

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2021-022/AT

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Gareth Baines

RELEVANT AUTHORITY: Wrexham County Borough Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Gareth Baines against the decision of the Wrexham County Borough Council's Standards Committee that he had breached the Chirk Town Council's code of conduct and the following sanction be imposed:

1.1.1 That the Appellant be suspended as a community Councillor from Chirk Town Council for a period of three months.

1.1.2 That the Appellant should undertake Code of Conduct training at the earliest convenience.

1.1.3 That the Appellant should send a letter of written apology for the breaches, to the Complainant and to the Chair of Chirk Town Council.

1.2 A hearing was held by the Appeal Tribunal at 10:00 am on Thursday 16th December 2021 by Cloud Video Platform (CVP). The hearing was open to the public.

1.3 Councillor Baines was given notice of the hearing date; indeed, it was listed following receipt of his and the other participants' dates of availability. Councillor Baines did not attend the hearing.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 On 15th July 2021 the Adjudication Panel for Wales received an appeal from Councillor Baines against the determination of the Wrexham County Borough Council's Standards Committee on 22nd June 2021 (the Notice of that

decision was e mailed to Councillor Baines on 25th June 2021), that he had breached the Chirk Town Council's code of conduct and should be sanctioned as set out at paragraphs 1.1.1- 1.1.3 above.

2.1.2 The Standards Committee's determination followed its consideration of a report dated 14th January 2021 by the Public Services Ombudsman for Wales ("the Ombudsman") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000, and a determination in accordance with the 'Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001'.

2.1.3 The allegations were that Councillor Baines had breached Chirk Town Council's Code of Conduct by sending an e mail on the 1st November 2019 to the employer of the complainant Mrs Rachel Allen in which he attempted to smear her name in her workplace and made her feel threatened and vulnerable. The e mail was sent from Councillor Baines personal account but was signed "Cllr Gareth Baines". The complainant is a teacher. The Ombudsman considered that this e mail was an act of retaliation (because Mrs Allen had made a complaint about Councillor Baines to the Ombudsman), which was designed to cause difficulty for the complainant in her place of work. Councillor Baines also copied this e mail to the Education Workforce Council, the independent regulator for the education workforce in Wales, conduct considered by the Ombudsman as being an attempt to cause a disadvantage to the complainant in her place of work..

2.1.4 The Ombudsman concluded, after an investigation which included interviewing the Appellant on 27th July 2020, and taking into account the Appellant's written comments and submissions, that the Appellant's conduct was suggestive of a breach of the following paragraphs of the Code of Conduct;

- You must - 4(b) - show respect and consideration for others
- You must - 4(c) - not use bullying behaviour or harass any person:
- You must not - 7(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;

2.1.5 The Appellant, in writing before the hearing of the Standard's Committee on the 22nd June 2021, and in oral representations at that hearing, confirmed that he did not dispute the facts in the Ombudsman's report. The Committee then considered the evidence and heard submissions from the Ombudsman's representative and from the Appellant as to whether there had been a failure to follow the Code of Conduct on the facts. The Standards Committee concluded that there had been a breach of paragraphs 4(b), 4(c) and 7(a) of the Code and imposed the sanction referred to above at paragraphs 1.1.1 - 1.1.3.

2.1.6 The Appellant appealed on 15th July 2021, as per paragraph 2.1.1 above. The Appellant accepted the findings of the Standards Committee as to facts and the breaches of the Code of Conduct, but he appeals against the sanction imposed, upon the basis that it was excessive compared to sanctions

for similar breaches of the Code locally, and that the Standards Committee had failed to take into account the mitigating circumstances that he had advanced. The President of the APW gave permission to appeal on the 19th July 2021 noting that it could not be said that there was no reasonable prospect of success since it is always generally arguable that a sanction imposed was too harsh or too lenient.

3. Pre- hearing directions

3.1 The Ombudsman had provided a response to the appeal on the APW 'Response to Representations by Appellant' form sent by e mail on 28th July 2021. The Appeal Tribunal, by listing direction dated and sent out on 19th October 2021, made directions to prepare the matter for the appeal hearing with orders as to the submission of further relevant evidence and submissions. The Appellant provided a further statement in response to directions dated 2nd November 2021.

3.2 The Appellant, the Ombudsman and the Monitoring Officer of the Authority, were informed of the final hearing date of 16th December 2021 by e mail of 16th November 2021.

3.3 By e mail sent to the Tribunal office by the Appellant at 09:50 on 15th December 2021, the day before the hearing, he said that "I'm sorry to advise" that he was due to fly to Munich on Thursday 16th December 2021 for treatment that he had missed the previous week. The Appellant attached details of a flight departing from Manchester Airport at 11:05 and landing in Munich at 14:05. This was a factual e mail with no request for postponement of the hearing. The Registrar to the Adjudication Panel for Wales e-mailed the Appellant, Ombudsman and Monitoring Officer to inform them that the hearing would proceed on the 16th December 2021.

4. APPEAL, HEARING, AND SUBMISSIONS ON ACTION TO BE TAKEN

4.1 The Appellant's Submissions

4.1.1 Councillor Baines submitted a number of points in his appeal form dated 15th July 2021 and amplified his evidence in his statement to the tribunal dated 2nd of November 2021. He argued that the sanction imposed was excessive when compared to similar breaches locally and failed to take into account considerable mitigating circumstances. He set out the following mitigating factors that he asked the Appeal tribunal to take into account in deciding upon the appropriate sanction;

- i. That he was new to the role.
- ii. That he had not been provided with training.
- iii. That he had experienced the stress of running an international business and 'being expatriated.'

- iv. He said that the panel were made aware of significant health concerns, and he provided details of a medical condition for which he was still receiving treatment.
- v. He said there had been no previous or subsequent investigations by the Ombudsman into his conduct and that he had fully complied with the Ombudsman's investigation.
- vi. That the Appellant had fully complied with Wrexham County Borough Council's Standards Committee (he used the term 'Panel') and that he had willingly accepted the conclusions of the Standards Committee.
- vii. That a similar hearing in a neighbouring authority resulted in a Councillor in a more senior position receiving a shorter suspension for a more serious breach. In that case, the Councillor had not been required to write a letter of apology to the complainant and to the Leader/Chair of the Council. The sanction in that other case had been brought to the attention of the Standards Committee at the time by the Ombudsman's representative. He therefore argued that the decision in his case was disproportionate and against precedent.
- viii. He argued that insufficient consideration was given to the circumstances leading to the complaint against him. He said that there had been several complaints against him by the same complainant, all of which had been dismissed "in what was viewed to be a vexatious campaign."

4.1.2 The Appellant provided further evidence in his witness statement, particularly in relation to his views that the complainant had previously complained about him and that "I viewed the complaints Mrs Allen made to the Ombudsman to be vexatious and to be an attempt to tarnish or smear her political rivals for her own benefit – and that they were politically driven...".

4.1.3 The Appellant's statement detailed that the events came at a time of extreme stress for him. He was working as the International Director for a multibillion Euro company based in Germany which required him to take on average 4 to 6 flights a week. He said that he was out of the UK for the majority of each calendar month although he was returning to the UK as much as possible to conduct his duties as Parliamentary Agent and councillor. He said that he had had no training in any form and, because of the amount of time he spent out of the country when he was first elected, he had very little experience of being a Councillor and was not aware that his behaviour was a potential breach of the Code. He used his title in the email of 1 November 2019 because Mrs Allen's initial complaint had related to his position. The Appellant said that he had used his title in a "misguided attempt to be transparent", and that the incident was entirely out of character for him.

4.1.4 the Appellant also provided medical evidence from a doctor and gave further details of the effect of his medical condition in his witness statement. The statement records: "I accept I breached the Code of Conduct and offered my unreserved apology to the Standards Panel – but felt, as I have submitted to the Ombudsman previously, there were several substantial mitigating factors that had not been taken into account."

5.2 The Ombudsman's Submissions

5.2.1 The Ombudsman was represented by Ms Katrin Shaw, and Ms Llinos Lake. Ms Shaw had been present at the initial hearing of the Standards Committee on 22 June 2021, and Ms Lake was involved in the Ombudsman's investigation, including as the Ombudsman's representative in the telephone interview with the Appellant on 27 July 2020. Ms Lake also emailed the APW on 28 July 2021 with the Ombudsman's comments in response to the Appellant's representations.

5.2.2 The Ombudsman's written representations confirmed that at the hearing of this matter before the Standards Committee, the Ombudsman's representative had shared a copy of the Sanctions Guidance issued by the President of the Adjudication Panel for Wales under section 75(10) of the Local Government Act 2000 ("the Sanctions Guidance") with the Committee in advance of the hearing. During the hearing, Ms Shaw had drawn the Committee's attention to the Sanctions Guidance as an appropriate framework for their decision on sanction.

5.2.3 With regard to the Appellants points on mitigation which the Appellant believed had not been appropriately considered by the Standards Committee before the decision was reached upon sanction, the Ombudsman noted;

- i. That the Appellant signed his declaration of acceptance of office on 22 June 2017 and the incident took place on 1 November 2019. The Ombudsman's view was that the Appellant was not new to the role of member as he had been in the role for over 2 years.
- ii. The Ombudsman accepted the Appellant's assertions that he had not received training on the Code but said it was unclear as to whether any training had been available to him, whether he had been refused training or had failed to access training that was available to him.
- iii. The stress of running an international business and being expatriated was not raised by the Appellant during the investigation. It was the Appellant's choice to become a Council member in those circumstances and having done so he was required to abide by the Code.
- iv. That the Appellant had not raised any medical issues during the Ombudsman's investigation, but he did make the Standards Committee hearing aware of his medical issues at the time of the events under consideration and at the hearing, but he did not explain how any issues may have impacted upon his behaviour on 1 November 2019 when he sent the email to the complainant's employer.
- v. The Ombudsman accepts that there were no previous findings of a breach of the Code and there were no ongoing Ombudsman investigations against the Appellant, who had not previously been referred to the Standards Committee or the APW. This information was confirmed during the Standards Committee hearing and is referred to in the Committee's decision notice.
- vi. The Ombudsman accepts the full cooperation of the Appellant during the investigation, and that the Appellant accepted the Committee's decision that he had breached the Code of Conduct.

- vii. The Ombudsman confirmed that Ms Shaw's submissions on sanction during the Standards Committee hearing referred to the case in a neighbouring authority which in the Ombudsman's opinion was more serious and had resulted in a two-month suspension on the member concerned.
- viii. The Ombudsman was unable to comment upon the weight given to the circumstances leading to the complaint by the Standards Committee in reaching its decision on sanction.

5.2.4 At the Appeal Tribunal hearing, Ms Shaw confirmed the Ombudsman's view that sanction is very much a matter for local standards committees to consider. She submitted that a breach of 4 (c) of the code not to bully or harass any person, is a serious breach, as is the misuse of the member's position. Suspension is an appropriate response to the Appellants misconduct. She confirmed the Ombudsman's view on the mitigating factors outlined above, and that the Appellant was concerned about the complaint that had been made to the Ombudsman about him.

5.2.5 Ms Shaw submitted that there were a number of aggravating factors. The Appellant's witness statement relates to background events and his genuine concern that complaints made against him were vexatious, but the conduct of the complainant is not at the heart of this matter, rather it is the conduct of elected members in their public service role. The Appellant appears to have a lack of understanding in relation to his conduct that led to the breaches of the Code. He does not appear to understand the complainant's concerns that her employer had been contacted by him.

5.2.6 Ms Shaw noted that whilst the Appellant had maintained before the Standards Committee that he had safeguarding concerns that he wished to report to the complainant's employer, in fact the email that he sent did not raise these issues of safeguarding at all and merely referred to the fact that a complaint had been made about him to the Ombudsman.

5.2.7 Ms Shaw submitted that a suspension of 3 months was not unreasonable in the circumstances. She had drawn the Committee's attention to a Standards Committee case in Denbighshire where a two-month suspension had been given, (as noted at 5.2.3.(vii) above), but it is a matter for the Wrexham Standards Committee to decide upon matters in their local area in any particular case.

6. The Monitoring Officer's submissions.

6.1 The Appeal Tribunal heard from Mrs Linda Roberts, the Monitoring Officer of Wrexham County Borough Council. Mrs Roberts was the Deputy Monitoring Officer at the time of the Standards Committee hearing on 22 June 2021, and the author of the letter to the Appellant of 25 June 2021 that gave details of the outcome of the Committee's conclusions that he had breached the Code.

6.2 Mrs Roberts gave evidence about the Standards Committee's deliberations on 22 June 2021. She said that the Committee had been particularly concerned about the aggravating factor of the Appellant copying his email to the complainant's regulator. The Committee felt that the Appellant was setting out to deliberately cause further trouble to the complainant rather than waiting for the Ombudsman to decide upon the earlier complaint that she had made against him.

6.3 Mrs Roberts noted that although the Appellant had admitted the breaches and did not dispute the contents of the Ombudsman's report, the Committee had concerns about his attitude to the Code of Conduct. He had said at the hearing that if he had breached the Code of Conduct, he would apologise, which contrasts with him currently saying that he will offer an unreserved apology. The Appellant appears to be saying that he breached the Code but does not seem to be really accepting this at the same time. The Standards Committee had been concerned about the Appellant's lack of training on the Code. He had been elected in 2017, the events happened in November 2019 and the Committee's hearing was in June 2021, at which point he had still not accessed any Code of Conduct training. The Committee were concerned about this and the Appellant's attitude which gave the impression that he was too busy to access the training and take account of what was available for him. The Committee felt that this indicated a lack of understanding of the Code and its importance.

6.4 Mrs Roberts gave details of training on the Code that is available. Training is offered via the main Wrexham County Borough Council, and if a clerk from a community Council contacts the main Council, they are happy to put training on. Mrs Roberts confirmed that she has provided training on the Code in this way. She also confirmed that many Community Councils are members of One Voice Wales who also offer training. Mrs Roberts confirmed that individual Community Councils can contact the Monitoring Officer for advice if they are unable to obtain advice from their own clerk. The Appellant had not made any requests for training on the Code.

6.5 Mrs Roberts confirmed that the Appellant had raised the medical points that he wished to rely upon for the first time at the Committee's hearing. She confirmed that the Committee did attach weight to the medical issues and considered it. However, the Committee noted that the Appellant was functioning in many other ways and had not been stopped from working or taking on extra roles and therefore, although the medical issue was a factor, it was not a significant one. The Committee had not specifically asked for medical evidence when he raised the issue, but the Appellant had been sent a standard form asking if there was any evidence that he had wanted to submit and he had not done so. He had been given ample opportunity to provide evidence in advance.

6. Appeal Tribunal's Decision

6.3.1 In considering the Appellant's appeal on sanction, the Appeal Tribunal has carefully considered all the facts, evidence, and submissions in the case. Evidence and submissions upon the medical issues were heard in camera and

details have not been referred to in this decision report. The Appellant was aware of this Appeal Tribunal's hearing date but the day before the hearing he emailed to say that he would be flying to Germany. His flight was booked for the same time that the hearing was taking place. There was no request for a postponement of the hearing and no explanation from the Appellant as to why he had to travel on the day and at the time of the hearing.

6.3.2 The Appeal Tribunal has carefully considered all the material before it and applied the Sanctions Guidance. The Tribunal has firstly assessed the seriousness of the breaches of the Code that have been admitted. Whilst the breaches arose from the sending of one email on 1 November 2019, the copying of that email to the complainant's regulator and the use of his title as a Councillor increase the seriousness of the breach.

6.3.3 In the Appellant's statement prepared for this appeal, he does appear to challenge the findings of the Ombudsman and the Standards Committee, for example by maintaining that using his title in the email to the complainant's school was not an attempt in any way shape or form to exert influence, or to influence the school's decision, but was a misguided attempt to be transparent. This Appeal Tribunal reminds itself that the Appellant accepted the decision and findings of the Ombudsman's report and of the Standards Committee and appeals only against sanction. It was open to the Appellant to appeal against the findings of the Committee on its breaches of the Code, but he chose not to do so. Accordingly, we disregard such comments from the Appellant insofar as they appear to be an attempt to undermine the original decision, but we agree with the Monitoring Officer that such comments indicate that the Appellant does not have full insight into the extent of his behaviour and breaches of the Code.

6.3.4 The Appeal Tribunal notes that the Appellant, particularly in his interview with the Ombudsman's representative in July 2020, placed repeated emphasis upon his safeguarding concerns in relation to the complainant's behaviour and professional role. It is noteworthy however that his email of 1 November 2019 makes no reference to any safeguarding concerns and concentrates instead upon what he considers to have been vexatious complaints against him. Accordingly, the Committee's findings upon the breaches of three paragraphs of the Code are sufficiently serious to warrant sanction. This is not a case where no action would be appropriate and the Appeal Tribunal consider that suspension is the appropriate sanction.

6.3.5 There are a number of mitigating factors. It is accepted, as it was by the Ombudsman and the Monitoring Officer, that the Appellant fully co-operated with the Ombudsman's investigation and the Standards Committee process. There was no evidence before the Appeal Tribunal of any past or current allegations or findings against the Appellant for breaching the Code.

6.3.6 The Appellant placed reliance upon medical issues in mitigation. The tribunal does not attach weight to the medical evidence the Appellant supplied and his representations relying upon the same. In the Listing Direction prior to this final hearing, the Appeal Tribunal ordered that any medical report supplied

should provide details of the impact of any condition upon the Appellant's everyday functioning at the time of the complaint in October and November 2019 and currently. The medical information that the Appellant supplied, did not specifically comply with this direction. There was no mention of medical issues or a potential medical explanation for his behaviour at all during the Ombudsman's investigation. During his interview with Ms Lake on 27 July 2020, the Appellant was given the opportunity in an open question, to provide any further information upon which he wished to rely. He did not raise medical issues in advance of the Standards Committee hearing although, upon the evidence of the Monitoring Officer, which we accept, he had the opportunity to do so. It is clear that the Appellant is a busy man and was so at the time he sent the email of 1 November 2019. He had a demanding job and was acting as the local Parliamentary Agent for the Conservative Party. This tribunal accept that the Standards Committee did consider the medical issues but did not place great weight upon them, since they did not have sufficient evidence to conclude that any medical issues were impairing the Appellant from acting as a high functioning individual.

6.3.7 The Appellant also relied upon as mitigation, that his conduct arose from provocation on the part of the complainant in that he had been the subject of a complaint from her to the Ombudsman, which was, on 1 November 2019, still under consideration. The Appellant described the earlier complaint against him as vexatious and indeed his email to the complainant's workplace of 1 November 2019 says that "I have been subjected to a vindictive and vexatious complaint filed by Mrs Allen because of a tweet." He further describes the vindictive, vexatious, and truculent nature of her spurious complaint and says he has instructed his solicitors to issue a High Court writ for libel unless he receives a full retraction and apology.

6.3.8 That original complaint was not pursued by the Ombudsman. There was no evidence before the Appeal Tribunal that the original complaint had been described as vexatious by anyone other than the Appellant and, upon his account, his solicitors. During his interview with Ms Lake the Appellant says that he wrote his email of 1 November 2019 in the terms that he did upon the direct advice of his solicitor. Again, he made this point repeatedly. This further demonstrates that he was acting upon considered advice and not as a result of any impaired judgement or behaviour as a result of any medical issues. The Appellant was thinking clearly enough to copy his email to the complainant's regulator.

6.3.9 The Appeal Tribunal accept that the Appellant was responding to a complaint against him which he considered to have been provocation, however this provides limited mitigation given that the Ombudsman's report into that complaint was ongoing and as the Appellant himself accepts, he should have awaited the outcome of the Ombudsman's investigations. That initial complaint against him was not pursued by the Ombudsman. The Appellant told the Ombudsman that he was acting upon legal advice, but he did not provide any further evidence in support, including anything from his solicitor, despite being invited to, and given the opportunity to do so. There was no evidence before the Appeal Tribunal that he has pursued any further action for libel or defamation.

6.3.10 The Ombudsman accepted that there had been a complaint against the Appellant and there was an element of provocation in mitigation but it was not clear to the tribunal that the Standards Committee had considered or attached any weight to the provocation point.

6.3.11 Ms Shaw, whilst stressing that the three-month suspension imposed by the Standards Committee in this case was within the reasonable range of responses and that it is a matter for local Committees to determine the appropriate sanction in their area, explicitly drew the Committee's attention at the hearing in June 2021 to a decision of Denbighshire County Council. That decision is in the public domain, in relation to councillor Richard Mainon, in which a two-month suspension had been imposed for matters that factually appeared to be more serious than the current case with findings that constituted evidence of bullying and harassment, bringing their office or authority into disrepute and using or attempting to use their position improperly. It is this case that the Appellant refers to in his appeal, although not by name.

6.3.12 The Appeal Tribunal prefer the Ombudsman's view upon the length of the Appellant's appointment. He signed his declaration of office on 22 June 2017, some 2 years and 4 months before he sent the email on 1 November 2019. The Appellant was not therefore new to his office, and if he had been unable to devote time to his duties as a councillor because of his busy work schedule, then that is a matter for how he prioritises his time and responsibilities and is not mitigation to which we attach much weight.

6.3.13 We consider it to be an aggravating factor that the Appellant has, at the date of the hearing, still not attended or arranged to attend training on the Code. More than two years has elapsed since he sent that email and there was no evidence before the tribunal that the Appellant had independently pursued training upon the Code.

6.3.14 The tribunal consider that the starting point for the length of suspension for the accepted breaches of the Code found by the Standards Committee in this case, would be 3 months, to which the mitigating and aggravating factors should then be applied. Undertaking that exercise, and noting the mitigating factors in this case, particularly the full cooperation with the Ombudsman and the Committee, the Appellant's hitherto unblemished record, his expression of contrition and noting that the breaches arose from one email that was not further pursued, the tribunal recommend that a suspension of two months is appropriate in the particular circumstances of this case.

6.3.13 In relation to the Mainon case, in fact the Adjudication Panel for Wales considered an appeal in that matter (APW-002-2021-022-AT) and in a decision dated 2 November 2021, noted that whilst breaches of the Code involving bullying and harassment could ordinarily attract a three-month period of suspension, the Appeal Tribunal endorsed the decision of the Standards Committee in that particular case, to suspend Councillor Mainon for two months.

6.3.14 The Appeal Tribunal accept that, as the Ombudsman's representative submitted, sanction in a particular area is a matter for the local Standards Committee and they are not bound to follow neighbouring authorities. The Committee in this case were entitled to consider three months as a reasonable period for suspension notwithstanding that their attention had been drawn to the decision of their colleagues in Denbighshire in Councillor Mainon's case. The Standard's Committee and APW decisions in the Mainon case are not binding on this tribunal, and each case will be decided on its particular facts and circumstances. Having said that, following the approach in the Sanctions Guidance, and noting the purpose of the sanctions regime, to achieve an appropriate deterrent effect for the individual and the wider Council membership, and to maintain public confidence in the standards of conduct in public life and in local democracy, the tribunal recommend a suspension of 2 months.

6.3.15 The Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of the Standards Committee that Councillor Baines should be required to undertake training on the Code of Conduct as soon as possible and that he should send a letter of apology for the breaches of the Code to the complainant and to the Chair of Chirk Town Council.

6.3.16 The Appeal Tribunal decided by unanimous decision to refer the matter back to the Standards Committee with a recommendation that Councillor Baines should be suspended from being a member or co-opted member of Chirk Town Council for a period of 2 months.

6.3.17 The authority and its Standards Committee are notified accordingly.

Signed...*R. Payne*

Date 13th January 2022

Richard Payne
Chairperson of the Appeal Tribunal

Glenda Jones
Panel Member

H. Eifion Jones
Panel Member