



## **FULL COUNCIL - INFORMATION REPORT**

Date Written	5 <sup>th</sup> January 2021
Report Author	Simon Jones
Service Area	Legal and Governance
Exempt/Non Exempt	Non Exempt
Committee Date	6 <sup>th</sup> January 2021

*To: Mayor, Ladies and Gentlemen*

### **DECISION OF THE ADJUDICATION PANEL FOR WALES IN RESPECT OF A COMPLAINT ABOUT AN ELECTED MEMBER**

#### **1.0 SUMMARY OF THE REPORT**

- 1.1 A case tribunal drawn from the Adjudication Panel for Wales met on 18 and 22 December 2020 to adjudicate upon a reference from the Public Services Ombudsman for Wales in respect of allegations against Kevin O'Neill, the then Leader of the Council.
- 1.2 The Case Tribunal found by unanimous decision that the Respondent had failed to comply with the Code with regard to all of the allegations.
- 1.3 The Case Tribunal decided by unanimous decision that Councillor O'Neill should be suspended from acting as a member of Merthyr Tydfil Borough Council for a period of seven months or, if shorter, the remainder of his term of office, with effect from 23<sup>rd</sup> December 2020.

#### **2.0 INTRODUCTION AND BACKGROUND**

- 2.1 In a formal notification sent to the authority on 23<sup>rd</sup> December 2020 the Adjudication Panel said as follows:
  1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
  2. In a letter dated 13th July 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Kevin

O'Neill ("the Respondent"). The allegations were that the Respondent had breached the Code of Conduct for members of Merthyr Tydfil Borough Council Code of Conduct ("the Code").

3. The first allegation was that the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15th August 2018.
4. The second allegation was that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15th August 2018.
5. The third allegation was that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15th August 2018.
6. The fourth allegation was that the Respondent's e mail to the Director of Social Services on 16th August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the e mail sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.
7. The fifth allegation related to whether the Respondent's actions in speaking at the meeting of the 15th August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16th August 2018 were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.
8. The sixth allegation related to the meeting with the former Chief Executive of the Council on the 5th March 2019 and whether the Respondent's conduct towards the former Chief Executive was inappropriate and failed to show respect and consideration to him in breach of the Code.
9. In accordance with Councillor O'Neill's wishes, the Case Tribunal determined its adjudication by way of written representations at meetings on Friday 18th and Tuesday 22nd December 2020 by Cloud Video Platform (but as if sitting at the Tribunal's offices at Cleppa Park, Newport.) **The Case Tribunal found by unanimous decision that the Respondent had failed to comply with the Code with regard to all of the allegations.**

10. Councillor O'Neill failed to comply with the Code as follows:

- 10.1 Paragraph 11(1) of the Code of Conduct states that "*Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.*"
- 10.2 The Case Tribunal found that Councillor O'Neill failed to declare a personal interest before and at the commencement of the inter-agency meeting of 15th August 2018.
- 10.3 Paragraph 14(1) of the Code of Conduct states that "*.... where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee- (a) withdraw from the room, chamber or place where a meeting considering the business is being held -*"
- 10.4 The Case Tribunal found that Councillor O'Neill had a prejudicial interest and did not withdraw from the room at the inter-agency meeting on the 15th August 2018 when the Luther Lane property was being discussed in breach of paragraph 14(1) (a) of the Code.
- 10.5 Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must "*not seek to influence a decision about that business*".
- 10.6 The Case Tribunal found that the Respondent had a prejudicial interest and did seek to influence a decision about the business of the authority at the inter-agency meeting on the 15th August 2018, in breach of paragraph 14 (1) (c) of the Code.
- 10.7 Paragraph 14(1)(e) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must "*not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.*"
- 10.8 The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and made oral representations in the inter-agency meeting on the 15th August 2018 in breach of paragraph 14 (1) (e) of the Code.
- 10.9 Paragraph 14(1)(d) of the Code of Conduct states that where a member has a prejudicial interest in any business of the authority that the member "*must not make any written representations*

*(whether by letter, facsimile or some other form of electronic communication) in relation to that business”*

- 10.10 The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and sent an e mail to the Director of Social Services on 16th August 2018 in breach of paragraphs 14(1) (c) and (d) of the Code.
  - 10.11 Paragraph 11(2)(a) of the Code of Conduct states that “(2) *Where you have a personal interest in any business of your authority and you make- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;*”
  - 10.12 The Case Tribunal found that the Respondent had a personal interest in the business of the authority and sent an e mail to the Director of Social Services on 16th August 2018 in breach of paragraph 11 (2)(a) of the Code.
  - 10.13 Paragraph 6(1)(a) of the Code of Conduct states that “6.-(1) *You must - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*”
  - 10.14 The Case Tribunal found that the Respondent’s conduct in speaking at the inter-agency meeting on 15th August 2018 and sending the e mail to the Director of Social Services on 16th August 2018 in relation to business of the authority in which he had a prejudicial interest amounts to a breach of Paragraph 6(1)(a) of the Code.
  - 10.15 Paragraph 4(b) of the Code of Conduct states that a member must “(b) *show respect and consideration for others.*”
  - 10.16 The case tribunal find that the Respondent’s conduct towards the former Chief Executive of the Authority at the meeting of 5th March 2019 breached paragraph 4(b) of the Code.
11. The Case Tribunal decided by unanimous decision that Councillor O’Neill should be suspended from acting as a member of Merthyr Tydfil Borough Council for a period of seven months or, if shorter, the remainder of his term of office, with effect from the date of this notice.
- 2.2 There is a right of appeal from this decision if permission is sought from the High Court
  - 2.3 The panel went on to make further recommendations for training when Cllr O’Neill returns to his position as an elected member

### 3.0 INTERIM ARRANGEMENTS

3.1 The Deputy Leader Cllr Lisa Mytton will carry out the functions of the Leader of the Council for a short period until a formal proposal is brought back before members at the next meeting of full Council when a Leader will need to be appointed.

### 4.0 FINANCIAL IMPLICATIONS

4.1 There are no financial implications

### 5.0 INTEGRATED IMPACT ASSESSMENT

	Positive Impacts	Negative Impacts	Not Applicable
<b>1. Merthyr Tydfil Well-being Objectives</b>	0 of 4	0 of 4	4 of 4
<b>2. Sustainable Development Principles - How have you considered the five ways of working:</b> <ul style="list-style-type: none"> <li>• Long term</li> <li>• Prevention</li> <li>• Integration</li> <li>• Collaboration</li> <li>• Involvement</li> </ul>	0 of 5	0 of 5	5 of 5
<b>3. Protected Characteristics</b> <i>(including Welsh Language)</i>	0 of 10	0 of 10	0 of 10
<b>4. Biodiversity</b>	0 of 1	0 of 1	1 of 1
<b>Summary:</b> There are no positive or negative impacts.			

**SIMON JONES**  
**SENIOR SOLICITOR**

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Does the report contain any issue that may impact the Council's Constitution?		

***Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.***