

Notice of Determination by the Standards Committee

Member	Cllr Peter Duffy
Relevant Authority	Prestatyn Town Council
Date and place of Standards Committee Hearing	24 th and 25 th July, County Hall, Ruthin, Denbighshire
Complainant	Cllr Paul Penlington
Public Services Ombudsman for Wales reference number	201700947

1. The Standards Committee of Denbighshire County Council considered a report by the Public Services Ombudsman for Wales (the Ombudsman) regarding alleged breaches of the Code of Conduct for members of Prestatyn Town Council by Councillor Peter Duffy, which was referred to the Standards Committee by the Ombudsman for determination.
2. On 18th May 2017 the Ombudsman received a complaint from Councillor Paul Penlington that Councillor Peter Duffy had failed to observe the Code of Conduct for members of Prestatyn Town Council. It was alleged that Councillor Duffy had used threatening and abusive behaviour towards Councillor Penlington and behaved in an aggressive and confrontational manner towards him personally at several Town Council meetings dating back to January 2015. On 26th September 2018 Councillor Penlington complained of further inappropriate behaviour by Councillor Duffy during a Town Council meeting which had taken place that day. The Ombudsman's investigation focused on two meetings which took place on 2nd November 2016 and 11th May 2017 respectively.
3. The Ombudsman's office forwarded to the Monitoring Officer of Denbighshire County Council a concluded Investigation Report dated 5th December 2018 which concluded that Cllr Duffy's actions were suggestive of breaches of Paragraphs 4(b) and 6(1)(a) of the Model Code of Conduct.
4. On 24 January 2019 the Standards Committee considered the Ombudsman's investigation report and made an initial determination that Councillor Duffy should be given an opportunity to make representations either orally or in writing in respect of the findings of the investigation and any allegation that he failed or may have failed to comply with the Code of Conduct.
5. At the hearing the Ombudsman was represented by Mrs. Annie Ginwalla. Councillor Duffy was represented by Mr. John Owens, Solicitor.

Stage 1 – Preliminary procedural issues

6. The Committee had been provided with a bundle of documents incorporating the Ombudsman's Investigation Report together with the witness statements obtained during the investigation. The bundle also included skeleton arguments provided by the respective advocates.
7. The Ombudsman's investigation report referred at page 17 of the bundle to the

following disputed facts:

- Did Councillor Duffy demonstrate aggressive and threatening behaviour towards Councillor Penlington when he arrived at the meeting of 2 November 2016?
 - Did Councillor Duffy demonstrate respect and consideration towards the Police Officers at the meeting of 2 November 2016?
 - Did Councillor Duffy refer to Councillor Penlington as a “f***ing prick” before the meeting of 11 May 2017 started?
 - Did Councillor Duffy refer to Councillor Penlington as a “fool” during the meeting of 11 May 2017?
8. The parties agreed that the Committee should focus its consideration of the evidence on the relevant meetings that took place on 2 November 2016 and 11 May 2017.
9. It was agreed that the witness statements could be taken as having been read by the Committee, that Mrs Ginwalla would ask each witness to confirm their statements, asking questions only in respect of particular issues that she wished to highlight, and that Mr. Owens would then have the opportunity to cross examine. Mrs Ginwalla would be given the opportunity to re-examine witnesses in respect of matters that had arisen from cross- examination.

Stage 2 – Making findings of fact

10. The Committee invited both advocates to make opening remarks.
11. Mrs Ginwalla referred to the complaint received by the Ombudsman and the fact that the Ombudsman had determined to conduct an investigation focussing on alleged breaches of the Code of Conduct at two meetings.
12. The Ombudsman had concluded that the evidence suggested a breach of the Code of Conduct.
13. Mr. Owens informed the Committee that Councillor Duffy had considered his position in respect of the allegations and considered them to be factually incorrect. Mr. Owens submitted that the evidence was contradictory and that it was right that the evidence be tested through a hearing in order that there be a process of fairness and transparency.
14. The Committee then heard evidence from a number of witnesses, each of whom confirmed the contents of their statements as being true and answered questions from both advocates.
15. The Committee also heard evidence from Councillor Duffy.
16. The Committee heard closing statements from both advocates.

17. The Committee retired to consider the evidence presented to it and found the following facts:

Councillor Duffy did demonstrate disrespect and a lack of consideration to both police officers at the meeting on 2 November 2016.

Councillor Duffy referred to Councillor Penlington as a “prick” before the meeting of 11 May 2017 started.

Councillor Duffy referred to Councillor Penlington as a “fool” or an “idiot” during the meeting of 11 May 2017.

Stage 3 – Deciding whether the member has failed to comply with the Code

18. The Committee invited representations from the parties as to whether, on the basis of the facts found, Councillor Duffy had failed to comply with the Code of Conduct.

19. It was established that the paragraph numbers of the Prestatyn Town Council Code of Conduct did not coincide with those of the Model Code of Conduct. The relevant paragraphs of the Model Code of Conduct were:

4(b) You must show respect and consideration for others

6(1)(a) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

These paragraphs were reflected in paragraphs 5 and 6 of the Prestatyn Code of Conduct.

20. The parties made submissions as to the capacity in which Councillor Duffy was acting at the first meeting and whether the Code of Conduct applied to his conduct at that meeting. The Committee was referred to the case of Livingstone v The Adjudication Panel for England [2006] H.R.L.R. 45
21. The Committee retired to consider whether or not Councillor Duffy had failed to comply with the Code of Conduct.
22. The Committee first considered whether the Code of Conduct applied to Councillor Duffy at the meetings held on 2 November 2016 and 11 May 2017. The Committee considered the case of Livingstone to which they had been referred.
31. The Committee concluded that Councillor Duffy had at the meeting on 2 November 2016 been acting or giving the impression that he was acting as a councillor. The meeting was not one that was open to the public and the evidence presented to the Committee by several witnesses was that those present were acting in their professional capacity. Councillor Duffy himself had stated that he was annoyed at not

having been invited given that the anti-social behaviour complained of affected his ward. Councillor Duffy had indicated in his initial written response and in interview that he should have been invited as Deputy Mayor of Prestatyn and because the matters to be discussed affected his ward.

32. The meeting on 11 May 2017 was a meeting for councillors to get to know each other and to make informal decisions as to certain appointments such as school governors and chairs of Committees. It was accepted by both parties that the Code of Conduct applied at this meeting. The Committee also concluded that at this meeting Councillor Duffy was acting in his capacity as a councillor.
33. The Committee determined that Councillor Duffy had failed to comply with paragraph 5 of the Prestatyn Town Council Code of Conduct at the meeting on 2 November 2016 in that he failed to show respect and consideration towards the police officers in attendance. Further, his behaviour towards invited guests at a meeting attended by other partner agencies was such that it brought the Town Council and the office of councillor into disrepute. In reaching these determinations the Committee has had regard to Article 10 European Convention on Human Rights. The Committee considered that the behaviour demonstrated towards the officers went beyond that which would be considered legitimate challenge or scrutiny.
34. The Committee determined that Councillor Duffy's conduct at the meeting on 11 May 2017 in respect of the use of the words "prick", "idiot" or "fool" was a failure to show respect and consideration for Councillor Penlington and the meeting in general. Councillor Duffy's use of these words went beyond the protection of Article 10 as this was considered to be personal abuse rather than political expression. The Committee further concluded that the use of such terms amongst councillors would if brought to the knowledge of the public erode the public's confidence in the standards of behaviour in local democracy and bring the Town Council and the office of Councillor into disrepute.
35. The Committee unanimously determined therefore that in respect of all three facts that had been found, Councillor Duffy had failed to comply with both paragraphs 5 and 6 of the Prestatyn Town Council Code of Conduct.

Stage 4 – Sanction

36. The Committee received representations from both parties as to the form of sanction, if any, that it should consider imposing on Councillor Duffy as a consequence of his failure to comply with the Code of Conduct.
37. The Committee also received copies of two decisions made by Standards Committees in Gwynedd and Rhondda Cynon Taf by way of examples of decisions made in similar cases.
38. The Committee retired to consider its decision as to sanction.
39. The Committee considered very carefully the representations made to it. The Committee considered the aggravating and mitigating factors relating to the conduct

of Councillor Duffy. The Committee also considered the Sanctions Guidance produced by the Adjudication Panel for Wales.

40. The Committee considered Councillor Duffy's long service to the Council and his commitment to his community. This long service should however have meant that Councillor Duffy knew the standards of behaviour expected of an elected member.
41. The incident on 2 November 2016 was one involving aggressive and disrespectful behaviour towards public servants who were seeking to work in partnership with the Council and was akin to behaving in such a manner to officers of the Council.
42. These were not isolated incidents, the Committee having found that Councillor Duffy had failed to comply with the Code of Conduct on three occasions at two separate meetings some months apart.
43. The Committee also considered that Councillor Duffy had not fully learnt the lessons to be learned from these incidents and had not shown any remorse for his actions.
44. The Committee considered whether to take no action, one of the courses open to it. The Committee concluded that these breaches of the Code of Conduct were not inadvertent or isolated and were too serious for this course of action.
45. The Committee considered censure but concluded that the breaches were too serious to be dealt with by this sanction considering that the conduct was considered to have brought the council and office of Councillor into disrepute.
46. The Committee therefore considered that suspension was the most appropriate form of sanction available to it. In determining the length of the suspension the Committee had regard to the decision notices that had been brought to its attention and to the aggravating features of the conduct in this case. Taking into account the seriousness of showing aggressive and disrespectful behaviour towards the police officers and the use of insulting words or language towards an elected member, the fact that there were three breaches of the Code of Conduct and the lack of insight and remorse shown by Councillor Duffy, the Committee determined that a period of suspension of four months was appropriate.
47. The Committee returned to inform Councillor Duffy that he would be suspended from Prestatyn Town Council for a period of four months. The Committee further strongly advised Councillor Duffy that he should at the end of that period of suspension avail himself of the opportunity to undergo training on the Code of Conduct provided by the Monitoring Officer.