
SPECIAL MEETING OF THE STANDARDS COMMITTEE, 29.07.14

Present:-

Independent Members:- Mr Gwilym Ellis Evans (Chairman), Ms Linda Byrne, Miss Margaret Jones, Mr Sam Soysa and Dr Einir Young.

Community Committee Member:- Councillor David Clay.

Also present:

On behalf of the Public Services Ombudsman for Wales - Julie Ann Quinn (Investigating Officer) Gwynedd Council Officers – Iwan Evans (Deputy Monitoring Officer) and Eirian Roberts (Members and Scrutiny Support Officer).

Apologies:- Councillors Michael Sol Owen and Eryl Jones-Williams (elected members).

1. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any member present.

2. COMPLAINT AGAINST COUNCILLOR NANCY CLARKE, TYWYN TOWN COUNCIL

The Chairman welcomed everyone to the hearing and then asked everyone to introduce themselves.

The Chairman then explained the nature / format of the hearing.

The Committee considered the report of the Public Services Ombudsman for Wales regarding alleged breaches of the Code of Conduct for Members of Tywyn Town Council by Councillor Nancy Clarke, which was referred to the Standards Committee by the Ombudsman for determination.

The Ombudsman had received complaints on 17th June, 15th July and 19th September 2013 that Councillor Nancy Elizabeth Clarke had failed to observe the Code of Conduct for Members of Tywyn Town Council. It was alleged that Councillor Clarke had failed to declare a personal prejudicial interest, made comments and voted at the Council's Finance Committee meetings on the 21st May, 4th July and 10th September 2013 and at the Council meetings of 29th May, 10th July and 11th September 2013. It is alleged that Councillor Clarke should have declared an interest and left the room when items relating to Tywyn and District Chamber of Tourism and Commerce ("the CTC") were discussed, due to a recent acrimonious history and her ongoing dispute with the CTC. It is also alleged that Councillor Clarke made unsubstantiated comments about the CTC in an attempt to prevent it from receiving financial assistance from the Council.

The Ombudsman decided to investigate whether Councillor Clarke had failed to comply with any of the following provisions of the Code of Conduct:

"6.- [a member] must –

(1) (a) not conduct [themselves] in a manner which could reasonably be regarded as bringing [their] office into disrepute.”

7. - [a member] must not –

(1) (a) in [their official] capacity or otherwise use or attempt to use [their] position improperly to confer on or secure for [themselves] or any other person, an advantage or create or avoid for [themselves], or any other person a disadvantage.

8a. [a member] must –

(1) (a) when participating in meetings or reaching decisions regarding the business of [the] Authority, do so on the basis of the merits of the circumstances involved and in the public interest.

11(1) Where [a member has] a personal interest in any business of the Authority and [attends] a meeting at which that business is to be considered, [they] 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)(c)(i) [the member] must regard [herself] as having a personal interest in any business of the Authority if the decision upon it might reasonably be regarded as affecting the wellbeing or financial position of a person with whom [they] have a close personal association.

14(1) (a) [a member, where they have a prejudicial interest in any business of the Authority], unless [they] have obtained a dispensation from the Authority’s Standards Committee -

(a) withdraw from the room, chamber or place where a meeting considering the business is being held,

(c) not seek to influence a decision about that business.”

At the commencement of the hearing. Councillor Clarke sought permission to introduce a transcript of the written judgment of Deputy District Judge Parsons at Aberystwyth County Court on 26th June 2014 dismissing the claim against Councillor Nancy Elizabeth Clarke brought by the Complainant. It was determined, on advice by the Deputy Monitoring Officer that the late submission of documents should only be allowed in exceptional circumstances and that the document was not of direct relevance to the issues before the Committee and should not be admitted.

The Standards Committee considered the Compliance and Language Manager’s covering report, the written report of the Ombudsman’s Investigation and the oral submissions from Julie Ann Quinn, Investigating Officer, Councillor Nancy Elizabeth Clarke and Mark Kendall as well as the written submissions of Councillor Clarke, Alex Lovett and Victoria Knapp.

The Committee then withdrew to consider its decision.

After reaching its decision, the Committee reconvened and the Chairman announced that the Standards Committee had determined that Councillor Nancy Clarke had failed to comply with the Code of Conduct as follows:-

- (1) The Committee found that Councillor Clarke was in breach of paragraph Para 14(1) (a) (e) of the Code of Conduct.

The reasons for the Committee's conclusions were as follows:

The Committee found that the circumstances by which Councillor Clarke's formal membership of the CTC came to a conclusion in late 2012 resulted in an acrimonious continuing dispute between the Chairman of the CTC, Councillor Michael Stevens and Councillor Clarke. This dispute involved correspondence with solicitors in relation to the recovery of CTC documents from Councillor Clarke. Evidence from both Councillor Clarke and Mr Mark Kendall confirmed that the dispute was ongoing and in existence at the relevant time. The dispute included an attempt by Councillor Michael Stevens ostensibly on behalf of the CTC to recover legal costs in the sum of £1824.00 from Councillor Clarke. This was the subject of County Court litigation. These issues were ongoing during the period from 21st May to 11th September 2013 and continued thereafter. The Committee was satisfied that these matters related to the CTC.

The Committee determined, having regard to the Ombudsman's Guidance on the Code of Conduct, that the circumstances of Councillor Clarke's relationship with the CTC, the acrimonious history and ongoing dispute constituted a close personal association for the purposes of paragraph 10(2) (c) of the Members' Code of Conduct and that the nature of this association meant that this interest was a prejudicial interest for the purposes of paragraph 12(1).

The Committee also found, and this was not disputed, that Councillor Clarke had attended at meetings of the Town Council's Finance Committee on the 21st May, 4th July and 10th September and at Council Meetings on 29th May, 10th July and 11th September when matters relating to the CTC were discussed and were the subject of decisions. Councillor Clarke had not declared the existence of an interest at any of the meetings and had failed to withdraw from those meetings in breach of the Members' Code of Conduct.

- (2) The Committee found that Councillor Clarke was in breach of paragraph 7(a) and 14(1) (c) of the Code of Conduct.

The reasons for the Committee's conclusions were as follows:

The Committee found that Councillor Clarke having a prejudicial interest in the matter and not having declared that interest participated in Council and Committee meetings, and in particular the meeting of the 10th July 2013 where she argued against the application by the CTC for £3000 of financial support and voted against a proposal to grant them £2000 financial support although also voting in favour of a proposal to grant £1000 financial support.

Having regard to the existence of the prejudicial interest and background of acrimony and dispute between the CTC and Councillor Clarke, the Committee considered that her participation and submissions to these meetings was improper and constituted an attempt to influence a decision about the business and confer a disadvantage for the CTC.

- (3) The Committee found that Councillor Clarke was in breach of paragraph 8(a) of the Members' Code of Conduct.

The reasons for the Committee's conclusions were as follows:

The Committee found that Councillor Clarke had prepared a detailed note of her contribution to the Council discussion on the CTC's application for a donation of

£3000. The matter had been discussed at the Finance Committee who had recommended a donation of £1000. The Committee whilst of the view that a Councillor preparing a note of what they proposed to say at Committee was not of itself inherently improper, it found that other evidence indicated that Councillor Clarke had come to the meeting with a closed mind and was not prepared to consider alternative arguments or alternative proposals. The Committee in particular, found that during the course of the interview with the Investigating Officer, Councillor Clarke stated that she had purposely held back her contribution until the end of the discussion where she read out a pre-prepared statement with a view to pushing for a vote and specifically noted *“and I didn’t want to be picked up on anything else”*. Having regard to the circumstances surrounding this proposal, the nature of the interest and the manner in which Councillor Clarke contributed to the Council meeting, the Committee concluded that Councillor Clarke had assumed a fixed position in relation to the application prior to the meeting and was not open to consideration of alternatives notwithstanding the merits of any proposal.

- (4) The Committee found that Councillor Clarke was in breach paragraph 6(1) (a) of the Members’ Code of Conduct.

The reasons for the Committee’s conclusions were as follows:

The Committee having found that Councillor Clarke participated in multiple meetings where she had a prejudicial interest and took active steps as a member to influence a financial application by the CTC in breach of the Members Code of Conduct. The Committee considered that her conduct throughout fell short of the expectations of the standard of conduct for members and could reasonably be considered to have brought the office of member of the Council into disrepute.

The Committee then withdrew to consider what action to take.

After reaching its decision, the Committee reconvened and the Chairman announced that the Standards Committee had determined that Councillor Clarke should be suspended from being a member of Tywyn Town Council for a period of three months.

The reasons for the Committee’s decision were as follows:

The range and nature of the breaches of the Code over a number of months. The fact Councillor Clarke not only failed to declare and properly act upon a prejudicial interest but actively contributed to the debate on the Councils consideration of the requests for financial support to the CTC.

The absence of acknowledgement by Councillor Clarke that she was in breach or might be in breach of the Code of Conduct. This continued throughout the investigation process and during the Standards Committee hearing.

Although the Committee accepted there may have been an element of uncertainty about the specific advice which the Clerk had given Councillor Clarke, the Committee also considered that ultimately it is the responsibility of the individual member to take their own decisions on issues of conduct. There were also instances where Councillor Clarke should have considered or reconsidered her position, including the fact that she was specifically named as a debtor in the CTC accounts which she perused and the correspondence from the Ombudsman during the relevant period informing her of these specific complaints and that there was an intention to investigate.

The Committee took into account that Councillor Clarke was a relatively inexperienced member.

The Committee also recommended that arrangements were made for Councillor Clarke to receive one to one training in the Members' Code of Conduct.

The Chairman announced:-

- (1) That Councillor Nancy Clarke may appeal against the determination of the Standards Committee to an appeals tribunal drawn from the Adjudication Panel for Wales. The appeal must be instigated by giving notice in writing to the President of the Adjudication Panel within 21 days of receiving the notice of determination. Notice of appeal must specify the grounds for appeal and whether or not the member consents to the appeal being conducted by way of written representations.
- (2) A report on the outcome of the investigation would be published in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.
- (3) Councillor Nancy Clarke, the complainant and the Public Service Ombudsman for Wales would be notified accordingly.

The meeting commenced at 10.30am and concluded at 3.05pm.