(CT13)

PDC / APW

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2015-016/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Councillor Paul Cawley

RELEVANT AUTHORITY(IES): Magor with Undy 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 A hearing was held by the Case Tribunal at 9.30am on Friday 11 March 2016 at the Hilton Hotel Newport. The hearing was open to the public.

1.3 Cllr Cawley attended and represented himself.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 20 October 2015, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Cllr Cawley. The allegations were that Cllr Cawley had breached the Magor with Undy Community Council Code of Conduct by not declaring an interest or leaving the meeting on 7 April 2014 whilst the Clerk's remuneration package was considered. Cllr Cawley and the Clerk were in a relationship and later married on 4 October 2014 and so Cllr Cawley had an interest in the matter under consideration.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Cawley indicated in his response to the allegations that he did not consider that he had acted improperly in remaining in the meeting. He had declared his interest when the public left the meeting and he sought guidance from the other members of the Council. It was agreed that he could stay in the meeting but not participate. He said that he and the clerk were not living together at the time and he did not consider that there was anything wrong with his actions.

2.2.2 Cllr Cawley felt that the Ombudsman's investigation had been poorly conducted and that key witnesses were not spoken to. Cllr Cawley explained that he would put his case before the Tribunal.

2.3 The Ombudsman's Written Representations

2.3.1 In view of Cllr Cawley's response no further written representations were made by the Ombudsman.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal heard oral evidence and submissions as follows.

Public Services Ombudsman for Wales

3.2 It was submitted that Cllr Cawley's relationship with the Clerk was such that it gave rise to a personal and prejudicial interest in the matter being considered. It could be argued that Cllr Cawley, in view of his impending marriage to the clerk would benefit from any pay increase. It was submitted that in remaining in the meeting and in not declaring his interest in the public part of the meeting Cllr Cawley's actions may have given rise to a public perception that he was taking advantage of his position. Although the Ombudsman did not suggest that Cllr Cawley had improperly used his position to gain an advantage nonetheless it was suggested that remaining in the meeting was damaging to the public confidence in the Council.

3.3 It was further submitted that the guidance and rules were clear and Cllr Cawley should have left the meeting.

3.4 Cllr Cawley made the following oral submissions:

3.4.1 He considered that the whole process was a waste of everybody's time. He did not accept that he had done anything wrong and he had explained his position to the Council and later to the Ombudsman. He didn't take any part in the meeting and had no influence in the matter that was being discussed. He didn't accept that members of the public had been concerned about his actions. In particular he was critical that the members of the public had not been contacted or interviewed as part of the Ombudsman's investigation. He said that no members of the public were affected and that the Cllr who reported the matter had delayed for a number of months. He considered that the allegations were unfounded.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following **undisputed** material facts:

4.1.1 Cllr Cawley is a member of Magor with Undy Community Council. He undertook to abide by the Council's Code of Conduct on 14 May 2012 and he underwent training on 22 November 2012.

4.1.2 Cllr Cawley has been in a relationship with the clerk to the Council since 5 October 2012 and they are now married.

4.1.3 On the 7 April 2014 Cllr Crawley did not declare an interest in the public part of the meeting or leave the meeting when the Clerk's remuneration package was discussed.

4.1.4 On 8 September 2014 Mr Andrews (Monitoring Officer of Monmouthshire County Council, since retired) referred a complaint to the Public Services Ombudsman for Wales that Cllr Cawley did not declare an interest or leave the meeting when the Clerk's remuneration package was discussed.

4.2 The Case Tribunal found the following **disputed** material facts:

4.2.1 Cllr Cawley had both a personal and prejudicial interest that required him to declare that interest and leave the meeting.

4.2.2 Cllr Cawley should have declared his interest in the public part of the meeting.

4.2.3 The failure by Cllr Cawley to declare his interest in the public part of the meeting and leave the meeting brought his office into disrepute.

4.3 The Case Tribunal found the following in respect of the disputed facts:

4.3.1 The Case Tribunal considered that the nature Cllr Cawley's relationship with the clerk was one that gave rise to a prejudicial interest. The Case Tribunal did not consider it was material whether they were living together at the time. The Case Tribunal considered that it was enough that they were engaged to be married and had been in a relationship for a number of months. In these circumstances the Case Tribunal considered that the interest was one that would affect public perception of his ability to make a decision. This was reinforced by the fact that the meeting involved the clerks remuneration package and a substantial increase was being considered. The Case Tribunal considered that this gave rise to a prejudicial interest because it concerned a significant benefit for his future wife.

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

5.1 The Respondent's Submissions

5.1.1 Cllr Cawley confirmed after the fact finding stage that he had an appointment and did not wish to make any further oral submissions. His position in writing and at the fact stage was that he had not done anything wrong and the public were not concerned.

5.2 The Ombudsman's Report

5.2.1 It was contended that the facts found proved gave rise to breaches of the code of conduct. In particular Paragraph 14(1) of the Code of Conduct states that "Where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee –

(a) withdraw from the room, chamber or place where a meeting considering the business is being held."

It was submitted that Cllr Cawley's failure to withdraw from the room gave rise to a clear breach of this provision.

5.2.1 It was submitted that it was a matter for the Case Tribunal whether paragraph 6(1) (a) of the code was also breached.

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."

It was submitted that in remaining in the meeting Cllr Cawley may have given the impression of impropriety and influence even though he did not take any part in the proceedings.

5.3 Case Tribunal's Decision

5.3.1 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 Magor with Undy's code of conduct.

5.3.3 The Case Tribunal found that Cllr Cawley, in not leaving the meeting, was in clear breach of Paragraph 14(1)(a) of the Code. The Case Tribunal had already found that Cllr Cawley had a prejudicial interest in the matter being discussed and according to the ombudsman's clear guidance he should have left the room to ensure that no criticism of the process could be made.

5.3.4 Further the Case Tribunal found that Cllr Cawley in remaining in the meeting may have given the impression of impropriety to the public regardless of any complaints made. The test is not whether Cllr Cawley would take the decision without prejudice but whether he would be seen as doing so. The fact that there was a complaint reinforces the fact that Cllr Cawley's actions had an adverse impact on the reputation of the authority and its probity in decision making. The Case Tribunal considered in these circumstances Cllr Cawley's actions did bring his office and the Community Council into disrepute in breach of paragraph 6(1)(a) of the code.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Cawley made no submissions on this matter.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case and in particular the fact that the decision involved a significant financial advantage to Cllr Cawley's

future wife. The Case Tribunal noted that a complaint had been received from a member of the public and the reputation of the authority had been brought into disrepute.

6.2.2 The Case Tribunal also had regard to the fact that Cllr Cawley had not accepted that he had done anything wrong and had never apologised or shown any insight into his conduct. The Case Tribunal was concerned that there was a risk of repetition of this behaviour in the future.

6.2.3 The Case Tribunal also took into account that Cllr Cawley had no previous complaints about his conduct and he had to a degree co-operated with the ombudsman and the Tribunal. Cllr Cawley had not sought to influence the discussion and he had declared his interest and asked permission to remain in the meeting. The Case Tribunal considered these were mitigating factors.

6.2.4 The Case Tribunal considered that a suspension was the only appropriate and proportionate sanction in this case. The Case Tribunal took into account the effect that this would have both on Cllr Cawley and those he represents but nevertheless considered that a period of suspension was required to uphold confidence in the democratic process and ensure proper standards. A relatively short period was considered appropriate to allow Cllr Cawley the opportunity to reflect and possibly consider further training on the code.

6.2.5 The Case Tribunal concluded by unanimous decision that Cllr Cawley should be suspended from acting as a member of the Magor with Undy community council for a period of 3 months.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal makes the following recommendation to the Magor with Undy Community Council.

7.1.1 That before returning to office Cllr Cawley undertakes further training with regard to the code of conduct.

E. L. Boothroyd.

Signed: Date...21 April 2016...

Mrs Emma Boothroyd
Chairperson of the Case Tribunal

Mr Andrew Bellamy
Panel Member

Miss Susan Hurds
Panel Member