

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2020-021/CT

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

RESPONDENT: Councillor David Vincent Poole

RELEVANT AUTHORITY: Caerphilly County Borough Council

1. INTRODUCTION

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
- 1.2 The Case Tribunal determined its adjudication by way of written representations at a meeting on 28 June 2021 which was conducted by video. Its reasons for doing so were set out in the Listing Direction dated 29 April 2021 at paragraph 2.6 [A3].
- 1.3 References in square brackets within this Decision Report are to sections and 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 23 February 2021, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against the Respondent [E367]. The allegations were that the Respondent had breached Caerphilly County Borough Council’s Code of Conduct in that he;
- (i) Used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information that he had received through his position as a Councillor at a meeting on 8 October 2018 (alleged breach of paragraph 7 (a) of the Code) and thereby brought the Authority and his office as a member into disrepute (alleged breach of paragraph 6 (1)(a) of the Code);
 - (ii) Failed to disclose a personal interest and/or withdraw from a meeting on 18 February 2019 when a matter in which he had a

prejudicial interest was being discussed, namely financial dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code).

2.1.2 The circumstances leading to the alleged breaches were as set out above and, in more detail, in the factual findings which follow below.

2.2 The Councillor's Written Response to the Reference

2.2.1 Although the Respondent was interviewed as part of the Ombudsman's initial investigation, he did not respond to the Adjudication Panel's subsequent communications. A copy of the Ombudsman's Report was forwarded to him by the Adjudication Panel on 24 February 2021 by email [E383-6]. He was directed to reply to the allegations in the Report in accordance with paragraph 3 (1) of the Schedule of the Adjudications by Case Tribunals and Interim Case Tribunal's (Wales) Regulations 2001 by 17 March 2021. He did not reply to that correspondence. By a letter dated 24 March 2021 [E430], which was sent to him both by email and post, the Adjudication Panel informed him that, as a result of his failure to respond by the deadline of 17 March 2021, the case papers were being forwarded to this Case Tribunal. Again, no response was received to that communication.

2.2.2 The Relevant Authority confirmed the accuracy and use of the Respondent's email addresses and the Listing Direction confirmed the Tribunal's approach in light of the Regulations (see paragraphs 2.4 and 2.5 [A4]).

2.2.3 On 4 May 2021, however, the Respondent did contact the Adjudication Panel, he apologised for his earlier failures to make contact and then set out his position in relation to the case against him [E452-3]. The extent to which the contents of the email advanced his case beyond the information already received is considered below.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. FINDINGS OF FACT

3.1 The Case Tribunal found the following **undisputed** material facts:

3.1.1 The Respondent was, at all times relevant, the leader of Caerphilly County Borough Council. He had been Leader since May 2017, having become a Councillor in May 2004.

3.1.2 He received training on the Council's Code of Conduct in May 2017 and undertook to observe the Code whilst fulfilling the duties of his office [B49, 61 and 281].

- 3.1.3 In his role, he attended Cardiff Capital Region (CCR) City Deal Regional Cabinet Meetings, a joint working arrangement between 10 Councils of the Cardiff Capital Region. Amongst other things, the Cabinet decided to invest in the CSC Project, a scheme designed to breathe new economic life into south east Wales through the creation of a manufacturing hub for semi-conductors. A company, CSC Foundry Ltd ('CSC'), was incorporated as a special-purpose vehicle in July 2017 to enable the CCR to give effect to its plans for the region. All 10 interested Councils had representatives acting as directors of CSC [B201].
- 3.1.4 At a CCR City Deal Regional Cabinet Meeting on 8 October 2018, the Respondent was present when a report prepared by Monmouthshire County Council the lead authority to CSC, and marked '*Confidential Appendix 1*', was considered [B192-199]. The report contained a number of appendices [B200 and following].
- 3.1.5 The documentation contained details of the financial arrangements between CSC and IQE plc ('IQE'), a company which had been engaged to work with CSC, the Welsh Government and the CCR City Deal to transform a disused building in Newport into the hub for the manufacture of semi-conductors for which it received a £38m grant. CSC controlled and managed that grant to IQE.
- 3.1.6 Contained within the report and its appendices were information about the level of IQE's investment and factors which affected its profitability (tooling costs, capacity and productivity). The report considered that productivity was "*significantly exceeding plan*", with a likely resultant acceleration to the 'tipping point' at which IQE achieved profitability (paragraph 9 [B194]). Further, within the appendices, an independent opinion was expressed about the likely consequent trajectory of IQE's share price by a well known firm of investment consultants, GVA [B234-5];
- "Whilst IQE's share price has dipped in recent months, we have been provided with evidence from analysts and the company's chairman to suggest that the share price should increase strongly again."* [B235]
- 3.1.7 The Respondent bought shares in IQE to the value of £2,034.55 on 22 October 2018 [B345]. He subsequently informed the Ombudsman that he had made the purchase with a view to making a profit [B303]. As a result, he believed that he had personal and prejudicial interests in respect of IQE [B293].
- 3.1.8 In January 2019, the Respondent attempted to amend his Register of Interests to reflect his ownership of shares in IQE. Following advice from the Monitoring Officer, no amendment was made. He was advised that, because of the level of his shareholding and the fact that the business was based outside the Council's area, it was not necessary to make any amendment [B125, 272-4 and 288-9].

- 3.1.9 On 21 January 2019, the Respondent reinvested dividends from his IQE shares by buying a further interest to the value of £111.57 [B346]. A further reinvestment of £111.33 was made on 31 May 2019 [B347].
- 3.1.10 At a CCR City Deal Regional Cabinet Meeting which took place on 18 February 2019, the Respondent made no declaration of interest regarding IQE (paragraph 2 [B252-6]). Amongst the matters discussed at that meeting was the Welsh Audit Office Review of the Cabinet's investment decisions, such decisions having included the grant to IQE (paragraph 11 [B256]). The Respondent remained in the room throughout the meeting [B291-2].
- 3.1.11 At a CCR City Deal Regional Cabinet Meeting on 29 April 2019, the Respondent *did* declare an interest regarding IQE and left the room during discussions which concerned CSC and/or IQE ([B257-262] and [B293-4]). After the meeting, he did not contact the Monitoring Officer to inform him of any change in respect of his registered interests [B294].
- 3.1.12 On 3 June 2019, at the prompting of the Deputy Monitoring Officer, the Respondent amended his Register of Interests to include IQE ([B96-101] and [B296-7]).
- 3.1.13 At a further CCR Cabinet Meeting which took place on 10 June 2019, the Respondent followed the same course of conduct ([B263-270] and [B299]).
- 3.1.14 The Respondent's declared interest was then discussed between him, officers from the Welsh Audit Office and the Monitoring Officer on 29 August 2019.
- 3.1.15 The Respondent sold his shares in IQE on 9 September 2019 for £1,244 [B348] and amended his Register of Interests to delete IQE [B107].
- 3.1.16 On 16 September 2019, the Respondent then referred himself to the Ombudsman [B33-4]. Within the letter, he stated that he understood that, in accordance with paragraph 11 (4) of the Code, he should have notified the Monitoring Officer of his declared interest at the meeting on 29 April 2019. He also stated that;
"..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area."
- 3.2 The Case Tribunal reached the following findings on the **disputed** material facts which were identified within the Annex to the Listing Direction on the balance of probabilities [A8]:

- 3.2.1 Whether the Respondent sought to benefit from information which he obtained as a result of his involvement in the meeting of 8 October 2018 by buying shares in IQE;
- 3.2.1.1 The Respondent had access to the confidential information referred to at the meeting of 8 October 2018. Although initially stating that he could not remember whether he had access, he accepted that he would have done when he was interviewed as part of the Ombudsman's investigation (see [B306] where he accepted that he would have had access it "*without a doubt*"). However, he denied that there had been anything within it which caused him to purchase the shares [B307];
- 3.2.1.2 The Respondent's motivation for purchasing the shares was stated to have been a demonstration of a 'vote of confidence' in the regeneration scheme and IQE's involvement in it. That was the reason given at interview [B303], albeit that he had also accepted that he had hoped to benefit financially. It was the reason repeated more recently in his email of 4 May 2021 [E452-3];
- 3.2.1.3 The Tribunal noted the Respondent's experience and was particularly struck by the proximity of the dates of the meeting and the share purchase, 8 and 22 October 2018 respectively. The simple message in the GVA letter was clear; that IQE's share price was likely to have seen an increase following an earlier than predicted achievement of profitability. The Respondent could have purchased shares at any point before 22 October to show a 'vote of confidence' in IQE, but only chose to do so once in receipt of that prediction;
- 3.2.1.4 The Tribunal considered that it was also noteworthy that, within his self-referral, the Respondent had appreciated that the purchase of the shares had been unwise, albeit because he considered that he was conflicted in future discussions regarding IQE, rather than because he ought not to have benefited from the contents of the confidential information that was seen.
- 3.2.1.5 Taking all of those matters into account, the Tribunal concluded that the Respondent had probably sought to benefit from the confidential information that he received in connection with the meeting of 8 October 2018 when he bought the shares.
- 3.2.2 Whether the information contained within '*Confidential Appendix 1*' was publicly available in any event and, if so, at what time;

- 3.2.2.1 There was some doubt as to what information had been made public in connection with the meeting of 8 October 2018.
- 3.2.2.2 Paragraph 1 of the minutes of the meeting suggested that there had been some technical difficulties associated with the dissemination of paperwork before the meeting [B190], but the Ombudsman's letter of 21 May 2021 made it clear that the Agenda and the report itself *had "been available for public inspection"* [E461]. The minutes made it clear, however, that certain appendices to the report were *not* published, which appeared to include the GVA report [B191]. That made sense to us given the price sensitive nature of the predictions within it.
- 3.2.2.3 The Respondent alleged that he had no advantage over anybody else when he had decided to buy the shares [B310]. He relied upon the fact that the "*information was in the public domain*" [B308] since there "*was in a press release anyway*" [B309]. In his more recent email of 4 May 2021, he stated that "*the decision to grant a loan to IQE was fully reported in the local media in 2017 and in the financial press*" and that he made the purchase a year later when his "*knowledge of the Company was out of date*" [E452]. The press report from 14 July 2017 undoubtedly covered IQE's initial involvement as the Respondent had claimed on 4 May 2021, but what it did *not* cover and/or make public was the change in the productivity projections, anticipated profitability and the likely effect on IQE's share price in 2018 [B341-3]. The Respondent pointed to no other source of such information which *he* had had been aware of before the shares were purchased.
- 3.2.2.4 Having considered all of that evidence, the Tribunal concluded that, although some information about productivity and potential profitability was made publicly available within the report to the meeting of 8 October 2018 (e.g. [B194]), the opinion in respect of its share price was *not* part of that information [B325] (see paragraph 3.1.6 above). Further, the Claimant's suggestion that that information had been made available in a press report in 2017 was not correct. The report contained considerably greater up-to-date detail and, in the case of the confidential appendices, information which was potentially price sensitive and valuable to an investor.
- 3.2.3 Whether the Respondent sought to influence any decision in which he had a prejudicial interest;
- 3.2.3.1 The Respondent was only present at one meeting between the date of his purchase of the shares and subsequent

meetings when he declared an interest, the meeting of 18 February 2019;

3.2.3.2 The subject for discussion on 18 February was not IQE itself and/or factors which may have affected its profitability or share price, but the Welsh Audit Office report into the arrangements for the CCR City Deal [B256]. There was nothing within the minutes or other evidence which suggested that the Respondent had sought to influence any decision in which he had a prejudicial interest. The meeting simply noted the contents of the report and the 'lessons' which were to have been learnt from it. Although the Tribunal did not have a copy of the Welsh Audit Office report, there was nothing to suggest that the findings may have either undermined or improved IQE's position.

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

4.1 The Code of Conduct

4.1.1 The relevant parts of the Code of Conduct were as follows;

Paragraph 6 (1)(a);

"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 all secure for yourself.. an advantage..."

Paragraph 11 (1);

"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 is apparent."

Paragraph 14 (1)(a);

"Subject to subparagraphs (2), (2A), (3) and (4), 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 business is being held.."

4.2 The Respondent's Submissions

- 4.2.1 The Respondent's position in respect of the breaches alleged under the Code was as follows;
- 4.2.1.1 Paragraph 6 (1)(a);
When interviewed, the Respondent stated that he considered that he had "*fully complied*" with that paragraph of the Code [B311].
- 4.2.1.2 Paragraph 7 (a);
In the Respondent's letter of self-referral, he went some way to admitting a breach of paragraph 7 (a). He stated that, "*with the benefit of hindsight*", he saw that the purchase of the shares prevented him from becoming involved in any future CCR decisions involving IQE [B34]. When subsequently interviewed, however, he stated that did not think that a lay person would have regarded his actions as having been in breach of that paragraph [B310].
- 4.2.1.3 Paragraph 11 (1);
In his letter of self-referral, the Respondent fully accepted that he "*should have notified the council's Monitoring Officer of the disclosure of the IQE interest at the meeting of CCR in April 2019*" [B34], but that was in relation to a potential breach of paragraph 11 (4). He did not address a potential breach of paragraph 11 (1).
- 4.2.1.4 Paragraph 14 (1)(a);
When interviewed, he '*did not think*' that he had breached that paragraph, albeit that he accepted that he held a prejudicial interest as stated above [B301].

4.3 The Ombudsman's Report

- 4.3.1 It was contended that;
- 4.3.1.1 Paragraphs 6 (1)(a) and 7 (a);
The Ombudsman considered that the facts were '*suggestive*' of breaches of both paragraphs of the Code. The Ombudsman believed that the nature of the confidential information which he had access to had led him to buy the shares in IQE. That information contained indications as to the likely value of the shares and he considered that the decision to purchase after sight of the commercially sensitive information demonstrated "*extremely poor judgment on his behalf*" [B26-7].
- 4.3.1.2 Paragraph 11 (1);

The Ombudsman appeared to consider that the Respondent had a personal interest as a result of the application of the wording of paragraph 10 (2)(a)(viii) of the Code; “*any body to which you have been elected, appointed or nominated by your authority*” [B13]. It was the Ombudsman’s case that the Respondent failed to declare that interest at the meeting of 29 April 2018.

- 4.3.1.3 Paragraph 14 (1)(a);
The Ombudsman’s view was that the Respondent had a prejudicial interest which ought to have led him to withdraw from the meeting on 18 February 2019 (paragraph 50 [B28]), a view shared by the Monitoring Officer ([B114] and paragraph 7 [B273]).

4.4 Case Tribunal’s Decision

- 4.4.1 On the basis of the findings of fact, the Case Tribunal unanimously found that there were failures to comply with the Code as follows:

- 4.4.1.1 Paragraph 6 (1)(a);
The Ombudsman’s Guidance in relation to this paragraph of the Code reminded members that their actions were subject to greater scrutiny than those of ordinary members of the public [B324].

The Tribunal considered that the Respondent’s breach of paragraph 7 of the Code (below) was conduct which brought his Authority into disrepute and, in particular, his office as leader.

- 4.4.1.2 Paragraph 7 (a);
The Ombudsman’s Guidance referred to the need for members to be mindful of the fact that the paragraph within the Code applied at all times, not just when carrying out duties as a member [B326].

Having concluded that the Respondent had used his capacity to attempt to secure a pecuniary advantage for himself when he bought the shares in IQE relying on the confidential information referred to within paragraph 3.2.2, the Tribunal concluded that he had committed a breach of paragraph 7 (a).

- 4.4.1.3 Paragraph 11 (1);
The Tribunal had some difficulty with this allegation because of the wording of paragraph 10 of the Code.

Paragraph 10 (2)(iv) defined a personal interest to include an interest which related to a corporate body which had a

place of business or land in the authority's area *and* in which the interest exceeded the value of £25,000. The Respondent did not meet each of those conjunctive tests in relation to his shareholding in IQE. Paragraph 10 (2)(a)(ix)(bb) related to companies, societies or other bodies "*directed to charitable purposes.*" We could not see that either of those sub-paragraphs or any other within paragraph 10 (2)(a) of the Code clearly defined the Respondent's shareholding as a personal interest.

Paragraph 10 (2)(c) was more generic but it extended the definition of personal interests to include something upon which an authority's decision might have affected a member's financial position (sub-paragraph (i)). The Tribunal considered the Respondent's share interest was likely to have been covered by paragraph 10 (2)(c)(i) because any decision in relation to IQE could have affected his financial position as a shareholder.

The Tribunal did not see the relevance of paragraph 10 (2)(a)(viii) which had been raised by the Ombudsman [B13].

The next question to address was whether the Respondent had attended a meeting at which "*that business [was] considered*".

The Respondent considered that it was not; it was only the 'process' or due diligence 'system' by which the investment had been made which was considered on 18 February 2019 (see the interview [B291] and his recent email of 4 May 2021 [E453]). The Tribunal concluded, however, that the Welsh Audit Office's review of CCR's investments clearly would have encompassed an examination of the £38m grant to IQE. In its broadest sense, IQE was either directly or indirectly 'considered' at the meeting.

- 4.4.1.4 Paragraph 14 (1)(a);
The Tribunal considered that the Respondent held a prejudicial interest paragraph 12 (1) of the Code. He accepted that that was the case, as did the Monitoring Officer. He did not withdraw from the room on 18 February 2019 when item 11 was discussed and was in breach of paragraph 14 (1) of the Code as a result.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

- 5.1.1 The Respondent had made no submissions which were directly related to mitigation, although comments within his interview and his email of 4 May 2021 contained some relevant points which we considered [E452-3].

5.2 The Ombudsman's submissions

- 5.2.1 The Ombudsman made submissions by a letter dated 21 May 2021 [E460-2].

5.3 Case Tribunal's Decision

- 5.2.1 The Tribunal considered all of the facts of the case, the Presidential Sanctions Guidance and the parties' submissions. It considered the following points to have been of particular relevance in mitigation;

5.2.1.1 The fact that there was no record of the Respondent having committed any previous breach of the Code of Conduct;

5.2.1.2 The fact that he did seek to register an interest in January 2019, but failed to do so as a result of the Monitoring Officer's advice;

5.2.1.3 His acceptance that his purchase of IQE shares led him to hold personal and prejudicial interests;

5.2.1.4 He did not seek to influence any decision concerning IQE that was taken at the meeting on 18 February 2019;

5.2.1.5 He then left the meetings on 29 April and 10 June 2019;

5.2.1.6 He then also resigned as leader, referred himself to the Ombudsman and accepted further training.

- 5.2.2 The following aggravating features were relevant;

5.2.2.1 The Respondent was an experienced council member and, as leader, had an influential position and was expected to have set the standards of conduct for the Council;

5.2.2.2 He had used confidential, price sensitive information to attempt to secure a personal advantage on the purchase of the IQE shares;

5.2.2.3 There was a significant gap between his declaration of interest at the meeting on 29 April and the amendment of his register of interests on 3 June 2019, the latter having been prompted by the Deputy Monitoring Officer, a further potential breach of paragraph 11 (4) of the Code;

5.2.2.4 Through the interview process, he had shown no real insight into his wrongdoing and/or acceptance of guilt;

5.2.2.5 In the latter stages of the process leading to this decision, he had failed to engage with the Adjudication Panel.

5.2.3 The Case Tribunal unanimously concluded decision that the Respondent ought to have been suspended from acting as a member of the authority as follows;

5.2.3.1 In respect of his breaches of paragraphs 6 and 7 of the Code, a period of **five months**;

5.2.3.2 In respect of his breaches of paragraphs 11 and 14 of the code, a period of **two months concurrently**.

The Tribunal considered that the breach of paragraph 7 was the more serious matter, particularly since it gave rise to a breach of paragraph 6. The suspension was concurrent because the Tribunal considered that the breaches of paragraphs 11 and 14 effectively arose from the same facts.

5.2.4 The Authority and its Standards Committee are notified accordingly.

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

6. CASE TRIBUNAL RECOMMENDATIONS

6.1 The Case Tribunal makes the following recommendation to the Authority and its standards committee;

6.1.1 That the Monitoring Officer re-emphasises the requirement for members to register interests as/when they arise and that the duty does not arise annually.



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

Date...30 June 2021...

Dr G Jones
Panel Member

Mrs S McRobie
Panel Member