

The investigation of a complaint
against Councillor Terry Davies of
Llanelli Town Council

A report by the
Public Services Ombudsman for Wales
Case: 202005902

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Introduction

Report by the Public Services Ombudsman for Wales on the investigation of a complaint made against Councillor Terry Davies of Llanelli Town Council, of breaches of the Council's statutory Code of Conduct for Members.

This report is issued under section 69 of the Local Government Act 2000.

Summary

The Ombudsman's office received a complaint that a Member ("the Member") of Llanelli Town Council ("the Council") had breached the Code of Conduct.

It was alleged that the Member had behaved inappropriately during an interaction with other members.

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

- 4(a) – 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(b) – You must show respect and consideration for others.
- 4(c) – You must not use bullying behaviour or harass another person.
- 6(1)(a) – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Witness accounts were obtained from 5 individuals, including both members of the public and members of the Council. The investigation found that the evidence suggested that the member had used discriminatory language towards other members on 9 February 2021. The Ombudsman concluded that the Member's behaviour was suggestive of a breach of paragraph 4(a) of the Code of Conduct.

The Ombudsman considered that the Member's comments and use of offensive language was an attempt to intimidate and undermine the members. She considered that the Member's behaviour was also suggestive of a breach of paragraph 4(b) of the Code of Conduct.

The Member denied that his actions had breached the Code of Conduct. The other members said they were upset, sad and “shook up” following the incident. A witness described one of the other members as visibly shaking and upset. On balance, the Ombudsman considered that the Member behaved in a way that was suggestive of a breach of paragraph 4(c) of the Code of Conduct.

The Ombudsman was also of the view that it would be reasonable to regard such conduct as capable of bringing the Member’s office or authority into disrepute and was therefore also suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

The report on the investigation was referred to the Monitoring Officer of Carmarthenshire County Council for consideration by its Standards Committee.

The Complaint

1. On 11 March **2021** the Ombudsman’s office received a complaint from Councillor Andre McPherson that Councillor Terry Davies had failed to observe the Code of Conduct for Members of Llanelli Town Council (“the Council”). It was alleged that Councillor Davies used discriminatory language and failed to show respect during an interaction with Councillor McPherson and Councillor Curry on 9 February 2021. A copy of the complaint is attached at Appendix 1.

Legal background

2. As required by Part III of the Local Government Act 2000 (“the Act”), the Council has adopted a Code of Conduct for Members which incorporates the provisions of a Model Code contained in an order made by the Welsh Ministers. A copy of that Code is at Appendix 2. Council Members are required to sign an undertaking that, in performing their functions, they will observe the Council’s Code of Conduct. Councillor Davies gave such an undertaking on 5 May 2017. A copy of that declaration is attached at Appendix 3. Councillor Davies was re-elected to the Council in May 2022. He was also elected as a member of Carmarthenshire County Council (“the County Council”).

3. Section 69 of the Act provides the authority for my investigation and the production of this report.

4. The Council’s Code of Conduct incorporates the mandatory provisions of the Model Code of Conduct for Wales, which is consistent with 10 core principles of conduct, derived from the Nolan Principles for Public Life:¹

- i. Selflessness
- ii. Honesty
- iii. Integrity and Propriety
- iv. Duty to Uphold the Law
- v. Stewardship

¹ The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No. 2276 (W.166)

- vi. Objectivity in Decision-making
- vii. Equality and Respect
- viii. Openness
- ix. Accountability
- x. Leadership.

5. Article 10 of the European Convention on Human Rights (“the ECHR”) states that:

- 10(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.
- 10(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 interest 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 and interests of others.

6. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable which requires those holding political office to have a “thicker skin”. This protection does not extend to gratuitous or offensive personal comment, nor to “hate speech” directed at denigrating colour, race, disability, nationality (including citizenship, ethnic or national origin, religion, or sexual orientation).^{2,3}

7. The Council’s Code of Conduct provides that members must observe the Code in its entirety whenever they act in the role of member and at all times in respect of paragraphs 6(1)(a) and 7.

² R (on the application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172 (Admin)

³ Heesom v Public Services Ombudsman for Wales [2014] EWGC 1504 (Admin)

My investigation

8. Having considered the complaint as made, my predecessor concluded that it was appropriate to investigate whether Councillor Davies had failed to comply with any of the following provisions of the Code of Conduct:

- 4(a) – 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(b) – You must show respect and consideration for others.
- 4(c) – You must not use bullying behaviour or harass another person.
- 6(1)(a) – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

9. Councillor Davies was informed of the intended investigation on 14 April 2021 (Appendix 4).

10. During the investigation, the Investigation Officer obtained copies of relevant documents from the Council (Appendix 5). This information confirmed that Councillor Davies had attended training on the Code of Conduct on 17 March 2021. The information also confirmed that Councillor Davies was offered the opportunity to attend Code of Conduct training, delivered by the County Council, in July 2019 and August 2020, and provided copies of the training materials. It is unclear whether Councillor Davies attended these training events.

11. Copies of all witness statements are attached at Appendix 6. An account was obtained from the following witnesses:

- Mr Andrew Wood - Park Contractor
- Mr Arfon Davies - Deputy Town Clerk
- Mr Steven Lewis - Member of the public
- Councillor Suzy Curry
- Councillor John Prosser

12. Councillor Davies provided comments on several occasions during the investigation, including an annotated aerial photograph of the scene. These comments are attached at Appendix 7. He also provided a written statement shortly before his interview, attached at Appendix 8. The evidence found by my investigation was shared with Councillor Davies, enabling him to review it before responding to questions, which were put to him at interview. The transcript of the interview with Councillor Davies is attached at Appendix 9. Councillor Davies also provided 2 character witness statements, which are attached at Appendix 10.

13. I have given Councillor Davies the opportunity to comment on a draft of this report which included my provisional views and finding. His comments, including 4 character statements provided, are included in Appendix 12.

My guidance on the Code of Conduct

14. My predecessor issued guidance for members of local authorities in Wales on the Model Code of Conduct (“the Guidance”). I include at Appendix 11 extracts of the Guidance which are relevant to this complaint.

Events

15. A children’s park (“the Park”) was developed in the Tyisha Ward (“the Ward”) of the Council. The Park was a County Council project, and the intention was that the Park would be transferred to the Council in due course. The Ward has 3 Councillors - Councillor McPherson and Councillor Curry were both Town and County councillors⁴, and Councillor Davies was a Town councillor and its Deputy Mayor⁵.

16. On 9 February 2021 Councillor McPherson and Councillor Curry received an invitation from Mr Arfon Davies, the Deputy Clerk of the Council, to meet him and the contractor who had built the Park (“the Contractor”), that day to discuss a list of snags identified at the Park (Appendix 6).

⁴ Councillor McPherson was not re-elected to the County Council in May 2022

⁵ Councillor Davies was elected to the County Council in May 2022

17. The Contractor was at the Park in advance of the meeting, dealing with some minor snagging issues (Appendix 6). He said he was approached by a gentleman whom he thought was the Deputy Clerk, Mr Davies. The Contractor said that the man was quite agitated and blunt, and he questioned the quality of the surfacing in the Park. He said that a member of the public came to talk to the man, so he took the opportunity to “escape”. The Contractor said that he now knows that this man was not the Deputy Clerk but was the Deputy Mayor (Councillor Davies).

18. In his response to written questions, the member of the public referred to above by the Contractor, Mr Steven Lewis, said (Appendix 6) that he spoke to Councillor Davies outside the Park’s fencing for about 5 minutes. He said that the Park had approximately 20 people in it at the time. Mr Lewis said that, once he had finished his polite and friendly conversation with Councillor Davies, he turned around and walked home with his back towards Councillor Davies. Mr Lewis said that he saw Councillor Curry and a male arrive nearby. He said that he did not hear any conversation between Councillor Davies and Councillor Curry and the male, as he is deaf.

19. In his complaint (Appendix 1), Councillor McPherson said that he and Councillor Curry arrived simultaneously at the Park in separate cars and noticed Councillor Davies standing outside the Park, near the road. Councillor McPherson said that he was a little taken aback to see Councillor Davies at the Park as Councillor Davies had not been optimistic about the project from the start, “even hostile to the project”. He said that Councillor Davies seemed to want to speak to them. Councillor Curry said that she was also surprised to see Councillor Davies at the Park (Appendix 6) due to Councillor Davies’ historic negative attitude towards the development of the Park. Councillor Prosser was a passenger in Councillor Curry’s car (Appendix 6) and remained in the vehicle throughout the events complained about, although he said he heard much of what was said by the 3 Councillors.

20. Councillor McPherson said (Appendix 1) that, as he and Councillor Curry got out of their cars, Councillor Davies said, “I don’t know if you have bothered to speak to the Clerk or the Deputy Clerk” and said

that he was not happy with several issues at the Park. Councillor Curry said (Appendix 6) that Councillor Davies launched into shouting at them with his arms moving a lot.

21. Councillor McPherson said that Councillor Curry informed Councillor Davies that they were fully aware of the snagging issues at the Park and that they were dealing with them. This was corroborated by Councillor Curry. She said that she told Councillor Davies that she was surprised to see him there as he had not been interested in the Park and had not contributed to its development in any way. She said that she asked Councillor Davies what he was now doing at the Park. Councillor Curry said that Councillor Davies “blew his top”, got very animated and angry with his arms waving about. She said that Councillor Davies said, “You’re not from around here” and “You’re English outsiders, you’re not from around here, you’ll never understand the people around here, you’ll never understand the issues around here”.

22. Councillor McPherson said that Councillor Davies repeated several times that he and Councillor Curry knew nothing as they were foreigners and outsiders, and “not from around here”. Councillor McPherson said that Councillor Davies kept saying that Wales should be for the Welsh people and that outsiders had no business being councillors in the area. Councillor McPherson said that Councillor Davies expressed his disgust at incomers being “dumped on Welsh communities” and said loudly that they would never be welcome. Councillor Curry (Appendix 6) and Councillor Prosser (Appendix 6) corroborated Councillor McPherson’s account.

23. Councillor McPherson said (Appendix 1) that Councillor Curry walked away towards the Deputy Clerk, Mr Arfon Davies, who was in the Park with the Contractor. Councillor Curry said that, as she walked away, she could hear Councillor McPherson trying to reason with Councillor Davies. She said that as she walked past the Park, there were mothers and young children in the Park “maybe half a dozen parents and 1 or 2 children per parent”.

24. Councillor McPherson said that he stayed with Councillor Davies who continued saying that they were not welcome. Councillor McPherson said that he decided to end the conversation and walked away. He said that as he did so, Councillor Davies shouted, "F off". He said that Councillor Davies must have shouted very loudly for him to have been able to hear this as he is partially deaf. Councillor Prosser said that Councillor Davies shouted "Fuck off Andre" loud enough for everyone in the Park to hear and the parents were looking around. Councillor Curry said that, when Councillor McPherson joined her, he told her that Councillor Davies had told him to either "F off" or to "Fuck off".

25. Mr Arfon Davies said (Appendix 6) that he did not hear any of the conversation between Councillor Davies and Councillor McPherson and Councillor Curry as he was too far away. He estimated that the 3 Councillors were between 30 and 40 metres from the centre of the Park. He said there were people in the Park at the time, but he could not recall how many.

26. Councillor McPherson said that Councillor Davies posted about the altercation on Facebook that evening (Appendix 1). The Facebook post said:

"For the Two outsiders I had a strong chat with today. We need a genuine party that builds here in Llanelli, Tyisha has been through a traumatic 30 years in decline. You have no idea what people have suffered here because of bad social decisions. The promises made to us that ended up as lies for the vote. As for one A [sic] stating the people here were my customers. You lack the understanding of a Welsh community, How [sic] the businesses here are conducted, All [sic] my customers were personal friends and the business was all about the community and still is successfully operating that way. Wales communities, it's every [sic] standards are being eroded by people who do not want to change their ways to be sociable. Housing is losing value because of it, setting up a chain reaction to more landlords [sic] portfolios and properties that welcome this association of people that give this community hell. NEXT TIME YOU WANT TO HAVE A GO AT ME. understand [sic] I have been through it with my family as a resident for 50 years, with a successful business that looked after the community here in Tyisha".

27. On 10 February Councillor McPherson, Councillor Curry and Councillor Prosser reported the matter to the Council's Clerk by email (Appendix 5). The Clerk informed Councillor Curry that he had spoken to Councillor Davies who had denied swearing and, although Councillor Davies had agreed there had been a "heated exchange", he felt he was reacting to Councillor Curry calling him a "vile person".

What the witnesses said

Councillor McPherson

28. Councillor McPherson said (Appendix 1) that he considered Councillor Davies' comments to be discriminatory as he was born in England. He said that he considered Councillor Davies' comments to also discriminate against many of the area's non-UK citizens. Councillor McPherson said that, as a gay Jewish person, Councillor Davies' behaviour had caused extra upset and made him sad. Councillor McPherson said that Councillor Davies' language was used in a public park and would have discriminated against any constituent of a different national origin who may have overheard. He said that the park was full at the time, and it was regularly used by European and Syrian families. He said that he had concerns that they overheard Councillor Davies' comments and could feel that they were not welcome in the community.

Councillor Curry

29. Councillor Curry said (Appendix 6) that she was "shook up" after the confrontation. She said that Councillor Davies' comments were nasty and racist. Councillor Curry said that the conversation with Councillor Davies happened directly in front of the Park, so anybody in the Park would have heard every single word. She said that she did not know any of the people in the Park, but that Tyisha had a large population of Polish and Romanian families and a few Syrian families who use the Park a lot.

30. Councillor Curry said that Councillor Davies instigated the confrontation and at no point during the exchange did she call Councillor Davies an evil and vile man.

Councillor Prosser

31. Councillor Prosser said (Appendix 6) that Councillor Davies “just went for them”. He said that Councillor McPherson was visibly shaking after the confrontation, and it really upset him. Councillor Prosser said that Councillor Davies had always been an opponent of the Park and he was never keen on it being built there.

32. Councillor Prosser said that there were about 10 or 15 people in the Park at the time of the altercation with at least 4 adults and the rest being children. He explained that a lot of Polish, Syrians and people from England use the Park. Councillor Prosser said that the people in the Park were very close, and they were looking at the confrontation. He said that he had since measured the distance between the road, where Councillor Davies’ van was parked, and the Park and it was 23 feet. Councillor Prosser also provided photographs of the area to give context (Appendix 6).

What Councillor Davies said

33. In response to being notified of the complaint made against him (Appendix 7), Councillor Davies identified a difficult historical relationship with Councillor McPherson, Councillor Curry and Councillor Prosser. He said that the complaint was “politicised and fabricated”. Councillor Davies said that he uses the term “outsiders” to refer to “county lines”.

34. Councillor Davies said that, when Councillor McPherson and Councillor Curry first approached him on 9 February, they asked him what he was doing there. He said Councillor Curry told him that the Park was nothing to do with him “along with a personal attack” including that he was a horrible man and evil. Councillor Davies said there was an exchange of words between them; he said he was not racist or prejudiced. He said he did not swear as he does not use that type of language in public or private.

35. During a telephone conversation with my Investigation Officer (Appendix 7), Councillor Davies said that Councillor Curry had told him he was an evil, nasty man after what he had previously put on Facebook. He said that when he asked what she was referring to, she told him he would have to find out for himself. He again said he was not racist.

36. In a further telephone conversation with my Investigation Officer (Appendix 7), Councillor Davies said that Councillor McPherson had alleged that he was racist and that “maybe he was”. He said that there was a problem with people from England being put in the Ward who had a history of crime and drugs or were “hardened criminals”.

37. On 20 October 2021 having been provided the file of evidence when invited for interview, Councillor Davies provided further comments and an aerial image of the location of the Park (Appendix 7). He said that he was further away from the Park when the interaction occurred than was suggested by witnesses. He reiterated that Councillor Curry’s opening comment to him was that he was evil and nasty with a “barrage of support with Councillor McPherson in tow”.

38. Shortly before his interview, Councillor Davies provided a written statement in response to the allegations made against him (Appendix 8). He did not consider that he had breached paragraphs 4(a), 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

39. When interviewed, Councillor Davies said (Appendix 9):

- He was acting in his role as an elected member when speaking to Mr Steven Lewis⁶ and that he was acting in his private capacity during the interaction with Councillor McPherson and Councillor Curry (“the Interaction”).
- He was approximately 100 yards away from the Park at the time of the Interaction. It was quite quiet in the Park at the time, and he estimated there to have been 4 or 5 people there, at most. There was nobody around them at the time of the Interaction and they were “well away” from the Park.
- After seeing Councillor McPherson and Councillor Curry arrive, he decided to wait and see what they had to say.

⁶ Councillor Davies initially referred to Mr Lewis as John during the interview but later confirmed that he was referring to Mr Steven Lewis

- The first words said to him by Councillor Curry were “You are an evil and nasty person” and she was referring to a Facebook post he had made. He said he was met with a “barrage of abuse” which was forceful language, but not shouting, and that the comments were personal and about his Facebook posts.
- He stepped over the mark and called the 2 Councillors “drop-in councillors”.
- He said he did not use the term “foreigners” but conceded that he used the term “outsiders” in respect of the 2 Councillors’ knowledge of the Ward and its history. He denied saying that Councillor McPherson and Councillor Curry would never be welcome.
- He agreed that he said “Wales are [sic] for Welsh people, and we have a Welsh community here” but not in respect of people from outside Wales settling in Wales.
- He did not think that he had referred to Councillor McPherson and Councillor Curry as “English outsiders”.
- He could not recall telling Councillor McPherson to either “F off” or to “Fuck off”, or saying anything about race, religion or being gay.
- The Interaction was “heated” - he did not shout, but he imagined his voice would have been raised in defence. He said there was no shouting between any of them.
- He did not lose his temper, but he was angry.
- The Interaction lasted at least 10 minutes.

40. In relation to the Facebook post that Councillor McPherson said was posted by Councillor Davies on the evening of 9 February (Appendix 1), Councillor Davies said:

- The Facebook page on which the post was made is a personal page. He said that he has a councillor Facebook account but had not been able to access it for about a year.
- The post related to 2 “druggies” from England that have caused him and his wife, and other elderly constituents some trouble both before and after the Interaction.
- Councillor McPherson and Councillor Curry are mistaken in thinking that the 2 outsiders he referred to in the post were them.
- This Facebook post was not the Facebook post referred to by Councillor Curry at the start of the Interaction.
- He could not recall when he had made the post as he was posting a lot on Facebook around that time. He believed the Facebook post was made after the Interaction.
- The Town Clerk advised him to delete the post, which he did.

41. When reflecting on the Interaction, Councillor Davies said:

- He interacted with Councillor McPherson and Councillor Curry as he wanted to “neutralise” the situation and not “let the bully get the better of me”.
- He said that, in hindsight, he should have driven away without giving Councillor McPherson and Councillor Curry any opportunity to speak to him.

42. In commenting on the draft version of this report [Appendix 12], Councillor Davies disputed their distance from the Park when the Interaction occurred. He said that they were close on 70 yards away from the Park and provided a photograph of where his van was parked from the perspective of the park.

43. Councillor Davies said that, due to historical ill-health, he does not work himself up to avoid further risks to his health.

44. He said that the complaint against him was part of a long-standing bullying effort by Councillors McPherson, Curry and Prosser, made in an attempt to discredit him in public. He said that his comments on Facebook about “two English drug people” was not about the 2 councillors, and he would not have called Councillor McPherson and Councillor Curry “two English people”. He said that he would not have called Councillor Curry English as she hails from Ireland.

45. Councillor Davies provided character statements from 4 individuals [Appendix 12].

Undisputed facts

46. The Ward is a multicultural and diverse community.

47. Councillor Davies had concerns about the development of the Park in the Ward.

48. An interaction occurred between Councillor Davies and Councillor McPherson, who was in the company of Councillor Curry, on 9 February 2021.

49. Councillor Davies called Councillor McPherson and Councillor Curry “drop-in councillors” and “outsiders”.

50. Councillor Davies said, “Wales are [sic] for Welsh people, and we have a Welsh community here”.

51. Councillor Davies was angry and raised his voice.

52. Councillor Davies said that, in hindsight, he should have driven away from the situation.

53. Councillor Davies was responsible for the Facebook message Councillor McPherson said was posted on the evening of 9 February 2021.

54. Councillor Davies deleted the Facebook post after receiving advice from the Town Clerk.

Disputed facts

55. Was Councillor Davies acting in his capacity as an elected member at the time of the Interaction?

56. Was Councillor Davies subject to a barrage of abuse from Councillor McPherson and Councillor Curry?

57. Did Councillor Davies shout during the Interaction?

58. Did Councillor Davies use discriminatory language towards Councillor McPherson and Councillor Curry on 9 February 2021?

59. Did Councillor Davies tell Councillor McPherson to either “F off” or to “Fuck off”?

60. Could members of the public have heard the Interaction?

61. Was the Facebook post said to be posted on 9 February 2021 directed towards Councillor McPherson and Councillor Curry, following the Interaction?

Analysis of evidence

Was Councillor Davies acting in his capacity as an elected member at the time of the Interaction?

62. Councillor Davies said that, whilst he was acting in his capacity as an elected member immediately prior to the Interaction when meeting

Mr Lewis, he was acting in his private capacity during the Interaction. It is my view that, given the proximity of the Interaction following his discussion with Mr Lewis and the fact that the nature of the Interaction related to Council matters, Councillor Davies was acting in his capacity as an elected member at the time of the Interaction.

63. In relation to the Facebook post said to be posted on 9 February 2021, Councillor Davies said that the post was made on his private Facebook account. He said that he used his private account to post about Council matters as he has been unable to access his councillor Facebook account for approximately a year. He also said that he was posting a lot on Facebook at the relevant time.

64. Given the nature of the post, and that Councillor Davies said that it was a “message to the system” and that he used it to raise awareness of problems in the Ward, it is my view that Councillor Davies was acting or giving the impression he was acting in his role as an elected member when publishing the post.

Was Councillor Davies subject to a barrage of abuse from Councillor McPherson and Councillor Curry?

65. Councillor Davies referred to being subject to a “barrage of abuse” from Councillor McPherson and Councillor Curry which lasted at least 10 minutes. He told my Investigation Officer that Councillor Curry’s first words to him during the Interaction were that he was “an evil and nasty person”, but did not provide any detail of what else was said by the 2 Councillors, other than what was said was personal and about his previous Facebook posts.

66. Councillors McPherson and Curry both said that it was Councillor Davies who initiated the conversation by telling them that he was not happy with a number of issues at the Park. Councillor Prosser said that Councillor Davies “just went for them”. By his own admission, Councillor Davies said that, after seeing the 2 Councillors arrive, he decided to see what they had to say.

67. Given Councillor Davies' failure to elaborate on exactly what Councillor Curry said to him during the "barrage of abuse" for at least 10 minutes, the corroborating accounts of both Councillor McPherson and Councillor Curry, and Councillor Prosser's account, I am of the view on the balance of probabilities that Councillor Davies was not subject to a barrage of abuse from Councillor Curry.

Did Councillor Davies shout during the Interaction?

68. Councillor Davies admits that he raised his voice during the Interaction. He denied shouting. By his own admission, he was angry during the Interaction. Councillor Curry described Councillor Davies shouting and Councillor Prosser said that he heard Councillor Davies despite being sat in a car with the windows closed. In addition, Councillor McPherson described Councillor Davies shouting "F off" as he walked away; he heard this despite being partially deaf.

69. For these reasons, it is my view that, on the balance of probabilities, it is more likely than not that Councillor Davies shouted during the Interaction.

Did Councillor Davies use discriminatory language towards Councillor McPherson and Councillor Curry on 9 February 2021?

70. Councillor Davies denied calling Councillor McPherson and Councillor Curry "foreigners" and "English outsiders". He also denied saying that they would never be welcome and that "Wales are [sic] for Welsh people, and we have a Welsh community here". He did, however, admit to using the term "outsiders" towards Councillor McPherson and Councillor Curry due to, what he said was, their limited knowledge of the Ward and its history. He also admitted to calling them "drop-in councillors". In a telephone conversation with my Investigation Officer (Appendix 7), Councillor Davies conceded that he may have used racist language during the Interaction.

71. On balance, I consider that the evidence suggests that Councillor Davies did use discriminatory language during the Interaction.

Did Councillor Davies tell Councillor McPherson to either “F off” or to “Fuck off”?

72. When responding to the complaint, Councillor Davies denied swearing (Appendix 7). He said that he did not use that type of language in public or private. When interviewed, he said (Appendix 9) that he may have thought the words but did not think he had said the words. He added that he could not recall telling Councillor McPherson to either “F off” or to “Fuck off”.

73. Councillor Davies’ evidence changed from initially saying that he never used such language, to saying he did not recall using such language during the Interaction. In view of this change of position and on the balance of the evidence, I consider that the evidence suggests that Councillor Davies did use one of these terms towards Councillor McPherson.

Could members of the public have heard the Interaction?

74. There is a discrepancy between the account of Councillor Davies and the account of the witnesses in relation to exactly where the Interaction occurred. Councillor Davies had distanced himself from the Park, initially explaining that he was 100 metres away and, when commenting upon the draft of this report, that he was close to 70 yards away. He also provided an annotated aerial photograph showing where the vehicles were parked and a photograph of where his van was parked from the viewpoint of a person in the Park. His evidence is contradicted by witnesses. Mr Lewis described speaking to Councillor Davies outside the Park’s fencing. Councillor McPherson described standing by the Park and Councillor Curry said they were directly in front of the Park. Mr Davies, who was some distance from the area, said that the 3 councillors were approximately 30-40 metres from the middle of the Park. Councillor Prosser provided photographs of the area and measured the distance to be 23 feet between where Councillor Davies’ van was parked and the Park.

75. Similarly, there is a discrepancy between the account of Councillor Davies and the account of witnesses in relation to the number of members of the public in the area. Whilst he admitted there were people in the Park, he said the Interaction occurred “well away” from the Park with nobody around them. Contrastingly, Mr Lewis estimated there to be

20 people in the Park, Councillor Curry described half a dozen parents with 1 or 2 children each in the Park, Councillor Prosser described there being 10-15 people in the Park, and Councillor McPherson described the Park as being “full”. In addition, witnesses have described people in the Park looking in the direction of the Interaction.

76. The evidence of the various parties varies regarding the number of people in the Park and the distance between the members of the public and the Interaction, including differing accounts provided by Councillor Davies himself. However, on balance, I consider it likely that the Interaction occurred close to members of the public and was sufficiently loud that they could have heard the Interaction and the language used by Councillor Davies.

Was the Facebook post directed towards Councillor McPherson and Councillor Curry following the Interaction?

77. The Facebook post provided as evidence is undated. Both Councillor McPherson and Councillor Curry said that the post was made on the evening of 9 February 2021. On 10 February, in his email to the Clerk, Councillor Prosser described the post as Councillor Davies’ “most recent” Facebook post.

78. Councillor Davies was uncertain about when this Facebook post was published although he believed that it was posted after the Interaction. He denied that the post was aimed at Councillor McPherson and Councillor Curry following the Interaction. He stated that it was instead aimed towards 2 “druggies” from England. When interviewed, he conceded that the 2 drug users did not follow him on Facebook and were unlikely to receive his “message”.

79. Given the topic of the post being very similar in tone and content to the allegations made against Councillor Davies during the Interaction, the reference to “Two outsiders I had a strong chat with today” and “NEXT TIME YOU WANT TO HAVE A GO AT ME”, and that Councillor Davies removed the post after being advised to do so by the Clerk, I am of the view that, on the balance of the evidence available, this Facebook post was directed at Councillor McPherson and Councillor Curry.

Conclusions

80. In conclusion, having considered all the available evidence, I have concluded that Councillor Davies' conduct was such that it may amount to a breach of paragraphs 4(a), 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

81. In relation to paragraph 4(a) of the Code of Conduct, I consider that Councillor Davies used discriminatory language towards Councillor McPherson and Councillor Curry during the Interaction on 9 February 2021, which is suggestive of a breach of paragraph 4(a) of the Code of Conduct by failing to have due regard to the principle that there should be equality of opportunity for all people, regardless of their race.

82. When considering complaints of a failure to show respect and consideration, I will consider the specific circumstances of the case and whether there was an attempt to intimidate or undermine the individuals involved. Councillor Davies' language, both during the Interaction and subsequently in his Facebook post was, in my view, an attempt to intimidate and undermine both Councillor McPherson and Councillor Curry. I consider that Councillor Davies' behaviour is suggestive of a breach of paragraph 4(b) of the Code of Conduct.

83. Paragraph 4(c) of the Code of Conduct states that members must not use bullying behaviour or harass any person. Bullying can be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour. It may happen once or be part of a pattern of behaviour. 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. Councillor Davies denied that his actions breached the Code of Conduct. Councillor McPherson said that Councillor Davies' behaviour caused him upset and made him sad. Councillor Prosser, who witnessed the Interaction, said that Councillor McPherson was visibly shaking and really upset. Councillor Curry said that she was "shook up" after the Interaction. On balance, I consider that Councillor Davies behaved in a way that is suggestive of a breach of paragraph 4(c) of the Code of Conduct.

84. I have considered very carefully whether Councillor Davies' actions might also be suggestive of a breach of paragraph 6(1)(a). As a member, Councillor Davies' actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. His role as Deputy Mayor (and now as a newly elected member of Carmarthenshire County Council) will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both his office and his Council into disrepute. As I am satisfied that Councillor Davies' behaviour was suggestive of a breach of paragraphs 4(a), 4(b) and 4(c), I am of the view that it would be reasonable to regard such conduct as capable of bringing his office or authority into disrepute and is, therefore, suggestive of a breach of paragraph 6(1)(a).

Finding

85. My finding under section 69 of the Act is that my report on this investigation should be referred to the Monitoring Officer of Carmarthenshire County Council for consideration by the Council's Standards Committee.

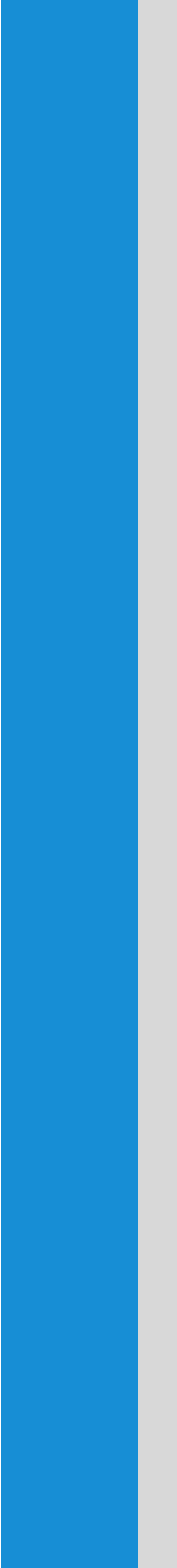
M.M. Morris.

Michelle Morris
Ombudsman

27May 2022

Appendices

Appendix 1	The complaint
Appendix 2	Code of Conduct
Appendix 3	Declaration of acceptance of office
Appendix 4	Investigation start letter
Appendix 5	Information from Clerk
Appendix 6	Witness statements
Appendix 7	Member comments during investigation
Appendix 8	Member written statement before interview
Appendix 9	Transcript of Member interview
Appendix 10	Character witness statements
Appendix 11	My guidance on the Code of Conduct
Appendix 12	Member comments on the draft version of this report



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