

# Public Document Pack



County Hall  
Rhadyr  
Usk  
NP15 1GA

Friday, 12 March 2021

## Notice of meeting

### Standards Committee

Monday, 22nd March, 2021 at 10.00 am,  
Remote Meeting

### AGENDA

Item No	Item	Pages
1.	Election of Chair	
2.	Appointment of Vice Chair	
3.	Apologies for absence	
4.	Declarations of interest	
5.	Appointment process for new Independent Member	
6.	Feedback on Code of Conduct training delivered to Mathern / Shirenewton.	
7.	Local Government and Elections Act - Overview and Governance impacts.	1 - 12
8.	Discussion on the Adjudication Panel Wales Decision Report	13 - 24
9.	To confirm the minutes of the previous meeting	25 - 28
10.	To confirm the date of the next meeting as 18th October 2021	

**Paul Matthews**  
**Chief Executive**

MONMOUTHSHIRE COUNTY COUNCIL  
CYNGOR SIR FYNWY

THE CONSTITUTION OF THE COMMITTEE IS AS FOLLOWS:

County Councillors:

David Evans  
Sheila Woodhouse  
Peter Clarke

Vacancy (Independent Representative)  
R. Stow (Independent Representative)  
R. McGonigle (Independent Representative)  
I. Cameron (Community Representative)  
P. Easy  
R. Williams-Flew

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### Welsh Language

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# Aims and Values of Monmouthshire County Council

## Our purpose

Building Sustainable and Resilient Communities

### Objectives we are working towards

- Giving people the best possible start in life
- A thriving and connected county
- Maximise the Potential of the natural and built environment
- Lifelong well-being
- A future focused council

## Our Values

**Openness.** We are open and honest. People have the chance to get involved in decisions that affect them, tell us what matters and do things for themselves/their communities. If we cannot do something to help, we'll say so; if it will take a while to get the answer we'll explain why; if we can't answer immediately we'll try to connect you to the people who can help – building trust and engagement is a key foundation.

**Fairness.** We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did what we did.

**Flexibility.** We will continue to change and be flexible to enable delivery of the most effective and efficient services. This means a genuine commitment to working with everyone to embrace new ways of working.

**Teamwork.** We will work with you and our partners to support and inspire everyone to get involved so we can achieve great things together. We don't see ourselves as the 'fixers' or problem-solvers, but we will make the best of the ideas, assets and resources available to make sure we do the things that most positively impact our people and places.



10 Mar 21

## LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

### Introduction

1. The Local Government and Elections (Wales) Act 2021, hereafter called LGE21, is a wide ranging piece of legislation of considerable impact across Local Government.
2. Across 172 sections and 13 schedules that span 202 pages it is difficult to encompass all the topics covered, but they include:
  - a. electoral reform. Including votes for 16 and 17 year olds and foreign citizens resident in Wales, changes to voter registration and enabling a principal council to choose between the 'first past the post' or the 'single transferable vote' voting systems;
  - b. general power of competence for principal councils and eligible community councils;
  - c. reforming public participation in local democracy – livestreaming, e-petitions, remote attendance and other 'gains' from the CV regs;
  - d. the leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
  - e. Corporate Joint Committees (CJCs);
  - f. new systems of performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers' support and intervention powers;
  - g. powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
  - h. local government finance including non-domestic rating and council tax;
  - i. miscellaneous provisions relating to: information sharing between regulators; abolition of community polls; fire and rescue authorities; the Local Democracy and Boundary Commission for Wales; and Public Service Boards.
3. The Act is [here](#) and a 597 page explanatory memorandum is very thorough and available [here](#).

### Aim

4. The aim of this document is to provide an introduction and overview of this key piece of legislation, set out the timetable of implementation, and start to identify likely actions required across the organisation accordingly.

### Subsequent Legislation

5. The Act is significant in size and only a handful of sections came into force immediately. The other elements will come into force through the use of subsequent legislation (commencement orders and regulations) over the course of the next year or so.
6. Appendix One contains the detail as far as it has been promulgated on when each section

will come into force. Those that are effective nlt 31 Mar have been coloured green given their imminence.

Matt Phillips

Appendices:

1. Breakdown of changes and possible actions.

## Appendix One

### BREAKDOWN OF CHANGES

Section/ Memorandum Para	Provision	Comes into Force	Actions/Responsibility/Notes
<b>Part 1 – Elections</b>			
2 3.18-	Extending the right to vote to 16-17 year olds and qualifying foreign citizens	<p>Entitlement to be registered as a Local Government Elector – 2 months after Royal Assent.</p> <p>Other provisions come into force 2 months after Royal Assent but do not take effect until 5 May 2022 and thereafter in respect of Local Government Elections and Local Referendum.</p> <p>20 March - Section 2(1) and (3) subject to section 3.</p> <p>Section 2(2) 5 May 2021</p>	<p>Returning Officer Dem Services Election Team</p> <p>Note – 16/17 year olds already allowed to vote in Senedd Elections following <a href="#">Senedd and Elections (Wales) Act 2020</a></p>
4	Promote awareness of registration of relevant young people and provide assistance	20 Mar 21	As above as aligned with electoral commission campaign.
5-13 3.29-	Two voting systems.  Simple majority system and Single Transferable Voting system.	6 May 2022	<ul style="list-style-type: none"> <li>- Simple majority system to apply unless and until the Council changes the voting system for the first time.</li> <li>- Constitution to be updated to address procedure to be followed regarding a proposal to change the Council's voting system, in part reflecting that a resolution would be required before 15 November of the year that is 3 years before the year in which the next ordinary election of the Council is due to be held.</li> <li>- Clarification required on the restrictions at Section 12 on number of Councillors if Single Transferrable Voting system applies to the election of Councillors for a Principal Council, the number of Councillors for each Electoral Ward is to be no less than 3 but no more than 6.</li> </ul>

14-17 3.37-	Change of electoral cycle for Principal and Community Councils, together with Elected Mayors from four years to five years and extension of power to Welsh Ministers to change election day in Wales	20 Mar 21 (and s13)	Amendments to Council website Amend reference in Constitution Advise Members
18 3.41-	Registration of Local Government Electors without application	Dates to be appointed by Welsh Ministers	Dem Services/Election Team
19-21 3.52-	Qualification and Disqualification for Election and being a member of a Local Authority	Dates to be appointed by Welsh Ministers	As above and with electoral commission guidance. Changes the rules so that there are situations whereby the employee of a LA may stand for election. (3.54)
22	Translation of Documents	20 Mar 21 to take effect for LG elections on/after 5 May 22	
<b>Part 2 – General Power of Competence</b>			
24-37 3.71-	Defines the power, defines qualifying local authority as a Principal Council and an 'eligible community council, including limits on charging in exercise of general power, limits on doing things for commercial purposes in exercise of general power, powers to make	Draft General Power of Competence (Commercial Purpose) (Conditions) (Wales) Regulations 2021 to be despatched for consultation Mar 21  GPOC to come into power Nov 21	I'm not going to put too much detail here as I think there will be a lot more forthcoming.  It will have an impact on all areas of MCC potentially in terms of how business is conducted, investments made, contracts entered into and procurement conducted.  This is not necessarily the silver bullet it was hailed as in England 10 years ago but its utility is and will grow.



	supplementary provisions by Welsh Ministers		
<b>Part 3 – Promoting Access to Local Government</b>			
39- 41 3.91	Public Participation  Duty on MCC to encourage participation in decision making at Council and partners (eg community councils).  Duty to publish a strategy on the above.	5 May 22	Dem Services?  Develop a Public Participation Strategy on how the Council proposes to comply with this duty – promoting awareness of its functions, how to become a member and what membership entails; ways of promoting and facilitating processes by which local people may made representation about a decision before and after it is made, bringing the public’s views to the attention of Scrutiny Committee and promoting awareness of the benefits of social media as a means to communicate.  Public participation and strategy to be reviewed as soon as practicable following each ordinary election.
42 3.92	Petition Scheme	5 May 22	To include e-petitions on the basis of best practice across LAs.
43	Publish electronic and postal address for each Cllr	5 May 22	
45 3.94-	Constitution Guides	5 May 22	Already set out within constitution so additional action for MO.
46 3.98	Access to Meetings  Webcasting	5 May 22	Dem Services and MO involved in working group on this.  Currently the most open LA in Wales as all meetings livestreamed. However, additional obligations for audio/visual impairment and live translation may turn this into something much more difficult. And so expensive.
47-48 3.101-	Attendance	1 May 21	Remote Attendance - Effectively removes the previous barriers (30% physical attendance etc). Community Council elements at s48 (5 May 22)
49 3.105-	Notice and Documents for meetings	1 May 21	Relaxation to reflect use of electronic means
50-51	Meetings and Documents	21 Jan 21	Basically gives Ministers to draft secondary legislation to tweak how this operates for LG and Community Councils

	Regulations		
52	Annual Reports by Town and Community Councils; to give opportunity for the public to speak at meetings Publish an annual report about their priorities etc Publish a training plan.	1 Apr 22	<b>This is a matter for Town and Community Councils:</b>  - Annual Report to be prepared and published as soon as reasonably practicable after the end of each financial year - Raise awareness of the need to report on priorities, activities and achievements during the previous financial year. - Awareness raising report to be taken to Community Liaison Committee. - To raise awareness in Monitoring Officer and Clerks meetings. - Copy of Action Plan to be provided to all Town and Community Councils.
<b>Part 4 – LA Executives, Members, Officers and Committees</b>			
54 3.110	Chief Executive  Becomes a Statutory Post incorporating HOPS with defined duties on performance	5 May 22 (and s 56)	Note – <a href="#">s55 20 Mar 21</a>
57 3.117	Assistants to the Executive	5 May 22	Not voting members of Cabinet though. These are development roles effectively.
58-59 3.119	Job-sharing by Executive	s58 - 5 May 22 s59 – <a href="#">5 Mar 21</a>	Can exceed max number of Cabinet members to do so (10). Need to amend constitution,
60	Job-sharing in Council	<a href="#">20 Mar 21</a>	WG to introduce Regulations specific to:  <ul style="list-style-type: none"> <li>- Chair of a Principal Council</li> <li>- Vice Chair of a Principal Council</li> <li>- Presiding Member of a Principal Council</li> <li>- Deputy Presiding Member of a Principal Council</li> <li>- Chair of a Committee or sub Committee of a Principal Council</li> <li>- Vice Chair or Deputy Chair of a Committee or sub Committee of a</li> </ul>

			Principal Council - Deputy Mayor in a Mayor and Cabinet Executive
61 3.121	Family Absence	1 Apr 21	Aims to keep the ability for Cllrs to take leave owing to family matters in step with employment law. Need to review Constitution and practices Const amended and new regs have since come in so further amendment required
62 3.124-	Members Conduct – Political Group Leaders to promote and maintain high standards of conduct  Standards Committee charged with monitoring performance and advising, training etc as necessary	5 May 22	Leaders must take reasonable steps to promote good conduct and cooperate with the Standards Committee  Action MO with SC and Gp Leaders
63	Standards Committee to make an Annual Report to Council on the above and their general functions	5 May 22	MO with SC
64 3.130-	PSOW powers	TBC	Ability to carry out investigations
65-66 3.133-	Overview and Scrutiny Committees:  - access to information - power to require the appointment of joint overview and scrutiny	5 May 22	Is there an action with CCR here?

	committees		
67 3.136-	Training of Community Councils	5 May 22	<p>This is a matter for Town and Community Councils:</p> <ul style="list-style-type: none"> <li>• Raise awareness of the need to report on priorities, activities and achievements during the previous financial year.</li> <li>• Awareness raising report to be taken to Community Liaison Committee.</li> <li>• To raise awareness in Monitoring Officer and Clerks meetings.</li> <li>• Share information with Town and Community Councils</li> <li>• First training plan to be made no later than 6 months after Section 67 comes into force.</li> <li>• With new training plans no later than 3 months after each ordinary election and review from time to time.</li> </ul>
<b>Part 5 – Collaborative Working by Principal Councils (CJCs)</b>			
68-88 3.140-	Various relating to CJCs	21 Jan 21	Covered in Detail in Other Documents.
<b>Part 6 – Performance and Governance of Principal Councils</b>			
89-94 3.158-	Duty to review performance and consult local people, convene a panel to do so and produce a report annually for Council and need to respond	<p>The majority of chapters 1, 3 and 6 of Part 6 in force on 1 April 2021</p> <p>First self-assessment report on FY 21/22 to be reported in 22</p> <p>Panel assessment and duty to respond - 5 May 22</p>	<p>Covered in detail by work undertaken by Richard Jones and Emma Davies</p> <p>WG will establish supplementary regulations</p>
95-101	Power of AG to carry out special inspection of LA if deems necessary	s95 - 20 Mar 21	Report submitted to Governance and Audit Committee and duty on Council to respond.

102-112	Ability of WG to provide support, direct another LA to provide support, intervene, direct cooperation with provision of support, direct a specific step(s), assume a responsibility of a LA to a Minister,	TBC – WG	There is very little detail or commentary on this in the explanatory memorandum.
115-118 3.169-	Change of name and function of Audit Committee  Governance and Audit Committee	s115 – 1 Apr 21  s116&118 – May 22	Actions:  - Chair of G&A must be a lay member - One third of Members to be lay persons - Deputy Chair must not be a member of the Local Authority's executive or an assistant to its executive.
119-120 3.171	Coordination between Regulators	TBC – WG	Led by AG and required to produce a timetable
<b>Part 7 – Mergers and Restructuring of Principal Areas</b>			
121-150 3.172-	Voluntary mergers, local discretion and conditions associated with Welsh Minister making restructuring regulations and remuneration arrangements for new Principal Councils	Largely immediate with some elements TBC - WG	Ability for LAs to carry out voluntary mergers – setting out the steps and requirements.
<b>Part 8 – Local Government Finance</b>			
151 3.193-	Powers to require information relating to hereditaments, information relevant to determining liability for non-domestic rate,	Sections 152, 154-156 and 158 20th March 2021  1 April 2021 (Sections 151, 153 and 157)	

	<p>powers to inspect property, amendment to multipliers, amendments to the Local Government Finance Act 1988, granting Welsh Ministers powers to make regulations on joint and several liability to pay Council tax.</p> <ul style="list-style-type: none"> <li>• Removal of Power to provide for Imprisonment of Council Tax Debtors</li> </ul>		
<b>Part 9 - Misc</b>			
159-160 3.205	Information Sharing	Immediate	Allows sharing predominantly between AG, Estyn and Ministers for the purposes of their roles.
161 3.208	Head of Democratic Services	5 May 22	Must be treated as a Chief Officer Can now be the MO.
162 3.212-	Abolition of Community Polls	5 May 22	
163-164 3.220	Local Democracy and Boundary Commission		BC can appoint own CEx (not WG) WG can direct BC to not conduct a review or stop a review.
165 3.225	Public Service Boards can merge and now de-merge	20 Mar 21	
166-169 3.227	Fire and Rescue Authorities  National Parks		
<b>Part 10 – General</b>			
			10

Schedules	
1	Initial reviews of electoral arrangements etc
2	Minor and consequential amendments relating to elections
3	Amendments relating to general power of competence relating to Principal Councils and Town and Community Councils.
4	Notice of Local Authority meetings, access to documents and attendance at meetings.
5	Consequential amendments relating to Chief Executives
6	Consequential amendments etc relating to assistance to Local Authority Executives
7	Job-sharing by Executive Leaders and Executive Members
8	Conduct of Local Government Members: investigations by the Public Services Ombudsman for Wales
9	Amendments related to CJs including creation of strategic planning functions for certain corporate joint committees and repeal of powers to establish strategic planning panels and repeal of power to establish joint transport authorities
10	Consequential amendments relating to renaming of Principal Council for the Committees.
11	Transition Committees of merging Councils and restructuring Councils.
12	Restraints on transactions and recruitment etc by merging Councils and restructuring Councils
13	Abolition of polls consequent of community meetings under the Local Government Act 1972
14	Consequential amendments relating to merger and de-merger of Public Services Board

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## DECISION REPORT

**TRIBUNAL REFERENCE NUMBER:** APW/002/2020-021/CT

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

**RESPONDENT:** Former Community Councillor Baguley

**RELEVANT AUTHORITY:** Sully and Lavernock Community Council

### 1. INTRODUCTION

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

1.2 The Case Tribunal determined its adjudication on the basis of the papers, at a meeting on 16 December 2020 conducted by means of remote attendance.

### 2. DOCUMENTS

#### 2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 16 September 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against former Community Councillor Baguley (“the Respondent”).

2.1.2 **Allegation 1** was that the Respondent had breached the Code of Conduct for Members of Sully and Lavernock Community Council (“the Code”) as follows: That the Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019, which it was alleged could reasonably be regarded as bringing the Councillor’s office or authority into disrepute and thereby breached Paragraph 6(1) of the Code.

2.1.3 During the course of the investigation, the Ombudsman extended the investigation to include **Allegation 2** as follows: That the Respondent allegedly failed to supply information and evidence in respect of the privacy status of the relevant posts, in non-compliance with requests of the Ombudsman in

connection with an investigation conducted in accordance with his statutory powers and thereby breached Paragraph 6(2) of the Code.

## **2.2 The Details of Allegation 1: Three Facebook Posts**

2.2.1 The three Facebook posts referenced in **Allegation 1** are as follows:

i) On 10 January 2019, responding to a Telegraph article titled “What if...Yvette Cooper was Labour leader”, Councillor Baguley wrote: “imagine this! This bitch is driving remain when the people of her constituency overwhelmingly [sic] voted out. A traitorous cow and one I hope she ends up with a noose around her neck!”

ii) On 9 March 2019 Councillor Baguley posted an online article about Shamima Begum and stated the following: “I hope that it [sic]she does carry out some atrocity Anna Soubry would be my chosen target”

iii) On 11 March 2019 Councillor Baguley commented on a video of Diane Abbott speaking at a conference. He wrote: “fucking idiot! Get me a gun please!”

2.2.2 The evidence was comprised of a bundle of Tribunal case papers including copies of numerous Facebook posts and correspondence to and from the Council’s Monitoring Officer, the Ombudsman and the Respondent.

### **The Respondent’s response to Allegation 1.**

2.2.3 In an e-mail to the Ombudsman dated 10 July 2019, the Respondent stated “(a) Facebook have their own code of conduct which I have not fallen foul of as they would have censored the comments and (b) many of the comments made are of friends of mine and not my own.”

2.2.4 On 20 August 2019, he wrote as follows to the Ombudsman; “my comments on Facebook are my own beliefs and have not been censored by Facebook.”

2.2.5 On 17 October 2019 he wrote to the Ombudsman to say that he had consulted a solicitor and; “he feels (as would any fair minded person) that they are political opinions and I fully stand by them.”

2.2.6 On 12 November 2019, he said that; “Facebook generally remove offensive sexist and racist comments automatically as they have identifiers built into the algorithm so if they were offensive they would have been removed.”

2.2.7 On 8 June 2020, in response to written interview questions, the Respondent responded as follows;

- In relation to Paragraph 6(1)(a); “This is ambiguous as the word reasonably is subjective and open to interpretation.”

- With regard to the Facebook post, dated 10 January 2019, the Respondent explained that he had a; “long held personal dislike of this individual from my days living in her constituency and I agree my comments are a bit strong.”

- As to the public nature of the postings; “I assumed it was locked down but was obviously wrong.”

- With regard to the Facebook post, dated 9 March 2019, he explained what he meant as; “I would rather turn a gun on myself rather than listen to her” and as to the status of the post, he said; “I did not know whether public or not.”

- In relation to the Facebook post, dated 11 March 2019, the Respondent explained; “I dislike Anna Soubry” and as to the status of the post, he said; “Didn’t know it was public or private”.

-As to the nature of the posts, the Respondent stated; “Facebook always remove comments and posts they feel are offensive but they remained which shows they were ok with them”.

-Finally, the Respondent explained his; “long standing dislike of the labour party and its officials and followers” from negative childhood experience.

-As to freedom of expression; “I am also allowed to hold my views as free speech and opinions is not yet illegal in the UK”.

## **2.3 Allegation 2: Failure to comply with Ombudsman’s requests**

2.3.1 The Ombudsman’s requests referenced in **Allegation 2** and the Respondent’s responses are as follows:

i) On 8 November 2019: “In your email of 10 July 2019, you said that you had it confirmed by Facebook support that your posts are not visible to anyone but your friends and this has been the case since 2013. It would assist the investigation if you could send me a copy of the activity log on your Facebook account to show when your privacy settings were changed and also a copy of the confirmation by Facebook that your posts have not been visible to anyone but your friends since 2013.” The Respondent replied almost immediately by sending a screenshot of his settings.

ii) On 12 November 2019: an e-mail advising the Respondent that the screenshot he had sent in response to i) above was of his current settings and asking again for his historical activity log. The Respondent was also asked to provide confirmation from Facebook to support his claim that it had confirmed his posts were not visible to anyone since 2013 and to confirm how he received this confirmation (e.g. by email or verbally by phone). Councillor Baguley responded the same day by e-mail; “No idea how to do that sorry can you tell me how?”.

iii) On 15 November: an e-mail to the Respondent, advising him how he could access his activity log. The Respondent did not respond to the email.

2.3.2 In response to the written interview questions on 8 June 2020, the Respondent stated as follows;

- With regard to his original comment that his posts had not been visible to anyone but his friend since 2013, he said that he had meant; "I checked my settings" and explained that he had contacted Facebook; "I phoned them and after a long and convoluted goose chase I got nowhere basically."

- As to whether he was aware of how Facebook settings work; "Not really" and as to his failure to provide a historical activity log, he said; "I didn't know how" and as to his continued failure to provide the same following guidance, he repeated; "No idea how to do it".

- As to the discrepancy between the posts being visible in 2019 and the Respondent's version of events that the posts had been visible to friends only from 2013 onwards, he said; "I thought this was the case".

-Finally, when asked when he changed to private or "friends" setting, the Respondent replied; "When I found out they had been strangely changed to public, maybe by my eldest son who has access and sometimes uses pictures I post".

2.3.3 The evidence was again comprised in the bundle of Tribunal case papers including correspondence from the Ombudsman and the Respondent.

### 3. FINDINGS OF FACT

3.1 The Case Tribunal noted the following **undisputed** material facts;

3.1.1 The Respondent was co-opted as a Community Councillor to Sully and Lavernock Community Council in May 2017. He resigned from this role in September 2020.

3.1.2 The Respondent signed a Declaration of Office and Undertaking regarding the Code of Conduct on 27th June 2017.

3.1.3 The Respondent did not attend any training in relation to the Code of Conduct or in relation to the use of social media during his period of office.

3.1.4 The Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019 about three high profile UK politicians, the contents of which are not in dispute.

3.2 The Case Tribunal found the following in relation to the **disputed** material facts;

## **Allegation 1**

3.2.1 That the Respondent was acting in a private capacity when he posted the three public Facebook messages in question. Certain Facebook posts sent by the Respondent did refer to the Relevant Authority, however the Facebook posts referenced in **Allegation 1** were not sent in this context. No evidence had been provided as to whether the Respondent's Facebook profile referred to his Community Council status.

3.2.2 That although the Facebook posts were written in the context of sharing political views on Facebook, the comments complained of went far beyond what could reasonably be considered to be political expression. It was however straightforward to separate the political debate from the comments which were the subject of **Allegation 1**. The comments were inflammatory and an expression of views which were extreme, threatening in nature and promoted violence towards individuals. The comments could not be dignified by the description of political expression.

3.2.3 That even if the Respondent was not aware of the status of his posts at the time of posting, despite the visible icon of a globe which showed that it was public, the Respondent was at the very least, reckless to that fact and the Tribunal found that on the balance of probabilities the Respondent was aware of their public status. He was well versed in the use of social media and sent regular and frequent posts and was reckless as to the consequences. In one of his posts not related to the Allegation, he had stated; "I will get another Facebook ban for saying it...". His responses to the written interview questions demonstrated that Respondent had little concern for whether his page was public or private.

3.2.4 The Case Tribunal considered that high profile politicians, by entering public life, lay themselves open to close scrutiny and indeed mockery and sarcasm. They were expected to possess thick skins and display a greater degree of tolerance than ordinary citizens, however such tolerance should not have to extend to personal, inflammatory and egregious comments which comprised of threats or inciting extreme violence and death from other politicians, albeit acting in their private capacity, including at a Community Councillor level. The comments were personal, disturbing and gratuitous verbal attacks, not political expression.

## **Allegation 2**

3.2.5 That the Respondent failed to comply with the Ombudsman's requests for information with regard to the change in his privacy settings. The Panel found that on the balance of probability, the Respondent's initial response that Facebook had confirmed that the settings had been private since 2013 was not a candid response and was written to attempt to minimise the nature and impact of the Facebook posts.

3.2.6 The Case Tribunal considered that the Respondent's subsequent responses contained a variety of excuses and no evidence or detail was forthcoming as to any relevant discussion with Facebook to confirm that the

Respondent's Facebook posts had been private since 2013. There was reference to a discussion with Facebook but the Respondent said that he had "got nowhere" in that instance. He then stated that he did not know how to check any change of settings that took place in 2013, although he was clearly an experienced user of Facebook and the Tribunal did not consider that this was an entirely candid response. Further to guidance supplied by the Ombudsman's Investigator, the Respondent failed to reply. Finally, in reply to written interview questions, the Respondent provided yet another explanation, stating that his settings had been "strangely changed" to public by a third party.

3.2.7 In conclusion the Panel considered that the Respondent had deliberately avoided providing information and full and frank responses to the reasonable requests of the Ombudsman's Investigating Officer in completing the investigation.

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

### **4.1 The Code of Conduct for Members**

4.1.1 The relevant parts of the Code are as follows;

#### **Allegation 1**

Paragraph 2(1)(d) of the Code states; "...You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7."

Paragraph 6(1)(a) of the Code states; "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

#### **Allegation 2**

Paragraph 6(2) states; "You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers."

### **4.2 Article 10 ECHR Considerations in relation to Allegation 1**

4.2.1 Article 10 of the European Convention on Human Rights states as follows;

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

4.2.2 The Case Tribunal adopted the following three-stage approach formulated in *Sanders v Kingston* [2005] EWHC 1145 in relation to **Allegation 1** and the three Facebook posts;

(i) Did the Respondent’s conduct breach Paragraph 6(1)(a) of the Code of Conduct?

(ii) Would the finding in itself comprise of a prima facie breach of Article 10?

(iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

### **4.3 Case Tribunal’s Decision – Allegation 1**

#### **Paragraph 6(1)(a) of the Code**

**4.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent failed to comply with Paragraph 6(1) of the Code for the following reasons;**

#### **Conduct within private capacity**

4.3.2 In accordance with Paragraph 2(1)(d) of the Code, Members must observe the Code at all times and in any capacity in respect of conduct which could reasonably be regarded as bringing a Councillor’s office or authority into disrepute and it therefore applied regardless of the fact that the Respondent was acting in his private capacity.

4.3.3 The Case Tribunal were mindful of the Ombudsman’s Guidance in this respect which states that;

- “...as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the code apply to you at all times.”

-It also refers to the significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter; “Even if you do not refer to your role as Councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

- “As a Member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your Council.”

- “Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute”.

4.3.4 The Case Tribunal was mindful of the case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 which set out the very limited circumstances in which the relevant Code in would apply in England where a Member was acting in his private capacity. The position in Wales can be distinguished however, as the legislation has spelt out in clear terms what is covered by the Code in Wales. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to “in performing his duties” in Wales in relation to the undertaking to observe the Code which Members must sign.

4.3.5 The three Facebook posts in this case were all extreme and gratuitous in referring to violence or methods of killing in relation to three high-profile politicians. Even if the comments were glib, reckless or expressed to be part of perceived normalisation of such language on social media platforms, the Case Tribunal was satisfied that it was of a sufficiently serious nature that it could reasonably be regarded as bringing the Respondent’s office and authority into disrepute;

(i) In relation to the Facebook post of 10 January 2019, the Respondent implies a wish that the subject of the post is hanged. He concedes that his comment was “a bit strong”.

(ii) The post of 9 March again had no reasonable alternative reading. The Respondent was expressing a wish the subject of the post to be the subject of an atrocity.

(iii) The Respondent had argued that in relation to the 11 March post that the comment, “Get me a gun” was a reference to the Respondent turning a gun on himself. The Case Tribunal considered that this was an artificial construction of the plain meaning of the words in the context of the previous comment, that he wished to shoot the subject of the post.

4.3.6 The Respondent posted public comments on a frequent and regular basis which came to the attention of a member of the public and the Relevant Authority’s Monitoring Officer and prompted a complaint in the light of the Respondent’s public role as a Community Councillor. As an outspoken public figure, many in the community would have been aware that the Respondent was a Councillor and the three Facebook posts would have adversely reflected on both his role and his authority.

4.3.7 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the “Nolan Principles” include the principles of “Integrity” and of “Leadership” whereby; “Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority”. The Respondent’s conduct had fallen well below the standards of conduct in public life which the Nolan Principles and the Code seek to uphold.



4.3.8 The Case Tribunal concluded that the three Facebook posts which are the subject of **Allegation 1** were so egregious, inflammatory and violent, that they offended against all notions of peace, safety, decency and democracy within society. In view of their extreme and public nature, the Case Tribunal had no difficulty in finding that the contents of the posts could reasonably be regarded as bringing the Respondent's office and also his authority into disrepute (quite apart from bringing the Respondent as an individual into disrepute).

#### **Article 10(1) ECHR**

4.3.9 Despite the finding that the Respondent breached Paragraph 6(1)(a) of the Code, the Case Tribunal nevertheless considered that the finding did comprise of a prima facie breach of Article 10 in that the finding could be deemed to restrict his right to freedom of expression.

#### **Article 10(2) ECHR**

4.3.10 The Case Tribunal were of the view that freedom of expression is a cornerstone of democracy and should not be readily displaced in any balancing exercise with competing rights of individuals, particularly of public figures who are expected to have "thick skin". The Case Tribunal gave extremely careful consideration to this issue, cognisant that anything which impeded political debate should be exercised with extreme caution.

4.3.11 As the Respondent's posts had been made in a private capacity and the Case Tribunal had found that they did not comprise of political expression, they did not attract the enhanced protection afforded to politicians. The Tribunal nevertheless concluded that even if enhanced protection had applied, the comments were so extreme and egregious, that the finding of a breach of the Code would nevertheless have been justified.

4.3.12 Article 10(2) makes it clear that the freedom of expression carries with it duties and responsibilities and may be subject to restrictions such as those contained in the Code (which are prescribed by law) and are necessary in a democratic society, in the interests of; "public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others."

4.3.13 The Case Tribunal noted that although the three Facebook posts which formed the subject of **Allegation 1** were made during the course of otherwise political exchanges, the comments themselves stood out as being quite distinct from that exchange and introduced a different and disturbing tone to the exchange.

4.3.14 As to the Respondent's argument that Facebook had its own code of conduct, the Case Tribunal stated that Member behaviour was governed by the statutory Code of Conduct by which Members had undertaken to abide and not by any procedure or code operated by a social media platform which may or may not identify threatening comments.

4.3.15 In conclusion, the three Facebook posts had been found by the Case Tribunal to be so extreme and egregious that, despite the fact that freedom of expression was a fundamental human right, there were necessary limits. The posts went well beyond what could be reasonably tolerated in a democratic society. It was necessary for the public interest in proper standards of conduct by Members of local authorities to be upheld by a finding that the Respondent had breached Paragraph 6(1)(a) of the Code, in order to safeguard public safety and the reputation and rights of others.

#### **4.4 Case Tribunal's Decision – Allegation 2**

##### **Paragraph 6(2) of the Code**

**4.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that the Respondent had failed to comply with Paragraph 6(2) of the Code for the following reasons;**

4.4.2 The Case Tribunal had reached the finding of fact that the Respondent had deliberately avoided answering the Ombudsman's reasonable requests in his Investigating Officer's efforts to complete the investigation in accordance with the Ombudsman's statutory powers.

4.4.3 It inevitably followed that there had therefore been a breach of Paragraph 6(2) of the Code.

#### **5. FINDINGS IN RELATION TO SANCTION**

**5.1 The Case Tribunal considered all the facts of the case and concluded by unanimous decision that the Respondent should be disqualified for 15 months from being or becoming a member of Sully and Lavernock Community Council or of any other relevant authority within the meaning of the Local Government Act 2000 for the following reasons;**

5.2. The Case Tribunal carefully considered the current Sanctions Guidance of the Adjudication Panel for Wales in particular and 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 in 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.

5.3 The Case Tribunal also considered paragraph 47 of the Guidance with regard to former Councillors which reads as follows;

- “In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...”

5.4 The Case Tribunal considered that the facts leading to breach of the Code in relation to **Allegation 1** were particularly serious and were of the view that if the Respondent had not resigned and remained in office, it would not have considered that suspension was a sufficient sanction to recognise the extremely serious nature of the breach.

5.5 The Case Tribunal had regard to sanctions imposed in previous cases. It was also mindful that the comments were directed at individuals who were national political figures, rather than officers of the Relevant Authority or members of the local community. The public figures would be unlikely to become aware of, or be directly affected by, the comments directed at them. The Case Tribunal nevertheless considered that as this was an extremely serious breach, the sanction was proportionate in all the circumstances.

5.6 In conclusion, the Case Tribunal considered that the Sanction imposed was the minimum necessary to uphold the standards of conduct in public life and maintain confidence in local democracy. It reflected the fact that the behaviour demonstrated that the Respondent was unfit for public office and required a significant period of time in order to reflect on his conduct before contemplating re-entering local politics.

5.7 With regard to **Allegation 2**, the Case Tribunal considered that the lack of full co-operation and compliance with the Ombudsman’s requests during investigation and lack of candour was a matter of concern, however it did not consider that a separate penalty should be imposed in relation to this breach.

5.8 The Case Tribunal came to the above conclusion having considered the following Mitigating and Aggravating factors which are highlighted in the Sanctions Guidance.

#### **Mitigating Factors;**

5.9 The Case Tribunal noted that the Respondent had a relatively short length of service and would have been inexperienced in the role of Community Councillor. There had been no record of a previous breach during this short period of service. The Respondent expressed a minimal amount of regret, for example by referring to his post of 10 January 2019 as “a bit strong”.

#### **Aggravating Factors;**

5.10 The Case Tribunal noted that the Respondent’s conduct was blatant and largely unapologetic. He stood by his comments although he regretted that his comments had been public. The behaviour was deliberate, reckless and

repeated and there appeared to be little or no concern for the Code and a lack of understanding or acceptance of the misconduct and any consequences.

5.11 In conclusion, the Case Tribunal found that the three Facebook posts consisted of the expression of views which were not worthy of respect in a democratic society, and were incompatible with human dignity and conflicted with the fundamental rights of others.

## **5.12 Article 10 ECHR Considerations**

5.12.1 The Case Tribunal recognised that the sanction comprised of a prima facie breach of Article 10 in that the finding could be deemed to restrict the Respondent's right to freedom of expression.

5.12.2 It considered however that the sanction of disqualification was a penalty prescribed by law and was of a length which was proportionate bearing in mind the interests of public safety and the need in a democratic society to prevent disorder or crime, for the protection of health or morals and for the protection of the reputation or rights of others in a democratic society.

5.12.3 The Case Tribunal recognised that disqualification would breach the Respondent's Article 10 rights. It was satisfied however that disqualification for 15 months was the minimum necessary to recognise the seriousness of the Respondent's breach of the Code. The sanction was necessary in this case in order to maintain the integrity of the Nolan principles as extended in the Welsh context as well as the Code of Conduct for Members, but also to protect others from gratuitous, offensive personal comment and 'hate speech' and to protect the health, safety and rights of others.

5.13 Sully and Lavernock Community Council and its Standards Committee is notified accordingly.

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

Signed



Date 12/01/2021

C Jones  
Chairperson of the Case Tribunal

S Hurds  
Panel Member

G Jones  
Panel Member

# Public Document Pack Agenda Item 9

## MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of the meeting of Standards Committee held  
in The Conference Room, County Hall, Rhadyr, Usk, NP15 1GA  
on Monday, 16th March, 2020 at 10.00 am**

**PRESENT:** Mr. R Stow (Vice Chair) (In the Chair)

County Councillors: D. Evans and S. Woodhouse

I. Cameron (Community Council representative)

Independent Members:

T. Auld (remote attendance), P. Easy, R. McGonigle and R. Williams-Flew

### **OFFICERS IN ATTENDANCE:**

Matt Phillips  
Richard Williams

Head of Law/ Monitoring Officer  
Democratic Services Officer

### **APOLOGIES:**

County Councillor P. Clarke

#### **1. Declarations of interest.**

None.

#### **2. Standards Committee Work Programme.**

We received the Standards Committee Work Programme. In doing so, the following points were noted:

- The Monitoring Officer has appointed two deputy Monitoring Officers from within his Department.
- The Local Government and Elections Bill will receive assent in July 2020.
- The Standards Committee will meet twice a year ( approximately April and October).
- Monmouthshire County Council's Standards Committee could meet with other Local Authority Standards Committees, particularly around training delivery.
- In response to a question raised regarding remote attendance at meetings, it was noted that the Authority was moving from Skype to Microsoft Teams.

## MONMOUTHSHIRE COUNTY COUNCIL

### Minutes of the meeting of Standards Committee held in The Conference Room, County Hall, Rhadyr, Usk, NP15 1GA on Monday, 16th March, 2020 at 10.00 am

- In response to questions raised in respect of paragraphs 3.5. b & c of the report, it was noted that Chief Internal Auditor would be involved in this matter with a view to closer working links being established between the Standards Committee and the Audit Committee.
- Details of Members' training is available on Monmouthshire County Council's website. Members' personal development plans have been despatched to Members via the Democratic Services Manager.

We resolved:

- 1) to meet twice a year around April and October, and as required by matters arising such as dispensation requests or disciplinary hearings;
- 2) to convene with these set meetings as required to deal with matters arising, hearings and dispensation requests;
- 3) to receive those reports relevant to its functions listed in the Constitution, including those set out at 3.7 of the report.
- 4) That the Standards Committee, on assent of the Local Government and Elections (Wales) Act, present a report to Council in the first meeting after the Annual General Meeting (AGM) annually.

#### **3. Confirmation of Minutes**

The minutes of the Standards Committee dated 16<sup>th</sup> September 2019 were confirmed and signed.

#### **4. Local Government and Elections Bill**

We noted that this matter had been discussed earlier in the meeting under the Standards Committee Work Programme agenda item.

#### **5. Constitution Update**

We receive a verbal update by the Head of Law / Monitoring Officer regarding the County Council's constitution. In doing so, the following points were noted:

- The Head of Law / Monitoring Officer had been appointed the Head of Recovery during the recent flooding events and had been taken away from his duties in preparing the draft Constitution.
- The draft Constitution has been prepared but requires further reviewing before it is presented to the Democratic Services Committee and Council.
- The COVID 19 Coronavirus pandemic is currently taking precedence across all services within the Authority. The draft Constitution will be

## **MONMOUTHSHIRE COUNTY COUNCIL**

### **Minutes of the meeting of Standards Committee held in The Conference Room, County Hall, Rhadyr, Usk, NP15 1GA on Monday, 16th March, 2020 at 10.00 am**

presented to the relevant Committees in due course but will be subject to this unprecedented event that is currently occurring.

- The Head of Law / Monitoring Officer will share the details in the draft constitution relating to the role of Committees with Members of the Standards Committee, for comment.
- In response to a question raised that the Planning Code of Conduct was not located within the current Constitution, the Head of Law / Monitoring Officer stated that he would investigate this matter.

We noted the update.

#### **6. Recent Adjudication Panel for Wales Case Discussion**

We resolved to defer consideration of this item to the next Standards Committee meeting.

#### **7. Dispensation Exercise**

We resolved to defer consideration of this item to the next Standards Committee meeting.

#### **8. Next Meeting**

The next Standards Committee meeting will be held in October 2020. The date to be confirmed in due course.

**The meeting ended at 11.28 am.**

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