

STANDARDS COMMITTEE - THURSDAY, 22 JUNE 2023

MINUTES OF A MEETING OF THE STANDARDS COMMITTEE HELD REMOTELY - VIA MICROSOFT TEAMS ON THURSDAY, 22 JUNE 2023 AT 10:00

Present

Councillor Mr C Jones OBE – Chairperson

G Thomas

Mr P Clarke

Mrs J Kiely

G Walter

Apologies for Absence

MJ Williams

Officers:

Kelly Watson	Chief Officer Legal, HR and Regulatory Services
Mark Galvin	Senior Democratic Services Officer - Committees
Stephen Griffiths	Democratic Services Officer – Committees

116. DECLARATIONS OF INTEREST

G Walter declared a personal and prejudicial interest in the case.

117. URGENT ITEMS

None

118. EXCLUSION OF THE PUBLIC

Members of the Committee considered whether they would hear the matter as an exempt item under Schedule 12A of the Local Government Act 1972.

Submissions were received from Cllr Sean Aspey and the Public Sector Ombudsman for Wales (PSOW) officers.

Cllr Aspey requested that the meeting take place in private, noting the actual nature of the complaint and the complainant. He argued that the subject caused quite a lot of concern within the local community and if public documents were to be released, he didn't want anything in terms of a redacted complainant or somebody to guess who it might be. He didn't want any repercussions either on himself or the person who made the complaint.

The representative from PSOW noted that it was in the interest of openness and transparency for the hearing to be held in public. This was to ensure public confidence in the ethical standards regime in Wales. She indicated that the information, which led to the investigation, was available on public forums such as Facebook and the substance of the complaint related to a letter which was shared publicly. She noted that Cllr Aspey had requested the hearing to be held in private and for relevant documents to be withheld from the public due to concern that residents will try to establish the source of the original complaint, although where this concern about the potential behaviour of some residents arises from is unclear.

She noted there was Adjudication Panel for Wales (APW) guidance which states that hearings should be held in public, except where the Tribunal considers that publicity would prejudice the interests or threaten the personal safety and security of any parties

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involved in the case. It states that the Tribunal will require convincing evidence of substantial harm to either the individuals involved or the hearing or to the public interest generally before holding a hearing in private.

The representative from PSOW recognised that the decision on whether to hold the hearing in public is entirely a matter for the Standards Committee to determine but she did not consider that Cllr Aspey had demonstrated evidence of a significant risk to the member of the public's personal safety or security or demonstrated a risk of substantial harm to a member of the public. However, she did acknowledge that care should be taken to protect the identity of the original complainant if any documents relating to the investigation are disclosed.

It was made clear that a Standards Committee is able to hold a hearing in public without publishing the Ombudsman's report and appendices until after the proceedings have concluded. It is also open to the Standards Committee to move to private session if at any time there is a need to discuss any sensitive information which might relate to the complainant. The representative from PSOW noted that she was not of the view that this would be necessary because the facts of the case have been drawn from documentation.

All the panel members were of the view the hearing should be held in public.

RESOLVED:

The Committee resolved to hear the matter in public.

119. OMBUDSMAN INVESTIGATION UNDER S69 OF THE LOCAL GOVERNMENT ACT 2000

The purpose of the meeting was to undertake the hearing into the conduct of Cllr Sean Aspey, Elected Member of Bridgend County Borough Council (BCBC).

Under the Local Government Act 2000 all allegations and breaches of the Code of Conduct are submitted to PSOW for investigation in the first instance.

The Ombudsman may determine a matter should be referred to the Authority's Monitoring Officer for investigation or may, as in this case, undertake the investigation and refer the matter to the Monitoring Officer for consideration by the Standards Committee.

The Committee has previously considered the report of the Ombudsman, noting that the initial hearing scheduled for 19 September 2022 was postponed due to the death of Queen Elizabeth II and the period of state mourning. A subsequent hearing scheduled for 24 November 2022

was also postponed with the agreement of the Chair of the Committee as Cllr Aspey was regrettably unable to attend for medical reasons. Members are requested to note that this is the first available date to reschedule the hearing due to not having adequate or required numbers (a quorum) for meetings.

The adopted procedure for the hearing was appended to the report as **Appendix 4**. The Committee, in accordance with their adopted procedure dealt with the case in three stages.

Stage 1: The Facts

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The Ombudsman's office received a complaint that Cllr Aspey a Member of Bridgend County Borough Council (BCBC) had breached the Code of Conduct. It was alleged that the Cllr Aspey used his position inappropriately in relation to fundraising efforts to oppose plans by the Ministry of Justice (MoJ) to consider using a Porthcawl hotel to house a Residential Women's Centre, the first in Wales.

The investigation considered whether the Member failed to comply with the following provisions of the Code of Conduct:

6(1)(a) - Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

7(a) - Members must not 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.

During the investigation, copies of relevant documents were obtained from BCBC, witness accounts were obtained, and an account was provided by Cllr Aspey.

Undisputed Facts

- Cllr Aspey has received training on the Code of Conduct.
- Cllr Aspey is a resident of Porthcawl.
- In March 2021 a letter was distributed by Cushman and Wakefield to residents in the vicinity of the Hotel advising that the MoJ intended to submit a planning application to the Council in Spring 2021 to change the use of the Hotel into the Centre.
- The Group was set up by residents to oppose the MoJ plans.
- The Group instructed a law firm to act on its behalf.
- The Group set up a GoFundMe page to raise funds to cover the legal fees.
- Cllr Aspey assisted the Group and was a member of its Facebook group.
- Cllr Aspey was acting in his role as an elected member when he assisted the Group.
- A Letter was distributed by the Group to all Porthcawl residents to reach those without access to Facebook and GoFundMe.
- The Letter referred to "the planning application" when no planning application had been made to the Council.
- The Letter referred to the impact the Centre could have on Porthcawl, based on the views of a local estate agent and the experiences of residents when homeless people were housed in Porthcawl hotels during the pandemic.
- The Letter outlined that a donation could be made using GoFundMe, directly into Cllr Aspey's bank account or by telephoning Cllr Aspey, who would collect cheques.
- The only person named on the Letter was Cllr Aspey.
- Cllr Aspey used a personal, dormant bank account to receive donations.
- Cllr Aspey transferred the donations received into his bank account into the GoFundMe account.
- Cllr Aspey personally collected donations from residents, including a 99-year-old lady.
- Cllr Aspey was acting in his capacity as an elected Member when he collected donations from residents.
- Concerns were raised with the Council about Cllr Aspey's involvement with the fundraising.

- The Council did not investigate the matter, as it considered no Trading Standards or Fraud Act offences had been committed within the content of the Letter.
- Cllr Aspey was advised by the Councils' Chief Executive that the fundraising was premature and would logically only be necessary after a planning application was made.
- By 12 May 2021 the MoJ withdrew its interest in the Hotel as a potential site for the Centre.
- Residents could have objected to the MoJ plans without any funds being raised.
- The funds raised were used to pay the legal fees incurred by the Group and the GoFundMe processing fees amounting to more than £3300, with the remainder split between the RNLI and the Sea Cadets, as had been indicated in the Letter.

Disputed Facts

Did Cllr Aspey check the content of the Letter for accuracy before approving its printing and distribution?

The representative from PSOW presented the report's analysis of the evidence. Cllr Aspey said that he checked the Letter before it was printed to ensure it was legal and correct and he thought it was very well worded. The author of the letter said that Cllr Aspey was not asked to check the content of the Letter before its distribution to residents. The Ombudsman accepted and was satisfied with Cllr Aspey's account that he did check the Letter before its printing and distribution on the balance of probabilities.

Was the content of the Letter misleading and inaccurate?

Again, the representative from PSOW presented the report's analysis of the evidence. Whilst Cllr Aspey said that the Letter was legal and accurate, it was not. No planning application had been made by the MoJ and the suggestion that it had and the request for urgent funding to deal with it, was not accurate and was misleading.

She concluded by stating that she was not aware of any other arguments in respect of findings of fact that in line with the process would have been required to be submitted in advance of the hearing. Therefore, she was satisfied that the detail within the report stands, and the Ombudsman would have no further comment to make regarding the facts. She would however, welcome the opportunity to comment if any other matters arise.

Cllr Aspey was invited to confirm whether he agreed with the facts and whether there were any issues still in dispute. It was noted that Cllr Aspey had had the opportunity to respond in advance and the Ombudsman had had the opportunity to address any issues raised, so it was not anticipated there would be any more at this stage.

In response, Cllr Aspey noted that he had submitted as much information as he could possibly do. He stated that, at the end of the day, he didn't take things and jump the gun. He tended to consider them. He didn't make immediate decisions. He tended to sleep on them and usually arrive at a destination within 48 hours or so. And then obviously if there's something he's not quite happy with, because it did mention in part of the letter about the decimation of house prices. He did wonder if that was correct or not and he consulted an estate agent that he knew and obviously from the information he provided he considered that that the paragraph to be correct. He said that he was told in the immediate vicinity house prices would have crashed between 25 and 30% and it would have had an impact across a lot of Porthcawl. He stated that he had had contact from Nottage Primary School and Porthcawl Comprehensive about their concerns for the

safety of pupils with regards to any possible proposal or had it come to fruition. He noted that obviously he had to take that into account.

He thought his main possible error was that it did state in the letter that it was either proposed, which means they were going to do it or planned which also meant that they were going to do it. He indicated that, reading the letter in full, you would get the impression that the MoJ was going to as opposed to already had. That was his interpretation.

He stated there was no deliberate attempt to mislead. He didn't write the letter but did some background checks. He stated that he didn't dive into things lightly. He was there for the residents on the initial meeting that they had in the street, and he said he would support them in any way that he could. At the time, he wasn't part of the Development Control Committee on Bridgend County Borough Council, and he wasn't part of the Planning Committee on Porthcawl Town Council, so he could have spoken at a meeting if it had been submitted to put the views across from the residents. They took things into their own hands and formed a group in terms of employing their own legal team, which he stated they were perfectly entitled to do. He did ask them why at the time and obviously a lot of it is to do with trust. Many of the residents are longstanding in Porthcawl and have a deep mistrust of this authority in terms of battling for them. So, they decided to do things separately.

He noted that he had been criticised and there had been controversy not only about Porthcawl as a location but also Sunnyside in Bridgend. Ultimately, nothing came to fruition. He stated that at the time and unbeknown to people in Porthcawl, there were three other sites that were being considered.

He added that not all the residents in the vicinity received a letter. It was only a select few and obviously word spread around very quickly and that's how he ended up being contacted.

At this point, the committee went into private session to discuss whether they agreed with the facts or whether they are still disputed and then once that decision was made there would be another session in public with the representative from PSOW and Cllr Aspey to determine if those facts meant there had been a failure to comply with the code.

The decision of the panel was that they found in favour of the Ombudsman, that the facts as set out by the Ombudsman were correct.

Following the finding of fact, the Committee proceeded to hear representations from Cllr Aspey and the PSOW as to whether the facts amounted to a breach of the Code of Conduct.

Stage Two: Code of Conduct

The representative from PSOW first stated that since the facts have been found in line with the report, she would briefly summarise the Ombudsman's view, which can also be found in the report, that the facts found in this case were suggestive of a breach of 6(1)(a) – Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute – of the Code of Conduct.

She noted that in relation to the funds raised, there is no doubt that the donations deposited into Cllr Aspey's personal bank account were all transferred into the GoFundMe account. The amount transferred back from the GoFundMe account when it

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was closed was used to pay Acuity Law and to donate to the RNLI and the Sea Cadets, as indicated in the Letter.

Cllr Aspey did not gain financially from his actions. There is no evidence to suggest that Cllr Aspey breached paragraph 7(a) of the Code of Conduct.

However, although Cllr Aspey's intentions may have been well meaning, he provided misleading information to residents when they were asked to donate money to a fund which was not necessary and from which they would not retrieve their money if the "legal action" outlined in the Letter never took place. Given that no planning application had actually been submitted when the Letter was distributed to residents, there was no application to be challenged through legal action at that time.

As a Councillor, Cllr Aspey's actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. When considering whether Cllr Aspey's conduct is capable of bringing their office or their authority into disrepute, their actions will be considered from the viewpoint of a reasonable member of the public.

Cllr Aspey has not shown any insight into his actions and has not acknowledged during the investigation that the Letter was misleading.

Cllr Aspey willingly leant his name and his status as a Councillor to misleading information about a potential, as opposed to an actual, planning application. The Council had to put out a notice to dispel this misinformation and Cllr Aspey ought to have known that the information in the Letter was not correct. Sharing incorrect information about matters relating to Council business and using his title "Cllr" in order to raise funds is behaviour which could reasonably be regarded as conduct capable of bringing his office or authority into disrepute and is, therefore suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

In response, Cllr Aspey stated that he always acted in the residents' best interests or, as he elaborated, have the residents at heart. There were quite a substantial number of residents with major concerns throughout the town, not just the impact on themselves, but on the tourism aspect of Porthcawl.

He claimed that he acted in good faith. He didn't or initially he wasn't the author of the letter he was given that initially was posted on the Facebook group. He thought there were 1300 Members in that and then a decision was made by the residents' group that they were going to print it and distribute it.

He noted that he had obviously deliberated on that for a good couple of days. There was never any intention on his part to benefit financially and the fact it took him an awfully long time because obviously he had to make sure these payments were posted correctly, they had to be done on the day, and he was checking the account three times a day. He had to supply his passport and driving licence and he distributed the money on the day that it was received. The money was split between two charities, the Sea Cadets, and the RNLI.

He said that, in terms of the letter itself, residents could simply bin it. They could ignore it, or they could want to assist. Those people that did contact Cllr Aspey were very, very concerned and were happy to assist, knowing that if obviously there was no outcome, if the application was not going to be submitted or cancelled, they were adequately represented.

In the event that there was additional money, they were more than happy for that to go to the designated charities, and we must understand that the Porthcawl Sea Cadets had £50,000, their entire life savings lost over the failure of the Maritime Centre. They didn't have a single penny and some of them were delighted that they received £6652. That gave them a warm glow knowing that. The money, in their opinion or eyes, was not wasted. They were happy that that the MoJ didn't proceed with any formal planning application.

He indicated that, as a result, the hotel had been put back as a hotel and it was going to be refurbished. Unfortunately, the top floor is uninhabitable. That happened during lockdown.

He said that if he had his time over again, he couldn't ignore residents. They all made the effort to come out into the street. There were three whole streets that were all stood in various groups, and I was the only town councillor that was there.

He noted that he had been on Porthcawl Town Council between 2008 and 2020 for the ward and he had been on the Borough Council since 2011. He said that he had never had any complaints and he has tried to conduct himself in an exemplary fashion.

He stated that he thought the problem related to the first paragraph of the letter but there was no intention to mislead. He reiterated that he didn't benefit financially. He stated that a lot of people and some counsellors were posting incorrect information, making accusations about him being untrustworthy and like an Arthur Daley type character off Minder. He recalled having had to take legal action against one of them that cost him over £2000 in order to make sure that that was put right and that no spurious comments were posted after. Fortunately, they weren't.

He pointed out that if something happened in the future, he would take a lot more time to deliberate and read thoroughly and scrutinise any literature.

He stated that he had received a phone call from the Chief Executive saying that that there wasn't anything illegal in the letter and also caution with regards to any payments that were made, and he was very diligent and meticulous with that and supplied all bank statements.

He said that it took an awful lot of time on his part, and he's glad that he did it for them because they got the result they wanted. Some of those residents were going to take it all the way to a judicial review if things had developed further down the line. They were that determined.

He pointed out that he had never had a complaint before, and it surprised him. He thought it significant that only one person actually made a complaint. If he had been misleading, then it would have attracted quite a large number of complaints.

He stated that the planning application hadn't been submitted but it was going to be because Cushman and Wakefield told people and it was delayed because of the Senedd elections in May that year.

He was concerned about the impact on tourism in Porthcawl, the lack of transport links, particularly public transport, and the lack of any specialist health care facilities that we were probably going to be needed.

The representative from PSOW intervened to indicate that Cllr Aspey

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had raised something new. Firstly, she pointed out that Cllr Aspey had made several references to the facts of the case, which had already been determined. Secondly, she indicated that he mentioned that residents could simply bin or ignore the letter, but obviously the content of the letter was quite significant and relevant to them. He also said that residents were aware that if a planning application was not then submitted the funds would be shared between the two charities. To clarify, that's not what the letter said. The letter said that surplus funds would be shared between the two charities once the application had been fought.

Further, Cllr Aspey made a number of references to the concerns of the residents. There is no question that residents were concerned about this matter but, to clarify, it is a finding of the Standards Committee that the letter was misleading with regards to whether or not the planning application had been submitted. She indicated that that was the finding that had already been made and which Cllr Aspey had demonstrated that he still does not agree with.

In response, Cllr Aspey reiterated that he thought the problem was in the first paragraph. Had that been worded more precisely than it would have been a lot plainer to the residents. It was not his intention to mislead, and he sincerely apologised if he had overlooked something that he should have corrected.

At this point, the Chair invited members of the committee to ask questions of Cllr Aspey or the representative from the PSOW.

A member asked Cllr Aspey if he agreed with the rest of letter, given that it makes quite a lot of references to planning applications.

In response, Cllr Aspey drew attention to aspects of the history of the building and the potential for an application for a change of use from commercial to residential.

He reiterated that the first paragraph said planning application, but there wasn't, and he knew that. By putting planning application in the letter, that gives the impression that it had been submitted.

The member came back to state that the reason he had raised the question was because planning application is used throughout the letter and not just the first paragraph.

Cllr Aspey responded by stating that planning application mixed in with proposed and planned and that it would have been nice to have worded the same in every paragraph all the way down. He noted that the English language is very, very varied, but it wasn't intentional, but perhaps he should have scrutinised the letter more rather than a couple of scans.

Another member asked Cllr Aspey if he had thought of contacting the planning department to find out what the current situation was before the letter was sent out?

Cllr Aspey responded by stating that he did check the BCBC website but there was nothing there. He checked on a regular basis to see if anything popped up on the planning system, but it didn't. Ultimately, a planning application didn't materialise.

The member continued by asking if he had thought of contacting anyone personally in the planning department?

Cllr Aspey responded by pointing out that it was an automated system now. An application is loaded on to the system and then it actually names the officer that's

associated with it. Without a planning number and without the officer allocated, it would have been a difficult task for them to track it down. As the ward member, he would have been notified of a planning application automatically and then he would have had the opportunity to click and accept that he had received it and then he could make comments whether to support or object to the application. He reiterated that he was constantly on the lookout for an application, but nothing actually ever came.

At this point, the committee retired to consider whether there had been a breach of the code of conduct, based on the information put before them.

Outcome

After careful consideration of all the evidence presented, the Committee determined that the Member had failed to comply with the Code of Conduct as follows:

The Committee found that the Member had breached paragraph 6 (1) (a) of the Code of Conduct for the following reasons:

Looking at the conduct of the Member as a whole, the Committee considered that it was sufficiently serious in nature to bring the Council and his office as a member into disrepute. The behaviour had been detrimental to the relationships within the Council and to its administration and had damaged its reputation. The Member knew the process for checking if a planning application had been submitted and could have clarified the position. His actions led to the Council having to put out a media release to provide clarity to the public.

Stage Three: The Sanction

In considering what sanction was appropriate, the Committee listened to representations from Cllr Aspey and the PSOW. They had regard to the Sanctions Guidance issued by the Adjudication Panel for Wales and considered mitigating and aggravating factors.

The representative from PSOW noted that it was for the Standards Committee to consider whether a sanction was appropriate but that there were a number of things that would need to be considered, including mitigating and aggravating factors. The APW issued guidance on its approach to sanctions. She indicated that she would refer to it to provide members an idea of the framework that is generally used.

In terms of the fundamental importance of promoting the highest standards in public life, the guidance aimed to assist tribunals in determining sanctions that are in, in all cases, fair, proportionate, and consistent.

The APW followed a five-step process where they assessed the seriousness of the breach and any consequences for individuals and the Council, identified the types of sanction, considered any relevant mitigating or aggravating factors, considered any further adjustment to ensure the sanction achieved an appropriate effect in terms of fulfilling the purpose of the sanction, and then confirmed and explained the decision.

She went on to set out the mitigation in this case. Cllr Aspey has a previous record of good service over a long period of time. In this case, the panel is referring to a single breach of the code. Cllr Aspey appears to have been motivated by a desire to assist the Action Group and obtain support and finances to deal with this issue.

In terms of aggravating factors in this case are that Cllr Aspey has attended regular training on the Code of Conduct throughout his term of office. A number of people were misled into handing over money to the Action Group when there was no need for them to do so. It also led to negative attention for the Council, requiring the Council to have to

put out a statement to correct the position. The misleading information may affect the trust that members of the public have for the office of member and Cllr Aspey has failed to acknowledge that the letter was misleading and neither has he suggested that if the situation arose again, he would take an alternative course of action beyond changing paragraph one. This doesn't recognise his part in leading people to believe that they needed to give money to fight something that never actually then happened, and it's the Ombudsman's view that this brought the office and the authority into disrepute, and this has now been found by the Standards Committee.

In respect of the seriousness of the breach, the panel set out the matters it may consider and these include the nature and extent of the breach and number of breaches, the members culpability, their intentions on breaching the code, and any previous breaches of the code, the actual and potential consequences of the breach for the individual, the wider public, or the Council as a whole, and the extent to which the member's actions are or are likely to have the potential to bring his or her office into disrepute.

The Ombudsman invited the Committee to consider a censure as the minimum sanction to foster public confidence in local democracy. Cllr Aspey has been found to have brought his office and the Authority into disrepute, which is a serious breach of the Code of Conduct.

Having assessed the seriousness of the breach and the mitigating and aggravating factors, the representative from PSOW invited the Committee to consider whether it would be appropriate for Cllr Aspey to be suspended from the Council for a short period. A suspension of less than one month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambition.

In response, Cllr Aspey noted that, in terms of its legality, he knew BCBC's shared regulatory service didn't have any issue. He indicated that he understood the impact of the wording of the letter and there was never any deliberate intent on my part to mislead residents. He had acted in good faith and willingly supported the residents right the way through. He claimed not to be one of those type of people to walk away. He looked at the wider impact not just on the local area, but Porthcawl in general. He noted the town has struggled very badly over recent years, and there were good signs it was starting to come back. For him personally, it would have had an adverse impact on tourism.

He sincerely apologised and stated that he would apply himself more diligently in any future correspondence that would come his way. He didn't breach data rules and he was in his third term now with the authority. He had never had any issues with anything previously.

He would be careful in any future things that may come his way because he had no intention of breaching the Code of Conduct. He liked to consider himself a really good person for his community. He wanted to make sure that Porthcawl progressed in the 21st century. It was still languishing in the 20th.

He stated that he had been caught out and this had cost him a lot of time. He would make sure he represented people that voted at the election and thought that if people had serious problems with the way that he had acted then he had no doubt whatsoever, he would not have been re-elected. He noted that when people came up to him at the polling station, they said that they always voted for a certain party, but that they voted for him because they trusted him.

It was not his intention to mislead anybody in any shape or form. He always tried to give good advice and guidance wherever he could and if he wasn't able to help, he tried to point people in the right direction to somebody that might. That was the way he

approached things. He liked to think he was a considerate person and always wanted to represent the community.

The Chairperson brought this part of the hearing to a conclusion and stated that they had now listened to representations from both parties in terms of mitigating and aggravating factors, and having heard that they would go back into a private session so they could decide on the appropriate sanction.

Final Outcome

Having established the facts, decided that a breach of the Code of Conduct had taken place, the Committee, having considered the seriousness of the conduct in question and the relevant mitigating and aggravating factors, resolved that Cllr Aspey should be suspended from office for a period of three months.

With regard to mitigating factors, the Committee acknowledged that the Member had engaged in the investigation process and had many years for good service. There was no personal gain and the motivation to assist the public was recognised.

Turning to the consideration of aggravating factors, the Committee found that the Member had the knowledge and resources to check whether a planning application had been submitted. The Member had included his name and Cllr prefix which would have added status to the letter, which was sent to a number of residents.

Cllr Aspey was informed that the Chief Officer – Legal & Regulatory Services, HR and Corporate Policy would phone him to explain when the sanction would start. He was also informed that he had the right to appeal. There would be a written decision notice prepared which would be published and both Cllr Aspey and the Ombudsman would get a letter confirming the outcome of today's hearing.