

DYDD MAWRTH, 1 MAWRTH 2022

AT: HOLL AELODAU'R PWYLLGOR SAFONAU

YR WYF DRWY HYN YN EICH GALW I FYNYCHU CYFARFOD RHITHWIR O'R **PWYLLGOR SAFONAU** A GYNHELIR AM **2.00 YP, DYDD MAWRTH, 8FED MAWRTH, 2022** ER MWYN CYFLAWNI'R MATERION A AMLINELLIR AR YR AGENDA ATODEDIG.

Wendy Walters

PRIF WEITHREDWR



AILGYLCHWCH OS GWELWCH YN DDA

Swyddog Democrataidd:	Martin S. Davies
Ffôn (llinell uniongyrchol):	01267 224059
E-bost:	MSDavies@sirgar.gov.uk

Wendy Walters Prif Weithredwr, *Chief Executive*,
Neuadd y Sir, Caerfyrddin. SA31 1JP
County Hall, Carmarthen. SA31 1JP

PWYLLGOR SAFONAU

AELODAETH: 9 AELOD

Aelodau Annibynnol (5)

1. Mrs Mary Dodd
2. Ms Caryl Davies
3. Mrs Daphne Evans
4. Mrs Julie James
5. Mr Frank Phillips

Aelod Pwyllgor Cymunedol (1)

1. Cynghorydd Tref Philip Rogers

Aelodau Etholedig y Cyngor Sir (3)

1. Y Cynghorydd Jeanette Gilasbey
2. Y Cynghorydd Rob James
3. Y Cynghorydd Gareth Thomas

AGENDA

1. YMDDIHEURIADAU AM ABSENOLDEB.
2. DATGAN BUDDIANNAU PERSONOL.
3. LOFNODI YN GOFNOD CYWIR COFNODION CYFARFODYDD Y PWYLLGOR A GYNHALIWDYD AR 4YDD CHWFROR,2022. 5 - 8
4. HYFFORDDIANT CÔD YMDDYGIAD AR GYFER CYNGHORWYR TREF A CHYMUNED. 9 - 64
5. DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021. 65 - 82
6. CYDYMFFURFIO Â'R CÔD YMDDYGIAD - CYNGHORAU TREF A CHYMUNED. 83 - 88
7. PENDERFYNIADAU PANEL DYFARNU CYMRU. 89 - 154
8. UNRHYW FATER ARALL Y GALL Y CADEIRYDD OHERWYDD AMGYLCHIADAU ARBENNIG, BENDERFYNU EI YSTYRIED YN FATER BRYD YN UNOL AG ADRAN 100B(4)(B) DEDDF LLYWODRAETH LEOL 1972

Mae'r dudalen hon yn wag yn fwriadol

Dydd Gwener, 4 Chwefror 2022

YN BRESENNOL: M. Dodd (Cadeirydd)

Aelodau Annibynnol:

C. Davies, D. Evans, J. James a F. Phillips

Aelod Cymunedol:

Y Cynghorydd Tref P. Rogers

Y Cynghorwyr:

S.J.G. Gilasbey, R. James a G.B. Thomas

Yr oedd y swyddogion canlynol yn gwasanaethu yn y cyfarfod:

R. Edgecombe, Rheolwr y Gwasanaethau Cyfreithiol

J. Owen, Swyddog Gwasanaethau Democrataidd

K. Thomas, Swyddog Gwasanaethau Democrataidd

Rhith-Gyfarfod - 10.00 - 10.30 yb

1. YMDDIHEURIADAU AM ABSENOLDEB.

Ni chafwyd ymddiheuriadau am absenoldeb.

2. DATGAN BUDDIANNAU PERSONOL.

Ni ddatganwyd unrhyw fuddiannau personol.

3. LOFNODI YN GOFNOD CYWIR COFNODION CYFARFODYDD Y PWYLLGOR A GYNHALIWDYD AR 13 RHAGFYR 2021.

PENDERFYNWYD llofnodi bod cofnodion cyfarfod y Pwyllgor Safonau a gynhaliwyd ar 13 Rhagfyr 2021 yn gofnod cywir.

4. CAIS AM OLLYNGIAD GAN Y CYNGHORYDD T DEVICHAND

Rhoddodd y Pwyllgor ystyriaeth i gais gan y Cynghorydd Cymuned T Devichand am ollyngiad o dan ddarpariaethau Rheoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) i siarad, pleidleisio a chyflwyno sylwadau ysgrifenedig ar faterion yn ymwneud â gwaredu terfynau cyflymder 20mya a chyfyngiadau parcio ar Heol Maescanner a Heol Dafen, Llanelli.

Dywedwyd bod gollyngiad yn cael ei geisio gan fod ei hetholwyr wedi gofyn i'r Cynghorydd Devichand ddadlau eu hachos a bod ganddi fuddiant personol a rhagfarnol yn y mater hwn, am ei bod yn byw yn Heol Dafen a bod y cynnig yn effeithio arni. Roedd y Cynghorydd Devichand wedi gofyn am i ollyngiad gael ei roi am y rhesymau canlynol:-

- Ni fyddai ei chyfraniad at unrhyw fusnes Cyngor o'r fath yn niweidio hyder y cyhoedd ac

- Roedd ei buddiant yn gyffredin i gyfran sylweddol o'r cyhoedd

Gan hynny, roedd y Cynghorydd Devichand wedi gofyn am ollyngiad o dan Reoliadau 2 (d) a (e) o Reoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001.

Cyfeiriodd Rheolwr y Gwasanaethau Cyfreithiol at yr ail reswm a gyflwynwyd gan y Cynghorydd Devichand i gefnogi ei chais am ollyngiad, a dywedodd nad oedd yn berthnasol i'r cais ar y sail ei fod yn fater lleol ac felly nid oedd yn gyffredin i gyfran sylweddol o'r cyhoedd.

Yn dilyn trafodaeth:-

PENDERFYNWYD

- 4.1 bod y gollyngiad yn cael ei roi o dan Reoliad 2 (d) o Reoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001 i'r Cynghorydd Tegwen Devichand siarad a chyflwyno sylwadau ysgrifenedig, ond nid pleidleisio, yng nghyfarfodydd Cyngor Gwledig Llanelli mewn perthynas â materion oedd yn ymwneud â gwaredu terfynau cyflymder 20mya a chyfyngiadau parcio ar Heol Maescanner a Heol Dafen, Llanelli**
- 4.2 Bod cyfnod y gollyngiad yn cael ei roi hyd at ddiwedd cyfnod presennol y Cynghorydd Devichand yn ei swydd hyd at yr etholiadau llywodraeth leol ym mis Mai 2022**

5. CAIS AM OLLYNGIAD GAN Y CYNGHORYDD SHAREN LOUISE DAVIES

Rhoddodd y Pwyllgor ystyriaeth i gais gan y Cynghorydd Sir S.L. Davies am ollyngiad o dan ddarpariaethau Rheoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) i siarad, pleidleisio a chyflwyno sylwadau ysgrifenedig ar faterion yn ymwneud â gwaredu terfynau cyflymder 20mya a chyfyngiadau parcio ar Heol Maescanner, Llanelli.

Dywedwyd bod gollyngiad yn cael ei geisio gan fod ei hetholwyr wedi gofyn i'r Cynghorydd Davies ddadlau eu hachos a bod ganddi fuddiant personol a rhagfarnol yn y mater hwn, am fod ei mam yn berchen eiddo yn Heol Maescanner ac felly roedd y cynnig yn effeithio arni. Roedd y Cynghorydd Davies wedi gofyn am i ollyngiad gael ei roi am y rhesymau canlynol:-

- Ni fyddai ei chyfraniad at unrhyw fusnes Cyngor o'r fath yn niweidio hyder y cyhoedd ac
- Roedd ei buddiant yn gyffredin i gyfran sylweddol o'r cyhoedd

Gan hynny, roedd y Cynghorydd Davies wedi gofyn am ollyngiad o dan Reoliadau 2 (d) a (e) o Reoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001.

Cyfeiriodd Rheolwr y Gwasanaethau Cyfreithiol at yr ail reswm a gyflwynwyd gan y Cynghorydd Davies i gefnogi ei chais am ollyngiad, a dywedodd nad oedd yn

berthnasol i'r cais ar y sail ei fod yn fater lleol ac felly nid oedd yn gyffredin i gyfran sylweddol o'r cyhoedd.

Yn dilyn trafodaeth:-

PENDERFYNWYD

- 4.1** bod y gollyngiad yn cael ei roi o dan Reoliad 2 (d) o Reoliadau Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001 i'r Cynghorydd Sharen Louise Davies siarad a chyflwyno sylwadau ysgrifenedig, ond nid pleidleisio, yng nghyfarfodydd Cyngor Sir Caerfyrddin a Chyngor Gwledig Llanelli mewn perthynas â materion oedd yn ymwneud â gwaredu terfynau cyflymder 20mya a chyfyngiadau parcio ar Heol Maescanner, Llanelli
- 4.2** Bod cyfnod y gollyngiad yn cael ei roi hyd at ddiwedd cyfnod presennol y Cynghorydd Davies yn ei swydd hyd at yr etholiadau llywodraeth leol ym mis Mai 2022

6. UNRHYW FATER ARALL Y GALL Y CADEIRYDD OHERWYDD AMGYLCHIADAU ARBENNIG, BENDERFYNU EI YSTYRIED YN FATER BRYD YN UNOL AG ADRAN 100B(4)(B) DEDDF LLYWODRAETH LEOL 1972

Nid oedd dim materion brys i'w trafod.

CADEIRYDD

DYDDIAD

Mae'r dudalen hon yn wag yn fwriadol

Y PWYLLGOR SAFONAU
08/03/2022

HYFFORDDIANT CÔD YMDDYGIAD
AR GYFER CYNGHORWYR TREF A CHYMUNED

Yr argymhellion / penderfyniadau allweddol sydd eu hangen:

Cytuno ar y trefniadau ar gyfer yr hyfforddiant côd ymddygiad ar gyfer 2022

Y Rhesymau:

Cynhaliwyd sesiynau hyfforddi côd ymddygiad blynyddol ers sawl blwyddyn ond cafodd y rhai ar gyfer 2020 eu canslo oherwydd pandemig y Coronafeirws

Angen ymgynghori â'r Pwyllgor Craffu perthnasol Amh

Angen i'r Cabinet wneud penderfyniad Amh.

Angen penderfyniad gan y Cyngor Amh.

YR AELOD O'R CABINET SY'N GYFRIFOL AM Y PORTFFOLIO:- Y Cyngorydd Emlyn Dole
- Arweinydd

Y Gyfarwyddiaeth:

Enw Pennaeth y Gwasanaeth:

Linda Rees Jones

Awdur yr Adroddiad:

Robert Edgecombe

Swyddi:

Pennaeth Gweinyddiaeth a'r
Gyfraith

Rheolwr y Gwasanaethau
Cyfreithiol

Ffôn:

Cyfeiriadau E-bost:
rjedgeco@sirgar.gov.uk

01267 224018

**EXECUTIVE SUMMARY
STANDARDS COMMITTEE
08/03/2022**

**CODE OF CONDUCT TRAINING
FOR TOWN AND COMMUNITY COUNCILLORS**

The making of arrangements for the delivery of code of conduct training to town and community councillors within the county is a task that falls within the remit of the Standards Committee.

This requirement has in recent years been fulfilled by the holding of annual sessions in County Hall, usually spread over 2 evenings in June or July.

In 2020 however, due to the Coronavirus pandemic these sessions were cancelled, and training notes circulated to all town and community councils instead.

Sessions were held in 2021 by remotely, via Zoom. Feedback from attendees at these sessions was generally positive, although several Councils stated that they had not sent any attendees because of inadequate internet connection and/or insufficient IT skills amongst their members. These councils expressed a preference for a return to physical face to face sessions.

At the time of writing this report the holding of physical training sessions is legally possible under the current Coronavirus restrictions. However, all employers (including the Council) are required to adopt and implement Coronavirus risk assessments. The risk assessments for the Chamber in County Hall currently restricts its capacity to less than 25 persons. In addition, it is possible that proposed building works that may take place in County Hall later this year could mean the Council Chamber is unavailable in any event.

Bearing in mind the resources available to deliver these sessions the Committee needs to decide

- How many sessions it wishes to run
- Whether they will be held remotely or in person, and if the latter, where.

A draft amended Training Presentation is attached for consideration.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET PORTFOLIO HOLDER(S)
AWARE/CONSULTED**

NO

Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-193	County Hall, Carmarthen

Mae'r dudalen hon yn wag yn fwriadol

**HYFFORDDIANT CÔD YMDDYGIAD AR
GYFER CYNGHORWYR TREF A
CHYMUNED
2022**

**CODE OF CONDUCT TRAINING FOR
TOWN AND COMMUNITY COUNCILLORS
2022**

RHAGLEN PROGRAMME

Cyflwyniad

Pryd mae'r côd yn gymwys

Dyletswyddau Cyffredinol

Buddiannau Personol

Buddiannau Rhagfarnol

Buddiannau Eithriedig

Gollyngiadau

Gorfodaeth

Deddfwriaeth ac Achosion

Diweddar

Ble gallwch gael cyngor

Casgliad

Cwestiynau

Introduction

Standards Committee

When the Code Applies

The Code and Social Media

General Duties

Personal Interests

Prejudicial Interests

Exempt Interests

Dispensations

Enforcement

Recent Cases & Legislation

Where to seek advice

Conclusion

Questions

CYFLWYNIAD INTRODUCTION

**Mae'r Côt yn seiliedig ar
Egwyddorion Nolan ar
gyfer ymddygiad ym
mywyd cyhoeddus**

**Mae'n rhaidd i bob Cyngor
fabwysiadu ei gôt ei hun
yn seiliedig ar fodel
Llywodraeth Cymru.
Diwygiwyd ddiwethaf –
haf 2016**

**Pwyllgor Safonau – 9 aelod.
3 Chynghorydd Sir, 1
Cynghorydd Cymuned a
5 aelod annibynnol
cyfetholedig.**

**Code based upon the Nolan
Principles for conduct in
public life**

**Each Council must adopt
its own code based on
the WG model. Last
revised – summer 2016**

**Ombudsman's Guidance
updated May 2021.**

**Specific guidance issued
for Town and Community
Councils**

STANDARDS COMMITTEE - COMPOSITION

- **9 members.**
- **3 County Councillors,**
- **1 Community Councillor and**
- **5 co-opted independent members**

STANDARDS COMMITTEE - ROLE

Promote high standards of conduct by Cllrs

Assist Cllrs to observe the Code

Monitor the operation of the Code

Advise on the adoption or revision of the Code

Arrange Code Training

Grant dispensations

PRYD MAE'R CÔD YN GYMWYS WHEN THE CODE APPLIES

PRYD MAE'R CÔD YN GYMWYS WHEN THE CODE APPLIES

**Mewn unrhyw gyfarfod
swyddogol o'r cyngor**

**Mewn unrhyw gyfarfod gydag
aelodau neu swyddogion**

**Wrth weithredu fel
Cynrychiolydd y Cyngor neu
ymddangos eich bod yn
gwneud hynny**

**Wrth ymgymryd â busnes y
Cyngor**

**Wrth weithredu mewn unrhyw
rôl swyddogol arall**

**Wrth gynrychioli'r Cyngor ar
gorff arall**

AC

In any official council meeting

**In any meeting with members
or officers**

**When acting as a Council rep
or appearing to do so**

If conducting Council business

**If acting in any other official
role**

**If a Council rep on another
body**

AND

PRYD MAE'R CÔD YN GYMWYS WHEN THE CODE APPLIES

UNRHYW BRYD OS YW'R CANLYNOL YN BERTHNASOL:

**Os yw eich ymddygiad yn
debygol o ddwyn anfri ar
eich swyddfa neu'r Cyngor**

**Os ydych yn defnyddio eich
swydd i ennill mantais i chi
eich hun neu rywun arall**

**Os ydych yn camddefnyddio
adnoddau'r Cyngor**

**COFIWCH – mae'r Côt yr un
mor berthnasol i
gyfarfodydd o bell ag i rai
wyneb yn wyneb**

AT ANY TIME IF:

**Your conduct is likely to
bring your office or the
Council into disrepute**

**You use your position to
gain an advantage for
yourself or another**

**You misuse Council
resources**

**REMEMBER – the Code
applies just as much to
remote meetings as to
physical ones**

The Code and Social Media

- The code will therefore apply when using social media
- Clearly distinguish between personal and political posts
- Don't post what you would not say to someone's face
- Don't drink and tweet !

DYLETSWYDDAU CYFFREDINOL

GENERAL DUTIES

Cynghorwyr yn
ymddiheuro i staff am
gynnig 'defod baganaidd'
Councillors apologise
to staff over 'pagan
ritual' offer

Dirprwy Arweinydd Cyngor yng
Nghymru yn ymddiswyddo dan
gwmwl oherwydd y gair 'N'

Welsh N-word council deputy
resigns in disgrace

Ymchwilio i Gyngorydd
oherwydd neges e-bost
dramgwyddus

Councillor investigated for
'offensive' email

Gwrandawriad naw awr
ynghylch cyngorydd oedd
wedi 'bod yn bigitian yn gas
ar y cyrion'

Nine-hour hearing over
councillor who 'bitched from
the sidelines'

DYLETSWYDDAU CYFFREDINOL – RHAID ICHI

GENERAL DUTIES – YOU MUST

- **Hyrwyddo Cydraddoldeb**
- **Dangos parch ac ystyriaeth i eraill**
- **Peidio â bwlio neu aflonyddu ar eraill**
- **Peidio â pheryglu diffyg tuedd y swyddogion**
- **Peidio â datgelu gwybodaeth gyfrinachol**
- **Peidio ag atal mynediad at wybodaeth**
- **Peidio â dwyn anfri ar eich swyddfa neu'ch cyngor**
- **Promote Equality**
- **Show respect & consideration to others**
- **Not harass or bully others**
- **Not compromise your officers impartiality**
- **Not disclose confidential information**
- **Not prevent access to information**
- **Not bring your office or council into disrepute**

DYLETSWYDDAU CYFFREDINOL – RHAID ICHI

GENERAL DUTIES – YOU MUST

- **Rhoi gwybod am achosion o dorri'r côd**
- **Peidio â gwneud cwynion blinderus**
- **Cydweithio ag ymchwiliadau**
- **Peidio â defnyddio eich swydd yn amhriodol**
- **Peidio â chamddefnyddio adnoddau'r Cyngor**
- **Gwneud penderfyniadau yn wrthrychol**
- **Ystyried cyngor a rhoi rhesymau dros beidio â'i ddilyn**
- **Report code breaches**
- **Not make vexatious complaints**
- **Cooperate with investigations**
- **Not use your position improperly**
- **Not misuse Council resources**
- **Reach decisions objectively**
- **Consider advice and give reasons for not following it**

DYLETSWYDDAU CYFFREDINOL – RHAID ICHI GENERAL DUTIES – YOU MUST

- **Cydymffurfio â rheolau ynghylch treuliau**
- **Peidio â derbyn anrhegion neu letygarwch sy'n eich rhwymo neu'n ymddangos eu bod yn gwneud hynny**
- **Comply with rules on expenses**
- **Not accept gifts or hospitality that obligates you or appear to do so**

BUDDIANNAU PERSONOL PERSONAL INTERESTS

“Mae'n rhaid i'r cyhoedd deimlo'n hyderus bod Cynghorwyr yn gweithredu er budd y cyhoedd, nid er eu budd eu hunain, neu er budd eu teulu a'u ffrindiau.”

(Ombwdsmon Gwasanaethau Cyhoeddus Cymru)

“The public must have confidence that Councillors are acting in the public's best interests, not their own, or those of their family and friends.”

(Public Services Ombudsman for Wales)

BUDDIANNAU PERSONOL PERSONAL INTERESTS

- Mae'r Côt yn rhestru nifer o sefyllfaoedd lle y mae buddiant personol yn codi
- Os oes gennych fuddiant personol mewn unrhyw fater sy'n berthnasol i'r Cyngor, mae'n rhaidd i chi ddatgan y buddiant hwnnw
- Os yw'r buddiant hwnnw hefyd yn rhagfarnol ni allwch gymryd rhan neu bleidleisio.
- Yn ddelfrydol, dylai POB agenda gynnwys eitem sefydlog ynghylch datgan buddiannau gan fod hyn yn helpu i atgoffa'r aelodau i roi ystyriaeth ddifrifol i'r mater
- The Code lists a number of situations where a personal interest arises.
- If you have a personal interest in any council business you must declare that interest
- If that interest is also prejudicial you cannot participate or vote.
- ALL agendas should ideally contain a standing item on declarations of interest as this helps remind members to give serious thought to this issue

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Os yw mater yn ymwneud â, **neu'n debygol o effeithio ar:**

1. Eich cyflogaeth neu'ch busnes
 2. Eich cyflogwr neu fusnes yr ydych yn bartner neu'n gyfarwyddwr ynddo
 3. Unrhyw un (heblaw'r cyngor) sy'n cyfrannu at eich treuliau o ran etholiadau neu dreuliau aelodau
- Neu...

Where a matter **relates to or is likely to affect;**

1. Your employment or business
2. Your employer or a business in which you are a partner or director
3. Anyone (other than your council) who contributes to your election or members expenses

Or....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad..

- 4. Cwmni sydd â lle busnes neu dir yn eich ardal y mae gennych 1% o gyfranddaliadau ynddo (neu gyfranddaliadau gwerth mwy na £25k)**
- 5. Contract am nwyddau/gwasanaethau/gwaith rhwng eich cyngor a busnes yr ydych yn gyfranddaliwr neu'n gyfarwyddwr ynddo**

Contd..

- 4. A company with a place of business/land in your area in which you hold 1% of shares (or shares worth more than £25k)**
 - 5. A contract for goods/services/works between your council and a business in which you are a director or a shareholder**
- Or.....**

Neu.....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad...

- 6. Tir yr ydych yn berchen arno (neu'n berchen yn rhannol arno) yn yr ardal**
- 7. Tir lle mae eich Cyngor yn landlord ac rydych chi neu eich busnes yn denant (yn cynnwys os ydych yn gyfarwyddwr neu'n gyfranddaliwr)**
- 8. Unrhyw dir yn yr ardal lle mae gennych drwydded alwedigaethol.**

Contd...

- 6. Land that you own (include part own) in the area**
- 7. Land where your Council is the landlord and you or your business is a tenant (includes where you are a director or shareholder)**
- 8. Any land in the area where you hold an occupational licence.**

Or....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad...

9. Lle rydych yn aelod neu lle mae gennych rôl rheoli yn y mathau canlynol o sefydliadau:

- (a) Awdurdod cyhoeddus/corff sy'n cyflawni swyddogaethau cyhoeddus**
- (b) Cwmni, cymdeithas neu elusen**
- (c) Corff sy'n bod er mwyn dylanwadu ar farn gyhoeddus**

Neu....

Contd...

9. Where you are a member of or have a management role in the following types of organisation;

- (a) Public authority/body exercising public functions**
- (b) Company, society or charity**
- (c) Body which exists to influence public opinion**

Or....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST ?

9. Parhad...

**(d) Undeb Llafur neu
gymdeithas broffesiynol**

**(e) Clwb, cymdeithas neu
fudiad preifat sy'n
gweithredu yn yr ardal**

9. Contd...

**(d) Trade union of
professional association**

**(e) Private club, society or
association operating in
the area**

Neu.....

Or.....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Os ystyrir **yn rhesymol bod y mater yn effeithio ar:**

1. Eich llesiant neu'ch sefyllfa ariannol
2. Llesiant neu sefyllfa ariannol person sy'n byw gyda chi
3. Llesiant neu sefyllfa ariannol **cyfaill agos personol**

Neu...

Where the matter **might reasonably be regarded as affecting;**

1. Your well-being or financial position
2. The well-being or financial position of a person you live with
3. The well-being or financial position of a **close personal associate**

Or...

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad...

4. Unrhyw gyflogaeth neu fusnes sydd gennych chi, person sy'n byw gyda chi, neu gyfaill agos personol i chi.

5. Unrhyw berson sy'n cyflogi person sy'n byw gyda chi neu gyfaill agos personol neu unrhyw fusnes y maent yn bartner neu'n gyfarwyddwr ynddo.

Neu...

Contd...

4. Any employment or business carried on by you, a person living with you, or a close personal associate of yours.

5. Any person who employs a person living with you or a close personal associate or any business in which they are a partner or director.

Or....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad...

6. Unrhyw awdurdod cyhoeddus, cwmni, cymdeithas, elusen, undeb llafur, cymdeithas broffesiynol, clwb neu gymdeithas breifat lle y mae person sy'n byw gyda chi/cyfaill agos personol yn aelod neu'n dal swydd reoli.

Neu...

Contd...

6. Any public authority, company, society, charity, trade union, professional association, private club, or association in which a person living with you/close personal associate is a member or has a position of control or management.

Or....

BETH YW BUDDIANT PERSONOL? WHAT IS A PERSONAL INTEREST?

Parhad...

7. Unrhyw gwmni lle mae person sy'n byw gyda chi/cyfaill agos personol yn berchen ar gyfranddaliadau gwerth mwy na £5,000.

**OS OES GENNYCH FUDDIANT
PERSONOL, MAE'N RHAID I CHI EI
DDATGAN.**

Contd...

7. Any company in which a person living with you/close personal associate owns shares worth more than £5,000.

**IF YOU HAVE A PERSONAL INTEREST
THEN YOU MUST DECLARE IT.**

BUDDIANNAU RHAGFARNOL PREJUDICIAL INTERESTS

**Os oes gennych
Fuddiant Personol
mae'n RHAID i chi
wirio ai buddiant
rhagfarnol ydyw hefyd.**

COFIWCH

**Nid cwestiwn ydyw o ran a
ydych yn credu bod y
buddiant yn dylanwadu
arnoch, ond a ydych yn
credu y byddai aelod
tybiedig o'r cyhoedd yn
credu ei fod yn dylanwadu
arnoch.**

**If you have a Personal
interest you **MUST**
check whether that
interest is also
prejudicial.**

REMEMBER

**The test is not whether you
think the interest
influences you, but
whether you think a
hypothetical member of the
public would think it does.**

BUDDIANNAU RHAGFARNOL

PREJUDICIAL INTERESTS

Os oes gennych Fuddiant Rhagfarnol mae'n RHAID i chi wneud y canlynol:

1. Datgelu'r buddiant hwnnw
2. Peidio â cheisio dylanwadu ar unrhyw benderfyniad
3. Gadael y cyfarfod tra bod y mater hwnnw yn cael ei drafod
4. Mae hyn yn golygu bod yn rhaid i chi adael yr ystafell!!

If you have a Prejudicial interest you MUST;

1. Disclose that interest
2. Not try to influence any decision
3. Withdraw from the meeting whilst that business is dealt with
4. This means you must leave the room !!

BUDDIANNAU EITHRIEDIG EXEMPTED INTERESTS

Mae'r Côt yn rhestru rhai buddiannau personol NAD ydynt yn rhagfarnol, sef:

- 1. Lle bo'r mater yn ymwneud ag awdurdod arall yr ydych yn aelod ohono**
- 2. Lle bo'r mater yn ymwneud ag awdurdod cyhoeddus arall y mae gennych swydd reoli ynddo**

Neu....

The Code lists certain personal interests which are NOT prejudicial, namely;

- 1. Where the business relates to another authority of which you are a member**
- 2. Where the business relates to another public authority in which you have a position of control or management**

Or....

BUDDIANNAU EITHRIEDIG

EXEMPTED INTERESTS

Parhad..

- 3. Lle bo'r mater yn ymwneud â chorff y cawsoch eich penodi gan eich Cyngor iddo**
- 4. Eich rôl fel llywodraethwr ysgol (lle NA chwsoch eich penodi gan eich Cyngor) ONI BAI bod y mater yn ymwneud yn benodol â'r ysgol honno**

Neu.....

Contd..

- 3. Where the business relates to a body to which you have been appointed by your Council**
 - 4. Your role as a school governor (where NOT appointed by your Council) UNLESS the business specifically relates to that school**
- Or.....**

BUDDIANNAU EITHRIEDIG

EXEMPTED INTERESTS

Parhad...

5. Eich rôl ar y Bwrdd Iechyd Lleol lle NA chawsoch eich penodi gan eich Cyngor
6. Yng nghyswllt grant/benthyciad ac ati a roddwyd gan eich Cyngor i fudiadau cymunedol neu wirfoddol **hyd at uchafswm o £500.**

Contd...

5. Your role on the LHB when NOT appointed by your Council
6. In relation to a grant/loan etc by your Council to a community or voluntary organisation **up to a maximum of £500.**

GOLLYNGIADAU DISPENSATIONS

GOLLYNGIADAU DISPENSATIONS

- **Gall Cyngorydd â buddiant rhagfarnol wneud cais i'r Pwyllgor Safonau am ganiatâd i gael ei gynnwys mewn trafodaeth ar fater.**
- **Mae'n rhaid cyflwyno ceisiadau mewn da bryd er mwyn cynnal cyfarfod yn unol â'r rheolau ynghylch cyhoeddi agendâu ac ati.**
- **A Cllr with a prejudicial interest may apply to the Standards Committee for permission to be involved in a matter**
- **Applications must be submitted in sufficient time for a meeting to be called in accordance with rules on publishing agendas etc.**

GOLLYNGIADAU DISPENSATIONS

- **Mae'n rhaid cyflwyno ceisiadau ar ffurflen safonol**
- **Gallant gael eu cyflwyno gan glerc ar ran 1 neu ragor o gynghorwyr.**
- **Mae'n rhaid bod y ceisiadau yn seiliedig ar un neu ragor o'r rhesymau canlynol:**
- **Applications must be submitted on a standard form**
- **They may be submitted by a clerk on behalf of 1 or more cllrs.**
- **They must be based on one or more of the following grounds;**

GOLLYNGIADAU DISPENSATIONS

- **Mae o leiaf 1/2 o'r cyd-gynghorwyr yn rhannu'r un buddiant**
- **Mae natur y buddiant yn golygu na fyddai'n niweidiol i'r hyder sydd gan y cyhoedd**
- **Mae gan y Cynghorydd arbenigedd penodol sy'n cyfiawnhau ei gyfranogiad parhaus**
- **Mae'r buddiant yn gyffredin i gyfran sylweddol o'r cyhoedd**
- **At least 1/2 of fellow cllrs share the same interest**
- **The nature of the interest is such that it would not damage public confidence**
- **The Cllr has a particular expertise which justifies their contd. involvement**
- **The interest is common to a significant proportion of the public**

GOLLYNGIADAU DISPENSATIONS

- **Mae'r mater yn ymwneud â sefydliad gwirfoddol ac mae'r Cynghorydd yn ymwneud â rôl reoli ac nid oes ganddo unrhyw fuddiant arall yn y mater *(gall siarad yn unig, ni all bleidleisio dan yr opsiwn hwn)***
- **Fel sy'n briodol fel arall o dan yr holl amgylchiadau *(Mae rhesymau eraill ond nid ydynt yn berthnasol i Gynghorwyr Cymuned)***
- **The matter relates to a vol. organisation & the Cllr is involved in its management & has no other interest in the matter *(can only speak , not vote under this option)***
- **Otherwise appropriate in all the circumstances**
- ***(There are other grounds available but they do not apply to Community Cllrs)***

GOLLYNGIADAU DISPENSATIONS

**Rhoddir gollyngiadau fel arfer
am gyfnod penodedig**

**Mae'r rhan fwyaf o ollyngiadau
i siarad yn unig**

**Mae gollyngiadau yn fwyaf
tebygol o gael eu rhoi pan fo
buddiant cynghorydd yn
ymwneud â'i gysylltiad â
sefydliad gwirfoddol.**

**Mae gollyngiadau yn llai
tebygol o gael eu rhoi pan fo'r
buddiant yn ymwneud â
buddiannau eiddo neu fusnes
personol cynghorydd**

**Dispensations are usually
granted for a set period of
time**

**The majority of dispensations
are to speak only**

**Dispensations are most likely
to be granted where a
councillors interest relates to
involvement in a voluntary
organisation.**

**Dispensations are less likely
to be granted where they
relate to a cllr's personal
business or property interests**

GOLLYNGIADAU DISPENSATIONS

Mae'r mwyafrif llethol o geisiadau am ollyngiadau yn cael eu caniatáu, o leiaf i siarad a gwneud sylwadau ysgrifenedig.

Mae gollyngiadau i bleidleisio yn brin

Dylai ceisiadau roi cymaint o wybodaeth â phosibl am fuddiant y Cynghorydd

The vast majority of dispensation applications are granted, at least to speak and make written representations.

Dispensations to vote are rare

Applications should give as much information as possible about the interest that the Cllr has

GORFODAETH ENFORCEMENT



- **New Public Services Ombudsman for Wales – Michelle Morris.**
- **Appointed from 1st April 2022**

GORFODAETH ENFORCEMENT

- **Dylai pob cwyn ynghylch torri'r côd gael ei chyfeirio at Ombwdsmon Gwasanaethau Cyhoeddus Cymru a fydd yn penderfynu ymchwilio ai peidio.**
- **Nid oes gan y Cyngor Sir unrhyw bŵer i ymyrryd**
- **Os yw Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn penderfynu ymchwilio i'r achos, gall wneud hynny ei hun neu gyfeirio'r achos at Swyddog Monitro lleol i wneud hynny**
- **All complaints regarding breaches of the code should be referred to the Ombudsman who will decide whether or not to investigate.**
- **The County Council has no power to intervene**
- **If the Ombudsman decides the case merits investigation, they may refer the case to the local Monitoring Officer to do so**

GORFODAETH ENFORCEMENT

- **Os yw ymchwiliad yn datgelu tystiolaeth o dorri rheolau, gellir cyfeirio'r achos at y Pwyllgor Safonau neu Banel Dyfarnu Cymru i benderfynu arno**
- **Gall y Pwyllgor Safonau atal Cynghorydd o'i swydd**
- **Gall y Panel Dyfarnu wahardd Cynghorydd o'i swydd**
- **Gall y ddau osod sancsiynau llai llym**
- **If an investigation finds evidence of a breach it may be referred to the local Standards Committee or the Adjudication Panel for Wales for determination.**
- **The Standards Committee can suspend a Cllr from office**
- **The Adjudication Panel can disqualify a Cllr from office**
- **Both can impose lesser sanctions**

ACHOSION DIWEDDAR

RECENT ADJUDICATION PANEL CASES

**Direct referrals from the
Ombudsman**

Cllr. Perry Morgan

Cllr. William Roy Owen

Cllr. David Poole

ACHOSION DIWEDDAR

RECENT ADJUDICATION PANEL CASES

Appeals from Standards Committees

Cllr. Gareth Baines

Cllr. Richard Mainon

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

Adran 67 – dyletswydd ar
Gynghorau Tref a
Chymuned i gyhoeddi
cynlluniau hyfforddi ar
gyfer ei aelodau a'i staff

- Section 67 – duty on Town and Community Councils to publish training plans for its members and staff
- The first training plan must be ready and published by 5 November 2022,

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

There are areas which all councils should ensure that they have sufficient skills and understanding. These are:

1. Basic induction for councillors
2. The Code of Conduct for members of local authorities in Wales.
3. Financial management and governance.

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

The training plan should reflect the training needs of the council and its plan for addressing those needs.

The plan must be approved by the full council prior to publication.

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

The plan should provide, as a minimum, information about:

1. The type of training,
2. Numbers participating
3. The timeframe over which the training is to be completed; and
4. The overall cost of the training

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

Under section 67(4) of the 2021 Act there is duty on councils to review their training plan.

As a minimum this would be at least at every ordinary election of community councillors.

New Plans must be prepared within three months of an ordinary election of community councillors

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

In practice, the plan is likely to require revising more frequently, e.g., following a council by-election or a new co-opted councillor joining; staff changes; or taking on new responsibilities such as new services or assets.

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

- Atodlen 8 - Rhoi'r un pwerau i'r Ombwdsmon â barnwr yr Uchel Lys o ran mynnu bod person yn darparu gwybodaeth/dogfennau
- Gall Ombwdsmon fynnu bod Cyngor yn darparu unrhyw gyfleuster y mae'n rhesymol iddo ofyn amdano
- Schedule 8 - Gives the Ombudsman the same powers as a High Court judge to require a person to provide information/documents
- Ombudsman can require a Council to provide any facility he reasonably requires

BLE GALLWCH GAEL CYNGOR

WHERE TO SEEK ADVICE

Clercod

Gallwch ofyn am gyngor y Swyddog Monitro ynghylch y Côt

Cynghorwyr

Mae'r Ombwdsmon yn nodi'n glir y dylai Cynghorwyr ofyn am gyngor gan y Clercod ynghylch materion Côt a dim ond gofyn i'r Swyddog Monitro os nad yw'r Clerc ar gael

Os yw'r Swyddog Monitro yn rhoi cyngor ar y côd yn uniongyrchol i Gynghorydd, bydd y cyngor hwnnw'n cael ei rannu â'r clerc perthnasol

Clerks

May seek advice from the Monitoring Officer in relation to the Code

Councillors

The Ombudsman makes it clear that Councillors should seek advice from their Clerks on Code issues and only approach the Monitoring Officer if the clerk is unavailable

If the Monitoring officer does provide code advice directly to a Cllr that advice will be shared with the relevant clerk

CASGLIAD CONCLUSION

- **Cymerwch amser i ymgylfarwyddo â'r côd**
- **Sicrhewch fod gennych y côd bob tro wrth gyflawni gwaith y cyngor**
- **Defnyddiwch ollyngiadau i gyflawni eich rôl ddemocrataidd**
- **Os nad ydych yn siŵr - MYNNWCH GYNGOR**
- **Take time to familiarise yourself with the code and the Ombudsman's Guidance**
- **Always have them with you when conducting council business**
- **Make use of dispensations to fulfil your democratic role**
- **If unsure – SEEK ADVICE**

CWESTIYNAU QUESTIONS



Mae'r dudalen hon yn wag yn fwiadol

Y PWYLLGOR SAFONAU
08/03/2022

DEDDF LLYWODRAETH LEOL AC ETHOLIADAU (CYMRU) 2021		
<p>Yr argymhellion / penderfyniadau allweddol sydd eu hangen: Nodi'r newidiadau deddfwriaethol sy'n cael eu gwneud gan y Ddeddf mewn perthynas ag arweinwyr grwpiau gwleidyddol a chytuno ar ddull y pwyllgor o ymdrin â'r mater.</p>		
<p>Y Rhesymau: Mae'r Ddeddf yn rhoi dyletswyddau newydd ar arweinwyr grwpiau gwleidyddol mewn perthynas ag ymddygiad aelodau</p>		
<p>Angen ymgynghori â'r Pwyllgor Craffu perthnasol Amherthnasol</p>		
<p>Angen i'r Cabinet wneud penderfyniad</p>		<p>Amherthnasol</p>
<p>Angen penderfyniad gan y Cyngor</p>		<p>Amherthnasol</p>
<p>YR AELOD O'R CABINET SY'N GYFRIFOL AM Y PORTFFOLIO:- Y Cyngorydd Emlyn Dole - Arweinydd y Cyngor</p>		
<p>Y Gyfarwyddiaeth: Enw Pennaeth y Gwasanaeth: Linda Rees Jones Awdur yr Adroddiad: Robert Edgecombe</p>	<p>Swyddi: Pennaeth Gweinyddiaeth a'r Gyfraith Rheolwr y Gwasanaethau Cyfreithiol</p>	<p>Ffôn: Cyfeiriadau e-bost: rjedgeco@sirgar.gov.uk 01267 224018</p>

**EXECUTIVE SUMMARY
STANDARDS COMMITTEE
08/03/2022**

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

The Local Government and Elections (Wales) Act 2021 contains several provisions which directly relate to political group leaders and the working of the Standards Committee. These are

- A duty on the leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- A duty on the leaders of political groups to co-operate with the standards committee in the exercise of that committee's functions
- Amending the functions of the Standards Committee to include monitoring compliance by group leaders with the above duties and advising and training them in respect of those duties.
- Introduces a statutory requirement on Standards committees to produce an annual report as soon as possible after the end of each financial year. And prescribes certain content to be included in those reports, namely
 - (a) A summary of what has been done to discharge the functions referred to above
 - (b) A summary of any reports or recommendations received
 - (c) A summary of any action taken following consideration of any reports or recommendations received
 - (d) An assessment of the extent to which political group leaders have complied with their duties under the Act

The Committee therefore needs to consider how it will

- engage with political group leaders in relation to their duties
- assess how political group leaders have complied with their duties under the Act

A more detailed report is attached setting out how these issues might be addressed

DETAILED REPORT ATTACHED?

YES

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET PORTFOLIO HOLDER(S)
AWARE/CONSULTED**

NO

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-194	County Hall, Carmarthen

Mae'r dudalen hon yn wag yn fwriadol

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

DISCUSSION PAPER

DUTIES ON POLITICAL GROUP LEADERS

1. A duty to take reasonable steps to promote and maintain high standards of conduct by the members of their group

- What does the committee consider to be 'reasonable steps'?
- Should the committee identify what it feels group leaders should be doing specifically to meet this duty and communicate those expectations to group leaders in writing?
- To what extent do the committee feel group leaders should be held to account for the conduct of their group members?

2. A duty on the leaders of political groups to co-operate with the standards committee in the exercise of that committee's functions

- What does the committee consider to be sufficient 'co-operation' to satisfy this duty? Does this extend to following recommendations made by the committee?
- Should the committee identify what it feels group leaders should be doing specifically to meet this duty and communicate those expectations to group leaders in writing?

The Act then goes on to place two duties on the Committee

1. Monitoring compliance by group leaders with the above duties and advising and training them in respect of their new duties

- How will the committee monitor compliance by group leaders?
- Will it seek to adopt meaningful performance indicators against which their performance can be measured?
- If yes, what indicators do the committee wish to adopt?
- How will it advise/train them?

2. A duty to include in its annual report to Full Council an assessment of the extent to which political group leaders have complied with their duties under the Act
 - What approach will the committee want to take in respect of this. Will it address group leaders compliance in a general, collective way, or address each individuals compliance separately?
 - Will the committee want to undertake interim assessments of compliance during the year and communicate any conclusions to the group leaders.
 - Will group leaders be given an opportunity to comment upon/respond to any assessment before it is published.

1. Consultation on the Local Government and Elections (Wales) Act 2021: standards of conduct statutory guidance

• 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.

Mae'r dudalen hon yn wag yn fwriadol

Y PWYLLGOR SAFONAU
08/03/2022

**CYDYMFFURFIO Â'R CÔD YMDDYGIAD -
CYNGHORAU TREF A CHYMUNED**

Yr argymhellion / penderfyniadau allweddol sydd eu hangen:

Cytuno ar y dull i'w ddefnyddio i gasglu data gan Gyngorau Tref a Chymuned

Y Rhesymau:

Mae'r pwyllgor wedi cynnal ymarfer casglu data blynyddol ers sawl blwyddyn, sy'n helpu i lywio adroddiad blynyddol a sesiynau hyfforddi blynyddol y pwyllgor

Angen ymgynghori â'r Pwyllgor Craffu perthnasol Amh

Angen i'r Cabinet wneud penderfyniad Amh.

Angen penderfyniad gan y Cyngor Amh.

YR AELOD O'R CABINET SY'N GYFRIFOL AM Y PORTFFOLIO:- Y Cyngorydd Emlyn Dole
- Arweinydd

Y Gyfarwyddiaeth:

Enw Pennaeth y Gwasanaeth:

Linda Rees Jones

Awdur yr Adroddiad:
Robert Edgecombe

Swyddi:

Pennaeth Gweinyddiaeth a'r
Gyfraith

Rheolwr y Gwasanaethau
Cyfreithiol

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01267 224018

**EXECUTIVE SUMMARY
STANDARDS COMMITTEE
08/03/2022**

**CODE OF CONDUCT COMPLIANCE
BY TOWN AND COMMUNITY COUNCILS**

For a number of years the committee has written to all Town and Community Councils annually requesting that they provide data regarding code of conduct compliance by their members. Responses received are combined with data held by the Monitoring Officer to provide the committee with an overview of code compliance by these councillors covering;

1. Declarations of interest
2. Dispensation requests
3. Code of conduct complaints
4. Code of conduct training.

Most Councils have consistently provided the requested data, but a small minority have failed to do so, despite repeated requests.

That committee is asked to consider and agree how it wishes to approach this issue in the future.

The attached discussion paper sets out the issues in more detail

DETAILED REPORT ATTACHED?

YES

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

**CABINET PORTFOLIO HOLDER(S)
AWARE/CONSULTED**

NO

N/A

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-193	County Hall, Carmarthen

Mae'r dudalen hon yn wag yn fwriadol

CODE OF CONDUCT COMPLIANCE DATA FOR TOWN AND COMMUNITY COUNCILS

1. For a number of years the committee has written to Town and Community Councils in the County seeking information regarding the number of declarations of interest made by their members and the extent to which their members have received Code of Conduct training during the preceding 12 months.
2. Whilst most councils do respond to this information request, it usually takes several months (and multiple reminders) for it to be received. A small number of councils do not respond every year.
3. The information received, coupled with publicly available data regarding code of conduct complaints (taken from the Ombudsman's annual report) and dispensation requests (taken from the committee's own minutes) forms the basis of an annual report to the committee, usually in December.
4. Throughout the years there has been no obvious correlation between the various data sets. Some councils have experienced periods of relatively high numbers of complaints, but this has generally been short term. Most councils have not had any code complaints at all. Some councils generate large numbers of declarations of interest every year, others have none. It is impossible for the committee to tell whether there are occasions where declarations should have been made but were not.
5. So far, the committee has simply noted the reported data and has not really utilised it to inform its future work
6. It is suggested therefore that prior to sending the data request to Councils for the period 1st April 2021 to 31st March 2022 the committee review its approach and consider whether any changes to be made to the data that is collected and how it is obtained. This exercise can then be used to explain to Councils why the data is required (if the committee wishes to continue with the exercise).
7. The committee is therefore asked to consider the following
 - (a) What is the purpose of requesting information from councils about code training and declarations of interest?
 - (b) What use has the committee made of this information?
 - (c) How has this information helped the committee perform its functions?
 - (d) What other information (if any) should the committee seek as well as or instead of that currently obtained?
 - (e) Is there any way the committee can make better use of the information it receives?
8. If the committee decides to continue with this exercise, it may wish to (a) include a more detailed explanation for doing so in the information request letter and (b) include a section in this summer's training event on the subject.

Mae'r dudalen hon yn wag yn fwriadol

**EXECUTIVE SUMMARY
STANDARDS COMMITTEE
08/03/2022**

ADJUDICATION PANEL FOR WALES DECISIONS

The Adjudication Panel For Wales (APW) is an independent body which performs an important dual function in respect of the members code of conduct. As well as determining the more serious allegations of breach referred directly to it by the Public Services Ombudsman for Wales, the Panel also hears appeals against decisions by local standards committees in disciplinary cases. Since the Standards Committee last met the Panel has published its decisions in the following cases.

Cases Referred directly from the Public Services Ombudsman for Wales

Name: Councillor Perry Morgan

Relevant authority: Abertillery and Llanhilleth Community Council

Nature of allegation: Breach of paragraphs 4(a), 4(b), 4(c), 6(1)(a), and 6(2) of the Council's Code of Conduct.

Name: Councillor William Roy Owen

Relevant authority: Gwynedd Council and Caernarfon Royal Town Council

Nature of allegation: Breach of paragraphs 4(b), 4(c), 6(1)(a), 6(1)(d), 6(2) and 7(a) of the Council's Code of Conduct.

Appeals from decisions of local Standards Committees

Name: Councillor Gareth Baines

Relevant authority: Wrexham County Borough Council

Nature of allegation: Breach of paragraphs 4(b), 4(c) and 7(a) of the Council's Code of Conduct.

Name: Councillor Richard Mainon

Relevant authority: Denbighshire County Council

Nature of allegation: Breach of paragraphs 2(b), 4(c), 6(1)(a) and 7(a) of the Council's Code of Conduct.

A copy of the relevant decisions are attached to this report

DETAILED REPORT ATTACHED?

YES

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: *LRJones*

Administration and Law

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	NONE	NONE	NONE	NONE	NONE	NONE

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: *LRJones*

Head of Administration and Law

1. **Scrutiny Committee** – not applicable
2. **Local Member(s)** - not applicable
3. **Community / Town Council** - it is suggested that such consultation take place
4. **Relevant Partners** - not applicable
5. **Staff Side Representatives and other Organisations** - not applicable

EXECUTIVE BOARD PORTFOLIO HOLDER(S) AWARE/CONSULTED

NO

**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal Services file	DPSC-193	County Hall, Carmarthen

Mae'r dudalen hon yn wag yn fwriadol

NOTICE OF DECISION

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

RESPONDENT: Councillor Perry Morgan

RELEVANT AUTHORITY: Abertillery and Llanhilleth Community Council

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
2. By an e mail dated 2nd August 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 Perry Morgan. The allegations were that the Respondent Councillor Morgan had breached the Abertillery and Llanhilleth Code of Conduct (“the Code”).
3. The Case Tribunal made the following findings of fact;
 - i) Councillor Morgan 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?”*
 - ii) Councillor Morgan 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”*
 - iii) Councillor Morgan’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.
 - iv) Councillor Morgan failed to engage with the Council’s microphone system, in a deliberate attempt to cause difficulty for Councillor Lucas.
 - v) 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.
 - vi) Councillor Morgan deliberately failed to engage with the Ombudsman’s investigation.

4. At a hearing on Wednesday 24th November, Thursday 2nd December 2021 and Thursday 20th January 2022 held remotely by Cloud Video Platform (CVP), the Case Tribunal found by unanimous decision that as a result of the findings of fact at paragraphs 3 (i) to (v) above, inclusive, that Councillor Morgan failed to comply with paragraphs 4(a), 4(b), 4(c) and 6(1)(a) of the Code.

4.1 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;

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

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

4.4 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.

5. The Case Tribunal found that, as per paragraph 3 (vi) above, Councillor Morgan deliberately failed to engage with the Ombudsman's investigation, in breach of paragraph 6 (2) of the Code which 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.

6. The Case Tribunal found 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 date of this notice.

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

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

9. The Case Tribunal makes the following recommendations to the authority:

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

9.2 That Councillor Morgan undertake Equality and Diversity training.

9.3 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 20th January 2022.

Richard Payne
Chairperson of the Case Tribunal

Glenda Jones
Panel Member

H. Eifion Jones
Panel Member

Mae'r dudalen hon yn wag yn fwriadol

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*

gwarded 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

Mae'r dudalen hon yn wag yn fwriadol

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW-002-2021-022-AT

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

APPELLANT: Councillor Richard Mainon

RELEVANT AUTHORITY(IES): Denbighshire County Council

INTRODUCTION

1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Richard Mainon against the decision of Denbighshire County Council's Standards Committee made on 11th June 2012¹ that he had breached Denbighshire County Council's Code of Conduct and should be suspended from being a member of Denbighshire County Council for a period of two months.

2. On 9th May 2017, upon his election to the office of Councillor, Richard Mainon, undertook in writing to observe the Code for the time being as to the conduct which is expected of members of Denbighshire County Council.

3. In so far as it relates to this case, Denbighshire County Council Members' Code of Conduct reads as follows.

a. Paragraph 2(d) of the Code provides that members must observe the Code of Conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

b. Paragraph 4(c) of the Code provides that members must not use bullying behaviour or harass any person.

c. Paragraph 6(1)(a) of the Code provides that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

d. Paragraph 7(a) of the Code provides that members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or create or avoid for themselves, or for any other person, a disadvantage.

4. The Public Services Ombudsman for Wales (“PSOW”) received a complaint that Councillor Mainon had failed to observe the Code of Conduct. It was alleged that he had abused his position by visiting a member of the public’s place of work and complaining to her employer about a private altercation between her and constituent in a local store car park.

5. The Ombudsman determined that there was evidence to suggest that Councillor Mainon had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council’s Code of Conduct. The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.

6. On 11th June 2021, a Standards Committee Hearing took place at County Hall, Ruthin, Denbighshire and via the “Zoom” video platform.

7. The Standards Committee found the following facts.

a. On 8th December 2018, Mrs Sandie Grieve had a heated altercation with Ms Jayne Davies outside a local mini supermarket. Ms Davies is a constituent of the Appellant.

b. Ms Davies phoned the local mini supermarket that evening to ask about CCTV footage of the car park and was advised the CCTV covered the car park, but it had no sound.

c. On 10th December 2018, Ms Davies established that Mrs Grieve worked for Social Care Wales (SCW) and asked Councillor Mainon for assistance with pursuing a complaint about Mrs Grieve to her employer. Councillor Mainon agreed to handle the matter for Ms Davies.

d. On 11th December 2018, Councillor Mainon conducted an online search for Mrs Grieve’s place of work and determined an address for SCW’s local office.

e. On 11th December 2018, Councillor Mainon attended SCW’s local office to determine if it was Mrs Grieve’s place of work and to speak to her.

f. On 11th December 2018, Councillor Mainon gained access to Mrs Grieve’s workplace via a secure door entry. Mrs Grieve was not in the office at the time and Councillor Mainon spoke separately to three colleagues (an office colleague, her line manager and the organisation’s Complaint Officer) about the altercation and shared details with them about the incident and Mrs Grieve’s conduct. Councillor Mainon spoke to the office colleague in person but spoke to the line manager and Complaints Officer by telephone.

- g. On 15th December 2018 Councillor Mainon visited the local mini supermarket to ask whether the incident between Mrs Grieve and Ms Davies was recorded on CCTV.
- h. On 21st December 2018 (*corrected from "2021" within the Standards Committee's Notice of Determination because it is obviously a typographical error*) Councillor Mainon visited the local mini supermarket and obtained information on what the CCTV footage of the incident had shown.
- i. On 21st December 2018 Councillor Mainon sent a complaint on Ms Davies' behalf to SCW about Mrs Grieve and her involvement in the altercation.
- j. SCW notified Mrs Grieve of the matter on 10th January 2019, which was subsequently dealt with according to the organisation's policy. SCW determined it was a private matter and no further action was taken.
- k. Aside from submitting that it was Ms Davies that had identified Mrs Grieve's employer, Councillor Mainon did not dispute this summary of the relevant facts.

8. Based upon these findings of fact, the Standards Committee found that Councillor Mainon had failed to comply with the Code of Conduct in the following ways.

- a. The Committee was satisfied that Councillor Mainon gave the impression of acting in his capacity as a Councillor, thereby engaging paragraph 2(d) of the Code of Conduct.
- b. The Committee found that Councillor Mainon had breached paragraph 4(c) of the Code in that his conduct in visiting Mrs Grieve's place of work and speaking to her colleagues in her absence could be considered to be bullying and harassing behaviour. The Committee had, in reaching this decision, considered the written evidence of Mrs Grieve and submissions to the effect that she had genuinely felt stressed, vulnerable, upset and embarrassed. The Committee also considered the information provided by Councillor Mainon to the investigating officer and his submissions. The Committee accepted that Councillor Mainon had not intended to cause upset to Mrs Grieve and that he had no malicious intent when he attended her place of work. The Committee accepted that his intention was to assist Ms Davies and to avoid a damaging social media dispute in his community. The Committee did however conclude that Mrs Grieve was entitled to perceive Councillor Mainon's actions as bullying and harassing and that this conduct could reasonably be regarded as such.
- c. The Committee concluded that Councillor Mainon had breached paragraph 6(1) (a) of the Code of Conduct. Councillor Mainon had given the impression to Mrs Grieve's colleagues that he was acting as a councillor in pursuit of Ms Davies' complaint. In doing so, and by visiting Mrs Grieve's place of work and speaking to her colleagues about the incident there was potential damage to the Council's reputation particularly as Councillor Mainon appeared

to have accepted Ms Davies' version of events and had not sought Mrs Grieve's version of events.

d. The Committee concluded that Councillor Mainon's conduct amounted to a breach of paragraph 7(a) of the Code of Conduct. The Committee took into account Mrs Grieve's view that Councillor Mainon's actions were an effort to get her investigated and discredit her professionally. The Committee accepted that Councillor Mainon had not considered his approach to the Complainant's employer to be menacing and that his intent had been to seek to assist Ms Davies to pursue a complaint. However, the Committee concluded that in giving the impression that he was acting as a councillor in bringing to the attention of Mrs Grieve's employer a private incident, without demonstrating balance or fairness towards both parties, Councillor Mainon had attempted to use his position to cause Mrs Grieve a disadvantage.

9. Thereafter, the Standards Committee heard representations on the appropriate sanction applicable to these findings. Having considered those representations, the available material and the Sanctions Guidance published by the Adjudication Panel for Wales, the Standards Committee determined that Councillor Mainon would be suspended as a Member of the Council for a period of two months.

THIS APPEAL

10. In an email dated 12th July 2021, the Adjudication Panel for Wales received an appeal from Councillor Richard Mainon against the determination of Denbighshire County Council Standards Committee on 11th June 2021 that he had breached the Denbighshire County Council Code of Conduct; and that he should be suspended from being a member of the Council for two months.

11. Councillor Mainon sought to appeal the Standards Committee's findings that he had bullied Mrs Grieve; that he had harassed Mrs Grieve; that he had brought the Council into disrepute; and that he had taken advantage of his position to cause disadvantage to Mrs Grieve. He also sought to appeal the sanction imposed on the grounds that it was inappropriate, unnecessary, and excessive in all the circumstances.

12. Councillor Mainon accepted that he had identified himself as a councillor and as acting in support of a constituent, who was seriously ill at the material time and who complained that her child had been upset by the initial incident. Councillor Mainon said he had good reason to believe that the dispute would be aired via social media and that this would have been divisive to the local community.

13. Councillor Mainon noted that the only contact he made with Mrs Grieve was via her place of work. When he was admitted after ringing a doorbell, he did not act aggressively and quoted from the unchallenged evidence of the person who attended upon him: *“I would say that Councillor Mainon’s manner was reasonable when I spoke to him and he wasn’t intimidating or anything like that.”* Councillor Mainon worked with the information he was given.

14. Councillor Mainon noted that the Standards Committee found that he did not intend to cause upset to Mrs Grieve; that he had no malicious intent when he attended her place of work; that he intended to assist a constituent and to avoid a damaging social media dispute in the community; and that he did not consider that his approach to Mrs Grieve’s employer was menacing.

15. Councillor Mainon submitted that the Standards Committee had failed to take account that he made his complaint in a *“reasonable and unintimidating manner”* and through the correct channel for complaint about a public servant. He therefore submitted that legitimate presentation of a complaint cannot itself constitute either harassment or bullying.

16. He further submitted that the Standards Committee’s expression of its findings using the conditional term *“could”*, (*“...could be considered to be bullying and harassing behaviour...”; “...the Complainant was entitled to perceive Councillor Mainon’s actions as bullying and harassing and that this conduct could reasonably be regarded as such”*) was insufficient to constitute a public finding of misconduct. Overall, the Standards Committee gave too much weight to untested statements as to Mrs Grieve’s feelings; too little to Councillor Mainon’s intent; and too little to all the circumstances of the case.

17. Councillor Mainon submitted that a course of conduct was required for a finding of harassment and that the Standards Committee had not identified such a course of conduct. He further submitted that his actions after attending Mrs Grieve’s place of work did not amount to a course of conduct.

18. Councillor Mainon submitted that the Standards Committee’s finding that he had brought the Council into disrepute, *“...particularly as (he) appeared to have accepted (Ms Davies’) version of events and had not sought (Mrs Grieve’s)...”* misunderstood that he was only trying to file a complaint and hand it on to the proper authority for investigation. It was, therefore, an error to hold his failure to investigate as an aggravating feature, not least because Mrs Grieve was not available for comment when he attended.

19. Councillor Mainon also submitted that the Standards Committee was wrong to find that he had taken advantage of his position to cause Mrs Grieve disadvantage, because all he had done was make a formal complaint about the

conduct of a public servant to the relevant department of her employer. The finding that Councillor Mainon intended to assist a constituent to pursue a complaint meant this further finding was not open to the Standards Committee. The fact that Mrs Grieve believed that Councillor Mainon acted “..to get her investigated and discredit her professionally”, did not assist that decision.

20. On sanction, Councillor Mainon submitted that the finding of a lack of malice, coupled with a finding of “*lack of understanding*” and “*relative inexperience*” meant that suspension was inappropriate and unnecessary. The public findings of reprehensible conduct are themselves massively important and the Standards Committee failed to take this into account. The potential impact upon Mrs Grieve had to be set against the fact that there was no actual impact upon her arising from the complaint made.

21. On the findings made, Councillor Mainon submitted that training (also bearing in mind the experience of this entire process) could be the appropriate remedy, rather than suspension; that depriving the Councillor’s constituents of representation for a period was unnecessary and wrong; and that two months’ suspension, that is one-third of the maximum available, was excessive in any event.

22. The President of the Adjudication Panel for Wales gave limited permission to appeal on the following grounds. At paragraphs 9(c) and 9(d) of her decision dated 28th July 2021: -

9c. The Appellant submits that the Standards Committee did not define “bullying” or “harassment” and failed to identify a course of conduct in relation to harassment.

The decision of the Standards Committee...shows that the Committee was taken to the definition of bullying and harassment within the Ombudsman’s guidance; it accurately summarises that relevant factors when dealing with allegations of bullying include the perception of the victim and the intention of the Appellant. I note that the report pack before the Standards Committee included excerpts of the Ombudsman’s guidance explaining both bullying and harassment.

The decision of the Standards Committee did not separate bullying from harassment; the two are not the same thing. The decision does not set how the Committee concluded that there was a course of conduct/repeated behaviour which constituted harassment. While the Notice sets out the activities of the Appellant towards the Complainant, which could be seen as more than one act and repeated behaviour, the Committee does not set out its conclusions in that regard to its decision; while it is likely that the Appellant’s case here is not strong, I cannot say it has no reasonable prospect of success. However, the decision does set out how the Committee concluded that the Appellant’s conduct could

*be reasonably perceived subjectively and objectively as bullying. **I do not consider this ground of appeal to have a reasonable prospect of success in respect of bullying and direct it not to be considered by the Appeal Tribunal. I do consider this ground of appeal to have a reasonable prospect of success in respect of harassment and it therefore will be considered by an Appeal Tribunal in due course.***

*9d. The Appellant goes on to dispute the Standards Committee's finding that he undertook a course of conduct which equated to harassment. For the relevant reasons given in sub paragraph c above, **I do consider this ground of appeal to have a reasonable prospect of success and it therefore will be considered by an Appeal Tribunal in due course.***

23. The President gave permission to appeal the sanction imposed in the following terms and with the following caveat.

*9k. I cannot say in all the circumstances that there is no reasonable prospect of success...as it is generally always arguable that a sanction imposed was too harsh or too lenient. This is despite the Appellant at the hearing, according to the Notice of Decision, saying that he would accept its judgment, and the evidence within the Notice of Decision that the Standards Committee considered the Sanctions Guidance. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. **It therefore will be considered by an Appeal Tribunal in due course.***

24. The Public Service Ombudsman for Wales responded in writing to those grounds upon which permission to appeal was granted.

25. The Standards Committee was taken to the definition of bullying and harassment within the Ombudsman's guidance, and the report pack before the Standards Committee included excerpts of the Ombudsman's guidance, explaining both bullying and harassment.

[That material reads as follows: -

"Consider your conduct from the other person's perspective.

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. 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...

When considering allegations of bullying and harassment I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.”]

26. The Ombudsman submitted that the evidence supported the finding of harassment and that this was an appropriate finding for the Standards Committee to make in the circumstances. When Councillor Mainon established that Mrs Grieve was not a Council employee and was employed by a different organisation, he searched that organisation’s website and determined its address and complaints procedure. He did not try to call that organisation or use its complaints procedure although relevant information and contact numbers were available on the website. Instead, he made an unannounced visit to Mrs Grieve’s place of work, with the expressed aim of getting her to refer herself to her professional/ regulatory body. On determining that she was not available at her workplace, Councillor Mainon then discussed the incident with three of Mrs Grieve’s colleagues, including her Line Manager. Councillor Mainon subsequently sought to validate Ms Davies’ account by obtaining information about the incident from staff at the local supermarket and then made a written complaint to Mrs Grieve’s employer on Ms Davies’ behalf.

27. The Ombudsman further submitted that Councillor Mainon’s actions had a huge impact on Mrs Grieve and made her feel upset, embarrassed, vulnerable, afraid to be alone in her office and stressed. She felt that Councillor Mainon’s actions were an effort to discredit her professionally. He acknowledged that his visit caused distress to Mrs Grieve and made her feel unsafe.

28. As to sanction, the Ombudsman submitted that the two-month suspension imposed was fair and reasonable in all the circumstances and that a more severe sanction could have been justified. The Standards Committee considered the relevant applicable Sanctions Guidance, and that at the time of the initial decision, Councillor Mainon said that he would accept the Standards Committee’s judgment.

29. The mitigating features were that the Appellant was a relatively new councillor at the time of the events. He had not previously been found to have breached the Code of Conduct. He had been motivated to try to defuse a

potential conflict on social media and assist a sick constituent. He had co-operated fully with the processes of the Ombudsman's office and the Standards Committee.

30. The aggravating features were the impact of the Appellant's conduct on the Complainant. He had shown a reckless disregard for the Complainant in contacting her employer without seeking to check her version of events in respect of the original incident. The incident had been a private matter on the view of the Complainant's employer. Some of his comments at the hearing suggested a lack of understanding of the seriousness of the matter.

31. The Ombudsman's representative noted that the nature of the breaches of the Code suggested that suspension would be appropriate to maintain public confidence, and that a censure would be inappropriate, given the Appellant's apparent lack of understanding of the significance of the issues.

32. The Ombudsman noted that the Sanctions Guidance is an appropriate framework for a fair decision, balancing the need for both a disciplinary response, the public interest in any case; and that a local Standards Committee with local knowledge is best placed to take the action necessary to maintain public confidence in elected members in their area.

PRE-HEARING LISTING DIRECTIONS

33. Councillor Mainon was permitted to serve any further evidence relevant to sanction by 15th October 2021.

34. Both Councillor Mainon and the PSOW were permitted to make further submissions in writing as to those issues upon which permission to appeal was given by 22nd October 2021.

35. The Monitoring Officer was permitted to attend the hearing, send a representative or make written representations by 22nd October 2021. The Monitoring Officer chose to contribute by an email which was sent the Registrar of the Adjudication Panel for Wales, and which was read in full to those attending the hearing.

THE HEARING

36. A hearing was held by the Appeal Tribunal at 10am on 29th October 2021 via Cloud Video Platform. The hearing was open to the public. Councillor Mainon was represented by Mr Owain James. The Public Service Ombudsman for Wales was represented by Ms Katrin Shaw. There were no preliminary applications.

37. The first stage of proceedings was to find as a fact whether Councillor Mainon had harassed Mrs Grieve. In the light of any finding, the second stage was to determine the extent to which Councillor Mainon had breached the Code of Conduct. Mr James indicated that he was content to deal with the first stage by way of submissions; and further content for the panel to decide the first and second stages together, without further submissions between those stages. For the PSOW, Ms Shaw agreed with this approach.

38. Mr James relied upon the written grounds of appeal and submitted that throughout both the investigation and hearing before the Standards Committee, bullying and harassment had been treated as effectively the same thing, when as a matter of law, they are quite separate. Harassment requires repeated behaviour; a course of conduct and the Standards Committee made no finding of any such course of conduct.

39. Mr James accepted that on appeal, the panel were able to consider the matter afresh and to consider whether the evidence amounted to harassment as well as bullying. He accepted that this task involved both a subjective consideration of both Councillor Mainon's understanding and actions; and Mrs Grieve's understanding and reactions. It also included an objective assessment of Councillor Mainon's actions in the circumstances.

40. Mr James invited the Tribunal to consider Councillor Mainon's actions in the round as a single matter rather than a course of conduct. He submitted that Councillor Mainon's actions after his attendance at Mrs Grieve's place of work did not contribute beyond his attendance at Mrs Grieve's work and so bullying by attending in person was the height of it, rather than harassment. Whilst harassment requires repeated behaviour against the same person, this was also not "repeated" behaviour, when considered subjectively from Councillor Mainon's perspective.

41. During submissions and responding to a matter raised by the Chair, Mr James also asked the Tribunal to consider whether these matters taken as a whole, can truly amount to harassment where, as here, Mrs Grieve found out about those matters after the event and thus suffered upset. Accepting that she was upset by what she had discovered, Mr James suggested that the single, ongoing incidence of upset militated in favour of characterising Councillor

Mainon's actions at most as a single instance of bullying rather than a course of conduct amounting to harassment.

42. For the PSOW, Ms Shaw invited the Tribunal to consider the allegation of harassment afresh, in the light of facts which were not disputed. She submitted that Councillor Mainon's actions could and should properly be considered as more than one act and so therefore amount to a course of conduct and harassment. He had involved himself in a matter unrelated to his role, sharing details of a private incident with three other people. He made enquiries in relation to the available evidence. He made a further effort to determine what the CCTV footage showed. His final submission gave an inaccurate impression about his state of knowledge and at best, an inaccurate impression as to the facts. His actions could properly be considered as a course of conduct involving separate actions. Mrs Grieve was entitled to the upset she reported when the complaint was relayed to her, given that Councillor Mainon had submitted it in his official capacity, relaying in accurate information and thereby appearing to already have taken sides.

DECISION ON FIRST AND SECOND STAGES

43. The Appeal Tribunal found by unanimous decision that between 11th December 2018 and 21st December 2018, Councillor Mainon harassed Mrs Grieve.

44. The Tribunal reminded itself that the civil standard of proof applies, and all findings are made on the balance of probabilities. The burden of proof lies on those responding and not on the appellant, Councillor Mainon.

45. The Tribunal referred to the Ombudsman's guidance both prohibiting harassment and defining it as "*repeated behaviour which upsets or annoys people.*" The Tribunal considered Mrs Grieve's perspective and whether Councillor Mainon intended his actions to be harassing. The Tribunal also considered whether Mrs Grieve was reasonably entitled to believe that she had been harassed.

46. The Tribunal found that Councillor Mainon engaged in repeated behaviour. His actions on 11th December 2018 can properly be considered together as parts of one incident. His actions that day are however distinct and therefore separate from his actions on both 15th December 2018; and 21st December 2018. Those actions obviously took place on different days. They engaged separate decisions and processes by Councillor Mainon.

47. These distinct incidents were individually considered and acted upon. They were however joined by the nexus of Councillor Mainon's ongoing pursuit

of Ms Davies' complaint against Mrs Grieve. To this extent therefore Councillor Mainon engaged in a course of conduct which is properly characterised as repeated behaviour.

48. There is no challenge to the fact that Mrs Grieve was upset and, no doubt, annoyed when she was told on 10th January 2019 that the issue with Ms Davies had come to her employer's attention via a complaint. She describes herself as "*very upset and embarrassed*", and ultimately "*shocked to learn...that Councillor Mainon also came to my place of work...*" The Tribunal accepted that Mrs Grieve's upset and annoyance can be properly taken as a single, ongoing revelation to her. That was inevitable given that the matters causing her upset were only brought to her attention after the event. The Tribunal found that this was no bar to characterising Cllr Mainon's actions as harassment. The working definition of harassment set out above does not require repeated upset or annoyance. Only repeated behaviour which causes such upset or annoyance.

49. The Tribunal therefore considered whether the repeated behaviour amounted to harassment, looking at that behaviour objectively but also considering the perspectives of both Councillor Mainon, Mrs Grieve and the other available evidence.

50. The Tribunal accepted that Councillor Mainon did not intend to harass Mrs Grieve. It however noted from Ms Davies' evidence (paragraph 6) that before he went to Mrs Grieve's place of work, Councillor Mainon already knew that Mrs Grieve was not a Council employee. Ms Davies does not recall whether she asked Cllr Mainon to make a complaint or if he offered to do it but (paragraph 7) she recalls that she asked Cllr Mainon to type up her complaint. He said that he would progress it as he would also be going near her workplace. As Councillor Mainon accepted, he did not attend the office to establish Mrs Grieve's version of events, but to ask her to refer herself to her professional body or regulator.

51. The Tribunal noted the evidence provided by Mrs Grieve's manager, Meilir Thomas, who said that Councillor Mainon's manner was reasonable when he attended and spoke to him "*...and he wasn't intimidating or anything like that*". Mr Thomas followed by saying in his statement that "*...it was an odd, really strange episode and not something I have experienced before. I should say I was completely shocked that Councillor Mainon had come to the door and discussed the events with me and been so open about it, and the nature of his visit*".

52. Events culminated in a written complaint that, at best, contained factually inaccurate information. The Tribunal had the full text of the complaint, in which Councillor Mainon purported to describe events recorded on the store's CCTV

in a manner which suggests he viewed that material. “A black Audi TT can be seen on the convenience stores CCTV...” Councillor Mainon accepts that he did not view that material. The complaint he drafted neither says nor suggests that he did not see it.

53. In the complaint, Councillor Mainon also described the words allegedly exchanged between Mrs Grieve and Ms Davies. He described an alleged response from Mrs Grieve as “...offensive. Given the angry way in which it was delivered...I find this unacceptable and worthy of challenge...Your organisation has been identified and associated with this behaviour and I deemed it a courtesy to bring it to your attention. Kindest Regards. Cllr Richard Mainon, Lead Member for Developing Community Infrastructure.” The CCTV does not record sound. Therefore, Councillor Mainon’s inclusion of the alleged conversation in the complaint coupled with his comments and opinions noted above lead the Tribunal to conclude that he had taken sides from the outset.

54. It follows therefore that Councillor Mainon took it upon himself to go to Mrs Grieve’s workplace; to take further investigative steps; and to initiate the complaint, citing his official status. Once he knew that Mrs Grieve was not a Council employee, the Tribunal found that he could and should have left it at that. The Tribunal accepted Mr James’ submission that to continue as he did was “overzealous”, but that is no answer. He pursued her regardless, repeatedly, when both he ought not have done so; and should have known not to do so, starting with the objectively unreasonable action of attending her workplace.

55. The Tribunal therefore found that Councillor Mainon acted in an extreme way and continued to do so when he had no right to do so. Mrs Grieve was entitled to perceive herself as having been harassed, even though the Tribunal accepted that Councillor Mainon did not intend to harass her. On balance, his actions amounted not only to bullying but also to harassment. He engaged in unjustified, extreme, repeated behaviour which he ought to have known he should not have done; ought to have known would upset or annoy Mrs Grieve; and which a reasonable person in possession of the same information as Councillor Mainon would think amounted to harassment.

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

56. The Appeal Tribunal therefore further found by unanimous decision that Councillor Mainon's behaviour amounted to harassment of Mrs Grieve and therefore amounted to a further breach of paragraph 4(c) of the Council's Code of Conduct.

57. The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of Denbighshire County Council's Standards Committee that Councillor Richard Mainon had breached Denbighshire County Council's Code of conduct by harassing Mrs Grieve.

SUBMISSIONS ON SANCTION

58. The Tribunal announced its decision on the first and second stages. The Tribunal then moved to the third stage, to consider the appeal against the sanction imposed. Councillor Mainon gave evidence on oath as to the effect that these proceedings have had on his family, together with his personal, political, and professional life. He gave evidence of the effect the reporting of this matter had had upon him and the fact that he had effectively been unable to function as a member of the Council's cabinet for months, notwithstanding the great deal of work there is still to do and the good work he has already done for the Council. He said that he had tried to be discreet, that he had done as he did for a person with difficulties, that this "*landed on his desk*" and that he would not have done it for anyone else. He said he could see how Mrs Grieve was entitled to feel violated.

59. In her submissions on sanction, Ms Shaw took the panel to the Sanctions Guidance and the five-stage process at paragraph 33 therein. Taken as a whole, she submitted the breaches to be dealt with were serious, if not at the very serious end of the spectrum bearing in mind the actual harm caused to Mrs Grieve; the potential for harm to her; and the harm to the Council caused by the finding in relation to disrepute. This was to be considered even though the actual and potential harm was not intended. Albeit that one might have great sympathy for Councillor Mainon now, suspension was reasonable, and censure was not appropriate. The lack of malicious intent, assisting a constituent with real health difficulties, seeking to avoid a social media spat and co-operation with the investigating authorities were mitigating features. The impact on the complainant, the nature of the breaches and Councillor Mainon's role as a lead member of the Council were aggravating features, even though to some extent, at the time he was relatively inexperienced. A suspension of less than a month would not fulfil the purposes of the sanctions regime. She finished by submitting that the sanction imposed by the Standards Committee was appropriate.

60. For Councillor Mainon, Mr James submitted that this was not a case where Councillor Mainon's position was worse for bringing his appeal. As the

Chair observed, he had not sought to contest the facts of the case. Mr James observed that the argument at the first and second stages had been somewhat technical. To that extent, he submitted that Councillor Mainon's sanction should not be increased. Whilst he had acted "overzealously", he was trying to assist a constituent and gained nothing for himself from his actions. Given the findings as to motive, the harassment proved was objective in nature and to that extent, less serious than subjective harassment, had that been intended. He had been seeking to engage a complaint's process. The actual harm caused was significant but limited. The potential harm to Mrs Grieve remained potential and was mitigated again by reason of the fact that it was not intended. The panel was to avoid double counting as aggravating features those facts considered in the general assessment of seriousness. Mitigating features included inexperience; a previous record of good service; the fact that the misconduct was a one-off; that Councillor Mainon acted in good faith, albeit in breach; and it arose from an honestly held, albeit mistaken view that the conduct involved did not constitute a failure to follow the Code. Mr James submitted that to an extent, the act of reporting alleged poor behaviour had some beneficial effect for the public interest. He relied upon Councillor Mainon's recognition and regret as to the misconduct and consequences and his co-operation with the investigating authorities. He recognised that Councillor Mainon's position of responsibility could potentially be an aggravating feature but that it was irrelevant to the breach. Otherwise, he submitted that none of the listed aggravating features applied to this case if one is not double counting. The sanction to be imposed could fairly be mitigated by reason of the broad knowledge of the findings and the size of the effect those findings have and will continue to have on Councillor Mainon's personal, professional, and political life. Given that he had effectively suspended himself from his office for some months, Mr James invited the Tribunal to censure Councillor Mainon and if that was not possible, a period of suspension measured in weeks rather than months would not be inappropriate, bearing in mind the totality of the effect of this case upon Councillor Mainon.

DECISION ON SANCTION

61. The Appeal Tribunal considered all the facts of the case, the documents presented, the submissions made and its findings in the context of the earlier findings of Denbighshire County Council's standards committee, namely that Cllr Mainon bullied Mrs Grieve contrary to paragraph 4(c) of the Code of Conduct; that he brought his office or the Authority into disrepute contrary to paragraph 6(1)(a) of the Code; and that he attempted to use his position to cause a disadvantage to Mrs Grieve, contrary to paragraph 7(a) of the Code.

62. The Tribunal considered the relevant Sanctions Guidance and applied the five-stage process identified at paragraph 33. The breaches took place over

several days and involved both bullying and harassment. Councillor Mainon's culpability was reckless rather than intentional, but it was nonetheless quite high. Councillor Mainon did not intend to bully or harass Mrs Grieve, but his actions had that effect, causing her the upset already referred to, embarrassment and worry lest such a thing would happen again. This was no way to pursue a complaint. Councillor Mainon ought to have known that what he was doing was wrong and ought to have known the likely effect his actions would have. By his actions, Councillor Mainon has also brought his position and, to an extent, the Council into disrepute. As he mentioned in his evidence, there has been a significant degree of local press coverage of these matters, albeit that, for balance, Councillor Mainon has borne the brunt of much of it.

63. Whilst there was potential for further harm to have been caused, the Tribunal considered that against the lack of intended harm. In this case, the actual harm caused to Mrs Grieve and the Council is the main feature of harm. Nonetheless, the Tribunal found that the actual harm was still significant and was caused by an elected Member, purporting to act in his official capacity, to the real detriment of a member of the public in her private and working life. Councillor Mainon lent his official weight to a cause in which he ought to have known he had no official business. Taken together, these were serious breaches of the Code of Conduct.

64. To that extent, the Tribunal found that suspension was the broad type of sanction most likely to be appropriate, having regard to those breaches, and that censure was not appropriate.

65. The Tribunal considered the mitigating and aggravating circumstances. Councillor Mainon was relatively inexperienced in his post, but his common sense should have told him not to involve himself in this matter. He cited his position as the Lead Member for Developing Community Infrastructure to emphasise the weight of his authority. Taken overall, the Tribunal considered this aspect to be a fact of the case already counted and therefore not aggravating; but also, that it could not amount to mitigation.

66. The Tribunal accepted that Councillor Mainon has a previous record of good service to his community; and that this matter was a one-off.

67. Given the observations made above, Councillor Mainon's overzealousness and failure to know better could not properly be characterised as acting "*in good faith*", albeit that again, the Tribunal referred to the fact that he did not intend the harm he caused. He held a view arising from a mistaken belief he should not have held. For that reason, his actions cannot be described as having had any beneficial effect for the public interest.

68. In his evidence to the Tribunal, Councillor Mainon recognised and regretted his misconduct. He had not sought to challenge any facts and the Tribunal recognised that this had been so during the Appeal hearing. Whilst the Tribunal did not find that an apology was specifically clear, it recognised that Councillor Mainon had co-operated with the investigation of this matter, had taken a degree of training in the meantime, and had complied with the Code of Conduct since the events giving rise to the adjudication.

69. When considering possible aggravating factors, the Tribunal was careful not to double-count as aggravating those factors already accounted for in the assessment of seriousness. Councillor Mainon's conduct in his appeal had not aggravated his position and so the Tribunal did not find that any of the aggravating features listed at paragraph 42 of the Sanctions Guidance applied.

70. The Tribunal considered any further adjustment necessary to ensure the sanction imposed achieves an appropriate effect in terms of fulfilling the purposes of the sanctions.

71. On the one hand, the Tribunal acknowledged the need to maintain both public confidence; the public interest in upholding the standards of conduct in public life; and the need to maintain confidence in local democracy.

72. On the other hand, the Tribunal also acknowledged the scale of the past, present and likely future personal, professional and political consequences of matter for Councillor Mainon; and the effect that any period of suspension would have on the electorate, temporarily depriving them of local representation.

73. Whilst the Tribunal considered that such breaches of the Code of Conduct involving bullying and harassment could ordinarily attract a three-month period of suspension, looking at matters afresh at this stage, the sanction imposed by the Standards Committee of two months' suspension from membership of the Council was the least sanction appropriate in the circumstances and one with which the Tribunal would not seek to interfere, balancing the overriding objectives of the sanctions regime with the effect of these findings on Councillor Mainon.

74. The Appeal Tribunal therefore further determined to endorse the decision of the Standards Committee that Councillor Mainon should be suspended from being a member of Denbighshire County Council for a period of two months.

75. Denbighshire County Council and its Standards Committee are notified accordingly.

Signed: Tom Mitchell

Date: 2nd November 2021

Tom Mitchell
Chairperson of the Appeal Tribunal

Siân McRobie
Panel Member

Hywel Eifion Jones
Panel Member