

DECISION REPORT

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

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

RESPONDENT: Councillor William Roy Owen

RELEVANT AUTHORITIES: Caernarfon Royal Town Council ('the Town Council') and Gwynedd Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 The Case Tribunal determined its adjudication, on the basis of the papers only at a meeting on 20 December 2021, conducted by means of remote attendance technology.

2. PRELIMINARY MATTERS

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

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

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

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

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

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

3. DOCUMENTS

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

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

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

4. ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 The Details of Allegation 2: The alleged Assault

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. THE RESPONDENT'S RESPONSE TO THE ALLEGATIONS.

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

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

5.2 That Councillor L is a "bully boy."

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

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

5.5 There is press interest in the investigation.

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

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

5.8 Councillor L has told "so many lies".

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

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

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

5.12 He was threatened by Councillor L and another councillor.

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

5.14 He said he was suffering from various health issues.

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

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

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

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

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

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

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

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

6. FINDINGS OF FACT

6.1 Undisputed Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2 Disputed Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Respondent's response to Allegation 1

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

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

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

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

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

The capacity in which the Respondent corresponded

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

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

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

Facebook messages and e-mail correspondence.

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

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

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

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

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

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

The Case Tribunal's decision regarding Allegation 1.

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

Paragraph 4(b) of the Code of Conduct

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

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

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

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

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

Paragraph 4(c) of the Code of Conduct

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

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

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

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

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

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

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

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

Paragraph 7(a) of the Code of Conduct

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

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

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

Article 10 ECHR

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

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

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

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

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

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

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

gward o [Councillor L] priory” (“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