

REPORT SUMMARY

106. Having considered the evidence before me therefore, I have concluded, on balance, that the evidence suggests that Councillor Fowlie intentionally misrepresented the content of his conversation with Alan Morris in his e-mail to Councillor Everett, in an attempt to legitimise his personal decision not to attend the proposed meetings.

120. In my view therefore, Councillor Fowlie's contribution to the article in the Daily Post did exactly what he had intended it to do – namely to lend further legitimacy to his decision not to attend the Audit Committee meetings, at the expense of the Deputy Monitoring Officer. Having considered the evidence before me therefore, I have concluded, on balance, that the evidence suggests that Councillor Fowlie intentionally misrepresented the advice he had received from the Deputy Monitoring Officer.

121. Having concluded that Councillor Fowlie intentionally misled Councillor Everett and the general public through his e-mail of 12 February 2009 and his newspaper interview published on 27 February 2009, I must now consider whether or not these actions suggest a breach of the code of conduct and, if so, what finding I should reach in response.

124. However, whilst Councillor Fowlie has my sympathies in respect of his personal health problems and in respect of the pressures brought about by internal conflict at the Council, it is my view that behaviour such as that displayed by Councillor Fowlie himself, as identified by this investigation, is indicative of the conduct which has created the serious problems now faced by the Isle of Anglesey County Council. Whilst therefore the problems faced by Councillor Fowlie, both personal and professional, may provide an element of explanation for events, they do not in my view represent an excuse for his behaviour.

125. As I have already stated, I am wholly unpersuaded by Councillor Fowlie's attempts to deflect attention away from his conduct by suggesting that it was nothing more than a chain of unfortunate misunderstandings. On the contrary, it is my view that Councillor Fowlie's conduct in sending the e-mail to Councillor Everett, making inaccurate statements to the Daily Post newspaper and singularly failing to correct the record until confronted by this investigation, represented a deliberate and sustained attempt to mislead. Furthermore, I have no hesitation in concluding that the motivation behind Councillor Fowlie's conduct was purely political in nature, with the intention of presenting his own decisions in a more palatable and 'voter friendly' light.

126. In light of my conclusion that Councillor Fowlie has, for political reasons, deliberately sought to mislead both another member of the Council and, via the media, the public generally, I am of the view that this is strongly indicative of a breach of the code of conduct.

127. In respect of both the misleading e-mail and the misleading newspaper article, I cannot conceive that any reasonable assessment of the facts could result in a conclusion other than that Councillor Fowlie's behaviour was both disingenuous and disreputable.

133. Firstly, by his own admission, Councillor Fowlie has received no training in respect of the FOI Act. However, despite this lack of formal training, Councillor Fowlie saw it fit to repeatedly question and dispute the interpretation of the FOI Act and Data Protection Act as explained to him by Mr Pritchard, the Council's Corporate Information Officer. In my view, even if Councillor Fowlie had attended a basic training course in respect of the FOI Act and Data Protection Act it seems highly unlikely that his knowledge of the relevant provisions would have exceeded Mr Pritchard's, who is employed by the Council specifically to deal with applications under that legislation.

134. Secondly, whilst Mr Pritchard supported his position with reference to the specific provisions of the legislation and comprehensively set out both the reasons why he needed sight of the letter and what he proposed to do with it once he had it, Councillor Fowlie's argument had no such reasoning. In my view, Councillor Fowlie's vague reference to issues within the letter that "... fall within the Data Protection Act..." are not indicative of his having an adequate knowledge of the legislation upon which he was seeking to base his refusal and suggest to me that his refusal to disclose the letter had no basis in law.

135. Thirdly, even if Councillor Fowlie's limited knowledge of the legislation upon which he erroneously relied could have been initially excused, it is clear that Mr Pritchard's letter of 26 February 2009 was unambiguous and unequivocal in stating that Councillor Fowlie's conduct constituted a breach of the Council's code of conduct. However, despite this explicit warning, Councillor Fowlie maintained a position which was erroneous and unsupportable in law. Accordingly, I have little hesitation in concluding that Councillor Fowlie's refusal to provide the Corporate Information Officer with a copy of the letter was a wilful act and was a decision taken in the clear knowledge that it was likely to represent a breach of the code of conduct.

137. Whilst Councillor Fowlie eventually disclosed the letter, he only did so after protracted correspondence and prevarication, in the face of a logical and well supported counter argument to his own and only after a complaint had been lodged with the ICO. As a result of this, it seems that the general public are now able to request sight of the lengthy correspondence exchanged by those involved in this matter and I consider it highly likely that the public would take a dim view of the way in which this affair has been conducted. On the basis of the evidence before me, it seems to me that such is the lack of any reasoned and legally supported argument in favour of the position he took, it is highly likely that Councillor Fowlie's approach to this matter was politically motivated. In my view, Councillor Fowlie's conduct in relation to this matter can have had nothing other than a negative effect upon the public perception of the office of member and I therefore consider there to be persuasive evidence that he may have breached the code of conduct by bringing the office of member into disrepute.

138. In addition to the negative effect upon his own office, Councillor Fowlie's conduct has brought upon the Council an adverse finding from the ICO and, whilst a formal Decision Notice was not ultimately issued in this respect, it is clear that the Council's reputation in the eyes of the ICO has been adversely affected, as evidenced by the concerns expressed in its letter of 29 June 2009. In light of this I am of the view that there is compelling evidence to suggest that Councillor Fowlie may have breached the code of conduct by bringing the Council into disrepute.

139. In light of the foregoing, having considered the evidence obtained during the course of both of the investigations carried out, I have concluded that there is persuasive evidence of a sustained and determined political agenda on Councillor Fowlie's part, which has manifested itself in the actions described in this report. Accordingly, I have no hesitation in concluding that the evidence gathered during the course of these investigations indicates that Councillor Fowlie behaviour may have breached the code of conduct on a number of occasions and I consider there to be evidence to suggest that these apparent transgressions are not isolated, but in fact demonstrate a recurring pattern of behaviour. This being the case, I believe that the evidence suggests that the complaints against Councillor Fowlie should be considered in a most serious light and I make my finding accordingly.

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

For the immediate attention of:

Lynn Ball
Monitoring Officer
Department of the Managing Director
Isle of Anglesey County Council
Council Offices
LLANGFNI
Ynys Môn
LL77 7TW

Your Ref:
Our Ref: qA834958

27 September 2010

Dear Madam



Reply to:

**LOCAL GOVERNMENT ACT 2000 - REFERENCE TO ADJUDICATION PANEL FOR WALES
ABOUT ALLEGED BREACH OF CODE OF CONDUCT**

TRIBUNAL REFERENCE NO. APW/010/2009-010/CT; FORMER COUNCILLOR P FOWLIE

A case tribunal drawn from the Adjudication Panel for Wales met today to adjudicate upon a reference from the Public Services Ombudsman for Wales in respect of allegations against the above named former councillor.

In accordance with section 79(8) of the Local Government Act 2000 (the "Act"), I enclose formal written notification to the Standards Committee of the tribunal's decision. The tribunal's decision has effect from the date of this notice. I should be grateful for written confirmation of your receipt of this letter and the enclosed notice.

A copy of the tribunal's decision has been sent to former Cllr Fowlie. In accordance with section 79(12) of the Act, the notice is also being copied to the Public Services Ombudsman for Wales and will be published in due course in one or more newspapers circulating in your authority's area.

The tribunal will take reasonable steps to inform the person who made the original allegation that gave rise to the adjudication of its decision.

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(CT17 v17.09.03)

I also enclose a copy of the tribunal's full reasoned decision will be available on the Adjudication Panel web-site in due course (www.adjudicationpanelwales.org.uk).

Yours faithfully

A large black rectangular redaction box covering the signature of Stephen Phipps.

STEPHEN PHIPPS
Registrar to the Panel

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**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

NOTICE OF DECISION

TRIBUNAL REFERENCE NUMBER: APW/010/2009-010/CT

RESPONDENT: Former Councillor Philip Fowlie

RELEVANT AUTHORITY(IES): Isle of Anglesey County Council

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 3 February 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against former Cllr Philip Fowlie. The allegations were that Cllr Fowlie had breached the Council's Code of Conduct by misrepresenting the content of conversations with a representative of the Wales Audit Office and the Council's Monitoring Officer in a subsequent interview with the press; also by refusing to provide the Council's Corporate Information Officer with information when requested to do so.

3. The Case Tribunal determined its adjudication by way of written representations at a meeting on Monday 27 September 2010 at the Castell Malgwyn Hotel, Llechryd, Cardigan. The Case Tribunal found by unanimous decision that Cllr Fowlie failed to comply with the Council's Code of Conduct as follows:

3.1 Paragraph 5(b) of the Code of Conduct states "*You must not prevent any person from gaining access to information to which that person is entitled by law.*"

3.2 The Case Tribunal found that, following a formal Freedom of Information Act request, Cllr Fowlie refused to provide the Council's Corporate Information Officer with a copy of a letter he had written to the Wales Audit Office on behalf of the Council Executive.

3.3 Paragraph 6(1)(a) of the Code of Conduct states "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"

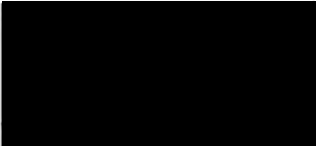
3.4 The Case Tribunal found that Cllr Fowlie, by failing to provide the information requested, and through his misrepresentations as alleged, brought his office and the authority into disrepute.

4. The Case Tribunal decided by unanimous decision that Cllr Fowlie should be disqualified for 12 months from being or becoming a member of the Isle of

Anglesey County Council or of any other relevant authority within the meaning of the Local Government Act 2000, with effect from the date of this notice.

5. The Isle of Anglesey County Council and its Standards Committee are notified accordingly.

6. The Respondent has the right to seek the leave of the High Court to appeal the above decision.

Signed.. 

Date...27 September 2010...

Helen Cole
Chairperson of the Case Tribunal

Colin Evans
Panel Member

Juliet Morris
Panel Member

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/010/2009-010/CT

REFERENCE IN RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT

RESPONDENT: Former Councillor Philip Fowlie

RELEVANT AUTHORITY(IES): Isle of Anglesey County 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 Monday 27 September 2010 at the Castell Malgwyn Hotel, Llechryd, Cardigan.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 3 February 2010, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against (now) former Cllr Fowlie. The allegations were that Cllr Fowlie had breached the Council's Code of Conduct by misrepresenting the content of conversations with the Wales Audit Office and the Council's Monitoring Officer in a subsequent interview with the press; and by refusing to provide the Council's Corporate Information Officer with information when requested to do so.

2.1.2 The circumstances leading to the alleged breaches are evident from the findings of fact.

2.2 The Respondent's Written Response to the Reference

2.2.1 Cllr Fowlie did not seek to challenge the findings of the Ombudsman's report.

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 18 March 2010, the Ombudsman noted that Cllr Fowlie accepted the facts and conclusions of his report and offered no further representations.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal did not receive oral submission.

4. FINDINGS OF FACT

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

4.1.1 At the material time, Cllr Fowlie was a member of the Isle of Anglesey County Council.

4.1.2 Cllr Fowlie gave a written undertaking to observe the Council's Code of Conduct on 1 May 2008.

4.1.3 On 12 February 2009, Cllr Fowlie sent to Cllr Cliff Everett an email stating "Following conversations with Mr Alan Morris of the Wales Audit Office, I have been advised not to proceed at the present moment with the scheduled meeting for Wednesday, 18 February, 2009. I shall keep you informed of progress."

4.1.4 On 13 February 2009, Mr Alan Morris sent an email to Cllr Fowlie clarifying that he had provided no such advice.

4.1.5 In an article which appeared in the Daily Post on 27 February 2009, Cllr Fowlie was quoted as saying that he had received advice from the Deputy Monitoring Officer not to proceed with the Audit Committee meetings and that he was awaiting further advice from the Welsh Local Government Association.

4.1.6 On 2 March 2009, the Deputy Monitoring Officer wrote to Cllr Fowlie clarifying the advice that he had provided and denying that this was against participating in meetings relating to the Wales Audit Office's Annual Letter.

4.1.7 Cllr Fowlie did not at the time withdraw, correct, amend, or explain the comments that he had made in his email or the quotations attributed to him in the article in the Daily Post.

4.1.8 On 18 December 2008, Cllr Fowlie wrote to the Wales Audit Office setting out the Executive's response to its draft Annual Letter.

4.1.9 In separate letters dated 23 January 2009, the Council's then Managing Director and the Corporate Information Officer wrote to Cllr Fowlie requesting a copy of his letter to the Wales Audit Office.

4.1.10 On 3 February 2009, Cllr Fowlie replied to the Council's Managing Director and suggested that it would be possible to supply a copy of the letter in exchange

for a copy of the Corporate Management Teams' response to the Wales Audit Office's draft Annual Letter.

4.1.11 Also on 3 February 2009, Cllr Fowlie replied to the Corporate Information Officer suggesting that the letter might be covered by an exemption under the Freedom of Information Act and disclosure should be sought from the Wales Audit Office.

4.1.12 In a response dated 5 February 2009, the Corporate Information Officer requested access to the letter in order to ensure the Council's compliance with the relevant legislation. The Corporate Information Officer advised that the law required the Council to respond to the request for disclosure of the letter within 20 working days (ie by 19 February 2009).

4.1.13 In a response dated 11 February 2009, Cllr Fowlie repeated that the letter was now in the ownership of the Wales Audit Office. He also expressed concern to protect the Council and individuals, and that there might be issues in the letter that fell within the Data Protection Act.

4.1.14 Cllr Fowlie received further correspondence (a letter dated 13 February) from the Managing Director and (a letter dated 26 February) from the Information Officer setting out the Council's obligations under the Freedom of Information Act and the Data Protection Act, the obligation upon him to provide a copy of the letter and the consequences if this was not done.

4.1.15 On 9 April 2009, Cllr Fowlie provided a copy of the letter to Cllr Charlton.

4.1.16 On 29 June 2009, the Information Commissioner's Office concluded that it would not issue a formal decision notice as the letter had now been provided, but did express concern at Cllr Fowlie's non-cooperation and that the case had been noted as a non-compliance with further intervention possible in the event of recurrence.

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

5.1 The Respondent's Submissions

5.1.1 Cllr Fowlie made no submissions as to whether there had been a breach of the Council's Code of Conduct.

5.2 The Ombudsman's Report

5.2.1 It was contended that Cllr Fowlie intentionally misled Cllr Everett and the general public in an email dated 12 February and newspaper interview on 27 February 2009. Whilst Anglesey County Council was experiencing particularly challenging times and although Cllr Fowlie was suffering poor health, these factors do not excuse his behaviour.

5.2.2 The Ombudsman was not persuaded that this was nothing more than a chain of unfortunate misunderstandings. On the contrary, the Ombudsman

concluded that Cllr Fowlie deliberately attempted to mislead as evidenced by his failure to attempt to correct any misrepresentation. The Ombudsman concluded that Cllr Fowlie's motivation was political.

5.2.3 It was contended that the explanations given by Cllr Fowlie for failing to provide the information were erroneous and unsupportable in law. Further that it was a wilful act was a decision taken in the clear knowledge that it was likely to represent a breach of the Code of Conduct.

5.2.4 It was contended that Cllr Fowlie's conduct not only brought his office into disrepute, but also brought the Council into disrepute as it resulted in an adverse finding against the Council from the Information Commissioner.

5.2.5 The Ombudsman also contended that there was persuasive evidence of a sustained and determined political agenda on Cllr Fowlie's part and a recurrent pattern of behaviour, and, that the complaints should be considered in a most serious light.

5.3 Case Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the Council's Code of Conduct.

5.3.2 Paragraph 5(b) of the Code of Conduct states "*You must not prevent any person from gaining access to information to which that person is entitled by law.*"

5.3.3 The Case Tribunal found that, following a formal Freedom of Information Act request, Cllr Fowlie refused to provide the Council's Corporate Information Officer with a copy of a letter he had written to the Wales Audit Office on behalf of the Council Executive.

5.3.4 Paragraph 6(1)(a) of the Code of Conduct states "*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"

5.3.5 The Case Tribunal found that Cllr Fowlie, by failing to provide the information requested, and through his misrepresentations as alleged, brought his office and the authority into disrepute.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Cllr Fowlie contended that this had been a very difficult time within the Council. There was a general climate of lack of co-operation, in particular between the governing Executive and the management team.

6.1.2 He could not remember having received training, although he would not dispute records that showed that he had.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case, the representations made by Mr Steve Thomas, Chief Executive, Welsh Local Government Association, concerning Cllr Fowlie's health problems and the medical evidence supplied. The Case Tribunal recognises that the Council faced particularly challenging times which it now seeks to put behind it.

6.2.2 The Case Tribunal gives Cllr Fowlie credit for not challenging the Ombudsman's findings.

6.2.3 The Case Tribunal accepts in its entirety the Ombudsman's conclusions as to the seriousness of the breaches and notes that no apology has been forthcoming. Whilst Cllr Fowlie has now stood down as a member of the Council, the reason offered is not contrition but his medical condition. It is also the case that Cllr Fowlie was the Leader and an experienced member of the Council. He had also received training on more than one occasion on the Code of Conduct, Data Protection and Freedom of Information.

6.2.4 But for Cllr Fowlie having this month stood down, a suspension of 12 months would have been the sanction imposed by the Case Tribunal. However, the Adjudication Panel's sanctions guidance provides that "...disqualification may be appropriate where the respondent is no longer a member in circumstances where, had he or she been a member, suspension would otherwise have been the likely sanction."

6.2.5 The Case Tribunal concluded by unanimous decision that Cllr Fowlie should be disqualified for 12 months from being or becoming a member of the Isle of Anglesey County Council or of any other relevant authority within the meaning of the Local Government Act 2000.

6.2.6 The Isle of Anglesey County Council and its Standards Committee are notified accordingly.

6.2.7 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.

Signed.....

Helen Cole
Chairperson of the Case Tribunal

Date...27 September 2010...

Colin Evans
Panel Member

Juliet Morris
Panel Member

DAVID J BOWLES, C.P.F.A., B.Sc.
Rheolwr Gyfarwyddwr Dros Dro
Interim Managing Director

CYNGOR SIR YNYS MÔN
ISLE OF ANGLESEY COUNTY COUNCIL
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Ein Cyf - Our Ref. DJB/JW

Eich Cyf - Your Ref.

12/11/2010

Dear Mr Henfrey

ITV WALES THIS WEEK – 4TH NOVEMBER 2010

ITV Wales has run a series of programmes on Anglesey and specifically its planning system. I very much regret that you chose to go over old ground and did not concentrate upon the recovery of the Council in your programme broadcast on 4th November; indeed the Welsh Audit Office's recent report which recognised the progress made was barely mentioned.

I am however writing to express my concern at a particular aspect of the programme; specifically the portrayal of the former Leader of the Council Phil Fowlie.

I am sure that we all wish Mr Fowlie a speedy recovery but he clearly is well enough to take part in your programme. In that your reporter said that Mr Fowlie *'tried to clean up the pig sty of Anglesey politics'* and Mr Fowlie himself said he wanted *'to get the County round that very very nasty corner'*.

I am frankly surprised at the lack of challenge such an investigative programme gave to Mr Fowlie in the face of the Ombudsman's conclusions in his report which resulted in Mr Fowlie's ban, which simply got a passing mention.

His conduct was so serious that the Ombudsman stated in his report of Phil Fowlie that

"... it is my view that behaviour such as that displayed by Councillor Fowlie himself, as identified by this investigation, is indicative of the conduct which has created the serious problems now faced by the Isle of Anglesey County Council..." (Para 124 of the Report)

The Ombudsman also concluded, that Councillor Fowlie in his role as Leader of the Council: **"intentionally misrepresented the content of his conversation with Alan Morris (Engagement Partner, Wales Audit Office)"**

This had serious implications for the relationship between the Council and Wales Audit Office.

The Ombudsman concluded that Councillor Fowlie: **“intentionally misrepresented the advice he had received from the Deputy Monitoring Officer”**. (Paragraph 120 of the Report).

This had serious implications for the relationship of trust between the Council’s most senior politician and one of its senior/statutory officers.

In the actions described above, the Ombudsman also concluded that Councillor Fowlie had: **“intentionally misled the Chair of the Audit Committee and the general public”**. (Paragraph 121 of the Report).

I would have thought that there was significant public interest in a Councillor who was Leader, no less, who deliberately misled the Auditor, the Chair of the Audit Committee and the Deputy Monitoring Officer and general public. I am surprised that you did not make this more apparent in you programme.

The Ombudsman states: **“I am wholly unpersuaded by Councillor Fowlie’s attempts to deflect attention away from his conduct by suggesting that it was nothing more than a chain of unfortunate misunderstandings. On the contrary, it is my view that Councillor Fowlie’s conduct ..., represented a deliberate and sustained attempt to mislead ... I have no hesitation in concluding that the motivation behind Councillor Fowlie’s conduct was purely political in nature, with the intention of presenting his own decisions in a more palatable and “voter friendly” light”**. (Paragraph 125 of the Report).

Astonishingly, not content with his conduct towards the Auditor, the Chair of the Audit Committee and the Deputy Monitoring Officer and the general public, the Ombudsman considers that there was an attempt to mislead him during the investigation. He even went as far as blaming his lack of understanding of English (Para 63 of the Report):

“Councillor Fowlie said that his poor command of the English language resulted in what he accepted was a significant difference in interpretation.” (Paragraph 63 of the Report)

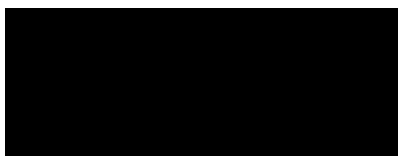
The Ombudsman concludes that

“I cannot conceive that any reasonable assessment of the facts could result in a conclusion other than that Councillor Fowlie’s behaviour was “both disingenuous and disreputable”. (Para 127 of the Report).

These are damning and unequivocal conclusions and needed to be sanctioned appropriately and reported in the public domain such as ITV. Instead what the public saw was a former Councillor making himself, with the support of your programme, look like some kind of innocent victim of Anglesey politics. As I understand the position at no stage did Mr Fowlie apologise to those he misled or the Council and I also understand that he accepted the Ombudsman’s conclusions.

I would be most grateful that if you do any further coverage on Anglesey you will take the opportunity of putting the record straight.

Yours sincerely,



DAVID J BOWLES
INTERIM MANAGING DIRECTOR