

**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