

**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 23<sup>rd</sup> 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 9<sup>th</sup> 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 10<sup>th</sup> June 2022 and was conducted by means of remote attendance technology.

## **2. ALLEGATION**

- 2.1 By letter dated 17<sup>th</sup> 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 9<sup>th</sup> 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 30<sup>th</sup> 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 writ of mandamus 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 writ 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 9<sup>th</sup> 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 9<sup>th</sup> 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 16<sup>th</sup> 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 19<sup>th</sup> November 2020. He was elected, unopposed, to the Town Council and signed a Declaration of Acceptance of Office on 29<sup>th</sup> November 2020, in which he undertook to abide by the Code.
- 5.2.6 On 25<sup>th</sup> 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 31<sup>st</sup> 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 29<sup>th</sup> 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 9<sup>th</sup> 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 30<sup>th</sup> 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

