr Geal until after the meeting. He did not speak to Cllr Rogers about this but he did tell his line manager Mike Barton. At the time of the meeting he believed Cllr Rogers was acting as a local member and was not aware that he had an interest. He thought the meeting was held to clarify some misunderstandings of the purchaser.

3.5 Mr Patrick Geal

3.5.1 Mr Geal confirmed his written statement as a truthful account of the facts. He confirmed that he had received a letter from Mike Barton dated the 4th September 2012 which stated that the land was valued for use as a private garden only. He also confirmed that he had received a number of other documents including legal correspondence between his solicitors and the council legal department. He said that he had bought the land as garden use only but that he had intentions to develop it. He confirmed that the meeting on the 4th June 2013 dealt with two issues – boundary liabilities and a confusion about restrictions on his own property. He said that the land was of little value to him with restrictions.

3.5.2 Responding to questions from Mr Stevenson he said that he had approached Cllr Rogers in his capacity as his local councillor, not to gain an advantage. He was shocked by the tender documents. Cllr Roger was an honest broker and had suggested the overage clause. He did not know the price he had bid for the land. He disagreed with Mr Edwards valuation of £60000 which he thought was a silly price.

3.6 Mr Richard Parry Jones

3.6.1 Mr Parry-Jones confirmed his written statement as a truthful account of the facts but clarified that he had retired as Chief Executive and was no longer employed by the council. He said that he submitted the complaint to the Ombudsman as it was his public duty. The matter was drawn to his attention. It was for the Ombudsman to investigate the issues. Having looked at the facts he had before him he believed that Cllr Rogers may have breached the code. He was aware of Cllr Rogers interest in this land in 2012 as he had submitted a corporate complaint. During the summer of 2013 there was some talk in the council about a personal connection with the purchaser and he became aware of the details about 6 months before he submitted the complaint.

3.6.2 It was his expectation that councillors were aware of the code and if in doubt they should seek advice from the Monitoring Officer. After May 2013 there was a formal procedure if there was a personal interest so that a fellow councillor could act.

3.6.3 So far as the land sale was concerned he accepted that there had been unfortunate delays. The council had carried out an investigation which found delay by both parties. He said that he understood the frustration, but he was also of the view that this was not about a failure of a council service but concerned a private transaction between seller and purchaser.

3.6.4 He accepted that as an Independent member Cllr Rogers did not have a supportive group but he could have approached the Leader for assistance. He treated every councillor the same. As an officer of a public authority he had no choice but to act to ensure the council was seen as open and unbiased.

3.6.5 He regretted the disclosure of confidential matters. Despite an internal investigation there was no evidence of the source of the breach. He completely rebutted the assertion that he had acted maliciously, and said that there was never any personal animosity against Cllr Rogers who he respected. He was not under any political pressure, but felt that it was his duty to make the complaint and he would have been happy to accept the decision of the Ombudsman.

3.7 Cllr Peter Rogers

3.7.1 Cllr Rogers made the following oral submissions:

3.7.2 Cllr Rogers confirmed that his written statement was a truthful account of the facts. He confirmed that he had lived in the area for forty years and had many friends through social and chapel relationships. He understood the difference between honesty and dishonesty. He has found this case difficult because it has damaged his reputation. He had not acted dishonestly and had never sought financial gain.

3.7.3 He confirmed his friendship with Mr Geal, and said he was as close to him before as after the marriage of their children. He acted for him in his capacity as a local councillor. He said everyone in the council knew of his relationship with Mr Geal and that there were so many opportunities for someone to advise him if he was acting inappropriately.

3.7.4 When he met with officers in June 2013 the deal was done. There were legal costs being incurred and Mr Geal thought he could save on solicitor's letters. Cllr Rogers confirmed that he had an understanding of the use of overage/clawback clauses because they had been used by the council in another sale of property in his village. He was amazed by the delay and it was his suggestion to insert an overage provision in the land sale at 6 Glyndwr.

3.7.5 He referred the Tribunal to his written statement where he outlined a number of instances where he had complained about council decisions and officers. He felt that the present complaint had been used as a diversionary tactic to draw attention away from other matters. It had never crossed his mind that he was doing anything wrong.

3.7.6 The 4th June meeting was the most important. He considered that the contemporaneous note had only limited accuracy. He was extremely angry which is why he wrote to the Deputy Chief Executive.

3.7.7 Responding to questions from Ms Ginwalla he said that he had not received the consultation letter of the 1st September 2011. He had written to the Housing officer on the 29th March 2012 of his own accord. He was not pushing for the land to be sold to Mr Geal but simply wanted to get matters sorted.

4. FINDINGS OF FACT

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

4.1.1 Councillor Peter Standing Rogers (“Cllr Rogers”) first became a councillor in May 2004. He was subsequently re-elected and signed a declaration of acceptance of office and undertaking to comply with the Council’s code of conduct on the 3rd May 2013.

4.1.2 On the 1st November 2013 Mr Richard Parry-Jones (Chief Executive of the Isle of Anglesey Council) made a complaint to the Public Service Ombudsman (“Ombudsman”) that Cllr Rogers had failed to declare a personal and prejudicial interest when writing and speaking to officers about the sale of council land. He further complained that Cllr Rogers had used or attempted to use his position as a councillor either to obtain an advantage for the landowner Mr Geal, or to disadvantage the council.

4.1.3 Nigel Patrick Geal (“Mr Geal”) is the legal owner of property known as 6 Glandwr Dwrn, (“the property”) which is occupied by a tenant.

4.1.4 Mr Geal and Cllr Rogers have known each other for 40 years. They both accept that they are friends and see each other almost daily, as they live close to each other on neighbouring farms. They visit each other’s homes. Mr Geal’s daughter married Cllr Rogers’s son in September 2012. Cllr Rogers is Mr Geal’s local councillor.

4.1.5 In early 2011 Mr Geal experienced problems with vermin at the property and, in contact with council officers he made enquiries about purchasing adjacent council land. Between 1st September 2011 and the 3rd June 2012 there was an exchange of a number of e-mails between Mr Geal and officers concerning this potential sale. In one of these e-mails on the 2nd November 2011 Mr Geal indicated that he had contacted his councillor Cllr Rogers.

4.1.6 On the 1st September 2011 a consultation letter was sent to Cllr Rogers about the proposed sale.

4.1.7 On the 29th March 2012 Cllr Rogers wrote to the Head of Housing Services (Shan Lloyd Williams) about a number of issues on the Glandwr estate, and included copy e-mails concerning Mr Geal’s proposed purchase, seeking a response.

4.1.8 On the 10th May 2012 Cllr Rogers wrote to the Chief Executive complaining about a failure to respond to his letter of the 29th March, and asking for his intervention. The Chief Executive responded on the 23rd May 2012.

4.1.9 Cllr Rogers submitted a corporate complaint on the 17th August 2012 referring to the “unacceptable response” to his letter in May, and “taking no action on e-mails making reference to myself which were not true”. The complaint was investigated and Cllr Rogers received a response from Beryl Jones on the 6th September 2012 containing an account of officers’ actions and a determination that there were no failings which merited disciplinary action.

4.1.10 On the 4th September 2012 Mr Geal and a neighbouring landowner were both invited to tender for the sale land on the Glandwr estate. The letter of invitation asked for offers in excess of £9000 with a market value reflecting usage as a "private garden only". Mr Geal offered £10751 which considerably exceeded the only other tender of £1000.

4.1.11 Cllr Rogers completed a questionnaire on the 10th October 2012 indicating dissatisfaction with the outcome of his complaint, and stating that his real concern was the failure to respond to his original letter. This was responded to by Beryl Jones on the 18th October 2012 and Cllr Rogers was subsequently offered a meeting with the Head of Housing Services.

4.1.12 Mr Geal instructed solicitors on the proposed sale/tender and they wrote to council officers on his behalf about the "garden use" condition on January 2013.

4.1.13 On the 22nd May 2013 Cllr Rogers met the Head of Housing Services, and a housing officer Paul Lloyd Jones at the Glandwr estate to discuss a number of issues and problems on the estate. No notes were made of this meeting. Cllr Rogers asked about the sale of land to Mr Geal, and he subsequently spoke to the Principal Valuation Officer Dylan Edwards on the 24th May about the conditions of sale.

4.1.14 On the 4th June 2013 Cllr Rogers, Mr Geal, Dylan Edwards and Dafydd Owen met to discuss the sale land and the conditions of the sale. There are no agreed minutes of the meeting, but there is a contemporaneous note made by Dafydd Owen. This note does not reference a significant matter in contention, namely whether a "clawback clause" could be agreed in the sale.

4.1.15 Cllr Rogers e-mailed Dafydd Owen on two separate occasions between 24th June and the 4th July 2013 querying what had been discussed and agreed during the meeting on the 4th June. Finally he e-mailed the deputy Chief Executive Bethan Jones on the 17th July 2013 asking for her support in bringing the matter to a conclusion.

4.1.16 Following a query from Mike Barton (Head of Property Services) on the 2nd August 2013 concerning his status in the matter Cllr Rogers replied that "you will fully understand my role, which is as a councillor".

4.1.17 During the period between 1st September 2011 and the 2nd August 2013 there were numerous contacts between Cllr Rogers and officers about the sale of the land at the Glandwr estate, by e-mail, telephone, and face to face contact. Cllr Rogers made no reference at any time of his relationship with Mr Geal.

4.1.18 After the complaint was lodged and investigated by the PSOW reports appeared in the local press, in particular in the Daily Post on the 13th March 2014. The reports did not name Cllr Rogers. Cllr Rogers wrote to the Investigating Officer Annie Ginwalla on the 18th July 2014 to raise this issue and the difficulties it had caused him.

4.2 The Appeal Tribunal found the following disputed material facts:

4.2.1 The nature and extent of Cllr Roger's relationship with Mr Geal and in particular whether it constituted a close association within the meaning of the code of conduct.

4.2.2 The capacity in which Cllr Rogers was acting in this matter.

4.2.3 Whether Cllr Roger's intervention was for the benefit of the Council or for Mr Geal - in particular whether the discussion on the "clawback provision" was primarily to ensure no prejudice to the Council or for the benefit and convenience of Mr Geal.

4.2.4 What was discussed and agreed at the meeting on the 4th June 2013.

4.2.5 The points during the period 1st September 2011 and 2nd August 2013 when there was an obligation on Cllr Rogers to consider whether he had a declarable interest be it personal or prejudicial.

4.2.6 Whether the complaint made by the Chief Executive was malicious.

4.2.7 Whether officers of the Council were aware at any time of any relationship between Cllr Rogers and Mr Geal.

4.2.8 Whether Cllr Rogers received the consultation letter of the 1st September 2011.

4.2.9 Whether Dylan Edwards had any previous knowledge of the use of "clawback clauses" by the Council in earlier land sales. In particular whether the legal agreement produced at the Standards Committee hearing has any relevance to the evidence given by officers.

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

4.3.1 The Ombudsman has given guidance on who may be considered a close personal associate which includes "close friends, colleagues with whom you have a particularly strong connection and close relatives". It does not include, amongst others, "people you simply come into contact with through your role as a member or your work in the local community". In written evidence Cllr Rogers accepted that he has such a close relationship with Mr Geal. Mr Geal similarly confirmed his longstanding friendship which was cemented by the marriage in 2012 of their two children. In his oral evidence Cllr Rogers reconfirmed this relationship, saying that he had never sought to dispute the close association.

4.3.2 The Appeal Tribunal found that Cllr Rogers relationship with Mr Geal did constitute a close association within the meaning of the code of conduct.

4.3.3 All of the evidence, both written and oral, supported the fact that, during the period between September 2011 and August 2013, Cllr Rogers was acting in his official capacity as a councillor on each occasion that he spoke, wrote or attended meetings concerning the land at 6 Glandwr. In particular when he was questioned about his status by Mr Mike Barton Cllr Rogers responded by e-mail dated the 2nd August 2013 stating "you will fully understand my role which is as a councillor".

The Appeal Tribunal therefore found that during the relevant period Cllr Rogers was acting in his official capacity.

4.3.4 Cllr Roger's written evidence which he confirmed as a correct and true record of his interview with the Investigating Officer recognised that Mr Geal could obtain some benefit from the purchase of the land at 6 Glandwr. He confirmed that the land would improve access to the property, allow the opportunity to build a garage, or use the additional land to extend the original building. Mr Geal confirmed in his oral evidence that he had sought to purchase the land with the clear intention of seeking to develop it, and that the land was of little value to him with the restrictive covenant, and that the replacement of this with an overage (clawback) clause was Cllr Roger's suggestion. Cllr Rogers additionally volunteered in his oral evidence that his intervention, through the facilitation of meetings between Mr Geal and officers, was a possible way of mitigating legal costs for Mr Geal. The removal of the restrictive covenant and replacement with an overage clause has allowed Mr Geal the opportunity to develop the land subject to any planning constraints, and has also allowed the purchase to proceed without the land being reoffered for sale on the open market. The fact that the insertion of the overage clause into the transfer might also benefit the council does not detract from the various benefits which accrued to Mr Geal successfully concluding this land transaction without any restrictions placed upon usage.

4.3.5 The Appeal Tribunal found that Cllr Roger's intervention benefited both the Council and Mr Geal. Cllr Rogers was seeking a solution which offered some financial protection for the Council but, on his own admission, he failed to consider the extent of the benefit which would accrue to Mr Geal and to take this into account when considering his own position when meeting and corresponding with officers.

4.3.6 The conflicting views about what was discussed and agreed at the meeting on the 4th June arose from a lack of clarity in the documents within the original tender pack, and a misunderstanding by both Mr Geal and Cllr Rogers of the legal status of the tender submitted by Mr Geal, which was an offer to purchase the land at 6 Glandwr at a price that was acceptable to the Council. Mr Geal had been advised by Mike Barton on the 4th September 2012 that offers were sought in excess of £9000, reflecting a market value of the land "for use as a private garden only". The Tribunal noted the legal correspondence which makes it clear that a draft contract and transfer were sent to Mr Geal's solicitors on the 17th September 2012 reflecting this condition. In oral evidence Dylan Edwards explained that this tender process was only authorised for small plots of land with limited interest from parties and which were valued at less than £10000. If the land use was unrestricted the valuation would increase and necessitate the land being sold on the open market. Mr Geal's solicitors sought clarification on the 15th January 2013 as to why the land was subject to restrictions. On the 18th April the Council's solicitor wrote back "If Mr Geal wishes to purchase the land without user restriction the council would be statutorily obliged to market the property on the open market". Other issues relating to boundaries and a misconception of the land affected by the restriction were addressed in a further letter dated 19th June 2013. Therefore during the period between May and June 2013 when Cllr Rogers had an exchange of e-mail with officers and the meeting of the 4th June took place there was also an exchange of legal correspondence setting out the position. The accounts of Dafydd Owen and Dylan Edwards of the meeting on the 4th June are supported by

contemporaneous notes and an undated e-mail sent by Mr Edwards to his line manager Mike Barton, in which he confirms that there was some discussion during the meeting about the possible future lifting of restrictions on the land “for a premium”. In his oral evidence Mr Edwards confirmed that any such decision would be a matter for legal colleagues. Both Cllr Roger’s and Mr Geal’s oral evidence on this point were unclear. Mr Geal confirmed that he obtained clarification about boundaries, and that the restrictions only applied to the additional land he sought to purchase. Cllr Rogers said that he was angry that the meeting had not resolved the issue and resulted in the removal of the restrictions.

4.3.7 The Appeal Tribunal found that the balance of the evidence and the written documentation and in particular the legal correspondence supported the accounts given by officers that although there was clearly some discussion no agreement was entered into at the meeting on the 4th June 2013 about the insertion of an overage clause.

4.3.8 Cllr Rogers accepted in his oral evidence that, during the period 1st September 2011 to 2nd August 2013 he had a continuing obligation to consider whether he had a declarable interest, be it personal or prejudicial, on each occasion that he wrote, spoke, or met with officers concerning the sale of the land at 6 Glandwr. He further confirmed that he had not given any consideration to this obligation.

4.3.9 Cllr Rogers has contended from the start of this matter that the original complaint by the Chief Executive was malicious. During the investigation by the Ombudsman he identified a number of matters where he was in conflict with council officers and departments, and that the present complaint was some form of retribution for his criticism. He provided no corroborating evidence for the assertion. The complainant Mr Parry-Jones in his oral evidence provided an explanation for his submission of the complaint. He said that once the issues were brought to his attention he had a professional and ethical obligation to forward the facts to the Ombudsman for investigation. He stated that he respected Cllr Rogers and believed that Cllr Rogers respected him. He explicitly rejected any malicious intent.

4.3.10 The Appeal Tribunal found that the complaint lodged by the Chief Executive Mr Parry-Jones was not malicious.

4.4.11 Oral evidence, which was not challenged by Cllr Rogers, confirmed that Dafydd Owen was aware of Cllr Rogers relationship with Mr Geal by virtue of a family friendship. Dylan Edwards became aware of the relationship shortly after the meeting on the 4th June 2013 and advised his line manager Mike Barton in an e-mail on the 17th July 2013. This prompted Mr Barton to seek clarification from Cllr Rogers on the 2nd August about his status in the matter. Mr Parry-Jones said that he had been aware of Cllr Rogers interest in the land since the 10th May 2012 but was not aware of his connection to Mr Geal until six months prior to the submission of his complaint in October 2013.

4.4.12 The Appeal Tribunal accepted this evidence and found that different council officers were aware at different times of the relationship between Cllr Rogers and Mr Geal.

4.4.13 The Appeal Tribunal accepted Cllr Roger's evidence that he had not received the letter dated 1st September 2011.

4.4.14 The document produced at the Standards Committee hearing was not a legal document. It was an estate agent's particulars concerning the sale on the open market of land and buildings which were entirely unconnected to the sale of the land at 6 Glyndwr. Dylan Edward's oral evidence was that he was aware of the use of overage/clawback clauses by the council, but that he was not directly involved in the drafting of such clauses which were dealt with by the legal department. Both Dylan Edwards and Dafydd Owen were very clear in their oral evidence of their respective professional roles and the role of the council's legal department.

4.4.15 The link between the marketing of the land referred to in the estate agent's advertisement and these two officers is tenuous, The Appeal Tribunal found that that it had no relevance to their credibility as witnesses.

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

5.1 The Appellant's Submissions

5.1.1 Mr Stevenson, as representative for Cllr Rogers, argued that hindsight was a wonderful thing. Cllr Rogers was acting as a councillor for the best interests of the Council. He referred to a consultation document that had recently been issued by the Ombudsman which proposed a two stage test for the investigation of complaints, one of which was a public interest test considering matters such as the seriousness of the breach, harm to third parties, whether there was personal gain or discrimination. He asked the Tribunal to consider how the situation would appear to the "man on the Clapham omnibus". The Chief Executive had apparently failed to refer the matter to the Ombudsman for some months. At no time had Cllr Rogers sought to influence the council. He simply wished to get the best deal. He was wearing two hats and acting in the best interests of the council.

5.2 The Ombudsman's Submissions

5.2.1 Ms Ginwalla argued that the evidence supported a finding that Cllr Rogers has breached the code through his failure to properly consider whether he had a declarable interest from the first trigger point on 29th March 2011. His longstanding relationship with Mr Geal gave rise to further breaches of the code as he had a personal interest in the matter on 13 separate incidents when he either e-mailed, spoke by telephone or met with officers to discuss the sale of the land at 6 Glyndwr up until August 2013.

5.2.2 The Tribunal was referred to the definition of prejudicial interest within the Code and the Ombudsman's guidance. The Ombudsman's function is to promote high standards in public life. During the meeting on the 4th June Cllr Roger's intervention was a significant attempt to change the approach of the Council for the benefit of Mr Geal. There had been considerable public interest in land transfers in Anglesey. Cllr Rogers was lobbying on behalf of one of the bidders. The under bidder had no knowledge of his involvement. An independent member of the public

could have considered his actions from the 24th May onwards to be prejudicial. His conduct had breached paragraphs 14(1)(a), (c), (d) and (e) of the code of conduct.

5.3 Appeal Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Appeal Tribunal found by a unanimous decision that there was a failure to comply with the Isle of Anglesey County Council's code of conduct.

5.3.2 Paragraph 7(a) of the Code of Conduct states that "You must not – (a) 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."

5.3.3 The Appeal Tribunal found that Cllr Rogers, from 29 May 2011 until 2 August 2013, was acting in his official capacity and, through his interventions with officers of the Council, used his position improperly to:

- i) confer an advantage upon and avoid a disadvantage to Mr Geal, and
- ii) potentially create a disadvantage for any member of the public who might have wished to express an interest in the land adjoining 6 Glandwr Dwyran had it been sold on the open market, and
- iii) in particular, potentially disadvantage the individual who was the under bidder in the Council's original tender process.

5.3.4 Paragraph 10(1) of the Code of Conduct states that "You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest."

5.3.5 The Appeal Tribunal found that, between 29 March 2012 and 2 August 2013, Cllr Rogers was acting in his official capacity on each occasion that he spoke, wrote and attended meetings concerning the land adjoining 6 Glandwr, and had failed to consider whether he had a personal interest. The obligation is the sole responsibility of the councillor and the knowledge or actions of officers are irrelevant to whether the code of conduct has been breached.

5.3.6 Paragraph 10(2) of the Code of Conduct states that "You must regard yourself as having a personal interest in any business of your authority if (c) a decision upon it might reasonably be regarded as affecting (i) your wellbeing or financial position or that of a person with whom you live or any person with whom you have a close personal association; (ii) Any employment of business carried on by persons described in 10(2)(c)(i)."

5.3.7 The Appeal Tribunal found that, between 29 March 2012 and 2 August 2013, Cllr Rogers did have a personal interest in all matters relating to the land adjoining 6 Glandwr by virtue of his close personal association with Mr Geal.

5.3.8 Paragraph 11(1) of the Code of Conduct states that "Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent."

5.3.9 The Appeal Tribunal found that Cllr Rogers attended meetings on 22 May 2013 and 4 June 2013 regarding the land adjoining 6 Glandwr. He did not declare his personal interest at any point during those meetings.

5.3.10 Paragraph 11(2)(a) of the Code of Conduct states that “ Where you have a personal interest in any business of your authority and you make written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication.”

5.3.11 The Appeal Tribunal found that Cllr Rogers wrote and emailed officers of the Council on 10 May, 17 August and 10 October 2012, and 28 May, 24 June, 4 July, 17 July, 19 July and 2 August 2013 regarding the land adjoining 6 Glandwr. At no point in those communications did he declare a personal interest in the matter.

5.3.12 Paragraph 11(2)(b) of the Code of Conduct states that “ Where you have a personal interest in any business of your authority and you make oral representations (whether in person or some form of electronic communication) to a member or officer of your authority regarding that business, you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.”

5.3.13 The Appeal Tribunal found that Cllr Rogers spoke to officers of the council on 24 May 2013 regarding the land adjoining 6 Glandwr. At no point in those telephone communications did he declare a personal interest in the matter nor did he write subsequently to confirm that interest.

5.3.14 Paragraph 12(1) of the Code of Conduct states that “Subject to paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”

5.3.15 Paragraph 14(1) of the Code of Conduct states that “where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority’s standards committee –

(a) withdraw from the room, chamber or place where a meeting considering the business is being held -

(i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

(ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.”

5.3.16 The Appeal Tribunal found that Cllr Rogers had a prejudicial interest on 10 May and 17 August 2012, and at all times between 22 May and 2 August 2013 in dealing with matters relating to the land adjoining 6 Glandwr. He failed to withdraw from meetings on 22 May and 4 June 2013 and, on other occasions during that time, sought to influence a decision about the land adjoining 6 Glandwr.

5.3.17 The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of the Isle of Anglesey Standards Committee that Cllr Rogers had breached the Isle of Anglesey’s code of conduct.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Appellant’s Submissions

6.1.1 Mr Stevenson said that Cllr Rogers had taken responsibility for his actions and did not seek to blame others. His intervention in the case was not a whim but was informed by a climate of distrust and fear within the council. It is wonderful to have the gift of hindsight. He should have taken advice from the Monitoring Officer but who could he have turned to within the council given the climate of distrust? The Code of Conduct was introduced to address corruption. Cllr Rogers did not involve himself in this matter for personal gain. He was simply sick and tired of the hassle and embarrassment caused by the delays in the sale. There was no detriment to the general public, and indeed the main beneficiary of his involvement was the public purse. The Council should have been grateful to him and not subjected him to an investigation. The punishment should fit the crime and he asked the Appeal Tribunal to refer the matter back to the Standards Committee with a recommendation for a reprimand and additional training.

6.2 The Ombudsman’s Submissions

6.2.1 The Ombudsman’s representative did not wish to make direct representations on the sanction but asked the Appeal Tribunal to weigh up the seriousness of the breaches and their impact on public confidence in public life. She argued that Article 10 of the Human Rights Act was not engaged on the facts of the case. There were mitigating factors in that Cllr Rogers was not motivated by personal gain and there was no real financial detriment to the public purse. However Cllr Rogers was a very experienced councillor who should have a good understanding of his ethical obligations. He had sought to blame others for the current hearing and had not fully accepted his own liability. Indeed in the course of

the appeal he had apparently retracted the apology given at the Standards Committee.

6.3 The Monitoring Officer Submissions

6.3.1 The Monitoring Officer provided an explanation of the sanction that had been imposed by the Standards Committee. They had sought to lay down a marker so that other councillors would have regard to the importance of declaring an interest. They took into account a number of mitigating factors, namely that there was no improper intention, the restrictive covenant and the overage clause would broadly have the same effect, the authority had not conducted the land transaction properly, the meetings with officers had mitigated legal fees, and finally Cllr Rogers involvement had happened progressively over a period of time.

6.3 Appeal Tribunal's Decision

6.3.1 The Appeal Tribunal when considering the sanctions to impose had regard to paragraph 4.72 of the Tribunal Procedure Rules which provide that they

- a) may endorse any penalty by a relevant standards committee or
- b) refer the matter back to the standards committee with a recommendation that a different penalty be imposed. The recommendation is not binding on the committee.

6.3.2 The Appeal Tribunal also had regard to its own guidance on sanctions and took into account the following matters.

6.3.3 In mitigation Cllr Rogers had a long history of public service, including a number of years as a councillor. He had not sought to obstruct the investigation. There had been no financial disadvantage to the Council, and arguably a benefit.

6.3.4 However the Tribunal did consider that there were a number of aggravating factors.

- a) They noted that during the course of the hearing Cllr Rogers repeatedly said that he was disappointed that officers had never raised their concerns with him over his connection with Mr Geal. However he had been advised by the then Chief Executive of the Council, the Ombudsman in the course of the investigation, and the Standards Committee that his behaviour constituted a breach of the code of conduct.
- b) Cllr Rogers gave no indication during the course of the hearing that he accepted that he had a declarable interest and pursued his allegation that the complaint was lodged from malice.
- c) He had sought to blame the Investigating Officer for pursuing the complaint.
- d) The Tribunal noted that the apology he gave to the Standards Committee was not repeated, and appeared to have been withdrawn.
- e) Although there was no financial detriment to the Council, in acting for Mr Geal Cllr Rogers ignored the very real potential detriment to other members of the public and in particular the under bidder who lost the opportunity of purchasing the land on the same basis as Mr Geal.

6.3.5 Despite Cllr Rogers experience as a councillor he exhibited a limited understanding and regard for his obligations under the code of conduct. It was

noted that he had been the subject of an earlier complaint which had occurred in the same time frame, where he had also been found to be in breach of the code.

6.3.6 The breaches of the code of conduct occurred over a protracted period of time between March 2012 and August 2013, and he had consistently failed to consider whether he had any personal interests which should be declared.

6.3.7 The Tribunal considered whether Article 10 of the Human Rights Act was engaged and decided that the facts of the case did not involve any restriction of Cllr Rogers right to free speech save those that are properly contained within the code itself under the provisions governing the duty to declare and withdraw from meetings.

6.3.8 The Appeal Tribunal accordingly decided by unanimous decision to refer the matter back to the Standards Committee with a recommendation that Cllr Rogers should be suspended for 3 months from being a member or co-opted member of Isle of Anglesey Council.

6.3.9 The Isle of Anglesey County Council and its Standards Committee are notified accordingly.

Signed.....
Ms Kate Berry
Chairperson of the Appeal Tribunal

Date...

Mr Ian Blair
Panel Member

Ms Juliet Morris
Panel Member