



DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2017-018/CT

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

RESPONDENT: Former Councillor Alison Halford

RELEVANT AUTHORITY: Flintshire County Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 The Case Tribunal determined its adjudication on the basis of the papers only, at a meeting on 6 October 2017 at the APW Office, Government Buildings, Spa Road East, Llandrindod Wells, Powys, LD1 6HA.

2. PRELIMINARY MATTERS

2.1. Reference from the Public Services Ombudsman for Wales

In a letter dated 22 June 2017, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against former Councillor Halford ("the Respondent"). The allegations were that the Respondent had breached Flintshire County Council's Code of Conduct by the sending of communication which allegedly failed to show respect and consideration for others and, used bullying and harassing behaviour.

2.2. Method of determination.

2.2.1. The Panel gave full consideration to the question of whether to proceed to determine the case that day or whether to adjourn the matter in order to provide a further opportunity for the Respondent to engage in the adjudication process.

2.2.2. The Panel firstly considered the relevant Regulations. The Adjudication by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 as amended, Regulation 2 states that the Respondent; "must deliver to the Registrar [of the Adjudication Panel for Wales] a written reply acknowledging receipt of the notice [of the reference to the Panel] and stating [amongst other matters]:-

(a) Whether or not that person intends;

- (i) to attend or be represented at the hearing, or
- (ii) to dispute the contents of the report and, if so, on what grounds".

2.2.3. The Panel noted that the Registrar had forwarded the written notice of the referral to the Respondent on the 4th July, 2017 by special delivery. The package enclosed a copy of the Ombudsman's report and a form entitled; "Respondent's Response to the Reference".

2.2.4. A further reminder was sent to the Respondent on 21st July, 2017 making it clear that; "if you do not collect the package, it may affect your ability to respond by the deadline to the allegations. The panel may decide in the absence of any response from you to make a decision without any hearing taking place." It also stated; "it is your opportunity to set out your defence" and "if you require more time to respond, you can make an application to the President for more time...more time can be granted if the President considers it to be in the interests of justice to do so, but there is also a public interest in dealing with your case promptly." No response was received from the Respondent however.

2.2.5 The Panel noted that Listing Directions were sent to the parties on 8th September, 2017, providing a further opportunity to make written submissions, the covering letter providing the Respondent the opportunity to confirm a preference for an oral hearing. The Respondent replied by e-mail on 17th September, stating that she would be abroad on the 6th October, 2017.

2.2.6 The Tribunal bundle was sent to the Respondent by special delivery on the 13th September, 2017. The Registrar then sent a reminder to the Respondent on the 18th of September, 2017 regarding the contents of the letter dated 8th September, 2017.

2.2.7 The Panel further noted that the Respondent wrote an e-mail to the Registrar on the 20th September, however the Panel considered that the letter did not address the requirements of regulation 3 of the 2001 Regulation, apart from stating; "Of course, I accept that it is virtually impossible to find against the decision of the PSOW". The Panel did not consider that this necessarily evidenced an acceptance by the Respondent of the contents of the Ombudsman's report however. The Panel further determined that, although the Respondent made the comment; "As it is the decision of the PSOW to send me to a tribunal at least I should be afforded the opportunity to attend it. As before, I expect that the hearing will be in N Wales as travel is no longer easy for me," the e-mail failed to confirm whether the Respondent would actually attend or be represented at a hearing and failed to clarify whether or not she disputed the contents of the Ombudsman's report.

2.2.8. The Panel finally noted that on the 26th September, 2017, the Registrar provided yet a further opportunity for the Respondent to engage in the process and to apply for an extension of time to submit the form; "Respondent's Response to the Reference" which was originally due to be returned no later than the 25th July, 2017. The letter made it clear that; "If you do confirm that you wish to apply for an

extension and provide reasons, with evidence, the Panel will consider this application on 6th October, 2017. However, in the absence of such application, consideration and determination of the matter may proceed on that day.”

2.2.9. No such application or further correspondence was received from the Respondent, nor had the Respondent made arrangements to collect either the package containing the Ombudsman’s report or the package containing the Tribunal bundle from the Post Office as of the 6th October, 2017.

2.2.10. In all the circumstances, the Panel decided that the Respondent had failed to properly and meaningfully engage with the adjudication process to date, despite the Adjudication Panel for Wales providing several opportunities to do so over a period of three months and concluded that there was no realistic prospect of her doing so in the future. The Panel considered that it was in the public interest to determine cases promptly and not to delay proceedings indefinitely. It therefore decided that it would proceed to finally determine the matter on the papers on the 6th October, 2017.

2.3 Town or Community Council status

2.3.1. In the Listing Directions dated 8th September, 2017, the Tribunal required the Monitoring Officer of Flintshire County Council to establish whether or not the Respondent is/was a Town Councillor as well as previously being a County Councillor and if so, of which Town or Community Council.

2.3.2. The Monitoring Officer of Flintshire County Council duly confirmed in writing that the Respondent was also a former Councillor of Hawarden Community Council.

2.3. Code of Conduct Training

2.3.1. In the Listing Directions dated 8th September 2017, the Tribunal also required the Monitoring Officer to confirm the date(s) on which the Respondent attended any Code of Conduct training.

2.3.2. The Monitoring Officer of Flintshire County Council duly confirmed in writing that the Respondent had not attended Code of Conduct training since the local government elections in 2012.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following material facts:

3.1.1 At the relevant time, former Councillor Halford was a member of Flintshire County Council.

3.1.2 The Respondent signed an undertaking on 14th May 2012 to the effect that she would observe the County Council’s Code of Conduct.

3.1.4. Flintshire County Council had been required to respond to a number of complaints regarding traveller encampments on various sites in Flintshire during the early part of 2016, which generated a huge amount of e-mail correspondence.

3.1.5. Mr M Jones (“the Officer”) was a team leader responsible for planning enforcement at Flintshire County Council.

3.1.6. The Officer had received an e-mail from a member of the public on 26th April, 2016 and he responded that day by lengthy telephone call to the member of the public. The Officer was not responsible for nor leading on the matter however and the lead officer assumed the role of corresponding with the member of the public, with other members of the public and with councillors.

3.1.7. The Respondent forwarded an e-mail to the Officer’s Head of Service and copied it to the Officer and six councillors at 4.15pm on 27 April, 2016. It stated;

“Andy, my resident has raised a genuine concern about Jones & would like an answer. Who us [sic] protecting him?”

He’s arrogant, lazy, mentally challenged & has been useless for years. Why do you not call him to account. He is not worthy of his salary. Alison.”

3.1.8 The Respondent forwarded an e-mail to the Officer and copied it to a councillor and the Officer’s Head of Service at 4.32pm on 5 May, 2016. It stated;

“Mark, I’m sure you [sic] aware I don’t rate you at all & I have made this clear to your senior officers. What about surprising this member of the public who does contribute to your salary & actually get back to him. Of course, this may be something of a record for you but you must be accountable to someone just for once. Alison Halford.”

3.1.9. The Respondent was acting in her official capacity as a councillor when sending these e-mails.

3.1.10. The Respondent posted a “tweet” on social media on 27 March 2017 which referred to the Ombudsman’s investigation in the following terms;-“My sin; ticking off LAZY officer. Ugg!”

3.1.11. The impact of the e-mail dated 27th April 2016 upon the Officer was that he felt insulted, absolutely devastated and horrified.

3.1.12. The impact of the e-mail dated 5th May 2016 upon the Officer (and read by the Officer before reading the e-mail dated 27th April 2016), was to cause worry, stress and upset to the Officer.

3.1.13. The e-mails led to the Officer seeking medical, counselling and occupational health support. They have also served to affect the Officer’s confidence in relation to dealing with certain councillors. He has also been off work with stress.

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

4.1 The Ombudsman's Report

The Ombudsman's Report appended a number of statements, including statements from the Officer, other officers and a councillor as well as a large number of background e-mails. The Ombudsman concluded that there was evidence suggestive of breaches of Paragraphs 4(b) of Flintshire County Council's Code of Conduct:-"you must...show respect and consideration for others", and Paragraph 4(c) of the Code of Conduct; "you must...not use bullying behaviour or harass any person".

4.2 Paragraph 4(b) of the Code

4.2.1. The Guidance issued by the Public Services Ombudsman for Wales and relevant at the time of the alleged breaches stated; "Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, the officers who are in more senior positions, for example Chief Executives or Heads of Service, will also be expected to have a greater degree of robustness."

4.2.2. It goes on to say:-"I expect members to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives."

4.2.3. Also:-"When considering such complaints I will take into account the specific circumstances of the case, whether in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said".

4.3 Paragraph 4(c) of the Code

4.3.1. The Guidance issued by the Ombudsman and relevant at the time of the alleged breaches stated in this regard;-"Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health."

4.3.2. It also states; "When considering allegations of bulling and harassment I will consider both the perspective of the alleged victim, and whether the member

intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied.”

4.3.3. Finally: “You need to ensure that your behaviour does not cross the line between being forceful and bullying...the greater the power difference between the officer and the member the greater the likelihood that the officer will consider behaviour to constitute bullying.”

4.4 Case Tribunal’s Decision

4.4.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Flintshire County Council’s Code of Conduct and had been acting in her official capacity at the relevant time so that the requirements of the Code of Conduct were fully engaged.

4.4.2 In relation to **Paragraph 4(b)** of the Code of Conduct, the Case Tribunal found that the Respondent breached the requirement to treat others with respect and consideration. The comments made in the Respondent’s e-mails dated 27th April and 5th May 2016 as well as the “twitter” message of 27th March 2017 were completely unwarranted and would have adversely affected the Officer’s ability to properly carry out his role, the planning enforcement role being a challenging and often unpopular role. The Respondent’s conduct towards the Council’s professional officer displayed a total lack of courtesy and consideration. The Respondent had not previously criticised or questioned the professionalism of the Officer to senior management. The comments were wholly gratuitous and unjustified and as senior officers and councillors were copied into the e-mails, the Case Tribunal considered that they were calculated to intimidate or undermine the officer whose job was already under threat due to restructuring.

4.4.3. In relation to **Paragraph 4(c)** of the Code of Conduct, the Case Tribunal found that, although falling short of repeated harassment, the Respondent intended to bully and had the effect of bullying the Officer. The comments made in the Respondent’s e-mails dated 27th April and 5th May 2016 as well as the “twitter” message of 27th March 2017 were personal comments which were highly offensive, extremely insulting, malicious and unwarranted. The Case Tribunal found the use of the words “mentally challenged” particularly shocking. The Officer was singled out unfairly, particularly as there was no indication that the Respondent had any previous complaints or concerns about his competence or responsiveness to members of the public. The Respondent had clearly been aware or should have appreciated by the 5th May, 2016 that the Officer was not responsible for dealing with temporary traveller encampments, as the Chief Executive forwarded an e-mail to the Respondent on 27th April, 2016 at 12.36pm stating that another officer would provide a full update and that the other officer; “is managing the case and will have the latest information”. This therefore constituted bullying behaviour and behaviour which fell well below the standard of behaviour expected of a Member, let alone an experienced politician.

4.5 Other Paragraphs of the Code of Conduct

4.5.1. It was noted that the Ombudsman did not consider that the Respondent's conduct breached paragraphs 4(d) and 7(a) of the Code, however he does not provide clarification as to how he reached that conclusion.

4.5.2. The Case Tribunal was somewhat surprised that the Ombudsman had not investigated the question of whether there had been a breach of paragraph 4(a) of the Code bearing in mind that the Officer is registered as disabled.

4.5.3. The Case Tribunal also noted that the Ombudsman had not investigated the question of whether there had been a breach of paragraphs 6(1)(a) and 6(2) of the Code.

4.5.4. In the circumstances, the Case Tribunal makes no findings in relation to these paragraphs of the Code.

5. DECISION ON ACTION TO BE TAKEN

5.1 Matters taken into account

5.1.1. The Case Tribunal considered all the facts of the case and in particular the serious nature of the breaches of paragraphs 4(b) and 4(c) of the Code of Conduct, in accordance with Section 79 of the Local Government Act 2000. It also had regard to guidance issued by the Adjudication Panel for Wales in relation to sanctions and to the sanctions imposed in previous cases.

5.1.2. The Case Tribunal was mindful of the fact that the aims of the sanctions guidance are directed towards upholding and improving the standard of conduct expected of local members, endorsing the role of the Code of Conduct, and maintaining public confidence in local democracy. The action is designed to discourage or prevent future non-compliance by members in general as well as the individual member.

5.1.3. In this case, the Tribunal was unanimous in concluding that imposition of a formal sanction was appropriate and noted that suspension was not an option as the Respondent was no longer a Councillor. The Case Tribunal considered that the facts leading to the breaches of the Code in this instance rendered the Respondent unfit for public office in view of the deliberate, blatant and repeated abuse of her position to bully, intimidate and maliciously undermine the confidence of a member of staff who did not hold a senior position, using wholly inappropriate language to do so.

5.2 Mitigating Factors

There is no doubt that there was considerable pressure upon the Respondent from members of the public in her electoral division relation to traveller encampments at the relevant time and that she would have experienced frustration

at not being able to ensure immediate resolution of the issues and it appears that the Officer bore the brunt of her frustration.

5.3 Aggravating Factors

5.3.1. The Case Tribunal received details of a Case Tribunal which found a previous breach by the Respondent of paragraphs 6(1)(a) and 6(2) of the Code in 2010. No sanction was imposed on that occasion. The decision report stated;—"the Tribunal accepts the assurances given that Cllr Halford fully appreciates the seriousness of this matter and that there will be no repetition." It was also noted that the conclusion at that time was that this was an isolated breach of the Code of Conduct. The Respondent neither fulfilled her commitment to the 2010 Case Tribunal, nor heeded the lessons from that previous investigation and adjudication.

5.3.2. The breach of the Code was blatant and deliberate or extremely reckless.

5.3.3. The case bundle revealed that the Respondent failed to co-operate with the Ombudsman's investigating officer and challenged the Ombudsman's investigation and the adjudication to the end, showing no regard for the formal processes in place in Wales to determine complaints of breach of the Code of Conduct.

5.3.4. The Respondent persisted in her bullying behaviour despite having been made aware that the Officer was not responsible for dealing with the issue in question and should not therefore have been criticised in any way for any perceived failure to address it, let alone in the terms used by the Respondent.

6. ARTICLE 10

6.1. Article 10 of the European Convention on Human Rights ("ECHR") was fully considered by the Case Tribunal during its deliberations both in relation to breach and sanction. Article 10 states as follows:-

- (1) Everyone has the right to freedom of expression. The 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..."

6.2. The Case Tribunal adopted the three stage approach used by Wilkie J in the case of *Sanders v Kingston No (1) [2005] EWHC 1145* in its deliberations as follows:-

- (1) Can the Panel as a matter of fact conclude that the Respondent's conduct amounted to a relevant breach of the Code of Conduct?

- (2) If so, was the finding of a breach and imposition of a sanction prima facie a breach of Article 10?
- (3) If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

As the Case Tribunal had determined (1) in the affirmative, it then went on to consider (2) and (3) and determined as follows.

6.3 The Case Tribunal was satisfied that in this instance, the contents of the e-mails of 27th April and 5th May, 2016 and the “twitter” message of 27th March 2017, did not consist of “political expression” which attracts enhanced protection under Article 10 of the ECHR. The contents were no more than gratuitous, abusive and offensive personal comments, divorced from any political debate. Had they been made in the context of political debate, the comments were so outrageous and unfair, the Panel concluded that the interference with the Article 10 rights would still have been lawful and justified.

7. DECISION OF THE CASE TRIBUNAL ON THE ACTION TO BE TAKEN

7.1 The Case Tribunal considered the facts of the case and the nature of the breaches. It decided that the imposition of no sanction was not an option, bearing in mind the aims of the sanctions guidance and in view of the serious nature of the Code breaches and the severe impact which these had upon an employee of the Council who, relative to the Respondent, was not in a position of seniority or power.

7.2 The Case Tribunal had found that these were blatant and deliberate or reckless breaches of the Code, which did not stop at one e-mail but which continued after the Respondent became, or should have become aware, that the Officer did not have responsibility for dealing with the traveller encampment in question. This was further exacerbated by a “twitter” message posted in March 2017 which showed a complete lack of insight or remorse as to her behaviour and as to the further impact it might have on the Officer.

7.3. The comments about the Officer would impact not only on the rights and interests of the employee of the Council but also upon the public interest in good administration, recognising the fact that officers are entitled to conduct their duties with dignity and without the risk of gratuitous attacks upon their reputation.

7.4. In all the circumstances, the Case Tribunal considered that disqualification was an entirely justified and proportionate sanction. The Case Tribunal considered that it was a particularly serious example of bullying and that the disqualification had to be sufficiently long to enable the Respondent to properly reflect upon her actions before considering re-entering local politics. The sanction is no more than is proportionate and necessary in the circumstances.

7.5. In the case of Heesom v the Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin), the High Court reduced the period of disqualification

imposed by the Tribunal from two years and six months to 18 months' disqualification. That case related to a series of incidents involving a number of officers in relation to paragraphs 4(b) and 4(c) of the Code of Conduct which took place over a period of some two years.

The Case Tribunal concluded that although the present case related to one officer and three incidents over a relatively short period of time, the cases were comparable in seriousness. In the present case the Panel considered that the bullying behaviour was particularly blatant and egregious.

7.6. In all the circumstances, the Case Tribunal concluded by unanimous decision that Former Cllr Halford should be disqualified for 14 months from being or becoming a member of Flintshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

7.7. The Case Tribunal directs that Flintshire County Council and its Standards Committee are notified accordingly.

7.8. The Case Tribunal duly notes that the Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed:



Date: 23 October 2017

Claire Jones
Chairperson of the Case Tribunal

Glenda Jones
Panel Member

Juliet Morris
Panel Member