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FRIDAY, 2 DECEMBER 2022

TO: ALL MEMBERS OF THE STANDARDS COMMITTEE

I HEREBY SUMMON YOU TO ATTEND A MEETING OF THE **STANDARDS COMMITTEE** WHICH WILL BE HELD IN THE **CHAMBER, COUNTY HALL, CARMARTHEN, SA31 1JP AND REMOTELY AT 2.00 PM ON MONDAY, 12TH DECEMBER, 2022** FOR THE TRANSACTION OF THE BUSINESS OUTLINED ON THE ATTACHED AGENDA

Wendy Walters

CHIEF EXECUTIVE

Democratic Officer:	Janine Owen
Telephone (direct line):	01267 224030
E-Mail:	JanineOwen@carmarthenshire.gov.uk

This is a multi-location meeting. Committee members can attend in person at the venue detailed above or remotely via the Zoom link which is provided separately.

The meeting can be viewed on the Authority's website via the following link:-
<https://carmarthenshire.public-i.tv/core/portal/home>

Wendy Walters Prif Weithredwr, *Chief Executive*,
Neuadd y Sir, Caerfyrddin. SA31 1JP
County Hall, Carmarthen. SA31 1JP

STANDARDS COMMITTEE

9 MEMBERS

MEMBERSHIP: 9 MEMBERS

Independent Members (5)

1. Mrs Mary Dodd (Chair)
2. Ms Caryl Davies
3. Mrs Daphne Evans
4. Mrs Julie James (Vice Chair)
5. Mr Frank Phillips

Community Committee Member (1)

1. Town Councillor Phillip Rogers

Elected Members of the County Council (3)

1. Councillor Betsan Jones
2. Councillor Rob James
3. Councillor Gareth Thomas

A G E N D A

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF PERSONAL INTEREST**
- 3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE:**
 - 3 .1 21ST NOVEMBER 2022** 5 - 12
 - 3 .2 17TH NOVEMBER 2022** 13 - 16
- 4. DISPENSATION APPLICATION BY COUNCILLOR EDWARD THOMAS** 17 - 26
- 5. DISPENSATION APPLICATION BY COUNCILLOR RUSSELL SPARKS** 27 - 36
- 6. DISPENSATION APPLICATION BY COUNCILLOR A. R. BRAGOLI** 37 - 44
- 7. RECENT ADJUDICATION PANEL DECISIONS** 45 - 102
- 8. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.**

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MONDAY, 21 NOVEMBER 2022

PRESENT: Councillor M. Dodd (Ph)(Chair)

Independent Members:

D. Evans (Ph), J. James (Ph) and F. Phillips(R)

Community Member:

P. Rogers (R)

Councillors

B. Jones (Ph) and GB Thomas (R)

Also Present (In Person):

R. Edgecombe, Legal Services Manager

A. Eynon, Principal Translator

K. Thomas, Democratic Services Officer

Also Present (Virtually):

M.S. Davies, Democratic Services Officer

[Ph = physical attendance at County Hall R = remote attendance via Zoom]

Chamber - County Hall, Carmarthen. SA31 1JP and remotely - 2.00 - 3.20 pm

1. APOLOGIES FOR ABSENCE.

An apology was received from C. Davies

2. DECLARATIONS OF PERSONAL INTEREST.

Councillor Gareth Thomas	9 – Dispensation Application by Councillors Jean Lewis, Ann Davies, Gareth Beynon Thomas, Ken Howell, Hefin Jones, Arwel Davies, Mansel Charles, Tyssul Evans, Linda Davies Evans, Andrew Davies, Bryan Davies, Hazel Evans and Elwyn Williams	Cllr. Thomas is one of the applicants for dispensation.
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3. TO SIGN AS A CORRECT RECORD THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON THE:

3.1. 25TH AUGUST 2022;

RESOLVED that the minutes of the meeting of the Standards Committee held on 25th August, 2022 be signed as a correct record,

3.2. 14TH OCTOBER 2022;

RESOLVED that the minutes of the meeting of the Standards Committee held on 14th October, 2022 be signed as a correct record,

3.3. 26TH OCTOBER 2022.

RESOLVED that the minutes of the meeting of the Standards Committee held on 26th October, 2022 be signed as a correct record,

4. DISPENSATIONS GUIDANCE.

The Committee was reminded that at its meeting held on the 13th June, 2022 it had requested that in determining dispensation applications for farming and agricultural matters generally and the provision of social care services in Carmarthenshire and across the South West Wales Region requested further guidance in relation to such applications given how wide ranging they could be in nature, scope and effect.

In accordance with that request the committee received a report on legislation and guidance and noted that The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 offered no specific legislative or statutory guidance on the subject matter but merely prescribed the grounds on which a dispensation could be granted, as set out in the dispensation application form. However, guidance issued by the Public Ombudsman Service for Wales on the Members Code of Conduct stated within paragraph 3.64:-

“The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority”.

Having regard to the above the Legal Services Manager stated that the committee’s historic approach to the determination of dispensation applications on a ‘case by case’ basis, with a presumption in favour of granting, wherever practicable, particularly in relation to granting a dispensation to speak only demonstrated good practice and was in accord with the guidance.

UNANIMOUSLY RESOLVED that the report be received.

5. DISPENSATION APPLICATION BY GORSLAS COMMUNITY COUNCILLORS S. D. MARTIN, R. JAMES, N. LEWIS AND E. GOLDSMITH.

The Committee considered an application submitted by the Clerk of Gorslas Community Council on behalf of Community Councillors S.D. Martin, R. James, N. Lewis and E. Goldsmith for the grant of a dispensation under the provisions of

the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak and vote in relation to their role as school governors at the following schools located within the Community Council's administrative area:-

Cefneithin School – Councillors S.D. Martin and R. James

Drefach and Cross Hands CP Schools Federation – Councillor N.Lewis

Gorslas CP School – Councillor E. Goldsmith

It was reported that a dispensation was sought as all 4 councillors had a personal interest in these matters pursuant to paragraph 10(2)(a)(ix)(aa) of the Code, and that such dispensation would enable the councillors in question to participate in council business relating to the schools and would not damage public confidence in the conduct of that business.

It was noted that whilst there was an exemption in paragraph 12(2)(a)(iv) of the Code relating to school governors that would not apply if the business related to the specific school of which the Councillor was a governor

Following a discussion it was

UNANIMOUSLY RESOLVED that dispensation be granted under Regulation 2(d) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001, to Councillors S.D. Martin, R. James, N. Lewis and E. Goldsmith to SPEAK AND VOTE at meetings of the Gorslas Community Council in relation to any discussions regarding their position as governors of Cefneithin School, Drefach and Cross Hands CP Schools Federation and Gorslas CP school within the Community Council's administrative area until the end of the current electoral term.

6. DISPENSATION APPLICATION BY GORSLAS COMMUNITY COUNCILLORS D. W. EDWARDS, C. GREEN, T. JUKES N. LEWIS AND A. KING

The Committee considered an application submitted by the Clerk to Gorslas Community Council, on behalf of Community Councillors D.W. Edwards, C. Green, T. Jukes, N. Lewis and A. King for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 to speak and vote at meetings of Gorslas Community Council in respect of matters relating to 2 welfare associations within the council's administrative area.

It was reported that a dispensation was sought as all 5 councillors had a personal interest in these matters pursuant to paragraph 10(2)(a)(ix)(ee) of the Member Code in that they were members of local Welfare Association Committees which were involved in the running of those parks. The dispensation, if granted, would enable the Councillors to participate in council business relating to their respective welfare associations and would not damage public confidence in the conduct of that business and that the interest related to a voluntary organisation in which the Councillors had a management role and no other personal interest.

Following a detailed discussion, it was

UNANIMOUSLY RESOLVED that dispensation be granted until the end of the current electoral term to the above-mentioned 5 members of Gorslas Community Council to SPEAK AND VOTE at meetings of Gorslas Community Council in relation to any discussions regarding the 2 welfare associations within the Council's administrative area under Regulations 2(d) (f) and (h) of the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001.

7. DISPENSATION APPLICATION BY COUNCILLOR SHAREN DAVIES.

The Committee considered an application submitted by Councillor Sharen Davies of Carmarthenshire County Council and Llanelli Rural Council for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak, vote and make written representations in respect of business relating to Dolen Teifi Community Transport.

It was reported that a dispensation was sought as Councillor Davies had a personal and Prejudicial interest in this matter by virtue of paragraph of paragraph 10 (2)(a) of the Members Code of Conduct as Dolen Teifi Community Transport were her employers.

Following a discussion it was

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2 (d) and (f) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to Councillor Sharen Davies to SPEAK AND MAKE WRITTEN REPRESENTATIONS ONLY BUT NOT VOTE at meetings of Carmarthenshire County Council and Llanelli Rural Council on any council business relating to Dolen Teifi Community Transport and the dispensation be valid until the end of the current electoral term.

8. DISPENSATION APPLICATION BY COUNCILLOR EDWARD THOMAS.

The Committee considered an application submitted by County Councillor Edward Thomas for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak only in respect of business relating to a grant application from Tregib Sports Facilities Limited, a not for profit limited company running the sports facilities at the Tregib Site, which would be submitted to a cabinet meeting for consideration.

It was reported that a dispensation was sought as Councillor Thomas had a personal interest in this matter as he was one of the Directors of Tregib Sports Facilities Ltd, which was a non remunerated volunteer post.

Following a discussion it was

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2 (d) (f) and (h) of the Standards Committees (Grant of

Dispensation) (Wales) Regulations 2001 to Councillor Edward Thomas to SPEAK ONLY on any council business relating to the Tregib Sports Facilities Ltd and the dispensation be valid until the end of the current electoral term.

9. DISPENSATION APPLICATION BY COUNCILLORS JEAN LEWIS, ANN DAVIES, GARETH BEYNON THOMAS, KEN HOWELL, HEFIN JONES, ARWEL DAVIES, MANSEL CHARLES, TYSSUL EVANS, LINDA DAVIES EVANS, ANDREW DAVIES, BRYAN DAVIES, HAZEL EVANS AND ELWYN WILLIAMS

[Note: Councillor Gareth Thomas, having declared an interest in this item, left the meeting.].

Prior to consideration of the dispensation application the Legal Service Manager referred to the inclusion of Councillr Kim Broom within the list of members on the report's Executive Summary seeking dispensation and advised that she had been included in error and was not one of the Councillors seeking dispensation

The Committee considered applications submitted by County Councillors Jean Lewis, Ann Davies, Gareth Beynon Thomas, Ken Howell, Hefin Jones, Arwel Davies, Mansel Charles, Tyssul Evans, Linda Davies Evans, Andrew Davies, Bryan Davies, Hazel Evans and Elwyn Williams for the grant of dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak and vote in relation to a proposed Notice on Motion relating to TB testing, which was to be considered at a forthcoming meeting of Carmarthenshire County Council

It was reported that dispensation was sought by each Councillor in that they had a personal and prejudicial interest in such business as they were all farmers (or were related to farmers) who farmed cattle and therefore had an involvement with the TB testing arrangements

The Committee noted that it had previously granted dispensation to these members to speak, but not vote, in relation to farming/ agriculture generally That grant was subject to a caveat that it did not apply to council business that related directly to the specific farm or agricultural land or activity that gave rise to the councillors' personal interest. In line with that caveat, the Council's monitoring officer had advised the previous grant would not permit the relevant members to participate in the debate on the particular Notice on Motion and, therefore, a more specific dispensation would need to be sought

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(d) and (f) of the Standards Committees (Grant of Dispensations) (Wales) Regulations to County Councillors Jean Lewis, Ann Davies, Gareth Beynon Thomas, Ken Howell, Hefin Jones, Arwel Davies, Mansel Charles, Tyssul Evans, Linda Davies Evans, Andrew Davies, Bryan Davies, Hazel Evans and Elwyn Williams TO SPEAK, VOTE AND MAKE WRITTEN REPRESENTATIONS, at meetings of Carmarthenshire County Council in respect of a proposed Notice on Motion relating to TB testing to

be considered at a forthcoming meeting of the County Council and the dispensation be granted until the end of the current municipal year ie 31st March 2023.

10. DISPENSATION APPLICATION BY COUNCILLOR ALEX EVANS.

The Committee considered an application submitted by County Councillor Alex Evans for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to make written representations in relation to road improvements required on Heol Y Pentre, Ponthenri.

It was reported that a dispensation was sought as Councillor Evans had a personal and prejudicial interest in this matter in council business relating or likely to affect that road as he lived there.

The Committee in considering the nature of the application had regard councillors role in the community and felt it would be meritorious in extending the scope of the dispensation to enable councillor Evans to also speak on the subject matter.

Following a discussion it was

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2(d) and (f) of the Standards Committees (Grant of Dispensation) (Wales) Regulations 2001 to Councillor Alex Evans to make SPEAK AND MAKE WRITTEN REPRESENTATIONS only in relation to council business relating or likely to affect Heol Y Pentre, Ponthenri and the dispensation be valid until the end of the current electoral term.

11. DISPENSATION APPLICATION BY COUNCILLOR JOHN JENKINS.

The Committee considered an application submitted by Councillor John Jenkins of Carmarthenshire County Council and Llanelli Town Council for the grant of a dispensation under the provisions of the Standards Committees (Grant of Dispensations) (Wales) Regulations to speak, vote and make written representations in relation to council business relating to the provision of domiciliary care or day service provision for adults with learning difficulties.

It was reported that a dispensation was sought as Councillor Jenkins had a personal and prejudicial interest in in council business relating to such matters as he worked for a company contracted to the Council to provide such services.

Councillor Jenkins had advised that should dispensation be granted if any specific debate was undertaken relating to his employer he would declare an interest and withdraw from the meeting during its consideration

Following a discussion it was:

UNANIMOUSLY RESOLVED that dispensation be granted under Regulations 2 (d) and (f) of the Standards Committees (Grant of

Dispensation) (Wales) Regulations 2001 to Councillor John Jenkins to SPEAK, and make WRITTEN REPRESENTATIONS ONLY BUT NOT VOTE at meetings of Carmarthenshire County Council and Llanelli Town Council in relation to council business relating to the provision of domiciliary care or day service provision for adults with learning difficulties and the dispensation be valid until the end of the current electoral term.

12. CODE OF CONDUCT COMPLIANCE BY TOWN AND COMMUNITY COUNCILLORS 2021-2022.

The Committee, in accordance with previous practice, received a report on the annual exercise to collect code of compliance data from Town and Community Councils. It was noted that letters were sent to all Town and Community Councils in April 2022 requesting them to provide information regarding code of conduct compliance during the preceding municipal year (1st April 2021 – 31st March 2022) and that as at the end of August 6 of the councils had failed to respond and arrangements made for them to be contacted by telephone.

The Legal Services Manager referred to the revised format of the report compared to that produced in previous years, which had been compiled using Snap Survey Software and suggested that should the Committee endorse the format, he could arrange for future annual exercises to be undertaken using that software. He could also arrange for future reports to incorporate the previous year's analysis as a comparison which could also be replicated for Code of Conduct Training.

A view was expressed that it would be also advantageous if the charts attached with the report could also be provide to the Town and Community Councils for them to view the number of declarations being made countywide.

Reference was made to the 'Dual Hatted' role of County Council Members when attending and Town and Community Council meetings where consideration was being given to the Council's Asset Transfer Policy and that they should be declaring an interest at those meetings. The Legal Service Manager advised he would liaise with the Council's monitoring officer on providing members with such advice

UNANIMOUSLY RESOLVED

- 12.1 to note the progress made to date in obtaining data from Town and Community Councils.**
- 12.2 That future annual exercises to collect Code of Conduct compliance data from Town and Community Councils be undertaken using the Snap Survey Software**

13. CODE OF CONDUCT TRAINING.

The Committee received a report on Code of Conduct Training by the Council following the local government elections in May 2022 and noted the following sessions had been held:

17th May 2022 – County Councillors (38 attendees)

4th July 2022 – Town and Community Councillors (42 attendees)

27th July 2022 – Town and Community Councillors (46 attendees)

It was further noted that Code of Conduct issues were also covered in a separate training session on the 23rd May, 2022 for County Councillors on constitution matters and meeting preparation when there were 29 attendees

UNANIMOUSLY RESOLVED to note the report.

- 14. ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.**

There were no items of urgent business.

CHAIR

DATE

THURSDAY, 17 NOVEMBER 2022

PRESENT: Mrs M. Dodd [Chair] (Ph)

Independent Members:

C. Davies (R), Mrs. D Evans (Ph), J. James (Ph) and P. Rogers (Ph)

Councillors:

W. T. Evans (R) (substitute) and G.B. Thomas (R)

The following Officers were in attendance:

L. Rees-Jones - Head of Administration and Law / Monitoring Officer (R)
R. Edgecombe - Legal Services Manager / Deputy Monitoring Officer (Ph)
G. Morgan - Head of Democratic Services
J. Owens - Democratic Services Officer (Ph) (note taker)
S. Rees - Simultaneous Translator (Ph)

Also in attendance:

Ms K. Shaw, Office of the Public Services Ombudsman for Wales (R)
Ms S. Jones, Office of the Public Services Ombudsman for Wales (R)
Mr D. Daycock, Legal Representative for Councillor T. Davies (Ph)

[Ph = physical attendance at County Hall R = remote attendance via Zoom]

Chamber - County Hall, Carmarthen. SA31 1JP and remotely - 11.30 am - 12.48 pm

1. APOLOGIES FOR ABSENCE.

Apologies for absence were received from Cllr B.W. Jones and Mr F. Phillips.

2. DECLARATIONS OF PERSONAL INTEREST.

There were no declarations of interest.

3. EXCLUSION OF PUBLIC.

UNANIMOUSLY RESOLVED, pursuant to the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, that the public be excluded from the meeting during consideration of the following item as the report contained exempt information as defined in paragraph 12 of Part 4 of Schedule 12A to the Act.

4. PRE-HEARING REVIEW IN RELATION TO A REPORT ISSUED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES IN RESPECT OF COUNCILLOR TERRY DAVIES.

Following the application of the public interest test it was RESOLVED pursuant to the Act referred to in minute no. 3 above not to publicise the content of the report

as it contained exempt information relating to a particular individual (Paragraph 12 of Part 4 of Schedule 12A to the Act). The public interest test in respect of this report outweighed the public interest in disclosing the information contained therein as disclosure at this stage would be a disproportionate and unwarranted intrusion into the private and family life of the Councillor in question and other third parties referred to in the report.

The Chair welcomed to the meeting Mr D. Daycock, Legal Representative for Councillor T. Davies, and Ms K. Shaw and Ms S. Jones of the Office of the Public Services Ombudsman for Wales.

The Committee was reminded that at the meeting of the Standards Committee held on 4th August, 2022 initial consideration was given to the report issued by the Public Services Ombudsman for Wales detailing the results of their investigation into allegations that Councillor T. Davies had breached the Members' Code of Conduct. The Committee concluded that the report did disclose evidence to suggest that there had been a breach of the Code of Conduct. The Committee resolved that Councillor T. Davies be given the opportunity to make representations to the Committee in respect of the findings of the investigation.

The main purpose of the Pre-Hearing Review was to consider any directions which may be required to facilitate the final hearing. Accordingly, the Deputy Monitoring Officer duly listed the directions required in terms of the provision of evidence, location of the final hearing, timings and narrowing of other issues.

Ms K. Shaw of the Public Services Ombudsman for Wales' Office and Mr. D Daycock, Legal Representative for Councillor T.Davies, were thereupon invited to address the Committee regarding the further progress of the case.

In considering the timings and written submissions to be provided in respect of the final hearing documentation, the Committee accepted that any such representations may need to be modified in light of any matters that transpired during the course of the final hearing.

Consideration was given to paragraphs 46-61 of the Public Services Ombudsman for Wales' report. The Public Service Ombudsman for Wales Representative was happy with the facts as written, while the Legal Representative for Councillor T. Davies stated that paragraphs 56-61 were under dispute by them.

The Deputy Monitoring Officer referred to the Authority's Code of Conduct for Members and confirmed that advice on the declaration of interests had been provided to the Standards Committee, and which would be reiterated prior to the final hearing.

Following a detailed consideration, it was

UNANIMOUSLY RESOLVED that:

- 4.1 The definition of Racial Discrimination enshrined within the Equalities Act 2010 be utilised for the purposes of the final**

- hearing.
- 4.2 Arrangements be made for the hearing to be conducted over a period of two days initially, based upon the time estimates provided by the Legal Representative and Public Service Ombudsman for Wales Representative.
- 4.3 The witness statement setting out the evidence for Cllr T. Davies be submitted to the Deputy Monitoring Officer by e-mail within 14 days of the meeting (4.00pm on 01 December 2022).
- 4.4 Any written representations, the content of which could be subject to change, prepared by the Public Service Ombudsman for Wales Representative and the Legal Representative for Cllr T. Davies, to be submitted to the Deputy Monitoring Officer by e-mail 10 days prior to the final hearing.
- 4.5 Councillor T. Davies was alleged to have breached the statutory Code of Conduct for members of Llanelli Town Council. Accordingly, any such sanctions imposed would only be applicable to Councillor T Davies' role as a Town Councillor.

The Public Service Ombudsman for Wales Representative and the Legal Representative for Cllr T. Davies agreed that determinations 4.1-4.5 were undisputed.

The Committee thereupon

UNANIMOUSLY RESOLVED to retire into private session in order to receive legal advice pursuant to Paragraph 16 of Schedule 12A of the Local Government Act 1972.

Following the adjournment, the Committee reconvened to advise of its decision.

UNANIMOUSLY RESOLVED that

- 4.6 In line with the requirement for openness and transparency in relation to the duties undertaken by the Standards Committee, the final hearing of the case in respect of Councillor T. Davies be held in public but with the Committee entering into private session should it be deemed in the public interest at any stage.
- 4.7 The final hearing documentation to include additional visual images in the form of photographs and plans of the site in question which would negate the need for a formal site visit.
5. **ANY OTHER ITEMS OF BUSINESS THAT BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR DECIDES SHOULD BE CONSIDERED AS A MATTER OF URGENCY PURSUANT TO SECTION 100B(4)(B) OF THE LOCAL GOVERNMENT ACT 1972.**

There were no items of urgent business to be considered.

CHAIR

DATE

STANDARDS COMMITTEE

12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR EDWARD THOMAS

Recommendations / key decisions required:

To consider the application and decide whether to grant Councillor Thomas a dispensation.

Reasons:

Consideration of such applications fall within the remit of the committee

Cabinet Decision Required NO

Council Decision Required NO

CABINET MEMBER PORTFOLIO HOLDER: - Councillor Linda Evans

Directorate:	Designations:	Tel: 01267 224018
Name of Head of Service:	Head of Administration and Law	Email addresses:
Linda Rees-Jones		rjedgeco@carmarthenshire.gov.uk
Report Author:	Legal Services Manager	
Robert Edgecombe		

EXECUTIVE SUMMARY

STANDARDS COMMITTEE 12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR EDWARD THOMAS

A dispensation application has been received from Councillor Edward Thomas of Carmarthenshire County Council.

Councillor Thomas seeks dispensation to speak and make written representations only in relation to council business regarding no 30 Bridge Street, Llandeilo which is in a state of disrepair.

Councillor Thomas has a personal and prejudicial interest in council business relating to the property as it adjoins his garden and therefore any council decision regarding the property will be likely to affect land owned by Councillor Thomas. A reasonable member of the public with knowledge of these facts would be likely to conclude that this would influence Councillor Thomas's view of the wider public interest when it came to the Council deciding what enforcement action (if any) should be taken.

The attached application from Councillor Thomas sets out the grounds upon which the application is made and stresses that he does not seek dispensation to exercise any executive or cabinet function in relation to the property.

If the committee is minded to grant Councillor Thomas a dispensation it will need to determine its duration.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: L. Rees Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: L. Rees Jones

Head of Administration and Law

1. Scrutiny Committee – n/a
2. Local Member(s) - n/a
3. Community / Town Council – n/a
4. Relevant Partners - n/a
5. Staff Side Representatives and other Organisations - n/a

CABINET MEMBER PORTFOLIO HOLDER AWARE/CONSULTED

No

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal File	DPSC-201	County Hall Carmarthen

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APPLICATION TO THE STANDARDS COMMITTEE FOR DISPENSATION

Please note that each section MUST be completed. Please refer to the attached Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name: Edward Gwynne Thomas

Name of your Council: Carmarthenshire County Council

Your address and postcode:
Awelfryn, 8 Bridge Street , Llandeilo SA19 6BN

Contact telephone number(s): 07811 067970

Email address: egthomas@carmarthenshire.gov.uk

2. DETAILS OF YOUR INTEREST

What is the matter under consideration?

My ability as Local Member for Llandeilo & Dyffryn Cennen to report this matter via DSU to Building Control. Building Regulations. Planning and Conservation due to the fact the tenants have reported the contents of the owners builders report about the perilous state of the building. I have a personal & prejudicial interest in that it is a neighbouring property and if the building fell down it would cause damage in my garden {a slate has already fallen missing my new shed}. I only wish to reprt the matter in the first instance without any repercussions that I am doing it out of any malice only responding to a request from the former tenant – They have had to seek alternative accommodation in the centre of town to run their business –the building would not be safe for customers .

What is your interest in the above matter?

My garden which is across the road from my home adjoins the overgrown garden of no 30 Bridge Street which is owned by Mr R A Ramsey-Williams & Elizabeth Evans absentee landowners. They bought the building with a sitting tenant Gerwyn's Fruit & Veg , when the lease expired, Gerwyn's left {it was just before the pandemic.} The building was empty until in 2021, and new tenants came in trading as Sian Emporium. They started making alterations to the building and discovered several serious faults. The owners builders have complied the report and told the tenants that it is unlikely that Williams & Evans owners will not undertake work . Therefore there is danger that the building will further decay and become an issue to the community. Bridge St is on the A483T and a dangerous structure could block the highway

When will the above matter be considered?

Are you applying for dispensation to:

Speak only: Speak and vote:
Make written Representations Exercise Executive Powers

3. GROUNDS FOR DISPENSATION

Regulations issued by the National Assembly for Wales prescribe the circumstances in which the Standards Committee may grant a dispensation. These grounds for granting a dispensation are summarised below and are set out in full in the attached guidance notes. On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

• at least half of the members considering the business has an interest	<input type="checkbox"/>
• my inability to participate would upset the political balance of the meeting to such an extent that the outcome would be likely to be affected;	<input type="checkbox"/>
• my participation would not damage public confidence	<input checked="" type="checkbox"/>
• the interest is common to me and a significant proportion of the general public;	<input type="checkbox"/>
• my participation in the business is justified by my particular role or expertise;	<input type="checkbox"/>
• the business is to be considered by an overview and scrutiny committee and my interest is not a pecuniary interest;	<input type="checkbox"/>
• the business relates to the finances or property of a voluntary organisation of whose management committee or board I am a member and I have no other interest	<input type="checkbox"/>
• it is appropriate to do so in all the circumstances where not otherwise possible to make reasonable adjustments to accommodate a person's disability	<input type="checkbox"/>

4. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please set out below the reasons why you consider that the Standards Committee should grant a dispensation in this case:

(Please note that failure to complete this section will result in the application form being returned to you)

- 1 Without the dispensation, I will not as the Local Member be acting in the best interests of my constituents in passing on this information to relevant departments to act on the information provided on the perilous state of the building .
- 2 If the matter reached a position of discussion in Council or Cabinet, I would declare my interest and withdraw from any vote

I confirm that the information provided on this form is true to the best of my knowledge. I agree that this application and all the information contained within it may form part of a public report to the Standards Committee. I request a dispensation in respect of the above matter.

Signed:

Date:

Please return this form to the Monitoring Officer, Chief Executive's Department, Carmarthenshire County Council, County Hall, Carmarthen, SA31 1JP.

Guidance notes

- (1) Please read through the Code of Conduct and decide which of the paragraphs is most appropriate to your case. Brief details of the relevant paragraphs are noted in the table below. If you are unsure, please contact the Monitoring Officer for advice.

Para.	Type of personal interest	
10(2)(a)	Council business which relates to or is likely to affect: <ul style="list-style-type: none"> • your employment or business, • your employer, firm or company • a contract made between the Council and you • any land, lease or licence in which you have an interest • a public body or other association in which you have membership or hold a position of general control or management 	X
10(2)(c)	Council business which affects your well-being or financial position, or the well-being, financial position or other interests of a person with whom you live or have a close personal association	
13	Council business which is being considered by an Overview and Scrutiny Committee and which relates to a decision of the Cabinet or another Committee of which you were a member at the time [County Council only]	

- (2) The Standards Committees (Grant of Dispensations)(Wales) Regulations 2001(as amended) state that a Standards Committee may grant dispensations where:

- (a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;
- (b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
- (c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;
- (d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;
- (e) the interest is common to the member and a significant proportion of the general public;
- (f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;
- (g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;

- (h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or
- (i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify.
- (j) It is considered appropriate in all the circumstances to do so where not otherwise possible to make reasonable adjustments to accommodate a persons disability

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STANDARDS COMMITTEE

12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR RUSSELL SPARKS		
Recommendations / key decisions required:		
To consider the application and decide whether to grant Councillor Sparks a dispensation.		
Reasons:		
Consideration of such applications fall within the remit of the committee		
Cabinet Decision Required	NO	
Council Decision Required	NO	
CABINET MEMBER PORTFOLIO HOLDER: - Councillor Linda Evans		
Directorate:	Designations:	Tel: 01267 224018
Name of Head of Service:		Email addresses:
Linda Rees-Jones	Head of Administration and Law	rjedgeco@carmarthenshire.gov.uk
Report Author:		
Robert Edgecombe	Legal Services Manager	

EXECUTIVE SUMMARY

STANDARDS COMMITTEE 12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR RUSSELL SPARKS

A dispensation application has been received from Councillor Russell Sparks of Carmarthenshire County Council.

Councillor Sparks seeks dispensation to speak and make written representations only in relation to council business regarding the provision of leisure services in the County, particularly the provision of swimming pools and swimming lessons by the Council.

Councillor Sparks has a personal and prejudicial interest in council business relating to such matters as it would be likely affect his swimming pool business.

A reasonable member of the public with knowledge of these facts would be likely to conclude that this would influence Councillor Spark's view of the wider public interest when it came to the Council deciding to what it extent should provide such services.

The attached application from Councillor Sparks sets out the grounds upon which the application is made.

If the committee is minded to grant Councillor Sparks a dispensation it will need to determine its duration.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: L. Rees Jones

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: L. Rees Jones

Head of Administration and Law

1. Scrutiny Committee – n/a
2. Local Member(s) - n/a
3. Community / Town Council – n/a
4. Relevant Partners - n/a
5. Staff Side Representatives and other Organisations - n/a

CABINET BOARD PORTFOLIO HOLDER AWARE/CONSULTED

No

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal File	DPSC-201	County Hall Carmarthen

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APPLICATION TO THE STANDARDS COMMITTEE FOR DISPENSATION

Please note that each section MUST be completed. Please refer to the attached Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name: Russell Sparks

Name of your Council: Carmarthenshire County Council

Your address and postcode: 6 Parc Starling, Johnstown, Carmarthen SA31 3HX

Contact telephone number(s): 07883098648

Email address: rusparks@carmarthenshire.gov.uk

2. DETAILS OF YOUR INTEREST

What is the matter under consideration?

The provision of leisure services in the County particularly the provision of swimming pools and swimming lessons by the Council

What is your interest in the above matter?

I own a swimming pool business

When will the above matter be considered?

At various times either in my role on the communities, home and regeneration scrutiny committee, or in general council meetings also.

Are you applying for dispensation to:

Speak only: Speak and vote:

Make written Representations Exercise Executive Powers

3. GROUNDS FOR DISPENSATION

Regulations issued by the National Assembly for Wales prescribe the circumstances in which the Standards Committee may grant a dispensation. These grounds for granting a dispensation are summarised below and are set out in full in the attached guidance notes. On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

• at least half of the members considering the business has an interest	<input type="checkbox"/>
• my inability to participate would upset the political balance of the meeting to such an extent that the outcome would be likely to be affected;	<input type="checkbox"/>
• my participation would not damage public confidence	<input checked="" type="checkbox"/>
• the interest is common to me and a significant proportion of the general public;	<input type="checkbox"/>
• my participation in the business is justified by my particular role or expertise;	<input checked="" type="checkbox"/>
• the business is to be considered by an overview and scrutiny committee and my interest is not a pecuniary interest;	<input checked="" type="checkbox"/>
• the business relates to the finances or property of a voluntary organisation of whose management committee or board I am a member and I have no other interest	<input type="checkbox"/>
• it is appropriate to do so in all the circumstances where not otherwise possible to make reasonable adjustments to accommodate a person's disability	<input type="checkbox"/>

4. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please set out below the reasons why you consider that the Standards Committee should grant a dispensation in this case:

(Please note that failure to complete this section will result in the application form being returned to you)

I own a business in Carmarthen which includes a swimming pool and the provision of swimming lessons and acknowledge the conflict of interest relating to my business as the county aquatic leisure services also offer swimming lessons.

I have worked in leisure and aquatics for my whole career and I continue to have a national role with Swimming Teachers Association as an External Quality Assurer, I understand the complexities of the leisure industry having worked for Swim Wales, Amateur Swimming Association and CCC in aquatics roles over the past 25 years of my career.

This work includes advising businesses on best practice, reviewing and promoting best practice and industry leading ideas to develop and promote swimming. As a national lead on education in quality assurance I effectively quality assure hundreds of businesses and offer them advice to develop and improve their output and their customer experiences. It also includes collaboration and development of regional working too. I think all of this expertise would be valuable for my own council too.

I would like a dispensation to be able to participate in any discussion in County Council or scrutiny committees regarding the provision of leisure facilities in the County and particularly swimming facilities and lessons

I feel allowing my participation in such a debate would not undermine public confidence as I am not a cabinet member and have no power to personally make decisions on such matters. I believe my expert professional advice would enhance the level of debate on this subject. Not allowing me to participate would disadvantage my constituents and reduce the quality of debate and scrutiny on these issues.

A dispensation would also enable me to participate in debates relating to wholistic solutions such as Pentre Awel which incorporate leisure, social care, medical innovation, living lab ideals and progressive housing solutions, including the provision of a swimming pool. Otherwise I might be unable contribute in a whole range of areas as arguably this all includes leisure services to an extent.

I feel I can speak objectively and would be able to give the benefit of my expertise if allowed to speak, I also feel that by not voting I would mitigate the conflict of interest which I have acknowledged.

I confirm that the information provided on this form is true to the best of my knowledge. I agree that this application and all the information contained within it may form part of a public report to the Standards Committee. I request a dispensation in respect of the above matter.

Signed:

Date:

Please return this form to the Monitoring Officer, Chief Executive's Department, Carmarthenshire County Council, County Hall, Carmarthen, SA31 1JP.

Guidance notes

- (1) Please read through the Code of Conduct and decide which of the paragraphs is most appropriate to your case. Brief details of the relevant paragraphs are noted in the table below. If you are unsure, please contact the Monitoring Officer for advice.

Para.	Type of personal interest	
10(2)(a)	Council business which relates to or is likely to affect: <ul style="list-style-type: none"> • your employment or business, • your employer, firm or company • a contract made between the Council and you • any land, lease or licence in which you have an interest • a public body or other association in which you have membership or hold a position of general control or management 	Y
10(2)(c)	Council business which affects your well-being or financial position, or the well-being, financial position or other interests of a person with whom you live or have a close personal association	
13	Council business which is being considered by an Overview and Scrutiny Committee and which relates to a decision of the Cabinet or another Committee of which you were a member at the time [County Council only]	

- (2) The Standards Committees (Grant of Dispensations)(Wales) Regulations 2001(as amended) state that a Standards Committee may grant dispensations where:

- (a) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;
- (b) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
- (c) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;
- (d) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business;
- (e) the interest is common to the member and a significant proportion of the general public;
- (f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;
- (g) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;

- (h) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or
- (i) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify.
- (j) It is considered appropriate in all the circumstances to do so where not otherwise possible to make reasonable adjustments to accommodate a persons disability

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STANDARDS COMMITTEE

12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR A. R. BRAGOLI		
Recommendations / key decisions required:		
To consider the application and decide whether to grant Councillor Bragoli a dispensation.		
Reasons:		
Consideration of such applications fall within the remit of the committee.		
Cabinet Decision Required	NO	
Council Decision Required	NO	
CABINET MEMBER PORTFOLIO HOLDER: - Councillor Linda Evans		
Directorate:	Designations:	Tel: 01267 224018
Name of Head of Service:		Email addresses:
Linda Rees-Jones	Head of Administration and Law	rjedgeco@carmarthenshire.gov.uk
Report Author:	Legal Services Manager	
Robert Edgecombe		

EXECUTIVE SUMMARY

STANDARDS COMMITTEE 12TH DECEMBER 2022

DISPENSATION APPLICATION BY COUNCILLOR A. R. BRAGOLI

A dispensation application has been received from Councillor A. R. Bragoli of Llanelli Town Council.

Councillor Bragoli seeks dispensation to speak and vote in relation to council business regarding Penygaer Changing Rooms.

Councillor Bragoli has a personal interest in council business relating to such matters as he is a member of a community group called Caru Lliedi which is working with the Town Council in relation to a grant application in respect of the changing rooms.

A reasonable member of the public with knowledge of these facts would be likely to conclude that this would influence Councillor Bragoli's view of the wider public interest when it came to Council decisions on the issue.

The attached application from Councillor Bragoli sets out the grounds upon which the application is made.

If the Committee is minded to grant Councillor Bragoli a dispensation it will need to determine its duration.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: **L. Rees Jones**

Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: **L. Rees Jones**

Head of Administration and Law

1. Scrutiny Committee – n/a
2. Local Member(s) - n/a
3. Community / Town Council – n/a
4. Relevant Partners - n/a
5. Staff Side Representatives and other Organisations - n/a

**CABINET MEMBER PORTFOLIO
HOLDER AWARE/CONSULTED**

No

**Section 100D Local Government Act, 1972 – Access to Information
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**APPLICATION TO THE STANDARDS COMMITTEE
FOR DISPENSATION**

Please note that each section MUST be completed. Please refer to the attached
Guidance Notes when completing the form.

1. YOUR DETAILS

Your full name:	ANDREW RONALD BRAGOLI
Name of your Council:	LLANGLLI TOWN
Your address and postcode:	42 PROSPECT PLACE LLANGLLI SA15 3PS
Contact telephone number(s):	0777 2187474
Email address:	andrew.bragoli@btinternet.com

2. DETAILS OF YOUR INTEREST

What is the matter under consideration?	PENYGAER CHANGING ROOMS
What is your interest in the above matter?	A MEMBER OF CARU LLIEDI AND I AM A COMMUNITY COUNCILLOR FOR LLIEDI WARD
When will the above matter be considered?	UNSURE
Are you applying for dispensation to:	
Speak only: <input type="checkbox"/>	Speak and vote: <input checked="" type="checkbox"/>
Make written Representations <input type="checkbox"/>	Exercise Executive Powers <input type="checkbox"/>

3. GROUNDS FOR DISPENSATION

Regulations issued by the National Assembly for Wales prescribe the circumstances in which the Standards Committee may grant a dispensation. These grounds for granting a dispensation are summarised below and are set out in full in the attached guidance notes. On which of the following grounds do you believe that a dispensation should be granted in this case? Please tick the appropriate box(es).

• at least half of the members considering the business has an interest	<input checked="" type="checkbox"/>
• my inability to participate would upset the political balance of the meeting to such an extent that the outcome would be likely to be affected;	<input checked="" type="checkbox"/>
• my participation would not damage public confidence	<input checked="" type="checkbox"/>
• the interest is common to me and a significant proportion of the general public;	<input type="checkbox"/>
• my participation in the business is justified by my particular role or expertise;	<input type="checkbox"/>
• the business is to be considered by an overview and scrutiny committee and my interest is not a pecuniary interest;	<input checked="" type="checkbox"/>
• the business relates to the finances or property of a voluntary organisation of whose management committee or board I am a member and I have no other interest	<input checked="" type="checkbox"/>

4. INFORMATION IN SUPPORT OF YOUR APPLICATION

Please set out below the reasons why you consider that the Standards Committee should grant a dispensation in this case:

(Please note that failure to complete this section will result in the application form being returned to you)

I AM A COMMUNITY COUNCILLOR AND I
HAVE NO PECUNIARY OR PERSONAL
INTEREST.

(please continue on a separate sheet if necessary)

I confirm that the information provided on this form is true to the best of my knowledge. I agree that this application and all the information contained within it may form part of a public report to the Standards Committee. I request a dispensation in respect of the above matter.

Signed:

Date:

Please return this form to the Monitoring Officer, Chief Executive's Department, Carmarthenshire County Council, County Hall, Carmarthen, SA31 1JP.

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STANDARDS COMMITTEE

12TH DECEMBER 2022

RECENT ADJUDICATION PANEL DECISIONS		
Recommendations / key decisions required:		
To note the recent APW decisions and identify any learning points		
Reasons: APW decisions provide useful guidance on the operation of the code and the conduct of disciplinary hearings		
Cabinet Decision Required	NO	
Council Decision Required	YES	
CABINET MEMBER PORTFOLIO HOLDER: - Councillor Linda Evans		
Directorate: Name of Head of Service: Linda Rees-Jones Report Author: Robert Edgecombe	Designations: Head of Administration and Law Legal Services Manager	Tel: 01267 224018 Email addresses: rjedgeco@carmarthenshire.gov.uk

EXECUTIVE SUMMARY

STANDARDS COMMITTEE 12TH DECEMBER 2022

RECENT ADJUDICATION PANEL DECISIONS

The Adjudication Panel for Wales (APW) deals with the more serious code of conduct breach cases referred directly to it by the Public Services Ombudsman for Wales (PSOW) and any appeals made from decisions by local Standards Committees.

Attached are 3 recent decisions by the APW for the committee to consider. These are cases relating to:

- Former Councillor Paul Dowson
- Former Councillor Caryl Vaughan
- Former Councillor Gordon Lewis

The Committee will note that in all 3 cases the individual in question was no longer a serving councillor but that the APW still imposed periods of disqualification ranging from 1-3 years.

DETAILED REPORT ATTACHED?

No

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: L. Rees-Jones Head of Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: L Rees-Jones Head of Administration and Law

1. **Scrutiny Committee** - None

2. **Local Member(s)** - None

3. **Community / Town Council**

All Town and Community Councils have been consulted as outlined in the Executive Summary

4. **Relevant Partners** - None

5. **Staff Side Representatives and other Organisations** - None

CABINET MEMBER PORTFOLIO HOLDER AWARE/CONSULTED	No
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Section 100D Local Government Act, 1972 – Access to Information
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Legal Department File	DPSC-201	County Hall

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**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REF. NO. APW/008/2021/022/CT

RE: REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT

Respondent:

Former Councillor Paul Dowson

Relevant authorities concerned:

Pembrokeshire County Council

Representation and attendance:

Respondent: Did not attend and was not represented.

PSOW: Ms K Shaw, counsel (with Mr L McAndrew, PSOW investigator);
Mr J. Harries, Interim Deputy Monitoring Officer

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
2. A hearing was held by the Case Tribunal on 22nd August 2022 at 0930, remotely via Cloud Video Platform. The hearing was open to the public.

PRELIMINARY DOCUMENTS

Reference from the Public Service Ombudsman for Wales

3. In a letter dated 8th February 2022, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”, “PSOW”) in relation to allegations made in three complaints against now former Councillor Paul Dowson.
4. In summary, the allegations were that former Councillor Dowson had breached paragraphs 4 (c) and 6 (1)(a) of the Code of Conduct for members of Pembrokeshire County Council. The alleged failures under consideration were set out in paragraphs 112 to 140 of the Ombudsman’s report.

- 4.1 The first complaint, initiated by a member of the public called Mr Marc Davies, alleged that the Respondent repeatedly made statements that were untrue about a fellow Member of Pembrokeshire County Council (“the Council”), Councillor Joshua Beynon; and about Mr Marc Davies himself.
 - 4.1.1 In 2020, the Respondent was alleged to have falsely and publicly accused Councillor Beynon of sharing a pornographic video of an underaged girl. It was further alleged that to make such a false allegation without checking that it was true brought the Respondent’s office and/or his Authority into disrepute. When the Respondent repeated and insinuated those false allegations, he bullied Councillor Beynon. This bullying is aggravated because the Respondent lied when he said that he was only repeating something Councillor Beynon had told him.
 - 4.1.2 Between September 2020 and February 2021, the Respondent was alleged to have falsely and publicly accused Mr Marc Davies of being an ex-offender, something which again, was factually untrue. Mr Marc Davies challenged the Respondent in September 2020 and told him he was wrong. Nonetheless, the Respondent repeated the allegations against Mr Marc Davies between September 2020 and February 2021, when he apologised for them and accepted that they were untrue. To repeatedly say such things against Mr Marc Davies without taking reasonable steps to confirm that the information he was sharing was accurate after being told that it was not, amounts to harassment and brought the Respondent’s office as a Member and/or his Authority into disrepute.
- 4.2 The second complaint, initiated by a member of the public Mrs Elaine Wyatt, alleged that on and after 17th January 2021, the Respondent misinformed people when he posted online that the Welsh Government’s Relationships and Sex Education (“RSE”) curriculum aims to teach 3-year-old children about masturbation; and to teach 13-year-old boys and girls about anal sex. He repeated this misinformation in an email to a fellow Member of the Council when he also said that lesson plans for 11-year-olds and upwards contained reference to bondage, anal sex, facial ejaculation and more. There was no basis for these statements about the curriculum and in saying that there was, the Respondent wilfully and dishonestly misinformed people to outrage them. By doing so, he has brought his office and/or his Authority into disrepute.
- 4.3 The third complaint, initiated by a member of the public Mr Timothy Brentnall, alleged that on 12th April 2021, the Respondent engaged in a heated conversation on Facebook with Mr. Brentnall, who at the time was using the name “Timothy Stjohn”. At one point in the conversation, the Respondent replied to Mr Brentnall “what a t**ser. I heard you are on the

register but it's not been proven so I'm not spreading it around. Better man than you".

- 4.3.1 It is alleged that the Respondent was thereby falsely and maliciously suggesting that Mr Brentnall was subject to registration because he was a sex offender.
- 4.3.2 It is further alleged that screenshot evidence the Respondent provided to the PSOW's investigation in respect of this third complaint was a fabricated exhibit and therefore amounted to a deliberate attempt to mislead the investigation. Both the initial post and the attempt to mislead the investigation taken separately and together, brought the Respondent's office as a Member and his Authority into disrepute.

The former Councillor's Written Response to the Reference

- 5. Former Councillor Dowson responded in the following terms:
 - 5.1.1 Regarding Councillor Beynon, former Councillor Dowson said that he did not suggest that the Councillor had shared images of a child. He said that the person depicted was 17 and not under 17. This was something that Councillor Beynon had told former Councillor Dowson in person, as had the girl's family. He conceded the possibility of making an error in relation to the girl's age, but denied he acted deliberately and said that in any event, everything he said, wrote or published concerning Councillor Beynon amounted to political expression, was in the public interest, and therefore protected by his Convention right to Freedom of Expression.
 - 5.1.2 Regarding Mr Marc Davies, former Councillor Dowson said that Marc Davies deliberately misled several people into believing that he was a near namesake, Mark Davies, who had been to prison. Former Councillor Dowson said that he apologised for what he had previously said when he became aware that they were different people. He said that he apologised to show good faith, but it was only later that he discovered that Mr Marc Davies had deceived him "by impersonating the other Mark".
- 5.2 Regarding the second complaint, former Councillor Dowson said that what he said about the Welsh Government's Relationships and Sex Education Curriculum was true. Former Councillor Dowson accepted that he erred when he typed "0-3 yr olds" instead of "3-6 year olds", which he accepted was wrong, albeit a genuine mistake.
- 5.3 Regarding the third complaint, former Councillor Dowson said that he did not suggest that anyone was on a sex offenders register, nor did he seek

to imply the same. His original comment in fact read "...I heard you are on the Antifa register but it's not been proven so I'm not spreading it around." Former Councillor Dowson said that "from day 1" he referred to the "local Antifa register", said by him to be part of "Antifa Watch". The screenshot that he relied upon which contains the word "Antifa" had been sent to him.

LISTING DIRECTIONS

6. In a listing direction dated 17th June 2022, the Case Tribunal summarised the allegations substantially in the manner set out above, together with the undisputed facts and the disputed facts. The Case Tribunal directed that it would convene for the final hearing at Court 5 at the Haverfordwest County Court and Family Court Hearing Centre; that Mr Marc Davies, Councillor Joshua Beynon and Mr Timothy Brentnall were to give live evidence at the final hearing; and summarised the process and hearing timetable.
- 6.1 The Case Tribunal also gave the following directions relating to documents.

The Tribunal notes that the bundle served to date contains 2261 pages, a number which vastly exceeds the number of pages directly relevant to the deal with the issues in this case.

No party may rely on any further witness, document or other form of evidence unless they seek permission from the Tribunal to rely on that evidence and the Tribunal grants permission to do so.

By Friday 1st July 2022, the Respondent must specifically identify in writing, to both the Tribunal and the PSOW, those passages in the documents already served which prove that his statements about the content of the RSE curriculum are true.

By Friday 15th July 2022, both parties are to prepare and submit an agreed, core hearing bundle of exhibits directly relevant to the issues of fact identified above, that either a) prove or b) rebut the allegations made in this case.

If the parties cannot agree a core hearing bundle of exhibits, by Friday 29th July 2022 each party is to file and serve a separate, core hearing bundle of directly relevant exhibits.

7. By email dated 2nd July 2022 former Councillor Dowson formally informed the Case Tribunal that he had chosen not to participate in any manner with the scheduled hearing, citing a lack of confidence in the fairness of the process and the Case Tribunal. On 12th July 2022, the Registrar to the Adjudication Panel for Wales emailed former Councillor Dowson to reassure him that the Case Tribunal would be heard in public; that the Adjudication Panel for Wales acts independently of all other public authorities and parties; and that the proceedings would continue in his absence. By email dated 14th July 2022, former Councillor Dowson confirmed that he maintained his stated position. From that point, former Councillor Dowson has been absent from proceedings and has not been represented.
8. On 15th August 2022, the listing directions were varied to the extent that the Case Tribunal would proceed by Cloud Video Platform.
9. On 18th August 2022, the listing directions were amplified to permit that witnesses could attend from their own home or office (in each case, from a private room).

THE HEARING

Applications made during the hearing.

10. On behalf of the PSOW, Ms Shaw made a preliminary submission to exclude from the hearing a participant identified on screen only as “iPad”, on the grounds that the presence of such an unidentified person could affect those giving evidence. The Chair invited “iPad” to identify themselves. “iPad” did not do so. The Tribunal therefore rose to consider further directions. By the time the Tribunal reconvened, “IPad” was no longer online. It was therefore not necessary to take that matter further.
- 10.1 The Tribunal was also informed at the start that Mr Marc Davies had attended a different location to that stated in the latest listing direction and could not access the hearing to give evidence. The Chair noted that Mr Davies’ evidence did not relate to any disputed fact; and that his attendance had been requested when former Councillor Dowson participated in the proceedings, to give former Councillor Dowson the opportunity to ask such questions as he thought fit. In former Councillor Dowson’s absence, the Chair directed that the Tribunal could proceed without hearing live evidence from Mr Marc Davies.

The hearing.

11. The Chair gave standard remote hearing directions to all present, and summarised the allegations, as set out in the first Listing Direction.
12. The following undisputed facts were identified.
 - 12.1 The Respondent was elected as a County Councillor on 8th May 2017 and undertook to abide by the Council's Code of Conduct.
 - 12.2 The Respondent attended Code of Conduct training. He did not attend training on social media use.
 - 12.3 In his capacity as a Councillor, the Respondent alleged in material posted online that Councillor Beynon, when 18 years old, had shared a pornographic video of a girl.
 - 12.4 Councillor Beynon did not share a pornographic video of a girl when he was 18 years old. Intimate, but not explicit, photographs of the girl and her partner (both of whom were 18 years old) were shared in a Facebook Messenger group created by Councillor Beynon whilst he was a school pupil. No further action was taken by the police at the request of the girl.
 - 12.5 The Respondent alleged on social media and in emails to the PSOW that Mr Marc Davies was an ex-offender who had been imprisoned for violent crime and for breaching parole.
 - 12.6 Mr Marc Davies has no offences listed on his DBS certificate dated April 2019.
 - 12.7 The Respondent published a Facebook post stating that 0–3-year-olds “will” be taught about masturbation and that the new RSE curriculum “includes teaching 13-year-old boys and girls about anal sex”.
 - 12.8 In an email to a fellow Councillor, the Respondent said that RSE lesson plans teach 3-year-olds about masturbation and 11-year-olds and upwards about bondage, anal sex and facial ejaculation.
13. The following disputed facts were identified.
 - 13.1 Did the Respondent say that Councillor Beynon shared a pornographic video of a girl aged either: 17; or under the age of 17?

- 13.2 Did Councillor Beynon tell the Respondent that, when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17?
- 13.3 Were the Respondent's statements about the content of the RSE curriculum true?
- 13.4 Did the Respondent post on Facebook that he "heard" that Mr Brentnall was "on the register"; or "on the Antifa register"?
- 13.5 If the Respondent posted "on the register" and not "on the Antifa register", was he referring to registration as a sex offender?
- 13.6 If the Respondent posted "on the register" and not "on the Antifa register", did he deliberately attempt to mislead the PSOW's investigation by providing a fabricated exhibit?
14. On behalf of the Public Services Ombudsman for Wales, Ms Shaw formally presented the investigation report.
15. The Case Tribunal then heard oral evidence from:
 - 15.1 Witness 1: Councillor Joshua Beynon.
 - 15.2 Witness 2: Mr Timothy Brentnall
16. The Case Tribunal then heard submissions on behalf of the PSOW.

Findings of fact and the reasons for them

17. The Case Tribunal reminded itself of the burden and standard of proof. The balance of probabilities applies, and the burden of proof lies upon the PSOW to prove the allegations which form the subject of these proceedings. The balance of probabilities is a single unvarying standard.
18. The Case Tribunal considered all written and documentary evidence presented together with the oral evidence called, limiting itself to that evidence.
19. The Case Tribunal made factual findings which are based on an interpretation of events that has previously been disclosed to former Councillor Dowson and in respect of which he has been provided with adequate opportunity to investigate, call evidence and make submissions.

20. The Case Tribunal based its factual findings on inferences drawn from documentary evidence and known or probable facts, using oral evidence to subject the documentary records to critical scrutiny and to consider each witness's personality and motivation. The Case Tribunal assessed the evidence in the round.
21. The Case Tribunal did not assess any witness's credibility exclusively on their demeanour when giving evidence. Each witness's veracity was tested by reference to the objective facts proved independently of their testimony, by reference to the documents in the case.
22. The Case Tribunal made a rounded assessment of each witness's reliability, rather than approaching their reliability in respect of each allegation in isolation from the others.
23. Where, as here, more than one allegation is pleaded in relation to the same Respondent, the Case Tribunal considered the facts of each allegation individually and separately, also considering the evidence as a whole.
24. The first complaint: in relation to Mr Marc Davies.
 - 24.1 On 18th September 2020, Mr Marc Davies sent an email to former Councillor Dowson asking the Respondent "...why you're happy to host comment on your Facebook page accusing another councillor of using child pornography". Mr Marc Davies said that he believed the accusations to be false. "I have seen you hint at accusations previously on several occasions but tonight's episode is beyond contempt. I...would like to know what as my councillor you're going to do you (sic) rectify this disgusting situation and also what you're going to do about the Facebook account using your name that wrongly accused me of being an ex convict?"
 - 24.2 Mr Davies identified himself as "Marc" and his email address is clearly visible. The other Councillor, to whom he said former Councillor Dowson was referring, was Councillor Joshua Beynon.
 - 24.3 At this stage, it may also assist to introduce the fact that there is another person, called Mr Mark Davies, who has previous convictions and is unrelated to Mr Marc Davies. It is an undisputed fact that Mr Marc Davies has no offences listed on his DBS certificate dated April 2019.

- 24.4 On 19th September 2020, former Councillor Dowson replied. "Everything I may have hinted about on my facebook page is true. I will not go into details with you about it as it should be up to the Cllr to come clean himself about it." Mr Marc Davies responded the same day, expressing dismay as to former Councillor Dowson's position.
- 24.5 In his witness statement to these proceedings, Mr Marcel Laval, a member of the public said that over a period of 6 to 8 months, former Councillor Dowson repeated "over and over again" that Mr Marc Davies was an ex-convict and not to be trusted; and that he made these statements even though Mr Marc Davies and others told him that he was referring to the wrong person.
- 24.6 Mr Marc Davies complained to the Ombudsman, referring amongst other things to allegations made on social media about Councillor Joshua Beynon. Correspondence indicates that former Councillor Dowson was informed of Mr Marc Davies' complaint on 12th October 2020.
- 24.7 On 12th October 2020, former Councillor Dowson responded to the Ombudsman in relation to Mr Marc Davies' complaint with an email in which he continued to allege that Mr Marc Davies had been imprisoned for violent offences. He repeated this accusation in a further email to the Ombudsman on 28th October 2020.
- 24.8 On 4th January 2021 former Councillor Dowson was informed that the Ombudsman had decided to investigate that part of Mr Marc Davies' complaint that related to Councillor Beynon.
- 24.9 On 5th and 12th January 2021, former Councillor Dowson provided to the Ombudsman screenshots and suggested that Mr Marc Davies was involved in a campaign against him.
- 24.10 On 16th January 2021, former Councillor Dowson wrote to the Ombudsman by an email in which he again accused Mr Marc Davies as having a "history of incarceration for violent crime", and campaigning against him.
- 24.11 On 21st January 2021, former Councillor Dowson posted the following on his "Cllr Paul Dowson" Twitter account. "@DyfedPowys would be worth running this mans name through the police national computer before taking any notice of him. Imprisoned for beating up a helpless man. Then recalled to prison for breaching parole. He is causing me alarm and distress and I will be making a report today." Mr Marc Davies responded

via Twitter. "You're accusing me of that? Just to be sure you don't think it could be anyone else?"

24.12 On 1st February 2021 former Councillor Dowson sent Mr Marc Davies a message via Facebook. It read, "Hi Marc. It appears I really did have you mixed up with someone else. A very good friend of mine gave me the wrong information about you and foolishly I did not check the facts out properly myself. All I can do is apologise for this error and hope we can move on from it and not waste any more time battling each other on our differing beliefs and opinions. If we were not in lockdown I would convey this apology in person. Perhaps when we come out of lockdown I can put this right with you. My mistake and I am sorry."

24.13 Mr Marc Davies responded the next day. "Hi Paul thanks very much for the apology. I have emailed you on 2 separate occasions to inform you that I wasn't the person you were talking about or that a fake account was talking about. I'm not sure you realise the influence you have over others who share your beliefs. There are several of your friends sharing this rumour about me at the moment...If you'd have listened in August or September this could have been avoided...I understand you've had threats yourself...so I know you understand where I'm coming from. I'm happy to meet up after this lock down is done and talk about things over a pint."

24.14 In his witness statement tendered in evidence to these proceedings, Mr Marc Davies said amongst other things that former Councillor Dowson had called him a drug dealer and said that he had spent time in prison. This was not Mr Marc Davies but Mr Mark Davies. He said that this was unsettling, and that people had asked him what he had been imprisoned for. He has a clear DBS history, good references, and acts as the Adult Protection Officer for a local youth rugby team he coaches.

24.15 When interviewed by the Ombudsman, former Councillor Dowson accepted that his allegations were incorrect and said he had apologised for them.

25. The first complaint: in relation to Councillor Joshua Beynon.

25.1 Former Councillor Dowson appeared in a live-streamed video on the "Voice of Wales" YouTube channel. The date cannot be ascertained. The following exchange took place. PAR1 is talking to PD who is former Councillor Dowson.

PAR1: ...But there's other things about Josh, isn't there, that we could bring up.

PD: That he's confided in me.

PAR1: That he's confided in you. Like I've heard some stories about when Joshy was a Head Boy, so you know, I don't know obviously he, and you've heard that from the horse's mouth haven't you?

PD: Yeah. He confided in me. I've got no problem, you know, relaying it, because I know it's a fact, it's true. Er yeah, I've got the screen shots, like he says, I've got the screen shots.

PAR1: Yeah. I've seen the screen shots.

PD: He was expelled as Head Boy whilst in the Sixth Form. 18 years old, to be Head Boy, makes him an adult.

PAR1: Mmm hmm.

PD: He denies it, but you know, the majority of people know about this. He, he had, uh, got into a girl's Facebook account, found a pornographic video she'd been sending to her boyfriend and decided that he'd pass it around everybody else. He was taken down a peg from Head Boy, expelled, wasn't allowed to give a speech at the end of the year, whatever, as they are normally. But nothing came of it because obviously you know, the person's parents did not want this in the public domain.

PAR1: And how old was the girl?

PD: The girl was a uh teenager, but she wasn't an adult, she was under 17 so...

PAR1: And it's a, right, yeah, yeah.

PD: And working on the doors recently, I came across a couple of lads, only about two months ago, that still had that video on their ...

PAR1: Really?

PD: ... on their phone and you know, in other words, yeah that poor girl's life is, yeah, it just goes on forever for her.

...

PAR1: I'm sure I heard, I may be wrong, but I'm sure I heard she was underage for sex. PD: Yeah, probably, yeah.

PAR1: So, under the age of 16, so that would take that offence to a whole another level.

PD: You know I've got the text messages here where he comes round to tell me all about it. Yeah, he actually came to my house, opened a McDonalds and told me all about it.

PAR2: So, he was boasting?

PD: Well, no, in a way he, he was confiding in me...

25.2 On 14th June 2021 a "Voice of Wales" video was posted to Facebook. This video featured former Councillor Dowson referring to videos posted to the TikTok social media site. INT speaks with PD, Paul Dowson.

PD: ... I'm also aware, er, I'm privy to some more information that he, um, you know, gave to me in confidence about a year ago, um, and it's caused me, er, concern because last year, er, when he told me about the story, it was about how he hacked into a schoolgirl's personal Facebook account, found a very private, explicit sex video on there, that he sent to loads of his friends. This girl was under age and he was eighteen years old which is an adult at the time.

...

PD: So, you know, that shows the measure of who, who this is, and there seems to be this overriding sexual theme in everything he does wrong.

INT: Mm.

PD: Er, you know, and it all seems to involve people, minors, or teenagers.

...

PD: I think the only reason why he wasn't prosecuted as an adult for a crime, was the fact that that girl's parents and family, and the girl herself, they don't want that being broadcast all over the place.

25.3 It is an undisputed fact that Councillor Joshua Beynon did not share a pornographic video of a girl when he was 18 years old. Intimate, but not explicit, photographs of the girl and her partner (both of whom were 18 years old) were shared in a Facebook Messenger group created by

Councillor Beynon whilst he was a school pupil. No further action was taken by the police at the request of the girl.

25.4 In his witness statement tendered in evidence to these proceedings, Councillor Joshua Beynon said that he did not recall the specifics of his conversation with former Councillor Dowson. Councillor Beynon recalls telling former Councillor Dowson that he had received anonymous letters and messages asking if it was true that he had shared images of a girl whilst at school. Councillor Beynon said that he explained to former Councillor Dowson that he did go onto a girl's Facebook account, but that he never shared an image. In his statement, Councillor Beynon went on to say that he was 17 when he left school and that his expulsion from school was due to comments he made in a speech at a Record of Achievement ceremony, rather than because of the incident involving access to the girl's Facebook account.

25.5 In a subsequent interview conducted by the Ombudsman with Councillor Beynon, Councillor Beynon said that he had shared one image to four other people in a Facebook Messenger chat group, but he did not share this image publicly or in a public group. That image was not pornographic.

25.6 In his live evidence to the Case Tribunal, Councillor Beynon said that he did not recall the specific conversation with former Councillor Dowson but Councillor Beynon said that he never shared any video material and that in so far as he spoke to former Councillor Dowson, he would have told him the truth about what happened. He said that the untruths told about him had left him anxious, that his reputation had been impeded and that he found the experience traumatic. He said that his performance as a Councillor had probably been affected.

26. **Findings of fact in relation to the first complaint.**

26.1 Did the Respondent say that Councillor Beynon shared a pornographic video of a girl aged either: 17; or under the age of 17?

26.1.1 The Case Tribunal found that former Councillor Dowson said that Councillor Beynon had shared a pornographic video of a girl aged under 17. The Case Tribunal relied upon the references in the "Voice of Wales" material set out above, in particular to the points where former Councillor Dowson said "The girl was uh teenager, but she wasn't an adult, she was under 17 so..."; and "...that shows the measure of who, who this is, and there seems to be this overriding sexual theme in everything he does

wrong...you know, and it all seems to involve people, minors, or teenagers.”

26.2 Did Councillor Beynon tell the Respondent that, when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17?

26.2.1 The Case Tribunal found that Councillor Beynon did not tell the respondent that when he was 18 years old, he had shared a pornographic video of a girl, aged either 17; or under the age of 17. The Case Tribunal accepted Councillor Beynon’s evidence that he would not have told former Councillor Dowson anything other than what happened. Councillor Beynon was not 18 when the incident occurred. The incident related to photographs, not a video recording. The female person involved was 18. The Case Tribunal could see no reason why Councillor Beynon would have told former Councillor Dowson information that was factually inaccurate. This is particularly true because taking, making or distributing an indecent photograph of a person under the age of 18 is an offence contrary to s.1 of the Protection of Children Act 1978. If former Councillor Dowson’s version of events is correct, Councillor Beynon would have admitted a serious criminal offence to him, and the Case Tribunal finds that he did not do this.

27. The second complaint.

27.1 Following a consultation which ended on 19th July 2019, the Welsh Government published its “Curriculum for Wales guidance” on 28th January 2020. A copy of this document was provided to the Case Tribunal. The Welsh Government published its “Statutory Guidance and Code” for RSE on 21st May 2021 which sets out the draft statutory guidance for and the draft Code on RSE for its new curriculum. The consultation period ended on 16th July 2021.

27.2 On 17th January 2021, on a Facebook page headed “Paul H Dowson, County Councillor”, posted the following.

*“If you are worried about our children’s future watch this RSE. New curriculum for sex education being sneaked in to our schools soon.
It will teach
Masturbation
From age 0-3
It includes teaching 13 year old boys and girls about anal sex. Illustrated by a banana and Nutella.*

*A lot more graphic examples I won't state due to Facebook standards. This is real, I kid you not... the draft document is available on PCP WALES WEBSITE
Would like to hear cllr guy Woodham (cabinet member for education) and the new director of education should share his views too.
Sexual rights from birth. Wtf??"*

- 27.3 On 14th June 2021, former Councillor Dowson sent an email to Councillor Tessa Hodgson, which read, in part, as follows.

Regarding RSE Curriculum. Welsh government are not in full possession of the actual lesson content. They are that ignorant to it they recently suggested that I was spreading misinformation...I am absolutely certain that what I am saying is 100% accurate...The lesson plans really do teach 3 year olds about masturbation. What is good touch and bad touch. It also really does contain lesson plans for 11 years and upwards about bondage, anal sex, facial ejaculation and a lot more...This RSE Curriculum is abuse and has no place in our childrens childhood."

- 27.4 On his Councillor Facebook page, former Councillor Dowson also shared a post written by "Paul Dowson" which read as follows.

*"We also need to say No to this RSE sex education curriculum...mandatory from age 3.
At age 3 they want to teach children about masturbation.
Are we going to let the woke brigade call the shots for our children too?"*

- 27.5 When interviewed by the PSOW Investigating Officer on 31st August 2021, former Councillor Dowson said that it was "absolutely true" that the new curriculum would teach masturbation from age 3, but that it had been decided that children have sexual rights from age 0. The following exchange then took place. LM is the interviewer. PD is the Respondent.

LM: Where, where did you get that information?

PD: I got that from UNESCO and the World Health Organisation, the global rollout of the RSE which has happened in England and in Scotland already, and it comes from material that they've got.

LM: Okay. Is that in any of the Welsh Government documentation?

PD: There's nothing in any of the Welsh Government documentation, apart from generalisation, they haven't, er, they ... well, they won't, er, admit to what the contents are going to be. However, er, there is

a video on line of Caroline Jones Assembly Member referring to the Senedd and her referring to teaching masturbation at age 3 and nobody's disputing it with her.

LM: Well, I don't know whether anyone's disputing it with her or, or not. Um, I did, I did watch the video and I didn't see ... at the end she just asks for the evidence but, um, I'm not sure if the evidence was sent or not.

PD: It hasn't even been drawn up properly in Wales but, er, you know, it's, it's quite easy for, for the Welsh Government to say it's misinformation at the moment because they haven't even drawn it up.

The interviewing officer also asked the Respondent to identify the source of his information in relation to teaching about anal sex using a banana and Nutella. The Respondent referred to hyperlinks which he said took a reader to lesson plans but conceded that they had not been developed by Welsh Government, nor did they refer to Welsh Government. Former Councillor Dowson suggested that there had been a vote in March for the RSE curriculum to go ahead in Wales, "and the RSE curriculum is the UNESCO and World Health Organisation global rollout."

The Respondent doubted that the statement he was being asked about said "0 to 3" and if so, that would be a mistake. Rather, he said, 3-year-olds would be taught about masturbation and children had sexual rights from age 0 to 16. This was part of the curriculum "that they have adopted to implement".

LM: Okay. So, if the Welsh Government haven't drawn it up yet, how can you say that what it will and will not include if it's not been drawn up yet?

PD: Because the framework has to include what I have said, how they deliver it is up to them.

LM: Okay. And where, where does it state that the Welsh Government must, er, include every element of this framework?

PD: In the UNESCO and the WHO, um, information that's provided in those hyperlinks.

28. **Findings of fact in relation to the second complaint.**

28.1 Were the Respondents statements about the content of the RSE curriculum true?

28.1.1 The Case Tribunal found that the Respondents statements about the content of the RSE curriculum were not true. The Tribunal was provided with a massive quantity of documentation. The Tribunal accepted the PSOW's submission that the available material provided no credible evidence to suggest that the Welsh Government or the Senedd intended to include in the curriculum the content which former Councillor Dowson has said it will include.

28.1.2 The Case Tribunal also accepted the submission that when pressed in interview, former Councillor Dowson could not identify any Welsh Government or Senedd documentation to prove his point because as he conceded, at that point, the RSE curriculum had yet to be drawn up. The Welsh Government "Curriculum for Wales" guidance makes no mention of the lesson plans which former Councillor Dowson says will be taught.

28.1.3 In the Listing Directions for the final hearing, former Councillor Dowson was asked to specifically identify those passages in the served documents which proved that his statements were true. He chose not to engage with the Tribunal any further.

29. The third complaint.

29.1 On 12th April 2021, The Pembrokeshire Herald published a post on Facebook headed "Dowson dissents on new CEO". The post gave rise to several responses. One of those responding was Mr Timothy Brentnall, who used the name "Timothy Stjohn", "St John" being his middle name. Former Councillor Dowson joined the thread to communicate with Mr Brentnall. According to Mr Brentnall, the following exchange took place.

Paul Dowson. *Timothy Stjohn get a grip I get you don't like me because I don't share your opinions. But don't get taken in by someone else's hate campaign. That pic was a selfie with a wall mural I'd just put up.*

Timothy Stjohn. *no Pauly, it's not that you don't share my opinions, that's not why I don't like you. I don't like you because you're a racist bigot, that's why I don't like you.*

Paul Dowson. *Timothy Stjohn what a t**ser. I heard you are on the register but it's not been proven so I'm not spreading it around. Better man than you.*

29.2 In his initial complaint, made on 16th April 2021, Mr Brentnall said that during the discussion, former Councillor Dowson called him a “tosser” (which he then edited to “t**ser”) and tried to suggest that he was a convicted sex offender. He provided a screenshot of the edit history for the exchange and the exchange itself.

29.3 On 21st April 2021, former Councillor Dowson responded to the complaint by email to the Ombudsman. He attached screenshots which contained text identical to that provided by Mr Brentnall, in particular the comment “I heard you are on the register”.

29.4 In an email on 18th May 2021 responding further to the complaint and its investigation, former Councillor Dowson said this.

His reference to the register being a sec (sic) offenders register is nothing more than his own interpretation of it. There are numerous registers but he automatically assumed it was the sex offenders register.

29.5 Former Councillor Dowson was interviewed by the Investigating Officer (LM) in relation to Mr Brentnall’s allegations on 1st September 2021. He said this.

LM: Okay. So, why did you refer to him being on the register in that comment thread?

PD: That, by the way, was the Antifa Register, not the Sex Offenders Register. If he chose to take it that way, that's not my fault.

LM: What do you mean by the Antifa Register?

PD: There's an unofficial register going round, with all the Antifa members in Pembrokeshire who are openly abusing people online. Somebody decided to make a page called the Antifa Register, where they're all named and shamed.

LM: Okay. So, when someone would read that comment, do you think they would think you were referring to the Antifa Register or the Sex Offenders Register?

PD: It all depends who they are and what they know about the Antifa Register.

LM: Okay. Is there anywhere within that thread where you refer to it being the Antifa Register?

PD: No, not at all.

LM: Okay, so what ... If you were referring to the Antifa Register, is there any reason why you didn't specifically refer to that?

PD: Because Mr. Stjohn, or whatever his real name is, is well aware of the Antifa Register, so he would know exactly what I'm on about.

Towards the end of the interview, former Councillor Dowson was asked if he had anything else to add. He declined to do so.

- 29.6 In an email to the Ombudsman on 13th December 2021, former Councillor Dowson forwarded a screenshot of his exchange with Mr Brentnall which reads as follows at the point in issue.

***Paul Dowson.** Timothy Stjohn what a t**ser. I heard you are on the Antifa register but its not been proven so I'm not spreading it around. Better man than you.*

- 29.7 Former Councillor Dowson's comments have subsequently been deleted and cannot now be accessed.
- 29.8 Mr Brentnall gave live evidence to the Case Tribunal in which he confirmed that the Respondent used the phrase "on the register" and therefore not "on the Antifa register".

30. Findings of fact in relation to the third complaint.

- 30.1 Did the Respondent post on Facebook that he "heard" that Mr Brentnall was "on the register"; or "on the Antifa register"?

- 30.1.1 The Case Tribunal accepted the PSOW's submission that the Respondent posted on Facebook that he "heard" that Mr Brentnall was "on the register"; and not "on the Antifa register". The Case Tribunal accepted Mr Brentnall's oral and written evidence. The document that former Councillor Dowson himself sent to the investigation on 21st April 2021, only a matter of days after the event did not include the word "Antifa" and therefore supported Mr Brentnall's version of events. That

submission was further bolstered by the evidence of the Respondent's other early correspondence on the point, and his replies in interview, where he himself said that he did not specifically refer to the "Antifa" register.

30.2 IF the Respondent posted "on the register" and not "on the Antifa register", was he referring to registration as a sex offender?

30.2.1 The Case Tribunal found that former Councillor Dowson used the term "on the register" to refer to Mr Brentnall as being a registered sex offender, and thereby to discredit him in a hurtful and harmful way. This was the meaning that Mr Brentnall understood when the term was used against him. The Case Tribunal accepted that is the meaning that any ordinary person would understand by that comment.

30.3 IF the Respondent posted "on the register" and not "on the Antifa register", did he deliberately attempt to mislead the PSOW's investigation by providing a fabricated exhibit?

30.3.1 The Case Tribunal found that former Councillor Dowson deliberately tried to mislead the PSOW's investigation by providing a fabricated exhibit. The Case Tribunal compared the document produced by former Councillor Dowson with the documents provided by Mr Brentnall. The Case Tribunal looked at the context and conversation. It looked again at the document former Councillor Dowson produced within days of the exchange, and his responses in writing and in interview. In the absence of expert evidence, the Case Tribunal did not need to go as far as the PSOW suggested in submitting that the document looked inauthentic. The rest of the evidence demonstrated that the inclusion of the word "Antifa" in the later document produced by former Councillor Dowson was a deliberate later addition, designed to mislead the Ombudsman.

31. **Findings of whether material facts disclose a failure to comply with the Code of Conduct.**

31.1 Paragraph 4(c) of the Code of Conduct reads as follows.

You must — (c) not use bullying behaviour or harass any person.

31.2 Paragraph 6(1)(a) of the Code of Conduct reads as follows.

You must — (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

- 31.3 The Case Tribunal found that the first complaint relates to two people whose complaints are similar in that in each case, former Councillor Dowson used social media to say in public that each person had behaved criminally. After Mr Marc Davies told former Councillor Dowson in September 2020 that he had not been convicted of any offences, as had previously been suggested, former Councillor Dowson later used Twitter to wrongly allege that Mr Davies was a violent criminal who breached parole. He made similar allegations during the PSOW's investigation. In Councillor Beynon's case, former Councillor Dowson alleged that Councillor Beynon engaged in serious criminal conduct, namely the posting of criminally indecent images. Neither allegation was true.
- 31.4 In the case of Mr Marc Davies, the Case Tribunal took the view that former Councillor Dowson did not care whether what he said was true or false and at best took no steps to determine the truth until Mr Marc Davies made a complaint and the Respondent was aware that he would have to answer it. In Councillor Beynon's case, the Case Tribunal took the view that former Councillor Dowson relied for credibility upon his untrue version of a conversation he had with Councillor Beynon, knowing that it was untrue. To that lie, he added others, again to bolster his credibility and to make life worse for a fellow elected Member.
- 31.5 Making such serious, false allegations against, on the one hand a member of the public, on the other, a fellow elected Member brought not only the office former Councillor Dowson held into disrepute but also the Council itself. The potential and actual reputational damage for both the office holder and the Council are obvious. In each case, former Councillor Dowson's actions demonstrated a wilful disregard for the truth. In the case of Mr Marc Davies, former Councillor Dowson continued with his statements even after he had been challenged. In the case of Councillor Beynon, former Councillor Dowson sought to justify his comments by reference to a conversation that never happened, at least in the manner that he suggested it did
- 31.6 In each case, former Councillor Dowson's behaviour also amounted, by reason of repetition to bullying against Councillor Beynon; and harassment against Mr Marc Davies. As the PSOW submitted and the Case Tribunal accepted, bullying can be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour; and that bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to confidence and capability, and may adversely affect their health. The Case Tribunal found that former Councillor Dowson's behaviour towards Councillor Beynon fell four-square within this definition.

- 31.7 Similarly, as the PSOW submitted and the Case Tribunal accepted, harassment is repeated behaviour which upsets or annoys people. The Case Tribunal found that former Councillor Dowson's behaviour towards Mr Marc Davies fell four-square within this definition.
- 31.8 Former Councillor Dowson's behaviour towards both Mr Marc Davies and Councillor Beynon do not come within the ambit of free speech protected by Article 10 of the Convention. His comments about each were directed towards each personally. They were not aspects of "political expression" and were in any event, not merely offensive but grossly offensive, and therefore not protected by Article 10.
- 31.9 Accordingly, the Case Tribunal found that on the first complaint, in respect of both Mr Marc Davies and Councillor Beynon, former Councillor Dowson's behaviour amounted to breaches of paragraphs 6(1)(a) and 4(c) of the Code of Conduct.
- 31.10 In relation to the second complaint, the Case Tribunal found this to be a further example of former Councillor Dowson representing something as true when he had no grounds to do so, from a position of authority on a subject that had the capacity to wrongly cause serious alarm to both his constituents and members of the public. That brought both his office and the Council into disrepute, particularly when taken as part of his wider course of similar conduct.
- 31.11 Considering again the question of whether former Councillor Dowson's comments came within the ambit of free speech protected by Article 10 of the Convention, the Case Tribunal agreed with the PSOW's submission that whilst Article 10 protects the right to make incorrect but honestly made statements in a political context, it does not protect statements which the publisher knows to be false. As he admitted in interview, former Councillor Dowson knew that he had no real foundation for his assertions about the future RSE curriculum.
- 31.12 In the absence of same, the Case Tribunal found that his comments were directed to cause shock and outrage, rather than to honestly inform the public and so were not protected by Article 10. They amounted to wilful misinformation. The Tribunal was fortified in this decision by its decisions in relation to the nature of former Councillor Dowson's behaviour towards Councillor Beynon, Mr Marc Davies and Mr Timothy Brentnall. His comments on the RSE curriculum can be seen as part of a similar pattern of behaviour.

- 31.13 Accordingly, the Case Tribunal found that on the second complaint, that former Councillor Dowson's behaviour amounted to a breach of paragraph 6(1)(a) of the Code of Conduct.
- 31.14 In relation to the third complaint, the Case Tribunal found this to be a further example of former Counsellor Dowson suggesting serious criminal conduct by a member of the public when he had no cause or grounds to do so. To allege for no reason that a person is a registered sex offender can do no other than bring both the Council and the officer holder into disrepute, given the potential for loss of public confidence caused by such behaviour. To seek to justify that behaviour by misleading an investigation and relying upon a fabricated exhibit can again do nothing other than bring both the office holder and the Council into disrepute.
- 31.15 Former Councillor Dowson's behaviour towards Mr Timothy Brentnall does not come within the ambit of free speech protected by Article 10 of the Convention. His comments were directed towards Mr Brentnall personally. They were not aspects of "political expression" and were in any event, not merely offensive but grossly offensive, and therefore not protected by Article 10.
- 31.16 The Case Tribunal therefore found breaches of paragraph 6(1)(a) of the Code of Conduct in relation to both aspects of the third complaint.
- 31.17 All the Case Tribunal's findings were unanimous.

32. Submissions on action to be taken.

- 32.1 Ms Shaw brought to the Case Tribunal's attention a report of a decision of the Standards Committee of Pembrokeshire County Council that took place in a hearing on 9th June 2022, when former Councillor Dowson was censured for behaviour on social media that breached paragraph 6(1)(a) of the Code of Conduct and other provisions. Former Councillor Dowson was not re-elected to office in May 2022, so by the time that hearing took place, the sanction passed was the maximum sanction available. The Committee noted that had former Councillor Dowson been re-elected, it was highly likely that he would have been suspended from office.
- 32.2 Ms Shaw directed the Case Tribunal's attention to the Sanctions Guidance, issued by the President of the Adjudication Panel for Wales under s.75(10) of the Local Government Act 2000. She outlined the role of the ethical framework in promoting high standards of public trust and confidence and noted the purpose of the sanctions regime as set out in

paragraph 18 of the guidance. She also noted that sanctions had to be applied in a fair and proportionate fashion, taking into account the public interest in maintaining public confidence in local democracy.

- 32.3 Ms Shaw directed the Tribunal to paragraph 33 of the guidance and the five-stage process prescribed therein. She noted that the Tribunal had returned five findings that former Councillor Dowson had brought both his office and the Council into disrepute. She also noted the evidence of actual and further potential harm to Mr Marc Davies, Councillor Beynon and Mr Brentnall.
- 32.4 Given that former Councillor Dowson is no longer an elected member of the Council, the Case Tribunal had a binary choice: either to take no action or to pass a period of disqualification from being or becoming a member of Pembrokeshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000. Ms Shaw accepted that the lack of any other sanction did not mean that the Tribunal should simply proceed to disqualification by default; and that this sanction should only be imposed if it was justified. Given the consequences and the seriousness of the breaches, Ms Shaw submitted that it was not appropriate to take no action and that disqualification was appropriate.
- 32.5 In terms of mitigating circumstances, Ms Shaw asked the Case Tribunal to consider the fact that former Councillor Dowson had served a relatively short length of service, having been in office since May 2017; that he had apologised to Mr Marc Davies in February 2021; and that he had co-operated with the process for example by being interviewed.
- 32.6 In terms of aggravating circumstances, Ms Shaw agreed that the Tribunal should be careful not to double-count as aggravating those features which were already considered as elements of the case proved. These were serious, numerous repeated breaches of the Code. The elements of dishonesty and the provision of misleading information were serious aggravating factors. Former Councillor Dowson had demonstrated a lack of acceptance of the wrong he had done and very little concern and reckless disregard for the consequences to others.
- 32.7 Ms Shaw submitted that in the circumstances, disqualification was proportionate, given that the behaviour to be sanctioned was at the very serious end of the scale. There are no comparable cases. The next elections for office will take place in 2027.

33. The Case Tribunal's decision.

- 33.1 Having applied the five-stage process directed in the sanctions guidance and having assessed the seriousness of the breaches and consequences for the individuals concerned and the Council, the Case Tribunal identified that disqualification was both appropriate and proportionate given the number of findings of disrepute; the gravity of each finding; the gravity of those findings when taken cumulatively; their persistence; and the serious potential and actual consequences for the complainants. The Case Tribunal agreed with the PSOW's submission that former Councillor Dowson's conduct called into question his fitness for public office.
- 33.2 Former Councillor Dowson may, at one time, have made some manner of apology to Mr Marc Davies but it was much too late to count seriously as mitigation. There was no such apology to Councillor Beynon, who had suffered real and serious personal and professional harm. Rather than apologise to Mr Brentnall, former Councillor Dowson had tried to explain his actions by using fabricated evidence.
- 33.3 The Case Tribunal considered mitigating features. Although former Councillor Dowson was relatively newly elected, the Case Tribunal did not consider his length of service to be mitigation. These were not trivial failures that could be explained by lack of knowledge or experience. His co-operation with the investigating authority was noted but very seriously undermined by his provision of a fabricated exhibit and his attempts to brazen out much of this case.
- 33.4 Former Councillor Dowson has been found to have bullied Councillor Joshua Beynon; harassed Mr Marc Davies and brought both his office and Pembrokeshire County Council into disrepute on five occasions. He alleged that Mr Marc Davies was a violent criminal when he was not. He alleged that Councillor Beynon distributed criminally indecent material when he did not. He alleged that Mr Timothy Brentnall was a registered sex offender when he was not. He alleged that the Welsh Government's relationships and sex education curriculum was to teach subject matter that it did not. He sought to undermine part of the investigation into him by relying on a fabricated exhibit and misleading the investigating authority.
- 33.5 This conduct, when taken together with the actual and potential further consequences for both the individuals concerned and the Council is so serious that disqualification is a reasonable and proportionate outcome. It is the only fair outcome.

- 33.6 Ms Shaw, in fairness to the Respondent, set out some possible mitigating features, however the Case Tribunal was unable to give them weight for the reasons set out above.
- 33.7 The Case Tribunal was careful not to double count those inherent facts of the breaches as additional aggravating features. The most recent, separate finding against former Councillor Dowson does him no credit but was distinct enough to be kept to one side.
- 33.8 The Case Tribunal found that the aggravating circumstances included: -
- 33.8.1 The repeated nature of the breaches and the findings of disrepute.
- 33.8.2 The lack of understanding of the consequence of misconduct for others.
- 33.8.3 The fact that former Councillor Dowson showed very little concern for those about whom he made allegations.
- 33.8.4 The fact that he sought to blame others for his faults.
- 33.8.5 He sought to blame Mr Timothy Brentnall for producing false documents, rather than admitting his own dishonesty.
- 33.8.6 He sought to blame Councillor Beynon for telling him what he repeated, even though no such conversation took place.
- 33.8.7 His behaviour demonstrated deliberate and reckless conduct with little or no concern for the Code of Conduct.
34. The Case Tribunal therefore decided unanimously that former Councillor Paul Dowson should be disqualified for three years from being or becoming a member of Pembrokeshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000, with effect from the date of this notice.
35. The Respondent has the right to seek the leave 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.
36. Pembrokeshire County Council and its Standards Committee are notified accordingly.

TOM MITCHELL

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Chairperson of the Case Tribunal

SUSAN HURDS

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Panel member

DEAN MORRIS

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Panel member

16th September 2022

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**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/009/2021-22/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE
CODE OF CONDUCT**

RESPONDENT: Former Councillor Caryl Vaughan

RELEVANT AUTHORITY(IES): Llansantffraed Community Council

(Principal authority – Ceredigion 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 As former Cllr Vaughan did not respond to the Public Services Ombudsman for Wales' ("the Ombudsman") reference, the Tribunal determined its adjudication by way of written representations and the evidence available to it at a meeting on 24 June 2022 by virtual means as it considered it to be in the interests of justice to do so.
- 1.3 When the term "the Ombudsman" is used, it is a reference to either the previous Ombudsman (Mr Nick Bennett) or the current Ombudsman (Ms Michelle Morris) or their staff. During the course of this matter, the officeholder changed but it did not affect any substantive issue to be considered by the Tribunal. It does though explain the mixed use of "*he*" and "*she*" when referring to the Ombudsman in this decision.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 7 March 2022, the Adjudication Panel for Wales ("APW") received a referral from the Ombudsman in relation to allegations made against former Cllr Vaughan. The allegations were that former Cllr Vaughan had breached Ceredigion County Council's Code of Conduct paragraph 6(1)(a), applicable to the relevant authority's members and co-opted members, by committing a criminal offence and her surrounding actions while holding the office of Councillor, and allegedly being responsible for the generation of

adverse publicity. The Ombudsman's position is that these actions breach the Code of Conduct and brought both the office of Councillor and Llansantffraed Community Council into disrepute.

- 2.1.2 The Case Tribunal declined to consider if paragraph 6(1)(b) of the Code of Conduct has been breached as initially indicated by the President following her review of the reference. The Case Tribunal unanimously concluded that as the provision referred to reporting the possible criminal conduct of "*another member*", if this provision was meant to deal with self-reporting, it should state this unambiguously.
- 2.1.3 The background to the reference is that former Cllr Vaughan signed her declaration of acceptance of office as a member of Llansantffraed Community Council on 7 May 2019. Three days later, on 10 May 2019, she was involved in an incident with the Council's Contractor (a private individual who will be referred to as "the Contractor"), in which she drove her car at speed on private land at the Contractor while he was undertaking his duties for the Council. Former Cllr Vaughan was acting in her private capacity at the time of the incident. Her car struck two minors during the incident; at least one suffered bodily harm. The evidence suggests the Contractor and the minors were distressed by what had occurred.
- 2.1.4 Police investigated the incident between Former Cllr Vaughan and the Contractor. She continued in her role as a Councillor after the incident and after pleading guilty to the offence. Former Cllr Vaughan was charged with causing bodily harm by wanton and furious driving contrary to Section 35 of the Offences against the Person Act 1861. Former Cllr Vaughan pleaded guilty to the offence on 14 October 2020. She was sentenced on 9 December 2020 to a suspended sentence of 10 weeks' imprisonment, and her driving licence was endorsed with 8 penalty points; she was also required to pay a victim surcharge of £128. The sentence fell short of automatic disqualification from the office of councillor (Section 80A of the Local Government Act 1972 says that a sentence of three months or more disqualifies a person from the office of councillor).
- 2.1.5 Former Cllr Vaughan's sentencing attracted local media interest. She continued in her role as a Councillor after her sentencing. Former Cllr Vaughan resigned from the Council on 22 December 2020 after adverse media reports about the incident and her conviction. Former Cllr Vaughan sought advice from the Clerk, and did not report her own conduct to the Monitoring Officer or the Ombudsman. The other councillors also did not report her possible criminal offence to the Ombudsman, following advice from the Clerk which made no reference to the requirement to do so under paragraph 6(1)(b) of the Code.

2.2 The Councillor's Written Response to the Reference

- 2.2.1 Former Cllr Vaughan did not respond to the reference. The only response received from her was to the Ombudsman in an email dated 18 November 2021, refusing to attend an interview:

"I wish not to attend the interview as its a busy time for me with work commitments and unable to find time that would be adequate for the interview. I would like to draw a line underneath it all and move forward. I joined the parish council to have a young voice representing the village and after discussing with the clerk and other people was better to resign to avoid the interviews as for me would feel more pressure and would not be worth the worrying and stress."

- 2.2.2 The Tribunal gave former Cllr Vaughan a further opportunity to make any submissions she wished to make to it by 23 May 2022; she failed to do so.

2.3 The Ombudsman's Written Representations

- 2.3.1 In a letter dated 4 May 2022, the Ombudsman made further submissions. She referred the Tribunal to the report produced by her predecessor in relation to the facts and whether there was a breach of the Code of Conduct.
- 2.3.2 The additional submissions were regarding the action to be taken if a breach of the Code was found. The Ombudsman said that former Cllr Vaughan's alleged misconduct was serious and affected minors. She accepted that at the time of the offence, former Cllr Vaughan had only been a councillor for three days, but highlighted her failure to realise the seriousness and consequences of her actions, her failure to co-operate with the Ombudsman's investigation, the lack of remorse and reflection, and the media interest generated by her offence. The Ombudsman submitted that the appropriate sanction was disqualification, saying that such a sanction would be fair, proportionate and in the public interest to maintain confidence in local democracy.

3. FINDINGS OF FACT

- 3.1 The Case Tribunal found the following **undisputed** material facts:
- 3.1.1 The matters outlined in paragraphs 2.1.3 to 2.1.5 were all undisputed and are found as facts.
- 3.2 There were no **disputed** material facts.

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

4.1 The Respondent's Submissions

4.1.1 Former Cllr Vaughan made no submissions.

4.2 The Ombudsman's Submissions

4.2.1 It was contended by the Ombudsman that former Cllr Vaughan did not resign after the event, and did not self-refer her actions for him to consider. It was pointed out that it was not until there was adverse local publicity, sometime after she was sentenced, that former Cllr Vaughan resigned her post; the Ombudsman submitted that this indicated a lack of recognition of the seriousness of her actions and the impact her behaviour and conviction might have on the reputation of her office and the Council. He said it raised also concerns about former Cllr Vaughan's fitness to hold public office.

4.2.2 The Ombudsman noted that the Clerk said that he did not advise former Cllr Vaughan whether she should make a self-referral to my office, but he did advise the Council as a whole that self-referral was an option. The Ombudsman accepted that this unclear advice from the Clerk could be seen as a mitigating factor. However, he remained of the view that given the nature of the criminal offence involving the Contractor, the impact upon the minors hurt in the incident, and the publicity surrounding the incident which refers to the Council indicated that former Cllr Vaughan's actions may have brought her office and the Council into disrepute. The Ombudsman submitted that a reference was necessary and in the public interest as currently former Cllr Vaughan could stand for re-election or be co-opted onto a relevant authority.

4.3 Case Tribunal's Decision

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Llansantffraed Community Council's code of conduct as follows:

4.3.2 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*".

4.3.3 The Case Tribunal found that former Cllr Vaughan's actions brought the office of councillor into disrepute, but not the Council itself. It considered it relevant at this point to make findings about the involvement of the Clerk to the Council and the nature of the adverse publicity in order to make its determination on this issue.

4.3.4 The Clerk to the Council, Mr Denfer Morgan, in the witness statement provided to the Ombudsman's investigation officer on 26 August 2021, said that he recalled mentioning the Ombudsman's complaints procedure to former Cllr Vaughan in case a complaint was made to the

Ombudsman after the incident that gave rise to the offence of which she was convicted. Mr Morgan said that he did not indicate to former Cllr Vaughan that he would make a reference to the Ombudsman (and he did not). Mr Morgan confirmed that some councillors had asked him about the complaints procedure, and he told them about it by email on or around 8 July 2020 and 15 December 2020. In his email to those members, the Tribunal noted that Mr Morgan failed to tell them about the requirements of paragraph 6(1)(b) of the Code and referred to a case where the accused councillor did not plead guilty and was found not guilty by a court.

- 4.3.5 Mr Morgan in his statement said that the advice he gave former Cllr Vaughan when her criminal case first went to court was not to refer the matter to the Ombudsman; he accepted that this advice was influenced by difficulties with the Contractor's contract with the Council. Mr Morgan explained that he and former Cllr Vaughan had discussed the options of self-referral, the possibility of a complaint and standing down from the office of councillor. Mr Morgan admitted that he told former Cllr Vaughan in a further discussion after her conviction in December 2020 that she would probably be found to have broken the Code of Conduct, so there was no reason for her to go through the Ombudsman's procedures and she should resign. Mr Morgan added that if former Cllr Vaughan had self-referred to the Ombudsman, or if a complaint was made against her and she remained in post as a Councillor, then taking part in an investigation would have been a strain on her.
- 4.3.6 It is evident that Mr Morgan did not inform the members of the Council of their obligation to report the possible criminal conduct of another member under paragraph 6(1)(b) of the Code, even after former Cllr Vaughan pleaded guilty. This omission is wholly unexplained, but it is not the responsibility of former Cllr Vaughan to give such advice. It is further the finding of the Tribunal that Mr Morgan and former Cllr Vaughan were aware that her criminal conduct was likely to be a breach of the Code by December 2020. Given that former Cllr Vaughan pleaded guilty in October 2020, the Tribunal finds that it is likely that former Cllr Vaughan knew much earlier, or should have known, that questions about the effect of her behaviour on whether she had breached the Code of Conduct arose. There is no evidence when Mr Morgan knew of the guilty plea, but his statement says he knew that she intended to plead guilty when the first court date was arranged.
- 4.3.7 Former Cllr Vaughan was not responsible for the advice given to her or the other councillors by Mr Morgan. However, the duty to comply with the Code cannot be delegated to another, including the clerk, by members. The advice given goes some way in the Tribunal's view to explaining why former Cllr Vaughan continued to serve in office and no reference or complaint was made to the Ombudsman at an earlier stage by either her or members of the Council.

- 4.3.8 The Tribunal turned to the alleged adverse publicity. The adverse press coverage disclosed consisted of four articles or letters to the press. One article was in Wales Online on 9 December 2020 headlined “*Farmer lost control of 4x4 moments after furious and 'pathetic' squabble about hedge*”. There was no reference to the Council or that former Cllr Vaughan was a serving councillor in this article. There was a video within the article showing how former Cllr Vaughan had driven. A letter from the parent of one of the minors involved was published in the Cambrian News, entitled “*18 months of hell for my family*” on 16 December 2020. This from the outset mentioned the office held by former Cllr Vaughan and the Council of which she was part, and that the Ombudsman would be receiving a complaint (though the letter writer did not make such a complaint). The third and fourth articles were also published on 16 December 2020 in Cambrian News and TruckerWorld. The article in the Cambrian News did not mention the Council or that former Cllr Vaughan was a serving Councillor. The Tribunal was told that there was an article in Aberystwyth Today on 16 December 2020, but a copy was not available and its contents are unknown.
- 4.3.9 The Tribunal observed from the emails of the Clerk that first contact by the media with the Council appeared to be on or around 8 July 2020. The Council was at that point aware of the likely public interest in the action of former Cllr Vaughan, and the email shows that she was made aware of the interest by the Clerk at that time.
- 4.3.10 The Tribunal found that it was not accurate to say that the adverse publicity regarding former Cllr Vaughan’s criminal act referred to her office as councillor or the Council. The only reference in the articles to the Council was to the Contractor working on its behalf. The only item that made any reference to the office of councillor or the actions of the Council was the letter from a family involved. The publicity generally did not bring the Council into disrepute; what left the Council vulnerable to criticism was its lack of action about former Cllr Vaughan and her continued presence as a councillor. The Code required the members to report the matter to the Ombudsman; the Clerk to the Council did not give the members this advice. Former Cllr Vaughan is not responsible for these failures or the negative publicity in the letter about the Council.
- 4.3.11 The Tribunal therefore focussed its attention on the criminal conduct of former Cllr Vaughan and her continued service on the Council after pleading guilty (and beforehand when she knew what she had done). The Tribunal reminded itself that paragraph 6(1)(a) expressly applies to conduct undertaken in a personal capacity. The case of Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) could not be directly translated into the legal position in Wales where the legislation and the mandatory provisions of the Code sets out in the relevant Welsh Regulations had, by clear wording, spelt out that Paragraph 6(1)(a) extended to a member’s conduct “*at all times and in any capacity*” under paragraph 2(1)(d).

- 4.3.12 The Tribunal considered that the act of driving a car by a councillor at a council Contractor and causing bodily harm to minors as a result, no less than a criminal act, in its own right brought the office held by that councillor into disrepute. The extent of the press coverage and whether it told readers of the office held by former Cllr Vaughan was to an extent irrelevant. What former Cllr Vaughan did was extraordinary and wholly inconsistent with the standard of behaviour for officeholders required by the Code and expected by the public. The public in particular was likely to view such unjustified and dangerous conduct as unacceptable, especially when it was directed at a council contractor undertaking work for the council of which former Cllr Vaughan was a councillor.
- 4.3.13 The Tribunal also considered that former Cllr Vaughan's decision to continue serving as a councillor after committing a criminal act of this nature and after pleading guilty to a serious criminal offence to be conduct bringing the office of councillor into disrepute. It ignored the Nolan principles and the wider Welsh public service principles. It was obvious from the evidence that former Cllr Vaughan only resigned, not because she felt any remorse or shame, but in order to avoid an investigation by the Ombudsman. The evidence of the Clerk demonstrated this. The likely view by the public of such conduct would be that former Cllr Vaughan had no regard or respect for the principles of public service, including integrity, openness, and leadership.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

- 5.1.1 Former Cllr Vaughan made no submissions.

5.2 The Ombudsman's submissions

- 5.2.1 The Ombudsman's submissions are recorded in paragraph 2.3 above.

5.3 Case Tribunal's Decision

- 5.3.1 The Case Tribunal considered all the facts of the case and in particular the seriousness of the breach of the Code of Conduct and former Cllr Vaughan's persistent failure to engage with either the Ombudsman or the APW.
- 5.3.2 The Case Tribunal concluded by unanimous decision that former Cllr Vaughan should be disqualified for 12 months from being or becoming a member of Llansantffraed Community Council or of any other relevant authority within the meaning of the Local Government Act 2000.
- 5.3.3 The Registrar confirmed to the Case Tribunal that the Monitoring Officer had written to say that there were no previous findings of a breach of the Code of Conduct by former Cllr Vaughan.

- 5.3.4 The Sanctions Guidance of the APW issued by the President came into effect from 1 September 2018. It remains in force and was considered by the Case Tribunal. It followed the five-step process set out in paragraph 33 of the Guidance. The Guidance reminded the Tribunal that it should apply the underlying principles of fairness, public interest, proportionality, consistency, equality and impartiality, and respect human rights.
- 5.3.5 The Tribunal first considered the seriousness of the breach and any consequences for individuals and/or the Council. Former Cllr Vaughan had committed a criminal offence, very shortly after becoming a councillor, and two minors had been hurt, though fortunately not significantly. In addition, the evidence shows that of greater impact was the emotional and traumatic consequences on a long-term basis. Their emotional balance, sleeping, and school attendance had been affected, and at least one had to visit a medical practitioner as a result. Flashbacks and nightmares have resulted from the offence. The Contractor himself was distressed, particularly about the effect on the minors involved and the potential consequences of former Cllr Vaughan's actions (that someone could have died). The actions of driving the car had been directed at a Contractor for the Council of which former Cllr Vaughan was a councillor at the time while he was undertaking work for the Council.
- 5.3.6 The Tribunal found that the breach of the Code through the actions of former Cllr Vaughan was particularly serious. It was fortunate that only minor bodily harm and trauma resulted; the Contractor or the minors could have been killed or suffered more serious injuries. The seriousness of former Cllr Vaughan's actions were compounded by her inability to see what she had done was wrong as shown by her statement to the police following the incident that *"no-one will make a complaint against me...my conduct is perfectly lawful"*. Former Cllr Vaughan continued in office after she pleaded guilty, which indicated a lack of insight and undermined the respect for the office in which she served, a potentially serious consequence for local democracy.
- 5.3.7 The Tribunal then considered the broad type of sanction that it considered most likely to be appropriate having regard to the breach. It bore in mind that as former Cllr Vaughan had resigned from her office, its options were limited to no action or disqualification; if former Cllr Vaughan was still in office, suspension would have been an option. The Tribunal noted that the sentence imposed on her was close to the level resulting in automatic disqualification. It also bore in mind the provision in paragraph 44 of the Sanctions Guidance:

"If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."

- 5.3.8 The Tribunal considered that the seriousness of the breach and former Cllr Vaughan's conduct was such that it rendered her entirely unfit for public office. It was satisfied that in broad terms, the appropriate sanction was likely to be disqualification.
- 5.3.9 The Tribunal turned to consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration. It has already noted that former Cllr Vaughan had only been in office for three days before she committed the criminal offence; it was unlikely that she had received any training regarding the Code of Conduct in such a short time. However, overall she had been in office for approximately 18 months, which would have given her an opportunity to attend such training.
- 5.3.10 The Tribunal also reminded itself of the advice given by the Clerk to the Council. Councillors are encouraged to seek the advice of the Clerk, who is meant to either advise or signpost councillors to the information they require, though this does not mean a councillor can delegate their own responsibility to comply with the Code to the clerk. However, in the view of the Tribunal, once former Cllr Vaughan decided to plead guilty to the offence and officially accept her culpability, it was for her to consider her position and whether she should self-refer to the Ombudsman. The conviction and the sentence did not result in her resignation. The Clerk's advice to resign was very late in the day and only after adverse publicity was generated about former Cllr Vaughan herself. The focus of that advice was about what was best for former Cllr Vaughan, not for the Council or the need to maintain confidence in local democracy. Mr Morgan failed to address the impact on the office of councillor and the council itself of a councillor who had been convicted of an offence continuing to serve without making a referral to the Ombudsman.
- 5.3.11 Former Cllr Vaughan's decision to remain in office without making a referral to the Ombudsman was in part explained by the advice she received from the Clerk, but her responsibility was not wholly expunged by this. The Tribunal considered the advice given by the Clerk to be a mitigating factor for former Cllr Vaughan but the failure to reflect for herself on her conduct and the lack of insight into her criminal act and the likely impact on the office of councillor and Council was viewed as an aggravating factor. Her conduct underlying the criminal conviction was in the view of the Tribunal "*deliberate or reckless conduct with little or no concern for the Code*" (paragraph 42 subsection x Aggravating factors, Sanction Guidance).
- 5.3.12 It was also an aggravating factor that former Cllr Vaughan resigned in the view of the Tribunal not because she had brought the office of councillor into disrepute or had behaved in a thoroughly reprehensible way towards the Contractor, but to avoid the Ombudsman's investigation (as shown by the Clerk's evidence). In addition, no apology to the Contractor or the minors has been given as far as the

Tribunal is aware, and former Cllr Vaughan chose not to co-operate with either the Ombudsman's investigation or these proceedings. The Tribunal concluded that former Cllr Vaughan's behaviour as a whole demonstrated no insight into or manifestation of the Nolan principles, despite her signed declaration that she would "*duly and faithfully fulfil the duties of it according to the best of my judgement and ability*" and comply with the Code.

5.3.13 The Tribunal considered any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of sanctions. It considered that no further adjustment was required and the appropriate sanction remained disqualification.

5.3.14 The Tribunal turned to consider the length of the disqualification period. It concluded unanimously that a period of 12 months was appropriate. It bore in mind other decisions of the APW where councillors had been disqualified, the seriousness of former Cllr Vaughan's breach and the need to maintain public confidence in local democracy. The Tribunal observed that cases where the period of disqualification exceeded 12 months tended to involve significant or extensive bullying and harassment or egregious conduct such as standing for election when already disqualified. It also bore in mind the events underlying the criminal conduct and the advice given to former Cllr Vaughan by the Clerk. If former Cllr Vaughan had remained in office but shown real remorse and insight, it was possible a sanction of suspension for 12 months would have been imposed. Taking all these matters into account, the Tribunal resolved on a 12-month disqualification period.

5.3.15 The Tribunal, having considered the above, confirms that its decision regarding the action to be taken is that former Cllr Vaughan is disqualified from holding public office in a relevant authority for a period of 12 months from 24 June 2022.

5.4 The relevant authority and the Standards Committee of the Principal Authority are notified accordingly.

5.5 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.

6. CASE TRIBUNAL RECOMMENDATIONS

6.1 The Case Tribunal makes the following recommendation(s) to the authority:

6.1.1 That all current councillors of Llansantffraed Community Council attend training on the Code of Conduct within a period of three months from today (to be provided by the Monitoring Officer, her delegate, One Voice Wales or any other appropriate provider) to ensure that they understand these provisions, including paragraph 6(1)(b);

6.1.2 That Llansantffraed Community Council considers requiring the attendance at such training by the Clerk to the Council.

Signed: C Sharp

Date: 27 June 2022

Tribunal Judge C Sharp
Chairperson of the Case Tribunal

Dr G Jones
Panel Member

Mr D Morris
Panel Member

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DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/0010/2021-022/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Former Councillor Gordon Lewis

RELEVANT AUTHORITY: Pencoed Town Council

1. INTRODUCTION

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales ('APW') considered a reference in respect of the above Respondent, which had been made by the Public Services Ombudsman for Wales ('the Ombudsman').
- 1.2 On 23rd March 2022, the Tribunal Registrar wrote to the Respondent in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, requiring a written acknowledgement to indicate whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.
- 1.3 On 9th May 2022, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for the parties to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application in this respect.
- 1.4 The Case Tribunal exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 10th June 2022 and was conducted by means of remote attendance technology.

2. ALLEGATION

- 2.1 By letter dated 17th March 2022, the Ombudsman made a referral to the APW and submitted his Report in relation to an Allegation made against the Respondent.

- 2.2 The Allegation was that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct for Members ('The Code') of Pencoed Town Council.
- 2.3 Paragraph 6(1)(a) states that a Member; - *'must not conduct [himself] in a manner which could reasonably be regarded as bringing [his] office or authority into disrepute.'*
- 2.4 The evidence was contained in the Tribunal Bundle which comprised of the Ombudsman's Report and linked correspondence.
- 2.5 The detail of the Allegation was summarised by the Ombudsman in his Report as follows. It was alleged that the Respondent had misled the Town Council as to his eligibility to be a Councillor and that his dishonesty, both when signing the declaration of acceptance of office and during the 1 year and 8 months that he acted as a Councillor, was a serious abuse of office. The Report stated that this went against the principles that underpin the Code. The Report went on to say that the Respondent did not engage with the investigation and did not give any explanation for his actions or show any remorse. The Ombudsman considered that the Respondent's actions were suggestive of a breach of paragraph 6(1)(a) of the Code.

3 PRELIMINARY LEGAL ISSUE

- 3.1 The Listing Directions dated 9th May 2022 identified a preliminary legal issue which the Case Tribunal had to determine as follows: -

'The Respondent and PSOW are invited to provide written submissions on the following question, which will be considered by the Case Tribunal as a preliminary issue. The question for consideration is whether an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members...'

- 3.2 The Respondent did not provide any submissions in response to this Listing Direction. The Ombudsman provided the following response by letter dated 30th May 2022: - *'The PSOW submits that an individual who is disqualified for being a member by reason of the provisions set out in Section 80 of the LGA 1972, and who nevertheless holds office as a member, is subject to the Code of Conduct for Members.'*

In support of this view is Section 82(1) of the Local Government Act 1972, which states that "the acts and proceedings of any person elected to an office under this Act ... and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified". Also the decision in Islington LBC v Camp (1999) WL 33285549 (citing Bishop v Deakin (1936) Ch. 409) supports the position that a councillor who is disqualified who, nevertheless, holds office is validly appointed in that office as a member of the relevant authority and is effective in office as a member of the relevant authority. In view of this, we submit that a member who held a position as a member of the Council, whose membership of a council was valid and effective whilst acting as a

member, is subject to the Code of Conduct and the provisions and duties set out under Part III of the LGA 2000.'

Legislation

3.3 The Case Tribunal firstly considered the legislative background. The relevant statutory provisions referenced in connection with this case and the caselaw cited by the Ombudsman are as follows: -

Local Government Act 1972

Section 80 - Disqualifications for election and holding office as member of a local authority.

'... a person shall be disqualified for being elected or being a member of a local authority if he –

...(d) has within five years before the day of election or since his election been convicted...of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine...'

Section 82 - Validity of acts done by unqualified persons.

... 'The acts and proceedings of any person elected to an office under this Act...and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.'

Section 86 – Declaration by a local authority of a vacancy in office in certain circumstances.

... 'Where a member of a local authority -(a) ceases to be qualified to be a member of the authority, or (b) becomes disqualified for being a member of the authority.... the authority shall, except in any case in which a declaration has been made by the High Court under this part of this Act, forthwith declare his office to be vacant'.

Section 92 – Proceedings for disqualification

... '(1) Proceedings against any person on the ground that he acted or claims to be entitled to act as a member of a local authority while disqualified for so acting within the meaning of this section may be instituted...in the High Court or a magistrates' court if that person so acted...but proceedings...shall not be instituted... after the expiration of more than six months from the date on which he so acted.'

(2) ...the High Court may - (i)...declare that the office in which the defendant has acted is vacant; (ii) grant an injunction restraining the defendant from so acting; (iii) order that the defendant shall forfeit...such sum as the court think fit, not exceeding £50 for each occasion on which he so acted while disqualified...'

Caselaw

3.4 The Case Tribunal carefully considered the caselaw to which the Ombudsman referred. The caselaw does not deal directly with the question of whether an individual disqualified for being a Member, yet acting as a Member, is nevertheless subject to the Code of Conduct for Members. It deals however with connected issue of the legal mechanisms which might be in place to deal with the situation where a disqualified person is elected to office. The caselaw does therefore provide some indication of the way in which the courts would view this particular set of circumstances.

Islington LBC v Camp (1999)

3.5 The question arose as to whether, under the relevant provisions of the Local Government Act 1972, an individual was disqualified for being a member of a council by reason of her employment which was linked to the council and whether the council was entitled to declare the office to be vacant and trigger procedures for a by-election to fill the vacancy. These were different Section 80 grounds to those involving the Respondent.

3.6 There were discussions around election petitions, section 86 declarations (as above) and section 92 proceedings (as above) as means of resolving disqualification issues. The Judge stated that he would be greatly troubled by the idea that, where a disqualifying state of affairs existed at the time of a person's election as a councillor and continued thereafter, there could be no form of challenge to that person continuing to act as a councillor if no election petition had been brought within the short period available for such challenge.

3.7 The Judge acknowledged however that election rules did not provide a complete safeguard. He noted that a dishonest declaration might lead to a criminal conviction giving rise to a separate ground for disqualification, however that would provide only a limited safeguard, since a disqualifying circumstance might well exist even though a candidate made a declaration in good faith to the contrary effect. Ultimately in this case, it was found that there was no remaining legal mechanism which allowed the office of Member to be declared vacant.

Bishop v Deakin [1936] Ch 409

3.8 This was an action to obtain a declaration that the defendant, who was acting as an elected councillor, was disqualified from acting, so that her office was deemed vacant. The same grounds for disqualification as for the Respondent were in play, albeit under predecessor provisions. The case dealt with the connected question of whether a relevant conviction and sentence prior to election disqualified a person for being a member [the Tribunal's emphasis] of a local authority, as well as from being disqualified for being elected.

3.9 The parties agreed that the election itself could only have been called into question by election petition and that opportunity had passed. The judge applied a 'disjunctive' construction to the particular provision. That is, conviction within five years *before* the date of election disqualified the individual only for election.

Conviction *after* election disqualified the individual for continuance in office only; so that a pre-election conviction was not a ground of disqualification for continuance in office [the Tribunal's emphasis].

3.10 It was therefore held that the defendant in this case, notwithstanding her disqualification for election, was not disqualified from acting as a member [the Tribunal's emphasis] of the local authority. The Judge stated that, even assuming he was wrong on this issue, he didn't consider that the declaration proceedings had been instituted within the necessary timescale.

Rex v Beer [1903] 2 K.B 693

3.11 This case is referenced in the cases above and related to an individual who was disqualified for bankruptcy pre-election. A type of warrant was issued to remove the individual from holding the office of councillor in order for the office to be declared vacant. The conclusion Lord Alverstone C.J reached in the case was that this warrant remedy could still be relied upon.

3.12 Channell J stated; *"It is settled law that, if an office is full in fact, there cannot be a writ of mandamus to hold a [fresh] election on the ground of disqualification of the holder, at any rate not if the office is such that a writ of quo warranto would lie in respect of it, in which case it would be necessary to make use of that mode of procedure in order to get the holder out of the office before applying for a mandamus to hold a fresh election, and therefore we discharged the rule for mandamus, for whether Mr Beer is qualified to hold the office of councillor or not, he is the holder de facto."* [the Tribunal's emphasis].

The Case Tribunal's decision on the Legal issue

3.13 The settled case-law therefore recognises that disqualification under Section 80(1)(d) does not automatically lead to the removal of the status of 'Member'. Indeed, it recognises that an individual continues to act in that role de facto, unless a further step is taken to formalise that disqualification, for example by election petition or resignation. Due to the apparent disjunctive application of Section 80(1)(d) of the Local Government Act 1972, in cases such as the present one, in relation to a relevant conviction and sentence pre-election, the legislative remedies to prevent an elected, although disqualified Member from continuing to act, are very limited.

3.14 The Code definition of 'Member' does not further the debate. as it simply states; *'includes, unless the context requires otherwise, a co-opted member.'* The Case Tribunal has therefore applied the standard ordinary meaning of the word, being an individual who has been elected to be Member of the Relevant Authority and acts de facto in that capacity.

3.15 The Ombudsman submitted that Section 82 of the Local Government Act 1972 was also relevant. The Case Tribunal did not consider that Section 82 was determinative in this debate however. The fact that the actions of a disqualified Member are deemed to be valid and effective, does not in itself alter the status of the individual. The Case Tribunal nevertheless considered that this meant that a

disqualified individual's declaration of acceptance of office and undertaking to abide by the Code were in themselves capable of being valid and effective actions.

3.16 In summary, the Case Tribunal was satisfied that although the Respondent was disqualified from being elected to office under Section 80(1)(d), he nevertheless acted as a Member and there needed to be an intervening step to enable the 'de facto' position to be altered. In other words, prior to resignation, unless an election petition, or action under Sections 86 or 92 of the Local Government Act 1972 were available and had been pursued and successfully concluded, the de facto status as Member would remain.

3.17 In conclusion, the Case Tribunal determined that an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members when continuing to act. The Respondent was elected as a Member and remained a Member within the ordinary meaning of the Code until the date of his resignation, despite his disqualification for being elected (but not necessarily from acting as Member as per the caselaw above.)

3.18 Accordingly, the Case Tribunal found that the Respondent was subject to the Code from the date of his election to the date of his resignation.

4. FINDINGS OF FACT

4.1 The Case Tribunal noted the following Undisputed Material Facts which were referenced in the Ombudsman's Report dated 17 March 2022.

4.2 The Listing Directions dated 9th May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Facts.

4.3 There being no further representations made as to these Undisputed Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Material Facts on the balance of probabilities: -

4.3.1 The Respondent was convicted of three criminal offences in July 2015. He received a suspended prison sentence exceeding three months, without the option for a fine.

4.3.2 In November 2018, the Respondent was disqualified from being elected to the Town Council due to his criminal conviction.

4.3.3 The Respondent stood for election to the role of Member at Pencoed Town Council during November 2018.

4.3.4 The Respondent submitted a Nomination Pack that was accepted by the Returning Officer as a valid nomination on 19 November 2018. In doing so, he falsely claimed to be eligible to stand for election to the role of Member at Pencoed Town Council.

- 4.3.5 The Respondent was duly elected as Member of Pencoed Town Council and signed a Declaration of Acceptance of Office on 29 November 2018. In doing so, Pencoed Town Council was misled into believing he was eligible to do so.
- 4.3.6 The Respondent remained as Member for 1 year and 8 months, undertaking Council business, when he was not eligible for election.
- 4.3.7 An article was published in a national newspaper on 25 July 2020, which referenced the Respondent's criminal conviction.
- 4.3.8 Pencoed Town Council was not aware of the Respondent's criminal conviction until it appeared in a press article in July 2020.
- 4.3.9 The Respondent resigned from his role as Member on 31 July 2020.
- 4.3.10 A complaint was made to the Police that the Respondent had failed to declare a criminal conviction when standing for election. The Police did not take further action due to insufficient evidence as the consent to nomination paper had been destroyed by the Elections Service.
- 4.4. There are no Disputed Facts.

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

- 5.1 The Listing Directions dated 9th May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with the Relevant Authority's Code.
- 5.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle as well as the Material Facts. It noted the Ombudsman's description of the following sequence of events; -
 - 5.2.1 On 16th July 2015, the Respondent was convicted of affray and two counts of common assault. He was sentenced to a total of 16 months imprisonment, suspended for 24 months.
 - 5.2.2 The Respondent stood for election to the role of Town Councillor at the Pencoed Town Council in November 2018. For his nomination to be valid, the Respondent was required to sign a Nomination Paper, which included the following declaration: *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000"*.
 - 5.2.3 The Nomination Paper explained that candidates must not sign the form if they were disqualified from standing and asked candidates to consent that they had

read the Electoral Commission's Guidance on standing for election, as well as the relevant legislation.

- 5.2.4 Part 1 of the Electoral Commission's Guidance set out the criteria that would render a member disqualified from standing for election. In line with paragraph 80(1)(d) of the 1972 Act, it said: *"You cannot be a candidate if at the time of your nomination and on polling day you have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day"*.
- 5.2.5 The Respondent's Nomination Paper was accepted by the Returning Officer as a valid nomination on 19th November 2020. He was elected, unopposed, to the Town Council and signed a Declaration of Acceptance of Office on 29th November 2020, in which he undertook to abide by the Code.
- 5.2.6 On 25th July 2020 an article was published in the Daily Mirror, detailing the Respondent criminal conviction. The Police received a complaint but concluded that, as the Respondent's completed nomination form had been destroyed by Electoral Services, it could not as a consequence be confirmed that a crime had been committed, therefore no further action was taken.
- 5.2.7 On 31st July 2020 the Respondent resigned from the role of Member of Pencoed Town Council and stated that his resignation was to take immediate effect.

The Ombudsman's report submissions

- 5.3 The Ombudsman stated that in order for the Respondent to be able to stand for election, he had to sign the relevant declaration. On the balance of probabilities, the Ombudsman considered that the Respondent had completed that declaration. In going on to also sign the Declaration of Acceptance of Office, he considered that the Respondent had misled the Town Council as to his eligibility to be a Member.
- 5.4 The Ombudsman considered that the Respondent's dishonesty, both when signing the Declaration of Acceptance of Office and during the 1 year and 8 months that he was serving as Member, was a serious abuse of office which went against the principles that underpin the Code of Conduct. He said that, as the Respondent had not engaged with the investigation, he had not given any explanation for his actions or shown any remorse.

The Case Tribunal's decision as to whether there was any failure to comply with the Code

- 5.5 The Case Tribunal noted that the position was absolutely clear that the Respondent was disqualified for being a Member of Pencoed Town Council. It agreed that, on the balance of probabilities, as he had taken up office, he had signed the relevant election document to consent to his nomination. This was regardless of whether the remainder of the documentation had been completed on his behalf by a political group or the persons so nominating him. The Case

Tribunal noted that the relevant form included the following wording directly above the space for the candidate's signature; *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000 (copies of which are printed overleaf)"*. It also noted that a full copy of Section 80 appeared on the next page of the election pack.

- 5.6 The Case Tribunal noted that the Electoral Commission booklet entitled *'Guidance for Candidates'* also included very clear guidance as to the circumstances in which individuals were disqualified for being elected. The Case Tribunal considered that, on the balance of probabilities, the Respondent had received a copy of this publication. The Guidance also provided clear instructions as follows; - *'The full range of disqualifications is complex and if you are in any doubt about whether you are disqualified, you must do everything you can to check that you are not disqualified before submitting your nomination papers. You must be sure that you are not disqualified as you will be asked to sign one of the required nomination papers to confirm that you are not disqualified. It is a criminal offence to make a false statement on your nomination papers as to your qualification for being elected, so if you are in any doubt, you should contact your employer, consult the legislation or, if necessary, take your own independent legal advice. The Returning Officer will not be able to confirm whether or not you are disqualified.'*
- 5.7 The Case Tribunal also noted that the Declaration of Acceptance of Office which the Respondent signed on 29th November 2020 included an undertaking to be guided by the Code in the performance of his functions in the office of Member.
- 5.8 Finally, the Case Tribunal were satisfied that the evidence showed that the Respondent had continued to act in the role of Member for the period 1 year and 8 months until his resignation in July 2020, despite being disqualified for being elected.
- 5.9 The Case Tribunal noted that the misleading *'Consent to Nomination form'* was signed before the Respondent became a Member and became subject to the Code. In view of the caselaw outlined above, the Case Tribunal also appreciated that although the Respondent was disqualified for being elected, he was not necessarily disqualified for being a Member, since his conviction and sentence occurred pre-election.
- 5.10 Despite the above, the Case Tribunal was nevertheless satisfied that the Respondent had been elected on a false premise and likewise that the signature of his Declaration of Acceptance of Office form, his undertaking to abide by the Code and his continuation in office also took place on the same false premise. It considered that the instructions and warnings in the Consent to Nomination form and Guidance to Candidates were so clear, that it was inconceivable that the Respondent was unaware of the fact that he was disqualified from being elected. It considered that his actions were either deliberate or were the result of extreme recklessness and that this deliberate or reckless behaviour continued throughout

his period of office. He either knew that the information he'd provided was false and misleading or was reckless as to that fact.

5.11 The Case Tribunal was satisfied in all the circumstances, that although other public law measures may not have been available to prevent a disqualified Member from acting or to bring the Respondent's de facto status as Member to an end, the Code was nevertheless binding upon the Respondent and he was not absolved from the usual remedies for breach of it. He signed his Declaration of Acceptance of Office and continued to act as Member for a considerable length of time following his election despite being disqualified for being elected. The Case Tribunal considered this to be conduct which could reasonably be regarded as bringing both the Respondent's Office and his Authority into disrepute.

5.12 The Case Tribunal also considered the matter in the light of the Nolan principles which underpinned the Code. It was satisfied that there was an expectation that local authority Members would act with integrity, act in accordance with the trust that the public placed in them, lead by example and act to promote public confidence in their role and in their Authority. The fact that the Respondent was disqualified from being elected and yet continued to act as Member went to the heart of public trust in democracy and undermined the Code and standards regime. The Respondent continued to deal with his constituents and act on a false premise and this constituted a clear breach of paragraph 6(1)(a) of the Code.

5.13 The Case Tribunal noted that the Respondent's conviction and sentence had been highlighted in the national press in July 2020. The conviction and sentence themselves were not a matter before the Case Tribunal, however it appears that this press reporting had uncovered the fact that the Respondent was disqualified for election. As the Respondent had been elected and had continued to act for 1 year and 8 months on a false premise, this would without doubt have attracted significant media and public attention and disquiet, which would inevitably bring both the office of Member and his Authority into disrepute.

5.14 On the basis of the Material Facts and evidence therefore, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Paragraph 6(1)(a) of the Code. It considered that he had conducted himself in a manner which could reasonably be regarded as bringing his office and Pencoed Town Council into disrepute.

6. FINDINGS IN RELATION TO SANCTION

6.1 The Listing Directions dated 9th May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceedings was reached.

6.2 No submissions were made by or on behalf of the Respondent. The Ombudsman wrote in his letter dated 30th May 2022 as follows; *"The purpose of the sanctions regime is to provide a disciplinary response to an individual member's breach of the Code, place misconduct and sanction on public record, deter future misconduct on the part of others and foster public confidence in local democracy."*

If the Case Tribunal finds a breach of the disrepute provision of the Code, the breach involving deliberate deception and dishonesty would amount to a serious breach of the Code and one which requires a significant disciplinary response to deter repetition and to safeguard confidence in public democracy. If proven, the circumstances of this case meet the Case Tribunal's Guidance for the most severe form of sanction of 'disqualification'.

The PSOW submits that the Respondent's conduct by acting as a councillor in the full knowledge that he was disqualified from doing so calls into question the Respondent's fitness for public office and is serious disreputable conduct. The Respondent's failure to engage with the investigation and adjudication process is also an aggravating factor.

The overriding public interest is such that, if proven, the Respondent's conduct suggests that the member is entirely unfit for public office and the PSOW respectfully submits that the Case Tribunal may consider disqualification to be the most appropriate form of sanction."

6.3 The Case Tribunal considered all the facts and evidence. It also had regard to the Adjudication Panel for Wales current Sanctions Guidance. In particular it noted the public interest considerations as follows in paragraph 44; - *"The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact on terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*

6.4 The Clerk to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

6.5 The Case Tribunal considered that the breach was serious in nature as the conduct could reasonably be regarded as conduct which would seriously undermine the public's faith in the Code and the standards regime. As such, it considered that disqualification was an appropriate sanction.

6.6 It noted that the Member had been in office for a lengthy period of time and significant decisions were likely to have been made by the Authority during that period. The Respondent was likely to have participated and voted in such matters and to have received sensitive information in the role of Member, despite being disqualified from being elected. Section 80(1)(d) was in place for a reason, so that an individual would be disqualified for a substantial amount of time if s/he had been convicted and sentenced of certain offences. By nevertheless signing his Declaration of Acceptance of Officer and acting as a Member for 1 year and 8 months, the Case Tribunal considered this to be a matter which merited a significant period of disqualification under the standards regime.

6.7 The Case Tribunal recognised that the Code and standards regime was about upholding standards in public life and an individual being elected to be a Member without legitimacy and continuing to act thereafter seriously undermined democracy and could raise questions about the legitimacy and standing of all local authority Members. The Case Tribunal also noted that this may have denied a legitimate candidate who would otherwise have stood for election.

6.8 In the circumstances, in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a lengthy period of disqualification. It considered that such disqualification would uphold the deterrent effect so that individuals standing for election did so with solemnity, care and integrity.

Mitigating factors

6.9 As the Respondent hadn't engaged with either the Ombudsman or the Adjudication Panel for Wales, it was unclear what, if any, mitigating factors he might wish the Case Tribunal to consider. The Case Tribunal nevertheless considered whether there were any relevant factors as indicated by the Sanctions Guidance. It noted that the Respondent had displayed a degree of recognition of the seriousness of the matter in view of his prompt resignation following press reporting, however there was no evidence of any real insight shown or evidence of any accompanying apology. It also noted the lack of checks and balances in the system which meant the issue was not identified at the outset.

Aggravating factors

6.10 The Case Tribunal considered that the conduct which led to this train of events was either deliberate or reckless. It also noted that there would have been an element of personal gain or political gain in achieving the status of Member. The status was also enjoyed for a lengthy period of time. The Case Tribunal was satisfied that this involved an abuse of a position of trust. It was noted that, as well as the election form, the Declaration of Acceptance of Office and undertaking to abide by the Code were solemn documents that should have been completed with honesty, integrity and extreme care. The election form had an official statement which needed to be read and signed by the Respondent and which would clearly have consequences. Finally, there was no evidence that the Respondent had co-operated or engaged in any way with the Ombudsman's investigation nor indeed with this Tribunal process. The Case Tribunal considered that all of the above were aggravating factors.

6.11 In conclusion, the Case Tribunal considered that it needed to impose a lengthy period of disqualification to reflect the seriousness of the issue and to recognise that they considered that the Respondent was currently unfit to fulfil the office of Member. It considered that he would have caused significant difficulties and embarrassment for his Authority and made a mockery of the standards regime through his actions.

6.12 The Case Tribunal had regard to sanctions imposed in previous cases and to the principle that the sanction imposed should be the minimum necessary to

uphold high standards of conduct in public life and maintain confidence in local democracy. The nature and extent of the breach and the level of culpability of the Respondent in this case, together with the potential consequences of the breach upon democracy, placed this breach amongst one of the more serious cases. The disqualification needed to provide sufficient time for the Respondent to reflect on his conduct before contemplating re-entering local politics.

6.13 As the sanction was a penalty prescribed by law, the Case Tribunal considered that disqualification needed to be of a length which was proportionate in all the circumstances, bearing in mind the public interest and the need to uphold law and justice and to protect the reputation and rights of others in a democratic society.

6.14 The Case Tribunal also considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards regime. It concluded by **unanimous** decision that Former Councillor Lewis should be **disqualified for 24 months** from being or becoming a member of Pencoed Town Council or any other relevant authority within the meaning of the Local Government Act 2000.

6.15 Pencoed Town Council and its Standards Committee are notified accordingly.

6.16 The Respondent has the right to seek the permission of the High Court to appeal the above decision. Any person considering an appeal is advised to take independent legal advice about how to appeal.

Signed C Jones Date 17 June 2022
Chairperson of the Case Tribunal

S McRobie
Panel Member

S Hurds
Panel Member

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