

STANDARDS COMMITTEE

TUESDAY 14 FEBRUARY 2023, WEDNESDAY 15 FEBRUARY 2023 &
WEDNESDAY 12 APRIL 2023

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

Independent Members:

D. Evans (Ph), J. James (Ph) and F. Phillips (Ph 14.02.23 and 15.02.23. R 12.04.23)

Community Member:

Councillor P. Rogers (R 14.02.23 and 15.02.23. Ph 12.04.23)

Councillors:

B.W. Jones (Ph), H. Jones (Substitute) (Ph) and A. Leyshon (Substitute) (Ph)

The following Officers were in attendance:

L. Rees-Jones - Head of Administration and Law / Monitoring Officer (Ph)
R. Edgecombe - Legal Services Manager / Deputy Monitoring Officer (Ph)
M. Davies - Democratic Services Officer (R) (14.02.23)
J. Owen - Democratic Services Officer (R) (15.02.23)
J. Owens Democratic Services Officer [Note Taker] (Ph)
M. Runeckles - Member Support Officer (Ph)
S. Hendy - Member Support Officer (R)
S. Rees - Simultaneous Translator (Ph) (14.02.23 & 15.02.23)
A. Eynon - Simultaneous Translator (Ph) (12.04.23)

Also in attendance:

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

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

In addition to those listed within the minutes, the Committee adjourned proceedings for comfort breaks, as follows:

- **14.02.23:** 10:45hrs – 11:00hrs, 12:28hrs – 13:18hrs, 15:14hrs – 15:25hrs.
- **15.02.23:** 12:27hrs – 13:18hrs, 16:05hrs – 16:10hrs.
- **12.04.23:** 11:10hrs – 11:28hrs, 13:25hrs – 14:30hrs.

Chamber - County Hall, Carmarthen. SA31 1JP and remotely - 10.00 am

1. APOLOGIES FOR ABSENCE.

Apologies for absence were received from C. Evans, Cllr R. James and Cllr G. Thomas.

2. DECLARATIONS OF PERSONAL INTEREST.

There were no declarations of personal interest.

3. FINAL HEARING IN RELATION TO A REPORT ISSUED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES IN RESPECT OF COUNCILLOR TERRY DAVIES.

The Chair welcomed Councillor T. Davies and his representative Mr D. Daycock to the meeting, together with Ms K. Shaw and Ms S. Jones from the Office of the Public Services Ombudsman for Wales (PSOW).

The Committee, at its meeting of the Standards Committee held on 4th August 2022, gave initial consideration to a report issued by the PSOW detailing the results of their investigation into allegations that Councillor Davies had breached the Members' Code of Conduct for Llanelli Town Council, by way of inappropriate behaviour during an interaction with other members on 09 February 2021. The PSOW's investigation concluded that there was evidence to suggest that Councillor Davies failed to comply with the following provisions of the Code of Conduct:

- 4(a) – You must carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion.
- 4(b) – You must show respect and consideration for others.
- 4(c) – You must not use bullying behaviour or harass another person.
- 6(1)(a) – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

The Deputy Monitoring Officer referred the Committee's attention to the Standards Committee Hearing Procedure set out at Appendix 2 of the meeting documentation which required the Committee to determine the findings of fact and whether Councillor Davies' conduct breached the Code of Conduct adopted by Llanelli Town Council, as suggested in the PSOW's report.

The Deputy Monitoring Officer advised the Committee that it should make its determinations based upon the evidence put before the Committee in the form of written and oral witness accounts, together with the legal submissions presented to the Committee and set out within the meeting documentation. As confirmed at the Standards Committee meeting (Pre-Hearing Review) held on 17 November 2022, the undisputed facts were listed in paragraphs 46-55 of the PSOW report and the disputed facts were set out at paragraphs 56-61.

Ms K Shaw, Ombudsman's Representative called four witnesses to provide oral evidence to the Committee in support of the PSOW investigation. Each witness verified to the Ombudsman's Representative that their respective written

statements, as set out in the PSOW's report, provided a true and accurate account of the events that occurred on 09 February 2021. All parties were then afforded the opportunity to further question the witnesses about their evidence.

With the Chair's permission, Mr Daycock was also given an opportunity to question Ms Jones, the Ombudsman's investigating officer, in relation to the conduct of her investigation in the light of Councillor Davies' ill-health and personal circumstances at the time of his interview with her.

The Chair, in accordance with the agreed procedure, thereupon invited Mr Daycock to present any evidence in support of Councillor Davies. In this regard, Councillor Davies provided oral evidence to the Committee in support of his written statement set out Appendix 3 of the meeting documentation. Cllr Davies thereupon presented additional documentation to the Committee in support of his case, and these were subsequently appended to the meeting documentation for the Committee's consideration.

The Meeting was adjourned at 16:57hrs on 14 February 2023 and reconvened at 10:00hrs 15 February 2023.

All parties were afforded the opportunity of asking questions of Cllr Davies on the evidence he had given.

The Ombudsman's Representative and Mr Daycock proceeded, in turn, to address the Committee on the evidence presented. Members of the Committee were afforded the opportunity of asking questions on the representations made.

The Committee, having considered the written and verbal representations:

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. On the balance of probabilities, it was RESOLVED THAT:

- 3.1 Councillor Davies was not subject to a barrage of abuse from Councillor McPherson and Councillor Curry.**
- 3.2 Councillor Davies did not shout during the interaction.**
- 3.3 Councillor Davies did use discriminatory language towards Councillor McPherson and Councillor Curry on 9 February 2021.**
- 3.4 Councillor Davies did tell Councillor McPherson to either "F off" or to "Fuck off".**
- 3.5 Members of the public could have heard the interaction.**
- 3.6 The Facebook post said to be posted on 9 February 2021 was directed towards Councillor McPherson and Councillor Curry, following the Interaction.**

Reasons:

- The Committee received only one example of language which could be considered to be categorised as 'abuse', whereas a 'barrage of abuse' would have contained further examples. On balance the committee felt that Councillor Davies was unable to substantiate the allegation.
- The Committee felt that whilst voices were loud and raised on all sides this did not demonstrate that Councillor Davies had shouted.
- On balance, the Committee preferred the evidence of Councillor McPherson and Councillor Curry over the evidence provided by Councillor Davies regarding the use by him of discriminatory language.
- On balance, the Committee preferred the evidence of Councillor A. McPherson and Mr J. Prosser over the evidence provided by Councillor Davies regarding the allegation that he had sworn at Cllr McPherson.
- The Committee was satisfied that there were people in the park at the time of the interaction and on the balance of probabilities, that the interaction took place close enough to the park that people could have heard what was being said.
- The Committee was satisfied that the wording of the facebook post referred to the 'strong chat' that he had on that day, and therefore it was the view of the Committee, on the balance of probabilities, it referred to the incident with the two Councillors.

The Meeting was adjourned at 17:01hrs on 15 February 2023 and reconvened at 10:00hrs on 12 April 2023.

The Deputy Monitoring Officer referred Committee's attention to email correspondence submitted by the witness Mr Arfon Davies on 11th April 2023 in respect of paragraph 14, page 189 of the meeting documentation put before the Committee at Stage 1 of the proceedings. In this regard, the Committee was informed that Mr Arfon Davies had clarified that the statements made within the paragraph were factually incorrect.

The Chair, in accordance with the agreed procedure, advised that the Committee would need to determine whether Councillor Davies' conduct, as established on the 14th and 15th February amounted to a breach the Code adopted by Llanelli Town Council.

Ms Shaw of the Ombudsman's Office referred to the Code of Conduct for Llanelli Town Council and summarised the Ombudsman's representations set out Appendix 5 of the meeting documentation and explained their relevance to the Committee's deliberations. In this regard the Committee was invited to give due consideration to the following case law within the context of the right of freedom

of expression for politicians under Article 10 of the European Convention on Human Rights (ECHR):

- Sanders v Kingston [2005] EWHC 1145 (admin);
- Heesom v The Public Services Ombudsman for Wales [2014] EWHC1504 (Admin); and
- Calver v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin).

Reference was also made to the Adjudication Panel for Wales' Decision on the case of Councillor Roy Owen (APW-006-2021-022-CT).

The Committee was afforded the opportunity to ask questions and seek clarification on the points made by Ms Shaw.

Representations were then received from Mr Daycock on behalf of Cllr Davies. These re-iterated the points detailed within Appendix 6a and 6b of the meeting documentation. The relevance of the Calver v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) judgement was highlighted to the Committee for consideration during its deliberations within the context of the need for politicians to have 'thicker skin' and the legitimisation of the conduct of politicians during robust discussions on political matters.

The Committee was afforded the opportunity of asking questions and seeking clarification on the representation made on behalf of Councillor Davies.

The Committee, having received the representations:

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.

The Committee reconvened to advise of its decisions and confirmed that

In deciding whether the facts in the case amounted to a breach of the Code, the Committee had followed the 3 stage approach adopted in the case of Sanders v Kingston [2005] EWHC 1145 (admin) and the principles established in the cases of Calver v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) and Heesom v The Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

During its deliberations, the Committee had separately considered whether the use of the words "F off" or "Fuck off" and the discriminatory language attributed to Cllr Davies amounted to a breach of paragraphs 4(a), 4(b) and 4(c) of the code. The Committee had also considered whether Cllr Davies' conduct in both regards breached Para 6(1)(c) by bringing his office and his council into disrepute.

Having regard to all the evidence the Committee.

3.7 RESOLVED that the use of the words 'F Off' or 'Fuck Off' in the context in which they were used amounted to a prima facie breach of paragraph 4(b) of the Code of Conduct– the duty to show

respect and consideration to others, but did not amount to a breach of paragraphs 4(a) or 4(c) of the Code of Conduct.

Reasons

- The Committee had considered whether those words amounted to political expression which attracted an enhanced level of protection under Article 10 of the European Convention of Human Rights (ECHR). Having regard to all the circumstances of the case the committee were of the view that the use of these words in the context that they were used amounted to personal abuse and not political expression, therefore Cllr Davies's Article 10 rights were not engaged.
- The Committee had considered whether the use of those words was covered by the need highlighted in the *Calver* case that politicians exhibit a thicker skin. In particular, the Committee noted paragraph 58 of the *Calver* judgement and concluded that the use of these words amounted to personal abuse rather than acceptable criticism in the political sphere. Accordingly, the Committee considered that the words used were not something a politician should be expected to be tolerant of.

3.8 RESOLVED that the discriminatory language used by Cllr Davies amounted to a prima facie breach of paragraphs 4(a) and 4(b) of the Code of Conduct but did not amount to a breach of paragraph 4(c) of the Code of Conduct.

Reasons

- It was felt that the use of discriminatory language was not an attempt by Cllr Davies to undermine Cllrs McPherson or Curry or intended to be bullying towards them.
- The Committee considered that the words used attracted the enhanced protections afforded to political expression under Article 10 of the ECHR, as they were used in the context of a robust discussion between three politicians about the issues affecting their community. However, the Committee concluded that it was necessary to interfere with Cllr Davies' Article 10 rights in order to protect the rights and interests of others, not only Cllrs Curry and McPherson but also other residents of Tyisha.

3.9 RESOLVED that Cllr Davies' conduct breached Article 6(1)(c) of the Code of Conduct.

Reasons

- The Committee was satisfied that the language used by Cllr Davies had come to the attention of members of the public.

- The Committee was further satisfied that the use of such language by Cllr Davies would have brought both councillor Davies' Office and his Council into disrepute.

The Chair, in accordance with the agreed procedure, advised that the Committee would need to determine whether or not a sanction should be imposed and if so, what form any sanction should take.

The Ombudsman's Representative and Mr Daycock proceeded, in turn, to address the Committee on their respective submissions of relevant factors in considering any sanctions, as set out at Appendices 5 and 6c of the meeting documentation. Members of the Committee were afforded the opportunity of asking questions on the representations made.

At this point in the proceedings, in order for the Committee to deliberate upon what sanction, if any, should be imposed, it was

UNANIMOUSLY RESOLVED to retire into private session to enable the Committee to consider exempt information as defined in Paragraph 16 of Schedule 12A to the Local Government Act 1972.

In considering the appropriateness of any sanctions to be imposed upon Councillor Davies for his breaches of the Code, the Committee had due regard to the representations made on behalf of the Ombudsman and Councillor Davies.

The Committee followed the five stage process set out in the sanctions guidance issued by the Adjudication Panel for Wales.

Seriousness

The Committee considered the seriousness of the breaches to be towards the lower end of the threshold.

Sanctions Considered

The Committee censure or a short period of suspension to be the most appropriate sanctions.

Mitigating Factors

The Committee considered relevant mitigating factors which included:

- This was an isolated incident.
- Cllr Davies had a good prior record as a Councillor and had not previously breached the Code of Conduct.
- The breaches were not pre-mediated or intentional.
The offending words were used on the spur of the moment during

a heated discussion.

Aggravating Factors

The Committee considered relevant aggravating factors, which included:

- Cllr Davies had committed a total of four breaches of the code of conduct.
- There appeared to be a lack of remorse from Cllr Davies.
- Cllr Davies did not appear to recognise the seriousness of his actions.

Reconsideration of Sanction

The Committee re-considered the appropriate sanction in light of these factors.

The Committee thereupon reconvened to advise of its decision.

RESOLVED that:

3.10 Cllr Davies be suspended from his office as a member of Llanelli Town Council for a period of 1 month.

3.11 Further training on the members Code of Conduct be recommended to Cllr Davies.

4. 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