

**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 24<sup>th</sup> November 2021, 2<sup>nd</sup> December 2021 and 20<sup>th</sup> 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 12<sup>th</sup> 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 26<sup>th</sup> October 2021 and the Respondent and the Ombudsman were to provide any

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

2.2 By e mail sent on Friday 19<sup>th</sup> 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 26<sup>th</sup> June and 30<sup>th</sup> 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 30<sup>th</sup> October 2019. Mrs Oakley sent a further e mail at 3:32 pm on the afternoon of Friday 19<sup>th</sup> 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 26<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 23<sup>rd</sup> 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 16<sup>th</sup> 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 10<sup>th</sup> 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 28<sup>th</sup> of July 2021 and there was no meeting in August. The Respondent attended meetings on 8 September, 27<sup>th</sup> of October, 3<sup>rd</sup> and 24<sup>th</sup> 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 4<sup>th</sup> and 27<sup>th</sup> 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 21<sup>st</sup> 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 8<sup>th</sup> 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 11<sup>th</sup> 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 29<sup>th</sup> 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 4<sup>th</sup> March 2020 informing the Respondent of his investigation. The Ombudsman sent a further letter to the Respondent on 4<sup>th</sup> 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 12<sup>th</sup> 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 26<sup>th</sup> 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 26<sup>th</sup> 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 26<sup>th</sup> and 27<sup>th</sup> 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 11<sup>th</sup> 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 26<sup>th</sup> 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 26<sup>th</sup> June 2019 whereas her statement said that she had done so after the incident of the 30<sup>th</sup> 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 30<sup>th</sup> 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 4<sup>th</sup> of March 2020 indicating that an investigation was being commenced [62-63], and of 4<sup>th</sup> 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 15<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 20<sup>th</sup> August 2021 and to suggest, in his denial of the facts, that witnesses were mistaken about the 30<sup>th</sup> 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 8<sup>th</sup> 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 20<sup>th</sup> 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 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