

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/011/2021-022/CT

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

**RESPONDENT:** Former Councillor Sheila Jenkins

**RELEVANT AUTHORITY:** St. Harmon Community Council

**1. INTRODUCTION**

1.1. A Case Tribunal was convened by the President of the Adjudication Panel for Wales ('APW') to consider a reference in respect of the above Respondent which was made by the Public Services Ombudsman for Wales ('the PSOW').

1.2 On 2 December 2022, the Tribunal Registrar wrote to the Respondent and, in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the letter required the Respondent to send written acknowledgement, indicating whether she wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.

1.3 On 27 January 2023, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for the parties to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application in this respect.

1.4 The Case Tribunal exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 17 March 2023 and was conducted by means of remote attendance technology.

## **2. ALLEGATIONS**

2.1 By letter dated 29 November 2022, the Ombudsman made a referral to the APW and submitted a Report in relation to allegations made against the Respondent, these allegations being as follows.

2.1.1 That the Respondent failed to declare personal and prejudicial interests at two Council meetings, despite being aware that she had such interests, and remained in the meeting room and addressed Council on both occasions. The PSOW considered that the Respondent's actions were therefore suggestive of breach of paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct for Members ('the Code').

2.1.2 That the Respondent used emotive terms in addressing Council and took part in votes at both meetings and in doing so, the Respondent's conduct could reasonably be perceived as being capable of influencing the decision of the Council. The PSOW also alleged that presence alone at those meetings was capable of influencing the Council's decision-making and that the conduct could also be perceived as attempting to secure an advantage for another person by taking part. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraphs 7(a) and 14(1)(c) of the Code.

2.1.3 That the Respondent's conduct at the meetings and subsequent press coverage may have brought the Respondent's Council and/or her office as a member into disrepute. The PSOW also alleged that knowingly disregarding the Code of Conduct showed lack of regard for the ethical standards regime in Wales which may affect public confidence in local democracy. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraph 6(1)(a) of the Code.

2.2 The evidence was contained in the Tribunal Bundle which comprised the PSOW's Report and linked correspondence.

## **3. FINDINGS OF FACT**

### **Undisputed Material Facts**

3.1 The Listing Directions dated 27 January 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Material Facts.

3.2 There being no further representations made as to these Undisputed Material Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Undisputed Material Facts on the balance of probabilities: -

3.2.1 The Respondent was co-opted as a Member of the Relevant Authority in March 2019 and signed a declaration of acceptance of office and undertaking to abide by the Code of Conduct for Members.

3.2.2 The Respondent chose not to attend training on the Code of Conduct for Members.

3.2.3 The Respondent is married to the former Chairman of the Council who was Chairman at the relevant time.

3.2.4 The Respondent attended Council meetings on 1 April and 3 November 2021 in which an Audit Wales Report was discussed.

3.2.5 The Respondent did not seek any advice on whether she should declare personal and prejudicial interests and did not seek a dispensation from the relevant Standards Committee to take part in the meetings.

3.2.6 The Respondent did not declare personal and prejudicial interests at either meeting and she remained in both meetings.

3.2.7 A decision made by the Council in April 2021 related to an Audit Wales report which included reference to a person with whom the Respondent had a close personal relationship. A decision made by the Council in November 2021 directly affected a person with whom the Respondent had a close personal relationship.

3.2.8 The Respondent's decision not to declare any interests was deliberate as she considered that she would be asked to leave the meeting if she had declared such interests.

3.2.9 The Respondent said that she abstained from voting at the April meeting, as she had not been on the Council at the relevant time, and also as she was the Chairman's wife.

3.2.10 The Respondent addressed Council at the April meeting and was present for the vote in which the Council resolved to write to Audit Wales to point out certain factual inaccuracies in the report.

3.2.11 The Respondent addressed the Council at the November meeting and the relevant minutes record that she said that "Audit Wales had it in for the chairman from the start and had been hanging around his neck, which is disgusting".

3.2.12 The minutes record that the Respondent took part in a vote at the November meeting upon a proposal to accept the findings of the report of Audit Wales and to report the Chairman to the office of the PSOW.

3.2.13 The minutes record that the Respondent voted against the proposal.

3.2.14 The minutes record that the Respondent abstained in a vote upon a proposal to report the Respondent to the office of the PSOW.

3.2.15 The Respondent did not declare a personal or prejudicial interest regarding the vote on a proposal to refer her to the office of the PSOW.

3.2.16 The Respondent was directly affected by the decision made by the Council in November 2021 to refer her to the office of the PSOW.

3.2.17. The Respondent resigned from the Council on 4 November 2021, the day after the November meeting.

3.2.18 There was subsequent press coverage of the November 2021 Council meeting.

### **Disputed Material Fact**

3.3 There was one Disputed Material Fact outlined in the PSOW Report. This was whether the Respondent intended to influence Council decisions at the meetings in April and November 2021. The Case Tribunal noted the following submissions by the parties.

#### **The PSOW's submissions**

3.3.1 The PSOW's submissions in this respect, as contained in the Report dated 29 November 2022, were that the Respondent had been clear that she attended the meetings to defend her husband and the PSOW could "*see no other reason for taking such a step, if not to influence the discussion and the decisions of the other members.*" The PSOW considered that by failing to declare interests, by addressing Council, and taking part in proceedings at both meetings, (including a vote on whether to accept the findings of the Audit Wales Report and to refer her husband to the PSOW's office), the Respondent intended to influence the decisions being made in relation to the Report.

3.3.2 The PSOW was also of the view that, even if the Respondent had abstained from voting, her presence alone was capable of influencing the Council's decision-making process.

3.3.3 The PSOW further considered that by using emotive terms such as "*hands around his neck*" and "*scapegoat,*" and taking part in votes at both meetings, that the Respondent's conduct could reasonably be perceived as capable of influencing the decisions of the Council.

#### **The Respondent's submissions**

3.3.4 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

3.3.5 During her interview and in a statement to the PSOW however, the Respondent stated that she had addressed the Council to support and defend her husband. She was emphatic that she was not trying to influence the decisions being made by Council. She said she was just putting forward her husband's side of the story and did not have any thought of influencing anybody. She said that she knew she would not influence anybody. She had been angry about the comments being made about her husband as she said he was a good man. She appreciated that it might sound melodramatic but thought there had been a move to destroy him. She said that she "*wanted to be there to at least be in his corner.*"

### **Case Tribunal's determination as to the Disputed Material Fact**

3.3.6 The Case Tribunal noted that the Respondent had not declared any interest at the meeting of 1 April 2021. The Minutes do not record the comments made by the Respondent at the meeting, however the evidence suggests that she did take part in discussions but abstained from voting on this occasion. She said that this was because she had not been a member of the Council at the time of the events raised in the Audit Wales report. She also said that this was because her husband was the Chairman referenced in the report.

3.3.7 It noted that the Respondent likewise did not declare any interest at the meeting of 3 November 2021. It was clear in this instance that the Respondent addressed the meeting, and the minutes recorded her comments. She also voted against a recommendation to report her husband to the PSOW under the Code. She abstained from voting following a proposal to refer herself to the PSOW.

3.3.8 The Case Tribunal considered that the PSOW's interview of the Respondent showed her responses to be honest and straightforward. However, despite her emphatic response that she had not intended to influence anyone, the Case Tribunal considered that, whether consciously or subconsciously, she had nevertheless intended to influence the decision of Council. The Respondent made it clear that she had been at the meeting to defend her husband and to "*be in his corner*" and her interview responses made it clear that she knew that she was acting in breach of the Code.

3.3.9 The Case Tribunal was satisfied that the reasons for not declaring interests, remaining in the meeting and addressing the Council about the recommendation to refer her husband to the PSOW, were all to try to convince the Council that her husband should not be so referred. The Respondent thought that there were entrenched views within the Council which she could not influence. However, the Case Tribunal considered that, on balance, the Respondent intended to influence the discussion at the meeting of the 3 November 2021. This was supported by the fact that during her interview she said that her only regret was that she did not explain herself better when defending her husband. In addition, in voting against the proposal to refer her husband to the PSOW, the Case Tribunal considered that this was also an attempt to influence the outcome of the meeting, as one vote is often capable of changing the outcome.

3.3.10 The Case Tribunal therefore found by unanimous decision in relation to the Disputed Material Fact that the Respondent had intended to influence a Council decision at the meeting of 3 November 2021.

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

4.1 The Listing Directions dated 27 January 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with the Relevant Authority's Code.

4.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle as well as the Material Facts as found above.

4.3 As to the alleged breach of the Code of Conduct, the Case Tribunal noted the following submissions by the parties.

**Paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.**

4.4 Paragraph 11(1) of the Code of Conduct states that; *'Where a member has a personal interest in any business of their authority and they attend a meeting at which that business is considered, they must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.'*

Paragraph 14(1)(a) of the Code of Conduct states that; *'Subject to sub-paragraphs (2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority's standards committee withdraw from the room, chamber or place where a meeting considering the business is being held —*

*i. where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and, in any event, before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or*

*ii. in any other case, whenever it becomes apparent that that business is being considered at that meeting.'*

Paragraph 14(1)(e) of the Code of Conduct states that; *'Subject to sub-paragraphs (2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority's standards committee, not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.'*

**The PSOW's Submissions**

4.4.1 The PSOW's submissions as contained in the Report dated 29 November 2022 are that the Respondent's conduct was suggestive of a breach of paragraphs 11(1), 14(1)(a), 14(1)(c) and 14(1)(e) of the Code of Conduct for the following reasons.

4.4.2 The PSOW stated that the Respondent failed to declare personal and prejudicial interests at Council meetings on 1 April and 3 November 2021 when the Audit Wales report was discussed. *"Despite being fully aware that she had a personal and prejudicial interest, that she was required to declare them and that there would be potential consequences for not doing so, she remained in the meeting room and addressed Council on both occasions."*

## The Respondent's Submissions

4.4.3 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

4.4.4 During her interview, the Respondent was asked about her understanding of what elected members should do as regards personal interests. She said that members should declare an interest and then leave the meeting. She made it clear that she had not wanted to leave the meeting and therefore did not declare an interest because she wanted to be there for her husband. She accepted that the Clerk had wanted relevant members to declare an interest. She therefore accepted that she had a personal interest and said; *"I was aware of what I was doing, yes."*

4.4.5 As to prejudicial interests, the Respondent's understanding of the concept was *"...probably prejudicial in the councillors that were trying to pull the council down yes."* In relation to the meeting of 3 November 2021, she recognised that she had an interest and that she had not received dispensation from Powys County Council to speak and vote at the meeting.

4.4.6 In summary, the Respondent accepted that she did have interests in the meetings and the reason she did not declare those interests was that she *"wanted to stay in the meeting to support my husband"* and that *"He couldn't support himself which I find disgraceful, he was not allowed, even criminals in court are allowed to defend themselves, he has been given no opportunity to defend himself in front of the public, at all"*. The Respondent made it clear that as regards declaring interests, she did not think she would have done anything differently, *"because my husband comes first."*

### **Case Tribunal's determination as to alleged breach of paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.**

4.4.7 In considering this matter, the Case Tribunal also considered the relevant provisions of the Code which explain the nature of personal and prejudicial interests as follows: -

4.4.8 A personal interest in this context is defined in Paragraph 10(2) of the Code as *'You must regard yourself as having a personal interest in any business of your authority if (c) a decision upon it might reasonably be regarded as affecting (i) your well-being or financial position, or of a person with whom you live, or any person with whom you have a close personal association.'*

4.4.9 A prejudicial interest in this context is defined as *'..where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant fact would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest'*.

4.4.10 In considering this matter, the Case Tribunal also had regard to the PSOW Guidance for Members of Community and Town Councils. As to paragraphs 11(1), 14(1)(a) and 14(1)(e) it states: -

*'3.9 It is always safer to declare an interest. However, if in doubt, consult your Clerk or the Monitoring Officer of the principal council for the area, who may be able to offer advice subject to resource constraints...*

*3.14 The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively or negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.*

*3.27 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a prejudicial interest. What constitutes a prejudicial interest is outlined in the following section'.*

4.4.11 The Guidance provided a case example, where the business being discussed was about a financial benefit for the member's future spouse. It was decided that the interest was one that would affect the public perception of the member's ability to act in the public interest. It was reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen to have done so.

4.4.12 As to prejudicial interests, the Guidance states that the test is an objective test and that also:

*'3.30 ... the interest must be perceived as likely to harm or impair your ability to judge the public interest.*

*3.32 ...You should clearly act in the public interest and not in the interests of any close personal associates...*

*3.41 The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders...*

*3.43 You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.'*

4.4.13 Whilst the business of the meeting of 1 April 2021 appeared to deal with the narrow issue of the factual accuracy or otherwise of the draft Audit Wales report, the business did also partly relate to the former Chairman. The Case Tribunal considered that whilst the draft report dealt with wide-ranging governance and financial concerns



applicable to the Council as a whole, it did also specifically refer to three individuals, one of whom was the Respondent's husband. The Respondent's husband had declared a personal and prejudicial interest and had left the meeting accordingly.

4.4.14 The Case Tribunal concluded that the Respondent had a personal interest in the business of the meeting of 1 April 2021, as the Council's decision might reasonably be regarded as affecting her husband's well-being. The Case Tribunal also considered this interest to be a prejudicial interest as it was clearly so significant that it was likely to prejudice the Respondent's judgment of the public interest. It noted from the evidence that the Respondent failed to declare any interests, remained in the meeting and addressed the meeting.

4.4.15 As to the meeting of 3 November 2021, the Case Tribunal considered that the Respondent had a clear personal interest, as one of the recommendations in the Audit Wales report directly affected the Respondent's husband. One of the recommendations made by Audit Wales was to consider whether matters raised in its report should be referred to the PSOW, as potential breaches of the Code. The Council duly decided to report the former Chairman to the PSOW. The Case Tribunal also considered that the personal interest was one which a member of the public would reasonably regard as being so significant that it was likely to prejudice the Respondent's judgment of the public interest.

4.4.16 The Case Tribunal also noted a further undisputed material fact that, not only did a decision of 3 November 2021 directly affect a person with whom the Respondent had a close personal relationship, but a second decision also directly affected herself. Again, the Respondent remained in the meeting, did not declare her clear personal and prejudicial interests in this respect and did not withdraw from the meeting once an additional proposal was made that the Respondent be reported to the PSOW

4.4.17 The Case Tribunal noted that the Respondent spoke but abstained in the vote on the 1 April 2021 and abstained in the vote relating to the proposal to refer herself to the PSOW in the meeting of 3 November 2021. Nevertheless, the Case Tribunal considered that the business of the meetings could reasonably be regarded as affecting the well-being of both the Respondent and her husband, as a referral to the PSOW would have been a matter of concern, embarrassment and discomfort to both. The Case Tribunal found that as the Respondent had not withdrawn from either meeting and had also made oral representations at the meetings and had not received dispensation to do so, the Respondent was in clear breach of the Code.

4.4.18 The Case Tribunal considered that the Respondent's answers during her interview indicated that she had not fully appreciated the requirements of the Code. She had equated declaring a personal interest with a requirement to leave the meeting, which was not the case. In addition, as to prejudicial interests, her answer during her interview indicated that she had not fully appreciated the meaning of this paragraph. Finally, the Case Tribunal noted that this was not a case where the Respondent was attempting to hide the fact that she was related to the former Chairman. Nevertheless, the Case Tribunal noted that the Respondent accepted that she was aware that she was acting in breach of the Code's provisions.

4.4.19 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.

### **Paragraphs 7(a) and 14(1)(c) of the Code of Conduct.**

4.5 Paragraph 7(a) of the Code of Conduct states that; *‘Members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person, a disadvantage.* Paragraph 14(1)(c) 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 – not seek to influence a decision about that business”.*

### **The PSOW’s Submissions**

4.5.1 The PSOW’s submissions as contained in the Report dated 29 November 2022 are that the Respondent’s conduct was suggestive of a breach of paragraphs 7(a) and 14(1)(c) of the Code of Conduct for the following reasons.

4.5.2 The PSOW considered that the Respondent had been clear that she attended the two meetings to defend her husband. She did so knowingly and in breach of the Code of Conduct. The PSOW could see no other reason for taking such a step, if not to influence the discussion and the decisions of the other members. The PSOW was therefore satisfied that the Respondent intended to influence the decisions being made in relation to the Audit Wales report. Even if the Respondent had abstained from voting, it considered that her presence alone would have been capable of influencing the decision-making process.

4.5.3 The PSOW was of the view that by addressing Council, using emotive terms such as *“hands around his neck”* and *“scapegoat.”* By taking part in votes at both meetings, the PSOW considered that the Respondent’s behaviour could reasonably be perceived as being capable of influencing the decision of the Council. The PSOW also considered that by participating in voting, this could be perceived as the Respondent attempting to secure an advantage for her husband.

### **The Respondent’s Submissions**

4.5.4 The Respondent did not provide formal submissions in response to the Tribunal’s letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

4.5.5 During her interview and in her statement, the Respondent stated that she had addressed the Council to support and defend her husband. She was adamant that she was not trying to influence the decisions being made by Council. She said she was just putting his view forward and his side of the story and did not have any thought of influencing anybody. Indeed, she said that she knew she would not influence anybody. She said she had been angry at the comments being made about her husband with which she disagreed. She said in response to the PSOW’s questions regarding 7(a) that *“I wanted to be there to at least be in his corner”.* *“I just ...know that he has been treated*

*appallingly, and....that as his wife of over 50 years, I wanted to support him. He wasn't able to defend himself, that wasn't allowed, which I found absolutely disgusting, and against his human rights."*

**Case Tribunal's determination as to alleged breach of paragraphs 7(a) and 14(1)(c) of the Code of Conduct.**

4.5.6 In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code. As to paragraph 7(a) it states: -

*2.54 '... You should not use, or attempt to use, your public officer either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.*

*3.40...you must not seek to influence a decision in which you have a prejudicial interest. This rule is similar to the general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that as well as leaving meetings where the item is discussed, you must also not write or make any oral representations about the matter, except in the circumstances above relating to representations by the public.*

*3.45 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest... Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.'*

4.5.7 The Case Tribunal considered that in the light of its finding on the Disputed Material Fact above, the Respondent had intended to influence proceedings and decisions of the Council. As to Paragraph 7(a) of the Code, the Case Tribunal considered that the wording of the Paragraph required a degree of intent or knowledge that the member's actions could influence others. In the light of its finding on the Disputed Material Fact and the evidence, the Case Tribunal was satisfied that the Respondent's failure to declare interests, her participation in meetings and particularly her voting on her husband's position, were all actions designed to try to prevent him being reported to the PSOW. It considered that her actions in the meeting of 3 November 2021 were either a conscious or subconscious attempt to use her position to avoid a disadvantage for her husband.

4.5.8 As to the comments which the PSOW alleged were suggestive of a breach of paragraph 7(a) of the Code, these were quoted in the press as *"The way [Audit Wales] have personally gone for the chairman with their hands around his neck is disgusting. He has been made a scapegoat"*. The Minutes recorded it in slightly different terms that the Respondent had said as follows *"Audit Wales had it in for the chairman from the*

*start and had been hanging around his neck, which is disgusting.*” There was no clear evidence to confirm whether the press had been present at the meeting of 3 November 2022 or whether the Respondent’s comments had been passed on to the press. The Case Tribunal was satisfied however that the Minutes provided an official record of the meeting and that on the balance of probabilities, the Respondent made the comment recorded in the Minutes

4.5.9 Whilst the Respondent was adamant that she did not intend to, and did not think she could change anyone’s mind she clearly spoke in emotive terms in support of her husband and voted to avoid his referral. She said that her intention was only to defend her husband in the face of what she considered to be entrenched views. Whilst in this particular case, the Case Tribunal considered it unlikely that the Respondent’s presence influenced others, her contribution to the debate could conceivably have persuaded others to temper their views. By voting on the issue, the Case Tribunal considered that this could have influenced and changed the outcome of the vote.

4.5.10 It was noted that the Relevant Authority provided an opportunity for members of the public to speak on issues at Council meetings. There is no available evidence to indicate whether the Respondent was advised or sought advice in this regard. Nevertheless, the Respondent could therefore have spoken in any event by virtue of Paragraph 14(2) of the Code and then left the meeting. However, by acting in the role of Member and in particular by using her right to vote, the Case Tribunal considered that she had attempted to use her position improperly to avoid a disadvantage to her husband.

4.5.11 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 7(a) and 14(1)(c) of the Code of Conduct.

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

4.6 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*’.

#### **The PSOW’s Submissions**

4.6.1 The PSOW’s submissions as contained in the Report dated 29 November 2022 are that the Respondent’s conduct was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct for the following reasons.

4.6.2 The PSOW said that caselaw had established that for a breach of this paragraph to be found, ‘*a member’s conduct must impact upon their Council’s reputation and/or the role of the elected member and go beyond affecting their personal reputation.*’ It was the PSOW’s view that the Respondent’s conduct at the relevant meetings, with members of the public and press being present at the meeting of 3 November 2021, as well as the press coverage about it, may have brought her Council and/or her office as a member into disrepute.

4.6.3 The PSOW considered that the Respondent had knowingly disregarded the Code and that this showed a lack of regard for the ethical standards regime in Wales and could in turn affect public confidence in local democracy. The PSOW also considered however that the Respondent's response during the investigation '*demonstrates a lack of appreciation of the duties placed upon her under the Code of Conduct whilst she was acting in her public role.*'

#### The Respondent's Submissions

4.6.4 During her interview, the Respondent said that she didn't think that, during the three years she was a member of the Relevant Council, she had said or done anything to bring the Council or her office into disrepute.

4.6.5 The Respondent said that both she and the presiding Chairman were unaware that a member of the press was present at the meeting of 3 November 2021.

4.6.6 In response to questions, the Respondent said that the press coverage probably had no impact on her office as member of the Relevant Council. She said that she had received no negative correspondence or telephone calls whatsoever. As to any impact on the Relevant Council, she conceded that the press coverage could have brought the council into disrepute, and then qualified this to say "*Well, certainly one member of it.*" By this she meant her husband.

#### Case Tribunal's determination as to alleged breach of paragraph 6(1)(a) of the Code of Conduct.

4.6.7 In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct. As to paragraph 6(1)(a) it makes it clear that: -

*2.31 ...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 the public perception of your office as a member, or your Council as a whole.*

*2.32 When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their council into disrepute.*

*2.33 Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves*

*dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.*

*2.34 Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code'.*

4.6.8 The Guidance then provided a list of case examples where a breach of paragraph 6(1)(a) had been found to have occurred. The Case Tribunal considered that these examples were not comparable to the behaviour of the Respondent in this case. The examples referred to a Councillor who had misrepresented a shop purchase as being on behalf of the Council and then being abusive to staff, a member writing an article in a publication which was aggressive and threatening and where a member was convicted of a criminal conviction for common assault. The Case Tribunal was nevertheless mindful that behaviour at a public meeting could, in some cases, amount to behaviour capable of breaching paragraph 6(1)(a) of the Code of Conduct.

4.6.9 As to the press report submitted in evidence, the Case Tribunal considered that this arose in the context of *'an Audit Wales report which criticised the council for inadequacies in governance, financial management and internal control arrangements.'* The headline however referred specifically to the Respondent's husband as the Chairman during the period upon which the Audit Wales report had focused, being the 2018-2019 financial year. The press report went on to say that Councillors had also agreed to refer the Respondent to the Ombudsman *'but she has since resigned from the authority.'* It went on to state that the Respondent had been reported for attending two council meetings when the audit report was discussed, and she should have declared a personal and prejudicial interest. The Respondent's comments were also reported.

4.6.10 The Case Tribunal considered that the Respondent's actions had arisen in a situation where it is likely that the Relevant Authority had already been brought into disrepute in the light of the critical Audit Wales Report. It was a 64-page document which focused in detail on governance, and financial management and internal control failures of the Council as a whole, whilst also referencing the role of three individuals connected to that Authority, including the former Chairman of the Council. Nevertheless, the Case Tribunal considered that the deliberate conduct of the Respondent on its own, in particular at the meeting of 3 November 2021 was also capable of bringing the Relevant Authority and the role of member into disrepute.

4.6.11 It considered that members of the public should be able to expect their elected members not to participate in proceedings and particularly not to vote on matters which

directly affect their spouses, friends or close personal associates. They would be expected to be acting solely in the public interest and not to benefit their own interests or those of people close to them. Doing otherwise, and deliberately so, would inevitably attract adverse publicity and local press interest and ultimately reduce trust in the role of member.

4.6.12 In conclusion, the Case Tribunal considered that the Respondent had deliberately disregarded the requirements of the Code of Conduct by failing to declare a personal and prejudicial interest at both meetings and continuing to participate in them. It considered that voting on the issue of referral of her husband to the PSOW was a serious breach of the Code. The press also reported the nature of the breach. Whilst it considered that the predominant reasons for press attention of the Relevant Authority was due to the actions of the Council as a whole and of named individuals in the Audit Wales report, the Respondent's disregard of the Code requirements could also reasonably be regarded as bringing the Authority and office into disrepute. The Respondent made it clear that she would have acted in the same way again as her *"husband came first."*

4.6.13 As for the comments made by the Respondent and recorded in the minutes of the meeting of 3 November 2021, the Case Tribunal considered that whilst they were somewhat emotive, they were not egregious in the context of ordinary political debate. It did not consider that these comments in themselves constituted a breach of the Code and noted that the comments were likely to have been made in the heat of the moment.

4.6.14 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct.

## **Article 10 ECHR**

4.7 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...'*

## **Case Tribunal's consideration as to Article 10 ECHR.**

4.7.1 The Case Tribunal adopted the following three-stage approach formulated in ***Sanders v Kingston [2005] EWHC 1145*** in relation to the allegations of breach of the Code of Conduct. This approach is as follows: - (i) Did the Respondent's conduct

breach 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)?

4.7.2 The Case Tribunal had, as above, found that there had been prima facie breaches of the Code of Conduct by the Respondent. It also considered that any prevention of the Respondent from freely expressing her views at meetings would comprise of a prima facie breach of Article 10 as the comments could be categorized as political expression during debate, freedom of expression being regarded as a cornerstone of democracy. Nevertheless, the Case Tribunal was satisfied that the Code's requirements to declare interests and to withdraw from the meeting as appropriate were justified by reason of the requirements of Article 10(2).

4.7.3 Whilst the Code requirements could be deemed to restrict the Respondent's right to freedom of expression and anything which impedes political debate should be exercised with extreme caution, the Code does provide an opportunity to express views in accordance with Paragraph 14(2) or by applying for dispensation and the Respondent did not avail herself of these opportunities.

4.7.4 The Case Tribunal considered that the restrictions provided in the Code were necessary to uphold the public interest in proper standards of conduct by members. Such restrictions were necessary to restrict members from participating in Council business which was to do with relatives or close personal associates. The Case Tribunal was satisfied that the restrictions on acting in certain circumstances, as provided by these Paragraphs of the Code as prescribed by law, were necessary. This was due to the fact that the restrictions upheld the law, protected ethics and morals and the rights of others by ensuring that close personal associates (a husband in this case) did not benefit from a member speaking and voting on a matter.

4.7.5 The Case Tribunal therefore found by unanimous decision that any restrictions provided by the Code of Conduct for Members would have been justified in this case by reason of the requirements of Article 10(2) of the ECHR.

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

5.1 The Listing Directions dated 27 January 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceeding was reached.

### The PSOW's Submissions

5.1.1 The Ombudsman wrote in a further letter in February 2023 as follows;

*'As the Tribunal is aware, the purpose of the ethical standards framework is to promote high standards amongst members of councils in Wales and maintain public confidence in local democracy. Whilst we take the view that the nature of any sanction is a matter*



for the Case Tribunal, having considered the facts of the case and the seriousness of the breaches of the Code of Conduct found, we recognise that the purpose of a sanction is to:

- *Provide a disciplinary response to an individual member's breach of the Code.*
- *Place the misconduct and appropriate sanction on public record.*
- *Deter future misconduct on the part of the individual and others.*
- *Promote a culture of compliance across the relevant authorities.*
- *Foster public confidence in local democracy.'*

5.1.2 The PSOW also highlighted from the relevant Sanctions Guidance certain aggravating and mitigating factors which it considered could apply in this case. Finally, the PSOW stated that the Respondent *'has not shown any remorse and indicated that if the same situation arose again, she would repeat the behaviour'* and considered that a sanction of disqualification would be fair, proportionate and in the public interest *'to maintain confidence in local democracy.'*

#### The Respondent's Submissions

5.1.3 In her response to the PSOW's report, the Respondent stated that in the last months, her health had deteriorated, and she provided details of her serious illness. She said *'I therefore will not be participating any further in this investigation. I am finding it very stressful, I have already said everything there is to say on this matter. As my husband was not allowed to defend himself I have no regrets at my actions. At [age details] and with failing health and a system I totally disagree with (giving a voice to the guilty and not to the innocent) and allowing the Welsh Audit Office to persecute a man who has worked his adult life volunteering his time with no pay. The chances of me going on any Community Council is nil. We sat on the Community Council with no pay to work for our community and have suffered three years of persecution for it. As I said I will not be taking any further part in this investigation. The Adjudication Panel must make their decision and let me know the outcome.'*

5.1.4 She also said *'the people I'm most disgusted with, are the Welsh Audit Office, because I understood that they were supposed to..., make sure that the council, eight people are doing what they should be doing. But they singled [name] out, they made an attack, a frontal attack on one person, not eight. And I think that that was done on purpose, for some reason, which I don't know anything about. But they made a frontal attack. Now there were eight people on that council at the time, eight people responsible for what was wrong or right, not one, eight.'*

5.1.5 During interview, the Respondent expressed her only regret as not having put the case in favour of her husband in a more effective way. As to the Code, she also said *"I was fully aware...and ... I knew there'd be consequences..., I'm not bothered about that at all, I wanted to be there for him."* Finally, she said *"Can I just say though, it was very*

*interesting, that I sat through the April one without anybody saying anything, and it wasn't until I spoke out in [name]'s defence in the November one, that Council allowed ... decided I shouldn't be there."*

### **Case Tribunal's determination as to Sanction.**

5.1.6 The Case Tribunal considered all the facts and evidence. It also had regard to the Adjudication Panel for Wales current Sanctions Guidance. In particular it noted the public interest considerations as follows in paragraph 44; - *'The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact on terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.'*

5.1.7 The Clerk to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

5.1.8 The Case Tribunal noted the Respondent's arguments that there had been individuals who had moved to destroy her husband and that the issue was to do with grant funding having been diverted to community projects from the Community Hall, to which the individuals were connected. She said it was they who had been in touch with Audit Wales and had reported her husband. She considered this to be unfair and did not provide him with an opportunity to give his side of the story.

5.1.9 Regardless of any difficult background issues however, the Case Tribunal considered that the breach was serious in certain respects, particularly in relation to the question of voting on whether to refer her husband to the PSOW. As such, it considered that the case was one which would normally attract disqualification or suspension for a significant number of months. In the circumstances, and in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a period of disqualification.

### **Aggravating factors**

5.1.10 The Case Tribunal went on to consider any aggravating factors in this case. It concluded that the following factors applied and that the Respondent: -

- was engaged in deliberate conduct and use of office/a position of trust to attempt to avoid a disadvantage for her husband;
- had breached the Code at two meetings and the Respondent's behaviour had therefore been repeated.
- had chosen not to attend training on the Code;

- had engaged in conduct with little or no concern for the Code;
- had ignored advice given by the Clerk regarding the Code at both meetings even though the Respondent accepted that the Clerk wanted her to declare an interest, and she had also chosen not to attend any Code training.

### Mitigating Factors

5.1.11 The Case Tribunal also considered mitigating factors in this case. It concluded that the following factors applied, that the Respondent: -

- had a relatively short period of service and inexperience in the role;
- had a previous record of good service;
- had co-operated with the investigation officer.

5.1.12 In addition to these mitigating factors highlighted from the Sanctions Guidance, the Case Tribunal considered the Respondent's responses during PSOW interview had been honest and straightforward. The Case Tribunal accepted the Respondent's evidence of her serious health condition in the absence of medical evidence and gave credit to the fact that the Respondent had not sought to use her health condition to excuse any failure to adhere to the Code, nor did she seek to blame others for this failure.

5.1.13 The Case Tribunal also noted the Respondent's position that there were entrenched views within the Relevant Authority and that she had been seeking to put forward an alternative view. Nevertheless, the Case Tribunal noted that there were other members who could have put forward an alternative view and that there were procedures in place which could have enabled her to speak, to include the procedure in Paragraph 14(2) of the Code as well as the right to apply to the Relevant Authority's Standards Committee.

5.1.14 In view of the Respondent's resignation the day after the meeting of November 2021, the sanction of suspension was clearly not a sanction available to the PSOW. As to former members, Paragraph 47 of the Guidance states '*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...*'

5.1.15 The Case Tribunal accepted that the Respondent had no intention of returning to member duties, nevertheless the Case Tribunal noted that sanctions had other overarching purposes. They not only provided a disciplinary response to an individual member's breach of the Code, but they were also to deter future misconduct by others and promote a culture of compliance across authorities generally. It considered there to

be a requirement to reinforce the importance of the Code as well as the principles of selflessness, propriety and objectivity in decision-making.

5.1.16 In the circumstances, the Case Tribunal considered whether *'No Action'* or *'Disqualification'* as detailed in the Sanctions Guidance was an appropriate outcome. It noted Paragraphs 39.1 and 39.2 of the Guidance in particular, which recognized that no action may be appropriate where there had been a resignation or ill health which rendered a sanction unnecessary and/or disproportionate.

5.1.17. In view of the Respondent's prompt resignation following the events of 3 November 2021, her candid responses during interview and her accepted ill-health, this was a finely balanced decision. The Case Tribunal also considered Article 10 in the context of imposing sanctions. Being mindful of the public interest however and the need to uphold the law, ethics and morals and to protect the rights of others in a democratic society, the Case Tribunal was satisfied that a finding of *'No Action'* would not be appropriate in this case. There was an expectation that members would act with integrity, act in accordance with the trust that the public placed in them, lead by example, and promote public confidence by acting in the public and not private interest. The Respondent had not done so.

5.1.18 In all the circumstances therefore and bearing in mind the Respondent's disregard of the Code and absence of regret for her actions, as well as the wider purpose of sanctions as outlined in the Guidance, it considered that the sanction of disqualification was appropriate. It considered that this was necessary to underline the importance of the Code and the need for members to reflect upon its purpose when undertaking to abide by the Code on taking office. It considered that disqualification for a period was a proportionate and necessary sanction in this case.

5.5.19 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 12 months** from being or becoming a member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.5.20 St. Harmon Community Council and its Standards Committee are notified accordingly.

5.5.21 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**; 31 March 2021

C Jones

Chairperson of the Case Tribunal

Mr D Morris

Panel Member

Mr H E Jones

Panel Member