



DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2023-24/CT

RESPONDENT: Former Councillor Emma McNamara

RELEVANT AUTHORITY: Mumbles Community Council

1. INTRODUCTION

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

1.2 The Case Tribunal determined its adjudication on the papers only and without the attendance of the parties, during a meeting on 18 March 2024, conducted by means of remote attendance technology.

1.3 By letter dated 10 October 2023, the APW received a referral from the Public Services Ombudsman for Wales ('the PSOW') in relation to an allegation made against the Respondent.

1.4 The allegation was that the Respondent had breached the Code of Conduct of the Relevant Authority by failing to comply with Paragraph 6(1)(a) of the Code of Conduct which states; '*you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*'

1.5 In summary, the details of the allegation were that the Respondent had made inflammatory comments on social media, which included a comment of a threatening nature, and that this conduct could reasonably be regarded as being disreputable and capable of undermining public confidence in the Council and in the office of member. It

was alleged that, as a Member of the Relevant Council at the time, the Respondent knew, or ought to have known, that her conduct was likely to have been linked to her role as Member during the exchange and showed a reckless disregard for the reputation of the Council, and of the office of Member.

1.6 The Respondent did not complete the standard APW response document regarding the allegation, however she provided a written submission indicating that she would not be responding any further or attending any hearings. The Respondent subsequently sent responses referencing an intention to call certain witnesses and referencing certain health issues.

1.7 Listing Directions were issued on 30th January 2024 providing a further opportunity to attend, to be represented, and to call any witnesses at any hearing. The Listing Directions also provided further opportunities to submit written responses in relation to the stages of the adjudication, including determination of the facts and as to whether there had been a failure to comply with the Code of Conduct.

1.8 The Respondent did not respond within the relevant timescales given in the Listing Directions. However, the APW office received a large number of e-mails shortly before the adjudication.

2. PRELIMINARY MATTERS

2.1 The Respondent's e-mails received shortly before the adjudication indicated that she might wish to attend a future hearing, although she had originally made it clear that she would not attend any hearings. She also wished to have more time to obtain a medical report.

2.2 The Case Tribunal carefully considered these e-mails as a preliminary matter. It considered that the Respondent's indication did not comprise of a formal application to adjourn proceedings out of time, and no formal medical report had been submitted to support any such application. Furthermore, in the interests of justice and the timely and efficient discharge of the APW's functions, the Case Tribunal determined that it would not be fair, reasonable, or in the interests of any of the parties to further delay this matter's adjudication.

2.3 In all the circumstances, the Case Tribunal determined that the adjudication would proceed without further delay.

3. THE OMBUDSMAN'S (PSOW'S) REPORT

3.1 The PSOW's report resulted from complaints submitted to the PSOW which stated that the Respondent had verbally abused two individuals on a publicly available

community action group Facebook page, following a post made by another Member of the Relevant Council and relating to Council business concerning himself. The exchange was subsequently deleted from Facebook and the complainants did not provide any further detail on the content of the original post. The PSOW considered that the wording of the exchange between the Respondent and the complainants suggested that the discussion related to the Relevant Council at the outset. As such, the PSOW considered the Respondent's conduct was linked to her role as Member and to the Relevant Council.

3.2 The report stated that the PSOW was not persuaded, on the balance of probabilities, that the Respondent claimed or intended to give the impression that she was acting in the role of Member during the exchange. She therefore did not consider that the Code in its entirety applied to the situation. However, the PSOW noted that the complainants were aware of her role on the Council and included her in their comments, partly because of her role as Member. Whilst the PSOW considered the complainants had used comments which were similar in nature to those of the Respondent, *'they appear to have been in direct response to her comments'*. The report recognised that the screenshots did not comprise a full record of the exchange, and that the full context was not available. It considered that the exchange suggested that the relationship between the complainants and the Respondent may already have been poor.

3.3 The PSOW noted that the Respondent had probably intended to resign at the point of the exchange and that she then did resign a few hours later. The PSOW thought this may have made her feel she no longer needed to consider her role. It was also considered that the Respondent knew, or ought to have known, that her conduct was likely to have been linked to her role as Member during the exchange. The PSOW considered that the Respondent's behaviour showed a reckless disregard for the reputation of the Council and the office of Member.

3.4 In conclusion, the PSOW considered that the language used by the Respondent was gratuitously offensive and abusive towards the complainants and as such, interfered with their rights and reputation. The PSOW acknowledged that the Respondent was no longer a Member, however she noted that it was open to her to stand again at any time. She also considered it significant that the Respondent's position on her actions was that she had made it clear that she stood by her comments, had made no apology and *"couldn't care less"* for the complaint.

4. THE RESPONDENT'S SUBMISSIONS

4.1 The Respondent provided submissions to the PSOW during the investigation. She said that the screenshots provided by the complainants were not contemporaneous or a true picture of the exchange and omitted what she said were the disgusting and horrific personal comments made about her by the complainants. She said she had a copy of the full thread of comments but did not wish to share them due to their personal nature.

4.2 The PSOW's report also recorded that the Respondent said that she used her own personal Facebook profile during the exchange and made clear in her comments that she was no longer a member of the Council. As a result, she believed that her conduct could not be reasonably regarded as bringing her office or authority into disrepute.

4.3 The Respondent said that she informed the PSOW that at the time of the relevant events, she had been under an extreme amount of emotional pressure due to health issues. In response to the draft version of the report however, she had said she stood by her comments and made no attempt to; *"justify, excuse or mitigate for them"*. She said she was proud to stand up to behaviour which she felt had been demonstrated and made *"no apologies for doing so."* She also said that she *"couldn't care less for this complaint and reply in the spirit of the contempt it deserves."*

4.4 The Respondent did not understand why she was subject to a PSOW investigation as she was a member of the public and no longer a Member.

4.5 She considered that the complainants used the relevant community action group Facebook page to *"hijack most threads"* and to belittle those who disagreed with them. She said she had originally blocked one of the complainants as she felt harassed by her before this incident but unblocked the complainant to carry out the relevant social media exchange.

4.6 The Respondent said she tried to resign several times. This was because she considered that there was a toxic culture of bullying and misogyny at the Relevant Council, and she no longer wanted to be a part of the relevant political group. She also considered that the group had not checked her suitability as a candidate for office. However, the Chairperson of the Relevant Council had refused to accept her resignation. The Respondent said she had also been extremely unwell at that time.

4.7 The Respondent then provided background information about a historical dispute with one of the complainants on social media. She recognised that she should have ignored the comments made about her on the thread which led to the incident. She said that she no longer engaged with social media and had exercised restraint in not responding to certain on-line comments. Finally, she provided full details of confidential, on-going serious health issues.

4.8 Regarding her resignation from the Council, she said the Council had experienced IT problems at the relevant time and that other Members were aware that she had left the Council prior to the time given in the PSOW's Report. However, the Respondent did not provide an indication as to the time and date when she considered that she had resigned. She also stated that there had been procedural irregularities as regards the 'acceptance of office' form, as it was not signed in the presence of the Council's clerk.

4.9 Finally, the Respondent submitted e-mail evidence shortly before the adjudication to the effect that the complainants wished to withdraw the complaint. The e-mail indicated that the Respondent had recently reached out to the complainants and personally

apologised for her behaviour on the relevant night and had acknowledged that it was unacceptable and should not have happened.

5. THE FINDINGS OF FACT

UNDISPUTED FACTS

5.1 The Case Tribunal noted the following undisputed material facts;

5.1.1 The Respondent signed a declaration of acceptance of office and undertaking to observe the Code of Conduct on 11 May 2022.

5.1.2 The Respondent completed training on the Code of Conduct on 11 May 2022.

5.1.3 Councillor Rob Marshall posted on the local community Facebook page. In his post, Councillor Marshall commented on the Relevant Council's handling of a complaint it received against him, the Council meeting of 16 August 2022, an alleged failure of some members to declare interests in that meeting and the alleged treatment he had received from other members of the Council.

5.1.4 The Respondent engaged in a conversation on Facebook with Mr Gary Davies and Miss Heather Davies on 3 September 2022. The conversation took place in the comments of Councillor Marshall's post about the Council.

5.1.5 The comments were made on the local community Facebook page that was public and referred to the Council and therefore could be viewed by members of the public.

5.1.6 The Respondent used the following expletive and offensive language during the exchange on Facebook on 3 September: *"cunt"*, *"FUCK YOU"*, *"pair of twisted cunts"*, *"fuck off"*, *"tory fuckers"*, *"Nazi bitch"*, *"Fuck off you tory nonce"*.

5.1.7 The Respondent made a comment of a threatening nature to Miss Davies, where she stated, *"I will shit on your doorstep"*.

5.1.8 Screenshots of certain comments made by the Respondent are timed and dated as being taken on Saturday 3 September between 20:38 and 21:08.

5.1.9 The Respondent resigned as a member of the Council in an e-mail she sent to the Clerk of the Council.

5.1.10 The comments complained about were deleted from Facebook and can no longer be accessed.

DISPUTED FACTS

5.2 The disputed material facts are as follows;

5.2.1 Was the Respondent a member of the Council when she made the comments complained about?

5.2.2 Was the Respondent acting in her capacity as a councillor when she made the comments complained about?

5.2.3 Did the Respondent use language of a similar nature to that used by Mr Davies and Miss Davies?

The Case Tribunal's determination

5.3 The Case Tribunal found the following in relation to the Disputed Facts: -

5.3.1 It noted that the Respondent had disputed the exact timing of her resignation and had commented about her previous on-going wish to resign from the Relevant Council and that she felt she had been prevented from doing so. The Respondent had not however provided any evidence to show that she had formally resigned prior to the social media incident which is the subject of the relevant complaint. Certain screenshots of the comments made by the Respondent were timed as being taken at 20.38 and 21.08 on the relevant date. However, it is likely that the exchange took place over a different and rather longer timeline on the relevant evening.

5.3.2 The PSOW asserted that the resignation took place just after 01.00 on the following date, however there was no supporting evidence to confirm this point. In the absence of any clear evidence to the contrary, however, the Case Tribunal concluded that, on the balance of probabilities, the Respondent was still a Member of the Council when she made the relevant comments.

5.3.3 The Ombudsman noted that the Respondent's Facebook account appeared not to refer to her Member status. The Report also accepted that during the relevant exchange the Respondent had suggested that she was not a Member of the Council and stated that she was "*nothing to do with mcc...*" and was "*not part of mcc*". The Case Tribunal noted however that the Respondent contradicted this during the exchange by stating; "*it is taking away from what we as elected representatives are here to do which is work for the benefit of our communities.*"

5.3.4 The PSOW also noted that the Respondent's comments related to a post by another Member of the Council which clearly discussed Council business. In the PSOW's Report, it noted that this suggested that the discussion was related to the Council at the outset. Nevertheless, the PSOW was not persuaded, on the balance of probabilities, that the Respondent claimed to or intended to give the impression she was acting in the role of Member during the exchange. The Case Tribunal agreed for the following reasons.

5.3.5 Firstly, it noted that the PSOW's report stated that the name documented on Facebook was 'Emma McNamara' with no reference to her Member role. It does not go

on to explain whether it had considered the Respondent's Facebook profile, to check whether this referenced the role. Nevertheless, on the available evidence the Case Tribunal concluded that the exchange was conducted on Facebook in the Respondent's personal capacity.

5.3.6 The Case Tribunal noted that the Respondent only referred to her Council role once the original complainant raised her status as follows; *"Its the end of the line for you with MCC"* and *"...this lady is on MCC"*. The Case Tribunal considered that on the balance of probabilities, the Respondent's reference to the Council was in response to this. It noted however that the social media debate which preceded the exchange was no longer available. It therefore considered it likely that it had not seen the entire exchange. Whilst it had no reason to doubt that it had indeed emanated from a post relating to the business of the Relevant Council, it considered that the exchange itself largely related to historical and personal animosity between the parties and had only loosely and incidentally referenced the business Relevant Council.

5.3.7 The PSOW Report was clear that the original post which led to the exchange had been about Council business. From this, the Case Tribunal had to assume that the PSOW's representative had originally seen the entire social media thread, however it was no longer available and had since been deleted. In conclusion, however, the Case Tribunal concurred with the PSOW's finding that the Respondent was not acting in her capacity as a Member when she made the relevant comments.

5.3.8 Finally, regarding the third disputed fact, the Case Tribunal considered the language used by the complainants was relevant only to the issue of mitigation and only if this stage of the adjudication were to be reached. Nevertheless, for the avoidance of doubt, it considered that on the balance of probabilities, the Respondent had used language which may have been of a broadly similar nature to that used by the complainants. This would have contributed to the appalling tone of the 'debate', albeit on the available evidence, it was likely that the Respondent's language had been more extreme. The PSOW also stated that the complainants' comments appeared to have been in direct response to the Respondent's comments. Again however, in the absence of the full social media thread, it is not possible or necessary to determine who started the unpleasant and unedifying exchange.

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

6.1 The relevant provisions of the Code, overarching Principles, the European Convention on Human Rights ('ECHR') and PSOW Guidance on the Code of Conduct for Members are as follows.

The Code of Conduct for Members

6.1.1 The relevant part of the Code are as follows; Paragraph 2(1)(d) of the Code states; *'... You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.'* Paragraph 6(1)(a) of the Code states; *"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.'*

Article 10 ECHR

6.1.2 Article 10 of the ECHR 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...'

The Nolan Principles

6.1.3 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the 'Nolan Principles' include the principles of 'Integrity' and of 'Leadership' 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'.*

The Ombudsman's Guidance on the Code of Conduct

6.1.4 With regard to Paragraph 6(1)(a) of the Code, the Ombudsman's Guidance states as follows: -

'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 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, such as the Chair of a Council, 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.'

The Case Tribunal's determination

6.2 The Case Tribunal's findings as to whether the material facts disclosed a failure to comply with the Code of Conduct are as follows: -

6.2.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent had not failed to comply with Paragraph 6(1) of the Code for the following reasons.

6.2.2 The Case Tribunal's starting point was that, in accordance with Paragraph 2(1)(d) of the Code, Members must observe the Code at all times and in any capacity as regards behaviour which could reasonably be regarded as bringing a Member's office or authority into disrepute. The Code can therefore apply in principle, regardless of whether a Member is acting in her/his private capacity, as poor behaviour by a Member in her/his private life can impact on the reputation and integrity of a Council.

6.2.3 The Case Tribunal was also mindful of the significant rise in complaints to the Ombudsman concerning the use of social media and the impact this may have on the reputation of Councils and the office of Member as highlighted in the Ombudsman's Guidance which states as above; *'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.'*

6.2.4 The relevant social media exchange in this case represented the worst possible manifestation of the use of social media. The Case Tribunal considered that Respondent's comments involved reprehensible language and grossly unpleasant insults and a threat. This could not be condoned in any circumstances, and whether or not there had been any provocation.

6.2.5 The key question for determination in this case however is whether the manifestly appalling behaviour for which the Respondent was responsible in her private capacity, could reasonably be regarded as bringing her office as Member, or the Relevant Authority into disrepute.

6.2.6 The Case Tribunal noted that the exchange occurred over a certain period on a particular evening on a public community action group Facebook site. The group had a large number of members. The Case Tribunal also noted that the Respondent is likely

to have resigned from being a Member shortly following the exchange. Unfortunately, there was no available evidence as to the length of time the exchange remained public. The Case Tribunal considered that on the balance of probabilities, however, the exchange had come to the attention of some members of the public as well as the complainants. It accepted that one of the complainants had been approached by a member of the public asking “...if the accusations were true.” The Case Tribunal also noted however that the exchange was of limited duration on a specific date. There was no evidence to show that the exchange was reported in the press or that it had reached any audience beyond the community action group.

6.2.7 It was likely that any members of the public viewing the posts would have been aware of the Respondent’s role as a Member of the Relevant Council. Nevertheless, due to the exchange's nature, the Case Tribunal considered the immediate thought of anyone reading it was that this was a particularly unpleasant private dispute being aired in public. As above, it considered that business of the Relevant Council was only loosely and incidentally referenced in the exchange, albeit Council business may have been the initial impetus for the exchange. It also considered the Respondent’s specific reference to the Council within that exchange where she stated that she was; “*nothing to do with mcc...*” and was “*not part of mcc*”, was likely to have been prompted by the complainants’ reference to the role.

6.2.8 Finally, the Case Tribunal considered that it was likely that the Respondent had felt it necessary to resign shortly after the exchange as she had realised that the behaviour was incompatible with her role as Member. It accepted that it was likely that she had tried to resign previously and had been uncomfortable about continuing in the role, however it considered it likely that the exchange had been the final determining factor. This may have been an acknowledgement of a potential Code breach. On the balance of probabilities however, the Case Tribunal considered that, due to the limited timescale of the exchange, the fact that it was a single incident, that there was no press report of the incident and a swift resignation by the following morning, the impact of the incident would have been limited and contained. It also concluded that any members of the public viewing the exchange would have seen this for what it was, as an extremely undignified and unpleasant personal exchange, with little or no relevance to the Relevant Council or her official or political role as Member.

6.2.9 Finally, as the Case Tribunal had determined that the Code of Conduct was not engaged in this case, it was not necessary to go on to consider the provisions of Article 10 of the ECHR. Nevertheless, it wished to note for the avoidance of doubt that it considered freedom of expression to be a fundamental right, including the right to forcefully express views, particularly in a political context. The Case Tribunal considered that the comments in question were so offensive, extreme and gratuitous however, that had there been a finding of a breach of the Code, the protections offered to politicians by the ECHR to freely express views would not have applied.

6.2.10 In conclusion, this decision was a finely balanced one, however the Case Tribunal concluded that the conduct of the Respondent on social media brought herself into disrepute in her personal capacity. Neither the Respondent nor the complainants could be said to have acted in a dignified or appropriate manner. On the specific facts of this case however, it concluded that it was not conduct which could also reasonably be regarded as bringing the Respondent's office or authority into disrepute.

6.3 Mumbles Community Council and its Standards Committee are notified accordingly.

Signed

A handwritten signature in black ink, appearing to be 'C Jones', written over a light blue horizontal line.

Date: 10/04/2024

C Jones Chairperson of the Case Tribunal

S Hurds Panel Member

G Jones Panel Member