

Extract from 'Decisions'

Relevant bodies: Ceredigion County Council and Aberystwyth Town Council

Nature of allegation: breach of paragraph 4(b), 4(c), 6(1)(a) and 7(a).

Tribunal decision: breach of paragraphs 4(b), 4(c) and 6(1)(a). No breach of 7(a).

Tribunal reference number: APW/006/2023-024/CT

Introduction & Background

The Public Service Ombudsman for Wales ('PSOW') produced an initial Interim Report on 20 March 2023. After its receipt, the Respondent failed to respond to the Panel's correspondence of 23 March 2023 (with the APW01 and Reply to Notice of Reference Form) and the case was then the subject of an Interim Case Tribunal hearing on 10 July, with a decision Report which followed on 9 August 2023.

The Respondent was elected as a member of Ceredigion County Council and to Aberystwyth Town Council in 2012, representing the Penparcau Ward. He resigned from both positions in October 2023. He had been mayor of Aberystwyth in 2017-8, a local school governor and had volunteered at a number of organisations and clubs. He was clearly well known and had a high profile in the area.

Complaint History

Incident 1

In early October 2020, a complaint was received that the Respondent had been making 'welfare checks' on a vulnerable widow, Mrs A, who was not in his ward and therefore not a constituent. He had known Mrs A's late husband and had visited her soon after his death. Her niece had asked him not to visit again but he had not adhered to the request. As a result, the relative had contacted the Council.

Mrs A complained that he had "*pestered*" her "*very frequently*". She had become "*frightened*" and "*very scared due to the Councillor's attitude*" and had wanted it to stop.

On 2 October, the Monitoring Officer spoke to the Respondent about the allegation. He said that he would not call again and Mrs A's niece was informed, but he subsequently emailed, as if testing the request. Although he did not visit again, he did see Mrs A in a local supermarket and spoke her about her complaint then.

When interviewed, the Respondent claimed that he had not returned to visit Mrs A once he had been asked not to and admitted to having 'challenged' her over her complaint when he had bumped into her in the supermarket.

Given the Respondent's behaviour on other occasions as set out below and the clear representations that were made to the Council, the APW considered it to have been more likely that there had been an element of persistence to the Respondent's visits.

Incident 2

It was alleged that, in early December 2020, an anonymous caller telephoned the Council expressing concerns about elderly members of their family. It was alleged that the Respondent had been visiting properties in his ward during the pandemic to ensure that residents were safe and not in need of anything. Although his conduct was congratulated to some extent, the concern that was expressed was that he was

entering properties, staying for some time and socially mixing in breach of the Covid-19 rules.

The Monitoring Officer arranged for a Teams meeting with the Respondent to discuss the issues which he did not attend, but he did eventually speak to the Monitoring Officer on 23 December when he confirmed that he had been making such visits and had cut lawns, mended fences and undertaken other errands and stated that his visits had all been compliant with the Covid rules then in force.

The APW did not find the evidence in support of this 'incident' particularly compelling or useful. The APW states that it was difficult to gauge the quality of the evidence which had been received by the Monitoring Officer which was reported to the PSOW as hearsay.

Incident 3

On 6 November 2020, the Council received a Multi-Agency Referral Form ('MARF') from the Police concerning an individual who complained that she had been harassed and stalked by the Respondent since September 2020. The Respondent was not known to her and was alleged to have left 'love notes' on her bicycle on eight or nine occasions, when she had left it to shop in the local supermarket. The notes indicated that he found her attractive and that he was interested in forming a relationship. He had also asked questions about her at a bus stop which she used.

The Monitoring Officer spoke to him on 23 December. The Respondent explained that he had left the notes to try to "*attract attention*", but he agreed not to contact her again. The following day, the Monitoring Officer emailed Adult Safeguarding to tell them of her discussions which was followed up by an email to the Respondent in which further safeguarding training was offered.

In light of the Respondent's position and the evidence as a whole, the Tribunal had little difficulty in concluding that he clearly had left notes on the individual's bicycle as alleged and had failed to comply with the request made of her boyfriend to cease his activity. The Tribunal also concluded that the Respondent had probably also made enquiries at a bus stop as reported. It was similar to the persistent and planned nature of his conduct in other respects.

Incident 4

Further complaints arose from the Penparcau Community Hub where the Respondent assisted as a volunteer from time to time.

It was alleged that he made inappropriate comments and conducted himself improperly in relation to a new, young, female worker and one of the female Co-Ordinators in late February. Specifically, it was alleged that he repeatedly nudged the new member of staff when they were working together, which was alarming to her and inappropriate in light of the Covid regulations which was still in force at the time.

The Respondent had also been using the Hub to visit people in their homes during the pandemic who he referred to as 'my old ladies, the ladies who vote for me'.

In addition to the specific allegations set out above, there were other complaints about him having made derogatory and offensive comments whilst out delivering food in the Hub minibus.

The Monitoring Officer and Safeguarding Manager spoke to the Respondent again and reiterated the Code of Conduct. They informed him that an investigation was ongoing.

On 23 April, the Monitoring Officer asked the Respondent not to volunteer in the community whilst the matter was under investigation. He did not reply to her email initially but, when he did, he seemed resistant to the request.

A Professional Concerns Meeting was held on 13 August 2021 it was noted that the Respondent had denied harassment during interview and that no further action could have been taken because no formal complaint had been lodged.

During his interview, the Respondent suggested that he had no recollection of any specific comments attributed to him during his work at the Hub and stated that his memory had 'blocked' his recall of the events there.

The evidence that the Tribunal considered in relation to the Respondent's conduct at the Hub was

compelling and came from a number of sources (two former Trustees, a former Manager, the Co-Ordinator and the local MP).

In broad terms, the Tribunal therefore accepted the evidence which was presented to them in relation to Incident 4 and Incidents 5 and 6 which followed.

Incidents 5 and 6

As stated above, these allegations arose from the incident which was investigated in relation to the Respondent's work at the Hub. Two female witnesses were interviewed by the Police and claimed that they had been harassed by the Respondent; he paid unwanted visits to them, sometimes at night, brought them flowers and tended to their gardens.

Although they were reluctant to make formal complaints, not only because of the Respondent's position as a councillor, but also because he lived nearby. They nevertheless wanted his conduct to stop.

The Respondent said that he could not and/or would not answer questions about those two allegations at interview without the names and addresses of those who had made the complaints.

The Tribunal concluded that the victims' accounts were likely to have been reasonably accurate.

Incident 7

This allegation concerned another young female who the Respondent had pursued with presents, cards and gifts. She had worked at a local sports club behind the bar. He started to drink there, but then started to drop off presents for her. She remembered that she was first bought a present in October 2022. He continued to make gifts, despite her saying that she did not want them. Once she had reported his conduct to her manager, he was told not to use the bar again.

The Respondent then started to visit a professional address where the woman worked during the day and continued his habit of dropping off gifts and cards. Before Christmas 2022, he dropped off a present with the gift tag which read "*All I want for Christmas is you xxx*".

The woman asked her colleagues to tell him not to visit her again. It was clear that he continued to do so, since a further Valentines gift was dropped off.

The woman reported the Respondent's conduct to the Police and it became the subject of another MARF in January 2023, the third. Again, she did not want to make a formal complaint, but did want the conduct to stop. He was told not to visit the sports club and/or her place of work again.

Matters went quiet for some time after Valentines Day 2023 until a further gift, a CD, arrived at her place of work in June with a note. Another gift arrived in July. Both had been differently addressed (under the name of a charity which she worked for) such that her colleagues accepted them thinking that they were legitimate.

In interview, the Respondent stated that he considered the woman to have been very pretty and he admitted having made the gifts.

In light of the physical evidence which existed to corroborate and support the victim's account and the Respondent's position in interview, there could have been no doubt that these events occurred as they were described.

Incident 8

In April 2022, the Respondent was banned from visiting Aberystwyth RFC because of an allegation of harassment (he had referred to a woman as a 'good pull'). In interview, he described the ban as a decision on his part to 'step back' but appeared to acknowledge that there had been an allegation to the police that he had made that comment.

The quality of the evidence in relation to this allegation was poor. The allegation turned upon the contents of a newspaper article and the Respondent's interview with the PSOW. There was no direct evidence of the words used and that part of the interview which concerned the issue was somewhat muddled.

Incident 9

In or around September 2022, a local MP, Mr Lake, received an anonymous letter about the Respondent in which it was asserted that he had been "*using his power to make his move on women*". The author said that he/she had seen "*for myself how he prays [sic] on younger women*".

The Tribunal did not consider it necessary or helpful to regard this as a separate 'incident'. The themes within the anonymous letter were corroborated elsewhere by specific, direct evidence from named individuals. The feature of it which was, perhaps, of more interest and concern was the timing; the letter arrived in September 2022 and spoke about events as if they were occurring then and/or in the recent past. The Respondent had been spoken to on multiple occasions by the Monitoring Officer, the Police, the Council's safeguarding Officers and others in relation to similar conduct over two years.

Case Tribunal's Decision

On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there were failures to comply with the Codes of Conduct as follows:

Paragraph 4 (b) and (c);

The Tribunal agreed with the PSOW's position; paragraphs 4 (b) and (c) of the Code ought to have been considered *sui generis* with (a) and read in the same context; they covered an individual's conduct when carrying out his duties as a councillor. He therefore had to have been working in that capacity and/or holding himself out as such at the time of any alleged breaches.

In relation to Incident 1, it was noteworthy that the complaint about the Respondent's conduct relating to Mrs. A had come to the authority. It might therefore have been thought that his conduct had been viewed as having arisen from his wider duties to the community as a councillor, but the Tribunal did not think so here for the following reasons.

First, the Respondent had known Mrs. A's husband before his death and his visits appeared to have emanated from that friendship. Secondly, Mrs. A also did not live in his Ward. Thirdly, the Tribunal did not see how the PSOW had come to the conclusion that Mrs. A 'had viewed his visits' as having been undertaken in his role as councillor.

On balance, therefore, the Tribunal did not consider that it could have been said he had been carrying out his duties as a councillor in respect of Incident 1.

In respect of his work at the Hub (Incidents 4, 5 and 6), the staff there all knew him as a councillor and his status appeared to have been relevant to his interactions; for example, he referred to those he made deliveries to as potential voters.

In respect of Incidents 4, 5 and 6, all of the women involved had been upset by the Respondent's conduct. The nature of his conduct towards the woman in the Incident 4 demonstrated a clear lack of respect and

constituted harassment of a sexual nature in the clearest sense. Paragraphs 4 (b) and (c) were breached. The manner in which the women in Incident 5 and 6 reported the Respondent's conduct also demonstrated breaches of those paragraphs, particularly because of the frequency and timing of his visits and some of the words used.

Paragraph 6 (1)(a);

The Tribunal determined the PSOW was correct in respect of the application of the Code, in the Tribunal's judgment; paragraphs 6 and 7 were not restricted to conduct necessarily committed whilst exercising the duties of a councillor. Paragraph 7 specifically referred to conduct committed '*in your official capacity or otherwise*'.

The PSOW contended that this paragraph was breached by the Respondent in respect of his conduct within Incidents 1, 3, 5 and 6.

It was not difficult to see how his conduct in respect of Incident 1 brought his office and/or that of the authority into disrepute since his behaviour was raised *with* the authority.

Incidents 3, 5, 6 and 7 all gave rise to multi-agency involvement; the police, safeguarding and/or the Monitoring Officer. This must have been embarrassing to the authority and readily brought it and/or the Respondent into disrepute.

Finally, the PSOW alleged that the Respondent's failure to adhere to the advice given to him by the Monitoring Officer over the many occasions that he was spoken to, amounted to a further breach of paragraph 6 (1)(a). We were not convinced that that, in itself, gave rise to a breach, but the "*widespread concerns about Former Councillor Davies in the community*" did. His letter to the Cambrian News and the consequent press report, his conduct within the community, at the Hub and sports clubs, Dyfed Powys Police's involvement in 4 of the cases and the sheer number of people involved in the Incidents referred to above, when he was such a public figure, must have served to bring his office and/or that of the authorities into disrepute.

Paragraph 7 (a);

It was alleged that the Respondent had been in breach of this paragraph in respect of Incidents 3, 5, 6 and 7.

In respect of Incidents 3 and 7, the 'advantage' that the Respondent sought to confer on himself, in the Tribunal's view, was some form of relationship with the women involved. The difficulty that the Tribunal had was understanding how it was alleged that he had used his *position* to confer that advantage. The PSOW's was that he had behaved in his personal capacity in respect of both Incidents. There was nothing in his notes and/or other communications with the women which suggested that he was attempting to use his position or status as a councillor to further his advances.

In respect of Incidents 5 and 6, whilst the women concerned had seemingly known him to have been a councillor and whilst the Tribunal found that he had acted in that role while working at the Hub for the purposes of paragraph 4, the advantage that the Respondent was attempting to confer upon himself in respect of these Incidents was far less clear. There was little within the evidence to suggest an attraction and/or an attempt to form a close relationship as in Incidents 3 and 7. The Tribunal did not consider that the PSOW had properly explained how this paragraph of the Code was said to have applied to the circumstances. Accordingly, the evidence did not enable the Tribunal to conclude that he had breached paragraph 7 in any respects here.

Case Tribunal's Decision - Sanction

The Case Tribunal unanimously concluded that the appropriate sanction in all of the circumstances was for the Respondent to be disqualified for 3 years from being or becoming a member of authority or of any other relevant authority within the meaning of the Local Government Act 20

