

Tribunal Reference Number: APW/003/2003/A

Appeal Against Standards Committee Determination in Relation to Alleged Failure to Follow the Local Government Code of Conduct

APPELLANT: Councillor Graham Powell

RELEVANT AUTHORITY: Monmouthshire County Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Powell against the determination of Monmouthshire County Council's Standards Committee that he had breached the authority's Code of Conduct and should be suspended for a period of one calendar month.

1.2 A hearing was held by the Tribunal on Tuesday 10 February 2004 at the Hilton Hotel, Chepstow Road, Newport, NP18 2LX. The hearing was open to the public.

2. PRELIMINARY DOCUMENTS

2.1. Appeal Against Decision of Relevant Standards Committee

2.1.1. In a letter dated 21 August 2003, the Adjudication Panel for Wales received an appeal from Cllr G Powell against the determination of Monmouthshire County Council's Standards Committee that he had breached the authority's Code of Conduct and should be suspended for a period of one calendar month.

2.1.2 The Standards Committee's determination followed its consideration of a report by the Commissioner for Local Administration in Wales ("the Local Commissioner") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000, following an investigation into alleged breaches of the Code of Conduct. The allegations were that Councillor Powell had breached paragraphs 4(a) (failing to show respect and consideration for others), 4(b) (compromising the impartiality of the Council's employees); 5(a) (improperly disclosing confidential information), 6(1)(b) (bringing the authority into disrepute) and 6(1)(e) (making vexatious or malicious complaints against other persons) of Monmouthshire County Council's Code of Conduct.

2.1.3 During the investigation into the above allegations, the Local Commissioner found that there was no evidence of a failure by Councillor Powell to comply with paragraphs 5(a) and 6(1)(e) of the Code of Conduct.

2.2. The Appellant's Response

2.2.1. In a letter dated 24 September 2003, Councillor Powell admitted to interrupting Ms Rossaye at the meeting on 7 August 2002 at Mr and Mrs Howard Powell's home and admitted telling her that her conduct could result in disciplinary action. He denied saying that he would throw her out of the window and he denied being abusive to her. He raised two preliminary issues which the appeal tribunal dealt with in the Listing Direction.

2.3 Oral Submissions

2.3.1 The Appellant made the following oral submissions:

- a. He contended that the allegations made against him were misplaced and that allegations made by Mr and Mrs Powell against Ms Rossaye should be investigated.
- b. He was critical of Mr Colin Berg's handling and making of the complaint.
- c. He was critical of the Local Commissioner's investigation and of his report.
- d. He requested the Appeal tribunal to investigate all of the above issues.

2.3.2 The Appeal Tribunal informed the Appellant that it could not investigate these issues, which were outside its powers and functions. Following a short adjournment the Appeal tribunal's powers, functions and procedures were again explained to the Appellant. The Appellant indicated his intention to leave the Tribunal hearing and also confirmed that he was not withdrawing his appeal. It was explained to him that in that eventuality, the Tribunal would continue to proceed based on the evidence already before it.

3. FINDINGS OF FACT

3.1 The Appeal Tribunal identified the following **undisputed** material facts, which were agreed by the Appellant at an early stage of hearing:

3.1.1. Monmouthshire County Council passed a resolution under section 51 of the Local Government Act 2000 adopting a code of conduct on 6 December 2001.

3.1.2 Cllr Powell gave an undertaking to abide by the authority's code of conduct on 23 January 2002.

3.1.3 Cllr Powell was present at a meeting between representatives of Monmouth County Council's Social and Housing Services Directorate and Mr and Mrs Howard Powell of 25 Cwrt Severn, Caldicot at their home on 7 August 2002.

3.1.4 An allegation about the Appellant's conduct at that meeting was made to the Commissioner for Local Administration in Wales by Mr Colin Berg, Corporate Director of Social and Housing Services at Monmouthshire County Council.

3.1.5 The Standards Committee considered a report from the Commissioner for Local Administration in Wales on 18 August 2003, which concluded that Cllr Powell had failed to comply with paragraphs 4(a), 4(b) and 6(1)(b) of the authority's code of conduct. The Committee suspended Cllr Powell for one calendar month with effect from 10 September 2003.

3.1.6 At the meeting of the Standards Committee on 18 August 2003, Cllr Powell confirmed to the Committee the Local Commissioner's view that he was acting as a councillor during the meeting with Mr and Mrs Powell on 7 August 2002.

3.2 The Appeal Tribunal identified the following **disputed** material facts:

3.2.1 That at the meeting with Mr and Mrs Howard on 7 August 2002:

- a. Cllr Powell had said that he would throw Ms Beebee Rossaye out of the window.
- b. Cllr Powell had shouted at Ms Rossaye.
- c. Cllr Powell said that he would have Ms Rossaye sacked.
- d. Cllr Powell's manner was intimidating, threatening and abusive.

3.3 The Appeal Tribunal considered the statements of the Appellant, Mr and Mrs Howard Powell, Mr John Powell, Ms Rossaye, Ms Webb and Mrs Penny Williams, all of whom were present at the meeting.

3.4 The Appeal tribunal found a discrepancy between what Councillor Powell, Mr and Mrs Powell and John Powell said on the one hand, and what Ms Rossaye, Ms Webb and Mrs Williams said on the other.

3.5 Ms Rossaye, Ms Webb and Mrs Williams are consistent in saying that the Appellant threatened to throw Ms Rossaye out of the window and that his manner towards her was threatening and intimidating. They all say that he was shouting and that he threatened to have her sacked.

3.6 The Appeal Tribunal gave weight to Mrs Williams' evidence and agrees with the Local Commissioner's view that in essence she can be regarded as an independent witness and that there appears to be no reason to regard her evidence as anything other than objective and accurate. She was asked to attend the meeting by Mr and Mrs Powell. She was not especially familiar with the Appellant or the social workers before the meeting.

3.7 On the evidence considered, the Appeal Tribunal found on the balance of probabilities that the Appellant did say that he would throw Ms Rossaye out of the window; that he shouted at her; that he said that he would have her sacked and that his manner was intimidating, threatening and abusive.

4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

4.1 The Local Commissioner's Report

4.1.1. The Code of Conduct provides that members of the authority:

- a. **must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others (*paragraph 4(a)*);**
- b. **must not do anything which compromises, or which is likely to compromise, the impartiality of the authority's employees (*paragraph 4(b)*) ;**
- c. **must not in their official capacity or otherwise behave in a manner which could be reasonably regarded as bringing the office of member or the authority into disrepute (*paragraph 6(1)(b)*).**

4.1.2 The Local Commissioner contended that the Appellant breached these provisions by failing to treat Ms Rossaye with respect and consideration at the meeting on 7 August 2002 (*paragraph 4a*); by attempting to influence her impartiality at the meeting (*paragraph 4(b)*); his conduct at the meeting could reasonably be regarded as bringing

the council, as Social Services Authority, into disrepute by prejudicing the ability of professional social workers to undertake their duties and diminishing public confidence in the council; it was also likely to give a poor impression of the relationship between members of the Council and its staff (paragraph 6(1)(b)).

4.2 Tribunal's Decision

4.2.1 On the basis of the findings of fact, the Appeal Tribunal found that there was a failure to comply with Monmouthshire County Council's Code of Conduct for the reasons set out by the Local Commissioner.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 Appeal Tribunal's Decision

5.1.1. The Appeal Tribunal considered all the facts of the case and took account of the Appellant's length of service, the written character references and his written submissions, including those presented on the day. The Appeal Tribunal has no reason to doubt the Appellant's integrity. Nevertheless, the Appeal Tribunal considers the Appellant's behaviour at the meeting on the 7 August 2002 to be wholly unacceptable and all the more so because of his length of service and his standing in the community.

5.1.2. The Appeal Tribunal concluded by unanimous decision to uphold the determination of the Standards Committee that Councillor Powell had breached Monmouthshire County Council's Code of Conduct. The Tribunal further decided to refer the matter back to the Standards Committee with a recommendation that Councillor Powell should be suspended from acting as a member of the authority for a period of 6 months.

6. Monmouthshire County Council's and its Standards Committee are notified accordingly.

Signed..... Date...10 February 2004...

**Ms Helen Cole
Chairperson of the Appeal Tribunal**

**Mr Ian Blair
Panel Member**

**Mr Colin Evans
Panel Member**