

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/015/2022-023/CT

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

RESPONDENT: Former Councillor Chris Evans

RELEVANT AUTHORITY: Newport City Council

1. THE ADJUDICATION

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 21 March 2023, 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 he wished the reference to be determined by way of written representations or oral hearing. The Respondent indicated that he wished the matter to be determined by way of written representations.

1.3 On 16 May 2023, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for either party to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application to this effect.

1.4 The Case Tribunal therefore exercised its discretion to determine its adjudication on the papers only. The adjudication duly proceeded in the absence of the relevant parties at 10.00am on 23 June 2023, and was conducted by means of remote attendance technology.

2. THE ALLEGATION

2.1 The PSOW's report and reference to the APW dated 20 March 2023 outlined the allegation to be adjudicated upon by the Case Tribunal as follows.

2.2 It was alleged that the Respondent had brought his office and the Council into disrepute when he pleaded guilty and was convicted of the criminal offence of soliciting. The PSOW noted the nature of the Respondent's criminal offence, which was contrary to the Sexual Offences Act 2003, and the significant publicity surrounding the conviction, which referred to both the Council and the Respondent's role as an elected member. The PSOW said this suggested that the Respondent's actions may have brought his office and the Council into disrepute and that the Respondent's conduct may amount to a breach of paragraph 6(1)(a) of the Relevant Council's Code of Conduct.

3. FINDINGS OF FACT

Submissions on the Undisputed Material Facts

3.1 There being no relevant Disputed Material Facts, the Case Tribunal's Listing Directions dated 16 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Material Facts.

3.2 The PSOW referred to the report dated 20 March 2023 and offered no further written submissions. The Respondent's representative made the following points in further written submissions dated 26 May 2023.

3.2.1 With regard to paragraph 3.3.2 below, he said that the Respondent couldn't recall making any mention of 'kerb-crawling' and he was merely representing the views of various bodies such as the World Health Organisation which have an interest in this issue. He had further suggested that local charities be consulted to seek their views. He said that the Respondent's engagement in the Committee meetings had been fully investigated by the Police and Crown Prosecution Service and no further action was deemed necessary.

3.2.2 As to paragraph 3.3.6 below, he said that the Respondent's Solicitor for the criminal proceedings had referenced the Respondent's councillor role during those proceedings, only to the extent of highlighting his excellent record as an elected representative, as evidenced by comments on social media. He had also referenced the impact the whole affair had on his standing, wellbeing and mental health.

3.2.3 As to paragraph 3.3.7 below, he said that the Respondent was seriously ill at the time. His Solicitor in the criminal proceedings had agreed a basis of plea, namely that the Respondent agreed to plead guilty in order to minimise the impact on his family, friends, community and the person involved. The Respondent's representative said that

the relevant magistrate credited the Respondent with his willingness to bring matters to a swift and reasonable end.

3.2.4 With regard to paragraph 3.3.8 below, the Respondent wanted it recorded that the main reporting came from a news agency he previously worked for, and with whom he was in dispute. The Respondent felt that he was not responsible for the media reporting and referred to the findings of the Leveson Report and its recommendations as to press intrusion and misreporting.

3.2.5 With regard to paragraph 3.3.9 below, the Respondent's representative said that relevant medical reports and doctor's notes clearly record that after the case, the Respondent suffered serious ill-health. He was receiving intense medical attention and was in no position to refer himself to anybody.

3.2.6 As to paragraph 3.3.10 below, he agreed that this was correct. However, the representative considered it important to note that the Respondent only effectively remained a Councilor for approximately two months, as the local elections were in early May. He said that after attending one meeting in January 2022, in which he was clearly unwell, he removed himself from all committees, political parties and council business. The representative said that retrospectively, the Respondent also donated his Councilor's allowance to various good causes. This was reported in the press.

3.2.7 Finally, as to paragraph 3.3.11 below, the Respondent's representative said that this description was wholly inadequate. In this context, he provided detailed and sensitive information about the medication, support and monitoring which the Respondent was receiving.

Case Tribunal's Determination as to the Facts

3.3 There being no relevant Disputed Facts, The Case Tribunal noted the detailed further written representations on the Undisputed Material Facts made by the Respondent's representative. It also considered the PSOW's report, together with the evidence in the Tribunal Bundle. The Case Tribunal acknowledged the contextual background provided by the Respondent's representative. On the balance of probabilities however, and having considered all these matters, it found the following Undisputed Material Facts: -

3.3.1 The Respondent was a member of the Relevant Council from 2012 until May 2022.

3.3.2 The Respondent attended meetings of the Committee to discuss the proposed Public Spaces Protection Order ('PSPO') in Pill on 19 February and 30 April 2021. He made comments about the provisions of the PSPO.

3.3.3 The meetings took place before the Respondent's offence.

3.2.4 The Respondent pleaded guilty and was convicted on 6 January 2022 of an offence of soliciting, contrary to section 51A of the Sexual Offences Act 2003. The offence occurred in Pill on 22 May 2021.

3.3.5 The Respondent received a 12-month conditional discharge. He was ordered to pay a £22 victim service surcharge and £85 costs to the Crown Prosecution Service.

3.3.6 The Respondent's role as a member of the Council was referenced by his representative during the Court hearing.

3.3.7 The Council had not been informed in advance of the hearing that the Respondent intended to plead guilty.

3.3.8 The Respondent's conviction received significant press interest, which referred to his role as a member of the Council. The press articles reported that the Respondent's representative in the criminal proceedings had referred to his Council role (and that he was 'resigned' to losing it), that the Judge had taken this into account when making his judgment, and that the Council had no powers to disqualify the Respondent.

3.3.9 The Respondent did not refer himself to the PSOW's office following his conviction.

3.3.10 The Respondent remained a member of the Council until 9 May 2022 and attended a meeting of the Full Council on 25 January 2022.

3.3.11 The Respondent has been prescribed both antidepressant and anxiety medication since 7 June 2021.

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

4.1 The Listing Directions dated 16 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether, in the light of the Facts, there had been a failure to comply with the Relevant Authority's Code.

4.2 The Case Tribunal considered the parties' submissions, the Respondent's interview responses, the contextual background in relation to the Undisputed Material Facts, as provided by the Respondent's representative in paragraph 3.2 above, as well as the evidence within the Tribunal Bundle.

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

4.3 The alleged Code breach relates to Paragraph 6(1)(a) of the Code of Conduct. This Paragraph states that '*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*'.

The Parties' submissions

4.4 The parties' submissions as to whether there has been a failure to comply with Paragraph 6(1)(a) of the Code of Conduct can be summarised as follows.

The PSOW's Submissions

4.4.1 The PSOW's submissions as contained in the Report dated 20 March 2023 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.

4.4.2 The PSOW's Report referred to the fact that the Respondent had pleaded guilty and was convicted on 6 January 2022 of an offence of soliciting in his private capacity, contrary to section 51A of the Sexual Offences Act 2003.

4.4.3 The Report also made the point that the Respondent did not resign following his conviction and attended a full Council meeting on 25 January 2022 and had not referred his actions to the PSOW's office for consideration. The PSOW considered that this indicated a lack of recognition by the Respondent of the seriousness of his actions and as to the impact his behaviour and conviction might have on the reputation of his office and the Council.

4.4.4 The PSOW noted that whilst the Respondent disputed the accuracy of the press articles in relation to the quotes attributed to his representative, he had nevertheless confirmed at interview that his Council role was referenced by his solicitor during the hearing.

4.4.5 The Report referenced the PSOW's Guidance which states that a Member's actions and behaviour are subject to greater scrutiny than those of ordinary members of the public, and that a criminal conviction may amount to a breach of paragraph 6(1)(a) of the Code of Conduct.

The Respondent's Submissions

4.4.6 The Case Tribunal again noted the written submissions made by the Respondent's representative as dated 26 May 2023 in relation to the Facts, in considering whether those Facts and the evidence in the Tribunal Bundle amounted to a breach of Paragraph 6(1) of the Code of Conduct.

4.4.7 The Respondent's representative also added general comments about the criminal proceedings. He said that relevant testimony in the proceedings had confirmed that no money changed hands on the night in question and no sexual relations took place. He also explained the lengthy, historical, complex and multi-layered context. He said that communications had been friendly and non-exploitative and that there was a relationship of respect with the person in question.

4.4.8 During his interview with the representatives of the PSOW, where his own legal representative was present, the Respondent had also made the following points: -

- that he had a previous history of raising the issues which were subject to the PSPO, and which pre-dated the meetings specifically referenced by the PSOW.

- that 'resigned to' losing his Councillor role, as referenced by his Solicitor in the criminal proceedings, was misinterpreted to imply that he had already 'resigned'.

- he said that the matter had been reported on the front page of one particular local newspaper for three days.
- he felt he was dealing with hostile media, with respect to the way that they reported it, in comparison with the case of another Councillor.
- The Respondent considered that the question of how the matter impacted on the Council and his role was; *“totally and utterly out of my control.”* He did not consider that he was responsible for the way that certain organisations chose to use him as *“clickbait”*.
- The Respondent’s representative thought that this offence was *“fairly low down the food chain”* in terms of such matters. He said; *“I’d submit it’s not necessarily caused any damage...a conditional discharge is a very, very, very lenient sentence.”*

4.4.9 During various written exchanges with the PSOW and the APW, the Respondent or his representative also made the following points; -

- It was Respondent’s view that the PSOW Report was unbalanced, relying essentially on evidence provided by the Relevant Authority, and did not portray the Respondent in a fair or reasonable light and was somewhat dismissive of his diagnosed mental and physical health conditions.
- He reiterated that in Committee meetings, he had expressed opinions that were not necessarily his own, by referencing various policies and opinions of organisations, such as the World Health Organisation. He said he was able to produce the research that he had carried out prior to the meetings. He did not consider that the comments he made at these meetings could bring the Council into disrepute, as he was merely representing the views of others.
- He said that the newspaper ‘clippings’ failed to include a report in one newspaper which stated that the Respondent intended to donate his Councillor allowance to various local good causes.
- He reiterated that the concept of being resigned to the notion that he would lose his position was clear throughout the reporting and may have been misunderstood by the presiding magistrate.
- He was not responsible for shares or comments made by a councillor who had a history of opposing his views and politics.
- He considered that there had been no requirement to resign. In addition, his failure to resign and self-report was due to illness, not failure to recognise the consequences of his actions. He had not been in a fit state *“to consider perceived impact of his behaviour”*.
- The Respondent felt that he had received overwhelming support, with countless requests for him to continue representing his community.

- The Respondent said that the police themselves withdrew the relevant part of the proposed PSPO. He thought that this suggested that they shared the views, and it was the Council itself that reintroduced the provision.
- He considered that where the Monitoring Officer was aware of the situation, then there was no need to self-report the matter and he referenced the PSOW Guidance in this respect.
- Apart from being unwell, he said that there was absolutely no obligation upon him to inform the Council as to whether he intended to plead guilty or not guilty. He said that he pleaded guilty on the relevant date; *“to move on with his life and limit the impact on family.”*
- He was not responsible for his solicitors’ actions in the criminal proceedings if he referenced the Respondent’s Council role.
- He considered that his actions were in line with his diagnosed medical conditions

Code of Conduct Guidance and the Welsh Principles.

4.5 The Case Tribunal carefully considered all of the evidence and the parties’ submissions. It also 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), the Guidance states 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.

4.6 The Guidance then provides a list of case examples where a breach of paragraph 6(1)(a) has been found to have occurred. One such case was of a Member acting in a private capacity, who received a conditional discharge for common assault due to the unsolicited touching of the leg of a female, which caused her distress. The Member had

accepted that his behaviour was unacceptable and had pleaded guilty to the offence. In that case, the Panel found that the conviction and negative publicity that surrounded the case had brought the Member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

4.7 The Case Tribunal also considered the Respondent's behaviour in the context of the Welsh Principles governing the conduct of elected Members in Wales which encompass the 'Nolan Principles'. These include the following Principles which underpin the Code of Conduct in Wales.

4.7.1 'Integrity and Propriety' which the relevant Regulations further explain as follows; *'Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour'*.

4.7.2 'Duty to Uphold the Law', further explained as follows: *'Members must act to uphold to law and act on all occasions in accordance with the trust that the public has placed in them.'*

4.7.3 'Accountability', further explained as follows: *'Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.'*

4.7.4 'Leadership', further explained as follows: *'Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.'*

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

4.8 Having considered the Guidance and Principles, the Case Tribunal turned to the question of whether the Respondent was acting in his private capacity at the time of the offence. It considered that he was indeed acting in his private capacity. It nevertheless noted that the Code of Conduct, as embodied in the relevant Welsh Regulations, made it clear at Paragraph 2(1)(d) that, a Councillor was required to observe the Code; *'at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7'*.

4.9 With reference to the PSOW Guidance, the Case Tribunal noted that the criminal behaviour to which the Respondent pleaded guilty did not amount to an offence involving dishonest, threatening or violent behaviour. The Case Tribunal also took into account the fact that the offence in question attracted a modest maximum penalty. It noted that the Magistrates Court may have taken into account the Respondent's likely loss of elected role and income in imposing sentence, however it considered that a conditional discharge following a guilty plea was relatively unusual.

4.10 The Case Tribunal concluded that pleading guilty and being convicted of an offence of this nature would inevitably attract interest and concern, even setting aside any unreasonable or salacious media interest. This was in light of the fact that the Respondent held a trusted leadership role as a Councillor and would be expected by reasonable members of the public to lead by example. The Case Tribunal noted that the Respondent had, for instance, been a Council nominated school Governor and his admitted behaviour was wholly at odds with that expected of an individual who had a role in representing the Council and/or a school. The Case Tribunal considered that public office attracted greater scrutiny than for ordinary members of the public. It was of the view that the Respondent, as an experienced Councillor, would have been fully aware of the likely consequences of his behaviour and its impact on his public role and Council. It considered that the Respondent's actions, albeit in a private capacity, failed to promote public confidence in the role of Councillor and in the work and efforts of the Relevant Authority. The Case Tribunal was therefore satisfied that the Respondent's conduct led to a breach of Paragraph 6(1)(a) of the Code.

4.11 With reference to the Welsh Principles, the Case Tribunal also considered that pleading guilty to the offence in question went hand in hand with a finding of failure to uphold the law and to maintain integrity, propriety and the responsibilities of public office in a leadership role. The Case Tribunal considered that Councillors would be expected to have carefully and consciously signed up to these Principles, as well as to the Code requirements when signing their undertakings on taking up office, and that the Respondent's actions had showed failure to uphold the Welsh Principles and that this further supported a finding of breach of Paragraph 6(1)(a) of the Code.

4.12 The Case Tribunal further considered that the Respondent would have been acutely aware of the focus on the issue of prostitution in the locality in which his offence occurred, as he had been particularly vocal on the PSPO issue in Committee meetings. He was also aware that the Police and his Authority had been working together to address the issue of prostitution as well as other anti-social behaviour in the locality. It considered that in committing this offence, the Respondent would inevitably 'stir up a hornet's nest'. Whereas a conditional discharge for such an offence may not ordinarily have attracted this level of interest, in this case it was undoubtedly the Respondent's role as elected politician which attracted additional attention. His actions had been exceptionally foolhardy in the circumstances.

4.13 With regard to the significant press interest associated with such proceedings, the Case Tribunal considered that individuals entering public life would be fully aware of this unfortunate reality. The Case Tribunal considered that it couldn't ignore that fact and reality in reaching its decision. The nature of the offence and the Respondent's status made it likely that the offence to which the Respondent pleaded guilty would attract such press attention following conviction and sentence and would inevitably make the role and Council a 'laughingstock'. The Respondent agreed that his solicitor had highlighted the Council role during his representation in the proceedings. The Case

Tribunal also noted that the media interest had undoubtedly included social media interest so was likely to have reached a wide range of constituents including children and would provide an unfortunate portrayal of local politics.

4.14 Whilst the Case Tribunal noted the Respondent's comments about a hostile media element due to a dispute with his former employer, it nevertheless considered that press reporting would have occurred in any event. The significant volume and variety of newspaper articles within the Tribunal Bundle showed that there was a degree of consistency in the reporting of the criminal proceedings. This was unlikely to have been exclusively connected to the former employer. In conclusion, whilst the Case Tribunal noted the dispute, as the reporting came from several different sources, it considered that it was more likely that the manner of reporting was due to the nature of the incident itself rather than the dispute. The articles also included material which recorded the Respondent's offer to donate his Councillor allowance to local good causes.

4.15 The Case Tribunal noted that the solicitor representing the Respondent in the criminal proceedings had, during the proceedings, stated to the effect that the Respondent was resigned to losing his role, rather than stating that he had already resigned. The Case Tribunal also noted that in correspondence from the Respondent's representative to the Relevant Authority, that he recognised that the outcome of the criminal proceedings might trigger a standards referral, and he sought information about the next steps, protocols and procedures associated with the same if this was the case. In the circumstances the Respondent demonstrated some awareness that the admitted behaviour was unacceptable, and that his actions might well constitute a breach of the Code of Conduct.

4.16 As to the Respondent's role at the relevant Scrutiny Committee meetings, the Case Tribunal considered that, whether or not the Respondent's comments reflected his own views as well as those of named organisations, and whether or not he had advocated against 'criminalising' customers as well as prostitutes when discussing the proposed PSPO, the meetings pre-dated his conviction, and he was exercising his right to freedom of expression.

4.17. Nevertheless, the Case Tribunal considered that the Respondent's passionate contribution to both publicly accessible meetings, in the context of the offence to which he pleaded guilty a few weeks later and in the locality being discussed in the PSPO, was a relevant factor. The combination of this contribution, together with the offence, was conduct which could reasonably have been regarded as bringing the office or the Council into disrepute. It could cause concern for anyone who had attended or watched the recorded meeting in the light of the subsequent offence. The Monitoring Officer candidly stated in his referral on behalf of the Relevant Authority; "*more by luck than judgement, this element has not been a major issue in regard to media and public criticism...*" The Case Tribunal was satisfied that, whatever his motivation or intention in speaking, the Respondent's involvement in the debate on the PSPO prior to his arrest was relevant to the extent that it could well have increased the potential embarrassment

and reputational harm for the Councillor and the Relevant Authority in the light of the subsequent criminal offence.

4.18 The Case Tribunal did not consider that it was significant that the Respondent had not informed the Council or Monitoring Officer in advance of the hearing that the Respondent intended to plead guilty. Whilst this may have left the Council in a difficult position in facing press enquiries, it was mindful that pleas often change on the first day of trial, that the Respondent was suffering from significant ill-health issues and that he said his guilty plea was entered to minimise the impact of the proceedings on other individuals.

4.19 The Case Tribunal noted that the Respondent did not self-report the potential breach of the Code of Conduct to the PSOW. It noted that there was some indication in the evidence that he or his representative were in contact with the PSOW and that the Respondent may have considered that he had done enough to self-report the matter to the PSOW. The Case Tribunal considered that the Monitoring Officer had acted fairly and reasonably in allowing the Respondent time to voluntarily refer the matter to the PSOW's office. The Case Tribunal was nevertheless satisfied that a duty to report conduct involving criminal behaviour and breach of the Code to the proper authority or the Monitoring Officer respectively, was defined as a duty placed upon Members other than the Respondent. It therefore did not consider that failure to self-refer was an additional factor leading to breach of Paragraph 6(1)(a) of the Code.

4.20 Again the Case Tribunal considered whether the Respondent's failure to immediately resign amounted to an additional breach of Paragraph of Paragraph 6(1)(a) of the Code. It noted that the Respondent attended one Council meeting relatively soon after the proceedings, however it was mindful of the fact that he then relinquished other Council duties and attended no other meetings. It accepted that, at the time, the Respondent was suffering from exacerbated ill-health symptoms following conviction and sentence and following intense media interest and newspaper reporting on the case. It also noted his representative's submission that the Respondent had not been in a fit state to consider the impact of his behaviour. In the circumstances, the Case Tribunal did not consider that the Respondent's continuation in office for a further four months was an additional factor in its determination as to breach of Paragraph 6(1)(a) of the Code.

4.21 Finally, the Case Tribunal considered the Respondent's right to respect for his private life (Article 8 of the ECHR). It noted that there should be no interference by a public authority with the exercise of this right except in certain circumstances. This includes where this is in '*accordance with the law*' and '*necessary for the prevention of... crime [and] for the protection of health or morals...*' In the light of the Respondent's guilty plea for the offence of soliciting, the Case Tribunal concluded that a finding of breach of the Code of Conduct for Members was not precluded by Article 8.

4.22 In conclusion therefore, the Case Tribunal considered that the nature of the criminal conviction under the Sexual Offences Act 2003, together with the significant

publicity surrounding it, which referred to both the Council and the Respondent's role as an elected member, reflected poorly on himself and his role and brought both his office and the Council into disrepute. The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 6(1)(a) of the Code.

5. FINDINGS IN RELATION TO SANCTION

5.1 The Listing Directions dated 16 May 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 Parties' submissions

5.2 The parties' submissions as to any sanction to be imposed in the event of a finding of breach of Paragraph 6(1)(a) of the Code of Conduct can be summarised as follows.

The PSOW's Submissions

5.2.1 The PSOW's representative made the following general submissions. He noted that the purpose of the ethical standards framework was to promote high standards of conduct amongst members of councils in Wales and maintain public confidence in local democracy. He also noted that the purpose of sanction was 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.

5.2.2 The PSOW's representative also highlighted some of the mitigating and aggravating factors from the APW's Sanctions Guidance which he considered applied in this case. He suggested that the breach was serious in nature, and a sanction would be fair, proportionate, and necessary in the public interest in order to maintain confidence in local democracy. He maintained that the conduct was such that it called into question the Respondent's fitness for public office and brought the Council into serious disrepute.

The Respondent's Submissions

5.2.3 The Respondent's representative made the following general submissions. He said that from a historical perspective the Respondent had, over the last 30 years, rebuilt his life and described the hardships he had faced. The representative said that the Respondent had provided sterling public service for many years in the ward of Rogerstone as a County and Community Councillor. He said he was held in high esteem by the people he represented. When this matter became known, the

representative said that the Respondent had *“enormous support and goodwill towards him from the community, testimony to the high regard and respect in which [he] was held because of the causes he had championed for local people in assisting them as a diligent Councillor with their various issues/complaints that needed attention”*.

5.2.4 The representative said that following the Court appearance, the Respondent's life had been in *“free fall”*, previous health issues had been exacerbated and he had required a great deal of input from health professionals. He explained that the Respondent had clearly been unwell at the time of interview with the PSOW representatives and suffering health challenges. The Respondent said he had *“no intention whatsoever of standing for election again.”*

Case Tribunal's determination as to Sanction.

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

5.4 The Registrar to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct by the Respondent.

5.5 The Case Tribunal considered that the breach was serious, as a conviction of this nature would inevitably attract significant media and public attention. Nevertheless, as the offence in question attracted a modest maximum penalty, and the Respondent received a conditional discharge only, the Case Tribunal considered that had the Respondent remained in office, a moderate period of suspension would have been appropriate. In the circumstances, the Case Tribunal was mindful of paragraph 47 of the Guidance which 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.’*

5.6 In the circumstances, the Case Tribunal considered that disqualification for a moderate period would be appropriate, to ensure that the Respondent had the opportunity to reflect upon the requirements of the Code of Conduct before

contemplating a return to public office in future, notwithstanding his currently expressed view that he had no intention of standing for election again.

5.7 The Case Tribunal then considered any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration as follows.

Mitigating Factors

5.7.1 The Case Tribunal concluded that the following mitigating factors applied to the Respondent:

- a previous record of good service over a long period of time. The behaviour had been described by the Respondent's representative as a moment of madness or a lapse of judgement.
- the evidenced misconduct was a one-off or isolated incident.
- the Respondent's confirmation that he had donated his Council allowance to local good causes following conviction and sentence.

Aggravating factors

5.7.2 The Case Tribunal also considered that the following aggravating factors applied to the Respondent:

- the long service and position of responsibility in the community should also have alerted the Respondent to his responsibilities and the need for accountability.
- a lack of acceptance of responsibility for the consequences of his actions or contrition regarding the misconduct and its inevitable consequences. The Respondent had failed to grasp the impact of his actions, his criminal conviction and subsequent reporting would have on his own role and that of the Council. It was his view that the question of how the matter impacted on the Council and his role was totally and utterly out of his control.
- reckless conduct with little or no concern for the Code and the ethical standards regime in Wales, despite having received detailed training upon it in 2018 and which emphasised the '*Need to restore public confidence and high ethical standards in public office*'.
- the absence of any regret or apology for the consequences of his actions as regards his elected role and the Relevant Authority

5.8 The Case Tribunal had regard to the public interest and the overarching purposes of the Code to uphold standards of conduct in public life and maintain confidence in local democracy. It also had regard to the mitigating and aggravating factors as above. In all the circumstances, it remained of the view that disqualification was the appropriate sanction. As the Respondent had not stood for office in the local government elections in Wales in 2022, it had carefully considered whether '*No Action*' or '*Disqualification*' as detailed in the Sanctions Guidance was the most appropriate outcome.

5.9 Paragraphs 39.1 and 39.2 of the Guidance were noted by the Case Tribunal in particular, which recognised that no action might be appropriate where there had been resignation or ill health which rendered a sanction unnecessary and/or disproportionate. The Case Tribunal noted however that the Respondent had chosen not to resign following his conviction in the criminal proceedings and that he had remained in office for a further four months. Whilst he was undoubtedly suffering from ill health at the time, he had nevertheless felt it appropriate to attend a Council meeting in January 2022 and had been able to instruct his legal representative to act on his behalf. In the light of the over-arching purpose of the standards regime and sanctions, the Case Tribunal considered a short period of disqualification to be necessary and proportionate to allow a further period of reflection.

5.10 The Case Tribunal accepted that the Respondent had been suffering from acute stress and mental ill-health throughout the considerable period from the night of the offence to this current adjudication. Nevertheless, the Case Tribunal was satisfied that a finding of *'No Action'* would not be an appropriate response 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 and promote public confidence by leading by example and upholding the law. It considered that a sanction should be imposed in order to underline the importance of the standards regime in Wales, to promote a culture of compliance across the relevant authorities and foster public confidence in local democracy. The Case Tribunal was satisfied that the only alternative to a finding of no action for a former Member was a moderate period of disqualification.

5.11 In all the circumstances, in the light of the evidence and the wider purpose of sanctions as outlined in the Guidance, the Case Tribunal considered that the sanction of disqualification was appropriate to reflect the question of fitness for public office. It considered that this was necessary to underline the importance of the Code and the need for members to carefully reflect upon its purpose when undertaking to abide by the Code on taking office. Whereas the Guidance indicated that a disqualification of less than 12 months was unlikely to be meaningful, it considered that disqualification for a shorter period was a proportionate and necessary sanction in this case. It noted that whilst the Respondent had continued in office for 4 months after conviction, he had already been away from politics for over a year by the date of this adjudication

5.12 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 9 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.

5.13 Newport City Council and its Standards Committee are notified accordingly.

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

Signed.....

Date: 7 July 2023

C Jones

Chairperson of the Case Tribunal

Dr G Jones

Panel Member

Mr H E Jones

Panel Member