

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2018-019/CT

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

RESPONDENT: Councillor Roderick

RELEVANT AUTHORITIES: Powys County Council
Brecon Beacons National Park
Authority

1. INTRODUCTION

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales considered a reference in respect of the above Respondent.
- 1.2 A hearing was held by the Case Tribunal on 19 November 2019 at the Welshpool Magistrates Court. The hearing was open to the public.
- 1.3 The Public Services Ombudsman for Wales was represented by Mr Hughes, counsel and Councillor Roderick attended and was represented by Mr Daycock, counsel. The Monitoring Officers of both relevant authorities were also present.
- 1.4 References in square brackets within this Decision Report are to pages within the bundle of Tribunal Case Papers unless otherwise stated.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 7 December 2018, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Councillor Roderick. The allegations were that Councillor Roderick had breached Codes of Conduct of the Council and the Authority by;
 - (i) Slapping the bottom of a female Councillor before a meeting of the Authority (alleged breaches of paragraphs 4 (b) and 6 (1)(a) of the Code); and
 - (ii) Threatening to divulge information about the Councillor if she pursued the complaint (alleged breaches of paragraphs 4 (b), 6 (1)(a) and 7 (a)).

2.1.2 The circumstances of the first complaint were that, shortly before the start of a meeting of the Brecon Beacons National Park Authority in the Meeting Committee Room in Plas Y Ffynon, Brecon on 8 December 2017, Councillor Roderick allegedly slapped the complainant's bottom as councillors were gathering at the start of the meeting. The complainant lodged a complaint on 5 January 2018 [B21].

2.1.3 The second complaint arose from two conversations which Councillor Roderick subsequently had with Ms Doel, the then Chairman of the Authority, and Ms Foxley, the then Monitoring Officer. During the first conversation on 15 January 2018, Councillor Roderick indicated that he had information about the complainant's behaviour which her husband would have been interested in. Ms Doel understood that he was threatening the disclosure of the information if the complaint was pursued. During the second conversation on 23 January, it was alleged that Councillor Roderick said that he would make public something that the complainant would not have liked and that he would "*hang her out to dry*". Ms Doel's complaint was dated 4 April 2018 [B23-4].

2.2 The Councillor's responses to the Complaints and Reference

2.2.1 Councillor Roderick responded to the complaints on a number of separate occasions;

(i) In respect of the first complaint;

- On 17 January 2018, Councillor Roderick emailed the Ombudsman and stated that he had given the complainant a "*friendly tap on the backside*"..*"with the back of [his] hand"* [B196-7];
- On 16 October 2018, during an interview, Councillor Roderick further stated that he had "*just tapped her with the back of [his] hand, on the bottom*". He denied that the contact had been a slap and described it as a '*flick*'. He stated that she had reacted by turning around sharply and saying "*oi don't do that*" [B159-177];
- In the Councillor's solicitors' letter of 22 November 2018, the contact was described as a "*light tap with the back of his hand*" [B200-2];
- In the Reply to the Notice of Reference dated 23 January 2019, the Councillor restated his position and denied breaches of the Code of Conduct ([C3-16] and [C33-38]).

(ii) In respect of the second complaint;

- Councillor Roderick emailed the Ombudsman on 14 May 2018 and stated that he did not accept that Ms Doel's complaint accurately reflected the words which she had used. He nevertheless accepted the 'thrust' of the account and accepted that he may have inadvertently breached paragraph 4 (b) of the Code of Conduct [B198-9];
- During the further interview which took place on 16 October 2018, the Councillor stated that he had been "*looking for payback*" when

he had spoken to Ms Doel and Ms Foxley on 15 and 23 January because he felt that the complaint had been defamatory [B176-192];

- In his Reply to the Notice of Reference dated 22 March 2019, no further details of the response were put forward [C19-32].

2.3 The Ombudsman's Written Representations

- 2.3.1 The Ombudsman responded to the Councillor's representations on 10 April 2019 [D3-7].

2.4 The Councillor's further representations

- 2.4.1 By a letter dated 12 November 2019, Councillor Roderick's solicitors wrote to indicate a significant change of stance to the allegations;

"Having reviewed matters with our client, our client has instructed us that he will not seek to contest the facts as presented to the Tribunal and accepts that he has breached the code in relation to the two complaints that the panel will be considering."

3. EVIDENCE

- 3.1. The Case Tribunal received a bundle comprising the Tribunal Case Papers and a DVD.
- 3.2 In light of the change of stance to the allegations referred to in paragraph 2.4.1 above, the Case Tribunal heard no oral evidence from the witnesses to the complaints who had been identified within the Ombudsman's report.
- 3.3 The Tribunal did, however, hear evidence from two character witnesses (see further below).

4. FINDINGS OF FACT

- 4.1 In light of Councillor Roderick's solicitors' letter of 12 November, the Case Tribunal found the following material facts. Where there were discrepancies between the witnesses' accounts within the Ombudsman's Report, the Tribunal made findings on the balance of those accounts as follows, although those discrepancies were not considered material to the issues:

First complaint

- 4.1.1 The Respondent and the complainant to the first complaint are Councillors. They are members of the Brecon Beacons National Park Authority and of the Powys County Council.
- 4.1.2 The Respondent received training on the National Park Authority's Code of Conduct on 16 June 2017 and signed an undertaking to observe it on that date too ([B40] and [B43]). He signed a similar declaration in relation to the Powys County Council Code on 9 May 2017 [B42].

- 4.1.3 There was a meeting of the National Park Authority on 8 December 2017 in the Meeting Committee Room, on the first floor of Plas Y Ffynnon, Brecon. A plan and photographs of the room were produced [F10-18]. The distances shown on the plan were set out within paragraphs 10-12 of Mr O'Connor's witness statement [F6-7].
- 4.1.4 The Respondent and a female Councillor, ('the complainant'), were both present. In total, approximately 21 people were present.
- 4.1.5 At the beginning of the meeting, some members were moving around the room and gaining access to the register of gift declarations. The complainant was signing the register when there was physical contact between the Respondent's hand and her bottom. She described the Respondent as having used the open palm of his hand to make contact with the force of a smack or slap. She reacted by saying "*I could have you struck off for that*" and some others in the room, but certainly not all, recalled her reacting, either by saying the words she maintained, or by exclaiming with surprise and/or by standing up and looking around. One Councillor remembered her appearing to have been close to tears at the start of the meeting (Ms Perkin [B130]).
- 4.1.6 On 5 January 2018, Councillor Durrant made a complaint to the Ombudsman about the Respondent's conduct on 8 December 2017. The Respondent was informed of the complaint on 8 January.

Second complaint

- 4.1.7 There was a conversation between the Respondent and Ms Doel, the Chairman of the National Park Authority, on 15 January 2018 during which he asked if a roundtable discussion could have been arranged to resolve the complaint which he then knew was being investigated by the Ombudsman. He then indicated that, if the complaint was pursued, he had information about the complainant's conduct or behaviour that her husband would have been interested in.
- 4.1.8 There was a subsequent conversation between the Respondent and Ms Foxley, the Monitoring Officer of the National Park Authority, on 23 January 2018 during which he said that, if the matter (i.e. the complaint) went against him, he would make something public that the complainant would not have liked and/or that he would '*hang her out to dry*' and involve his lawyer.
- 4.1.9 During the interview which took place on 16 October 2018, the Respondent stated that he had been "*looking for payback*" when he had spoken to Ms Doel and Ms Foxley because he felt that the complaint had been defamatory [B176-192].

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSED A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 The Code of Conduct

- 5.1.1 The relevant parts of the Code of conduct were as follows;

Paragraph 4 (b);

*“You must-
(b) show respect and consideration for others;”*

Paragraph 6 (1)(a);

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

Paragraph 7 (a);

*“You must not –
(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;”*

5.2 Case Tribunal’s Decision

5.2.1 In light of the contents of the Respondent’s solicitor’s letter of 12 November 2019 and the evidence set out above, the Tribunal confirmed their unanimous view that breaches occurred as follows;

- (i) In respect of the first complaint; breaches of paragraphs 4 (b) and 6 (1)(a);
- (ii) In respect of the second complaint; breaches of paragraphs 4 (b), 6 (1)(a) and 7 (a).

6. ACTION TO BE TAKEN

6.1 The Respondent’s Evidence and Submissions

6.1.1 Councillor Roderick called evidence as to his character from;

- Councillor Pritchard [C51];
- County Councillor Van-Rees [C45].

6.1.2 He also relied upon a number of written character references which the Case Tribunal read and considered;

- County Councillor Harris [C40];
- Councillor Weale [C41];
- Mrs Lynette Thomas [C42];
- Councillor Alexander [C43];
- Councillor Price [C44];
- Mr Chris Davies MP [C46];
- Mrs Janet Watkins [C48-9];
- Mrs Ann Webb [C50];
- Councillor Pugh [C56].

6.1.3 Lengthy submissions were made on his behalf by Mr Daycock, in which it was contended that Councillor Roderick was apologetic and contrite. Mr Daycock alluded to his lack of experience as a councillor, having

been elected in 2017, but he also referred to his extensive work for his ward and community over many years.

6.1.4 In relation to the first complaint, it was important to note that the Respondent had accepted that his actions had not been appropriate and/or intended as disrespectful with hindsight and that he offered to apologise [B174-5].

6.1.5 In relation to the second complaint, it was noteworthy that the Respondent had accepted that he had not expressed himself as thoughtfully as he would have liked and had admitted an inadvertent breach of paragraph 4 (b) of the Code at an early stage [B198-9].

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all of the facts of the case and the Respondent's submissions in mitigation (see above). It applied The Guidance issued by the President under s. 75 (10) of the Local Government Act 2000, it considered the Nolan Committee's Principles for Public Life from which the National Assembly for Wales' core principles were derived.

6.2.2 First, the Case Tribunal had to assess the seriousness of the breaches and their consequences. It considered that the Respondent's conduct on 8 December had degraded and humiliated the complainant and had long been considered wholly unacceptable in any public arena. It was described by Mr Hughes on behalf of the Ombudsman as '*shocking and extraordinary*'.

6.2.3 In relation to the second complaint, however, the Case Tribunal considered that the threats that the Respondent made could have been described as akin to blackmail. It was not clear to the Tribunal on what basis the Respondent had denied breaches of the Code, despite admitting the thrust of the allegations in relation to the complaint. Mr Daycock realistically accepted that it was the more serious complaint, an issue with which the Tribunal readily agreed, not only because his conduct had been repeated on 15 and 23 January, but also because the conduct itself was more likely to have brought his office as a Councillor and/or the Authority into disrepute. It was short sighted and naive for him to have believed that two similar conversations with the Chair and Monitoring Officer would not have resulted in action having been taken against him.

6.2.4 In terms of the broad sanction that was appropriate in the circumstances, the Tribunal considered that the option of suspension was most applicable. The Tribunal started its considerations by considering whether it could take no action and then a partial suspension but, in the case of the former, it considered the conduct to have been too serious and, in the case of the latter, there was no particular aspect of the Respondent's conduct which made a partial suspension appropriate. The Tribunal was also conscious that the Respondent's role on the Authority had been derived from his role as a County Councillor.

- 6.2.5 The Tribunal then considered both mitigating and aggravating features of the breaches.
- 6.2.6 In the Respondent's mitigation in relation to the first complaint, the Tribunal noted that a degree of contrition had been expressed at a relatively early stage in interview and that it had been a one-off incident. There was no systemic conduct or protracted harassment.
- 6.2.7 Mr Daycock informed us that Councillor Roderick was inexperienced and was described by Councillor Van Rees as '*not a sophisticate*'. He was not familiar with the heightened level of formality and the ethos of committee environment. He accepted that he had made an error of judgment but that no malice had been meant. The Tribunal accepted as much.
- 6.2.8 Unfortunately, the Respondent had denied the gravity and nature of the incident until recently, thereby potentially extending the period of upset to the complainant. It was a concession nevertheless which had to stand to his credit. Mr Daycock informed the Tribunal that the delay was attributable to the fact that the Councillor's representatives did not have a good understanding of the code of conduct.
- 6.2.9 In relation to the second complaint, the Tribunal noted the Respondent's degree of insight; that he '*didn't express himself as thoughtfully as he would have liked and accepted and inadvertent code breach*'. Nevertheless, the conduct had been repeated and, by its very nature, there had been an attempt to use his position for gain.
- 6.2.10 In more general terms, the Tribunal considered a strong set of character references. The Respondent clearly commanded a broad range of respect and trust, which made his conduct all the more surprising and out of character. His level of dedication to his community was impressive. He had no prior record of misconduct with the Ombudsman.
- 6.2.11 The Case Tribunal considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards expected in public life. It concluded by unanimous decision that **Councillor Roderick should be suspended from acting as a member of authorities for a period of 4 months.**
- 6.2.12 The sanction applied to both positions held by the Councillor. The Tribunal could discern nothing in the nature of the conduct and/or the breaches which suggested that the Respondent's behaviour was peculiar to, or specifically arose from, his work with the Authority. His position on the Authority was derived from his role with the Council and both the Council and Authority were relevant authorities under ss. 69 and 79 for these purposes.
- 6.2.13 The authorities and their Standards Committees have been notified accordingly.

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

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal made the following recommendation to the authorities;

7.1.1 That Councillor Roderick receive further training in relation to his duties under the code of conduct from or on behalf of the Monitoring Officer of the Brecon Beacons National Parks Authority by 31 January 2020.



Signed.....
John Livesey
Chairperson of the Case Tribunal

Date...20 November 2019.....

Ms C Jones
Panel Member

Dr G Jones
Panel Member