PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES
HYSBYSIAD O BENDERFYNIAD

RHIF CYFEIRNOD Y TRIBIWNLYS: APW/003/2011-012/CT ("Rhif Cyfeirnod 1")

APW/005/2012-013/CT ("Rhif Cyfeirnod 2")

APW/007/2012-013/CT ("Rhif Cyfeirnod 3")

YMATEBYDD: y Cyn Gynghorydd Michael Whitby

AWDURDODAU) PERTHNASOL: Cyngor Cymuned Coedpoeth

1. Mae Tribiwnlys Achos a gynullwyd gan Lywydd Panel Arfarnu Cymru wedi ystyried tri atgyfeiriad mewn perthynas â'r Ymatebydd uchod.
2. Mewn llythyron dyddiedig 24 Tachwedd 2011, 6 Medi 2012 a 29 Hydref 2012, cafodd Panel Arfarnu Cymru dri atgyfeiriad ar wahân oddi wrth Ombwdsmon Gwasanaethau Cyhoeddus Cymru ("yr Ombwdsmon") mewn perthynas â honiadau a wnaed yn erbyn y cyn Gyng. Michael Whitby. Yr honiadau oedd i'r cyn Gyng. Whitby dorri Cod Ymddygiad y Cyngor Cymuned uchod trwy ei ymddygiad a'i arestiad wedi hynny am dorri'r heddwch yn ystod gwrthdystiad yn Lerpwl ar 4 Rhagfyr 2010, methiant i ddangos parch ac ystyriaeth i Glerc y Cyngor Cymuned, ei ymddygiad, ei arestiad, ei garchariad wedi hynny a methiant ar ei ran ef i gydweithredu â'r awdurdodau perthnasol yn sgil protest yn Llys Sirol Penbedw ar 7 Mawrth 2011; a'i fethiant i gydweithredu ag ymchwiliad yr Ombwdsmon i'r honiadau hyn.
3. Yn niffyg unrhyw ymateb priodol ac ystyrlon gan y cyn Gyng. Whitby, penderfynodd y Tribiwnlys Achos ar ei ddyfarniad ar sail tystiolaeth ysgrifenedig a oedd ger ei fron mewn cyfarfod ddydd Iau 28 Mawrth 2013 yn y New House Country Hotel, Thornhill, Caerdydd. Dyfarnu'r Tribiwnlys Achos drwy benderfyniad unfrydol fod y Cyng. Whitby wedi methu â chydymffurfio â Chod Ymddygiad Cyngor Cymuned Coedpoeth fel a ganlyn:

Rhif Cyfeirnod 1

3.1 Mae Paragraff 4(b) o'r Cod Ymddygiad yn datgan "Rhaid i chi ddangos parch at eraill ac ystyriaeth ohonynt."

3.2 Dyfarnu'r Tribiwnlys Achos fod y cyn Gyng. Whitby yn rhinwedd tôn a chynnwys ei ohebiaeth â swyddfa'r Ombwdsmon wedi torri paragraff 4(b) trwy fethu â dangos parch i ymchwilydd yr Ombwdsmon.

Rhif Cyfeirnod. 1 a 3

3.3 Mae Paragraff 6(1)(a) o'r Cod Ymddygiad yn datgan "Rhaid i chi beidio ag ymddwyn mewn modd y gellid yn rhesymol ei hystyried yn un sy'n dwyn anfri ar eich swydd neu ar eich awdurdod."

3.4 Dyfarnu'r Tribiwnlys Achos fod y cyn Gyng. Whitby yn rhinwedd ei ymddygiad yn ystod y gwrthdystiad yn Lerpwl ar 4 Rhagfyr 2010 ac yn rhinwedd ei ymddygiad a'i arestiad ym Mhenbedw ar 7 Mawrth 2011, ynghyd â'i ymddangosiad gerbron y llys a'i garchariad, wedi dwyn anfri ar swyddogaeth aelod ac ar y Cyngor Cymuned.

Rhif Cyfeirnod 1, 2 and 3

3.5 Mae Paragraff 6(2) o'r Cod Ymddygiad yn datgan "Rhaid i chi gydymffurfio ag unrhyw gais gan ……..Ombwdsmon Gwasanaethau Cyhoeddus Cymru, mewn cysylltiad ag ymchwiliad a wneir yn unol â'i bwerau statudol."

3.6 Dyfarnu'r Tribiwnlys Achos fod y cyn Gyng. Whitby wedi methu â darparu ymateb priodol a llawn i gwestiynau ffurfiol a'i fod trwy hynny wedi methu â chydymffurfio â cheisiadau'r Ombwdsmon mewn perthynas â'r ymchwiliad.

3.7 Ni fethodd y Cyng. Whitby â chydymffurfio â'r Cod Ymddygiad mewn perthynas â'i ymddygiad honedig tuag at Glerc y Cyngor Cymuned.

4. Penderfynodd y Tribiwnlys Achos trwy benderfyniad unfrydol y dylai'r Cyng. Whitby gael ei anghymhwyso am 5 mlynedd rhag bod yn aelod o Gyngor Cymuned Coedpoeth neu unrhyw awdurdod perthnasol arall o fewn ystyr Deddf Llywodraeth Leol 2000, gydag effaith o ddyddiad yr Hysbysiad hwn.
5. Hysbysir Cyngor Cymuned Coedpoeth a Phwyllgor Safonau Cyngor Bwrdeistref Sirol Wrecsam yn unol â hynny.
6. Mae gan yr Ymatebydd yr hawl i ofyn am ganiatâd yr Uchel Lys i apelio yn erbyn y penderfyniad uchod.

Llofnodwyd……
Dyddiad…28 Mawrth 2013……

Ms Kate Berry
Cadeirydd y Tribiwnlys Achos

Mr Andrew Bellamy
Aelod o'r Panel

Mr Colin Evans
Aelod o'r Panel

PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES
NOTICE OF DECISION

TRIBUNAL REFERENCE NUMBER: APW/003/2011-012/CT ("Reference No. 1")

APW/005/2012-013/CT ("Reference No. 2")

APW/007/2012-013/CT ("Reference No. 3")

RESPONDENT: Former Councillor Michael Whitby

RELEVANT AUTHORITY(IES): Coedpoeth Community Council

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered three references in respect of the above Respondent.
2. In letters dated 24 November 2011, 6 September 2012 and 29 October 2012, the Adjudication Panel for Wales received three separate referrals from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against now former Cllr Michael Whitby. The allegations were that former Cllr Whitby had breached the above Community Council's Code of Conduct by his behaviour and consequent arrest for a breach of the peace during a demonstration in Liverpool on 4 December 2010, failure to show respect and consideration to the Clerk to the Community Council, his behaviour, arrest, subsequent imprisonment and non-cooperation with the relevant authorities arising from a protest at Birkenhead County Court on 7 March 2011; and his lack of co-operation with the Ombudsman's investigation of these allegations.
3. In the absence of any proper and meaningful response by former Cllr Whitby, the Case Tribunal determined its adjudication on the basis of written evidence before it at a meeting on Thursday 28 March 2013 at the New House Country Hotel, Thornhill, Cardiff. The Case Tribunal found by unanimous decision that Cllr Whitby failed to comply with the Coedpoeth Community Council's Code of Conduct as follows:

Reference No. 1

3.1 Paragraph 4(b) of the Code of Conduct states "You must show respect and consideration for others."

3.2 The Case Tribunal found that former Cllr Whitby by virtue of the tone and content of his correspondence with the Ombudsman's office breached paragraph 4(b) by failing to show respect to the Ombudsman's investigator.

Reference Nos. 1 and 3

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 former Cllr Whitby by virtue of his behaviour during the demonstration in Liverpool on 4 December 2010 and by virtue of his behaviour and arrest at Birkenhead on 7 March 2011, coupled with his court appearance and detention, brought the office of member and the Community Council into disrepute.

Reference Nos. 1, 2 and 3

3.5 Paragraph 6(2) of the Code of Conduct states "You must comply with any request of……..the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with [his] statutory powers."

3.6 The Case Tribunal found that former Cllr Whitby failed to provide a proper and substantive response to formal questions and thereby failed to comply with the Ombudsman's requests in respect of the investigation.

3.7 Cllr Whitby did not fail to comply with the code of conduct in relation to alleged conduct towards the Community Council Clerk.

4. The Case Tribunal decided by unanimous decision that Cllr Whitby should be disqualified for 5 years from being or becoming a member of the Coedpoeth Community 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. Coedpoeth Community Council and the Standards Committee of Wrexham County Borough Council are notified accordingly.
6. The Respondent has the right to seek the leave of the High Court to appeal the above decision.

Signed……
Date…28 March 2013……

Ms Kate Berry
Chairperson of the Case Tribunal

Mr Andrew Bellamy
Panel Member

Mr Colin Evans
Panel Member

Llywodraeth Cymru
Welsh Government

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