

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2016-017/AT

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

APPELLANT: Councillor Gary Price

RELEVANT AUTHORITY: Powys County Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Price against the decision of Powys County Council's Standards Committee that he had breached the code of conduct of Powys County Council and should be suspended for five months.

1.2 A hearing was held by the Appeal Tribunal at 10.00am on 7 March, 2017 at the Llandrindod Wells Civil and Family Justice Centre Hearing Centre, Noyadd Parks, Llandrindod Wells, Powys, LD1 5DF and on the 8 March, 2017 at 10.00am at the APW Tribunal Offices, Government Buildings, Spa Road East, Llandrindod Wells, Powys, LD1 5HA. The hearing was open to the public.

1.3 Cllr Price attended and represented himself.

2. PRELIMINARY DOCUMENTS AND MATTERS

2.1 Appeal Against Decision of Standards Committee

2.1.1 The Adjudication Panel for Wales received an appeal dated 23 November, 2016 from Cllr Price against the determination of Powys County Council's Standards Committee held on 2 November 2016 that he had breached the Code of Conduct of Powys County Council and should be suspended for five months.

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 as amended.

2.1.3 The allegations were that Cllr Price had breached paragraph 4(b) of the Members' Code of Conduct by failing to show respect and consideration for others and paragraph 6(1)(a) of the code in that he brought his office into disrepute by virtue of the contents of a letter sent by Cllr Price to Ms X on 20 March, 2015 which incorrectly and unfairly portrayed the proceedings of a Grievance Appeal hearing which took place on 20 February, 2015.

2.1.4 In his appeal form sent on the 23 November, 2016, Cllr Price indicated his reasons for disputing information contained in a number of paragraphs of the Ombudsman's report and raised several grounds of appeal. He also stated that no consideration had been given to Article 10 of the European Convention of Human Rights ("ECHR").

2.1.5 The President of the Adjudication Panel for Wales issued a Decision Notice on 9 December, 2016 which specified the appeal grounds for which the President could not say in all the circumstances that there was no reasonable prospect of success and that the President therefore required an Appeal Tribunal to be convened to hear the appeal.

2.1.6 The Ombudsman provided his response to the representations by Cllr Price on 3 January, 2017.

2.2 Preliminary matter

Cllr Price confirmed that he was a Llandrindod Wells Town Councillor as well as a Powys County Councillor

3. ORAL SUBMISSIONS

The Appeal Tribunal heard oral evidence and submissions as follows:-

3.1. The Ombudsman

3.1.1 Ms Katrin Shaw, on behalf of the Ombudsman, outlined the events which had led to Cllr Price writing a letter dated 20 March, 2015 to Ms X, which was at the heart of the matter. The subject-matter of the letter was to do with a Grievance Appeal Panel hearing dated 20 February, 2015 which had considered Ms X's five employment-related grievance issues.

3.1.2 Ms Shaw referred to an e-mail forwarded by Cllr Price to his fellow panel members and the Monitoring Officer on 10 March, 2015 where Cllr Price expressed his dissatisfaction with the process and stating that he was inclined to write to Ms X himself.

3.1.3 Ms Shaw stated that the evidence overwhelmingly supported the conclusion that Cllr Price had agreed with fellow panel members not to uphold the five grievance points and that he had agreed for the Grievance Appeal Panel hearing to go ahead in the absence of Ms X.

3.2 Cllr Katheryn Roberts-Jones

3.2.1 Cllr Roberts-Jones who had been a member of the Grievance Appeal Panel of 20 February, 2015, confirmed her recollection of events. She said that Ms X had been given ample opportunities to appear before the Panel.

3.2.2 Cllr Robert-Jones said that the decision to proceed with the hearing and the conclusions regarding the five grievance points were agreed upon unanimously through discussion and that Cllr Price contributed fully as did each panel member. There had been no dissent in relation to the decisions.

3.2.3 Cllr Roberts-Jones had been quite surprised to read Cllr Price's e-mail of 10 March, 2015. She felt insulted by the letter dated 20 March, 2015 from Cllr Price to Ms X and the comment that the matter had been pre-judged. This comment by implication had been directed at Panel members in her view. The Cllr said that she took such matters seriously and would never pre-judge as a person's livelihood was at stake.

3.2.4 She said that Cllr Price could have had the matter adjourned by leaving the hearing; however he did not do so. She also confirmed that Cllr Price is a Cllr who is willing to challenge issues with which he disagrees.

3.3 Cllr John Michael Williams

3.3.1. Cllr Williams who had chaired the Grievance Appeal Panel of 20 February, 2015, confirmed his recollection of events. He confirmed that Cllr Price had made the point that he would have preferred it if Ms X had been present however that all the Panel members had agreed for the matter to go ahead.

3.3.2. He said that the Panel had debated each of the five points, that the decisions were unanimous and that Cllr Price had been as involved as the other Cllrs had been in the Panel deliberations.

3.3.3 Cllr Williams had been shocked to read Cllr Price's e-mail dated 10 March, 2015 and said that it bore no relationship to the hearing. Cllr Williams said that fairness was important to him in all things. He could not understand why Cllr Price had made the comments he had in his letter dated 20 March, 2015.

3.4 The Appellant - Cllr Gary Price

3.4.1 Cllr Price made it clear that the whole situation was highly regrettable. His starting point was that Ms X had every right to appeal, that there had been a number of adjournments for various reasons and that on 20 February, 2015, it had been Cllr Price's opinion that Ms X had not been able to attend due to medical reasons which were confirmed by occupational health.

3.4.2 Cllr Price said that he had raised his concerns regarding collusion by witnesses at various points in the proceedings, only one of which had been recorded.

3.4.3 He reluctantly agreed for the meeting of 20 February, 2015 to go ahead. He was “quite confident” however that he had disagreed with at least two of the five grievance points. He could not however recall which points.

3.4.4 Cllr Price said that after having received the draft Decision Notice of the proceedings of 20 February, 2015, he had met the Monitoring Officer, Mr Pinney, by chance in County Hall, Llandrindod Wells and that Mr Pinney had said that as long as Cllr Price wrote as an individual rather than as a Councillor and did not use Council facilities to do so, then he would be ‘ok’. He said that he did not ask for, nor receive, any advice as to the Members’ Code of Conduct.

3.4.5 Cllr Price described the events which led to the letter being shared with the panel and other Members. Ultimately, Cllr Price resigned from the Employment Appeal Committee as a result of the matter.

3.4.6 He made it clear that, in hindsight, he felt that sending the letter of 20 March, 2015 had not been the right thing to do and that if he had realised it would be passed on, he would not have written it. He said the letter had been intended as a private letter although he recognised that he had assumed this naïvely. He felt he was not accountable for the subsequent use of the letter however.

3.4.7 Cllr Price said that there had been a considerable personal cost. He said he was robust in the scrutiny of the Council and if he had been required to attend an Employment Tribunal regarding the background matter, he would have said the same thing, namely that he felt that the proceedings of the Grievance Appeal Panel hearing were shambolic.

3.4.8 In relation to “pre-judging by others”, Cllr Price said that he had misused the word “pre-judge” and that he had meant was that there had been collusion by officers who were advising the panel. He said he had great respect for Cllr Williams and he had drafted letters of apology to both members. He explained that he had not sent them yet and was waiting for the conclusion of the current appeal proceedings.

3.5 Mr Clive Pinney – Monitoring Officer

3.5.1 Mr Pinney referred to the Grievance Appeal Panel hearing of Ms X and said that the matter had been adjourned on three previous occasions. The hearing took place on the fourth occasion on the 20 February, 2015. On that date, a phone call was made to Ms X’s solicitors to say that the Panel would wait for a further 30 minutes to allow Ms X to attend. The matter went ahead following the unanimous agreement of the Panel, albeit that Cllr Price had said that he would be happier had Ms X been there.

3.5.2 The decisions not to uphold the five grievance points were unanimous. Cllr Price seemed content with the discussion. He was not normally reticent and Mr Pinney applauded that, but in this instance, Cllr Price did not indicate any dissent.

3.5.3 Mr Pinney said that in relation to whether questions of concern, for example, whether questions regarding collusion should be put to the clerk to the Panel or to the witnesses, he said it would depend on the issue. If a Panel member felt that

collusion had taken place, then the question would have to be put directly to the witnesses.

3.5.4 He could not recall Cllr Price raising the question of his concern regarding witnesses at any point of the procedure, other than that recorded in the transcript of proceedings and he could not recall providing any advice to Cllr Price at a chance meeting in County Hall regarding Cllr Price's proposed letter to Ms X and this had been the first time that this had been suggested to him.

3.5.5 Mr Pinney said that he had shared the letter of 20 March, 2015 which had been forwarded on to him by Ms X's solicitor with the other panel members in view of the accusations of pre-judging. The letter was not marked private and confidential and was not subject to legal privilege. It also suggested that the author of the decision letter had been disingenuous by stating that the decision was unanimous and it was therefore a serious issue.

4. FINDINGS OF FACT

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

- 4.1.1 At the relevant time, Councillor Price was a member of Powys County Council.
- 4.1.2 Councillor Price signed an undertaking on 16 May, 2012 that he would observe the Council's Code of Conduct.
- 4.1.3 Councillor Price received training on the Code of Conduct in 2012.
- 4.1.4 Councillor Price has been a member of the Council's Employment Committee Appeal Panel from time to time since 2004.
- 4.1.5 Councillor Price was one of three County Council Members of a Grievance Appeal Panel convened to determine a grievance appeal brought by Ms X.
- 4.1.6 Following previous adjourned hearings, the matter was determined by the Appeal Panel on the 20 February, 2015.
- 4.1.7 Councillor Price has agreed the contents of the transcript of the proceedings of 20 February, 2015, albeit that the transcript did not record the deliberations.
- 4.1.8 Councillor Price wrote to the Monitoring Officer by e-mail on 10 March, 2015 to express his dissatisfaction with the process.
- 4.1.9 The Monitoring Officer responded by e-mail on the 11 March, 2015 and noted that Councillor Price may write to Ms X himself and stated that the draft decision letter would be published if he did not hear from Councillor Price to the contrary by 4.00pm on 12 March, 2015.

4.1.10 The Employment Committee Appeal Panel forwarded its determination letter to Ms X on 12 March, 2015.

4.1.11 Councillor Price wrote to Ms X on 20 March, 2015 in relation to the proceedings.

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

4.2.1 Whether Councillor Price agreed for the Grievance Appeal hearing of 20 February, 2015 to proceed in the absence of Ms X.

4.2.2 Whether Councillor Price agreed to reject the five points of Ms X's grievance.

4.2.3 Whether Councillor Price's letter dated 20 March, 2015 to Ms X incorrectly and unfairly portrayed the outcome of the Grievance Appeal hearing.

4.2.4 Whether Councillor Price was acting, claiming to act or giving the impression that he was acting in the role of elected Member when writing to Ms X.

4.2.5 Whether Councillor Price had the permission of the Monitoring Officer to write to Ms X.

4.2.6 Whether Councillor Price had the permission of the Monitoring Officer to write to Ms X in the terms in which he did.

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

4.3.1 That Cllr Price agreed for the Grievance Appeal panel hearing of 20 February, 2015 to proceed in the absence of Ms X, albeit that he agreed this reluctantly as stated in his oral evidence.

4.3.2. Cllr Price did agree to reject the five points of Ms X's grievance. There was clear, consistent and credible evidence that agreement had been unanimous on all points, whereas Cllr Price could not recall the points with which he claimed to disagree. The comment in his e-mail dated 10 March, 2015 that in his "heart of hearts" there had not been a unanimous decision showed that he may have had internalised doubt which had not been expressed at the panel hearing and he was by March 2015 suffering from "second thoughts".

4.3.3 In key respects, Cllr Price's letter dated 20 March, 2015 to Ms X incorrectly and unfairly portrayed the outcome of the Grievance Appeal Panel hearing. In particular, the recipient of the letter would, incorrectly and unfairly, be led to believe that Cllr Price's fellow Panel members had pre-judged the Grievance Appeal and that the decision not to uphold the grievances had not been unanimous.

4.3.4 Cllr Price was acting in the role of elected member when writing to Ms X. Cllr Price had obtained Ms X's address from the Appeal papers and gave his view of the proceedings by virtue of the fact that he was a Panel member and a Councillor.

4.3.5 Cllr Price did receive 'permission' in the form of advice from the Monitoring Officer that he could write to Ms X. Cllr Price posed the question, "I'm inclined to write to Ms X myself?" and Mr Pinney responded, "I note that you may write to Ms X yourself, and of course you may do so."

4.3.6 Cllr Price did not have the permission of the Monitoring Officer to write to Ms X in the terms in which he did. The letter to Ms X was written in more extreme terms than the e-mail to the Panel and the Monitoring Officer dated 10 March, 2015.

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 Cllr Price submitted that the Ombudsman's report stated that there was no evidence of breach of paragraph 4(b) of the Code of Conduct. Cllr Price conceded that he may have caused the Panel members alarm and distress. He had already written letters of apology but was waiting until the proceedings concluded before sending them.

5.1.2 With regard to paragraph 6(1)(a) of the Code, Cllr Price said that he very much regretted the steps taken and he had never anticipated that his letter dated 20 March, 2015 would have been sent on. Neither Ms X nor her solicitor had contacted Cllr Price since Ms X's solicitor acknowledged receipt of the letter. He said that he had done his best to rectify the situation, but he did not feel that he had brought his office or the Council into disrepute through his actions.

5.2 The Ombudsman's Submissions

5.2.1 Ms Shaw contended that in the light of the finding of fact at 4.3.4, there was indeed a breach of paragraph 4(b) of the Code. Despite the contents of the Ombudsman's report, Ms Shaw acknowledged that the full code was engaged as per the findings of the Standards Committee. The comment regarding pre-judging of the matter caused offence and was disrespectful, and unfairly portrayed the Grievance Appeal Panel proceedings and the objective approach of the Panel members.

5.2.2 Ms Shaw also argued that as Cllr Price had agreed to go ahead with the Grievance Appeal Panel hearing and had agreed to reject the five grievance points, the false portrayal of events in the letter dated 20 March, 2015 brought the office of councillor and the authority into disrepute.

5.2.3 She said that Cllr Price had acted in a premeditated way by writing about the proceedings in a way which was contrary to what actually occurred. The recipient of the letter would have taken it at face value.

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 Code of Conduct of Powys County Council

5.3.2 Paragraph 4(b) of the Code of Conduct states that "you must show respect and consideration for others".

5.3.3 The Appeal Tribunal found that Cllr Price breached Paragraph 4(b) of the Code. In view of the finding of fact that Cllr Price was acting in the role of elected member when writing to Ms X, the Tribunal found that the Paragraph was engaged and on an objective assessment found that Cllr Price failed to show respect and consideration for his Panel colleagues which undermined the whole process. It is also the case that, by sending a misleading letter, he failed to show respect for the recipient, who was signed off work due to stress. ~~as well as officers of the Council.~~

5.3.4 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".

5.3.5 The Appeal Tribunal found that Cllr Price did breach Paragraph 6(1)(a) of the code and the action of sending the letter dated 20 March 2015 to Ms X in the terms in which he did, brought the office and authority into disrepute. Although Ms X was a member of staff, she was also a member of the public. Such a letter could have led to serious consequences for the authority as it unfairly and incorrectly discredited a formal procedure affecting employment. It also called into question other Grievance Appeal Panel hearings dealt with by the members of the Panel as Cllr Price said he had pre-judged the matter before them. Councillors should correctly state what happened at hearings.

5.3.6 The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of Powys County Council's Standards Committee that Cllr Price had breached the Code of Conduct of Powys County Council.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Appellant's Submissions

6.1.1 Cllr Price stated that he was extremely remorseful regarding the upset that he had caused to the other panel members. He had drafted letters of apology but he thought that he should not send them until the process was concluded. Cllr Price had not appreciated the opportunity offered on pages 3 and 14 of the appeal form, APW05 to call witnesses, including witnesses (as to character) should the

Tribunal find that there has been a breach of the provisions of the Code of Conduct. He did not however wish to add anything further.

6.2 The Ombudsman's Submissions

6.2.1 Ms Shaw referred to the aggravating and mitigating factors taken into account by the Standards Committee and also to a previous breach of the Code which had led to Cllr Price being suspended for a month from his role as a Powys County Councillor in 2013 which comprised of a breach of paragraphs 5 and 6(1)(a) of the then Code of Conduct. It was also an intentional breach as Cllr Price had taken the premeditated decision to write to Ms X and to misrepresent the decision and deliberations of the Panel. She was also of the view that Cllr Price had sought to blame others and although there had been no serious repercussions to the action taken on this occasion, there had been the potential for serious consequences. Cllr Price's proposed apologies were noted and it would have been helpful if this had been indicated earlier in the process as they may have had an impact on proceedings.

6.3 Appeal Tribunal's Decision

6.3.1 The Appeal Tribunal considered all the facts of the case and in particular the following aggravating and mitigating factors:-

Aggravating Factors

The Tribunal considered the breach to be a serious one:-

- Cllr Price's action discredited a vital and formal procedure affecting employment.
- This was the second finding of a breach of the Code of Conduct against Cllr Price.
- The actions brought the office and authority into disrepute.
- The actions of Cllr Price were reckless as to breach of the Code.
- Until this hearing, Cllr Price had continued to deny key issues, for instance to deny that the decision of 20 February, 2015 to proceed with the Grievance Appeal Panel hearing was unanimous.
- Cllr Price had sought to blame others for some elements of events.

Mitigating Factors

It was accepted by the Panel however that the Standards Committee had not had the benefit of hearing the mitigating factors which the Panel had the opportunity to hear during the course of the appeal:-

- Cllr Price has made it very clear at this hearing that he very much regretted the steps he had taken.

- There was some recognition by Cllr Price that his actions had caused upset and the panel noted the laudable intention to send a written apology to Cllrs Williams and Roberts-Jones.
- Cllr Price has co-operated with the investigation and with this Panel's proceedings.

Article 10

Article 10 of the ECHR was considered by the Tribunal both at the breach and sanction stages of the proceedings. It noted that the President, when dealing with the issue of permission to appeal, had refused permission to appeal on the basis that the letter to Ms X did not consist of political expression and did not therefore attract enhanced protection.

Article 10 of the ECHR provides:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others,..."

The provisions of the Code of Conduct are prescribed by law and the question of whether the provisions are "necessary in a democratic society for the protection of the rights of others" calls for the following questions to be asked:-

- (a) Was the legislative objective behind these provisions sufficiently important to justify limiting freedom of speech?
- (b) Were the measures adopted rationally connected to the legislative objective? and
- (c) Were the means used to impair the right or freedom of speech no more than is necessary to accomplish the legislative objective?

The purpose of the relevant legislation is to encourage and impose certain minimum standards of behaviour in respect of the conduct of Councillors in local government. Cllr Price has not challenged the necessity of the provisions of the Code of Conduct and it is implicit that he therefore accepts the operation of the ethical framework which, in principle satisfies the three conditions for a lawful interference with free speech in a democratic society.

The Tribunal concluded that the key sections of Cllr Price's letter to Ms X dated 20th March, 2017 amounted to no more than an incorrect and unfair expression of personal frustration and regret regarding the proceedings.

The Panel also concluded that even if the key observations in the letter dated 20th March, 2017 had amounted to political expression and a higher level of protection

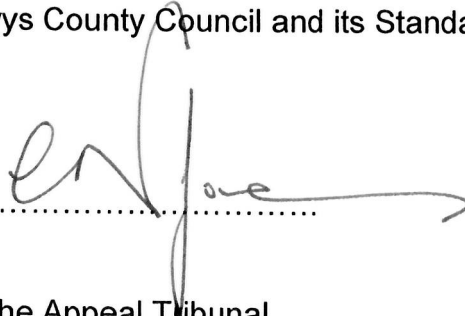
applied, in view of the clear finding that these observations were incorrect and unfair, the interference would nevertheless be lawful and justified pursuant to Article 10(2).

Decision

6.3.2 The Appeal Tribunal accordingly decided by unanimous decision to refer the matter back to the Standards Committee with a recommendation that Cllr Price should be suspended for a period of 3 months.

6.3.3 That Powys County Council and its Standards Committee are notified accordingly.

Signed.....



Date... 17th March, 2017

Claire Jones
Chairperson of the Appeal Tribunal

Claire Sharp
Panel Member

Siân Jones
Panel Member

