



**CYNGOR BWRDEISTREF SIROL
RHONDDA CYNON TAF
COUNTY BOROUGH COUNCIL**

COMMITTEE SUMMONS

C. Hanagan
Service Director of Democratic Services & Communication
Rhondda Cynon Taf County Borough Council
The Pavilions
Cambrian Park
Clydach Vale CF40 2XX

Meeting Contact: Marc Jones - Democratic Services Officer (07385 401845)

YOU ARE SUMMONED to a virtual meeting of **STANDARDS COMMITTEE** to be held on **WEDNESDAY, 16TH MARCH, 2022** at **10.00 AM**.

Non Committee Members and Members of the public may request the facility to address the Committee at their meetings on the business listed although facilitation of this request is at the discretion of the Chair. It is kindly asked that such notification is made to Democratic Services by Wednesday, 9 March 2022 on the contact details listed above, including stipulating whether the address will be in Welsh or English.

AGENDA

**Page
No's**

1. DECLARATION OF INTEREST

To receive disclosures of personal interest from Members in accordance with the Code of Conduct

Note:

1. Members are requested to identify the item number and subject matter that their interest relates to and signify the nature of the personal interest: and
2. Where Members withdraw from a meeting as a consequence of the disclosure of a prejudicial interest they must notify the Chairman when they leave.

2. MINUTES

To approve as an accurate record, the minutes of the meeting held on 19th November 2021.

REPORT OF THE MONITORING OFFICER

3. PUBLIC SERVICES OMBUDSMAN FOR WALES - CODE OF CONDUCT CASEBOOK

To consider the Code of Conduct Casebooks for the months January – March 2021 (Issue 25).

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4. PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS - 01.11.2021 - 28.02.2022

To receive a summary of Complaints against Members from the 1st November 2021 – 28th February 2022.

23 - 26

5. ADJUDICATION PANEL FOR WALES - RECENT TRIBUNAL DECISIONS

To allow Members the opportunity to consider recent decisions made by the Adjudication Panel for Wales (APW).

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6. FEEDBACK FROM THE 2022 ALL WALES STANDARDS CONFERENCE

To afford Committee members the opportunity to provide feedback and discuss the recent All Wales Standards Conference, which was held virtually on 9th February 2022, with particular reference to Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

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7. NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS AND VICE-CHAIRS

To seek Members' views on this proposal.

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8. LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021 - STANDARDS OF CONDUCT STATUTORY GUIDANCE

To inform the Committee of changes to the statutory ethical framework, which are being introduced by Part 4 of the Local Government and Elections (Wales) Act 2021 and seek agreement of the actions to be taken in response.

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9. URGENT BUSINESS

To consider any items, which the Chairman, by reason of special circumstances, is of the opinion should be considered at the meeting as a matter of urgency.

Service Director of Democratic Services & Communication

Circulation:-

Independent Members – M.Jehu, MBE (Chair), D. Bowen and J.Thomas

County Borough Councillors: M. Forey & E. Webster

Community Councillor R.Butler

(Reserve Community Councillor Member: C. Willis)

Officers:

Mr A Wilkins, Monitoring Officer

Mr C. Hanagan, Service Director of Democratic Services and Communication

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RHONDDA CYNON TAF COUNCIL STANDARDS COMMITTEE

Minutes of the hybrid meeting of the Standards Committee held on Friday, 19 November 2021 at 10.00 am.

County Borough Councillors - Standards Committee Members in attendance:-

Mr M Jehu MBE (Chair)
Councillor M Forey Councillor E Webster
Mr D. Bowen Mr R. Butler
Mr J. Thomas

Officers in attendance

Mr A Wilkins, Director of Legal Services & Monitoring Officer
Mr P Nicholls, Service Director, Legal Services

1 WELCOME AND APOLOGY

The Chair welcomed Committee Members, Officers and Observers to the hybrid meeting of the Standards Committee and an apology for absence was received from Reserve Community Councillor C. Willis.

2 Declaration of Interest

In accordance with the Council's Code of Conduct, Councillor R. Butler declared the following personal interest in Item 4 of the agenda 'I am a Community Councillor for Llantwit Fardre Community Council, which is referenced throughout the report. I will not take part in this item but will remain in the meeting whilst the items are being discussed'.

3 Minutes

It was **RESOLVED** to approve the minutes of the 24th September 2021 as an accurate reflection of the meeting.

4 ADJUDICATION PANEL FOR WALES - RECENT TRIBUNAL DECISIONS

The Monitoring Officer provided the Standards Committee with the report to consider recent decisions made by the Adjudication Panel for Wales (APW).

Members were referred to the appendices of the report, which detailed a number of APW decision notices, that had been issued following the conclusion of the cases.

The Monitoring Officer advised the Committee that they may find it helpful to consider these decisions and the approach adopted by the APW in formulating its decision and sanctions (where relevant) in light of its own role when conducting Code of Conduct hearings and to consider whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

In relation to a query raised regarding point 4.4.1.2 of Appendix 1 of the report whereby it is concluded that this was the more serious breach of the Code, the Monitoring Officer reported that the sanctions would be where you would consider the severity of the breach in question.

The Standards Committee **RESOLVED:**

1. To consider the recent decisions made by the Adjudication Panel for Wales (as appended to the report); and
2. To determine whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

5 PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS - 01.04.2021 - 31.10.2021

The Monitoring Officer provided the Standards Committee with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2021 – 31st October 2021.

Members were reminded that in determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in the circumstances.

The Monitoring Officer drew Members' attention to the Ombudsman's comments and conclusions on each matter which they would find helpful to understand how they might approach dealing with a complaint, should one come before the complaint for consideration, and noted that there were zero complaints made against County Borough Members during the period.

(Note: Having previously declared an interest (Minute No. 2), Community Councillor R. Butler did not participate in this item.)

The Standards Committee **RESOLVED:**

- 1 To note the content of the report.

6 **DISPENSATION APPLICATIONS**

The Monitoring Officer outlined the following applications for dispensation for the Standards Committee's endorsement:

1. The Monitoring Officer sought Committee's endorsement to grant dispensation to County Borough Councillor P. Jarman to speak and vote on all matters for the duration and adoption of the 2022-23 Budget process in her capacity as Leader of the Opposition.

It was explained that County Borough Councillor P. Jarman's son works in the Streetcare Department and lives with her at her home address and therefore, Councillor Jarman sought a dispensation to speak and vote on all services affected by the Budget. In her application for dispensation, Councillor Jarman stated that by virtue of being Leader of the Opposition Group, her participation in the Budget process is justified.

The Monitoring Officer continued and advised that one of the grounds for granting dispensation was:

"(f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise"

2. The Monitoring Officer sought Committee's endorsement to grant dispensation to County Borough Councillor Bevan to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter who is employed by the Council as the Service Manager Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed by the Standards Committee on an annual basis.

Members were informed that Councillor Bevan acknowledged that any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other taxpayers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if he were to take part in the discussion.

In his application for dispensation Councillor Bevan further states that by virtue of being a Cabinet Member his participation in matters relating to the Community and Children's Services Group is justified.

The Monitoring Officer continued and advised that two of the grounds for granting a dispensation were:-

“(d) the nature of the Member's interest is such that the Member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business”; and

“(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise.”

3. The Monitoring Officer then sought Committee's endorsement to grant dispensation to County Borough Councillor Michael Powell a dispensation to speak and vote on all matters relating to the Children's Services department (within the Community and Children's Group), save for any specific matters that directly affect his wife, who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed by the Standards Committee on an annual basis.

Members were informed that County Borough Councillor Michael Powell's wife works in the Children's Services department as a Contact Worker. In his application Councillor Powell stated that his wife is not in a decision-making position.

The Monitoring Officer explained that any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on his wife than on other taxpayers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if Councillor Powell were to take part in the discussion.

The Monitoring Officer continued and advised that the ground for granting dispensation was:

(f) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;

The Standards Committee **RESOLVED:**

1. To grant County Borough Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2022-23 Budget process in her capacity as Leader of the Opposition;
2. To grant County Borough Councillor Robert Bevan a dispensation to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter, who is employed by the Council in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed by the Standards Committee on an annual basis; and
3. To grant a dispensation to County Borough Councillor Michael Powell to speak and vote on all matters relating to the Children's Services department (within the Community and Children's Services Group), save for any specific matters that directly affect his wife who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed on an annual basis by the Standards Committee.

7 PUBLIC SERVICES OMBUDSMAN FOR WALES - ANNUAL REPORT AND LETTER 2020 - 2021

The Monitoring Officer provided Members with a summary of matters pertaining to standards of conduct of County, Town and Community Councillors as set out in the Ombudsman Annual Report and Annual Letter to this Council for 2020-2021.

The Committee were informed that the number of Code of Conduct Complaints had increased by 47% during 2020-2021 with the PSOW receiving 535 new complaints with 308 taken forward for investigation. The total number of complaints for the year 2018-19 was 282 and for 2019-20, 231. Of those 308 complaints 167 related to Town and Community Councils, 138 to Local Authorities, 2 to National Park authorities and 1 to a Fire Authority.

Members learned that Within a small number of Town and Community Councils the PSOW has stated he is still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities rather than being true Code of Conduct issues. Where his offices receives 'tit for tat' complaints they will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

Members were informed that as in previous years the majority of CCCs (55%) related to matters of the promotion of equality and respect; 14% related to the failure to disclose or register interests; 12% related to integrity; 4% related to accountability and openness; 5% related to failure

to be objective or act with propriety; 8% related to the duty to uphold the law and 2% related to selflessness and stewardship. The PSOW has noted there is an annual increase in the number of complaints where bullying behaviour is being alleged.

The Monitoring Officer reported that the PSOW has highlighted once again the importance of Code of Conduct training to become a 'good councillor', and from his investigations he has gained an impression that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for Members to complete training currently it is strongly advised they should do so.

Members noted that 24 complaints were taken forward for investigation in 2020-21 with the PSOW again directing investigative resources towards the more serious complaints where an investigation is required in the public interest. In 14 cases an investigation was discontinued (5 cases), no evidence of breach was found or no further action was necessary (9 cases) and there were 10 referrals (to either Standards Committees or the Adjudication Panel for Wales) – a 50% increase from 2019-2020.

Furthermore, in 58% (14 cases) of the investigations undertaken during the period (i.e. no evidence of breach was found or investigation discontinued), a significant decrease on the previous year, where this outcome happened in 85% of cases. The PSOW has stated that whilst fewer cases are being referred to investigation, of those that are, he is finding evidence suggestive of a breach of the Code of Conduct in more cases.

Members were advised that in 20/21 the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 100% of Ombudsman referrals.

The Monitoring Officer reported that the PSOW had stated that the increase in the number of complaints referred for further consideration in respect of potentially serious breaches of the code last year, is of concern and suggests there has been some decline in member conduct. Of the complaints referred for hearing which are yet to be determined, it is concerning that the complaints suggest disreputable conduct and that some members may have misused their positions as members.

In response to a query raised in relation to the rise in the number of CCCs during 2020-21 and the decline in Members Conduct, the Monitoring Officer responded that this could be due to the fact that Members of the public potentially have had more interaction with Councillors and Local Authorities than they have done so previously during this period in light of the pandemic and the public and communities accessing council services via councillors, however, the evidence suggests that not all of these complaints were valid.

A Member raised concerns regarding the number of CCCs relating to matters of the promotion of equality and respect as in previous years and commented that it would be interesting to see the statistics of how many of those who committed the breaches did not undertake the relevant training which had been strongly advised. In response, the Monitoring Officer reported that he would raise this with the Ombudsman as it would be a useful tool to determine the underlying cause of this. He also noted that there is a review being undertaken by Welsh Government into the Ethical Standards Framework in Wales whereby training and mandatory training may form part of this process.

In response to a query raised in relation to the Annual Letter received from the Ombudsman to the Council for 2020-2021 requesting that the Authority informs him of the outcome of the Council's considerations and proposed actions contained within the letter by 15th November 2021, the Monitoring Officer commented that a report had been presented to Cabinet in response of the letter and he is able to share their considerations of the report to the Committee so that Members have the opportunity to align their responses with the report before being submitted to the Ombudsman. Furthermore, the Monitoring Officer reported that he had been in contact with the Ombudsman who is be able to extend the deadline for the purpose of receiving comments from the Committee.

It was reported that the number of complaints received by the Ombudsman for our Authority is in the bottom quartile of the aggregate population, whereby only 5% required a PSOW intervention.

The Chair thanked the officer for the detailed update and the Standards Committee **RESOLVED:**

1. To agree with the principle that code of conduct training should become a mandatory requirement and noted Welsh Government had conducted a review into the ethical and standards framework which resulted in a similar proposal being recommended by the individual who conducted the review.
2. To receive the considerations of the report from Cabinet before being submitted to the Ombudsman.
3. To note the matters relating to Code of Conduct Complaints reported in the Public Services Ombudsman for Wales' Annual Report and Annual Letter to this Council 2020-21.

2 REVIEW OF THE ETHICAL STANDARDS FRAMEWORK IN WALES

The Monitoring Officer advised Members of the publication of the report into Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

Members were reminded that as reported at the Committee's meeting in March 21 Welsh Government confirmed they would be reviewing the

ethical Framework and the model Code of Conduct following the coming into force of the Local Government & Elections (Wales) Act 2021.

Members were informed that the Ethical Standards Framework for Wales Was established by Part 3 of the Local Government Act 2000 to promote And maintain high standards of ethical conduct by members and officers of relevant authorities in Wales, and that a 'relevant authority' is a county or county borough council (referred to as "a principal council"), a community council, a fire and rescue authority and a National Park authority in Wales.

Members learned that the key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority. Furthermore, the Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'), which are included in the Conduct of Members (Principles) (Wales) Order 2001. Also, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity which includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.

The Monitoring Officer reported that an independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose, whereby the review took into account the new legislative requirements set out in the Act and the current equality and diversity policy context.

The Monitoring Officer outlined that the final report of the Ethical Standards Framework in Wales concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct.

Members learned that the findings fall into categories based on whether They would need legislation to implement and some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases), others require secondary legislation (such as updating the code of conduct itself). Furthermore, some are matters of practice that can be implemented if the relevant parties are willing to do so.

The Monitoring Officer reported that Welsh Government will now consider The recommendations to amend the Model Code of Conduct in the short

term and any legislative change will be subject to a technical consultation with a planned implementation ahead of next May's Local Elections. Furthermore, Welsh Government say action to address other recommendations in the report will be taken forward in partnership with key stakeholders in the medium to longer term.

The Monitoring Officer noted that there had been a duplication of this item within the reports received by the Committee and therefore ensured that Members had received the correct report prior to the meeting.

The Standards Committee **RESOLVED:**

1. To defer this item at the next meeting of the Committee to allow Members an appropriate opportunity to consider the report prior to its consideration by Committee.

9 MEMORANDUM OF UNDERSTANDING

The Monitoring Officer provided Members with a draft Memorandum of Understanding for Members comment and feedback to the Democratic Services Committee before its presentation to full Council.

Members were informed that the Democratic Services Committee have proactively been undertaking work to promote and encourage diversity in democracy through the Diversity in Democracy Working Group and at a meeting of the Democratic Services Committee on the 10th May 2021, Members received and supported the interim report of the Diversity in Democracy working group and its resulting recommendations. Furthermore, Full Council subsequently endorsed the 16 recommendations outlined by the working group and also committed to becoming a Diverse Council.

The Monitoring Officer reported that within its interim report, the working group took forward a recommendation in respect of the creation of a 'Memorandum of Understanding' namely; "*To consider introducing a 'statement of understanding' for Members outlining their duties as a Councillor including the need to have mutual respect within the Council Chamber*", whereby the intended outcome of the statement would be a demonstration of mutual respect to other people with varying political opinions and a show of working together for the benefit of its communities. Furthermore, a draft Memorandum was presented to the Democratic Services Committee on the 27th September, to which Members agreed for its presentation to the Council's Standards Committee for further comment and feedback.

The Committee learned that the Memorandum would provide an opportunity for Members to publicly commit to using their term of office to work for the Council, the County Borough and its citizens, and to commit to the standards of conduct expected by the Council. Furthermore, it is considered its adoption would strengthen standards and ethical arrangements within the Council and would support and sit alongside the

Council's Code of Conduct for Members, the Standards of Conduct Expected by Members Local Resolution Policy and Member-Officer Protocol.

A Member queried whether the Memorandum of Understanding would be issued to the Community and Town Councils as an amendment of their Code of Conduct. In response, the Monitoring Officer reported that there is a Community Liaison Committee within RCT whereby he would be able to inform the Committee of the report and also write letters to each Community/Town Council clerk asking them to consider and sign up to this.

In response to query raised in relation to undertaking the necessary training and whether there should be a set time scale in doing so, the Monitoring Officer reported that he would feedback these comments as part of the Committees findings.

The Monitoring Officer outlined the work of the Democratic Services Committee Diversity working group which looks to improve the equality and diversity across the County Borough and within the local democracy setting. Also, he advised the Committee of the importance of their role during the current climate and suggested that they may find it beneficial to meet with the group for their own learning requirements and would be happy to arrange this session for them.

Following discussions, the Committee agreed for the Diversity working group to present to Committee to discuss the current issues within Equalities and Diversity in the forthcoming future.

The Standards Committee **RESOLVED:**

1. To include the Memorandum of Understanding from the Diversity in Democracy Working Group on a future agenda of the Community Liaison Committee and write a letter to each Community/Town Council clerk asking them to consider and sign up.
2. To feedback comments on the Memorandum of Understanding as part of the Committee's findings
3. To invite the Diversity working group to present to Committee.

This meeting closed at 11.00 am

**MR. M. JEHU
CHAIR.**



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

PUBLIC SERVICES OMBUDSMAN FOR WALES – CODE OF CONDUCT CASEBOOK

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To receive the Ombudsman's Code of Conduct Casebook (Issue 25) produced by the Public Services Ombudsman for Wales.

2. RECOMMENDATION

2.1 To note and consider the contents of the Ombudsman's Code of Conduct Casebook (Issue 25) published by the Public Services Ombudsman for Wales.

3. BACKGROUND

3.1 The Public Services Ombudsman for Wales produces quarterly Code of Conduct casebooks.

3.2 Issue 25 of the Code of Conduct Casebook, covers the period January - March 2021, and is attached as Appendix 1 to the report.

3.3 Members should note that the Casebooks are able to be accessed via the Ombudsman's Website and the following link:

[Code of Conduct Casebooks](#)

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

STANDARDS COMMITTEE

11 MARCH 2022

REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)
– 01443 424105

Introduction

The Public Services Ombudsman for Wales considers complaints that members of relevant authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- a) that there is no evidence that there has been a breach of the authority's code of conduct;
- b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defense put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers January to March 2021.

The Code of Conduct Casebook

Contents

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Case summaries

No evidence of breach

There are no summaries in relation to this finding.

No action necessary

There are no summaries in relation to this finding.

Referred to Standards Committee

[Knighton Town Council – Promotion of equality and respect](#)

[Case Number: 201907610 – Report issued in January 2021](#)

The Ombudsman received a complaint from a member of the public that a Member (“the Member”) of Knighton Town Council (“the Council”) had failed to observe the Code of Conduct for members of the Council.

It was alleged that the Member shouted, and used offensive language, aimed at people present at a public meeting held to discuss the local community’s response to the coronavirus (COVID-19) outbreak. It was also alleged that the Member swore and used bullying behaviour towards the complainant. The Member had accepted a Conditional Caution from the Police for his conduct at the meeting.

The Ombudsman found that there was evidence to suggest that the Member shouted and used offensive language at the meeting and had used bullying behaviour.

The Ombudsman determined that the Member may have breached the Council’s Code of Conduct, in particular, paragraphs 4(b) and 4(c) as he failed to show respect and consideration, and used bullying behaviour, towards members of the public who attended the meeting. The Ombudsman also found that the Member’s actions could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Powys County Council for consideration by its Standards Committee.

The Standards Committee found that the Member had breached paragraphs 4(b), 4(c), and 6(1)(a) of the Code of Conduct and suspended the Member for a period of 6 months.

Chirk Town Council – Promotion of equality and respect

Case Number: 201904568 – Report issued in January 2021

The Ombudsman received a complaint that a Member (“the Member”) of Chirk Town Council (“the Council”) had breached the Code of Conduct.

It was alleged that the Member had sent an email to the complainant’s employer, in which he attempted to smear her name in her workplace and to make her feel threatened and vulnerable.

The investigation considered whether the Member had breached the following paragraphs of the Code of Conduct:

- 4(b) - show respect and consideration for others.
- 4(c) - not use bullying behaviour or harass any person.
- 7(a) - not, in his official capacity or otherwise, to use or attempt to use his position improperly to confer on or secure for himself, or any other person, an advantage or create or avoid for himself, or any other person, a disadvantage.

The Ombudsman found that the Member had sent an email to the complainant’s employer in which he threatened to take legal action against the complainant. The Member also copied his email to the Education Workforce Council, which was considered to be an aggravating factor.

The Ombudsman concluded that the Member’s conduct was such that it may amount to a breach of paragraphs 4(b), 4(c) and 7(a) of the Code of Conduct. The matter was referred to the Monitoring Officer of Wrexham County Borough Council, for consideration by the Council’s Standards Committee.

Referred to Adjudication Panel for Wales

Caerphilly County Borough Council – Disclosure and registration of interest

Case Number: 201903571 – Report issued in February 2021

The Ombudsman received a self-referred complaint that a Member (“the Member”) of Caerphilly County Borough Council (“the Council”) had breached the Code of Conduct.

The Member represented the Council as a member of the Cardiff Capital Region (“CCR”) City Deal’s Regional Cabinet. It was alleged that the Member had purchased shares in a company (“the Company”) that had been leased premises by CCR City Deal, to manufacture compound semiconductors and develop applications and that he had subsequently failed to declare an interest in the Company during CCR City Deal’s Joint Committee Meetings.

The complaint was investigated on the basis that there may have been a failure 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 to confer on or secure for themselves an advantage.
- 10(2)(viii) – members must regard themselves as having a personal interest in any business of their authority if it relates to, or is likely to affect...any body to which they have been elected, appointed or nominated by their authority.
- 11(1) – Where a member has a personal interest in any business of his authority and attends a meeting at which that business is considered, he 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 becomes apparent.
- 14(1)(a) – Where a member has a prejudicial interest in any business of his authority, unless he has obtained dispensation from his authority's Standards Committee, he must withdraw from the room, chamber or place where a meeting considering the business is being held.

The investigation found that the Member had access to confidential information by virtue of his position on the CCR City Deal's Regional Cabinet, which enabled him to purchase shares in the Company at a low price with a reasonable expectation that he could later sell those shares at a higher value. The Ombudsman considered that his actions were not in the spirit of the Principles which underpin the Code of Conduct, in particular the principle of integrity, which expects members not to act or take decision to gain financial benefits for themselves. The Ombudsman also considered that the Member's behaviour was suggestive of a breach of paragraph 7(a) and 6(1)(a) of the Code of Conduct.

In respect of the allegation that the Member had failed to declare an interest in the Company during CCR Regional Cabinet meetings, the investigation found that the Member failed to declare an interest in the Company during a CCR Regional Cabinet meeting on 18 February 2019 and that, whilst no decisions were made about the Company during this meeting, the Member's failure to declare a personal and prejudicial interest and withdraw from the meeting was suggestive of breaches of paragraphs 11(1) and 14(1)(a) of the Code of Conduct.

The investigation concluded that the Ombudsman's report on the investigation should be referred to the President of the Adjudication Panel for Wales, for consideration of a possible breach of paragraphs 6(1)(a), 7(a), 11(1) and 14(1)(a) of the Code of Conduct.

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RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS AGAINST MEMBERS – 1ST NOVEMBER 2021 – 28TH FEBRUARY 2022

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

- 1.1 To provide Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st November 2021 – 28th February 2022.

2. RECOMMENDATIONS

- 2.1 To consider the contents of the report and provide any comments/feedback on the complaint received by the Ombudsman during the period 1st November 2021 – 28th February 2022.

3. BACKGROUND AND DETAILS OF COMPLAINT

- 3.1 In determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in the circumstances.

- 3.2 Members will note below the summary of an anonymised complaint made against a Member and submitted to the Ombudsman during the reporting period 1st November 2021 – 28th February 2022:

Date Complaint Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
15/12/21	Rhondda Cynon Taf CBC (Councillor)	<p>Cllr H complained Cllr S posted an image on Social Media comparing a group of individuals to Nazis. Cllr H believed that in doing so Cllr S breached paragraphs 4(b) and 6(1)(a) of the Code of Conduct i.e. that they failed to show respect and consideration and caused their office or authority disrepute.</p> <p>The Ombudsman noted that the Code usually only applies when a member of a council is performing functions as a member or seeking in some way to rely upon their status as a member. Given that Cllr S's twitter profile referenced their role as Councillor the Ombudsman was of the view that they gave the impression they were acting as a representative of the Council and that the Code was fully engaged in relation to their posts on that page.</p> <p>The Ombudsman commented that when acting as an elected member and expressing political views or conducting political business, a member's freedom of expression is afforded enhanced protection, more so than an ordinary member of the public. Further, as politicians, members are likely to be afforded protection even where the language used by them may be inflammatory, provided the focus of it is political. Political comments are not confined to the Council chamber and can include comments members may make generally about their authority's policies or government policies. Political expression extends to all matters of public administration.</p> <p>The Ombudsman further noted a member's right to freedom of expression is not absolute and must be balanced against the need to protect the rights and interests of others. Freedom of expression is not limitless and the more egregious the conduct concerned, the more justified it becomes to restrict expression using the provisions of the Code of Conduct.</p> <p>In the Ombudsman's view, Cllr S's post could reasonably be considered political expression and said to benefit from the enhanced protection afforded by Article 10 of the European Convention on Human Rights (freedom of expression). Whilst the</p>	No

		<p>Ombudsman consider that the post was offensive they did not consider that it was so inflammatory, violent or shocking that it could amount to a breach of the Code. It is not the purpose of the Code to inhibit free speech and the robust expression of political differences. The post referred to highly publicised incidents regarding the individuals. The individuals which the post were directed towards were all senior politicians and as such would be expected to have an exceptionally thick skin.</p>	
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4. LEGAL IMPLICATIONS

4.1 There are no legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972
AS AMENDED BY
THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL
STANDARDS COMMITTEE
11 MARCH 2022
REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS

INFORMATION REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To allow Members the opportunity to consider recent decisions made by the Adjudication Panel for Wales (APW).

2. RECOMMENDATIONS

- 2.1 It is recommended the Committee considers the recent decisions made by the Adjudication Panel for Wales (as appended to the report); and
- 2.2 Determines whether there are any possible messages or lessons to be learnt arising out of the decision that could be communicated as part of future training for Members on the Code of Conduct.

3. BACKGROUND

- 3.1 The ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct. The operation of the Panel is governed by Regulations issued by the Welsh Government.
- 3.2 The APW issues decision notices following the conclusion of the cases it considers and in that respect Members will find copies of the following decisions appended to the report:

Appendix 1 - APW/001/2021-022/CT – Councillor Jonathan Bishop (Taff's Well & Nantgarw Community Council)

Appendix 2 – APW/005/2021-022/CT – Councillor Perry Morgan (Abertillery and Llanhilleth Community Council)

Appendix 3 – APW/006/2021-022/CT – Councillor William Roy Owen (Gwynedd Council and Caernarfon Royal Town Council)

Appendix 4 – APW/003/2021-022/AT – Councillor Gareth Baines (Wrexham County Borough Council (Appealing a Standards Committee decision)

- 3.3 The Committee may find it helpful to consider these decisions and the approach adopted by the APW in formulating its decision and sanctions (where relevant) in light of its own role when conducting Code of Conduct hearings.
- 3.4 The Committee may also wish to consider whether there are any possible messages or lessons to be learnt arising out of the decisions that could be communicated as part of future training for Members on the Code of Conduct.

4. LEGAL IMPLICATIONS

- 4.1 There are no legal implications arising from this report.

5. CONSULTATION

- 5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

- 6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972
AS AMENDED BY
THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
STANDARDS COMMITTEE
11 MARCH 2022
REPORT OF MONITORING OFFICER

ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2021-022/CT

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

Respondent:

Councillor Jonathan Bishop

Relevant authority:

Taff's Well and Nantgarw Community Council

Representation and attendance:

Respondent: In person, supported by Mr F Bishop,
his father

Public Services Ombudsman for Wales: Mr G Hughes, counsel

1. INTRODUCTION

1.1 A Case Tribunal, convened by the President of the Adjudication Panel for Wales, considered a reference in respect of the above Respondent which had been made by the Public Services Ombudsman for Wales ('the Ombudsman').

1.2 References in square brackets within this Decision Report are to pages within the bundle of Tribunal Case Papers unless otherwise stated. A separate bundle had been produced for public and/or press access in accordance with paragraph 5.21 of the Listing Direction of 6 October 2021 [8].

Events prior to the Hearing

1.3 A substantial amount of additional material was produced by the Respondent after the Preliminary Hearing and in breach of the timetable set in the Listing Direction. The documentation was addressed by the Tribunal in the email of 1 November 2021 [2485] and the hearing bundle was compiled accordingly. That evidence has been referred to below where necessary (see Section G [2504-2959]).

- 1.4 On 3 February 2022, a further 25 documents were submitted together with a further document headed 'Submission on behalf of Mr FW Bishop'. Mr Hughes had not seen a copy of the latter document until the hearing itself but, once he had time to consider it, he did not object to its use.
- 1.5 In advance of the hearing, the Respondent had requested a postponement due to the unavailability of Dr Matthews. Her evidence had been provided in writing (her report of 10 March 2021 [523-527]) and was only relevant to the Third Stage of the hearing. The Tribunal considered that it was unlikely that the evidence was to have been challenged to any significant degree by the Ombudsman and that her inability to attend in person was not a great disadvantage to him. It was also unclear when she might have been able to attend. She was on maternity leave. The Tribunal nevertheless permitted the Respondent to renew his application at the hearing, which he did not.
- 1.6 Yet further, there was an application made by the Respondent, in his capacity as the stated Editor-in-Chief of Crocels News LLC (one of the Crocels group of companies discussed in more detail below), for disclosure of the press bundle which was prepared in accordance with paragraph 5.21 of the Listing Direction [8]. That application was also dismissed. The Respondent had, of course, received a copy of the complete bundle and the Tribunal explained that members of the accredited press were only entitled to access to those documents referred to during the hearing, if and when they were referred to and adduced into evidence. That matter was not raised again at the hearing either.
- 1.7 Finally, a number of late attempts were made by the Respondent's father to file an amended witness statement which were also dismissed. The matter was not raised again during the hearing.
- 1.8 These applications were time consuming, largely wholly unnecessary and/or in breach of the clear directions given at the Preliminary Hearing and in the Listing Direction.

The hearing

- 1.9 The hearing was held by the Case Tribunal on 7, 9 and 10 February 2022 by video conference (CVP). The hearing was open to the public, save for the receipt of evidence and submissions at Stage Three. It was conducted in English, except the evidence of Reverend Gethin Rhys which was given in Welsh.
- 1.10 Adjustments to the hearing were made to accommodate the Respondent's disabilities as discussed, agreed and recorded in the Listing Direction of 6 October, paragraph 5.20 [7].
- 1.11 The hearing proceeded in accordance with the timetable discussed at the Preliminary Hearing, although the Respondent had to be urged to

restrict his questioning of the Ombudsman's witnesses to matters which were relevant to the issues before the Tribunal.

- 1.12 Further, The Respondent's father had to be asked by the Tribunal not to prompt the Respondent's answers during his evidence on more than one occasion. The Respondent himself asked his father to leave the room that they had both been occupying so that he could give his evidence without interruption. He acceded to that request.
- 1.13 Finally, both the Respondent and his father wrote a number of emails to the Tribunal during the hearing in which further evidence was adduced and/or challenges were made to the findings at Stage One and/or Two. They have been referred to below where necessary.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Ombudsman

2.1.1 In a letter dated 31 March 2021 with an enclosed Report ([1776-7] and [16-61]), the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against the Respondent. The allegations were that he had breached Taff's Well and Nantgarw Community Council's ('the Authority's') Code of Conduct by using language which had demonstrated a failure to show respect and/or which had constituted bullying and harassment and that he had submitted expenses claims in which false evidence was provided, thereby demonstrating a lack of integrity and honesty.

2.1.2 The actual allegations considered by the Tribunal were in three groups, identified within paragraphs 115, 124 and 125 of the Ombudsman's Report [56-58]. The details were that;

2.1.2.1 The Respondent used language in correspondence, both to the Clerk to the Council on 25 September [128] and 31 December 2019 [140] and 21 January [115] and 3 February 2020 [346, 349 & 350], and the Chairman, Councillor Fowler, on 11 September 2019 [370-1], which showed a lack of respect and/or consideration for the recipients and, in the case of Mrs Williams, had amounted to bullying and harassment;

2.1.2.2 The Respondent submitted expenses claims for Mr Edwards' support and attendance at Council meetings on 30 October [144-5] and 27 November 2019 [146-7]. It was alleged that Mr Edwards was never paid for such attendances, that the Respondent gave false evidence in relation to such claims and that they were not made in compliance with the relevant guidance and principles. Further, the Respondent indicated a desire to recover payment on behalf of his father for support that he

provided at another meeting and allegedly supplied false information about his father's relationship with a company with which he was involved. In those instances, it was alleged that he failed to act with honesty and integrity;

2.1.2.3 Following Mr Edwards's interview by the Ombudsman on 28 February 2020, a witness statement was sent to him for approval [399-400]. By a letter dated 2 March 2020 purportedly from Mr Edwards and apparently signed by him [824], he objected to the draft witness statement. The Ombudsman alleged that the Respondent had in fact written the letter, a matter which he refused to explain when interviewed. It was alleged that he had thereby, attempted to interfere with the course of the investigation.

2.2 The Councillor's Written Response to the Reference

2.2.1 The Respondent responded to the allegations on numerous occasions in correspondence and interview, the relevant parts of which have been set out below in respect of each allegation. The main sources of his responses were;

- The Ombudsman's interview on 21 October 2020 [436-514];
- His, response to the Ombudsman's report of 18 May 2021 [1732-1766].

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 17 June 2021, further representations were made by the Ombudsman [1769-1774].

3. EVIDENCE

3.1. The Case Tribunal heard the following witnesses give evidence at the First Stage of the hearing;

- Councillor Alun Fowler, who gave evidence in accordance with his statement [371-3];
- Mrs Williams, former Clerk to the Authority, who gave evidence in accordance with her two statements [107-112];
- Mrs Cook, the Ombudsman's investigating officer, who explained the reasoning contained within paragraphs 97-8 of the Ombudsman's report [52];
- Mr F Bishop, the Respondent's father, who gave evidence in accordance with his statements [423-5, 2948-2950 and 2951-2959];
- The Respondent, who confirmed the accuracy of the evidence which had given at interview [437-504] and in response to the Ombudsman's report [1736-1752].

3.2 The Tribunal heard submissions and argument at the First Stage from both parties.

- 3.3 The Case Tribunal heard the following witness give evidence at the Third Stage of the hearing;
- Reverend Gethin Rhys;
 - Mr F Bishop again.
- 3.4 The Tribunal heard further submissions and argument at the Second and Third Stages from both representatives.

4. FINDINGS OF FACT

- 4.1 Having considered the evidence and both parties' submissions (including the Respondent's father's written submissions), the Case Tribunal found the following material facts on the balance of probabilities. The Tribunal approached its task by addressing the three factual areas identified within paragraph 2.1.2 above.

Language used in correspondence (paragraph 2.1.2.1)

- 4.2 In respect of the correspondence sent to, or in respect of, Mrs Williams, the Tribunal was satisfied that the following were sent by the Respondent;
- 4.2.1 An email dated 24 September 2019 to Mrs Williams, in which he described her as "*penny-pinching*" [758-760];
 - 4.2.2 A further email of 15 October 2019 to her in which he suggested that, if she could not calculate his entitlement to mileage expenses, she should "*redesign the form or use a calculator*" [739-740];
 - 4.2.3 A letter to Mrs Williams on 31 December 2019, in which he suggested that she should undertake a CILCA course "*so I can enjoy the same quality of service I get from the Clerk of Cam Parish Council*" [140];
 - 4.2.4 An email dated 20 January 2020 [115] in which he questioned the level of Mrs Williams' salary;
 - 4.2.5 An email of 21 January 2020 [114] which was sent to Mrs Williams and others in which he questioned her training once again;
 - 4.2.6 Several emails of 3 February 2020 in which he accused Mrs Williams of being a "*bully, always trying to force your position on a council made up of brain-dead sycophants who would eat poison if the chair or clerk suggested it*" [346], referred to her as "*a disgrace*" [349] and as "*part of the axis of evil that bullies me, trying to stop me getting allowances I'm entitled to*" [360].
- 4.3 There were a considerable number of additional pieces of correspondence which were written in a similar tone but which did not contain quite the same character of language. Mrs Williams had only worked 14 hrs/week and had found that much of her time was absorbed by issues raised by the Respondent in 2019/2020.

- 4.4 In respect of Councillor Fowler, the Tribunal was satisfied that two emails were sent by the Respondent on 11 September 2019 in which he stated as follows [384-5];

*“FUCK OFF YOU NOSEY FUCKING BASTARD!!!!
LEAVE ME ALONE YOU HARASSING CUNT!”*

and later that day

*“YOU ARE A FUCKING COUNCILLOR NOT AN OFFICER!!!!
FUCK OUT OF MY PRIVATE LIFE YOU FUCKING TWAT!!!!!”*

- 4.5 Although the reasons for the use of his language has been considered subsequently, there was no doubt that the communications referred to above were written and sent by him.
- 4.6 The Tribunal was also satisfied that they were sent by the Respondent whilst acting in his capacity as a councillor (see paragraph 2.2 of the Annex to the Listing Direction [14]); there was no personal capacity or reason in which the Respondent would have been communicating with Councillor Fowler or Mrs Williams that was drawn to the Tribunal’s attention. The emails themselves concerned his expenses claims in respect of his attendance at Council meetings. The Respondent confirmed in evidence that the emails were sent from an account which he used for all matters relating to the holding of public office and we noted that they had been signed by him in his official capacity, as ‘Councillor Jonathan Bishop’.
- 4.7 As part of the Respondent’s submissions and evidence on those issues, he raised two matters;

4.7.1 Automatism;

The Respondent alleged that he lacked capacity to act as a councillor when he sent the emails which were the subject of the allegations.

The Tribunal noted that the legal defence of automatism, a defence to certain criminal charges, had not been raised by him before. He had previously referred to the emails to Councillor Fowler having been written whilst in a state of ‘meltdown’.

The Tribunal understood automatism to have been a state in which a defendant would not have known of his actions and had therefore acted involuntarily. We understood the Respondent’s description of his ‘meltdowns’ to have been an emotional reaction to an event which was magnified by the effects of his disability.

The Tribunal did not consider that the defence of automatism applied here, either as a matter of law or on the facts. Although the Respondent's emails had possibly reflected a magnified or exaggerated emotional response, which we will consider below, there was no evidence that it was written and/or sent involuntarily, unwittingly, unknowingly or without intent.

- 4.7.2 Justification of use and/or lack of offence, relying upon the decisions of *DPP-v-Collins* [2006] UKHL 40, *Chambers-v-DPP* [2012] EWHC 2157 (Admin), *Calver-v-APW and PSOW* [2012] EWHC 1172 (Admin) and *Connolly-v-DPP* [2007] EWHC 237 (Admin);

The arguments put forward by the Respondent at the First Stage were really of relevance to the Second Stage of the hearing. Nevertheless, since they were raised here, the Tribunal addressed them here.

These authorities did not assist the Respondent. The case of *Chambers* concerned a defendant who had Tweeted a threat to an airport which was asserted to have been of a menacing character within the meaning of s. 127 of the Communications Act 2003. 'Menace' was not the issue in this case. Similarly, the Respondent argued that the emails were not grossly offensive, as had been argued in *Collins*. That statutory test (also within s. 127 (1)) was not in play here. We were only really concerned with whether the emails had been sent and had been offensive so as to have breached the Code and, although that latter question was really part of the Second Stage, we had no hesitation in concluding that the words used had been offensive as they were normally to have been understood.

Calver and many of the other cases had to be considered in the context of the Respondent's Article 10 rights (see the Second Stage below).

For the avoidance of doubt at this stage, we were satisfied that Councillor Fowler had found the emails offensive; he had said so in his first email of complaint of 13 September 2019 [70], in his witness statement to the Ombudsman [372], specifically at paragraph 7, and in his oral evidence to the Tribunal. The case of *Connolly* did not assist the Respondent.

Expenses claims; Mr Edwards (paragraph 2.1.2.2)

- 4.8 The Respondent is disabled and receives the highest level of Personal Independence Payment, suggesting significant daily living and mobility needs. He was signed off work by his GP because of his disabilities.
- 4.9 The Respondent receives support and assistance in respect of some of the activities that he undertakes. Although he did not provide details of

his disabilities to Councillor Fowler, Mrs Williams or any other member of the Council, he asked the Authority that he be permitted to bring a carer to support him in meetings of the Council, which was permitted as a reasonable adjustment.

- 4.10 The Respondent is involved in a number of companies registered at Companies House. He confirmed in evidence that he was a Director of four such companies, one of which is Crocels Community Media Group CIC ('CCMG CIC'). The other two Directors are corporate bodies of which he is also the sole Director, Jonathan Bishop Ltd and Crocels Press Ltd. The Respondent further stated that CCMG CIC employed Jason Barrett and Melissa Hulbert. The relevance of the Company and/or those employees has been discussed below.
- 4.11 In 2019, the Respondent submitted expenses claims for Mr Edwards who had supported him at two Council meetings on 30 October [144-5] and 27 November [146-7]. The claims were in the sums of £166.65 (2½ hours support) and £116.66 (1¾ hours support) respectively, charged at the rate of £55.55/hr. The Respondent signed each claim himself although he stated that the paperwork had been prepared by Melissa Hulbert, a CCMG CIC employee.
- 4.12 On 25 September 2018 [138] and 27 March 2019 [136], the Authority adopted the Independent Remuneration Panel for Wales' ('the IRPW') Report which set out the principles for the reimbursement for such support through councillors' expenses claims; Determination 46 enabled such expenses to have been recovered if they were the "*reimbursement of additional actual costs*"..*"on production of receipts for the carer"*.
- 4.13 During the Respondent's interview, he stated that Mr Edwards was employed by Crocels on a zero hours contract [458] and had been since 2014 [464] and was paid for his attendance at the meetings "*when he asked to be*" ([460] and [462]). A record of such payments was said to have been "*on the accounts*" [460]. In his response to the Ombudsman's report, he further stated that Mr Edwards had been "*served P60 and P11D documentation*" [1750].
- 4.14 In further evidence produced in the final weeks before the hearing by the Respondent, there were several documents entitled 'Payroll Earnings' bearing Crocels' name and purporting to evidence several payments that had been made to Mr Edwards between 30 October 2019 and 3 April 2020 [2507-2509]. A payslip from 30 October showed a payment in respect of 2½ hours work paid at £14.55/hr, a total of £36.38 (not £55.55/hr charged to the Authority [144]) [2507]. The payslip for 27 November was in the same amount, reflecting another 2½ hours of work [2507], not 1¾ hours claimed of the Authority [147]. Again, the rate was different. Both payslips purported to show that the payments had been made on the dates that the support had actually been provided at both meetings. The Respondent confirmed that they

were highly likely to have been the actual dates of payment during his evidence to the Tribunal.

- 4.15 When interviewed by the Ombudsman's investigators, Mrs Cook and Ms Jones, on 28 February 2020, Mr Edwards stated that he had known the Respondent since he was 7, they had been at school together and were friends. He stated that he had worked for the Respondent voluntarily and was not self-employed [406]. He stated that he did not receive payments in respect of specific items of work which may have been undertaken, but had merely received some money when he had needed it for help or support and no receipts were provided [407].
- 4.16 Having heard evidence from Mrs Cook and in view of the fact that the Respondent himself did not challenge the accuracy of his own notes of interview, we considered that the transcript of Mr Edwards' interview at [402-420] was likely to have been a reasonably accurate account of what he had said in response to Mrs Cook's questions. It was important to note that the Respondent had not been present.
- 4.17 In a subsequent letter purporting to have been from Mr Edwards dated 2 March 2020, he stated that he had not been paid for the support that he had provided [824]. That was a letter which the Respondent told us in evidence, *he* had drafted for Mr Edwards to read, approve and sign (see, further, below).
- 4.18 In his response to this allegation, the Respondent stated that Mr Edwards had been paid at the rate of £14/hour [1740]. In evidence, he explained the difference in rates (£14 and £55.55) on the basis that, although CCMG CIC had paid Mr Edwards at the lower rate, there were additional costs and expenses involved which had entitled it claiming the higher rate. Those costs, which were identified as direct costs, indirect costs and surplus, were not elaborated upon, save that Mr Edwards' alleged membership of the Association of Christian Counsellors was said to have been one.
- 4.19 The Tribunal referred to the list of disputed facts within paragraph 2 of the Annex to the Listing Direction of 6 October 2021. The Tribunal was satisfied that;
- 4.19.1 Mr Edwards was not employed by CCMG CIC in any formal capacity, as he stated in interview. No contract, P60, P11D or other documentation which might have evidenced his employment was produced;
- 4.19.2 The invoices and claims submitted by the Respondent for Mr Edwards' support at the two meetings did not reflect any contractual indebtedness or formal liability to Mr Edwards, as was also stated in interview. The Respondent's evidence, that payments had been made to him on 30 October and 27 November as suggested by the payslips [2507], was starkly in contrast both with Mr Edwards' evidence to the investigation and, more importantly, the Respondent's *own* evidence, since he had

drafted Mr Edwards' letter of 2 March 2020 in which he denied having received any payment [824];

4.19.3 The invoices and claims, on their face, had the appearance of establishing proof of such indebtedness and, to that extent, they were misleading.

4.20 After the Tribunal had delivered its factual findings at the First Stage of the hearing, the Respondent stated that he wanted to appeal because Mr Edwards had been an employee of Crocels. A few minutes later, he sent the following email;

"I would like to appeal the decision that Graham Edwards was not properly employed on the grounds that there is no P60, P11D nor contract of employment, all of which are untrue.

These records are currently at Crocels's Berkeley office in Gloucestershire and with the accountant in Belfast (with the exception of the CoE in the case of the latter which Graham Edwards has likely lost his copy of).

There is a case currently before the Tax Tribunal on whether my disability is a reasonable excuse for not filing the P11D(b) on time, but the fact this case is live proves P11D information exists."

4.21 After the Tribunal had moved on to hear submissions at the Second Stage of the hearing and before its judgment in that respect, the Respondent sent a further email which enclosed two further documents;

4.21.1A handwritten receipt for payments purportedly made to Mr Edwards, two of which related to the 30 October and 27 November 2019. The documents stated that the payments of £36.38 had been made on 3 April and 27 April 2020;

4.21.2 Co-Operative bank statements for an account under the name 'Crocels DCMS Limited' (a former name of CCMG CIC) which evidenced salary payments to Mr Edwards on the same dates and in the same sums.

4.22 The email itself read as follows;

"I thought it would help the Tribunal in its deliberations to have copies of redacted bank statements showing Graham Edwards being paid and for there to be signed by Graham Edwards matching "receipts" that also correspond with the payroll entries already submitted.

A special general meeting was held of Crocels Community Media Group C.I.C. today and the members agreed unanimously to release this information.

Crocels was never asked to provide this information and it would have been a breach of the Companies and Fraud Acts for me to misuse my position as director of Crocels CMG CIC (GBL) to disclose company information for personal gain.

Unfortunately, Graham Edwards's PAYE records are in Gloucestershire, along with his contract of employment, so I am not able to provide this at this time."

- 4.23 In light of that information, the Tribunal considered whether it ought to re-visit and/or re-consider any of its factual findings.
- 4.24 The Tribunal considered that the Respondent had had ample opportunity to produce all and any relevant documentation to both the Ombudsman during his investigation and to the Tribunal in advance of the hearing in accordance with the Listing Direction (paragraph 5.21 (c) [8]). The findings within paragraph 4.19.1 above stood; no such documentation had ever been produced. Yet further, even if contractual documentation could have been produced evidencing some form of employment relationship between Mr Edwards and CCMG CIC, we considered it unlikely to have subverted our findings that there had been no liability or indebtedness to him in respect of his attendance at the meetings on 30 October and 27 November 2019. Even on the Respondent's case, there was no liability to him in the *actual* sum claimed (see, further, paragraph 4.27 below).
- 4.25 The Tribunal noted that the receipts purported to show payment dates long after those on the other documentation [2507], which the Respondent had confirmed had been accurate in evidence. They were also inconsistent with the account given in interview in October 2020 in which he had stated that Mr Edwards had not even been paid *then* [468-9]. In evidence, he asserted that he had been confused when questioned by Mrs Cook and had meant that Mr Edwards had never been paid *as an employee*, which was itself inconsistent with what was said in the emails written during the course of the hearing (paragraphs 4.20 and 4.22 above).
- 4.26 This drip-fed disclosure created a web of greater confusion and cast yet more doubt upon the veracity of the Respondent's overall account.
- 4.27 In the Respondent's final submissions at the Third Stage of the hearing, he stated that the claims submitted to the Authority had included an element of 'surplus' which Crocels would have applied to charitable purposes within the community. Whatever the purpose of the surplus, the submission was an implicit acceptance that the claims had exceeded any actual indebtedness to Mr Edwards.
- Expenses claims; Mr Bishop (paragraph 2.1.2.2)
- 4.28 Mr Frederick Bishop is the Respondent's father and also provides him with care and support. He supported and accompanied the Claimant at a Council meeting in the first half of 2019.
- 4.29 In a series of emails in September 2019, the Respondent enquired as to how to progress an expenses claim in respect of his father's support at that meeting. Mrs Williams gave guidance [150-1] and raised a query in

respect of his role; she specifically asked whether he was employed by Crocels [173].

- 4.30 In reply, on 4 September 2019, the Respondent stated that his father “*is engaged by and paid by Crocels to support me*” [172]. It was stated that his hourly rate was £53.20 plus VAT and that an internal timesheet was to have been completed to support an expenses claim in respect of his attendance. Mrs Williams then asked for details of the arrangement between the Company and the Respondent’s father and how the hourly rate was calculated [171-2]. The Respondent replied with Crocels’ pay rates, but he sensed that Mrs Williams had been suggesting that a conflict of interest had existed and then stated that his father would forgo his claim and that “*the most experienced mentor at Crocels*” would support him instead going forward [170].
- 4.31 The Respondent’s father subsequently provided a statement to the Ombudsman in which he said that he did not get paid to attend any Council meeting whilst supporting his son and that he was not employed by Crocels and knew nothing about the Company or its employees (paragraph 3 of the statement of 19 August 2020 [423], which he confirmed in evidence). He subsequently stated in evidence that he had been a ‘member’ and had made decisions for/within the Company.
- 4.32 During his interview with the Ombudsman, the Respondent stated that his father had not wanted to have been paid [446], was not employed by Crocels [462] and had received no payment [470]. He stated that his email of 4 September 2019 had not been correct [469].
- 4.33 Emails which were produced subsequently threw more light on the issue; on 3 September, the Respondent had asked his father for the dates of his support “*so Jason [Mr Barrett, another CCMG CIC employee] can prepare the claim for me as he has done when you’ve worked for Access to Work. It would be Specialist Mentor (ASC) and Jason would invoice Taff’s Well Community Council for using Crocel’s invoice and time sheet...Jason can get the exact hours from the minutes of the meeting on the council’s website – you just need to indicate the dates you attended*” [2803]. His father responded “*Not happy about this there is a tax issue for me we are pushing our luck*” [2802]. In evidence, the Respondent candidly stated that he believed that his father’s use of the expression ‘pushing our luck’ referred to the possibility that a retrospective claim for unpaid carer’s help at a council meeting may have been in breach of the Code of Conduct.
- 4.34 Taking all of this evidence together, the Tribunal concluded that the Respondent had intimated a claim in respect of his father which would not have been by way of reimbursement, for which there had been no genuine indebtedness and which was always going to have been something of a ‘try on’. Even his father saw it as such. In fact, it appears

to have been his email of 4 September [2802] which caused the Respondent not to progress the matter.

Mr Edwards' letter of 2 March 2020 (paragraph 2.1.2.3)

- 4.35 Following Mr Edwards' interview on 28 February 2020 [401-420], the Ombudsman's investigators drafted a witness statement based upon the evidence which he had given and sent it to him for approval [399-400].
- 4.36 On 2 March 2020, a letter was written in reply which purported to have been written and signed by Mr Edwards [824]. The letter stated that the witness statement was "*not a fair reflection of what I said*" and was described as a "*misrepresentation*". It was asserted that the matter had been referred to the Deputy Chairman of Crocels who was to have conducted an investigation. The right to have the matter referred to the Information Commissioner was also reserved.
- 4.37 The Ombudsman believed that the letter had been written by the Respondent himself and not Mr Edwards because of the similarity between its tone and content and other documentation (for example, the Respondent's email of 4 March [829]). Similarities in format and typeface were also highlighted (for example, the letter of 31 December 2019 [763]).
- 4.38 The Respondent was asked about the matter in interview in October 2020, but he declined to answer the question as to whether he had drafted the letter, despite it having been put on a number of occasions [465-6]. He merely stated that Mr Edwards "*was supported under the whistleblowing procedure*".
- 4.39 In reply to the Ombudsman's report in May 2021, the Respondent subsequently stated that the letter had been composed *with* Mr Edwards as a reasonable adjustment [1743] and during his evidence at the hearing, he then stated that he had drafted the letter as Mr Edwards' line manager, with him physically present. He had then read and signed it.
- 4.40 For the sake of completeness, the Respondent's closing submissions included challenges to some of the items in the list of undisputed facts within the Listing Direction [13], matters which were raised for the first time. He challenged the following paragraphs;
- 1.3 He stated that he had disclosed details of his disability within the expenses claims by reference to 'ASC Support' [145-6] which, he said, referred to Autism Spectrum Condition. The Tribunal did not consider that to have been a disclosure of details of his condition so as to have subverted the accuracy of paragraph 1.3 but it was irrelevant to our findings in any event;

1.5 The Respondent made the point that one of the Crocels companies had been co-founded by others. Again, this was irrelevant to our findings but did not render paragraph 1.5 wrong as it was worded;

1.6 He denied that Mr Edwards had been a longstanding friend. Mr Edwards had given that evidence to the Ombudsman in interview [403] which we had accepted (see paragraph 4.16 above);

He also made submissions in relation to paragraphs 1.7 and 1.9, but did not challenge their factual accuracy.

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

5.1 The Code of Conduct

5.1.1 The Respondent had agreed to observe the Authority's Code of Conduct, most recently on 29 May 2019 [91-2], and stated that he knew of its provisions [446].

5.1.2 The Authority had adopted the Model Code of Conduct approved by the National Assembly in 2001 on 15 May 2008 [88]. The Ombudsman conducted his investigation under the 2016 Model Code which was only adopted in 2021. This matter was addressed and determined within paragraph 5.5.2 of the Listing Direction [5]. The relevant parts of the 2016 Code were as follows;

Paragraph 4 (b) and (c);

"You must-

(b) show respect and consideration for others;

(c) not use bullying behaviour or harass any person;"

Paragraph 6 (1)(a);

"(1) 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 or secure yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;"

Paragraph 9 (a);

"You must –

(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;"

5.1.3 Although paragraph 7 of the Code had not been addressed by the Ombudsman in his report, it was considered relevant by the Tribunal and had been addressed at the Preliminary Hearing and in other correspondence.

5.1.4 The Tribunal considered further submissions from the Ombudsman and the Respondent and also took account of the Guidance from the Ombudsman on the Code of Conduct (August 2016).

5.2 The Respondent's position

5.2.1 The Respondent made certain concessions in relation to the emails he had been sent to Councillor Fowler on 11 September 2019 and in relation to the allegations under paragraph 4 of the Code; he stated that he had had a '*melt-down*' and used language that he would not normally have used ([95-9] and [1737]). He described the words used as British slang ([448-9], [454] and [502]). He did not expressly concede that it had amounted to a breach of the Code.

5.2.2 The Respondent also repeated his submissions on the law (see paragraph 4.7.2. above) and referred to a self-written article '*Internet Trolling and Cyberstalking*' [2835-2849] and asserted, relying upon paragraph 6 and the cases of *Morris* and *King* cited within it, that Councillor Fowler's feelings were not wounded [2836]. He further stated that, since Councillor Fowler had acted *ultra vires* in sending him the email which provoked the response because he had had no power to intervene between him and the Clerk, his emails in response ought to have been ignored.

5.2.3 In relation to his communications with Mrs Williams, he considered them to have been justified and was unrepentant ([449] and [471]). Relying upon the decision in *Scottow-v-CPS* [2020] EWHC 3421 (Admin), he considered that the words had not been grossly offensive.

5.2.4 In relation to the expenses issues, the Respondent had, at the First Stage of the hearing, submitted that he considered that the word 'receipt' in the IRPW Report was equivalent to a 'bill'. That submission was probably best considered in the context of the Second and/or Third Stage.

5.3 The Ombudsman's position

5.3.1 It was succinctly contended by Mr Hughes that;

5.3.1.1 The emails to Councillor Fowler caused the Respondent to have breached paragraph 4 (b) of the Code of Conduct;

- 5.3.1.2 The emails to Mrs Williams caused a breach of paragraphs 4 (b) and (c);
 - 5.3.2.3 The expenses claims made on behalf of Mr Edwards and his father brought about breaches of paragraphs 6 (1)(a), 7 (a) and 9 (a);
 - 5.3.3.4 The letter purporting to have been from Mr Edwards, but written by the Respondent, caused a breach of paragraph 6 (1)(a). Mr Hughes submitted that the facts could have also supported an allegation under paragraph 6 (2) but did not pursue one since it had not been raised before.
- 5.3.2 Mr Hughes urged the Tribunal to consider the cases of *Heesom-v-PSOW* [2014] EWHC 1504 (Admin), paragraphs 39-42, and *Calver* (above), paragraphs 33 and 39-61 ,in respect of the matters in paragraphs 5.3.1.1 and 5.3.1.2; he submitted that, although the Respondent's Article 10 rights to freedom of expression were engaged, insofar as it was necessary to interfere with them in order to make findings of breaches of the Code, it was proportionate and justified to do so in order to protect the rights of others, Councillor Fowler and Mrs Williams.

5.4 Case Tribunal's Decision

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

Language used in correspondence (paragraph 2.1.2.1 and paragraphs 4 (b) and (c) of the Code)

- 5.4.2 The emails of 11 September 2019 to Councillor Fowler were a **breach of paragraph 4 (b)** of the Code in that they demonstrated a clear lack of respect. The words used may well have derived from British slang as the Respondent asserted, but that did not mean that they were not offensive and disrespectful.
- 5.4.3 The Tribunal's views in respect of the Respondent's submissions on the caselaw had already been covered within paragraph 4.7.2 to some extent, but not in relation to his Article 10 rights. In that respect, the Tribunal was satisfied that the communications to Councillor Fowler tipped the balance firmly in favour of an interference with those rights. We recognised that Article 10 enabled the Respondent to say or write things which "*right thinking people consider dangerous and irresponsible or which shock or disturb*" (*Calver*, paragraph 55) and that councillors and other politicians in Councillor Fowler's position ought to have thicker skins than ordinary members of the public (paragraph 58 of *Calver* and 39 of *Heesom*), but we did not consider that the Respondent's views had been part of any political debate and/or that the enhanced level of protection considered in *Calver* ought to have applied. The emails were "*little more than an expression of personal anger*" (paragraph 52 of *Calver*).

- 5.4.4 The Tribunal did not accept the proposition that Councillor Fowler had acted *ultra vires* when he had written to the Respondent. We did not consider that he had acted outside of his powers by writing to a fellow councillor about an expenses claim and/or about his communications with the Clerk. It was part of his duties under the *Good Councillors Guide* to ‘*share responsibility for financial management*’ (Part 7 [2906]) and to ensure ‘*good working relationships*’ were maintained with ‘*mutual respect and understanding*’ (part 8 [2910]). Even if he had, it did not enable the Respondent’s emails in reply to have been ignored for the purposes of the Code of Conduct.
- 5.4.5 In the series of emails which the Respondent had sent to Mrs Williams including, but not limited to, those set out in paragraphs 4.2, he had been gratuitously critical, undermining, disparaging and rude. The emails demonstrated a clear lack of respect and consideration and the Respondent was in **breach of paragraph 4 (b)** in that respect too.
- 5.4.6 The Tribunal took time to consider the emails against the words used in *Calver* (paragraph 33). We recognised that there were no “*bright lines*” to the balancing exercise that we undertook (paragraph 46). We were also aware of the need for people in Mrs Williams’ position to have had relatively thick skins too (*Heesom*, paragraph 42), but that point played less well in respect of a civil servant than it did for a politician; it was a “*legitimate public aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect on good administration*” (*ibid*). Here, it was not so much the contents of a single email to Mrs Williams which had concerned us, but it was the consistent rudeness and repeated criticism over a period of time which she had had to face which placed the Respondent in breach of the Code.
- 5.4.7 In respect of paragraph 4 (c), bullying and harassment was described in the Ombudsman’s Guide to the Code of Conduct as “*repeated behaviour which upsets or annoys people*” and/or “*offensive, intimidating, malicious, insulting or humiliating behaviour*”. That accorded with our understanding of the words as they were commonly applied through other legislation (for example, s. 26 of the Equality Act 2010). Having considered the communications against that test, we were satisfied that the Respondent was also in **breach of paragraph 4 (c)**. We repeat our findings in respect of the Respondent’s Article 10 rights.

Expenses claims (paragraph 2.1.2.2)

- 5.4.8 The IRP’s Report’s requirement for expenses claims to have been by way of “*reimbursement of additional actual costs*” to be met upon “*production of receipts from the carer*” clearly presupposed the existence of a contractual liability to that effect. The Respondent argued that no pre-existing liability had to exist before a claim could have been made, but the Tribunal considered that the approved IRPW guidance [136] was very clear; it was designed to cover “*the reimbursement of actual costs [parenthesis added]*”. Mrs Williams’ evidence also supported that interpretation. No receipts from the carer, Mr Edwards, had ever been

produced until the final day of the hearing. Even then, they were inconsistent with other evidence (see paragraphs 4.21-4.26 above). The Respondent's alternative submission, that 'receipts' equated to 'bills' in his mind, was inconsistent with his primary case and lacked credibility.

5.4.9 The Respondent had sought to create the impression of a formal, settled employment relationship having existed between Crocels and Mr Edwards or, at the very least, that some kind of contractual liability to pay for the support rendered at the meetings had been created. The Tribunal found there to have been no such relationship or liability. Further and more importantly, Mr Edwards was not in fact paid, as both he and the Respondent (in the form of Mr Edwards' letter of 2 March 2020 which was drafted by him) stated. Yet further, even if a liability had existed, it had not existed for the sum claimed from the Authority, as the Respondent's submissions at the Third Stage of the hearing confirmed.

5.4.10 The expenses claim was misleading and the Claimant had brought his office into disrepute by making it in **breach of paragraph 6 (1)(a)** of the Code. The claim was also an attempt to gain a financial advantage which rendered him also in **breach of paragraph 7 (a)** in the absence of a liability to forward the claim to Mr Edwards in whole or in part. Further, it demonstrated a failure to follow the Authority's rules concerning the claiming of expenses and he was in **breach of paragraph 9 (a)**.

5.4.11 The Respondent also intimated an expenses claim in respect of his father which, when questioned, was not proceeded with. His account in respect of his father's role and relationship with Crocels (4 September 2019 [172]) was inaccurate, as he subsequently conceded [469]. His actions, in the preparatory steps *towards* an expenses claim, did not, however bring his office into disrepute. He was testing the water. We considered that he had **not been in breach of paragraph 6 (1)(a)** of the Code of Conduct. His father's email of 4 September [2802] appeared to have been an implicit acceptance of the fact that such a claim might have been improper but, since he did not actually submit one, the Tribunal was not satisfied that he had attempted to confer an advantage upon himself or anyone else. He was also therefore **not in breach of paragraph 7 (a)**. He had also not failed to observe the Authority's rules regarding the claiming of expenses and was **not in breach of paragraph 9 (a)**.

Mr Edwards' letter of 2 March 2020 (paragraph 2.1.2.3)

5.4.12 The Respondent had not been present at Mr Edwards' interview on 28 February 2020. He could not have known what had been said. He nevertheless drafted the letter of 2 March 2020 in which Mr Edwards purported to deny the accuracy of the account which he had given. It was reasonable to conclude that the Respondent had become involved because Mr Edwards' draft statement had contained evidence which was damaging and inconsistent with his own.

5.4.13 That was a serious matter; Mr Edwards had given an account to an investigation into the Respondent's conduct and here was the Respondent himself attempting to influence and/or change that evidence. At the very start of the Ombudsman's investigations, he was written to in the following terms [104-5];

"The Ombudsman's investigations are conducted in private. You are therefore asked not to contact or discuss the details of the complaint with any potential witnesses or persons who may be involved in the matter, whether directly or indirectly, to avoid any prejudice to the investigation. Conduct of this kind may amount to a breach of the Code."

5.4.14 His conduct in relation to the drafting of the letter brought his office into disrepute and he was in **breach of paragraph 6 (1)(a)** of the Code of Conduct. The Ombudsman's Guidance to this paragraph specifically prohibited councillors from engaging "*in any behaviour that may prejudice an investigation undertaken by me* [the Ombudsman]". His assertion that he had been writing the letter as Mr Edwards' line manager under Crocels' Whistleblowing Policy (which had never been produced) was no defence.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Evidence and submissions at this point were heard and received in closed session in accordance with paragraphs 5.11 and 5.12 of the Listing Direction [6]. In order to enable the parties to understand some of the personal evidence which was accounted for, the Tribunal has done little more than refer to the sources of that evidence below and the mitigation that it provided.

6.1.2 The Tribunal received character evidence from Reverend Gethin Rhys who spoke of the Respondent's philanthropic work in Treforest and elsewhere through and on behalf of Crocels. It was pleasing to hear that he had not experienced the type of loss of control which had been exhibited in the emails to Councillor Fowler.

6.1.3 In terms of his autism and mental health generally, the Respondent stated that recent modifications to his medication by Dr Macaulay had significantly improved the control of his irritability and reactivity. His father echoed that point.

6.1.4 In relation to other matters, the Respondent stated that he now had a good working relationship with the Authority, with a new Chairman and Clerk now in place, and continued to have a fruitful relationship with his colleagues on Cam Parish Council in England. His ability to attend meetings remotely reduced the stress that he experienced.

6.1.5 In relation to the allegation under paragraph 4 (c) of the Code, the Respondent had previously argued that bullying and harassment were new concepts for which he had not received training (see paragraph 5.5.2 of the Listing Direction), although he has received training on the 2016 Code now.

6.2 Case Tribunal's Decision

6.2.1 The Case Tribunal considered all the facts of the case and the Sanctions Guidance issued by the President of the Adjudication Panel for Wales under s. 75 (10) of the Local Government Act 2000. It also considered the Nolan Committee's Principles for Public Life from which the National Assembly for Wales' core principles were derived. Those principles set standards of conduct and behaviour which were expected of councillors in the Respondent's position and which included honesty, integrity, respect and openness, all of which had been brought into focus here.

6.2.2 First, the Case Tribunal had to assess the seriousness of the breaches and their consequences.

6.2.3 It considered that the Respondent's conduct on 11 September 2019 towards Councillor Fowler and, over a longer period, to Mrs Williams had shown a lack of respect and been unacceptable. It was clear that Mrs Williams had been particularly upset by this (paragraph 11 of her first statement [111] and paragraph 2 of her second [112] and her letter of resignation [838-9]), following over forty years' work in local government.

6.2.4 In relation to the expenses issues as stated above, the Respondent's closing submissions at Stage Three indicated an awareness that what had been claimed on behalf of Mr Edwards had been more than his indebtedness. Irrespective of the intended use of the 'surplus' which CCMG CIC would have acquired if the claims had been paid, the submission was the clearest admission yet that the claims had *not* been limited to a liability owed to Mr Edwards.

6.2.5 Finally, in relation to the letter purportedly written by Mr Edwards, as we said in paragraph 5.4.13 above, we considered that to have been a serious matter for the reasons set out therein.

6.2.6 In terms of the broad sanction that was appropriate in the circumstances, the Tribunal considered that the option of disqualification was most applicable.

6.2.7 The Tribunal had started by considering whether it could take no action or impose a partial suspension but, in the case of the former, it considered the conduct had been too serious and, in the case of the latter, there was no particular aspect of the Respondent's conduct which made a partial suspension appropriate. As to a suspension

generally, the lack of contrition and/or apparent insight into his wrongdoing left the Tribunal with a sense of concern in relation to the Respondent's future conduct. Further, as a result of s. 76 (5) of the Local Government Act, any suspension would have been limited to 4 May 2022, the date upon which the Respondent's term of office ended, which we considered would not have adequately reflected the nature of the wrongdoing.

6.2.8 The Tribunal then considered both mitigating and aggravating features and, in particular, those matters set out within paragraph 42 of the President's Sanctions Guidance.

6.2.9 The Tribunal was informed that the Respondent had no prior record of misconduct with the Ombudsman or the relevant Monitoring Officer.

6.2.10 In the Respondent's mitigation in relation to the complaint concerning the emails to Councillor Fowler, the Tribunal noted two matters in particular; first, that there had been a certain level of acceptance of wrongdoing at first (see his email of 13 September [95]). Unfortunately, however, that contrition appeared to have evaporated by the time of the hearing, with him continually asserting that the Councillor would not have been upset by the words used. He had nevertheless attended further training on the Code.

6.2.11 Secondly, there was the medical evidence in relation to his disability which had to be considered and, in particular, the matters which were said to have contributed to what he described as a 'meltdown'; see Dr Rajput's report, following assessments in April and June 2020 [650-1] and the specific reference to 'meltdowns' when overwhelmed in Dr Matthews' report of 10 March 2021 [525]. Those were important mitigating factors and we recognised that the style and content of those emails to Councillor Fowler had been markedly different from hundreds of others that had been before us.

6.2.12 We were encouraged by the effects of the Respondent's altered medication and pleased to hear about his current relationships with the Authority and his colleagues at Cam Parish Council. Nevertheless, the Respondent had been a councillor, on and off, since 2003 and the emails had been unacceptable. We were concerned about a repeat of similar conduct in the absence of any clear insight or acceptance of his wrongdoing.

6.2.13 It could not have been said, however, that the series of emails which had been written to Mrs Williams had been the product of the same impulsive 'meltdown'. The Respondent had embarked upon a campaign to denigrate and demean and, although his condition may have prevented him from appreciating the effect of his conduct upon someone in Mrs Williams' position, the Tribunal was concerned that his lack of contrition or awareness may lead to a repeat of the same or similar conduct.

- 6.2.14 The Tribunal considered that the Respondent's lack of training in respect of paragraph 4 (c) of the Code was a poor point. We did not consider that a councillor, who was otherwise bound by and aware of the Code, ought to have needed formal training in order to prevent him from engaging in a course of conduct which amounted to bullying or harassment.
- 6.2.15 Nor did the medical evidence explain or justify the Respondent's wrongdoing in relation to the expenses issues and/or his involvement in the composition of Mr Edwards' letter. These matters were serious and had required care, pre-meditation and an intention to mislead. There was nothing in the medical evidence to suggest that such traits were a feature of his disability.
- 6.2.16 It was, the Tribunal considered, also rather a shame that the Respondent's father had approached the matter in such a combative and non-conciliatory manner. Rather than, for example, accepting that his son had been ill advised or hot headed in some respects (for example, to have written some of his emails to Councillor Fowler and/or Mrs Williams), he accused the former of having made "*false malicious lies*" and suggested that the Respondent had never "*questioned the clerks qualifications or tried to undermine*" her [2948]. Despite the representative support which he had provided, we could not and did not blame the Respondent himself for his father's stance.
- 6.2.17 The Case Tribunal considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards expected in public life. It concluded by unanimous decision that Councillor Bishop should be **disqualified for 12 months** from being or becoming a member of the Authority or any other relevant authority within the meaning of the Local Government Act 2000.
- 6.2.18 The Authority and its Standards Committee are notified accordingly.
- 6.2.19 The Respondent has the right to seek the permission of the High Court to appeal the above decision. Any person considering an appeal was advised to take independent legal advice about how to appeal.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal did not consider it appropriate to make recommendations to the Authority in the case given the nature of the sanction imposed and the surrounding circumstances.



Signed.....
Mr J Livesey
Chairperson of the Case Tribunal

Date...14 February 2022.....

Dr G Jones
Panel Member

Mr R Payne
Panel Member

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DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/005/2021-022/CT

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

RESPONDENT: Councillor Perry Morgan

**RELEVANT AUTHORITY: Abertillery and Llanhilleth
Community Council**

Representation and attendance.

Respondent: Mrs Sally Oakley

Public Services Ombudsman for Wales: Mr Gwydion Hughes, Counsel

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 which had been made by the Public Services Ombudsman for Wales (“the Ombudsman”).

1.2 A hearing was held by the Case Tribunal by Cloud Video Platform (CVP) on 24th November 2021, 2nd December 2021 and 20th January 2022. The hearing was open to the public save for evidence in relation to confidential medical matters that was heard in camera.

1.3 Cllr Morgan attended and was represented by Mrs Sally Oakley, a retired and non-practising solicitor. The case tribunal was grateful for Mrs Oakley’s representation and assistance. A hearing bundle was prepared for the parties and the tribunal and references within square brackets are to the pages of documents within the hearing bundle unless otherwise stated.

2. Preliminary issues at the hearing.

2.1 The Case tribunal issued a listing direction dated 12th October 2021 [3-10] in which, amongst other things, directions were given to enable the Respondent to provide a witness statement and any medical evidence by 26th October 2021 and the Respondent and the Ombudsman were to provide any

further submissions by 3rd November 2021. The Respondent did not comply with those directions.

2.2 By e mail sent on Friday 19th November 2021 at 12:21 to the Adjudication Panel for Wales (APW), Mrs Oakley sought an order striking out the case against the Respondent based on what she described as the “demonstrably unreliable” evidence of Councillors Lucas and Postlethwaite, asking that if this was not acceded to that the minutes of the meetings of Abertillery and Llanhilleth Council (“the authority”) of 26th June and 30th October 2019 be added to the bundle and that permission be given for a statement of fact from Councillor Gary Oakley (Mrs Oakley’s husband) to be admitted concerning the meeting of 30th October 2019. Mrs Oakley sent a further e mail at 3:32 pm on the afternoon of Friday 19th November 2021 seeking to adduce information relating to medical matters and stating that what had been recorded as an undisputed fact in relation to the Respondent declining to be interviewed by the Ombudsman in December 2019 was now disputed.

2.3 The tribunal indicated that these emails should be forwarded to the Ombudsman for comment and would be dealt with as preliminary issues at the hearing.

2.4 Mrs Oakley renewed her application to strike out the case against the Respondent on the morning of the first day of the hearing. In essence, she argued that one of the allegations related to the authority’s meeting on the 26th June 2019 and the minutes of that meeting, as well as evidence from her husband that she sought to adduce (including What’s app messages), proved that the Respondent was not at that meeting. Further in relation to allegations after the meeting of 30th October 2019, she contended that the minutes [page 110] demonstrated that the Respondent had left the meeting early and the allegations could not be true. Mrs Oakley submitted that the totality of this evidence meant that there had been some form of collusion between Councillors Lucas and Postlethwaite in relation to the allegations of 30th October 2019 as the Respondent was simply not there. She submitted that this was of such fundamental importance to the allegations that the case should be struck out.

2.5 The tribunal asked why the listing direction had not been complied with and why a statement from Councillor Oakley had not been submitted previously. Mrs Oakley candidly admitted that it was a matter of regret that these points had not been spotted until recently. She offered no reason as to why the Listing Direction had not been complied with.

2.6 Mr Hughes for the Ombudsman noted that the suggestion that this information had only come to light recently is plain wrong and submitted that the Respondent and Mrs Oakley had completely failed to engage with the tribunal’s listing direction and had they done so then they might have been alerted to these points sooner. By analogy with the test for strike out in civil proceedings there is a reasonable case to answer and it would be very unusual for a civil court to engage with factual matters on a strike out application unless it was entirely obvious that a factual case would fail. Mr Hughes drew attention to the

Respondent's response form to the APW which was signed with a statement of truth [208] and that in that form he conceded that he was present on 30th October 2019 [192.193]. Further, Councillor Lucas' account was supported by the evidence of Councillor Assirati, Mrs Clark and Ms Postlethwaite and there was no challenge to the credibility of the others. Mr Hughes did not object to the late admission of Councillor Oakley's statement since he was able to deal with this.

2.7 The tribunal rejected the application to strike out the case. The Respondent had not complied with the listing direction and there was still no written statement from him. Mrs Oakley was unable to offer any reason at all, let alone any good reason, for the non-compliance. In view of the Respondent's continuing lack of compliance with the directions order, the application could best be described as optimistic, or more realistically, as entirely misplaced. Mrs Oakley and the Respondent had ample time to consider the hearing bundle and previously produced documentation. The Respondent had ample time to submit a witness statement of his own (which he had still not done) and to submit a statement from Councillor Oakley. The points upon which Mrs Oakley submitted the whole case should be struck out, were just two of many factual instances to be considered by the tribunal. Those matters can be tested in evidence and any apparent contradictions can be put to the witnesses for comment. It ill behoves the Respondent to ignore the listing direction which is specifically designed to enable him to provide evidence directed to the allegations and disputed facts, only to then seek to adduce late evidence and rely upon that to try and dismiss the entire proceedings. The application bordered on impertinence.

2.8 The tribunal allowed the witness statement of Councillor Oakley to be admitted late and was grateful for Mr Hughes' approach to this matter. The tribunal allowed the limited medical evidence to be admitted, again notwithstanding that this was substantially out of time with the order in the listing direction.

3. PRELIMINARY DOCUMENTS

3.1 Reference from the Public Services Ombudsman for Wales

3.1.1 In a letter sent by e mail dated 2nd August 2021, the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against Cllr Morgan. The allegations were that Cllr Morgan had breached the Abertillery and Llanhilleth Community Council's Code of Conduct by using offensive and discriminatory remarks about a fellow councillor in relation to her hearing impairment, by deliberately behaving in a manner at Council meetings so as to cause difficulty for her, and by failing to engage with the Ombudsman's investigation. The tribunal was investigating alleged breaches of paragraphs 4(a), 4(b), 4 c), 6 (1)(a) and 6(2) of the Code.

3.1.2 The allegations that the Ombudsman considered on balance were suggestive of a breach of the Code were as follows. That the Respondent

ridiculed Councillor Lucas who has a hearing impairment of which the Respondent was aware, during the council meeting of 30 October 2019. It was alleged that the Respondent said “I can say what I like about her, she can’t hear me anyway” and “there should be a law against having a disabled deaf woman here, what use is she going to be?”[26-27]

3.1.3 That the Respondent made discriminatory remarks ridiculing Councillor Lucas immediately after the Council meeting on 30 October 2019 and making the following comments: “what you going to do? If I want to talk about you I will, you won’t hear it”. [27-28]

3.1.4 That the Respondent’s behaviour during council meetings, specifically talking across others and engaging in conversation with Councillor White was a deliberate attempt to cause difficulty for Councillor Lucas [28]

3.1.5 That the Respondent failed to engage with the Council’s microphone system in a deliberate attempt to cause difficulty for Councillor Lucas [29], and that the Respondent put his hand over his mouth when speaking in a deliberate attempt to cause difficulty for Councillor Lucas who partly relied on lip reading [29-30].

3.1.6 That the Respondent deliberately failed to engage with the Ombudsman’s investigation [30].

3.2 The Councillor’s Written Response to the Reference

3.2.1 The Respondent provided a written reply to the APW dated 20 August 2021 on form APW01 [187-208].

3.2.2 Matters commented on by Cllr Morgan, referred to by paragraph numbers of the Ombudsman’s report in his written reply to the APW [192-195];

- a) Paragraph 33- the Respondent says that he was not aware that Councillor Lucas had a hearing impairment until the Council meeting of 11 December 2019.
- b) Paragraph 35 – the Respondent strongly denied making any remarks about Councillor Lucas during the Council meeting on 30 October 2019. He suggested that if Councillor Assirati had heard him, she would have called a point of order.
- c) Paragraph 36 – the Respondent strongly denied ridiculing Councillor Lucas immediately after the council meeting of 30 October 2019, or at any other time and said he had had no contact with her since they had been at school, until she joined the Council. He described talking to Councillor Postlethwaite in the car park after the meeting whilst Councillor Lucas was stood a short distance away.
- d) Paragraph 37 – the Respondent denied making any attempt to cause Councillor Lucas difficulty by making comments to Councillor White.

- e) Paragraph 39 – the Respondent denied putting his hand over his mouth when speaking to cause difficulty for Councillor Lucas who he now knows relies partly on lip reading.
- f) Paragraph 40 – the Respondent denied deliberately failing to engage with the Ombudsman’s investigation, stating that he was too ill to do so.

3.3 The Ombudsman’s Written Representations

3.3.1 By an email dated 25 October 2021 [291], the Ombudsman, using form APW08, [210-214, 292-295] provided a written response to the Respondent’s APW01 reply form, with reference to the paragraph numbers in the Ombudsman’s report.

- a) Paragraph 33 – the Respondent did not tell the Ombudsman that he was unaware of Councillor Lucas’s hearing impairment until the meeting of 11 December 2019. The Respondent’s letter to the Ombudsman dated 23rd of March 2020 referred to his foster carer role, that he had fostered children with hearing impairments and that his mother suffers from a hearing impairment. This suggests that he was aware and accepted that Councillor Lucas also suffered from a hearing impairment.
- b) Paragraph 35 – his comments about Councillor Assirati are speculation and had not previously been provided.
- c) Paragraph 36 – in denying that he ridiculed Councillor Lucas after the meeting of 30 October 2019, the Respondent has now provided his own account of events which he did not do during the Ombudsman’s investigation.
- d) Paragraph 37 – the Respondent’s comments were not provided to the Ombudsman during his investigation.
- e) Paragraph 39 – the Respondent’s comments and denial of putting his hand over his mouth when speaking was not provided to the Ombudsman during the investigation.
- f) Paragraph 40 – the Respondent was provided with several opportunities to engage with the Ombudsman’s investigation, including the option of completing written questions rather than attending an interview. The Ombudsman also agreed to the Respondent’s requests to interview further witnesses. The Respondent did not provide the Ombudsman with any detail of his illness despite being requested to do so. The Council’s Clerk informed the Ombudsman that the Respondent had been attending Council meetings during the time of the Ombudsman’s second request for him to attend at an interview.

4. The Listing Direction.

4.1 It should also be noted that, the Case Tribunal, upon considering the evidence, felt that there was a further allegation suggestive of a breach of the Code, namely that Councillor Morgan, at a meeting of the full Council on Wednesday, 26 June 2019, was alleged to have said to Councillor Lucas after she had signed the declaration of office “what the fuck are you doing back here? Didn’t you get the message that we don’t want a deaf woman here?”. The Case Tribunal therefore added this to the list of disputed facts in the listing direction and added it to the list of allegations for the tribunal to consider [5,10].

5. ORAL EVIDENCE AND SUBMISSIONS

5.1. The Case Tribunal heard oral evidence from the following witnesses at the First stage of the hearing;

Public Services Ombudsman for Wales

5.2 Councillor Beverley Lucas, former councillor Gill Clark, Councillor Michaela Assirati, Councillor Graham White, Councillor Allen Rees and former councillor Tracy Postlethwaite.

5.3. Councillor Beverley Lucas

5.3.1 Councillor Lucas confirmed that the contents of her witness statement of 15 October 2021 and exhibits [304-315], were true. She described being born with one ear and having microtia. She had a prosthetic ear fitted at age 30 and currently has bilateral hearing aids, one bone anchored and one behind the ear. She described her hearing as getting progressively worse. She was at comprehensive school with the Respondent, although not in the same year. She did not wear hearing aids at school as she had nothing on the right side and there was no technology to assist her at that time, and she relied upon hearing from the left side. Her hearing has deteriorated since her teenage years.

5.3.2 Councillor Lucas said that she made the whole Council aware of her hearing impairment when she joined the council in February 2019, and she said that the Respondent was aware of this because of the things that he said to her. There were two periods when she was a Council member, when co-opted in February 2019 until her resignation in May 2019, and then again after being co-opted at a meeting on 26 June 2019. She described sitting next to the Respondent at Council meetings between February and May 2019 as they were members of the same political party. She said that she told anybody she spoke to about her hearing impairment. She told the Respondent as she sat next to him, and she described that she would have to say “pardon” so he did know about this.

5.3.3 Councillor Lucas described attending a council meeting on 26 June 2019, the occasion when she was co-opted back onto the council. She described being nervous and sitting in the public gallery and that the Respondent voted against her being co-opted and said to her “what the fuck are you doing back

here, didn't you get the message, I didn't want you back here". Councillor Lucas referred to a document [44] attached to her original complaint to the Ombudsman and said that these were typed notes that she had made contemporaneously. She said that after the meeting on 26 June 2019 she was so upset that she decided that she needed to keep a record and this document was a record of her notes and personal observations.

5.3.4 Councillor Lucas was challenged strongly by Mrs Oakley about her recollection of the meeting of 25 June 2019. The minutes of that meeting listing the Respondent as being absent were put to her, as were the contents of WhatsApp messages from the Respondent to Councillor Oakley on 26 June 2019 and 27 June 2019, the latter asking how the meeting went. Councillor Lucas stood by her account, maintained that the Respondent had been there, and she had sat by him and suggested that the time of receipt of WhatsApp messages could be easily manipulated. Councillor Lucas said that she was "100% sure" that the Respondent was present because that was when she started making notes. She said that at that time a folder was passed around to participants at the meeting to sign and that if an individual was not there at the beginning of the meeting they would be marked as absent.

5.3.5 Councillor Lucas maintained that on 30 October 2019 during the meeting, when newly appointed Councillor Assirati was sat to her left, that the Respondent said to her "I can say what I like about her, she can't hear me anyway" and "there should be a law against having a disabled deaf woman here, what use is she going to be?" [304] Councillor Lucas described being with Councillor Postlethwaite in the car park after the meeting. It was dark and Councillor Postlethwaite was going to give her a lift home. She asked the Respondent why he was behaving like that with her and she said, "he just laughed and said what are you going to do about it, you can't hear me and I can say what I like about it." She said that she tried to explain that she could hear him as a bi- lateral hearing aid wearer, but "he just laughed and said that you could not do anything about it, I have been here a long time". Councillor Lucas described that Councillor Postlethwaite had challenged the Respondent that what he was saying was not in line with the Disability Discrimination Act and that he was being offensive and unnecessarily hurtful, but "he just laughed and said that there are two of you having a go at me now are there, but you're not going to get anywhere."

5.3.6 Councillor Lucas maintained her account under cross examination and was adamant that the exchange in the car park with the Respondent, herself, and Councillor Postlethwaite had taken place on 30 October 2019. She said that she made the notes of what happened on the same day, the 30th of October.

5.3.7 Councillor Lucas maintained that the Respondent and Councillor White had made personal remarks about her hearing in meetings in November 2019 as reported in her email to the then Clerk of the Council, Gill Clark [313]. She said this is still happening and "it is almost like I am being tolerated not accepted".

5.3.8 Councillor Lucas described how it was straightforward to use the Council microphone system and that members were reminded to use it at the meeting

on 11 December 2019. She described that the Respondent had laughed at that point, and she felt that there was not much point in her coming to the Council meetings as she was being called names and subjected to personal remarks which she was finding difficult to cope with. For the meeting on 20 January 2020, she had changed seats. She did so in order that more councillors could be in her line of sight so that she could lip read or have them on her better side so she could benefit from the more powerful new hearing aid that she was using. She also said that the Respondent was making it intolerable for her to be in her previous seat. She had confided in Councillor Postlethwaite that she was considering not returning to the Council after Christmas, and Councillor Postlethwaite had offered to exchange seats.

5.3.9 Councillor Lucas said that she had told the whole chamber that she had a severe hearing disability but also relies upon lip reading when there is a big room and although she had hoped that use of the microphone and changing seats would solve the problem, it did not because the Respondent would put his hand in front of his mouth when he was speaking so that she could not see what he was saying. She also described the Respondent keeping up a running commentary with Councillor White and that as hearing aid users will know, all you can hear is the crisp packets rustling and whispering if they are next to you. Councillor Lucas said that the Respondent would sometimes not switch the microphone on, and he would also speak over whoever was speaking. She was clear that he does not do this with anyone else and only does this if she needs to know what is going on.

5.3.10 Councillor Lucas confirmed that, as per paragraph 8 of her witness statement [305], that at the meeting on 11 December 2019 when councillors were reminded to use the microphone system, the Respondent said to her “you don’t want to think that I’m going to help you, you got no business being here.” She said that they were sat next to each other at that point, and she could hear quite well because of her new upgraded hearing aid that she used together with her lip reading. She said that she could not possibly know his motivation for behaving like this and saying these things, but she maintained he had done so.

5.3.11 Councillor Lucas told the tribunal that when she had first sat next to Councillor Morgan, she explained the situation and told him that he had to be patient and that conversation would have taken place on both occasions when she joined the Council (after joining in February and June 2019). She remembered telling him this. She also said that the Respondent was part of a small gang of boys bullying her in school because of her disability and she described going to both the junior and senior comprehensive school.

5.4 Councillor Michaela Assirati

5.4.1 Councillor Assirati confirmed the contents of her witness statement signed on 5 September 2020 [121-122]. She said that she had known Councillor Lucas in secondary school and as soon as she first met her, she knew she had a hearing problem. She described that Councillor Lucas was bullied quite a lot at school as she only had one ear and quite a few people used to take the

mickey out of her. It was possible to see that she only had one ear, for example if doing PE when her hair would be blown about.

5.4.2 Councillor Assirati confirmed that the first council meeting she attended was on 30 October 2019 and “it opened my eyes to a council meeting, it was the way that Councillor Morgan was to Beverley, he was saying things like I can say what I like she can’t hear me anyway.” “I was disgusted to be honest how someone could be treated like that, I don’t know if she was meant to hear it, but I certainly heard it.” Councillor Assirati said that the Respondent was sitting on Councillor Lucas’ right which is her bad ear side, and that she was sitting on Councillor Lucas’ left which was her good ear side. She maintained that as per paragraph 4 of her statement [121] that she heard the Respondent say something about there being a law about deaf people as they are no good and cannot do anything anyway. When cross-examined about this she said that she had definitely heard him saying things about deaf women at the Council, “I definitely heard that, I am not in the habit of making things up, I definitely heard it.”

5.4.3 Councillor Assirati also described the meeting on 11 December 2019 when Councillor Clark had described Councillor Lucas having hearing difficulties and asking for consideration and that councillors use the microphone system. She said that this didn’t work as, although some councillors obeyed, the Respondent kept putting his hand over his mouth and half the time he did not use the microphone system after being told that Councillor Lucas could not hear. Councillor Assirati was asked why she had the impression that the Respondent covering his mouth was directed at Councillor Lucas. She said that when the Respondent covered his mouth as he was talking, he was looking directly at Councillor Lucas. She said that the Respondent put his hand over his mouth numerous times and was reminded about it. She said that she was not saying he did this every time, but it was not just at that meeting, he did it at numerous meetings.

5.5 Councillor Graham White.

5.5.1 Councillor White confirmed the contents of his statement signed on 27 October 2020 [125-126]. He has known the Respondent for the last 6 or 7 years or so since the Respondent has been on the council during which time they have sat next to each other at council meetings. He said they did not talk to each other through the meetings although when he said in his statement that he and the Respondent bounce off each other what he means is that if somebody makes a statement during the meeting, he will clarify with the Respondent whether it is correct or not and will comment quietly to the Respondent if he does not think what is being said is right or true. Councillor Morgan will respond to him, and he said they do chat between themselves. He says he usually brings a bag of sweets; jelly babies and takes a big bag as the Respondent eats more of them than he does. He said he took jelly babies to meetings and never took crisps. He had not appreciated that the rustling of a sweet packet could cause problems to somebody with a hearing impairment.

5.5.2 Councillor White said he knew Councillor Lucas in 2015 when she attended a meeting but there was no indication then that she had a hearing

problem and he said that he could not remember the Respondent ever saying anything disparaging about Councillor Lucas having a hearing problem in the council chamber. He referred to a previous council chair who had a hearing impairment and used to lip read. He repeatedly maintained that if the Respondent had said something disparaging about Councillor Lucas's hearing impairment, then he would have pulled him up for it and said he should not be doing it.

5.5.3 Councillor White said that it was at the meeting after Councillor Lucas was co-opted as a councillor in February 2019 that he realised she had a hearing problem. He said that "I knew of her in 2015 when she first applied to join the council and my wife knew her from taking the kids to school, the next time I saw her was when she appeared as a councillor. It was fairly obvious she had to take longer to absorb what we were saying and obviously it was because of her hearing impairment." He said that when Councillor Lucas became a councillor that she explained that she had a problem with her hearing, and he suggested that the Respondent must have known this as he knew her from years and years back and he felt that the Respondent would have been aware of Councillor Lucas's hearing impairment before she became a councillor.

5.6 Councillor Allen Rees.

5.6.1 Councillor Rees confirmed the truth of his statement signed on 25 February 2021 [127-128]. He said that although there was a possibility that it was mentioned in passing somewhere before, that to the best of his knowledge he first became aware that Councillor Lucas had a hearing problem when the councillors were requested to use the microphone system and when she had changed seats in the council chamber.

5.6.2 Councillor Rees said that he had not picked up anything with regard to the Respondent's behaviour towards Councillor Lucas. He confirmed that under the previous clerk in 2019 that a folder was handed around in meetings and attendees signed it. He thought it possible but unlikely that Councillors attending late and not signing the paper would occur, because the previous clerk was very efficient and would have asked councillors to sign and it would have been recorded that someone came in late.

5.7 Former Councillor Gill Clark.

5.7.1 Mrs Clark confirmed the truth of her statement signed on 29 August 2020 [119-120]. The statement recorded that she had blocked the Respondent's emails because of his behaviour, and she elaborated in oral evidence that the tone of the Respondent's emails was very threatening and quite crass in the things that he raised. She said there was no business-like behaviour, rather it was the Respondent insulting the clerk and herself as the previous chair of the Council, and other councillors. Mrs Clark's statement recorded her belief that the Respondent deliberately makes it difficult for Councillor Lucas to participate at meetings and she elaborated upon the reasons for this. She said that the Respondent was sitting very close to Councillor Lucas and Councillor Assirati and his behaviour was very disruptive. Councillor Lucas often said that she

could not hear what was going on because of the Respondent's joking and behaviour with Councillor White. Mrs Clark said that the Respondent did not take Councillor Lucas' difficulties into account and treated it as a joke.

5.7.2 Mrs Clark said that even after Councillor Lucas had explained to the council about her hearing difficulties and hearing aids that the behaviour of the Respondent and Councillor White carried on. Mrs Clark said that this was very disrespectful of not only Councillor Lucas, but of the council itself. Mrs Oakley challenged Mrs Clark as to why she had not raised a point of order if the Respondent's behaviour was as she had indicated? Mrs Clark said that she did tell the Respondent that his behaviour was unacceptable, and she interrupted the Respondent and Councillor White upon many occasions. However, she took advice from the clerk and pointed out that not everything was minuted. Further she did not consider it would be appropriate to put such things in the minutes as it would not give a good image of the council to the public and would make the council a laughing stock.

5.7.3 Mrs Oakley suggested that the difficulties caused for Councillor Lucas were not caused by the Respondent and his behaviour was no different from anyone else's and that was the reason he had not been singled out in council minutes. Mrs Clark said that that was incorrect. She knew that the whole council did not behave that way and the fact that she raised it showed that she had concerns, for example in the minutes for the meeting of 29 January 2020 [83]. Mrs Clark said that it would not be appropriate to single individuals out in the minutes, and it would not give the public a good impression of the Respondent had he been named in the minutes in this way.

5.7.4 Mrs Clark's statement recorded that the Respondent behaves as if Councillor Lucas's hearing difficulty is a joke to him and he uses it as a stick to beat her with and it is as if he tries to intimidate her [paragraph 5, page 120]. Expanding upon this in her oral evidence, she said that another way of saying this would be that he takes the mickey out of Councillor Lucas and his behaviour towards her is not acceptable. It would not be acceptable in the workplace, and it is not acceptable in the council. Mrs Clark said that if someone has a disability then you should do your best to include them and not to laugh at them and make comments about them. She conceded that she did not hear exactly what the Respondent said, but she could hear him and Councillor White laughing and could see that Councillor Lucas was upset.

5.7.5 Mrs Clark said that Councillor Lucas had come to her after the meeting of 30 October 2019. Her statement said that the Respondent had been particularly disruptive during that meeting and that she spoke to Councillor Lucas after the meeting. In oral evidence, Mrs Clark could not now remember specifically where she spoke to Councillor Lucas upon that occasion but said it was most likely that Councillor Lucas had come over to Mrs Clark when other members had left or were leaving.

5.7.6 Mrs Clark said that she had also served on Blaenau Gwent Borough Council for two terms over nine years, often in the chair, and she never felt uncomfortable or disrespected throughout those nine years. She contrasted this with her time at Abertillery and Llanhilleth community Council which she

described as “toxic”. She said that the council Clerk and herself were challenged all the time at every meeting. She said that the Respondent was one of those who challenged the clerk and he often talked across the room to other people. She said that the Respondent was the only one who had not done the code of conduct training. Everyone else had done it and new councillors went as far as Bridgend to do the training, but the Respondent said that he would not go unless the training was in Abertillery. She said that it was quite common when they had votes, for the Respondent to punch the air if his side was successful.

5.7.7 Mrs Clark said that the Respondent was the person that she had to remind most frequently to use the microphone system, but she did not know if this was intentional and would give him the benefit of the doubt and say it was accidental. However, when Councillor Lucas had said she couldn’t hear matters, the Respondent made no attempt to change his use of the microphone system. Mrs Clark confirmed that the system for recording members attendance at meetings was for them to sign it in a book that was passed around and she felt that if a person came in late the book would be passed to them and the clerk and the minutes would both record this. Mrs Clark said that she did not know about Councillor Lucas’s hearing impairment until she joined the council but noted that Councillor Lucas talks quite freely about her hearing difficulties and has had quite complicated devices fitted. Mrs Clark could not remember how soon after Councillor Lucas joined the council that she had become aware of her hearing difficulties but noted that Councillor Lucas does raise the issue with people and had often raised issues that she had problems hearing if there were a number of people speaking at the same time.

5.8 Former Councillor Tracy Postlethwaite.

5.8.1 Ms Postlethwaite confirmed the truth of her statement signed on 5 September 2020 [123-124]. She confirmed that she did not know either Councillor Morgan or Councillor Lucas before she joined the council. She said that she became aware that Councillor Lucas had a hearing impairment during meetings when Councillor Lucas would raise her hand and asked for things to be repeated. She could see that there was an issue. She sat directly opposite Councillor Lucas and could see that Councillor Assirati was writing things down and helping her. She had been co-opted to the council and believed that she had first attended at the meeting on 25 September 2019.

5.8.2 Ms Postlethwaite said that after the meeting on 30 October 2019 she walked out and down the steps with Councillor Lucas and offered her a lift home as it was a cold night, and she was going in that direction. She said that the Respondent was stood outside the door of the council offices smoking as they walked through the door. She said that the Respondent asked her if she was going to the knit and natter group, and she said that she did not know what he was talking about. He told her that she could be a good councillor. Ms Postlethwaite said she replied “so could you if you behaved yourself”. She told the tribunal she had said this because it was very unruly and “if a vote was won, he would punch the air as if a football team had scored, which I thought was a bit bizarre.” She also said that the Respondent would challenge every single thing in the council meetings, and she felt it was a bit of a battlefield at times and a bit toxic.

5.8.3 Ms Postlethwaite said that on 30 October 2019 Councillor Lucas reacted to something that the Respondent said about the knit and natter group, and she got upset. Ms Postlethwaite said to the Respondent that he should be more careful in the way that he behaves and what he does. The Respondent then said, "well she can't hear me anyway". Ms Postlethwaite told the Respondent that he should not be acting this way as it was discriminatory under the Disability Discrimination Act, and you should be mindful of people with disabilities. She said that the Respondent said he knows all about this as he fostered a daughter who is disabled, and he sort of shrugged and laughed it off. She described Councillor Lucas as being angry and really upset and that she was sick of being treated in this way. Ms Postlethwaite said that it was hard to remember word for word what had been said as it was going back two years although she thought she would probably remember it better if she was the person with the disability and the comments were hurtful to her.

5.8.4 Ms Postlethwaite was challenged robustly but fairly by Mrs Oakley as to whether she was mistaken about the date of this exchange being 30 October 2019. Ms Postlethwaite said that she was certain that it was 30 October and accepted that the Respondent may have left the meeting a little bit earlier to have a smoke, but that the conversation in the car park did take place with him after the meeting.

5.8.5 Ms Postlethwaite said that the Respondent could be very disruptive in meetings and very challenging to other people's views. With regard to the microphone system that required buttons to be pressed she described him as playing the class clown and that he could be very childlike at times. She did not think that he took the microphone system or anything else with regard to the Council, particularly seriously. She said he had seen sweets and biscuits brought by the Respondent and Councillor White, and when she swapped seats with Councillor Lucas, she appreciated that the noise of a rustling packet would be an additional hurdle for Councillor Lucas. Her statement records that after swapping seats she understood how difficult it was for Councillor Lucas as the Respondent and Councillor White kept up a running commentary upon matters and had been told numerous times not to speak when others were speaking. She said that her time as a councillor was short lived and she found it an unpleasant experience as it was a battleground and a cause of stress to her, so she resigned.

6. Witnesses for the Respondent.

6.1 The case tribunal heard evidence from Councillor Gary Oakley and the Respondent.

6.2 Councillor Gary Oakley

6.2.1 Councillor Oakley had been given permission to adduce his late statement dated 22 November 2021 and he confirmed that the contents were true. It was

submitted too late to be included in the hearing bundle. Councillor Oakley's statement confirmed that the Respondent was not at the meeting of 26 June 2019 and had sent a WhatsApp message to Councillor Oakley asking him to raise a point on his behalf. The statement also recorded that the Respondent left the meeting on 30 October 2019 early and contacted Councillor Oakley by WhatsApp the next day to ask if he had missed anything. Copies of the WhatsApp messages were exhibited to his statement. Councillor Oakley also corrected part of the contents of paragraph 6 of his statement as he had been mistaken about a vote of no-confidence taking place on 30 October 2019 and he asked that that part of his statement be deleted. Councillor Oakley denied that he had tampered with the dates of the WhatsApp messages and said that he would not know how to do so.

6.2.2 Councillor Oakley also described the council microphone system as being difficult to use as it is a multichannel system. He also said that he did not realise that Councillor Lucas had a hearing problem until it was made clear at the meeting in December 2019. He had previously had contact with Councillor Lucas and he described taking a box of chocolates to her and spending half an hour with Councillor Lucas and her mother after she had resigned earlier in 2019. He said that he had no idea at all that she had a hearing problem. Councillor Oakley said he himself has a hearing problem and the acoustics in the council chamber are absolutely awful and it is difficult to hear people if you are sat at the back, particularly if they are softly spoken.

6.2.3 Councillor Oakley said that he is on friendly terms with the Respondent from the council business point of view. He meets the Respondent at a café for egg and chips and tea but has only been to his house once. Although the Respondent is part of the group that Councillor Oakley finds himself in on the council, he said that he did not vote with the Respondent most of the time and they have opposing views upon some things.

6.2.4 Councillor Oakley considered the council's minutes and confirmed the Respondent's attendance record at council meetings. From 20 January until the 26 February 2020 the Respondent attended three meetings. Owing to Covid there were no meetings then until August 2020. From 12 August until the November meeting in 2020 these were held over zoom only and there were four meetings. The Respondent attended two of these. From 16 December 2020, the council chamber was opened for hybrid meetings as some councillors did not have access to the Internet. These meetings were a combination of those in the chamber and held on Zoom. The Respondent attended and was in the chamber for the hybrid meeting of 16th December 2020. In 2021 the Respondent attended a meeting on 27 January but did not attend meetings on 20 January and 22 February. He was not present on 24 February when there was proper microphone access to connect the microphone systems to the laptop. The Respondent was present at meetings on the 10th and 31 March but not present at the meeting on 28 April. The Respondent was present at a meeting on 19 May but not on the 26 May. The Respondent was present at meetings on 23 June and 28th of July 2021 and there was no meeting in August. The Respondent attended meetings on 8 September, 27th of October, 3rd and 24th of November but was absent for the meeting on 29 September.

6.3 Councillor Perry Morgan.

6.3.1 The Respondent Councillor Morgan had not provided a witness statement as directed but answered questions from Mrs Oakley. He was asked if he was aware that Councillor Lucas had a hearing impairment prior to the meeting of 11 December 2019 and he said, "I don't know why I would know as I wasn't at the meeting on the first co-option and wasn't there at the second co-option." He said that he did not know Councillor Lucas in school and had not bullied her. He described the suggestion that he had done so as a "total lie" that had totally shocked him. He maintained that the first time he realised that Councillor Lucas had a hearing problem was when Gill Clark told the meeting about it on 11 December 2019.

6.3.2 Mrs Oakley read the allegation that the Respondent, at a meeting of the full council on Wednesday, 26 June 2019 said to Councillor Lucas after she had signed the declaration of office "what the fuck are you doing back here? Didn't you get the message that we don't want a deaf woman here?". She asked him to comment. The Respondent said, "it is now apparent that I wasn't at that meeting and no, so I couldn't have said that to her.....". Asked why he thought Councillor Lucas said he spoke those words he said, "I have no idea, I have never ever once had a conversation with Councillor Lucas since she was a councillor I don't know why she makes that up."

6.3.3 With regard to the allegation that he ridiculed Councillor Lucas during the council meeting on 30 October 2019 he said that he had left the meeting at 9 o'clock and "I would never have said that to anybody, I've been a foster carer for many years working with different people for a long period of time, why would I say it as I didn't know that she had a hearing defect at that time."

6.3.4 In relation to the allegation that he had ridiculed Councillor Lucas immediately after the council meeting on 30 October 2019 in the car park, he denied this. He said "it has become apparent that I left the meeting. I had left at 9 o'clock but I would have left to go and pick people up at an airport or to pick my foster child up. I wouldn't have been hanging around in the car park." He said that he did recall a conversation with Tracy Postlethwaite after a council meeting but says that this was in December 2019 and in October Tracy Postlethwaite had only just joined the council. He said, "it definitely would not have been the October meeting, it would have been the December meeting and I would have said about the knit and natter as Tracy was at the time part of the group of ladies who were involved in the knit and natter at that time." He said that he believed other councillors were in the car park and maybe Councillor Lucas was but "I can categorically say that I didn't have a conversation with her". It was put to the Respondent that Councillor Lucas had asked him to modify his behaviour. He denied this and said, "I have never had a conversation with Councillor Lucas". He strongly denied ridiculing Councillor Lucas on 30 October 2019 describing her as a "total liar".

6.3.5 The Respondent denied that his behaviour in council meetings was causing any problems to any councillor. He said that he would put his hand up

when he was to speak and in relation to suggestions that he punched the air on a successful motion he described it as nonsense and that he would only behave in that way if Manchester United scored or in relation to Welsh rugby. He said that he never ate crisps or biscuits in the council chamber although he would eat the jelly babies brought in by Councillor White. He said that he has now undertaken code of conduct training which was held in the local council offices in Abertillery whereas the previous clerk had wanted them to undertake training in Bridgend. He said that running his own taxi business and doing a lot of airport runs, and with his wife's foster carer commitments he was not able to attend training in Bridgend but had always said that he would do so when it was arranged locally. He said he was not prepared to give up a £300 airport run for training and would not be prepared to give up his income.

6.3.6 The Respondent said that there were some problems with the microphone system when it was first introduced as no one knew how it worked, and even now some people forget to use the microphone system, this happens at every meeting. The Respondent denied that his behaviour in the council chamber has ever veered towards being unacceptable or rude and said that he was glad that Gill Clark had found his behaviour challenging, because he felt that it was part of his role as a councillor to question the chair and the clerk to get them to clarify things before they are voted on. He said that he had never been spoken to about his behaviour.

6.3.7 The tribunal heard evidence in camera in relation to the allegation that the Respondent had failed to engage with the Ombudsman's investigation. The Respondent denied this and gave evidence, that will not be publicly recorded in this decision report, that he was unable to do so by reason of ill health.

6.3.8 The Respondent was cross-examined by Mr Hughes who suggested that he had known since childhood that Beverley Lucas had a hearing impairment. The Respondent denied this and maintained that although he had sat next to her in council meetings on the 4th and 27th of March 2019 for example, that he had never had a conversation with her other than saying "hi" to her. The Respondent suggested that Councillor Lucas had complained about him to the Ombudsman because of different views on the solar farm grant distribution.

6.3.9 The Respondent denied that he had been at the meeting on 26 June 2019, and he said that if a councillor turned up late to a meeting this would not have been missed by the clerk at the time. He said he was not at the meeting, and he would not have used the words alleged as he accepts it would have been grossly offensive. He says his own mother is deaf and uses hearing aids. Mr Hughes cross-examined the Respondent robustly on the allegations in relation to 30 October 2019. The Respondent maintained his account that the only conversation he had had with Tracy Postlethwaite about the knit and natter group and being a good councillor was on 12 December. He said that Councillor Lucas would not have heard him because she was by the doors, some 30 metres away.

6.3.10 The Respondent denied the allegations made about him but accepted that he did not have an independent recollection of what had happened on 30 October 2019 other than what was in the minutes. Mr Hughes asked the

Respondent if he knew why Councillor Lucas had moved to the other side of chamber for the January 2020 meeting. The Respondent said "I have no idea and I didn't ask. Perhaps she thought I had BO, I don't know." The Respondent denied putting his hand over his mouth when he spoke to cause difficulties for Councillor Lucas, and when it was suggested that he had done so deliberately he said "total rubbish. I never put my hand over the mic or my mouth once." He said that he did not speak over other councillors any more than anybody else.

6.3.11 The Respondent said that when he had signed the statement of truth in his response to the APW, he believed that the contents were true, but he realised when the subsequent documents and minutes came to light that the dates were wrong.

7. Ombudsman's submissions on the facts.

7.1 Mr Hughes submitted that Councillor Lucas was a witness doing her best to provide an account of evidence that had happened two years ago. The WhatsApp messages in relation to the meeting of 26 June 2019 suggests that she got her dates wrong and so her evidence may be rejected, but if a witness does make a mistake upon dates this does not mean that their account should be rejected wholesale. He pointed out that both the Respondent and Councillor Oakley had also mixed dates up. Mr Hughes said that Councillor Lucas's evidence is in large part corroborated by the supporting evidence of Councillor Assirati and Tracy Postlethwaite and in more general terms by Gill Clark. The Respondent was unable to provide any credible reason why Councillor Assirati or Tracy Postlethwaite would have invented their accounts, or why Councillor Lucas would have concocted her evidence and put herself through the stress of this tribunal and the Ombudsman's investigation.

7.2 Mr Hughes, whilst noting this was a matter for the tribunal, submitted that the Respondent was a poor witness and appeared before the tribunal with every indication that he holds the whole system of the code of conduct in contempt as for five years he declined to attend any training on the code. The Respondent has also refused to comply with reasonable requests made of him by the Ombudsman and with the directions of the tribunal. He conducts himself as if the rules do not apply to him. If the tribunal were to find that the discriminatory language alleged was used, then this might be corroborative evidence that the type of conduct alleged against the Respondent in meetings was motivated in part by an attempt to inconvenience Councillor Lucas. Mr Hughes further submitted that there was no reason why the Respondent could not have attended an interview with the Ombudsman and certainly no reason why he could not have answered the written questions, a reasonable adjustment had been made for him. The exchange of correspondence in the bundle shows that he was opening his correspondence and in part was engaging with some of the documents sent to him, and for example with the letter he sent on 23 March 2022 the Ombudsman [179], he had responded at length.

8. Respondent's submission on the facts.

8.1 Mrs Oakley submitted that the Respondent had been given the almost impossible task of proving that he did not do the things that he was alleged to have said or done. However, she said there was incontrovertible contemporaneous written evidence that proves the allegations could not be true. The minutes of the meeting of 26 June 2019 confirmed that the Respondent was not present at the meeting. The minutes of the meeting of 30 October 2019 confirmed that Councillor White was not present at that meeting and that the Respondent had left the meeting at approximately 9 o'clock. The WhatsApp messages confirming the Respondent's absence cement the evidence that the account of Councillor Lucas was fabricated as was the evidence of Councillor Assirati.

8.2 Councillor Lucas's email to Gill Clark of 21st of November 2019 [113] asking for a reminder about the need for councillors to be respectful to each other crucially does not mention the Respondent. In Councillor Lucas's statement she said that she started to make notes of the Respondent's comments after the meeting in October 2019 said in evidence that she started to do so after the meeting of 26 June 2019. There is an inconsistency between her notes and the other documents and if they were written on 26 June 2019, they would have shown that the Respondent was not there. The notes record a conversation on 30 October with the Respondent and with Councillor White when they were not there.

8.3 Mrs Oakley said that the Respondent initially thought the conversation with Tracy Postlethwaite had taken place on 30 October 2019 because it was in her statement, but on reflection he realised that it could not have been, and he had left the meeting early and sent the WhatsApp message to Councillor Oakley on 31 October 2019 confirming that he had left the meeting early. There was no evidence that his behaviour was different to any other councillor at meetings, he was not singled out and the reminders sent out in the minutes were targeting the whole council. Gill Clark did not notice the Respondent putting his hand over the mic and he did not fail to use the system or behave in a way to cause difficulty for Councillor Lucas. Mrs Oakley made submissions in camera relying upon medical issues for the Respondent being simply unable to comply with the Ombudsman's investigation.

9. FINDINGS OF FACT

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

9.1.1 The Respondent made a written declaration on 8th May 2017, that in performing his functions as a Council member for Cwmtillery Ward, that he would observe the provisions of the Council's Code of Conduct for members.

9.1.2 The Respondent, at the time of the allegations that are the subject of this complaint and proceedings, had not undertaken training on the code of conduct.

9.1.3 Councillor Lucas and the Respondent attended a Council meeting on 30 October 2019 and sat next to each other during the meeting.

9.1.4 At the Council meeting of 11th December 2019, Councillor Lucas explained the problems that she experienced in hearing to members and the Chair, Councillor Clark, referred to the difficulty that members had hearing what was being said, particularly if some Councillors spoke over others. This made it difficult for others to hear, particularly if they had hearing difficulties. The Chair asked for members to speak one at a time, not interrupt others and to speak loudly enough for everyone to hear. Members agreed to use the microphone system from now on.

9.1.5 At a meeting of the Council on 29th January 2020, Councillor Lucas sat opposite the Respondent. During that meeting, comments were made by the Chair (Councillor Gill Clark), by Councillor Lucas and other members, that it was very difficult to hear and understand what was going on as several people were speaking at the same time. Later in the meeting, Councillor Dyson, Councillor Lucas and the Chair again asked other members to show consideration to others and to stop speaking over others, as it was difficult for others to hear and understand what was going on, particularly if they had hearing difficulties.

9.1.6 The Ombudsman sent the Respondent a letter on 4th March 2020 informing the Respondent of his investigation. The Ombudsman sent a further letter to the Respondent on 4th May 2021 informing him of the Ombudsman's intention to widen his investigation to consider matters under 6(1)(a) of the Code.

9.1.7 The Respondent declined to be interviewed by the PSOW in relation to the allegations in December 2020.

9.1.8 The Respondent emailed the Ombudsman on 12th January 2021 indicating that he was experiencing ill health and "if I take a time to reply I'm sure you can understand."

9.1.9 The Respondent said that he was unable to attend at an interview on the dates offered by the Ombudsman in March 2021 because of health issues.

9.1.10 The Ombudsman sent a written interview questionnaire to the Respondent on 26th March 2021 seeking a response within five working days. The Respondent did not respond at all.

9.2 The Case Tribunal found the following in respect of the **disputed** material facts:

9.2.1 The tribunal was **unable** to find, on the balance of probabilities, that at a meeting of the full council on Wednesday 26th June 2019, the Respondent said to Councillor Lucas after she had signed the declaration of office, "what the fuck are you doing back here? Didn't you get the message that we don't want a deaf

woman here?” Councillor Lucas was adamant that this had occurred and she gave additional information that she was certain that this occurred on the date that she was co-opted back onto the Council as she described having been sat in the public gallery behind the Respondent and him voting against her co-option. The minutes of that meeting and the WhatsApp messages between Councillor Oakley and the Respondent of the 26th and 27th June 2019 indicate that the Respondent was not at that meeting. The tribunal accepts the evidence of Councillor Oakley that the dates of the Whatsapp messages have not been manipulated or tampered with and are reliable.

9.2.1 The Respondent **was** aware of Councillor Lucas’ hearing impairment prior to the Council meeting of 11th December 2019.

9.2.2 That the Respondent ridiculed Councillor Lucas during the Council meeting on 30 October 2019 and made the following comments: *“I can say what I like about her, she can’t hear me anyway” and “there should be a law against having a disabled deaf woman here, what use is she going to be?”*

9.2.3 The Respondent ridiculed Councillor Lucas immediately after the Council meeting on 30 October 2019 and made the following comments: *“What you going to do? If I want to talk about you I will, you won’t hear it”.*

9.2.4 The Respondent’s behaviour during Council meetings, specifically, talking across others and engaging in conversation with Councillor White, was a deliberate attempt to cause difficulty for Councillor Lucas.

9.2.5 Councillor Morgan failed to engage with the Council’s microphone system, in a deliberate attempt to cause difficulty for Councillor Lucas.

9.2.6 Councillor Morgan put his hand over his mouth when speaking in a deliberate attempt to cause difficulty for Councillor Lucas who partly relied on lip reading.

9.2.7 Councillor Morgan deliberately failed to engage with the Ombudsman’s investigation.

9.3 The Case Tribunal found the following in respect of the disputed facts:

9.3.1 That notwithstanding the Tribunal’s decision on the 26th June 2019 allegation, that Councillor Lucas was a witness of truth. There was a contradiction about the date that she first started to make notes of what had happened, as noted by Mrs Oakley. Councillor Lucas said that in oral evidence that she had done so after the incident of the 26th June 2019 whereas her statement said that she had done so after the incident of the 30th October 2019, but save for the allegation relating to 26 June 2019, there was corroborative evidence in relation to all of the other disputed facts and this discrepancy did not undermine the reliability of the rest of her evidence.

9.3.2 With regard to the hearing impairment, Councillor Lucas said that she had told the Respondent about this and when sitting next to him in council meetings would often have to say “pardon” when she had not heard. Councillors Oakley and Rees said that they were unaware of Councillor Lucas’s hearing problem until it was drawn to their attention in the December 2019 meeting when councillors were requested to use the microphone system. Councillor Assirati said that as soon as she had first met Councillor Lucas when they were in secondary school she knew that she had a hearing problem. Councillor White said that when he first knew Beverley Lucas in 2015 there was no indication to him that she had a hearing problem but when she became a councillor after February 2019, he said that he realised that she had hearing problems at the first co-opted meeting that she attended. Significantly, Councillor White referred to a Councillor Holt, another councillor who had hearing problems and was involved prior to Councillor Lucas, and he said that no one in the Council chamber realised that Councillor Holt had a hearing problem. Councillor White by contrast said that “it was fairly obvious that Councillor Lucas had to take longer to absorb what we were saying and obviously it was because of her hearing impairment.” He also said that it was only when she became a councillor that Beverley Lucas explained that she had a problem with her hearing, but he felt that the Respondent must have known “as Perry knew her years and years back, I would think he was aware before that”.

9.3.4 Councillor Assirati was certain that she heard the Respondent making comments about a deaf woman at the council during the meeting of 30 October 2019. She was also certain that this had been said on that occasion and not in December 2019. She said in evidence “that was my first meeting, and I was dumbfounded when I heard him say that”. She confirmed that the Respondent was sat to the right of Councillor Lucas, and she was disgusted by what she heard. The tribunal found Councillor Assirati to be a credible and reliable witness and accepts her account of events.

9.3.5 Tracy Postlethwaite likewise confirmed that it was clear during Council meetings that Councillor Lucas had a hearing impairment as she would raise her hand and asked for things to be repeated and she could see that Councillor Assirati was writing things down for her. She was clear about the conversation that she had with the Respondent immediately after the meeting on 30 October 2019 and described how she had a 23-year career of working with people with disabilities and she had told the Respondent he should be more mindful. She gave a detailed account both in her witness statement and in oral evidence of the conversation that she had with the Respondent, remembering that he had referred to fostering a disabled daughter, that she had said the Respondent could be a good councillor if he was more careful and referring to the knit and natter group. The tribunal found Tracy Postlethwaite to be a reliable and credible witness. Her evidence corroborated that of Councillor Lucas as to the events in the car park on 30 October 2019.

9.3.6 The Respondent in his written response to the APW [193] confirms that he spoke to then Councillor Postlethwaite after the meeting on 30 October 2019 and confirms other details about the conversation in relation to being a good councillor and the knit and natter group. He confirms that Councillor Lucas was waiting for a lift home. Upon considering the documentary evidence in this matter,

the Respondent noted that it was recorded in the minutes of the meeting of 30 October 2019 that he had left before the conclusion of the meeting. Seizing upon this, his entire case has changed from the APW response form that he signed with a statement of truth on 20 August 2021. He sought to persuade the tribunal that he had been mistaken upon dates and that in fact since he left the October meeting early, the exchange that he had in the car park with Councillor Postlethwaite took place after the meeting on 11 December 2019. Whenever that conversation took place, he denied that he had made disparaging remarks about Councillor Lucas.

9.3.7 The tribunal reject the Respondent's account. He may well have left the meeting of 30 October 2019 early, but the tribunal accepts the evidence of Councillor Lucas and Tracy Postlethwaite that he was in the car park immediately after the meeting and the exchange took place in the terms described by Tracy Postlethwaite and Councillor Lucas. The Respondent gave his account in writing signed on 20 August 2021 in which he verified both the elements of the conversation with Tracy Postlethwaite, save for the disparaging remarks, and the date of that conversation, namely 30th of October 2019. The Respondent noting that he had left the meeting early, now opportunistically sought to construct a different version of events. However, he accepted in evidence that he had no independent recollection of these matters and suggested that he must have behaved in a particular way, rather than giving direct evidence that he could positively remember behaving in such a way. For example, he suggested that after the meeting on 30 October 2019 he would not have remained in the car park because it was likely that he would have to go and collect a family member or go on a work journey. He said that he would not have remained in the car park if it was wet and cold for health reasons.

9.3.8 By contrast, Councillor Lucas and Tracy Postlethwaite had no doubts about the date of the exchange, they did have independent recollection of what had happened, and Councillor Lucas made a contemporaneous note [311]. This is also consistent with the evidence of Councillor Assirati who remembered the comments being made during the meeting on 30 October 2019. This was particularly memorable for her because it was the first council meeting that she attended.

9.3.9 The Respondent wrote to the Ombudsman on 23 March 2020 [179- 183]. This was a detailed letter in which he made several criticisms and observations about the workings of the council. He also expressed his belief that the complaint made by Councillor Lucas was malicious stating "As a foster carer I have fostered children with hearing impairment, my mother also suffers with hearing impairment. I did not make the comments referred to in Miss Lucas complaint." The tribunal considers these remarks to be significant. In his response to the APW of 20 August 2021 he said for the first time that he was unaware of Councillor Lucas's hearing impairment until the council meeting of 11 December 2019 [192]. Why did he not mention this in his letter of 23 March 2020, particularly when he had specifically mentioned family members with hearing impairments? The Tribunal conclude that there was no mention of this because, on the evidence, assessed upon the balance of probabilities, the assertion that he was unaware of Councillor Lucas's hearing difficulties until the meeting of 11 December 2019 was simply not true.

9.3.10 The evidence of Gill Clark did not relate to the specific allegations of comments made. The tribunal found Mrs Clark to be an entirely credible witness. She gave useful background evidence and had many previous years experience as a county councillor before joining the authority. She explained that the Respondent's conduct by email was frequently rude, threatening and inappropriate so that she blocked him, and she gave evidence as to his disruptive behaviour within the council chamber. The Respondent suggested that the allegations against him were untrue and one of the reasons for this was that he was not singled out in the minutes and no points of order had been raised against him. Mrs Clark explained that she did not think it was appropriate or suitable to name individuals in the minutes, that not everything was minuted in any event and that she took advice from the clerk to the council. She was clear however that the Respondent's behaviour was different to other councillors and that he behaved as if Councillor Lucas' hearing difficulty was a joke to him and that he takes the mickey out of her in an unacceptable way.

9.3.11 Mrs Clark's evidence was that the Respondent was the member that she had to remind most frequently to use the microphone, but she gave him the benefit of the doubt and said it was accidental. She also said that she would be very surprised if a councillor arrived late to a meeting and was not recorded in the book as it would be passed round to them. She also felt that the minutes would note this. The tribunal accept her evidence as being fair and balanced. She confirmed that Councillor Lucas talks quite freely about her hearing difficulties although she was unaware of these until Councillor Lucas joined the council. On the Respondent's conduct in the council chamber, she recorded how one member had complained that he had called her a "fucking loony" and that it was quite common for him to punch the air on successful votes being passed. Significantly, Mrs Clark said that even after she had raised with councillors the difficulties that Councillor Lucas was having and her use of hearing aids, that the disrespectful behaviour of the Respondent and Councillor White continued.

9.3.12 The Respondent denied he had ever behaved inappropriately in the council chamber, denied that he was aware of Councillor Lucas's hearing impairment until 12 December 2019 and denied that he had ever had any conversations with Councillor Lucas. He specifically denied punching the air when motions he had voted in favour on were successful. There was compelling contrary evidence to these bare denials. Tracy Postlethwaite also independently raised the Respondent's punching of the air in the chamber. The tribunal are satisfied on the balance of probabilities that the Respondent did behave in a disruptive way and did punch the air as described. Taken together, these findings undermine the credibility of the Respondent's evidence.

9.3.13 The tribunal is satisfied upon the written and oral evidence, on the balance of probabilities, that the Respondent failed to engage with the microphone system and put his hand over his mouth when speaking, in a deliberate attempt to cause difficulty for Councillor Lucas. This behaviour is consistent with the direct evidence of Councillor Lucas, Councillor Assirati and Tracy Postlethwaite, and with the supporting evidence of Mrs Clark that the Respondent would behave

disrespectfully to Councillor Lucas and take the mickey out of her on account of her hearing impairment. The tribunal also makes this finding in the context of being satisfied that the Respondent made the disparaging remarks about Councillor Lucas and her hearing impairment on 30 October 2019. There was a flippancy about some of the Respondent's testimony, for example when he was asked why he thought Councillor Lucas had moved to the other side of the chamber in January 2020 he said that he had no idea and didn't ask "perhaps she thought I had BO."

9.3.14 The tribunal will not repeat the details of the confidential evidence heard in camera, but was satisfied, on the balance of probabilities, that the Respondent deliberately failed to engage with the Ombudsman's investigation. The tribunal accepts that the Respondent suffers with the health condition that he described in camera but the medical evidence relied upon by the Respondent, namely his own testimony and a small extract from a medical record, did not demonstrate that he was incapable by reason of ill-health, of cooperating with the investigation. Reasonable adjustments had been made by the Ombudsman including the provision of a written questionnaire that was not completed. The Respondent failed to provide any independent medical evidence despite being given the opportunity to do so in specifically tailored directions that made clear his confidentiality would be respected. His reasons for that failure were not convincing. He has had the benefit of support and advice from Mrs Oakley since at least August 2021 including the period since the listing direction was issued in October 2021. The Respondent asserted upon a number of occasions that he was not going to produce his confidential medical records, but he had never been asked to do so in any event.

9.3.15 There were numerous examples within the hearing bundle of matters where the Respondent corresponded with the Ombudsman. He sent the detailed letter of 23 March 2020 already referred to, [179], and there were other examples, around the time that the Ombudsman on 17 November 2020 had invited the Respondent for an interview to take place over Microsoft teams [131]. The Ombudsman followed this up with an email on 11 December 2020 at 10:52 [138] to which the Respondent had replied by email at 11:11 on 11 December 2020 [138], in which he said that he had been "going through the file" the Ombudsman had sent him and after going through it he had found it very biased, and he suggested some other potential interviewees for the Ombudsman's investigation. Mr Hughes in his submissions noted that the email correspondence indicated that the Respondent was opening his correspondence and in part was engaging with some of the documents sent to him and that he was capable of responding. Although the responses were short, he was still responding. These are fair points to make and are accepted by the tribunal.

9.3.16 The tribunal is fortified in its view that the Respondent failed to engage with the investigation, by his approach to these proceedings. Notwithstanding that he has had the benefit of Mrs Oakley's support and advice, the Respondent has failed to comply with directions and did not submit a statement. The tribunal find that, on the balance of probabilities and given his response form to the APW of 20 August 2021, that he was capable of preparing and submitting a statement in these proceedings and he was capable of completing the Ombudsman's written questionnaire. Notwithstanding the evidence heard in camera about the

Respondent's medical condition, it is also clear from the evidence given by Councillor Oakley, that the Respondent has attended at a number of council meetings both online by zoom and in person since the Ombudsman's letters to the Respondent of 4th of March 2020 indicating that an investigation was being commenced [62-63], and of 4th of May 2021 extending the investigation.

9.3.17 The Ombudsman's investigator Llinos Lake in the email correspondence of 11 December 2020 [137-140] offered the Respondent a number of potential dates to attend at interview which she had previously made clear would take place over Microsoft teams. One of those dates was 17 December 2020 at 2 PM. The Respondent, in his email of 11 December 2020 at 12:19, asked her to contact other councillors and said that he would contact her after Christmas to arrange speaking to her [137]. Llinos Lake responded by email of 15th of December 2020 at 09:19 [137] pointing out that it was for the Ombudsman to decide who he contacts to provide witness evidence and raising issues of the proportionality of enquiries and the public interest. She also referred to what the Respondent could tell the Ombudsman in interview. It is noteworthy that on Councillor Oakley's evidence, the Respondent attended in person in the Council chamber for a hybrid meeting on 16 December 2020. The tribunal is satisfied that the Respondent could have attended an interview with the Ombudsman online on 17 December 2020 and the fact that he wished others to be interviewed by the Ombudsman was not a good reason for him failing to attend at interview on the dates offered in late December 2020. The Respondent did not return to the Ombudsman suggesting alternative dates for online interview and did not complete the written questionnaire. In the tribunal's judgement, he could have done either or both of those things.

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

10.1 The Ombudsman's Submissions

10.1.1 Mr Hughes contended that sometimes factual findings don't always suggest a breach of the code but in this case, the tribunal's findings do suggest breaches of 4 (a), (b) and (c), 6(1)(a) and 6(2). The factual findings do appear to support a finding under 4(c) but there is a course of conduct over a period that could be characterised as bullying or harassment. Regarding 6(1) (a) it is always a moot point as to whether the conduct brings the Respondent as an individual into disrepute or whether it could bring his office into disrepute. The type of conduct found in this case is capable of doing the latter. Mr Hughes considered whether the Respondent's article 10 rights to free speech are engaged but submitted that this was not political discourse but was gratuitous abuse and the enhanced protection for political comment does not apply. With regard to the findings after the meeting of 30th October 2019, he submitted that this was conduct so closely connected to the Council meeting and his role as a councillor that it is possible to find that this is council-related conduct. In any event paragraph 6 (1) (a) of the code applies regardless of the circumstances in which a councillor is conducting himself and includes conduct as a private individual.

10.2 Respondent's Submissions

10.2.1 Mrs Oakley said that given the findings of fact that there was not much that could be said save for her submission that with regard to the comments made outside the council meeting on the 30th October 2019 that the comments were not made in an official capacity by the Respondent acting as a councillor although she accepted that paragraph 6 (1) (a) applied, she submitted that the facts found did not bring the office or the authority into disrepute.

11. Case Tribunal's Decision

11.1 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 authority's code of conduct as follows:

11.1.1 Paragraph 4(a) of the Code states that you must carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;

11.1.2 Paragraph 4(b) of the Code states that you must show respect and consideration for others;

11.1.3 Paragraph 4(c) of the Code states that you must not use bullying behaviour or harass any person.

11.1.4 Paragraph 6(1)(a) of the Code states that you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

11.1.5 Paragraph 6 (2) of the Code states that you must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

11.2 The findings of fact that the Respondent ridiculed Councillor Lucas during the Council meeting on 30th October 2019 and made the comments in the car park immediately after that meeting constitute breaches of 4(a) and (b and 6(1) (a). The comments were clearly disrespectful and inconsiderate and related to Councillor Lucas's disability. The findings at 9.2.2 - 9.2.6 above taken together constitute breaches of 4 c). The Ombudsman's Guidance on the Code of Conduct for member of local authorities in Wales [165] helpfully invites councillors to consider their own conduct from the other person's perspective and describes harassment as repeated behaviour which upsets or annoys people and that bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour [171]. "Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability and may adversely affect their health." Councillor

Lucas was upset and felt humiliated by her treatment, and the comments made about her by the Respondent constitute bullying behaviour and harassment. The comments about Councillor Lucas's hearing impairment were not political comment but were abusive and insulting comments that would not attract the additional protection of article 10.

11.3 The comments that were made by the Respondent after the meeting of 30th October 2019 were made in the context of his work as a Councillor. The conversation was in the car park outside the council chamber immediately after the council meeting and the contents of the conversation related to matters arising from the council meeting and membership of the council. Behaving in the way that he did and using the words that he did, brought the Respondent's office as a councillor into disrepute.

11.4 The Respondent was capable of engaging with the Ombudsman's investigation and was specifically capable of attending at an online interview in December 2020. Whilst the Tribunal accepts that the Respondent suffers from the condition about which evidence was heard in camera, and that there would likely have been some days when his abilities to deal with matters were compromised, the tribunal did not have evidence before it from which it could conclude, on the balance of probabilities, that the Respondent was entirely incapable through reason of ill health, of engaging with and complying with reasonable requests from the Ombudsman, throughout the investigatory period. The Respondent was able to send detailed analytical correspondence in March 2020, to correspond by e mail by return in December 2020 and to attend at various council meetings both in person and online. The Ombudsman had made reasonable adjustments by sending the written interview questionnaire. Therefore, the breach of 6(2) was made out.

12. SUBMISSIONS ON ACTION TO BE TAKEN

12.1 The Respondent's Submissions

12.1.1 Mrs Oakley submitted that the Respondent had a previous record of very good service and described his work and representation in the community as being exceptional. She submitted that if he were not permitted to serve on the council that the community would suffer. She said that the Respondent had completed a training course subsequent to the events that are the subject of this hearing and he is prepared to undertake further training.

12.1.2 Mrs Oakley submitted that the facts found by the tribunal do not represent the Respondent's views, he has fostered children with hearing impairments, and the chances of any form of repetition of such conduct are remote.

12.2 The Ombudsman's submissions

12.2.1 Mr Hughes submitted that sanction is of course a matter for the tribunal and although it is for the tribunal to identify the appropriate aggravating and

mitigating circumstances, looking at the mitigating factors at paragraph 42 of the Sanctions Guidance issued by the President of the APW under section 75(10) of the Local Government Act 2000, (“the Sanctions Guidance”) he felt that (iii), a previous record of good service, and (xviii) compliance with the Code since the events giving rise to the adjudication, were applicable.

12.2.2 Mr Hughes submitted that there were many aggravating factors as set out in paragraph 42 of the Sanctions Guidance. These included; (vi), repeated breaches of the Code, there were a number of different breaches on different dates and over different periods of time. There was a lack of understanding or acceptance of the misconduct and any consequences (viii), there had been a previous refusal and/ or failure to attend training on the Code (ix), the conduct was deliberate or reckless with no regard to the Code (x). Further factor (xii) refers to the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the rights of others. The things said to Councillor Lucas were directed to diminishing her and undermining her and related to protected characteristics. Factor (xiii) is obstructing or failing to co-operate with the Ombudsman, and (xiv) is a refusal to accept the facts despite clear evidence to the contrary. There were two other witnesses, Tracy Postlethwaite and Councillor Assirati who were clear that the language alleged had been used. Factor (xviii) is continuing to deny the facts, despite clear evidence to the contrary and this is also present.

12.3 Case Tribunal’s Decision

12.3.1 The Case Tribunal considered all the facts of the case and gave careful consideration to the Sanctions Guidance and the Nolan Committee’s Principles for Public Life.

12.3.2 The tribunal applied the five-stage approach as set out in paragraph 33 of the Sanctions Guidance and concluded that the breaches were serious and their consequences for Councillor Lucas in particular were serious. It was clear however from the evidence of Councillor Assirati and the evidence of former Councillors Gill Clark and Tracy Postlethwaite, that the Respondent’s behaviour had consequences for others too. The breaches related to comments made on the basis of Councillor Lucas’ hearing impairment.

12.3.3 The tribunal carefully considered whether disqualification was appropriate but concluded that suspension was the broad type of sanction that was appropriate in this case. The tribunal considered the number and nature of the breaches, and the mitigating and aggravating factors as set out in paragraph 42 of the Sanctions Guidance. The tribunal reminded itself that, as per paragraph 44 of the Sanctions Guidance, that the overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. The tribunal considered its chosen sanction against previous decisions of the APW.

12.3.4 The tribunal accepted the submissions made on the Ombudsman's behalf about the aggravating factors and the continual denying of the conduct and the facts by the Respondent. The Respondent sought at the hearing to go back on his signed statement of 20th August 2021 and to suggest, in his denial of the facts, that witnesses were mistaken about the 30th October 2019 date that he had previously agreed was accurate. These attempts lacked credibility. Whilst Mrs Oakley referred to the Respondent's record of good service, in fact having signed his declaration of office on 8th May 2017 [59], his experience as a councillor for over two years at the time of these events, made his behaviour an aggravating factor.

12.3.5 The Case Tribunal concluded by unanimous decision that Councillor Morgan should be suspended from acting as a member of Abertillery and Llanhilleth Community Council for a period of 10 months or, if shorter, the remainder of his term of office, with effect from the 20th January 2022.

12.3.6 Abertillery and Llanhilleth Community Council, Blaenau Gwent County Borough Council and its Standards Committee are notified accordingly.

12.3.7 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.

13. CASE TRIBUNAL RECOMMENDATIONS

13.1 The Case Tribunal makes the following recommendations to the authority;

13.1.1 That Councillor Morgan undertake further training upon the Code of Conduct.

13.1.2 That Councillor Morgan undertake Equality and Diversity training.

13.1.3 That Councillor Morgan provide a full written apology to Councillor Beverley Lucas for the breaches of the Code of Conduct found the by the Case tribunal.

Signed.....*R. Payne*... ..

Date 22 February 2022

Richard Payne
Chairperson of the Case Tribunal

Dr Glenda Jones
Panel Member

H. E Jones
Panel Member

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DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW-006-2021-022-CT

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

RESPONDENT: Councillor William Roy Owen

RELEVANT AUTHORITIES: Caernarfon Royal Town Council ('the Town Council') and Gwynedd 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, on the basis of the papers only at a meeting on 20 December 2021, conducted by means of remote attendance technology.

2. PRELIMINARY MATTERS

2.1 The Case Tribunal noted that the Respondent had decided not to take the opportunity to apply for leave to attend an oral hearing in accordance with paragraph 2.5 of the Listing Directions dated 19 November 2021 which stated as follows; *'Notwithstanding the Respondent's indications that he does not wish to attend an oral hearing or be represented at such hearing, he is nevertheless at liberty to apply to the APW Tribunal Office (by no later than 10 days of the date of these Listing Directions), for leave to do so....'*

2.2 The Listing Directions also specified at paragraph 2.6 as follows; *'No application for adjournment of such hearing would be considered therefore in the absence of clear evidence from a suitably qualified medical practitioner, certifying that the party in question is unfit to attend and participate in the proceedings.'*

2.3 The Respondent clarified in writing that he did not intend to be present at an oral hearing due to his medical condition and did not indicate a wish to be represented. The Case Tribunal noted that the APW, through the President

and through the Case Tribunal's Directions, had afforded the Respondent opportunities to provide such specific medical evidence, however he had not taken the opportunity to do so. His relative thanked the APW for putting provisions in place to proceed without his attendance.

2.4 The Case Tribunal also considered paragraph 2.8 of the Listing Directions as follows; *'It should be noted that the Case Tribunal will be confining its deliberations to the issues it is required to determine and will expect any further submissions in accordance with the following Directions to be limited to these substantive issues only. Any material which is not relevant to these issues will be excluded from the Tribunal's deliberations.* It noted that the Respondent had corresponded at great length with the APW Tribunal Office, however the Case Tribunal confined its deliberations to correspondence which was relevant to the substantive issues only.

2.5 The Case Tribunal noted that there was a significant amount of information provided within the hearing bundle, a lengthy timeline and an involved train of events which needed to be considered. It therefore grouped the Allegations before it into five main themes as set out in paragraph 4 below.

3. DOCUMENTS

3.1 In a letter dated 2 September 2021, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ('the Ombudsman') in relation to Allegations made against Councillor William Roy Owen ('the Respondent').

3.2 The Allegations, split into the five main themes in paragraph 4 below, were that the Respondent had breached the Code of Conduct for Members ('The Code') of the Relevant Authorities in relation to Paragraphs 4(b), 4(c), 6(1)(a), 6(1)(d), 6(2) and 7(a).

3.3 The evidence to be considered was comprised in a bundle of Tribunal case papers, including copies of numerous Facebook posts and correspondence between the Respondent and the Clerk to the Town Council, officers and the Monitoring Officer of Gwynedd Council and the Ombudsman. The subject of most of this material was the complainant, Councillor Larsen ('Councillor L'), who is a Councillor in the same ward and division as the Respondent.

4. ALLEGATIONS

4.1 The Details of Allegation 1: Issues around Prescriptions, Volunteers and other matters

The Allegation was summarised by the Ombudsman as follows; *"Shared information about the complainant on Facebook and with professionals,*

associated with both Councils, about the complainant” and engaged the following Paragraphs of the Code; -

Paragraph 4(b); “You must show respect and consideration for others”.

Paragraph 4(c); “You must not use bullying behaviour or harass any person”.

Paragraph 6(1)(a); “You must 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 in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage”.

The Ombudsman had reached the following conclusions in relation to this Allegation; -

4.1.1 Councillor L complained that the Respondent publicly blamed him for difficulties that the Respondent experienced in obtaining prescriptions for others during the Covid-19 pandemic and posted part of an email by Councillor L on Facebook, which misrepresented the context, and also sent the email in its entirety to third parties.

4.1.2 In his correspondence with the Town Clerk, the Social Care Team and the Chief Executive of Gwynedd Council about the issues he experienced with prescriptions, the Respondent used his County Council email account. The emails contained statements about Councillor L including that he was a “dangerous liar”. He also made several statements about Councillor L interfering with prescriptions and putting people at risk.

4.1.3 The Facebook posts about prescriptions were made despite the Respondent being informed by both the Chief Executive and the Town Clerk that the Pharmacy was responsible for implementing changes to the way ‘Cofis Curo Corona’ volunteers collected prescriptions. He was also told that this did not affect other individuals collecting prescriptions on behalf of members of the public. Publishing part of an email on Facebook, provided to him in his capacity as a councillor, and without publishing the full explanation provided to him, was misleading to his constituents, and suggested that Councillor L had acted in a way which was causing difficulty for constituents and putting ill people at risk.

4.1.4 The Respondent was discussing Council business and therefore gave the impression he was acting in his capacity as an elected member so that the whole of the Code of Conduct applied to the above emails. He also published on Facebook part of an email, provided to him in his capacity as a councillor.

4.1.5 The Respondent posted on Facebook that he had received several complaints that volunteers from a volunteer group linked to Councillor L had not returned change to the vulnerable, from payments provided for shopping.

4.1.6 The “concerns” and Facebook posts lacked credibility and caused embarrassment and upset to Councillor L and the volunteer group he was associated with at a time, when they were performing an essential public task at the height of the pandemic.

4.1.7 The evidence suggests that the Respondent raised these concerns with the Town Clerk in his capacity as a councillor and in his personal capacity on Facebook. North Wales Police confirmed that it did not receive any such reports and the Respondent has not provided any evidence to support his claim of theft by volunteers.

4.2 The Details of Allegation 2: The alleged Assault

The Allegation was summarised by the Ombudsman as follows: - *“Approached the complainant in the street and began an altercation which required police involvement”* and engaged the following Paragraph of the Code; -

Paragraph 6(1)(a); “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

The Ombudsman reached the following conclusions in relation to this Allegation; -

4.2.1 The evidence suggests that the Respondent assaulted a fellow Councillor, with whom Councillor Larsen was distributing leaflets advertising the services of a volunteer group linked to Councillor L, during the Covid-19 pandemic.

4.2.2 The Respondent approached Councillor L, who was at the time in the company of another councillor on 5 July 2020 and there was an altercation. The police were involved and although the Respondent refused to sign the relevant community resolution paperwork, the police considered it appropriate to issue the Respondent with words of advice.

4.3 The Details of Allegation 3: The disclosure of Personal Information

The Allegation was summarised by the Ombudsman as follows; *“Posted information, which should reasonably be regarded as confidential, about the complainant’s family members”* and engaged the following Paragraph of the Code; -

Paragraph 6(1)(a); “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

The Ombudsman reached the following conclusions in relation to this Allegation; -

4.3.1 The Respondent disclosed personal information by posting on Facebook that a volunteer group that the Respondent was involved with, had delivered a meal to Councillor L’s parents.

4.3.2 As a volunteer during the Covid-19 pandemic, the Respondent was privy to information that he would reasonably be expected to treat as confidential. The information that Councillor L's parents were receiving meals from a volunteer organisation during the pandemic, could reasonably be considered to be confidential.

4.3.3 The post identified Councillor L's parents as elderly and vulnerable and could have put them at risk.

4.3.4 The post related to the Respondent's role as a volunteer rather than as an elected member.

4.4 The Details of Allegation 4: Threatening proceedings, certain actions, and complaints

The Allegation was summarised by the Ombudsman as follows; *"made several complaints to the Clerk, the Police and to the Ombudsman, which lacked foundation and appeared to be motivated by malice or political rivalry"* and engaged the following Paragraphs of the Code; -

Paragraph 6(1)(d); "You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority."

Paragraph 7(a); "You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage."

The Ombudsman reached the following conclusions in relation to this Allegation; -

4.4.1 The Respondent made several references to seeking an injunction against Councillor L, including to third parties, and he regularly threatened to "take matters further" to apply pressure to various parties with whom he was in disagreement.

4.4.2 The Respondent made numerous statements referencing an injunction, raising complaints, or involving the media, to the Town Clerk, the Chief Executive, the Social Care Team and to the PSOW. The Respondent also made similar comments on Facebook. Apart from seemingly seeking advice from a Romford-based solicitor on 16 September 2020, the PSOW had not seen any credible evidence that the Respondent had issued legal proceedings seeking an injunction as claimed, despite informing the PSOW's officer on 20 September 2020 that he had instructed the solicitor to act.

4.4.3 No Pre-Action Protocol letter had been received or any indication that an injunction had been sought against Councillor L by the Respondent or his legal representative.

4.4.4 The Respondent's complaints about Councillor L have lacked foundation and his claimed involvement with the media also lacked credibility. Nevertheless, the repeated comments to a number of different parties, made Councillor L feel undermined and intimidated.

4.4.5 The Respondent made vexatious, malicious, or frivolous complaints about various agencies and made two untrue and entirely fabricated complaints that Councillor L had breached the Code of Conduct to the PSOW's officer.

4.4.6 The Respondent also made a report of harassment against Councillor L to North Wales Police, although he did not wish to make a formal complaint. These complaints appear to be in retaliation for the complaints made about him.

4.4.7 The Respondent has refused to provide the evidence he claimed to have in support of these complaints on two occasions. The complaints against Councillor L were unsubstantiated and therefore appear to be vexatious and malicious.

4.5 The Details of Allegation 5: Failure to co-operate with the Ombudsman's investigation

The Allegation was summarised by the Ombudsman as follows; *"deliberately failed to engage with my investigation in an attempt to obfuscate the process"* and engaged the following Paragraph of the Code; -

Paragraph 6(2); "You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers".

The Ombudsman reached the following conclusions in relation to this Allegation; -

4.5.1 The Respondent declined to be interviewed by the PSOW's Investigation Officer and declined to answer written questions when this was offered to him as a reasonable adjustment. The Respondent also said that he wished to make a formal complaint against the Investigation Officer for harassment after he was sent the file of evidence and invited to interview.

4.5.2 After being sent a copy of the PSOW's draft report and invited to comment, the Respondent returned the draft report. Despite stating that he did not intend to comment and/or was unfit to comment, the Respondent sent a large volume of communication to the PSOW'S officers over a period of weeks, seeking extensions to the deadline. An extension to the deadline was given and adjustments were made to assist him submitting further information. These failed and the Respondent stated he had no more evidence to provide.

4.5.3 The Respondent maintains that he has a volume of evidence that appears to be relevant to this investigation, e.g., witness statements and CCTV evidence. However, he has refused to provide this evidence to the PSOW's investigation. He has also requested that the PSOW should destroy the evidence that he has provided to the Investigation Officer.

4.5.4 Despite attempts to engage the Respondent in the process, including making a reasonable adjustment for his illnesses, he refused to comply with the PSOW's requests. Further, the Respondent's complaints against the PSOW's Investigation Officer appeared to be an attempt to obfuscate the process and deflect attention from his refusal to comply with the process.

5. THE RESPONDENT'S RESPONSE TO THE ALLEGATIONS.

The Respondent had provided a range of responses and his specific responses to each of the five Allegation themes are detailed in Paragraph 8 below. His general responses to the Ombudsman's investigations were summarised in the Ombudsman's Report as follows; -

5.1 That the Respondent was shocked at the allegations made against him.

5.2 That Councillor L is a "bully boy."

5.3 He was informed by the Chief Executive of the Pharmacy that a member of County Council staff and Councillor L were responsible for the changes to collecting prescriptions.

5.4 He has received many complaints from members of the public about Councillor L and volunteer organisations that Councillor L was involved with.

5.5 There is press interest in the investigation.

5.6 The "welsh [sic] commission of the human rights" had emailed his solicitor about the case.

5.7 Police are involved and dealing with the matter as a hate crime, and he has CCTV footage.

5.8 Councillor L has told "so many lies".

5.9 There was no incident on 5 July 2020 involving Councillor L

5.10 He had removed himself from Committees that Councillor L is on.

5.11 He intends to take an injunction out against Councillor L.

5.12 He was threatened by Councillor L and another councillor.

5.13 This was "all planned" and he is being bullied.

5.14 He said he was suffering from various health issues.

5.15 That the file of evidence was “full of rubbish”.

5.16 His GP wanted him to stand down from the Councils, but he had to continue as a County Councillor as he needed the money.

5.17 He was not “trying to dodge the bullet”. He said that he forgets things he has said and did not remember half the things he is accused of doing.

5.18 He had offered to the County Council to write a letter of apology and attend a training course.

5.19 His “social media page is been [sic] run tighter before any mail is published I look at it first”, and he was closing his social media site.

5.20 He was getting £30,000 for an injunction against Councillor L.

5.21 The Respondent considered that the file of evidence produced by the Ombudsman was “full of rubbish” and he wished to make a formal complaint of harassment against the Ombudsman’s investigating officer. He said that the Officer “only wants one side” of the story.

5.22 The Respondent had told the Ombudsman that he had 48 witnesses and his solicitor had already obtained witness statements from 17 of them, but the Ombudsman’s report recorded that the Respondent did not provide any further information on what they had been witness to or the relevance to the Ombudsman’s investigation.

6. FINDINGS OF FACT

6.1 Undisputed Facts

The Case Tribunal noted the following **undisputed** material facts; -

6.1.1 Between 9 January and 5 July 2020, Councillor Owen regularly emailed the Town Clerk and the Chief Executive using his County Council email address.

6.1.2 At the time of the events, Councillor Owen used the Social Media platform Facebook in the name ‘William Owen’. He used the account to discuss Council matters and to post to a group called “Gwynedd Councillor Seiont Ward”.

6.1.3 In the emails, Councillor Owen raised concerns about Councillor Larsen and said that he had, or would, escalate matters to various bodies.

6.1.4 Councillor Owen told the Town Clerk that he was working to “get rid of Councillor Larsen as a priority”, called him a “dangerous liar” and an “awful councillor”.

6.1.5 Councillor Owen informed the Social Care Team that he was raising concerns about Councillor Larsen with the Business Group and the office of the PSOW. He also complained about Councillor Larsen's involvement with the Pharmacy to the Chief Executive.

6.1.6 On 23 and 27 April 2020, Councillor Owen told the Town Clerk he had received complaints about volunteers helping Councillor Larsen.

6.1.7 On 27 April, Councillor Owen was advised by the Chief Executive that Councillor Larsen had no role in the procedural decisions at the Pharmacy and that the changes made, only affected Cofis Curo Corona volunteers and did not affect individuals collecting prescriptions for others.

6.1.8 Despite the advice of the Chief Executive, Councillor Owen posted on social media that Councillor Larsen was responsible for the changes at the Pharmacy for political gain and suggested Councillor Larsen had put lives at risk.

6.1.9 On 6 May, the Town Clerk provided emails (from Councillor Larsen) to Councillor Owen, during an exchange which related to Council business, and Councillor Owen later shared a section of one of those emails on Facebook.

6.1.10 On 1 July, Councillor Owen told the Town Clerk that volunteers were not returning change to the vulnerable. He reiterated this on Facebook. North Wales Police did not receive any such reports.

6.1.11 On 5 July 2020, Councillor Owen approached Councillor Larsen and another councillor. The incident resulted in police intervention and the police issued advice to Councillor Owen.

6.1.12 From 5 July 2020, Councillor Owen regularly threatened to obtain an injunction against Councillor Larsen to keep him out of the Ward they both represent and disclosed this to third parties. He also threatened to make Facebook posts about him.

6.1.13 On 5 July, Councillor Owen posted on Facebook that his volunteer group was non-political and had delivered a meal to Councillor Larsen's parents. He named the area that they live in.

6.1.14 On 14 September, Councillor Owen told the police that Councillor Larsen was harassing him and making derogatory remarks about his wife on social media, but that he did not wish to make a formal complaint.

6.1.15 On 14 September and 5 October, Councillor Owen complained to the PSOW that Councillor Larsen was bullying him and had threatened him. He accused Councillor Larsen of a hate crime and said the police were investigating. He claimed to have supporting evidence but did not provide it when asked. The PSOW declined to investigate the complaint because Councillor Owen did not provide any prima facie evidence of a breach of the Code of Conduct by Councillor Larsen.

6.1.16 Councillor Owen was deemed unfit to work, because of stress, from 28 April 2021.

6.1.17 Councillor Owen declined to be interviewed by the PSOW's Investigation Officer and declined to respond to written questions. Councillor Owen partially returned the file of evidence to the office of the PSOW.

6.2 Disputed Facts

The **disputed** material facts identified by the Ombudsman, and which were considered and determined by the Case Tribunal were as follows; -

6.2.1 *“Was Councillor Owen acting in his role as an elected member when making posts on Facebook?”*

6.2.1.1 Despite the Ombudsman concluding that most of the Respondent's posts did not relate to Council business, the Case Tribunal was satisfied that the Respondent was using his Facebook account in a dual capacity, both official and private. Although there was no evidence that the Respondent referred to his Councillor status in his Facebook name or profile, the contents of the posts which were before the Case Tribunal were integrally linked with his Council as well as his voluntary roles.

6.2.1.2 It considered that in the references in certain Facebook posts to Councillor L, Seiont Ward, the words “non-political” and reference to a political party, all pointed to political rivalry and to the use of Facebook to promote the Respondent's Council ward/division work, views and status and therefore his official role. One post stated that the Respondent had received complaints and that he; “can naver [sic] work with these Councillors who don't even live on the ward”. Another referred to his ward being under attack. The Case Tribunal considered that this was a clear indication that the Respondent was acting in his official role as an elected member.

6.2.1.3 The Case Tribunal also noted that the Respondent had posted an extract of an e-mail regarding the prescriptions issue which it considered that the Respondent had received in his official capacity and to his official Council e-mail account. It considered that this example showed that the Respondent was using the Facebook account as a platform for discussion of matters which stemmed from political rivalry.

6.2.1.4 In conclusion, the Case Tribunal determined that the Respondent used his Facebook account interchangeably for private and official purposes. It concluded that he was acting in his role as an elected member on relevant occasions when making posts on Facebook and that he would have expected readers to have recognised his status as an elected member and that he was commenting as such.

6.2.2 *“Did Councillor Owen receive complaints that Cofis Curo Corona volunteers were not returning change to the vulnerable after shopping on their behalf?”*

6.2.2.1 The Case Tribunal did not have sight of any independent evidence to support the Respondent's claim that he had received complaints that Cofis Curo Corona

volunteers were not returning change to vulnerable individuals, despite the Respondent having had ample opportunity to provide any such evidence.

6.2.2.2 A representative of Cofis Curo Corona contacted the police to check the position and no complaint had been made to them, despite the Respondent indicating that this had occurred.

6.2.2.3 The Case Tribunal noted that the Respondent considered that Councillor L had also made an initial allegation against him on Facebook as follows; *“Just a quick word of warning - here’s been a very recent case of someone asking for quite a lot of money for going out shopping for people who are self isolating. This service is available free to anyone who lives in Caernarfon through Cofis Curo Corona. Nobody needs to pay for this”*. The Respondent said the police talked to him about this and that the police concluded that the initial allegation had been malicious.

6.2.2.4 On the balance of probabilities, the Case Tribunal concluded that the Respondent had not received such complaints and that his Facebook message was posted on a retaliatory basis.

6.2.3 *“Did Councillor Owen disclose to third parties that the PSOW was conducting an investigation into his conduct?”*

6.2.3.1 The Case Tribunal did not consider there was evidence that the Respondent had directly disclosed information that the Ombudsman was conducting an investigation. It noted that the Ombudsman had decided not to pursue an allegation regarding this matter in any event; *‘I have considered the information submitted by Councillor L and found no evidence that Councillor Owen has breached the Code of Conduct in this respect.’*

6.2.3.2 The Case Tribunal noted the oblique reference to the Respondent being under some restriction, however the relevant Facebook post did not elaborate. It read as follows; - *“Seems that my seat is under attack can’t say a lot election may 2022”*, followed by *“I try to let you now [sic] what’s happening on the ward but have bene [sic] reported for doing so do think it’s right”*. Councillor Owen also commented: *“Better not or they will report me to the ombudsman of Wales this is how they work”*.

7. ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (‘ECHR’) AND CASE-LAW

7.1 The Case Tribunal considered Article 10 ECHR throughout its deliberations as follows; -

7.1.1 *‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....’*

7.1.2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or*

penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...'

7.2 The Case Tribunal also considered the following Caselaw (which had been referenced by the Ombudsman) during the course of its deliberations.

7.2.1 Sanders v Kingston [2005] EWHC 1145 ('Saunders') which set out a three-stage test as follows; -

- (i) Did the Respondent's conduct breach a Paragraph of the Code of Conduct?
- (ii) Would the finding, in itself, comprise of a prima facie breach of Article 10?
- (iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

7.2.2 R (on the application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172 (Admin) ('Calver')

7.2.3 Heesom v Public Services Ombudsman for Wales [2014] EWGC 1504 (Admin) ('Heesom')

8. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

8.1 Allegation 1: Issues around Prescriptions, Volunteers and other matters

The Respondent's response to Allegation 1

8.1.1 The Respondent referred to the voluntary group with which he was associated, which collected prescriptions and took food around the community during the Covid pandemic. The group had arrangements to pick up prescriptions from a particular pharmacy. The Respondent said that arrangements changed suddenly, and volunteers were refused prescriptions. He asked the Clerk of the Town Council who had changed a well-working system. He said that he was told it was the pharmacy, Gwynedd Council and Councillor L.

8.1.2 As to the allegation of bullying, he said that he hates the word and knows how horrible it can be to be the subject of bullying.

8.1.3 He didn't consider that he had used his position improperly and all he wanted was answers from the Clerk to the Town Council about his concerns and about things which were happening in his ward. He considered it was his job to fight for the rights of the electorate. He said he would only find out what was happening in his ward once schemes had been implemented or by reading about them in newspapers. He would then have to deal with complaints from the public about such schemes. He felt other councillors were getting answers to their concerns. In

conclusion he considered many things had been done in his ward, but there had been little or no contact about them with himself.

8.1.4 The Respondent also referred to certain Facebook posts by Councillor L which the Respondent took to be referring to himself and he considered that he had been harassed by the Councillor.

The capacity in which the Respondent corresponded

8.1.5 The Case Tribunal's finding on disputed fact 6.2.1 was that the Facebook posts were generated both in his official and private capacity. Some posts were integrally linked to the Respondent's correspondence with the Relevant Authorities.

8.1.6 The correspondence with the Relevant Authorities regarding matters such as the prescriptions collection arrangements, litter collection and management of a local park was all conducted in his official capacity. The correspondence was sent from and to the Respondent's official Council e-mail address. Council officials would reasonably have considered that the Respondent was acting in his official capacity.

8.1.7 As the Respondent's Facebook posts and correspondence were generated in his official capacity, the whole of the Code then applied, including Paragraphs 4(b) and 4(c), by virtue of Paragraph 2(1) of the Code.

Facebook messages and e-mail correspondence.

8.1.8 The Case Tribunal considered the Facebook messages which had been included in an Appendix to the Ombudsman's Report, together with a large volume of correspondence which had been sent to officials of the Relevant Authorities.

8.1.9 It noted that one of the Facebook messages stated that the changes in prescription arrangements for the relevant pharmacy occurred following two e-mails being sent by Councillor L. It referred to an e-mail the Respondent had received in his official capacity from the Clerk of the Town Council in this respect. The letter said that Councillor L had apologised for not keeping the Clerk in the "loop" and acknowledging that he hadn't consulted sufficiently with volunteer co-ordinators about the contents of his e-mail and that he was open to suggestions.

8.1.10 Another Facebook message appeared to blame Councillor L for "the mess". A third stated; *"T was him and a officer from Gwynedd who interfered I will name and shame her officers from [identified] medical named them call recorded some one could have died this one person I don't want to see again shocking wait until this is over the publicity will be massive I have complained in righting to the chief executive and the leader of plaid cymru shocking remarks all done for political gain bothing more let's see what the legal team have [identified] they head office named Larsen."*

8.1.11 A further example consisted of a Facebook post by the Respondent suggesting that he had received several complaints that volunteers from the volunteer group linked to Councillor L had not returned change from payments provided for shopping, to the vulnerable; *"received a lot of complaints people doing shopping and not giving back change let [sic] get a bit of truth here no names*

mentioned I live on the seiont [sic] ward I don't think I am lucky with this guy just watch this space massive TV coveragE [sic]".

8.1.12 The Respondent also wrote a great number of e-mails to the Clerk and former Clerk of the Town Council, on a range subject and the common theme was criticism of Councillor L. In correspondence to the Clerk and former Clerk to the Town Council, the Respondent referred to Councillor L in derogatory terms, such as: - “a disgrace as a chairman”, “an awful councillor”, “a terrible chair and “a dangerous liar” and, in correspondence relating to these proceedings, an “idiot”.

The Case Tribunal's decision regarding Allegation 1.

8.1.13 On the basis of the findings of fact and the documentary evidence, the Case Tribunal found by unanimous decision that the Respondent failed to comply with Paragraph 7(a), but not Paragraphs 4(b), 4(c) or 6(1)(a) of the Code in relation to Allegation 1 for the following reasons: -

Paragraph 4(b) of the Code of Conduct

8.1.14 The Case Tribunal noted the starting point was the Covid-19 pandemic and various individuals and agencies were trying to put arrangements in place to help the community during this emergency. It noted that there had been separate volunteering groups under the support of two politicians within the same ward. It noted that the context of the Allegation was therefore an unfortunate political split and rivalry within the community effort.

8.1.15 It was within this context that prescription arrangements at a particular pharmacy raised concerns. The Respondent only became aware of changes to arrangements when one of the volunteers in the Respondent's group was refused collection of a prescription for the Respondent's close relative. This led to what the Case Tribunal considered to be lengthy, obsessive and wholly disproportionate correspondence by the Respondent on the subject.

8.1.16 The Case Tribunal noted the unfortunate lack of communication and co-operation between the Respondent and Councillor L in relation to the prescriptions issue. It considered that the Respondent had a misplaced and unsubstantiated belief that the change in arrangements had been instigated by Councillor L for personal rather than genuine motives.

8.1.17 The Case Tribunal nevertheless considered that there was a prima facie breach by the Respondent of Paragraph 4(b) of the Code, as he had shown disrespect and lack of consideration for Councillor L in Facebook posts and correspondence with Council officials on this subject. His withdrawal from meetings chaired by Councillor L demonstrated lack of respect for the role of a fellow Councillor. The obsessive and voluminous correspondence, criticising Councillor L's involvement in scathing and inflammatory terms on a range of issues was disrespectful. As to the threat of 'naming and shaming' an officer whilst carrying out an important role during the Covid pandemic, the Case Tribunal considered that this also amounted to a lack of respect and consideration.

8.1.18 The Case Tribunal considered that the comment regarding the volunteer group linked to Councillor L and non-return of change from payments provided for shopping to the vulnerable was unnecessary and disrespectful. Even if it was a retaliatory comment, it considered that such Facebook comments were most unfortunate. In conclusion, the Case Tribunal considered that the Respondent did not show necessary respect and consideration for others, particularly in an environment where agencies and volunteers were trying to help the community within an emergency environment. The Case Tribunal was satisfied that this constituted a prima facie breach of Paragraph 4(b) of the Code.

Paragraph 4(c) of the Code of Conduct

8.1.19 In the context of the unfortunate background to the change in prescription arrangements, the Case Tribunal considered that the Respondents' intemperate comments on Facebook lacked respect and consideration for others. It did not however consider that the comments were so egregious as to amount to bullying and harassment of Councillor L. The threat of "naming and shaming" an officer was highly unpleasant and disrespectful, however there was no available evidence to suggest that the officer had been distressed by or indeed taken any regard of the comment.

8.1.20 As to the correspondence sent to the Clerk to the Town Council, this had been viewed by Councillor L following an official request for information which he made to the Town Council. Although viewing the disrespectful comments after the event would no doubt have been a cause for concern for Councillor L, the Case Tribunal considered that it was correspondence intended to be viewed by the Clerk and was not generated to directly bully or harass Councillor L. The Clerk has also confirmed that once he'd settled into his role, he put the correspondence to one side and accepted it for what it was.

8.1.21 The Case Tribunal concluded that the evidence did not demonstrate a breach of Paragraph 4(b) of the Code

Paragraph 6(1)(a) of the Code of Conduct

8.1.22 The Case Tribunal noted that the Respondent may have been motivated by frustration and political rivalry, which did not reflect well upon the Respondent personally. It considered that it also had the potential to reflect poorly upon his office and the Relevant Authorities however, as the Facebook posts were public.

8.1.23 It considered that members of the public would have reasonably expected its elected representatives to show leadership and to lead by example in accordance with the Nolan principles. During the Covid-19 pandemic, unnecessary, intemperate comments and political rivalry about issues of vital importance such as pharmacy arrangements, could reasonably be regarded as bringing the office of Councillor and the Relevant Authorities into disrepute. Suggesting that someone could have died due to the change in arrangements was, in the view of the Case Tribunal, designed to unnecessarily inflame the situation.

8.1.24 In addition, it had regard to the Ombudsman's Guidance as follows; *"Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute. Inappropriate e-mails or social media posts might well bring the office of member into disrepute."* The Case Tribunal considered that the Facebook posts provided only part of the picture and did not provide a fair and balanced account of events.

8.1.25 As to the correspondence sent to officers of the authorities, this was private correspondence which emerged only following Councillor L's request for information to the Clerk to the Town Council in particular. The Case Tribunal did not therefore consider that the Respondent's correspondence could, in itself, reasonably be regarded as bringing the Respondent's office or authority into disrepute. It was not intended for discussion in the public domain and, despite the Respondent's threats to air the matter in the press, there was no evidence that this occurred.

Paragraph 7(a) of the Code of Conduct

8.1.26 The Case Tribunal concluded that the correspondence which the Respondent sent to the officers of the Relevant Authorities demonstrated an obsessive desire by the Respondent to create a disadvantage for Councillor L.

8.1.27 The Case Tribunal was satisfied that the Respondent was acting in his official capacity when writing to officers regarding this matter. It also considered that the context involved a mixture of political rivalry as well as genuine concern, frustration and anger which arose from the personal experience of the Respondent's close relative in relation to the change in prescription arrangements. Nevertheless, it considered that the Respondent's motivation was driven foremost by a wish to place Councillor L at a disadvantage and himself potentially at an advantage, for instance at any future election.

8.1.28 The correspondence to the Clerk of the Town Council made it clear that the Respondent was attempting to get rid of Councillor L from Seiont ward and making things difficult for him. On 22 March 2020, in an e-mail to the Clerk of the Town Council, the Respondent informed the Clerk that he would be working as a priority, for the time that was left, to get rid of Councillor L.

Article 10 ECHR

8.1.29 In applying the three-stage test in the case of Saunders, the Case Tribunal re-capped that there had been an 'in principle' breach of Paragraphs 4(b), 6(1)(a) and 7(a) of the Code of Conduct, but one which would comprise of a prima facie breach of Article 10 of the ECHR, being the right to freedom of speech. The Case Tribunal considered the restriction was not justified by reason of the requirements of Article 10(2) for the following reasons.

8.1.30 The Case Tribunal was mindful that it needed to strike a balance between the relevant aspects of the public interest. It noted that the Respondent's comments were rude and disrespectful, however not particularly egregious or violent, and that the exception in Article 10 should be construed strictly. It considered that the

freedom of right to expression was a fundamental right and that a politician acting in his official capacity had enhanced rights to freedom of expression.

8.1.31 The Case Tribunal considered the established legal principles in the Saunders, Calver and Heesom cases as follows. The freedom of expression includes the right to say things which people might consider dangerous or irresponsible or which shock or disturb. Caselaw shows that in political debate, emotive or non-rational expression should not be prevented if there is a rational concern at its heart. The Case Tribunal also noted that albeit exaggerated and misguided, the Respondent's concerns had some limited foundation as referenced in the above cases; *"surprising as it may be perhaps appear to some, the right to freedom of speech does extend to abuse..."* and, *"If subjects are politicians acting in their public capacity, they lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public."*

8.1.32 'Necessity' in a democratic society as per Article 10(2) ECHR sets a high threshold. It is important therefore to give words such as 'respect' in the Code a narrow reading. Political expression can clearly include matters which are not high manifestations of political expression and includes matters of public concern at local government level. As with the Calver case, the comments in this case appear to have been intended to undermine a rival in an unattractive way, however they did not necessarily amount to a breach of the Code. In this case, it was difficult to disentangle abuse from genuine, if misplaced, political concerns expressed on Facebook and in correspondence, about the running of Council affairs and regarding the Respondent's political rival.

8.1.33 In all the circumstances and due to the application of the three-stage test in Saunders, the Case Tribunal considered that, although there had been a prima facie breach by the Respondent in relation to Paragraphs 4(b) and 6(1)(a) of the Code, the Respondent had expressed political views and therefore had enhanced rights as regards freedom of expression. This protected the Facebook comments which failed to show respect and consideration, and which were capable of bringing the Respondent's office or Authorities into disrepute. The Case Tribunal considered that it was not necessary to make a finding of a breach in order to protect the reputation or rights of others, *'for the prevention of disorder or crime' or 'for the protection of health or morals...'* In this instance, Councillor L as a fellow politician would have been expected to possess a thicker skin, as per the Calver case. In addition, the public Facebook posts were not so egregious or personal as to override the right to freedom of expression.

8.1.34 In relation to Paragraph 7(a) however, the Case Tribunal did consider that it was necessary to make a finding of a breach, in order to protect the reputation or rights of another. The Case Tribunal considered that the Respondent had attempted to use his position improperly to create a disadvantage for another, and the right to freedom of expression did not protect such an attempt. The evidence showed that the Respondent's efforts from March 2020 were being directed towards creating a disadvantage for Councillor L, albeit the Respondent's motivation partly stemmed from a genuine political concern. The Case Tribunal noted the Respondent's stated aim to get rid of Councillor L; *"fyddai yn gweithio am yr amser sydd ar ol igael*

gward o [Councillor L] prioriy” (“I will be working in the time that’s left to get rid of Councillor L...priority”).

8.1.35 The Case Tribunal concluded that the Respondent’s motivation was therefore largely personal, and his priority was to do harm to his political rival. In the circumstances and despite the fact that the Case Tribunal considered that the Respondent had enhanced rights of political expression, this did not extend to comments forwarded to officers where the chief underlying motivation was to disadvantage or destroy an individual Councillor, rather than to address a genuine political concern in a rational manner. Article 10(2) of ECHR was thereby engaged to protect the reputation and rights of others.

8.1.36 In summary, in relation to Allegation 1, the Case Tribunal found by unanimous decision that the Respondent had breached Paragraph 7(a) of the Code but not Paragraphs 4(b), 4(c) and 6(1)(a).

8.2 Allegation 2: The alleged Assault

The Respondent’s response to Allegation 2

8.2.1 The Respondent denied that any incident took place on 5 July 2020 involving Councillor L. He said that “nothing of that nature” had taken place. He said that he had been threatened by Councillor L and another councillor, that this was “all planned” and he was being bullied. At the relevant time, he said that he and other individuals had been involved in delivering hot meals to the elderly, although no independent signed evidence to this effect has been supplied, despite the Respondent stating that he had nearly 60 witness statements to confirm this.

Information from North Wales Police

8.2.2 The alleged victim and Councillor L, who witnessed the incident, reported the incident to the police. It was reported that they had been delivering leaflets regarding a free ready-meal service on the estate where the Respondent lived. The Respondent allegedly got out of his vehicle and approached the victim, shouted, and made threats that he should leave the area, or he will “get the boys to sort him out”. This was taken by the alleged victim and witness to be a threat. The Respondent then allegedly made incorrect allegations regarding the pharmacy’s prescriptions arrangements and made a threat of what he would do with a pamphlet if one had been left at his property.

8.2.3 The police noted that incident appeared suitable to be resolved via a community resolution procedure. It was clear from the police record that the Respondent had acknowledged that an incident took place and that there was an ongoing feud between himself and Councillor L as local councillors in the same ward and division. The Respondent alleged that the victim and witness had been making gestures and laughing at him. The Respondent refused to sign any community resolution paperwork. Suitable words of advice were given, and the Respondent said that he’d already taken steps to distance himself from Councillor L.

8.2.4 The police referred to this as being “a very low-level incident between two ‘rival’ council members whilst out rallying for support in the Caernarfon area”. The police noted that the individuals were of good character and decided that it was not in the public interest to take further action; “with both parties to be offered words of advice in respect of their behaviour.”

The Case Tribunal’s decision regarding Allegation 2

8.2.5 On the balance of probabilities, the Case Tribunal considered that an incident did take place as described by the victim and Councillor L. It was particularly concerned about the lack of candour demonstrated by the Respondent in attempting to say that no incident occurred when he had clearly acknowledged to the police that an incident did occur. Indeed, he had said that the only reason for not signing the paperwork was that he thought it might be used against him in future by Councillor L. The Case Tribunal noted the surrounding circumstances and that the incident appeared to be an undignified and petulant verbal attack by the Respondent, regardless of any provocation or political rivalries which existed.

8.2.6 The Case Tribunal had regard to the Ombudsman’s Guidance as follows; - “As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your office or your authority”. Also; - “Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life”.

8.2.7 The Case Tribunal was satisfied in the circumstances, that the Respondent had not acted in a rational or proportionate manner, and it was reasonable to conclude that he had damaged his personal reputation. It did not however consider that the Respondent’s conduct in relation to this incident could reasonably be regarded as bringing his office or the Relevant Authorities into disrepute under Paragraph 6(1)(a) of the Code. This was in view of the police’s description of the incident as being very low level in the context of volunteering and political rivalry, resulting in both parties receiving words of advice.

8.2.8 It also noted that there was also no evidence that the incident was witnessed by or came to the attention of any members of the public, although the incident appears to have taken place on a housing estate, and there is no evidence that the matter was reported in the press. It resulted in no further police action. The Case Tribunal noted its concern however that police time had been taken up by this incident, particularly during the Covid-19 pandemic and appeared to be part of on-going tensions between the two Councillors.

8.2.9 The Case Tribunal came to the unanimous conclusion that the Respondent had not breached Paragraph 6(1)(a) of the Code regarding Allegation 2.

8.3 Allegation 3: The disclosure of Personal Information

The Respondent's response to Allegation 3

8.3.1 The Respondent said that he had not shared any privileged information about Councillor L's relatives. He said he double checked and noted that the Facebook post in question referred only to a particular village, but no further details. He also said that his volunteer group had received a group message from a relative of Councillor L asking the Respondent's group to deliver food to relatives in that village. The Respondent stated that the fact that there had been a request and the village had been revealed by the relative on another Facebook page in any event. He said his Facebook post was therefore third-hand news.

The relevant Facebook posts

8.3.2 The Allegation concerned a Facebook post by the Respondent as follows; - *"Today we extended the food to [an identified village] we are non political as we supplied a fresh meal to Councillor Larsen [s identified relatives]"*.

8.3.3 The Case Tribunal noted that the Ombudsman concluded that the Respondent was not acting in his official capacity at the relevant time and that Paragraph 5(a) of the Code of Conduct regarding disclosure of confidential information did not apply in this case. The Ombudsman nevertheless considered that the Respondent's conduct in disclosing information of a confidential nature could reasonably be regarded as bringing the Respondent's office or authority into disrepute by virtue Paragraph 6(1)(a) of the Code.

8.3.4 The Case Tribunal noted a Facebook post where the relative expressed their thanks for the meal provided to Councillor L's relatives. The relevant village was not referenced in this post. The Case Tribunal considered that it had been unwise and irresponsible of the Respondent to share any information regarding the identity of users of a voluntary service in which he was involved, let alone any vulnerable individuals. It considered that this comprised of another unfortunate instance of 'points scoring' by the Respondent and it was notable that the date of the post was the same as the date of the incident in Allegation 2.

The Case Tribunal's decision regarding Allegation 3

8.3.5 The Case Tribunal concluded that, although the action may have damaged his personal reputation, it would not reasonably be regarded as an action which would bring the Respondent's office or authority into disrepute. The voluntary service was not set up by the Town Council or Gwynedd Council and the reader would have associated the Respondent's Facebook post in this instance with his private/volunteer capacity rather than his official one.

8.3.6 The Case Tribunal therefore concluded by unanimous decision that the Respondent had not breached Paragraph 6(1)(a) of the Code regarding Allegation 3.

8.4 Allegation 4: Threatening proceedings, certain actions, and complaints

The Respondent's response to Allegation 4

8.4.1 The Respondent stated that he had not made any vexatious or malicious complaints over his 21 years in office and thought that if the Clerk to the Town Council had provided him with answers and carried out investigations, he didn't think *"we would be here"*. He also said that he would never abuse his position and thought it was his job *"to fight for the rights of the electorate"*. He said he just wanted to know the truth and about things that were happening in his ward. Effectively he felt excluded.

The nature of the correspondence

8.4.2 The Case Tribunal noted that the Clerk and the former Clerk to the Town Council had received a large number of e-mails from the Respondent regarding a range of issues involving Councillor L. Examples of comments included; - *"He should keep out of Gwynedd matters"*, *"Keep him away"* giving the Clerk a few days *"or I'll sort it"*, *"I'll be working in the time that's left to get rid of L"*.

8.4.3 The Respondent also referred Councillor L on multiple occasions to various officers of the Town and Gwynedd Council, as well as stating that he had referred him to various individuals and bodies. He referred in serial e-mails to instructing solicitors and Leading Counsel, making complaints to the police, sending a pre-action protocol, taking out an injunction, *"returning to court"*, the press and a story being on national television and in newspapers, complaint to the Ombudsman, threats to *"tell people on the street"*, referral to the 'district auditor', to the Assembly, mention of many people having signed a petition, threatening a Facebook post *"i pawb cael gwybod"* ("for everyone to know") and maintaining that he had 200 complaints from other individuals.

8.4.4 The correspondence to the Clerks and complaints spanned a period from 2018 to 2021 and covered a wide range of topics. The Respondent had also made two complaints to the Ombudsman about Councillor L. He did not substantiate either complaint however, and he later sought to withdraw them. He also provided six police crime reference numbers to support his complaints against Councillor L, however having contacted the police, it was confirmed that these did not relate to Councillor L. He also maintained that he had a 500-page document containing all the complaints he had received about Councillor L. He said that this was with his solicitor.

The Case Tribunal's decision regarding Allegation 4

8.4.5 On the basis of the findings of fact and the documentary evidence, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Paragraph 6(1)(d) for the following reasons.

8.4.6 The Case Tribunal was satisfied that in relation to the multitude of threats of proceedings and complaints against Councillor L, the Respondent was acting in his capacity as an elected member. He wrote directly to the Clerk of the Town Council

and to the Monitoring Officer of Gwynedd Council in his official capacity, using his Council e-mail address and signed them off as Councillor. The Case Tribunal was therefore satisfied that all provisions of the Code applied in principle to this Allegation, including Paragraph 6(1)(d).

8.4.7 The Case Tribunal was satisfied in the circumstances, that the Respondent had made a large number of vexatious, malicious and frivolous complaints against Councillor L on a range of subjects, which lacked any real foundation. He'd made these complaints to the Clerks of the Town Council, the Monitoring Officer, the Ombudsman and the police. There was little evidence that any of the threatened judicial steps had been carried out, save for an initial letter from a firm of solicitors in Romford and initial instructions to another firm of solicitors. He had made two complaints to the Ombudsman, however then failed to provide any evidence to substantiate these complaints and subsequently requested withdrawal of these complaints.

8.4.8 As an example, the Respondent had received a full explanation of how the prescriptions issue had arisen and about the concerns which had led to a change in methodology for release of prescriptions. The Respondent persisted in obsessively pursuing this matter however, despite the explanation from the Chief Executive of Gwynedd Council, which should have provided sufficient comfort to the Respondent, and which should have concluded the matter.

8.4.9 The Case Tribunal had no hesitation in concluding that the motivation for the complaints included an element of malice in view of the stated intention to "get rid" of Councillor L as a priority. He had used various means and platforms to attempt to achieve this result. It considered that the complaints were also vexatious and frivolous and led to an escalation of events and grossly disproportionate use of the complaint mechanisms of the various bodies during the pandemic. It noted that there appeared to be a pattern of behaviour in finding new issues and avenues through which to pursue his stated aim of getting rid of Councillor L. It therefore found that there was a prima facie breach of Paragraph 6(1)(d) of the Code.

8.4.10 As to Paragraph 7(a) of the Code, the Case Tribunal considered that it was the same body of evidence which led to a finding of a breach of 7(a) in relation to Allegation 4 and Allegation 1 and, in the circumstances, it did not consider it necessary to re-visit this Paragraph of the Code under this heading.

Article 10 ECHR

8.4.11 In applying the three Saunders tests, the Case Tribunal considered that there had been an 'in principle' breach of Paragraph 6(1)(d) of the Code of Conduct but one which comprised of a prima facie breach of Article 10 of the ECHR, as the Case Tribunal recognised the Respondent's enhanced right to freedom of speech. The Case Tribunal considered the restriction was justified in this instance by reason of the requirements of Article 10(2) for the following reasons.

8.4.12 The Case Tribunal was again mindful that it needed to strike a balance between various relevant aspects of the public interest. In this instance, the volume of complaints and the egregious and obsessive nature of the complaints to various

individuals and bodies over an extended period, meant that Article 10(2) was engaged.

8.4.13 The Case Tribunal considered that the exercise of the right to freedom of expression carried with it duties and responsibilities which were rightly subject to the Code in the interests of the protection of the reputation or rights of others. It concluded that the obsessive and malicious nature of the complaints made by the Respondent went beyond what could reasonably be tolerated in democratic society. It went beyond the limits of what was acceptable, even within the political sphere.

8.4.14 The Case Tribunal was again mindful of the caselaw and the expectation that politicians should possess thick skin. This did not however extend to having to be subjected to continuous, frivolous, vexatious, and malicious complaints. Complaints made by the Respondent to the Clerk of the Town Council and the Ombudsman and actions and threats of proceedings, were seemingly used as retaliation for complaints made against himself. The Case Tribunal considered the behaviour to have been egregious and had used up considerable time for various agencies. In particular, it had placed the current Clerk to the Town Council under unnecessary pressure when he was new to the role, having to manage the affairs of the Town Council at a very difficult period during the pandemic.

8.4.15 The Case Tribunal concluded that the Respondent had breached Paragraph 6(1)(d) by making a range of unsubstantiated complaints against Councillor L. The Case Tribunal considered the behaviour to have been exacerbated by the Respondent pretending to have taken court action and other serious steps against him and threatening various other action, including involvement of the press, which will have caused distress and anxiety when they came to his notice. It was satisfied that the Respondent could not reasonably have believed that there were valid complaints against Councillor L, as he had been unable or unwilling to produce evidence to support them. He would have been aware that they were wholly unsubstantiated or vastly exaggerated in the context of his stated aim to get rid of Councillor L. In the circumstances, it considered that the Respondent did make vexatious, malicious, and frivolous complaints against another Member of the Relevant Authorities.

8.4.16 In the circumstances, the Case Tribunal concluded by unanimous decision that the Respondent had breached Paragraph 6(1)(d) of the Code.

8.5 Allegation 5: Failure to co-operate with the Ombudsman's investigation

The Respondent's response to Allegation 5

8.5.1 The Respondent acknowledged that he had been sending out too many e-mails. He said that he could not co-operate with the Ombudsman due to health issues and considered that provision hadn't been made for him under equalities legislation. He said that was really unwell and he had not been sufficiently fit to be interviewed. He referred to a data breach and that the Ombudsman's file had been left on his doorstep when he was away. He believed that children had tried to set it on fire and that information from the file had been on Facebook and comments made about his mental health.

8.5.2 He considered the file of evidence supplied by the Ombudsman was “full of rubbish” and said; - *“Load of rubbish, gone to a solicitor”*. He confirmed that he wished to make a formal complaint of harassment against the Ombudsman’s Investigation Officer and said that the Investigation Officer “only wants one side” of the story.

The Ombudsman’s correspondence and telephone discussions

8.5.3 The Ombudsman stated that it had provided reasonable adjustments to the Respondent during its investigation, having given options for the Respondent to ask an advocate to provide comments on his behalf. It offered a telephone conference and granted an extension. The Respondent declined an opportunity to respond to written questions instead and indicated that comments were already in place. He stated that his solicitor was instructed, and the police were investigating. He said that the only new evidence he had was in the form of written statements from locals stating that nothing had happened. He also referred to media interest and alleged that a small media company had approached him. He also referred to taking the matter to court if the matter moved on. He also alleged a data breach and said that an outside organisation was looking at the way the Ombudsman’s office investigated.

8.5.4 The Ombudsman sent a file of evidence to the Respondent on two occasions. The Respondent said that he couldn’t focus on the file or understand the information which the Ombudsman sent to him and said that he’d returned the file. He variously informed the Ombudsman’s representative that the package was damaged, that a CD was missing from the first package and that the second package was missing.

8.5.5 There had been a large amount of written correspondence to the Ombudsman and only some of it acknowledged any remorse or acceptance of the conduct alleged. Similarly, the Ombudsman’s notes of telephone calls referred to other action which the Respondent said he would allegedly take, including court action and referral to the media in response to the investigation.

The Case Tribunal’s decision regarding Allegation 5

8.5.6 The Case Tribunal considered that the Respondent had entirely failed to comply with the reasonable and appropriate requests of the Ombudsman in trying to conclude a fair investigation process. He failed to co-operate with the Ombudsman’s investigator who was acting in accordance with the Ombudsman’s statutory powers. He had returned the Ombudsman’s file of evidence and, as a Councillor is expected to consider and respond to the Ombudsman’s investigation, based upon the information within the file, this evidenced a failure or willingness to engage with a vital process in upholding the Code.

8.5.7 As the Respondent has been able to correspond at length with the Ombudsman as well as other individuals and bodies, albeit without a clear focus, the Case Tribunal considered that the Respondent could and should have co-operated and responded fully and properly to the Ombudsman’s investigation. He had been provided with several opportunities to give meaningful evidence and submissions to

the Ombudsman. He had also been provided with opportunities to supply specific evidence that he was medically unable to engage with the specific process of an Ombudsman's investigation or to engage the assistance of a friend or appoint a legal or other representative to assist. There was no evidence produced however of any significant health condition which prevented engagement with the Ombudsman's investigation.

8.5.8 The Case Tribunal considered that the Respondent's various attempts at obfuscation appeared to be designed to delay or confuse the process and to deflect from the allegations. The unwillingness to respond to questions, but conversely to respond at length and in bullish terms about other issues, meant that the Respondent had deliberately failed to engage with the statutory process to investigate complaints against him.

8.5.9 The Case Tribunal also considered that the Respondent had not responded to reasonable adjustments made by the Ombudsman in relation to the investigation, including engaging through a representative, despite having professional support from an advocate, and having the opportunity to respond to written questions rather than participate in a formal interview. The Case Tribunal did not doubt that the Respondent was finding the investigation process stressful, however he continued to act as a ward Member on the Town Council and on Gwynedd Council and he was receiving support. The Case Tribunal considered that he had gone out of his way to disrupt and avoid the statutory process.

8.5.10 In the circumstances, it was the Case Tribunal's unanimous decision that the Respondent had breached Paragraph 6(2) of the Code. It considered that Article 10 ECHR was not relevant in the context of a refusal to co-operate with processes and to respond to questions. Even if it was relevant and the failure to comply with reasonable requests of the Ombudsman could be seen to be, in itself, a political expression, the Case Tribunal considered the Respondent's behaviour towards the Ombudsman's investigation and the Investigating Officer to be so egregious that Article 10(2) should apply. It considered that it was necessary to invoke the Code to protect and uphold the law and the reputation and rights of others.

9. FINDINGS IN RELATION TO SANCTION

9.1 The Clerk to the Tribunal reported that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

9.2 The Case Tribunal carefully considered the current Sanctions Guidance of the Adjudication Panel for Wales and, in particular noted the public interest considerations as follows in paragraph 44; - *"The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*

9.3 The Respondent did not consider that he should be made subject to any formal sanction, and he was particularly concerned that he would no longer receive an allowance as a County Councillor if he was suspended or disqualified. This was due to his claim that his allowance went towards medical treatment for a young relative.

9.4 The Ombudsman stated that communications from the Respondent were difficult to follow and that he did not engage in the investigative process in a meaningful way. The Ombudsman noted that the complaints about Councillor L have lacked foundation and credibility and that the impact upon Councillor L has been significant, causing stress and upset. It pointed to numerous breaches over a sustained period. It said that the Respondent has referred to a longstanding grudge against Councillor L for perceived slights, but that he has not provided any evidence of poor behaviour by Councillor L to justify the nature of his behaviour towards him. Finally, the Respondent, as an elected member, is a trusted person in the community with a following on social media. Therefore, his behaviour towards Councillor L could only be interpreted as an attempt to damage Councillor L's standing within the community.

The Case Tribunal's Findings on Sanction

9.5 The Case Tribunal considered that the breaches of Paragraphs 6(1)(d), 6(2) and 7(a) to have been serious breaches which went to the heart of the Nolan principles in terms of lack of honesty, integrity, openness, and leadership and which had the potential to undermine local democracy. It noted that the Respondent had persisted in a course of conduct of exaggerated, unsubstantiated, and malicious complaints which continued to undermine these principles.

9.6 The Case Tribunal considered that the Respondent's actions had been deliberate or at best irrational and in the circumstances, disqualification was a potential sanction in this case due to the seriousness of the breaches and to make it clear that this was unacceptable conduct in public office. Nevertheless, the Case Tribunal was mindful that disqualification in this instance might have a particularly disproportionate effect on the Respondent, as it would be likely to prevent him from standing for election until 2027. In the exceptional circumstances of this case, the Case Tribunal considered that a lengthy suspension would be likely to deter repetition.

9.7 The Case Tribunal had regard to sanctions imposed in previous cases and to the principle that the sanction imposed should be the minimum necessary to uphold the standards of conduct in public life and maintain confidence in local democracy. The nature and extent of the breaches and the level of culpability of the Respondent in this case, together with the potential consequences of the breach upon another individual, albeit a political rival rather than a member of the public or an officer, placed these breaches at the higher end of the suspension range in the circumstances. A suspension would need to provide sufficient time for the Respondent to reflect on his conduct before contemplating re-entering local politics.

Mitigating Factors

9.8 The Case Tribunal had regard to the following mitigating factors; -

9.8.1 The Case Tribunal was aware that the Respondent had referred to a range of health issues and personal circumstances and it had no reason to disbelieve that he was suffering from a degree of stress due to the Ombudsman's investigation. The Ombudsman also acknowledged that; *"Although Councillor Owen has not presented evidence of his ill health, his behaviour is not as you would expect from someone who is well"* and *"Councillor Owen has indicated that he has pressures in his life which have contributed to his actions. It should also be noted that his behaviour towards Councillor Larsen appears to have worsened during the COVID 19 pandemic"*.

9.8.2 A record of over 20 years' service in local government.

9.8.3 The Respondent expressed some limited regret and noted that one of his comments had been "a bit strong". He said that he had no malice against the Ombudsman's Investigating Officer and that it was just his heath "kicking in". He said that he had nothing against her and that he recognised that she was just doing her job.

9.8.4 He referred to several apologies that he had made, and provided a copy of a written apology to Councillor L, although there was no evidence that he had communicated this apology to Councillor L.

9.8.5 He briefly acknowledged a need to change his behaviour, and he had referred to being willing to attend further training. He also acknowledged that if he engaged in Council committees, then he would get answers to concerns. He said that he has removed himself from Facebook.

Aggravating Factors

9.9 The Case Tribunal had regard to the following mitigating factors: -

9.9.1 The Respondent had long experience of local government and should have been immersed in the Nolan Principles and been well-versed in Code expectations.

9.9.2 He had sought to unfairly blame others for the Respondent's own actions, primarily Councillor L but also others including an officer of Gwynedd Council and the Clerk of the Town Council.

9.9.3 The Respondent persisted with a pattern of behaviour that involved repeatedly failing to abide by the Code.

9.9.4 He had not acted with candour during the investigation, for example, he had sent a formal complaint to the Ombudsman about Councillor L, giving police crime reference numbers which did not relate to Councillor L.

9.9.5 The Respondent, despite expressing regret, appeared not to understand or fully accept the misconduct and any consequences of his misconduct.

9.9.6 The Respondent refused to accept the facts, despite clear evidence to the contrary in relation to the prescriptions issue.

Article 10 ECHR Considerations

9.10 The Case Tribunal recognised that the sanction of suspension comprised a prima facie breach of Article 10 in that the finding could be deemed to restrict the Respondent's right to freedom of expression.

9.11 It considered however that the sanction was a penalty prescribed by law and needed to be of a length which was proportionate in all the circumstances, bearing in mind the public interest and the need to uphold law and justice and to protect the reputation and rights of others in a democratic society.

9.12 The Case Tribunal recognised that suspension would impact upon the Respondent's Article 10 rights. It concluded however that a suspension for nine months was the minimum necessary to recognise the serious nature of the Respondent's breaches of the Code. The sanction was necessary in this case to uphold standards of conduct in public life, and also to protect the rights and reputation of others from unsubstantiated and unfair allegations.

9.13 The Case Tribunal concluded by unanimous decision that Councillor Owen should be **suspended** from acting as a member of both Caernarfon Royal Town Council and Gwynedd Council **for a period of nine months or, if shorter, the remainder of his term of office**, with effect from 21 December 2021

9.14 Caernarfon Royal Town Council and Gwynedd Council and the Standards Committee of Gwynedd Council are notified accordingly.

9.15 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 *C Jones*

Date 10 January 2022

C Jones
Chairperson of the Case Tribunal

S McRobie
Panel Member

G Jones
Panel Member

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2021-022/AT

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Gareth Baines

RELEVANT AUTHORITY: Wrexham County Borough Council

1. INTRODUCTION

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Gareth Baines against the decision of the Wrexham County Borough Council's Standards Committee that he had breached the Chirk Town Council's code of conduct and the following sanction be imposed:

1.1.1 That the Appellant be suspended as a community Councillor from Chirk Town Council for a period of three months.

1.1.2 That the Appellant should undertake Code of Conduct training at the earliest convenience.

1.1.3 That the Appellant should send a letter of written apology for the breaches, to the Complainant and to the Chair of Chirk Town Council.

1.2 A hearing was held by the Appeal Tribunal at 10:00 am on Thursday 16th December 2021 by Cloud Video Platform (CVP). The hearing was open to the public.

1.3 Councillor Baines was given notice of the hearing date; indeed, it was listed following receipt of his and the other participants' dates of availability. Councillor Baines did not attend the hearing.

2. PRELIMINARY DOCUMENTS

2.1 Appeal Against Decision of Standards Committee

2.1.1 On 15th July 2021 the Adjudication Panel for Wales received an appeal from Councillor Baines against the determination of the Wrexham County Borough Council's Standards Committee on 22nd June 2021 (the Notice of that

decision was e mailed to Councillor Baines on 25th June 2021), that he had breached the Chirk Town Council's code of conduct and should be sanctioned as set out at paragraphs 1.1.1- 1.1.3 above.

2.1.2 The Standards Committee's determination followed its consideration of a report dated 14th January 2021 by the Public Services Ombudsman for Wales ("the Ombudsman") under the terms of sections 69(4)(c) and 71(2) of the Local Government Act 2000, and a determination in accordance with the 'Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001'.

2.1.3 The allegations were that Councillor Baines had breached Chirk Town Council's Code of Conduct by sending an e mail on the 1st November 2019 to the employer of the complainant Mrs Rachel Allen in which he attempted to smear her name in her workplace and made her feel threatened and vulnerable. The e mail was sent from Councillor Baines personal account but was signed "Cllr Gareth Baines". The complainant is a teacher. The Ombudsman considered that this e mail was an act of retaliation (because Mrs Allen had made a complaint about Councillor Baines to the Ombudsman), which was designed to cause difficulty for the complainant in her place of work. Councillor Baines also copied this e mail to the Education Workforce Council, the independent regulator for the education workforce in Wales, conduct considered by the Ombudsman as being an attempt to cause a disadvantage to the complainant in her place of work..

2.1.4 The Ombudsman concluded, after an investigation which included interviewing the Appellant on 27th July 2020, and taking into account the Appellant's written comments and submissions, that the Appellant's conduct was suggestive of a breach of the following paragraphs of the Code of Conduct;

- You must - 4(b) - show respect and consideration for others
- You must - 4(c) - not use bullying behaviour or harass any person:
- You must not - 7(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;

2.1.5 The Appellant, in writing before the hearing of the Standard's Committee on the 22nd June 2021, and in oral representations at that hearing, confirmed that he did not dispute the facts in the Ombudsman's report. The Committee then considered the evidence and heard submissions from the Ombudsman's representative and from the Appellant as to whether there had been a failure to follow the Code of Conduct on the facts. The Standards Committee concluded that there had been a breach of paragraphs 4(b), 4(c) and 7(a) of the Code and imposed the sanction referred to above at paragraphs 1.1.1 - 1.1.3.

2.1.6 The Appellant appealed on 15th July 2021, as per paragraph 2.1.1 above. The Appellant accepted the findings of the Standards Committee as to facts and the breaches of the Code of Conduct, but he appeals against the sanction imposed, upon the basis that it was excessive compared to sanctions

for similar breaches of the Code locally, and that the Standards Committee had failed to take into account the mitigating circumstances that he had advanced. The President of the APW gave permission to appeal on the 19th July 2021 noting that it could not be said that there was no reasonable prospect of success since it is always generally arguable that a sanction imposed was too harsh or too lenient.

3. Pre- hearing directions

3.1 The Ombudsman had provided a response to the appeal on the APW 'Response to Representations by Appellant' form sent by e mail on 28th July 2021. The Appeal Tribunal, by listing direction dated and sent out on 19th October 2021, made directions to prepare the matter for the appeal hearing with orders as to the submission of further relevant evidence and submissions. The Appellant provided a further statement in response to directions dated 2nd November 2021.

3.2 The Appellant, the Ombudsman and the Monitoring Officer of the Authority, were informed of the final hearing date of 16th December 2021 by e mail of 16th November 2021.

3.3 By e mail sent to the Tribunal office by the Appellant at 09:50 on 15th December 2021, the day before the hearing, he said that "I'm sorry to advise" that he was due to fly to Munich on Thursday 16th December 2021 for treatment that he had missed the previous week. The Appellant attached details of a flight departing from Manchester Airport at 11:05 and landing in Munich at 14:05. This was a factual e mail with no request for postponement of the hearing. The Registrar to the Adjudication Panel for Wales e-mailed the Appellant, Ombudsman and Monitoring Officer to inform them that the hearing would proceed on the 16th December 2021.

4. APPEAL, HEARING, AND SUBMISSIONS ON ACTION TO BE TAKEN

4.1 The Appellant's Submissions

4.1.1 Councillor Baines submitted a number of points in his appeal form dated 15th July 2021 and amplified his evidence in his statement to the tribunal dated 2nd of November 2021. He argued that the sanction imposed was excessive when compared to similar breaches locally and failed to take into account considerable mitigating circumstances. He set out the following mitigating factors that he asked the Appeal tribunal to take into account in deciding upon the appropriate sanction;

- i. That he was new to the role.
- ii. That he had not been provided with training.
- iii. That he had experienced the stress of running an international business and 'being expatriated.'

- iv. He said that the panel were made aware of significant health concerns, and he provided details of a medical condition for which he was still receiving treatment.
- v. He said there had been no previous or subsequent investigations by the Ombudsman into his conduct and that he had fully complied with the Ombudsman's investigation.
- vi. That the Appellant had fully complied with Wrexham County Borough Council's Standards Committee (he used the term 'Panel') and that he had willingly accepted the conclusions of the Standards Committee.
- vii. That a similar hearing in a neighbouring authority resulted in a Councillor in a more senior position receiving a shorter suspension for a more serious breach. In that case, the Councillor had not been required to write a letter of apology to the complainant and to the Leader/Chair of the Council. The sanction in that other case had been brought to the attention of the Standards Committee at the time by the Ombudsman's representative. He therefore argued that the decision in his case was disproportionate and against precedent.
- viii. He argued that insufficient consideration was given to the circumstances leading to the complaint against him. He said that there had been several complaints against him by the same complainant, all of which had been dismissed "in what was viewed to be a vexatious campaign."

4.1.2 The Appellant provided further evidence in his witness statement, particularly in relation to his views that the complainant had previously complained about him and that "I viewed the complaints Mrs Allen made to the Ombudsman to be vexatious and to be an attempt to tarnish or smear her political rivals for her own benefit – and that they were politically driven...".

4.1.3 The Appellant's statement detailed that the events came at a time of extreme stress for him. He was working as the International Director for a multibillion Euro company based in Germany which required him to take on average 4 to 6 flights a week. He said that he was out of the UK for the majority of each calendar month although he was returning to the UK as much as possible to conduct his duties as Parliamentary Agent and councillor. He said that he had had no training in any form and, because of the amount of time he spent out of the country when he was first elected, he had very little experience of being a Councillor and was not aware that his behaviour was a potential breach of the Code. He used his title in the email of 1 November 2019 because Mrs Allen's initial complaint had related to his position. The Appellant said that he had used his title in a "misguided attempt to be transparent", and that the incident was entirely out of character for him.

4.1.4 the Appellant also provided medical evidence from a doctor and gave further details of the effect of his medical condition in his witness statement. The statement records: "I accept I breached the Code of Conduct and offered my unreserved apology to the Standards Panel – but felt, as I have submitted to the Ombudsman previously, there were several substantial mitigating factors that had not been taken into account."

5.2 The Ombudsman's Submissions

5.2.1 The Ombudsman was represented by Ms Katrin Shaw, and Ms Llinos Lake. Ms Shaw had been present at the initial hearing of the Standards Committee on 22 June 2021, and Ms Lake was involved in the Ombudsman's investigation, including as the Ombudsman's representative in the telephone interview with the Appellant on 27 July 2020. Ms Lake also emailed the APW on 28 July 2021 with the Ombudsman's comments in response to the Appellant's representations.

5.2.2 The Ombudsman's written representations confirmed that at the hearing of this matter before the Standards Committee, the Ombudsman's representative had shared a copy of the Sanctions Guidance issued by the President of the Adjudication Panel for Wales under section 75(10) of the Local Government Act 2000 ("the Sanctions Guidance") with the Committee in advance of the hearing. During the hearing, Ms Shaw had drawn the Committee's attention to the Sanctions Guidance as an appropriate framework for their decision on sanction.

5.2.3 With regard to the Appellants points on mitigation which the Appellant believed had not been appropriately considered by the Standards Committee before the decision was reached upon sanction, the Ombudsman noted;

- i. That the Appellant signed his declaration of acceptance of office on 22 June 2017 and the incident took place on 1 November 2019. The Ombudsman's view was that the Appellant was not new to the role of member as he had been in the role for over 2 years.
- ii. The Ombudsman accepted the Appellant's assertions that he had not received training on the Code but said it was unclear as to whether any training had been available to him, whether he had been refused training or had failed to access training that was available to him.
- iii. The stress of running an international business and being expatriated was not raised by the Appellant during the investigation. It was the Appellant's choice to become a Council member in those circumstances and having done so he was required to abide by the Code.
- iv. That the Appellant had not raised any medical issues during the Ombudsman's investigation, but he did make the Standards Committee hearing aware of his medical issues at the time of the events under consideration and at the hearing, but he did not explain how any issues may have impacted upon his behaviour on 1 November 2019 when he sent the email to the complainant's employer.
- v. The Ombudsman accepts that there were no previous findings of a breach of the Code and there were no ongoing Ombudsman investigations against the Appellant, who had not previously been referred to the Standards Committee or the APW. This information was confirmed during the Standards Committee hearing and is referred to in the Committee's decision notice.
- vi. The Ombudsman accepts the full cooperation of the Appellant during the investigation, and that the Appellant accepted the Committee's decision that he had breached the Code of Conduct.

- vii. The Ombudsman confirmed that Ms Shaw's submissions on sanction during the Standards Committee hearing referred to the case in a neighbouring authority which in the Ombudsman's opinion was more serious and had resulted in a two-month suspension on the member concerned.
- viii. The Ombudsman was unable to comment upon the weight given to the circumstances leading to the complaint by the Standards Committee in reaching its decision on sanction.

5.2.4 At the Appeal Tribunal hearing, Ms Shaw confirmed the Ombudsman's view that sanction is very much a matter for local standards committees to consider. She submitted that a breach of 4 (c) of the code not to bully or harass any person, is a serious breach, as is the misuse of the member's position. Suspension is an appropriate response to the Appellants misconduct. She confirmed the Ombudsman's view on the mitigating factors outlined above, and that the Appellant was concerned about the complaint that had been made to the Ombudsman about him.

5.2.5 Ms Shaw submitted that there were a number of aggravating factors. The Appellant's witness statement relates to background events and his genuine concern that complaints made against him were vexatious, but the conduct of the complainant is not at the heart of this matter, rather it is the conduct of elected members in their public service role. The Appellant appears to have a lack of understanding in relation to his conduct that led to the breaches of the Code. He does not appear to understand the complainant's concerns that her employer had been contacted by him.

5.2.6 Ms Shaw noted that whilst the Appellant had maintained before the Standards Committee that he had safeguarding concerns that he wished to report to the complainant's employer, in fact the email that he sent did not raise these issues of safeguarding at all and merely referred to the fact that a complaint had been made about him to the Ombudsman.

5.2.7 Ms Shaw submitted that a suspension of 3 months was not unreasonable in the circumstances. She had drawn the Committee's attention to a Standards Committee case in Denbighshire where a two-month suspension had been given, (as noted at 5.2.3.(vii) above), but it is a matter for the Wrexham Standards Committee to decide upon matters in their local area in any particular case.

6. The Monitoring Officer's submissions.

6.1 The Appeal Tribunal heard from Mrs Linda Roberts, the Monitoring Officer of Wrexham County Borough Council. Mrs Roberts was the Deputy Monitoring Officer at the time of the Standards Committee hearing on 22 June 2021, and the author of the letter to the Appellant of 25 June 2021 that gave details of the outcome of the Committee's conclusions that he had breached the Code.

6.2 Mrs Roberts gave evidence about the Standards Committee's deliberations on 22 June 2021. She said that the Committee had been particularly concerned about the aggravating factor of the Appellant copying his email to the complainant's regulator. The Committee felt that the Appellant was setting out to deliberately cause further trouble to the complainant rather than waiting for the Ombudsman to decide upon the earlier complaint that she had made against him.

6.3 Mrs Roberts noted that although the Appellant had admitted the breaches and did not dispute the contents of the Ombudsman's report, the Committee had concerns about his attitude to the Code of Conduct. He had said at the hearing that if he had breached the Code of Conduct, he would apologise, which contrasts with him currently saying that he will offer an unreserved apology. The Appellant appears to be saying that he breached the Code but does not seem to be really accepting this at the same time. The Standards Committee had been concerned about the Appellant's lack of training on the Code. He had been elected in 2017, the events happened in November 2019 and the Committee's hearing was in June 2021, at which point he had still not accessed any Code of Conduct training. The Committee were concerned about this and the Appellant's attitude which gave the impression that he was too busy to access the training and take account of what was available for him. The Committee felt that this indicated a lack of understanding of the Code and its importance.

6.4 Mrs Roberts gave details of training on the Code that is available. Training is offered via the main Wrexham County Borough Council, and if a clerk from a community Council contacts the main Council, they are happy to put training on. Mrs Roberts confirmed that she has provided training on the Code in this way. She also confirmed that many Community Councils are members of One Voice Wales who also offer training. Mrs Roberts confirmed that individual Community Councils can contact the Monitoring Officer for advice if they are unable to obtain advice from their own clerk. The Appellant had not made any requests for training on the Code.

6.5 Mrs Roberts confirmed that the Appellant had raised the medical points that he wished to rely upon for the first time at the Committee's hearing. She confirmed that the Committee did attach weight to the medical issues and considered it. However, the Committee noted that the Appellant was functioning in many other ways and had not been stopped from working or taking on extra roles and therefore, although the medical issue was a factor, it was not a significant one. The Committee had not specifically asked for medical evidence when he raised the issue, but the Appellant had been sent a standard form asking if there was any evidence that he had wanted to submit and he had not done so. He had been given ample opportunity to provide evidence in advance.

6. Appeal Tribunal's Decision

6.3.1 In considering the Appellant's appeal on sanction, the Appeal Tribunal has carefully considered all the facts, evidence, and submissions in the case. Evidence and submissions upon the medical issues were heard in camera and

details have not been referred to in this decision report. The Appellant was aware of this Appeal Tribunal's hearing date but the day before the hearing he emailed to say that he would be flying to Germany. His flight was booked for the same time that the hearing was taking place. There was no request for a postponement of the hearing and no explanation from the Appellant as to why he had to travel on the day and at the time of the hearing.

6.3.2 The Appeal Tribunal has carefully considered all the material before it and applied the Sanctions Guidance. The Tribunal has firstly assessed the seriousness of the breaches of the Code that have been admitted. Whilst the breaches arose from the sending of one email on 1 November 2019, the copying of that email to the complainant's regulator and the use of his title as a Councillor increase the seriousness of the breach.

6.3.3 In the Appellant's statement prepared for this appeal, he does appear to challenge the findings of the Ombudsman and the Standards Committee, for example by maintaining that using his title in the email to the complainant's school was not an attempt in any way shape or form to exert influence, or to influence the school's decision, but was a misguided attempt to be transparent. This Appeal Tribunal reminds itself that the Appellant accepted the decision and findings of the Ombudsman's report and of the Standards Committee and appeals only against sanction. It was open to the Appellant to appeal against the findings of the Committee on its breaches of the Code, but he chose not to do so. Accordingly, we disregard such comments from the Appellant insofar as they appear to be an attempt to undermine the original decision, but we agree with the Monitoring Officer that such comments indicate that the Appellant does not have full insight into the extent of his behaviour and breaches of the Code.

6.3.4 The Appeal Tribunal notes that the Appellant, particularly in his interview with the Ombudsman's representative in July 2020, placed repeated emphasis upon his safeguarding concerns in relation to the complainant's behaviour and professional role. It is noteworthy however that his email of 1 November 2019 makes no reference to any safeguarding concerns and concentrates instead upon what he considers to have been vexatious complaints against him. Accordingly, the Committee's findings upon the breaches of three paragraphs of the Code are sufficiently serious to warrant sanction. This is not a case where no action would be appropriate and the Appeal Tribunal consider that suspension is the appropriate sanction.

6.3.5 There are a number of mitigating factors. It is accepted, as it was by the Ombudsman and the Monitoring Officer, that the Appellant fully co-operated with the Ombudsman's investigation and the Standards Committee process. There was no evidence before the Appeal Tribunal of any past or current allegations or findings against the Appellant for breaching the Code.

6.3.6 The Appellant placed reliance upon medical issues in mitigation. The tribunal does not attach weight to the medical evidence the Appellant supplied and his representations relying upon the same. In the Listing Direction prior to this final hearing, the Appeal Tribunal ordered that any medical report supplied

should provide details of the impact of any condition upon the Appellant's everyday functioning at the time of the complaint in October and November 2019 and currently. The medical information that the Appellant supplied, did not specifically comply with this direction. There was no mention of medical issues or a potential medical explanation for his behaviour at all during the Ombudsman's investigation. During his interview with Ms Lake on 27 July 2020, the Appellant was given the opportunity in an open question, to provide any further information upon which he wished to rely. He did not raise medical issues in advance of the Standards Committee hearing although, upon the evidence of the Monitoring Officer, which we accept, he had the opportunity to do so. It is clear that the Appellant is a busy man and was so at the time he sent the email of 1 November 2019. He had a demanding job and was acting as the local Parliamentary Agent for the Conservative Party. This tribunal accept that the Standards Committee did consider the medical issues but did not place great weight upon them, since they did not have sufficient evidence to conclude that any medical issues were impairing the Appellant from acting as a high functioning individual.

6.3.7 The Appellant also relied upon as mitigation, that his conduct arose from provocation on the part of the complainant in that he had been the subject of a complaint from her to the Ombudsman, which was, on 1 November 2019, still under consideration. The Appellant described the earlier complaint against him as vexatious and indeed his email to the complainant's workplace of 1 November 2019 says that "I have been subjected to a vindictive and vexatious complaint filed by Mrs Allen because of a tweet." He further describes the vindictive, vexatious, and truculent nature of her spurious complaint and says he has instructed his solicitors to issue a High Court writ for libel unless he receives a full retraction and apology.

6.3.8 That original complaint was not pursued by the Ombudsman. There was no evidence before the Appeal Tribunal that the original complaint had been described as vexatious by anyone other than the Appellant and, upon his account, his solicitors. During his interview with Ms Lake the Appellant says that he wrote his email of 1 November 2019 in the terms that he did upon the direct advice of his solicitor. Again, he made this point repeatedly. This further demonstrates that he was acting upon considered advice and not as a result of any impaired judgement or behaviour as a result of any medical issues. The Appellant was thinking clearly enough to copy his email to the complainant's regulator.

6.3.9 The Appeal Tribunal accept that the Appellant was responding to a complaint against him which he considered to have been provocation, however this provides limited mitigation given that the Ombudsman's report into that complaint was ongoing and as the Appellant himself accepts, he should have awaited the outcome of the Ombudsman's investigations. That initial complaint against him was not pursued by the Ombudsman. The Appellant told the Ombudsman that he was acting upon legal advice, but he did not provide any further evidence in support, including anything from his solicitor, despite being invited to, and given the opportunity to do so. There was no evidence before the Appeal Tribunal that he has pursued any further action for libel or defamation.

6.3.10 The Ombudsman accepted that there had been a complaint against the Appellant and there was an element of provocation in mitigation but it was not clear to the tribunal that the Standards Committee had considered or attached any weight to the provocation point.

6.3.11 Ms Shaw, whilst stressing that the three-month suspension imposed by the Standards Committee in this case was within the reasonable range of responses and that it is a matter for local Committees to determine the appropriate sanction in their area, explicitly drew the Committee's attention at the hearing in June 2021 to a decision of Denbighshire County Council. That decision is in the public domain, in relation to councillor Richard Mainon, in which a two-month suspension had been imposed for matters that factually appeared to be more serious than the current case with findings that constituted evidence of bullying and harassment, bringing their office or authority into disrepute and using or attempting to use their position improperly. It is this case that the Appellant refers to in his appeal, although not by name.

6.3.12 The Appeal Tribunal prefer the Ombudsman's view upon the length of the Appellant's appointment. He signed his declaration of office on 22 June 2017, some 2 years and 4 months before he sent the email on 1 November 2019. The Appellant was not therefore new to his office, and if he had been unable to devote time to his duties as a councillor because of his busy work schedule, then that is a matter for how he prioritises his time and responsibilities and is not mitigation to which we attach much weight.

6.3.13 We consider it to be an aggravating factor that the Appellant has, at the date of the hearing, still not attended or arranged to attend training on the Code. More than two years has elapsed since he sent that email and there was no evidence before the tribunal that the Appellant had independently pursued training upon the Code.

6.3.14 The tribunal consider that the starting point for the length of suspension for the accepted breaches of the Code found by the Standards Committee in this case, would be 3 months, to which the mitigating and aggravating factors should then be applied. Undertaking that exercise, and noting the mitigating factors in this case, particularly the full cooperation with the Ombudsman and the Committee, the Appellant's hitherto unblemished record, his expression of contrition and noting that the breaches arose from one email that was not further pursued, the tribunal recommend that a suspension of two months is appropriate in the particular circumstances of this case.

6.3.13 In relation to the Mainon case, in fact the Adjudication Panel for Wales considered an appeal in that matter (APW-002-2021-022-AT) and in a decision dated 2 November 2021, noted that whilst breaches of the Code involving bullying and harassment could ordinarily attract a three-month period of suspension, the Appeal Tribunal endorsed the decision of the Standards Committee in that particular case, to suspend Councillor Mainon for two months.

6.3.14 The Appeal Tribunal accept that, as the Ombudsman's representative submitted, sanction in a particular area is a matter for the local Standards Committee and they are not bound to follow neighbouring authorities. The Committee in this case were entitled to consider three months as a reasonable period for suspension notwithstanding that their attention had been drawn to the decision of their colleagues in Denbighshire in Councillor Mainon's case. The Standard's Committee and APW decisions in the Mainon case are not binding on this tribunal, and each case will be decided on its particular facts and circumstances. Having said that, following the approach in the Sanctions Guidance, and noting the purpose of the sanctions regime, to achieve an appropriate deterrent effect for the individual and the wider Council membership, and to maintain public confidence in the standards of conduct in public life and in local democracy, the tribunal recommend a suspension of 2 months.

6.3.15 The Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of the Standards Committee that Councillor Baines should be required to undertake training on the Code of Conduct as soon as possible and that he should send a letter of apology for the breaches of the Code to the complainant and to the Chair of Chirk Town Council.

6.3.16 The Appeal Tribunal decided by unanimous decision to refer the matter back to the Standards Committee with a recommendation that Councillor Baines should be suspended from being a member or co-opted member of Chirk Town Council for a period of 2 months.

6.3.17 The authority and its Standards Committee are notified accordingly.

Signed...*R. Payne*

Date 13th January 2022

Richard Payne
Chairperson of the Appeal Tribunal

Glenda Jones
Panel Member

H. Eifion Jones
Panel Member

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RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

FEEDBACK FROM THE 2022 ALL WALES STANDARDS CONFERENCE

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To afford Committee members the opportunity to provide feedback and discuss the recent All Wales Standards Conference, which was held virtually on 9th February 2022, with particular reference to Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

2. RECOMMENDATION

- 2.1 It is recommended Committee members provide any feedback they have, and discuss any matters arising, following their attendance at the All Wales Standards Conference held virtually on 9th February 2022 with particular reference to Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

3. BACKGROUND

- 3.1 The Ethical Standards Framework for Wales was established by Part 3 of the Local Government Act 2000 to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), a community council, a fire and rescue authority and a National Park authority in Wales.
- 3.2 Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority. The Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Conduct of Members (Principles) (Wales) Order 2001.

Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (“Model Code of Conduct”) provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.

4. INDEPENDENT REVIEW OF THE ETHICAL FRAMEWORK IN WALES AND STANDARDS CONFERENCE WALES 2022

- 4.1 The All Wales Standards Conference was held virtually on 9th February 2022.
- 4.2 A number of Committee Members attended the conference.
- 4.3 One of the key presentations delivered at the conference concerned Welsh Government’s ongoing review the ethical framework and the model Code of Conduct following the coming into force of the Local Government & Elections (Wales) Act 2021.
- 4.4 As Members will be aware an independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose. The review took into account the new legislative requirements set out in the Act and the current equality and diversity policy context.
- 4.5 The terms of reference of the review were to undertake a review of the whole framework to include:
 - an audit of the Codes of Conduct adopted by authorities;
 - an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
 - whether the framework is still fit for purpose;
 - the role of Standards Committees;
 - an analysis of the arrangements and protocols in place to support members and staff; and
 - consideration of the current sanctions and whether they are still appropriate.
- 4.6 The final report was published on 14th October (attached at Appendix 1 to this report) concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct.
- 4.7 The findings fall into categories based on whether they would need legislation to implement. Some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases),

others require secondary legislation (such as updating the code of conduct itself) and some are matters of practice that can be implemented if the relevant parties are willing to do so. A summary of the report's key findings can be found at Appendix 2 to the report.

- 4.8 Welsh Government are currently considering the recommendations to amend the Model Code of Conduct in the short term. Any legislative change will be subject to a technical consultation with a planned implementation ahead of next May's Local Elections. Welsh Government say action to address other recommendations in the report will be taken forward in partnership with key stakeholders in the medium to longer term. A further update was provided by Welsh Government representatives at the Standards Conference as to potential developments in this area.
- 4.9 At Appendices 3-5 of the report are copies of the presentation slides delivered at the Conference by Welsh Government representatives, One Voice Wales' Chief Executive and the Public Services Ombudsman for Wales respectively.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report. Any associated costs of providing training and advice for political group leaders would be met from the allocated budget.

6. LEGAL IMPLICATIONS

Relevant legal provisions are set out in the body of the report.

7. CONCLUSION

The All Wales Standards Conference was held virtually on 9th February 2022 and this report affords the opportunity for committee members who attended the conference to feedback any comments to the Committee and discuss any matters arising with particular reference to Welsh Government's ongoing review into the ethical and standards framework in Wales.

LOCAL GOVERNMENT ACT 1972
AS AMENDED BY
THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
STANDARDS COMMITTEE
11 MARCH 2022
REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Penn Review of the Ethical Standards Framework in Wales (Published 14th October 2021)

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

Independent Review of the Ethical Standards Framework in Wales

Richard Penn
Independent Consultant

July 2021

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1 Executive summary

1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.

1.2 The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate.

1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **Increased use of local resolution of complaints**

The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

2 Background and methodology

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

Welsh Government officials

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

Welsh Local Government Association

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

One Voice Wales

Chief Executive

Deputy Chief Executive and Resources Manager

Society of Local Councils Clerks

Wales Policy Liaison Officer

Public Services Ombudsman for Wales

Ombudsman

Director of Policy, Legal and Governance

Adjudication Panel for Wales

APW President

Monitoring Officers

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

Fire and Rescue Authorities

Monitoring Officer of South Wales Fire and Rescue Authority

National Park Authorities

Monitoring Officer of Pembrokeshire Coast National Park Authority

Chairs of Standards Committees

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

3 The current ethical standards framework for local government in Wales

3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards framework for local government in Wales. It created a power for the National Assembly for Wales to issue a Model Code of Conduct to apply to members and co-opted members of all relevant authorities in Wales (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.

3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report 'Standards of Conduct in Local Government in England, Scotland and Wales'. Three more principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))

3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.

3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as detailed below.

1. *Selflessness*

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on, or to avoid a disadvantage for, themselves or to improperly confer an advantage or disadvantage on others.

2. *Honesty*

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

3. Integrity and propriety

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

4. Duty to uphold the law

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

5. Stewardship

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

6. Objectivity in decision-making

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

7. Equality and respect

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

8. Openness

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

9. Accountability

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

10. Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure to adhere to the Principle concerning 'equality and respect' would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

3.2.5 All relevant authorities in Wales were required to adopt the Code in its Model form in its entirety, but could make additions to the Code provided these were consistent with the Model Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.

3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.

3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
 - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
 - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code. The Welsh Local Government Association has produced useful guidance on social media entitled 'Social Media: A Guide for Councillors'. The guidance aims to provide members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally conducted in public unless there are valid reasons for not doing so to promote public confidence in standards in public life. Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke,

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committees or the Adjudication Panel for Wales is required 'in the public interest'. Public interest factors include:
 - the seriousness of the breach
 - whether the member deliberately sought personal gain for themselves or another person at the public expense
 - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
 - whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
 - whether there is evidence of previous similar behaviour on the part of the member

- whether the investigation or referral to a Standards Committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a Standards Committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (the Ombudsman takes account of the outcomes of previous cases considered by Standards Committees across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a Standards Committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

3.5 **Local Resolution Process**

Most principal councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

3.5.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his investigation of allegations that a member has failed to comply with their authority's Code of Conduct;

and

- to consider appeals from members against the decisions of local authority standards committees that they have breached the Code of Conduct in Appeal Tribunals.

3.6.2 The Adjudication Panel for Wales' procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended);

and

- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

3.6.3 The Adjudication Panel for Wales operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the Panel are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the Adjudication Panel for Wales clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Panel. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

3.6.6 Where either a Standards Committee or the Panel suspends or partly suspends a member or co-opted member that member is still subject to the Code of Conduct, in particular the provisions set out in paragraphs 6(1)(a) (*'bringing the office of member or authority into disrepute'*) and paragraph 7 (*'improperly using the position of member'*).

3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair to ensure that appropriate procedures are followed at meetings and that all necessary information is available to Councillors so that they may make informed decisions. Clerks may approach their relevant County or County Borough Council's Monitoring Officer for advice and support.

3.8.1 The Clerk is an employee of the Council and is not required to abide by the Code of Conduct. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Public Services Ombudsman for Wales cannot consider complaints regarding the performance of the Clerk as this is a matter for the Council as the Clerk's employer.

3.9 **Complaints to the Public Services Ombudsman for Wales**

3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

	2019/20	2018/19
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
Total	231	282

3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councillors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.

3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:

- 4 referrals to Standards Committees
- 1 referral to the Adjudication Panel for Wales

3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.

3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.

3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of 'person', a term frequently used in the Model Code of Conduct. A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is 'a body of persons corporate or unincorporate'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

4.2.7 Paragraph 4a of the Model Code of Conduct requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *'Social Media: A Guide for Councillors'*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they are *'Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority'*, and the Code applies if a member conducts them self *'in a manner which could reasonably be regarded as bringing your office or your authority into disrepute'*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman's guidance states that:

'Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute', and in the same way that you are required to act in Council meetings or in your communities you should:

- show respect for others - do not use social media to be rude or disrespectful
- not disclose confidential information about people or the Council
- not bully or intimidate others - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- not try to secure a benefit for yourself or a disadvantage for others

- abide by the law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

4.2.9 Criminal convictions

6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. It states:

(You must) 'report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty)'

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

4.3 Training for Councillors

4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

4.4 **Standards Committees and Independent Chairs**

4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.

4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe how the Committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.

4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

4.5 **Community Councils**

4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.

4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

4.6 Local resolution of complaints

4.6.1 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

4.6.2 Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

4.7 The Public Services Ombudsman for Wales

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage 'public interest' test was considered to be subjective and based mainly on the Ombudsman's opinion. It was suggested that the 'public interest' test should be applied by a wider 'audience' appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman's discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation's time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

4.8 **The Adjudication Panel for Wales**

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel's powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, 'practice directions' need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

- 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

4.8.8 Sentencing powers

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or

- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councillors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5 Conclusions and recommendations

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.

5.4 The following were required as key components of delivery:

- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
- *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
- *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
- *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
- *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

approach to addressing concerns.

- *Consideration of the current sanctions and whether they are still appropriate*

5.5 This first stage of the review has covered each of these issues and my findings and recommendations for change below relate to the key components of delivery:

5.5.1 ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

I conducted an audit of the Codes of Conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances and to consider whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made. The Monitoring Officers of all principal councils, National Parks Authorities and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a county Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half also have a mandatory training requirement again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

5.5.2 ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

All of those I met as part of this review consider that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.

However, there are concerns by the Public Services Ombudsman and Monitoring Officers about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code of Conduct for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

5.5.3 Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's Monitoring Officer, or in relation to a Community Council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'
- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct which requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

does not include all protected characteristics. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted local resolution procedures to deal with low level complaints which are made by a member against a fellow member. These arrangements are proving to be effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;

b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;

and

c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5.5.4 Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.*

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

5.5.6 *Consideration of the current sanctions and whether they are still appropriate*

Where a Standards Committee concludes that a member or co-opted member has failed to comply with the relevant Council's Code of Conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured which takes the form of a public rebuke

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

5.5.7 Accessibility of the ethical standards framework

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

Richard Penn

Independent Consultant

July 2021

REPORT'S KEY FINDINGS

<p><i>An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances</i></p>	<p>With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.</p>
<p><i>An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements</i></p>	<p>The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.</p>
<p><i>Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements</i></p>	<p>The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision.</p>

A number of the following recommendations would need to be implemented by way of Secondary Legislation or through Primary Legislation i.e. an Act.

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.
- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion'

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.
- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

<p>Mandatory training on the Code of Conduct for all members of principal councils and community councils</p>	<ul style="list-style-type: none"> • The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. • The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman’s resources are devoted to the investigation of serious complaints. • Extended powers for the Public Services Ombudsman for Wales • Greater use of the Ombudsman’s discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
<p>Changes to the powers and processes of the Adjudication Panel for Wales</p>	<ul style="list-style-type: none"> • Restricted reporting orders <p>The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.</p>

- Anonymity of witnesses

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- Appeal Tribunal procedure

The Panel President intends to ask for amendments to the Appeal Tribunal procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- Case Tribunal procedure

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

	<ul style="list-style-type: none"> • Permission to appeal procedure <p>Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.</p> <ul style="list-style-type: none"> • Sentencing powers <p>The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.</p> <ul style="list-style-type: none"> • Interim Case Tribunals <p>The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.</p>
<p><i>Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.</i></p>	<ul style="list-style-type: none"> • There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.

	<ul style="list-style-type: none">• An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns• No view was expressed on whether the current sanctions open to Standards Committees are still appropriate• Accessibility of the ethical standards framework - the report believes that the lack of publicity about the ethical standards framework constrains use of the process, especially if the person wishing to complain if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems.
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Llywodraeth Cymru
Welsh Government

Adolygiad o'r Fframwaith Safonau Moesegol Review of the Ethical Standards Framework

Ymateb Llywodraeth Cymru
a meysydd posibl ar gyfer deddfwriaeth
Welsh Government response
and potential areas for legislation

Pam adolygu'r Fframwaith Safonau Moesegol? Why review the Ethical Standards Framework?

- Fe'i sefydlwyd dros 20 mlynedd yn ôl
- Established over 20 years ago
- Deddf Llywodraeth Leol ac Etholiadau (Cymru) 2021
- Local Government and Elections (Wales) Act 2021
- Cyd-destun y polisiau cydraddoldeb ac amrywiaeth presennol
- Current equality and diversity policy context
- A yw'n dal i fod yn addas i'w ddiben?
- Is it still fit for purpose?

Yr adroddiad a'r camau nesaf

Report and next steps

- Croesawu'r adroddiad a'r argymhellion
- Welcome the report and recommendations
- Fe'u cyhoeddwyd ar wefan Llywodraeth Cymru ar 14 Hydref 2021
- Published on Welsh Government website on 14 October 2021
- Y Datganiad Ysgrifenedig a gyhoeddwyd gan Rebecca Evans AS, y Gweinidog Cyllid a Llywodraeth Leol
- Written Statement issued by Rebecca Evans, MS, Minister for Finance and Local Government
- Ystyried yr argymhellion yn fewnol
- Internal consideration of recommendations
- Ymgysylltu â phartneriaid
- Engagement with partners

Gweithredu'r argymhellion

Implementing the recommendations

- Camau gweithredu gan Lywodraeth Cymru
- Action by Welsh Government

- Camau gweithredu gan bartneriaid
- Action by partners

Eich sylwadau ar y canlynol? Your thoughts on?

- Pennu trothwy o ran datgan unrhyw rodd, lletygarwch, buddiant materol neu fantais – cytundeb gwirfoddol
- Setting a threshold for declarations of any gift, hospitality, material benefit or advantage – voluntary agreement
- Datrys mwy o gwynion yn lleol
- Increased use of local resolution of complaints
- Sefydlu Fforwm Cymru Gyfan ar gyfer cadeiryddion annibynnol pwyllgorau safonau ac ailsefydlu'r gynhadledd flynyddol
- Establish an all-Wales Forum for independent chairs of standards committees and re-establish an annual conference



Llywodraeth Cymru
Welsh Government

Unrhyw gwestiynau?
Any questions?

Manylion cyswllt

Contact details

Llywodraeth Cymru

Yr Is-adran Democratiaeth Llywodraeth Leol

LGDemocracy@llyw.cymru

Welsh Government

Local Government Democracy Division

LGDemocracy@gov.wales

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Un Llais Cymru CYNHADLEDD SAFONAU One Voice Wales STANDARDS CONFERENCE

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**Y CEFNDIR I ADRODDIAD PENN A'R YMATEB IDDO
BACKGROUND AND RESPONSE TO PENN REPORT**

Sut mae Un Llais Cymru yn Cefnogi Cyngorau?

How Does OVW Support Councils?

- Ceisiadau am Gyngor
- Gweithredu Proses Datrysïadau Lleol
- Model Bolisïau Cefnogi
- Hyfforddiant
- Advice Requests
- Operation of Local Resolution Process
- Model Supporting Policies
- Training

Ceisiadau am Gyngor

Requests for Advice

- **Ceisiadau Rheolaidd**
- **Mae enghreifftiau'n cynnwys camddefnyddio cyfryngau cymdeithasol, methiant i ddatgan buddiannau a bwlio ac aflonyddu gan gynghorwyr unigol**
- **1320 cais am gyngor yn 2021 – 5.4% yn ymwneud a'r Cod Ymddygiad**
- **Frequent Requests**
- **Examples include misuse of social media, failure to declare interests and bullying and harassment by individual councillors**
- **1320 requests for advice in 2021 – 5.4% related to the Code of Conduct**

Model Brotoolcol ar gyfer Datrysiadau Anffurfiol

Model Informal Resolution Protocol

- Darparwyd i aelod gynghorau
- Gwnaed diwygiad diweddar i gynnwys ceisiadau ail-adroddus ar lefel isel
- Nid yw'n cael ei ddefnyddio'n aml nac yn cael ei ddeall gan lawer o bobl
- Anaml y gofynnir am gyngor ar ei ddefnyddio
- Bwriedir datblygu canllaw ar fwlïo ac aflonyddu gyda'r SLCC – caiff ei gyhoeddi ym mis Mai 2022
- Supplied to member councils
- Recent amendment to include low level repetitive requests
- Not widely used or understood
- Rarely asked for advice on its operation
- Development of a guide on bullying and harassment with SLCC – launch in May 2022

Model Bolisiâu Cefnogi a Hunan Asesu

Model Supporting Policies and Self Assessment

- Cydraddoldeb ac Amrywiaeth
- Atal Bwlïo ac Aflonyddu
- Urddas yn y Gwaith
- Protocol Aelodau/Swyddogion
- Pecyn Hunan Asesu
- Equality and Diversity
- Anti Bullying and Harassment
- Dignity at Work
- Member/Officer Protocol
- Self Assessment Toolkit

Darparu Hyfforddiant

Provision of Training

- **Modiwl Hyfforddi Rhyngweithiol**
- **Mae'n bosib y bydd Llywodraeth Cymru yn ariannu 2 le am ddim i bob cyngor yn 2022/23**
- **Cafodd ei gomisiynu yn y gorffennol gan ambell gyngor sir (bwrdeistref)**
- **Bydd yn cael ei ddiwygio i ganolbwyntio mwy ar ddatrysiadau lleol**
- **Interactive Training Module**
- **Possible WG funding of 2 places per council in 2022/23**
- **Has in past been commissioned by a few county (borough) councils**
- **Amending to focus more on local resolution**

Ein Hymateb i Adroddiad Penn

Our Response to the Penn Report

- Cefnogi cadw'r fframwaith presennol (mae ein cydweithwyr yn Lloegr yn eiddigeddus)
- Byddwyn yn annog cynghorau i ddefnyddio datrysiadau anffurfiol
- Cefnogi Hyfforddiant gorfodol (dylai olygu llai o gwynion)
- Cefnogi trothwy ar gyfer rhoddion a lletygarwch
- Support retention of current framework (our English counterparts are envious)
- We will encourage Councils to use informal resolution
- Support for mandatory training (should reduce complaints)
- Support threshold for gifts and hospitality

Ein Hymateb i Adroddiad Penn

Our Response to the Penn Report

- Cefnogi cynnwys yr holl nodweddion gwarchoddedig yn y Cod
- Byddai'n dda gweld y Cod yn cael ei ddiwygio i gynnwys cyfeiriad at gyfryngau cymdeithasol
- Support all protected characteristics being included in Code
- Amendment to code re: social media would be welcomed

Datrysiadau Lleol – Rhai pryderon

Local Resolution – A few concerns

Disgwylir mwy o gefnogaeth gan Un Llais Cymru (diffyg adnoddau)

Cwestiwn ynghylch annibyniaeth Un Llais Cymru pe baem yn ceisio helpu gyda datrysiadau lleol

Mae angen Datblygu sgiliau aelodau a bydd angen i gynghorau gael hyfforddiant ar reoli prosesau

- Greater support from OVW expected (resource issues)**
- Issue of independence of OVW if we sought to assist local resolution**
- Skills of members need to be developed and Councils will require training in process management**

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**Cynhadledd
Safonau
Cymru Gyfan**

**All Wales
Standards
Conference**

9 Chwefror 2022

9 February 2022

Ombwdsmon Gwasanaethau
Cyhoeddus Cymru

Public Services Ombudsman for
Wales

Ein cwynion am y Cod Ymddygiad

219 o gwynion newydd hyd yn hyn
eleni

+ 8% ar 2020/21

+ **30%** ar 2019/20

23% yn fwy o gwynion newydd am
gyngorau tref a chymuned

23% yn fwy o ymchwiliadau

11 o gyfeiriadau at Banel Dyfarnu
Cymru a Phwyllgorau Safonau

Our complaints about the Code of Conduct

219 new complaints so far this year

+ 8% on 2020/21

+ **30%** on 2019/20

23% increase in new complaints about
town and community councils

23% increase in investigations

11 referrals to the Adjudication Panel
for Wales and to Standards
Committees

Argymhellion Penn

Byddai mwy o ddefnydd o ddisgresiwn yr Ombwdsmon ym maes atgyfeirio yn cael ei groesawu gan Swyddogion Monitro a Chadeiryddion Pwyllgorau Safonau

Achosion ynghylch bwlio a gwahaniaethu

Cyngh. Owen Cyngor Tref Frenhinol Caernarfon a Chynghor Gwynedd

Cyngh. Stevens Cyngor Tref Tywyn

Cyngh. Morgan Cyngor Cymuned Abertillery a Llanhilleth

Penn Recommendations

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees

Cases involving bullying and discrimination

Cllr Owen Caernarfon Royal Town Council and Gwynedd Council

Cllr Stevens Tywyn Town Council

Cllr Morgan Abertillery and Llanhilleth Community Council

Argymhellion Penn

Datrys mwy o gwynion yn lleol

**Hyfforddiant gorfodol ar y Cod
Ymddygiad i holl aelodau prif
gynghorau a chynghorau cymuned**

Tribiwnlysoedd Achos Interim

Ystyried rôl Pwyllgorau Safonau

Penn Recommendations

**Increased use of local resolution
of complaints**

**Mandatory training on the Code of
Conduct for all members of
principal councils and community
councils**

Interim Case Tribunals

**Consideration of the role of
Standards Committees**

Gair cyn gadael

‘Byddai aelodau’r cyhoedd yn rhesymol ddisgwyl i’w gynrychiolwyr etholedig ddangos arweiniad ac arwain drwy esiampl yn unol ag egwyddorion Nolan. Yn ystod pandemig Covid-19, gellid yn rhesymol ystyried bod sylwadau diangen ac eithafol a chystadleuaeth wleidyddol ynghylch materion hollbwysig megis trefniadau fferylliaeth, yn dwyn anfri ar swydd y Cynghorydd a’r Awdurdodau Perthnasol.’

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Parting message

‘Members of the public would have reasonably expected its elected representatives to show leadership and to lead by example in accordance with the Nolan principles. During the Covid-19 pandemic, unnecessary, intemperate comments and political rivalry about issues of vital importance such as pharmacy arrangements, could reasonably be regarded as bringing the office of Councillor and the Relevant Authorities into disrepute.’



Diolch

Thank you



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS AND VICE-CHAIRS

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

At the All Wales Standards Conference held on 9th February 2022 a discussion took place in respect of the establishment of a National Forum for Standards Committee Chairs and Vice-Chairs, a recommendation emanating from the Penn Review into the Ethical and Standards Framework in Wales. This report seeks Members' views on this proposal.

2. RECOMMENDATION

- 2.1 That the Committee supports the creation of an All Wales forum for Standards Committee Chairs and Vice-Chairs.

3. BACKGROUND

- 3.1 The Penn Report on the Review of the Ethical Regime in Wales ("the Penn Report") commented on the variety of practice across Wales in how Standards Committees discharge their duties. It recommended that a national forum for the Chairs of Standards Committees be established modelled on the forum that exists in North and Mid Wales.

- 3.2 At paragraph 4.4.1 the report says:

"I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than

this, and as leading the development and maintenance of the ethical standards framework in that local authority.”

- 3.3 Richard Penn then went on to comment positively upon the work of the forum for Chairs of Standards Committees in North and Mid Wales. Whilst acknowledging the place for local decision making, he recommends that a national forum be established along the same lines - see paragraph 4.4.5

“I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum ... would encourage consistency of approach and the adoption of best practice across Wales.”

- 3.4 A discussion around this recommendation took place at the recent All Wales Standards Conference. Monitoring Officers in Wales have agreed to consult their Standards Committees on the issue.

- 3.5 There are a number of issues to consider with the creation of such a national forum but these are common issues that are considered when establishing such a forum and it is considered workable solutions could be found for all. They include 1) Resources 2) Meeting format and location 3) Administration and advice 4) Agendas 5) Meeting dates and frequencies.

- 3.6 Officers do therefore consider it would be beneficial to establish such a forum and recommending such a proposal be supported by Members.

4. FINANCIAL IMPLICATIONS

A national forum would not, of itself, require significant resources. Physical meetings would entail small cost for venue hire and travel which can be accommodated within existing budgets.

5. LEGAL IMPLICATIONS

There are no specific legal implications aligned to the report.

6. CONSULTATION

- 6.1 All Local Authorities in Wales are being consulted about his proposal.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

STANDARDS COMMITTEE

11 MARCH 2022

REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Penn Review of the Ethical Standards Framework in Wales (Published 14th October 2021)

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

11 MARCH 2022

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021: STANDARDS OF CONDUCT STATUTORY GUIDANCE

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To seek Members feedback on the consultation initiated by Welsh Government in relation to draft statutory guidance relating to the new duties in the Local Government and Elections (Wales) Act 2021 concerning standards of conduct, and agree a response to be submitted in response to that consultation.

2. RECOMMENDATIONS

The Committee is recommended to:

- 2.1 Consider the contents of the report and Welsh Government consultation document, attached at appendix 1 to the report, which contains draft statutory guidance relating to the new duties in the Local Government and Elections (Wales) Act 2021 concerning standards of conduct; and
- 2.2 Provide feedback in response to that consultation, noting the series of questions asked within the consultation document, and agree a response based on Members' feedback be submitted to Welsh Government on behalf of the Standards Committee.

3. BACKGROUND

- 3.1 The Local Government Act 2000, Part III (and associated regulations made thereunder) provides an ethical framework in respect of the conduct of local government members. Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority.

- 3.2 The [Local Government and Elections \(Wales\) Act 2021](#) ('the Act'), which received Royal Assent on 20th January 2021, provides for the establishment of a new and reformed legislative framework for local government elections, democracy, performance and governance. In addition, Welsh Government are reviewing the ethical framework and the model Code of Conduct in light of the Act.
- 3.3 As reported to Committee Members at their meeting held on 19 March 2021 the Act will:
- (a) Require leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups, and to co-operate with standards committees (to take effect from May 2022);
 - (b) Require standards committees to produce annual reports on the exercise of their functions (due to take effect after, and in relation to, the financial year 2022/23); and
 - (c) Consolidate provision about investigations by the Public Services Ombudsman for Wales into the conduct of members of local government.
- 3.4 The Explanatory Memorandum accompanying the Local Government and Elections (Wales) Bill during its passage through the legislative process explains the purpose and intended effect of the new legislation relating to political group leaders and standards committees as follows:

Ethical framework

3.125 Engendering a culture within a principal council which embraces high standards of conduct requires both local leadership and all members to accept responsibility for their actions both individually and collectively.

3.126 The White Paper 'Reforming Local Government: Power to Local People' stated that councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever ever their background, if a more diverse range of people to be encouraged to seek elected office in local government. The White Paper noted that standards of behaviour were key to this and expressed concern that an overly 'macho' culture in some authorities might be acting as a deterrent to women, in particular, standing for office.

3.127 To complement the existing statutory ethical framework, the White Paper proposed that those in positions of leadership and influence within a principal council should have responsibility in respect of the promotion of diversity and to combat bullying and harassment amongst elected members and council staff.

3.128 The Bill provides that leaders of political groups must take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the council's standards

committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a standards committee has new functions under the Bill to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.

3.129 Local standards committees play an important role in supporting members, individually and collectively, to develop and maintain a culture which embraces high standards of conduct. It is important that standards committees review their work periodically and report significant matters they have dealt with and any emerging trends to their council. Standards committees will be required after the end of each financial year to make an annual report to the authority describing how the committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the council. The council will be obliged to consider the report and any recommendations made by the standards committee within 3 months of receipt.

4. CONSULTATION ON DRAFT STANDARDS OF CONDUCT STATUTORY GUIDANCE

- 4.1 Welsh Government have initiated a consultation on draft statutory guidance which sets out how leaders of political groups in principal councils should meet their duties under the Act in relation to the promotion and maintenance of high standards of conduct by the members of the group. The consultation document which includes the draft guidance is attached at Appendix 1 to the report.

The draft guidance specifically addresses the following duties:-

Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group
Duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions

- 4.2 The Welsh Government consultation document recognises that Councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever their background, in order to encourage a more diverse range of people to seek elected office in local government. Standards of behaviour are key to this, and all members have a responsibility to act in a manner which respects and values all people.
- 4.3 As stated above Welsh Government believe the provisions in the Local Government and Elections (Wales) Act 2021 support this culture by providing a new duty on the leaders of political groups to take steps to promote and maintain high standards of conduct of their members. The duty recognises those in positions of leadership and influence within a principal council should have responsibility for combating bullying and harassment amongst elected members and council staff, and must act as a positive role model.

- 4.4 The Minister for Finance and Local Government has acknowledged that the duty is not intended to be the panacea and will not cover everyone (particularly those members who do not belong to a group), but it is designed to be proportionate and helpful. Its aim is to prevent or stop inappropriate behaviour before it escalates into a breach of the Code of Conduct.
- 4.5 Welsh Government say the guidance is designed to support leaders of political groups understand and discharge their duties in relation to high standards of conduct, whilst recognising that they will wish to and should be encouraged to develop their own approach in line with their wider statutory obligations, local circumstances, and best practice. Leaders of political groups must have regard to the guidance issued in relation to the exercise of these functions
- 4.6 The draft guidance, attached at Appendix 1 to the report, covers the following topics:-

Chapter 1: describes the policy context within which the duties are set and the purpose of the duties.

Chapter 2: explains the duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group.

The Guidance emphasises that the duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.

The draft guidance also sets out a series of reasonable steps the group leader may undertake to ensure compliance with the duty.

The importance of attendance at training on the Code of Conduct has been highlighted by the Ombudsman and was raised under the independent review of the Ethical Standards Framework and Model Code of Conduct carried out by Richard Penn. Leaders of political groups should encourage all members in their group to read the Ombudsman's Guidance and any local guidance issued by the monitoring officer or standards committee and to take up any offer of training. They should also work constructively with standards committees and Monitoring Officers to identify the training requirements for themselves and for their group members.

The group leader has a significant role to play in creating a culture of trust and mutual respect in their group. Where issues arise, the importance of resolving low-level complaints at a local level has been raised by the Ombudsman and the independent Review of the Framework. Typically, these complaints are about alleged failures to show respect and consideration for others and the making of frivolous and low level complaints. The group leader should be pivotal in preventing the escalation of these complaints to the stage where more formal interventions become necessary. Leaders of political groups should have informal discussions with members who may be showing early signs of inappropriate behaviour to 'nip this in the bud' before it

becomes problematic or in danger of breaching the Code. This may include suggesting and requesting training for the members concerned, asking for social media posts to be removed, and requesting apologies where appropriate.

A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman's Guidance).

A political group's internal disciplinary procedures remain a matter for that group or any associated political party's own rules on discipline. However, it is expected that the group leader will take reasonable steps to promote and maintain high standards of conduct by members within group communications and meetings as well as their 'public' conduct outside of the group setting.

Chapter 3: provides guidance on the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions

It is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee.

Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.

If a member is found by the standards committee to be in breach of the Code of Conduct and is disciplined by the committee, the leader of the political group must support the action

Chapter 4: describes the functions of standards committees in relation to the new duties.

Duty of a standards committee to monitor group leaders' compliance with the duties, and provision of advice and training

A council's political group leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.

A standards committee must also provide advice and training, or arrange to train group leaders on the new duty. At the start of each administration this should take place within six months of the election and be reviewed at least annually.

The standards committee chair may wish to meet with group leaders periodically to review behaviour.

Duty of standards committee to make annual report

Section 63 of the 2021 Act inserts a new section 56B into the 2000 Act which places a requirement on standards committees in each “relevant authority” to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.

As a minimum, the report must:

- describe how the committee has discharged its functions during the preceding financial year;*
- include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member code of conduct, and any subsequent action taken by the committee;*
- include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel’s decisions on possible breaches of the member code of conduct;*
- describe the advice it has provided on training for all members and how that has been implemented, and*
- in the case of a principal council, include the committee’s assessment of how political group leaders have complied with the new duty under section 52A(1) of the 2000 Act (inserted by section 62 of the 2021 Act) to promote high standards of conduct, including the advice the standards committee has provided and the training it has suggested.*

The committee may also wish to report on the number of cases considered under local resolution processes. This would help to capture data on an “all Wales” basis, on matters which do not reach the Public Services Ombudsman for Wales.

The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority’s consideration of a report will be a matter of public record through the published minutes of the meeting.

It would be good practice for Standards Committees to share their Annual Reports with the Public Services Ombudsman for Wales.

- 4.7 The consultation document poses a series of questions and it is recommended the Committee give consideration to these questions and provides feedback in order for a response to be submitted by the Committee in response to the consultation.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report. Any associated costs of providing training and advice for political group leaders would be met from the allocated budget.

6. LEGAL IMPLICATIONS

Relevant legal provisions are set out in the body of the report.

7. CONCLUSION

Welsh Government have initiated a consultation on draft statutory guidance which sets out how leaders of political groups in principal councils should meet their duties under the Local Government and Election (Wales) Act in relation to the promotion and maintenance of high standards of conduct by the members of the group. The report affords Members the opportunity to consider the draft guidance and respond to the consultation as they deem necessary.

LOCAL GOVERNMENT ACT 1972
AS AMENDED BY
THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
STANDARDS COMMITTEE
11 MARCH 2022
REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Freestanding Matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

OPEN CONSULTATION

Consultation on the Local Government and Elections (Wales) Act 2021: standards of conduct statutory guidance

We want your views on guidance on duties set out under the Local Government and Elections (Wales) Act 2021.

A PDF download of this page will be available soon.

Contents

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- [Foreword by the Minister for Finance and Local Government](#)
- [Introduction](#)
- [Chapter 1: Policy context and purpose of the duties set out in section 52A of the Local Government Act 2000](#)
- [Chapter 2: Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group](#)
- [Chapter 3: Duty to co-operate with the council's standards committee \(and any sub-committee\) in the exercise of the standards committee's functions](#)
- [Chapter 4: Functions of standards committees](#)
- [Consultation questions](#)
- [How to respond](#)
- [Your rights](#)
- [Further information and related documents](#)

Foreword by the Minister for Finance and Local Government

Councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever their background, in order to encourage a more diverse range of people to seek elected office in local government. Standards of behaviour are key to this, and all members have a responsibility to act in a manner which respects and values all people.

The provisions in the Local Government and Elections (Wales) Act 2021 support this culture by providing a new duty on the leaders of political groups to take steps to promote and maintain high standards of conduct of their members. The duty recognises those in positions of leadership and influence within a principal council should have responsibility for combating bullying and harassment amongst elected members and council staff, and must act as a positive role model. Among other things, this duty is designed to support our diversity in democracy agenda and actions in our Race Equality Action Plan.

The duty is not intended to be the panacea and will not cover everyone (particularly those members who do not belong to a group), but it is designed to be proportionate and helpful. Its aim is to prevent or stop inappropriate behaviour before it escalates into a breach of the Code of Conduct.

All of us in public life must demonstrate the highest standards of behaviour and respect, particularly with regard to equalities and diversity. This guidance provides advice on the new duties introduced to support this position.

Rebecca Evans, MS

Minister for Finance and Local Government

Introduction

The Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) provides a new and reformed legislative framework for local government elections, democracy, governance and performance.

This guidance sets out how leaders of political groups in principal councils should meet their duties contained in section 52A of the Local Government Act 2000 (“the 2000 Act”), inserted by section 62, of the 2021 Act, which relates to the promotion and maintenance of high standards of conduct by the members of the group.

Leaders of political groups must have regard to any guidance issued by Welsh Ministers in relation to the exercise of their functions under section 52A(2) of the 2000 Act.

The guidance is designed to support leaders of political groups understand and discharge their duties in relation to high standards of conduct, whilst recognising that they will wish to and should be encouraged to develop their own approach in line with their wider statutory obligations, local circumstances, and best practice.

This guidance specifically addresses the following duties:-

Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group

Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

Duty to co-operate with the council’s standards committee (and any sub-committee) in the exercise of the standards committee’s functions

Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

This guidance refers specifically to these duties on a leader of a political group, and sets out the expectations on how they will perform these duties. All of the duties apply from 5 May 2022. Leaders of a political group will be required to have regard to the guidance once the relevant duties come into force.

There are other provisions within Part 3 of the 2000 Act relating to standards committees, inserted by sections 62 and 63 of the 2021 Act. These aspects of the 2021 Act are also described in this guidance.

The guidance is set out as follows:-

Chapter 1: describes the policy context within which the duties are set and the purpose of the duties.

Chapter 2: explains the duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group.

Chapter 3: provides guidance on the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions

Chapter 4: describes the functions of standards committees in relation to the new duties.

Chapter 1: Policy context and purpose of the duties set out in section 52A of the Local Government Act 2000

Policy context

Part 3 of the 2000 Act established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), community council, fire and rescue authority, a national park authority and a Corporate Joint Committee subject to the draft Corporate Joint Committees (General) (Wales) Regulations 2022 being made.

The framework consists of the ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'), set out below:

- Selflessness
- Honesty
- Integrity and propriety
- Duty to uphold the law
- Stewardship
- Objectivity in decision-making
- Equality and respect
- Openness
- Accountability
- Leadership

These are included in the statutory Model Code of Conduct (as required under section 50 of the 2000 Act), which lays down a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity as well. It also guides members on the declaration and registration of interests. All elected members must give a written undertaking to observe the Code before they can take up office.

Building on the existing arrangements, section 62 of the 2021 Act inserts a new section 52A into the 2000 Act which places a duty on leaders of political groups within a principal council to promote and maintain high standards of conduct by members of their group. Group leaders are required to co-operate with the council's standards committee in the exercise of its general and specific functions for promoting high standards (see below).

Subsection (3) amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. A standards committee must also provide advice or provide or arrange training for group leaders on the new duty.

Purpose of the standards of conduct provisions

The ethical standards framework in Wales aims to promote the observance of consistent standards of conduct by local government members. High ethical standards underpin and maintain public confidence in democratic governance and the decision making process. For any organisation to be effective it must respect diversity and treat everyone with respect. Engendering a culture within a principal council which embraces high standards of conduct, requires both local leadership and all elected members to accept responsibility for their actions both individually and collectively.

The standards of conduct provisions in the 2021 Act complement the existing statutory ethical framework and support the Code of Conduct process. The provisions are designed to ensure leaders of political groups in principal councils, supported by standards committees, promote and maintain high standards of conduct by the members of their group.

The wider environment in which the standards of conduct duties operate

The standards of conduct provisions contained in the 2021 Act support the Welsh Government's wider commitment to equality and diversity in public life. Action has been taken through the Diversity in Democracy Programme to tackle the barriers which prevent individuals' active participation in local democracy. Within local government, and through the Welsh Local Government Association (WLGA), there has been a commitment to Diversity in Democracy, including councils signing Diverse Council declarations which seek, amongst other actions, to ensure councils 'demonstrate an open and welcoming culture to all'. Furthermore, the WLGA, working with the Local Government Association (LGA), Northern

Ireland Local Government association (NILGA) and the Scottish body, COSLA, has been promoting the Civility in Public Life programme, which seeks to promote civil, constructive and respectful political discourse.

The Race Equality Action Plan for Wales: An anti-racist Wales sets out a series of goals and actions designed to improve the outcomes for black, Asian and minority ethnic people in Wales. The Action Plan sets out a number of goals and actions for local government relating to its leadership and representation role. It recognises that a more diverse elected representation is good for decision making and likely to lead to decisions which reflect society as a whole.

Chapter 2: Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group

Introduction

This chapter of guidance should be read by a leader of a political group in a principal council to support the discharge of their duties in section 52A of the 2000 Act, to take reasonable steps to promote and maintain high standards of conduct by the members of the group. The guidance here reflects the minimum requirements, recognising that leaders are best placed to build on this to develop the detail of their own approach.

Definition of political groups and group leaders

Section 52A(3) of the 2000 Act enables the Welsh Ministers to make provision in regulations about the circumstances in which (a) members of a county council or county borough council in Wales are to be treated as constituting a political group; (b) a member of a political group is to be treated as a leader of the group.

The Local Government (Committees and Political Groups) Regulations 1990, made under the Local Government and Housing Act 1989, currently governs the position in this respect, until such time as regulations passed under 52A(3) of the 2000 Act are made.

New Duty

Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.

Reasonable steps the group leader *may* undertake include:

- demonstrating personal commitment to and attending relevant development or training around equalities and standards;
- encouraging group members to attend relevant development or training around equalities and standards;
- ensuring nominees to a committee have received the recommended training for that committee;
- promoting civility and respect within group communications and meetings and in formal council meetings;
- promoting informal resolution procedures in the council, and working with the standards committee and monitoring officers to achieve local resolution;
- promoting a culture within the group which supports high standards of conduct and integrity;
- attend a meeting of the council's standards committee if requested to discuss Code of Conduct issues;
- work to implement any recommendations from the Standards Committee about improving standards;
- work together with other group leaders, within reason, to collectively support high standards of conduct within the council.

As set out in chapter 1, the purpose of the new duties is to build on and support a culture which is proactive, acts on and does not tolerate inappropriate behaviour. The Guidance from the Public Services

Ombudsman for Wales for members on the Code of Conduct provides advice on the Code and its requirements. It includes examples of cases considered by the Ombudsman and decisions reached by local standards committees and the Adjudication Panel for Wales which demonstrate behaviours which are unreasonable or inappropriate. Leaders of political groups and all members should have regard to the Ombudsman's Guidance, which can be accessed on the [Ombudsman's website](#).

The importance of attendance at training on the Code of Conduct has been highlighted by the Ombudsman and was raised under the independent review of the Ethical Standards Framework and Model Code of Conduct carried out by Richard Penn. Leaders of political groups should encourage all members in their group to read the Ombudsman's Guidance and any local guidance issued by the monitoring officer or standards committee and to take up any offer of training. They should also work constructively with standards committees and Monitoring Officers to identify the training requirements for themselves and for their group members.

It is essential that relationships with members are established which encourage them to raise issues with the group leader. The group leader has a significant role to play in creating a culture of trust and mutual respect in their group. Where issues arise, the importance of resolving low-level complaints at a local level has been raised by the Ombudsman and the independent Review of the Framework. Typically, these complaints are about alleged failures to show respect and consideration for others and the making of frivolous and low level complaints. The group leader should be pivotal in preventing the escalation of these complaints to the stage where more formal interventions become necessary. Leaders of political groups should have informal discussions with members who may be showing early signs of inappropriate behaviour to 'nip this in the bud' before it becomes problematic or in danger of breaching the Code. This may include suggesting and requesting training for the members concerned, asking for social media posts to be removed, and requesting apologies where appropriate.

A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman's Guidance).

A political group's internal disciplinary procedures remain a matter for that group or any associated political party's own rules on discipline. However, it is expected that the group leader will take reasonable steps to promote and maintain high standards of conduct by members within group communications and meetings as well as their 'public' conduct outside of the group setting.

Chapter 3: Duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions

Introduction

This chapter of guidance is about the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions within section 52A of the 2000 Act.

The duties will come into force from the start of the next local government electoral cycle, on 5 May 2022.

New Duty

Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions. The duties of a standard committee are described in more detail in chapter 4.

Role of leader of political group

It is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee.

Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.

If a member is found by the standards committee to be in breach of the Code of Conduct and is disciplined by the committee, the leader of the political group must support the action, in order to maintain the high standards of conduct expected in public life and the Code. Group leaders should have regard to the Ombudsman's Guidance and the Sanctions Guidance issued by the President of the Adjudication Panel for Wales, which can be accessed on the [Adjudication Panel's website](#).

Chapter 4: Functions of standards committees

Introduction

This chapter describes the duties of standards committees in relation to standards of conduct, within the 2000 Act, inserted by section 63 of the 2021 Act.

The duties will come into force from the start of the next local government electoral cycle, on 5 May 2022.

Current position

Local standards committees play an important role in supporting members, individually and collectively, to develop and maintain a culture which embraces high standards of conduct.

A principal council, fire and rescue authority or National Park authority in Wales (but not a community council) is required by section 53 of the 2000 Act to establish a standards committee.

The general functions of a standards committee under section 54(1) of the 2000 Act are to promote and maintain high standards of conduct by members and co-opted members of a “relevant authority” and to assist them to observe the code of conduct.

In addition, a standards committee also has specific functions under section 54(2) of the 2000 Act, namely to:

- advise the authority on the adoption or revision of a code of conduct;
- monitor the operation of the code of conduct; and
- provide advice or provide or arrange training on the code of conduct for members of the authority.

Section 56(1) of the 2000 Act provides that a principal council’s standards committee (or a sub-committee established for the purpose) also exercises these functions in relation to members of community councils in its area.

Monitoring officers work closely with standards committees and support them in providing day-to-day advice to members on conduct matters.

A principal council may arrange for its standards committee to exercise such other functions as it considers appropriate, for example, monitoring the operation of corporate maladministration complaint procedures.

New duties

Duty of a standards committee to monitor group leaders’ compliance with the duties, and provision of advice and training

Section 62(3) of the 2021 Act amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. As noted above, a council’s political group

leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.

A standards committee must also provide advice and training, or arrange to train group leaders on the new duty. At the start of each administration this should take place within six months of the election and be reviewed at least annually.

The standards committee chair may wish to meet with group leaders periodically to review behaviour.

Duty of standards committee to make annual report

Section 63 of the 2021 Act inserts a new section 56B into the 2000 Act which places a requirement on standards committees in each “relevant authority” to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.

As a minimum, the report must:

- describe how the committee has discharged its functions during the preceding financial year;
- include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member code of conduct, and any subsequent action taken by the committee;
- include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel’s decisions on possible breaches of the member code of conduct;
- describe the advice it has provided on training for all members and how that has been implemented, and
- in the case of a principal council, include the committee’s assessment of how political group leaders have complied with the new duty under section 52A(1) of the 2000 Act (inserted by section 62 of the 2021 Act) to promote high standards of conduct, including the advice the standards committee has provided and the training it has suggested.

The committee may also wish to report on the number of cases considered under local resolution processes. This would help to capture data on an “all Wales” basis, on matters which do not reach the Public Services Ombudsman for Wales.

The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority’s consideration of a report will be a matter of public record through the published minutes of the meeting.

It would be good practice for Standards Committees to share their Annual Reports with the Public Services Ombudsman for Wales.

Consultation questions

Question 1

Does the draft guidance make it clear what is expected of leaders of political groups in principal councils as set out in the provisions of Part 4 of the Local Government and Elections (Wales) Act 2021 in a way that can be understood by leaders of political groups in principal councils?

If not, why not?

Question 2

Does the draft guidance make it clear what is expected of Standards Committees in principal councils as set out in the provisions of Part 4 of the Local Government and Elections (Wales) Act 2021 in a way that can be understood by Standards Committees?

If not, why not?

Question 3

We would like to know your views on the effects that the guidance would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4

Please also explain how you believe the guidance could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and have no adverse effects on opportunities for people to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

Question 5

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use the consultation response to express your views.

How to respond

Submit your comments by **16 May 2022**, in any of the following ways:

- complete our [online form](#)
- download, complete our [response form](#) and email LGDTMailbox@gov.wales
- download, complete our [response form](#) and post to:

Local Government Democracy Division
Welsh Government
Cathays Park

Cardiff
CF10 3NQ

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Under the data protection legislation, you have the right:

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- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please [tell us](#).

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer

Data Protection Officer
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail: data.protectionofficer@gov.wales

Information Commissioner's Office

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: ico.org.uk

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Further information and related documents

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