



**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**19 MARCH 2021**

**ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS**

**INFORMATION REPORT OF THE MONITORING OFFICER**

**1. PURPOSE OF REPORT**

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

**2. RECOMMENDATION**

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

**3. BACKGROUND**

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

Appendix 1 - APW/002/2020-021/CT – Former Community Councillor Baguley

Appendix 2 - APW/001/2020/CT - Councillor Kevin O'Neill

- 3.3 The Committee may find it helpful to consider those decisions and the approach adopted by the APW in formulating its decision and sanctions (where relevant) in light of its own role when conducting Code of Conduct hearings.

- 3.4 The Committee may also wish to consider whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

**4. LEGAL IMPLICATIONS**

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

**5. CONSULTATION**

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

**6. EQUALITY AND DIVERSITY IMPLICATIONS**

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

**7. FINANCIAL AND RESOURCE IMPLICATIONS**

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

**LOCAL GOVERNMENT ACT 1972**  
**AS AMENDED BY**  
**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**STANDARDS COMMITTEE**  
**19 MARCH 2021**  
**REPORT OF MONITORING OFFICER**

**ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS**

**BACKGROUND PAPERS**

**Freestanding Matter**

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

## **DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/002/2020-021/CT

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

**RESPONDENT:** Former Community Councillor Baguley

**RELEVANT AUTHORITY:** Sully and Lavernock Community 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, at a meeting on 16 December 2020 conducted by means of remote attendance.

### **2. DOCUMENTS**

#### **2.1 Reference from the Public Services Ombudsman for Wales**

2.1.1 In a letter dated 16 September 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against former Community Councillor Baguley (“the Respondent”).

2.1.2 **Allegation 1** was that the Respondent had breached the Code of Conduct for Members of Sully and Lavernock Community Council (“the Code”) as follows: That the Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019, which it was alleged could reasonably be regarded as bringing the Councillor’s office or authority into disrepute and thereby breached Paragraph 6(1) of the Code.

2.1.3 During the course of the investigation, the Ombudsman extended the investigation to include **Allegation 2** as follows: That the Respondent allegedly failed to supply information and evidence in respect of the privacy status of the relevant posts, in non-compliance with requests of the Ombudsman in

connection with an investigation conducted in accordance with his statutory powers and thereby breached Paragraph 6(2) of the Code.

## **2.2 The Details of Allegation 1: Three Facebook Posts**

2.2.1 The three Facebook posts referenced in **Allegation 1** are as follows:

i) On 10 January 2019, responding to a Telegraph article titled “What if...Yvette Cooper was Labour leader”, Councillor Baguley wrote: “imagine this! This bitch is driving remain when the people of her constituency overhweminly [sic] voted out. A traitorous cow and one I hope she ends up with a noose around her neck!”

ii) On 9 March 2019 Councillor Baguley posted an online article about Shamima Begum and stated the following: “I hope that it [sic]she does carry out some atrocity Anna Soubry would be my chosen target”

iii) On 11 March 2019 Councillor Baguley commented on a video of Diane Abbott speaking at a conference. He wrote: “fucking idiot! Get me a gun please!”

2.2.2 The evidence was comprised of a bundle of Tribunal case papers including copies of numerous Facebook posts and correspondence to and from the Council’s Monitoring Officer, the Ombudsman and the Respondent.

### **The Respondent’s response to Allegation 1.**

2.2.3 In an e-mail to the Ombudsman dated 10 July 2019, the Respondent stated “(a) Facebook have their own code of conduct which I have not fallen foul of as they would have censored the comments and (b) many of the comments made are of friends of mine and not my own.”

2.2.4 On 20 August 2019, he wrote as follows to the Ombudsman; “my comments on Facebook are my own beliefs and have not been censored by Facebook.”

2.2.5 On 17 October 2019 he wrote to the Ombudsman to say that he had consulted a solicitor and; “he feels (as would any fair minded person) that they are political opinions and I fully stand by them.”

2.2.6 On 12 November 2019, he said that; “Facebook generally remove offensive sexist and racist comments automatically as they have identifiers built into the algorithm so if they were offensive they would have been removed.”

2.2.7 On 8 June 2020, in response to written interview questions, the Respondent responded as follows;

- In relation to Paragraph 6(1)(a); “This is ambiguous as the word reasonably is subjective and open to interpretation.”

- With regard to the Facebook post, dated 10 January 2019, the Respondent explained that he had a; “long held personal dislike of this individual from my days living in her constituency and I agree my comments are a bit strong.”

- As to the public nature of the postings; “I assumed it was locked down but was obviously wrong.”

- With regard to the Facebook post, dated 9 March 2019, he explained what he meant as; “I would rather turn a gun on myself rather than listen to her” and as to the status of the post, he said; “I did not know whether public or not.”

- In relation to the Facebook post, dated 11 March 2019, the Respondent explained; “I dislike Anna Soubry” and as to the status of the post, he said; “Didn’t know it was public or private”.

-As to the nature of the posts, the Respondent stated; “Facebook always remove comments and posts they feel are offensive but they remained which shows they were ok with them”.

-Finally, the Respondent explained his; “long standing dislike of the labour party and its officials and followers” from negative childhood experience.

-As to freedom of expression; “I am also allowed to hold my views as free speech and opinions is not yet illegal in the UK”.

## **2.3 Allegation 2: Failure to comply with Ombudsman’s requests**

2.3.1 The Ombudsman’s requests referenced in **Allegation 2** and the Respondent’s responses are as follows:

i) On 8 November 2019: “In your email of 10 July 2019, you said that you had it confirmed by Facebook support that your posts are not visible to anyone but your friends and this has been the case since 2013. It would assist the investigation if you could send me a copy of the activity log on your Facebook account to show when your privacy settings were changed and also a copy of the confirmation by Facebook that your posts have not been visible to anyone but your friends since 2013.” The Respondent replied almost immediately by sending a screenshot of his settings.

ii) On 12 November 2019: an e-mail advising the Respondent that the screenshot he had sent in response to i) above was of his current settings and asking again for his historical activity log. The Respondent was also asked to provide confirmation from Facebook to support his claim that it had confirmed his posts were not visible to anyone since 2013 and to confirm how he received this confirmation (e.g. by email or verbally by phone). Councillor Baguley responded the same day by e-mail; “No idea how to do that sorry can you tell me how?”.

iii) On 15 November: an e-mail to the Respondent, advising him how he could access his activity log. The Respondent did not respond to the email.

2.3.2 In response to the written interview questions on 8 June 2020, the Respondent stated as follows;

- With regard to his original comment that his posts had not been visible to anyone but his friend since 2013, he said that he had meant; "I checked my settings" and explained that he had contacted Facebook; "I phoned them and after a long and convoluted goose chase I got nowhere basically."

- As to whether he was aware of how Facebook settings work; "Not really" and as to his failure to provide a historical activity log, he said; "I didn't know how" and as to his continued failure to provide the same following guidance, he repeated; "No idea how to do it".

- As to the discrepancy between the posts being visible in 2019 and the Respondent's version of events that the posts had been visible to friends only from 2013 onwards, he said; "I thought this was the case".

- Finally, when asked when he changed to private or "friends" setting, the Respondent replied; "When I found out they had been strangely changed to public, maybe by my eldest son who has access and sometimes uses pictures I post".

2.3.3 The evidence was again comprised in the bundle of Tribunal case papers including correspondence from the Ombudsman and the Respondent.

### 3. FINDINGS OF FACT

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

3.1.1 The Respondent was co-opted as a Community Councillor to Sully and Lavernock Community Council in May 2017. He resigned from this role in September 2020.

3.1.2 The Respondent signed a Declaration of Office and Undertaking regarding the Code of Conduct on 27th June 2017.

3.1.3 The Respondent did not attend any training in relation to the Code of Conduct or in relation to the use of social media during his period of office.

3.1.4 The Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019 about three high profile UK politicians, the contents of which are not in dispute.

3.2 The Case Tribunal found the following in relation to the **disputed** material facts;

## **Allegation 1**

3.2.1 That the Respondent was acting in a private capacity when he posted the three public Facebook messages in question. Certain Facebook posts sent by the Respondent did refer to the Relevant Authority, however the Facebook posts referenced in **Allegation 1** were not sent in this context. No evidence had been provided as to whether the Respondent's Facebook profile referred to his Community Council status.

3.2.2 That although the Facebook posts were written in the context of sharing political views on Facebook, the comments complained of went far beyond what could reasonably be considered to be political expression. It was however straightforward to separate the political debate from the comments which were the subject of **Allegation 1**. The comments were inflammatory and an expression of views which were extreme, threatening in nature and promoted violence towards individuals. The comments could not be dignified by the description of political expression.

3.2.3 That even if the Respondent was not aware of the status of his posts at the time of posting, despite the visible icon of a globe which showed that it was public, the Respondent was at the very least, reckless to that fact and the Tribunal found that on the balance of probabilities the Respondent was aware of their public status. He was well versed in the use of social media and sent regular and frequent posts and was reckless as to the consequences. In one of his posts not related to the Allegation, he had stated; "I will get another Facebook ban for saying it...". His responses to the written interview questions demonstrated that Respondent had little concern for whether his page was public or private.

3.2.4 The Case Tribunal considered that high profile politicians, by entering public life, lay themselves open to close scrutiny and indeed mockery and sarcasm. They were expected to possess thick skins and display a greater degree of tolerance than ordinary citizens, however such tolerance should not have to extend to personal, inflammatory and egregious comments which comprised of threats or inciting extreme violence and death from other politicians, albeit acting in their private capacity, including at a Community Councillor level. The comments were personal, disturbing and gratuitous verbal attacks, not political expression.

## **Allegation 2**

3.2.5 That the Respondent failed to comply with the Ombudsman's requests for information with regard to the change in his privacy settings. The Panel found that on the balance of probability, the Respondent's initial response that Facebook had confirmed that the settings had been private since 2013 was not a candid response and was written to attempt to minimise the nature and impact of the Facebook posts.

3.2.6 The Case Tribunal considered that the Respondent's subsequent responses contained a variety of excuses and no evidence or detail was forthcoming as to any relevant discussion with Facebook to confirm that the



Respondent's Facebook posts had been private since 2013. There was reference to a discussion with Facebook but the Respondent said that he had "got nowhere" in that instance. He then stated that he did not know how to check any change of settings that took place in 2013, although he was clearly an experienced user of Facebook and the Tribunal did not consider that this was an entirely candid response. Further to guidance supplied by the Ombudsman's Investigator, the Respondent failed to reply. Finally, in reply to written interview questions, the Respondent provided yet another explanation, stating that his settings had been "strangely changed" to public by a third party.

3.2.7 In conclusion the Panel considered that the Respondent had deliberately avoided providing information and full and frank responses to the reasonable requests of the Ombudsman's Investigating Officer in completing the investigation.

## **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

### **4.1 The Code of Conduct for Members**

4.1.1 The relevant parts of the Code are as follows;

#### **Allegation 1**

Paragraph 2(1)(d) of the Code states; "...You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7."

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

#### **Allegation 2**

Paragraph 6(2) states; "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."

### **4.2 Article 10 ECHR Considerations in relation to Allegation 1**

4.2.1 Article 10 of the European Convention on Human Rights states as follows;

"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....

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...”

4.2.2 The Case Tribunal adopted the following three-stage approach formulated in *Sanders v Kingston* [2005] EWHC 1145 in relation to **Allegation 1** and the three Facebook posts;

(i) Did the Respondent’s conduct breach Paragraph 6(1)(a) 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)?

### **4.3 Case Tribunal’s Decision – Allegation 1**

#### **Paragraph 6(1)(a) of the Code**

**4.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent failed to comply with Paragraph 6(1) of the Code for the following reasons;**

#### **Conduct within private capacity**

4.3.2 In accordance with Paragraph 2(1)(d) of the Code, Members must observe the Code at all times and in any capacity in respect of conduct which could reasonably be regarded as bringing a Councillor’s office or authority into disrepute and it therefore applied regardless of the fact that the Respondent was acting in his private capacity.

4.3.3 The Case Tribunal were mindful of the Ombudsman’s Guidance in this respect which states that;

- “...as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the code apply to you at all times.”

-It also refers to the significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter; “Even if you do not refer to your role as Councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

- “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 Council.”

- “Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute”.

4.3.4 The Case Tribunal was mindful of the case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 which set out the very limited circumstances in which the relevant Code in would apply in England where a Member was acting in his private capacity. The position in Wales can be distinguished however, as the legislation has spelt out in clear terms what is covered by the Code in Wales. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to “in performing his duties” in Wales in relation to the undertaking to observe the Code which Members must sign.

4.3.5 The three Facebook posts in this case were all extreme and gratuitous in referring to violence or methods of killing in relation to three high-profile politicians. Even if the comments were glib, reckless or expressed to be part of perceived normalisation of such language on social media platforms, the Case Tribunal was satisfied that it was of a sufficiently serious nature that it could reasonably be regarded as bringing the Respondent’s office and authority into disrepute;

(i) In relation to the Facebook post of 10 January 2019, the Respondent implies a wish that the subject of the post is hanged. He concedes that his comment was “a bit strong”.

(ii) The post of 9 March again had no reasonable alternative reading. The Respondent was expressing a wish the subject of the post to be the subject of an atrocity.

(iii) The Respondent had argued that in relation to the 11 March post that the comment, “Get me a gun” was a reference to the Respondent turning a gun on himself. The Case Tribunal considered that this was an artificial construction of the plain meaning of the words in the context of the previous comment, that he wished to shoot the subject of the post.

4.3.6 The Respondent posted public comments on a frequent and regular basis which came to the attention of a member of the public and the Relevant Authority’s Monitoring Officer and prompted a complaint in the light of the Respondent’s public role as a Community Councillor. As an outspoken public figure, many in the community would have been aware that the Respondent was a Councillor and the three Facebook posts would have adversely reflected on both his role and his authority.

4.3.7 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the “Nolan Principles” include the principles of “Integrity” and of “Leadership” whereby; “Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority”. The Respondent’s conduct had fallen well below the standards of conduct in public life which the Nolan Principles and the Code seek to uphold.

4.3.8 The Case Tribunal concluded that the three Facebook posts which are the subject of **Allegation 1** were so egregious, inflammatory and violent, that they offended against all notions of peace, safety, decency and democracy within society. In view of their extreme and public nature, the Case Tribunal had no difficulty in finding that the contents of the posts could reasonably be regarded as bringing the Respondent's office and also his authority into disrepute (quite apart from bringing the Respondent as an individual into disrepute).

#### **Article 10(1) ECHR**

4.3.9 Despite the finding that the Respondent breached Paragraph 6(1)(a) of the Code, the Case Tribunal nevertheless considered that the finding did comprise of a prima facie breach of Article 10 in that the finding could be deemed to restrict his right to freedom of expression.

#### **Article 10(2) ECHR**

4.3.10 The Case Tribunal were of the view that freedom of expression is a cornerstone of democracy and should not be readily displaced in any balancing exercise with competing rights of individuals, particularly of public figures who are expected to have "thick skin". The Case Tribunal gave extremely careful consideration to this issue, cognisant that anything which impeded political debate should be exercised with extreme caution.

4.3.11 As the Respondent's posts had been made in a private capacity and the Case Tribunal had found that they did not comprise of political expression, they did not attract the enhanced protection afforded to politicians. The Tribunal nevertheless concluded that even if enhanced protection had applied, the comments were so extreme and egregious, that the finding of a breach of the Code would nevertheless have been justified.

4.3.12 Article 10(2) makes it clear that the freedom of expression carries with it duties and responsibilities and may be subject to restrictions such as those contained in the Code (which 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."

4.3.13 The Case Tribunal noted that although the three Facebook posts which formed the subject of **Allegation 1** were made during the course of otherwise political exchanges, the comments themselves stood out as being quite distinct from that exchange and introduced a different and disturbing tone to the exchange.

4.3.14 As to the Respondent's argument that Facebook had its own code of conduct, the Case Tribunal stated that Member behaviour was governed by the statutory Code of Conduct by which Members had undertaken to abide and not by any procedure or code operated by a social media platform which may or may not identify threatening comments.

4.3.15 In conclusion, the three Facebook posts had been found by the Case Tribunal to be so extreme and egregious that, despite the fact that freedom of expression was a fundamental human right, there were necessary limits. The posts went well beyond what could be reasonably tolerated in a democratic society. It was necessary for the public interest in proper standards of conduct by Members of local authorities to be upheld by a finding that the Respondent had breached Paragraph 6(1)(a) of the Code, in order to safeguard public safety and the reputation and rights of others.

#### **4.4 Case Tribunal's Decision – Allegation 2**

##### **Paragraph 6(2) of the Code**

**4.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that the Respondent had failed to comply with Paragraph 6(2) of the Code for the following reasons;**

4.4.2 The Case Tribunal had reached the finding of fact that the Respondent had deliberately avoided answering the Ombudsman's reasonable requests in his Investigating Officer's efforts to complete the investigation in accordance with the Ombudsman's statutory powers.

4.4.3 It inevitably followed that there had therefore been a breach of Paragraph 6(2) of the Code.

#### **5. FINDINGS IN RELATION TO SANCTION**

**5.1 The Case Tribunal considered all the facts of the case and concluded by unanimous decision that the Respondent should be disqualified for 15 months from being or becoming a member of Sully and Lavernock Community Council or of any other relevant authority within the meaning of the Local Government Act 2000 for the following reasons;**

5.2. The Case Tribunal carefully considered the current Sanctions Guidance of the Adjudication Panel for Wales in particular and 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.

5.3 The Case Tribunal also considered paragraph 47 of the Guidance with regard to former Councillors which reads as follows;

- “In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...”

5.4 The Case Tribunal considered that the facts leading to breach of the Code in relation to **Allegation 1** were particularly serious and were of the view that if the Respondent had not resigned and remained in office, it would not have considered that suspension was a sufficient sanction to recognise the extremely serious nature of the breach.

5.5 The Case Tribunal had regard to sanctions imposed in previous cases. It was also mindful that the comments were directed at individuals who were national political figures, rather than officers of the Relevant Authority or members of the local community. The public figures would be unlikely to become aware of, or be directly affected by, the comments directed at them. The Case Tribunal nevertheless considered that as this was an extremely serious breach, the sanction was proportionate in all the circumstances.

5.6 In conclusion, the Case Tribunal considered that the Sanction imposed was the minimum necessary to uphold the standards of conduct in public life and maintain confidence in local democracy. It reflected the fact that the behaviour demonstrated that the Respondent was unfit for public office and required a significant period of time in order to reflect on his conduct before contemplating re-entering local politics.

5.7 With regard to **Allegation 2**, the Case Tribunal considered that the lack of full co-operation and compliance with the Ombudsman’s requests during investigation and lack of candour was a matter of concern, however it did not consider that a separate penalty should be imposed in relation to this breach.

5.8 The Case Tribunal came to the above conclusion having considered the following Mitigating and Aggravating factors which are highlighted in the Sanctions Guidance.

### **Mitigating Factors;**

5.9 The Case Tribunal noted that the Respondent had a relatively short length of service and would have been inexperienced in the role of Community Councillor. There had been no record of a previous breach during this short period of service. The Respondent expressed a minimal amount of regret, for example by referring to his post of 10 January 2019 as “a bit strong”.

### **Aggravating Factors;**

5.10 The Case Tribunal noted that the Respondent’s conduct was blatant and largely unapologetic. He stood by his comments although he regretted that his comments had been public. The behaviour was deliberate, reckless and

repeated and there appeared to be little or no concern for the Code and a lack of understanding or acceptance of the misconduct and any consequences.

5.11 In conclusion, the Case Tribunal found that the three Facebook posts consisted of the expression of views which were not worthy of respect in a democratic society, and were incompatible with human dignity and conflicted with the fundamental rights of others.

## **5.12 Article 10 ECHR Considerations**

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

5.12.2 It considered however that the sanction of disqualification was a penalty prescribed by law and was of a length which was proportionate bearing in mind the interests of public safety and the need in a democratic society to prevent disorder or crime, for the protection of health or morals and for the protection of the reputation or rights of others in a democratic society.

5.12.3 The Case Tribunal recognised that disqualification would breach the Respondent's Article 10 rights. It was satisfied however that disqualification for 15 months was the minimum necessary to recognise the seriousness of the Respondent's breach of the Code. The sanction was necessary in this case in order to maintain the integrity of the Nolan principles as extended in the Welsh context as well as the Code of Conduct for Members, but also to protect others from gratuitous, offensive personal comment and 'hate speech' and to protect the health, safety and rights of others.

5.13 Sully and Lavernock Community Council and its Standards Committee is notified accordingly.

5.14 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



Date 12/01/2021

C Jones  
Chairperson of the Case Tribunal

S Hurds  
Panel Member

G Jones  
Panel Member

## **DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/001/2020/CT

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

**RESPONDENT:** Councillor Kevin O'Neill

**RELEVANT AUTHORITY:** Merthyr Tydfil Borough 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 In accordance with Councillor O'Neill's request, and in accordance with regulation 15(1)(a) of The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, and upon being satisfied that it was in the interests of justice to do so, the Case Tribunal determined its adjudication by way of written representations at a meeting on 18<sup>th</sup> and 22<sup>nd</sup> December 2020 held by Cloud Video Platform (CVP), but as if meeting at the tribunal's offices.

1.3 Councillor O'Neill was represented by Capital Law solicitors who made written representations and submission on his behalf. The tribunal received written representations and submissions from Katrin Shaw, Chief Legal Adviser and Director of Investigations on behalf of the Public Services Ombudsman for Wales.

1.4 References in square brackets within this Decision Report are to pages within the bundle of Tribunal case papers unless otherwise stated.

### **2. PRELIMINARY DOCUMENTS**

#### **2.1 Reference from the Public Services Ombudsman for Wales**

2.1. In a letter dated 13<sup>th</sup> July 2020 the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Kevin O'Neill ("the Respondent"). The allegations were that Councillor O'Neill had breached Merthyr Tydfil Borough Council's Code of Conduct ("the Code") in August 2018 in relation to a personal



and prejudicial interest, and in his treatment of the former Chief Executive of the Relevant Authority at a meeting on 5<sup>th</sup> March 2019, contrary to paragraphs 4(b), 6(1)(a), 11(1), 11(2)(a), 14(1)(a), 14(1) (c), 14(1)(d) and 14(1)(e) of the Code.

## **2.2 The alleged breaches of the Code**

The six alleged failures under consideration were as follows;

### **2.2.1 Allegation 1**

Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15<sup>th</sup> August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.

### **2.2.2 Allegation 2**

Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15<sup>th</sup> August 2018.

### **2.2.3 Allegation 3**

Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15<sup>th</sup> August 2018.

### **2.2.4 Allegation 4**

That the Respondent's email to the Director of Social Services on 16<sup>th</sup> August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the email sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.

### **2.2.5 Allegation 5**

Whether the Respondent's actions in speaking at the meeting of the 15<sup>th</sup> August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16<sup>th</sup> August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.

### **2.2.6 Allegation 6**

Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5<sup>th</sup> March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.

## **2.3 The Councillor's responses to the investigation and Reference**

2.3.1 Councillor O'Neill responded to the Ombudsman's investigation and reference to the Adjudication Panel for Wales upon a number of different occasions. He was first written to by the Ombudsman on 30<sup>th</sup> April 2019 in relation to the investigation. On 11 March 2020 Councillor O'Neill was interviewed by Annie Ginwalla, Investigation Improvement Officer, and by Leigh McAndrew, Investigating Officer, at the authority's offices. The interview was recorded and a transcript appears at section B pages 382 – 555 of the bundle. During the interview Councillor O'Neill accepted that he had a personal interest in the property in Luther Lane but denied that he had a prejudicial interest. In relation to the meeting with the former Chief Executive and his conduct and behaviour towards him, Councillor O'Neill considered that he had not breached the Code.

2.3.2 The Respondent provided his undated written comments on the draft of the Ombudsman's report [Appendix 23 to the Ombudsman's Report, B591-597].

2.3.3 The Respondent, through his solicitors, wrote to the APW on 14<sup>th</sup> August 2020 [pages C.2-25] on the Response to the Ombudsman's report form (APW01) dated 13<sup>th</sup> of August 2020, in which, amongst other things, (the description below is not intended to be exhaustive), he;

- a. Disputed that he had sought to influence a decision at the meeting on 15 August 2020
- b. Disputed that he had failed to show respect and consideration to the former Chief Executive,
- c. Asserted that he heeded the Monitoring Officer's advice in relation to the meetings on 15 August 2018 and that he recognised the need to "stand back", but he did not recall any legal language regarding a 'prejudicial interest' being used.
- d. Said that in relation to the email he sent on 16 August 2018 to Lisa Curtis Jones, the Director of Social Services, that she had been present at the two meetings the previous day and was well aware of his position as a resident.
- e. Stated that in relation to the thirteen occasions when he spoke at the meeting on 15 August 2018, that the majority of these occasions were minor/completely innocuous statements/questions.
- f. Disputed that he had breached the following provisions of the Code; 4(b), 6(1)(a), 11(1), (11(2)(a), 14(1) (c), (d) and (e).

2.3.4 Councillor O'Neill also submitted an additional witness statement dated 13<sup>th</sup> August 2020 in which he said "*It is only from this investigation process and specific mentoring since the events that I understand what the phrase 'prejudicial interest' means and when it is relevant. If I found myself in a similar situation in the future, then I would certainly replace the term 'compromised' with the more*

*legal phrase ‘prejudicial interest’ and quote it at every appropriate opportunity should similar situations arise.”*

2.3.5 On 6<sup>th</sup> November 2020 the Tribunal’s listing direction was sent out inviting further submissions in the light of the case being decided upon the papers. The Respondent’s solicitors accordingly sent in further submissions dated 27<sup>th</sup> November 2020, and 9<sup>th</sup> December 2020.

## **2.4 The Ombudsman’s Written Representations**

2.4.1 By letter of 27<sup>th</sup> August 2020, the Ombudsman sent in form APW18 and responded to Councillor O’Neill’s written representations in his Response to the Ombudsman’s Report form. Following the listing direction being sent out, the Ombudsman provided further written representations on 27<sup>th</sup> November 2020 and 9<sup>th</sup> December 2020.

## **3. FINDINGS OF FACT**

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

3.1.1 The Respondent is a Councillor and the current Leader at Merthyr Tydfil County Borough Council (“the Council”). He was first elected to the Council in May 2017 and has been Leader of the Council from June 2017 until the present.

3.1.2 The Respondent received training on the Council’s Code of Conduct for Members in 2017 and signed an undertaking to observe the Code on 10th May 2017.

3.1.3 The relationship between the Respondent and the former Chief Executive, Mr Gareth Chapman, was strained and poor.

3.1.4 The Respondent had a personal interest in a matter affecting St David’s, Luther Lane, Merthyr Tydfil, a property neighbouring his home which was purchased by a private organisation with the intention of housing children from troubled backgrounds in a community setting.

3.1.5 The Respondent was present at two meetings to discuss the Luther Lane property on 15th August 2018, the first a pre-meeting with Council staff, the second an inter-agency meeting.

3.1.6 The Respondent sent an e mail on 16th August 2018 to the Director of Social Services following up on issues of concern to him arising from the inter-agency meeting on 15th August 2018 at which the Director had been present, and the Respondent did not include any declaration in that e mail of his personal or prejudicial interest in the matter of the Luther Lane property.

3.1.7 The Respondent did not give the former Chief Executive, the former Deputy Chief Executive or the Monitoring Officer, any indication that he intended to raise the former Chief Executive’s performance at the meeting on the 5th March 2019.

3.1.8 The Respondent, when concerned about the performance of the former Chief Executive, did not follow the Member Code of Conduct Protocol for Merthyr Tydfil Borough Council paragraph 2.8, in the manner in which he raised his concerns at the meeting of 5th March 2019.

3.2 The Case Tribunal found the following **disputed** material facts:

3.2.1 The Respondent had a prejudicial interest in the proposed development of St. Davids, Luther Lane, Merthyr Tydfil.

3.2.2 The Monitoring Officer advised the Respondent in August 2018 that he had a very clear prejudicial interest in the matter of the property, St Davids, Luther Lane and that he should not front any type of focus or lobbying group or be involved with this.

3.2.3 The Monitoring Officer advised the Respondent that he should not attend at the meetings on 15<sup>th</sup> August 2018. When the Respondent made it clear that he was going to attend, the Monitoring Officer advised that upon that basis, he should not contribute to the discussion at the meeting and only be a facilitator.

3.2.4 The Monitoring Officer gave her advice as per 3.2.2 and 3.2.3 above, orally to the Respondent on a date in August 2018 that has not been recorded, but that was before the meetings of the 15<sup>th</sup> August 2018.

3.2.5 At the inter-agency meeting of the 15<sup>th</sup> August 2018, the Respondent was an active participant and his role went beyond that of merely a facilitator.

3.2.6 The Respondent did make comments at the inter-agency meeting on 15<sup>th</sup> August 2018 that were capable of influencing others present and any decision associated with it.

3.2.7 The Respondent's conduct towards the former Chief Executive at the meeting of the 5<sup>th</sup> March 2019 failed to show respect and consideration to the former Chief Executive.

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

3.3.1 Before considering the disputed facts and the case tribunal's findings in more detail, it is emphasised that since this hearing was determined on the papers at the Respondent's request, the tribunal carefully considered the totality of the written evidence contained in the hearing bundle, and decided matters based on that evidence on the balance of probabilities. The Respondent had the benefit of legal advice in asking for a paper determination, aware that the effect of this request would be to prevent him from appearing in person to put forward his case and to cross-examine other witnesses, and that the case tribunal would accordingly assess the facts on the basis of the documentary evidence.

**3.3.2 The Respondent had a prejudicial interest in the proposed development of St. Davids, Luther Lane, Merthyr Tydfil.**

3.3.3 Paragraph 12 of the Code describes prejudicial interests and says at 12(1); *“Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”* The exemptions in 12(2)(a) do not apply here and neither party sought to argue that they did.

3.3.4 The Respondent has always accepted that he had a personal interest in the proposed development of St Davids, Luther Lane. Personal Interests are defined at paragraph 10 (2) of the Code, which says;

*“You must regard yourself as having a personal interest in any business of your authority if –*

*(a) it relates to, or is likely to affect- .....*

*(vi) any land in which you have a beneficial interest and which is in the area of your authority; and;*

*(c) A decision upon it might reasonably be regarded as affecting –*

*(i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;”*

3.3.5 The Respondent lives at Luther Lane, Merthyr Tydfil. The Ombudsman’s Report of 13<sup>th</sup> July 2020 sets out the factual position in 2018 as follows;

*“23. In August, Councillor Hughes and the Deputy Chief Executive were advised by the Director of Social Services that a property entitled ‘St David’s’, at Luther Lane, Twynyrhodyn had been purchased by an independent company, Inspire & Support, to provide residential accommodation for young children living away from their families. Inspire & Support had made an application to the Council’s planning department for a change of use associated with the property.*

*24. Councillor O’Neill lives at ..... the property situated directly next door, to the right of St Davids. Councillor Hughes informed Councillor O’Neill about the application.”*

3.3.6 The Respondent argues that there was no Council decision here for the purposes of the complaint and that the reference to “change of use” was a straightforward disability adjustment to the front access of the property, and that there was no policy/decision in motion when the Respondent became aware of the Inspire proposal [C8]. This position is repeated in the Respondent’s submissions of 27<sup>th</sup> November 2020, (albeit when dealing with whether there has been a failure to comply with the Code), but it is also relevant to the Case Tribunal’s factual consideration here.

3.3.7 The Respondent says that he did not have a prejudicial interest and *“.... It is significant here that there was no Council decision to be made in connection with the Luther Lane property. There was no judgement to be applied by C’ON, or any other Councillor or official. It is submitted that where there is no official outcome to affect (one which involves considerations of or assessments of the public interest in that context), the question of prejudice is almost moot (or at least the prospect of prejudice to an ordinary person must be more remote). In any*

event, the “ordinary person” test is not met. Based on the backdrop and context as explained in this submission and in the APW01, the Respondent submits that the ordinary informed member of the public would not consider that the Respondent had a prejudicial interest in any matter where the Council had no decision or remit.” [Bundle Further Submissions 75].

3.3.8 The Ombudsman Asserts that in the context of the meeting of 15 August 2018, *“it is irrelevant that the parties at the meeting were not required to make any ‘decisions’ associated with the development/property at that meeting.”* In submissions made on 9<sup>th</sup> December 2020, the Ombudsman addresses the question of whether there was any decision pending which was capable of being influenced by the Respondent. The Ombudsman notes that this was not a point taken by the Respondent at the time or during interview, rather that the Respondent’s stance was that, given the political significance of the proposed Inspire and Support home within his ward, the outcry in the press, social media and more generally, when the proposal became public knowledge, he had little choice other than to become involved, and consciously chose to become involved despite the advice of the Monitoring Officer.[Bundle Further submissions page 94].

3.3.9 The Ombudsman’s report concludes that the Respondent’s personal interest in the proposed development of St Davids, Luther Lane, was also prejudicial. The Ombudsman says at paragraph 130 of his report [Bundle B page 40]

*“The relevant facts that the objective and reasonable observer would consider would, in my view, include matters such as the proximity of the property to his home (although detached, the property is directly next door) and the nature of the proposed use; Councillor O’Neill confirmed that, when he became aware of the application, he was advised that its use was for ‘troubled teens’. Councillor O’Neill also advised of his wife’s immediate reaction, based on the suitability of the location. Additional relevant facts would include the strength and significant feelings displayed by the community and feelings of suspicion and concern displayed by elected members, including Councillor O’Neill, that officers in the Council had not brought this issue to their attention sooner.”*

The Ombudsman adds at paragraph 132 of his report;

*“Further, at interview, Councillor O’Neill said that members of the public have commented about his ability to get the development ‘stopped’ in his Street, when seeking his help on another unrelated matter, thus suggesting that they have the impression that his involvement had, at the very least, the potential to have been influential.”*

3.3.10 The case tribunal notes that in his complaint to the Ombudsman of 1<sup>st</sup> April 2019, Mr Gareth Chapman, the former Chief Executive, upon his return from leave in August 2018, discussed the Luther Lane matter with the Respondent and

says that, in such discussion, *“The Leader focused upon assertions that the home would be used by “drug addicts, sex offenders etc” and he failed to recognise the actual proposed use of the property for children/young people in the care setting, each of whom have differing needs and requirements but most importantly, all need a stable home and support environment.....I advised the Leader that in my opinion this was a classic case of “nimbyism” and would have grave consequences.”* [Bundle B1b pages 76 and 77].

3.3.11 Mr Chapman confirms this in his witness statement of 2<sup>nd</sup> October 2019 provided to the Ombudsman, at paragraph 29 where he says *“On my return from leave I became aware that there had been a huge social media campaign about the application suggesting that the property would be filled with criminals, drug users, sex offenders etc. I was informed placards/posters had been displayed in Councillor O’Neill’s windows at home. The publicity surrounding this issue was extremely negative and was advised [sic] completely misrepresented the plans for the facility. The publicity led in some ways to a bit of a witch hunt as I understand other members of the Independent Group began asking for the location of other properties of this kind in the County which is totally inappropriate in my view.”* Mr Chapman says that he attempted to speak to the Respondent about it after returning from leave; *“I mentioned that I had been made aware of the issue. He appeared reluctant to talk about it I advised him that I felt he had a personal and prejudicial issue in this matter, he should not have been involved in any discussions or meetings relating to it. I told him that it was, in my view, the worst case of nimbyism I had seen.”* [Bundle B1h page 213].

3.3.12 The Case tribunal note that in his interview Councillor O’Neill talks about the St David’s building and describes it as *‘right next door’, ‘absolutely next door’* [B.2L page 408], and *‘our fence is, it’s about three foot from the building next door.’* He described how his wife was *‘absolutely lambasted on social media’* for comments that she had made. [B2.L 414] He said *“... What happened was, is that my wife then, when I was out went and put a sign up, no hostel here.... I didn’t have any involvement with it, and clearly, later on we took it down. It caused a major storm, on Facebook all this stuff kicked off.”* [B2.L page 414] he described how members of the community came to his home and he was saying *‘look, I can’t get involved’*. He said *“Well, it was really difficult. Um, because, because you know, we’ve invested, like every else [sic] invested a lot of money, er, in the house and it, it wasn’t based around the fact that you would have that interface, I mean linked with tho...those properties is the social workers, the police attendance, all that. I mean it’s a really busy road as it is I don’t think it accommodated where it is anyway,”* [B2.L page 415].

3.3.13 The Respondent then describes that, with another councillor, David Hughes, he arranged for a meeting to see all the active partners to see *‘where this came from’*. He describes opening the meeting and said that because he lived next door he was stepping back, that the police were at the meeting and they were very concerned about the process. [B2.L416].

3.3.14 On 15<sup>th</sup> August 2018 there were two meetings that were held at the authority's offices. For the purpose of clarity throughout this decision, the first meeting will be described as the pre-meeting. This was a meeting at which the Respondent spoke with other members of the authority before hosting the meeting at which third parties such as representatives of Inspire and Support and the police were present. This will be described as 'the inter-agency meeting' of 15th August.

3.3.15 The tribunal note that under the Code, Part 1, Interpretation, "meeting" means **"any meeting"** of the relevant authority, executive or board, of any committee, sub-committee etc and "(d) **where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990, and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority.**" It is clear therefore that a meeting that attracts the requirements to observe the Code is one where members or officers are present. Voting or formal decision making is not required to bring a 'meeting' within the Code.

3.3.16 Part 2 of the Code, General Provisions, says that members **must** observe this code of conduct **"2(a) whenever you conduct the business, or are present at a meeting of your authority"**. It is clear that the conducting of business is disjunctive from being present at a meeting. It is an obvious point but one that is nevertheless made in the Code, that a member does not need to be in a meeting to be conducting the business of the authority.

3.3.17 The Respondent says that he, together with Councillor Hughes, arranged the pre-meeting and the inter-agency meetings on the 15<sup>th</sup> August 2018. The meetings were held at Council property and the inter-agency meeting was attended by representatives of the police force, Inspire and Support and 4Cs Regional Commissioning Manager. Lisa Curtis Jones, the Director of Social Services for the authority says in her statement at paragraph 5, of the pre-meeting, [B.2f page 339] *"I attended as Director of Social Services. Prior to the meeting we had a pre-meeting sit down with Councillor O'Neill and everyone except the representatives from Inspire and Support. The purpose was to pre consult ahead of meeting. Much of the discussion focused on the placement strategy, the needs we as the Council had for young people and we discussed the history of the company coming to the area."*

3.3.18 The former Deputy Chief Executive (now the current Chief Executive) Ellis Cooper, in his statement dated 8<sup>th</sup> October 2019 says, paragraph 3, that "In August 2018 I was party to meetings that were held relating to a situation involving an application made by a care home provider to create a facility for vulnerable young adults in the County." [B.1i page 249]. He adds, of the inter-agency meeting; *"The meeting was arranged to enable discussion relating to concerns that had been raised by the members and the public via a social media campaign and meet the provider. This meeting was not open to the public."*



*Councillor O'Neill was hosting the meeting but was in an awkward position because the property was next door to his home. Because he had a direct interest in this matter, I believe he made a statement at the start of the meeting to the effect that he was hosting the meeting and not participating.*" [B1i. Page 250, paragraph 4]. Minutes were taken of the interagency meeting which were exhibited to Mr Cooper's statement. [B1i pages 254-261]

3.3.19 The tribunal find that both meetings on the 15<sup>th</sup> August 2018, on council premises, involving Council members and staff, were conducting the business of the authority and were meetings of the authority within the meaning of the Code. The fact that there was a pre-meeting showed the importance of the meeting in that the Council felt that they needed to discuss where they were going with this, and their strategy. The pre-meeting was in the Respondent's office, the inter-agency meeting was held in a meeting room of the authority. During the inter-agency meeting itself, the Respondent said that there should have been political oversight of these issues from the former Chief Executive [B1i page 257]. The tribunal agrees with the submission of the Ombudsman that there does not need to be a decision made at the meetings of 15<sup>th</sup> August for there to be a prejudicial interest. The tribunal is satisfied on the balance of probabilities, taking the foregoing matters into account that the personal interest that the Respondent had in the business of the authority in relation to St Davids, Luther Lane, was one that a member of the public with knowledge of the relevant facts would regard as so significant that it is likely to prejudice the Respondent's judgement of the public interest.

3.3.20 The tribunal in deciding as a fact that the Respondent had a prejudicial interest endorses the words of the Ombudsman's Chief Legal Adviser in the representations of 9<sup>th</sup> December 2020 "*The factual context speaks for itself. Inspire & Support were proposing to operate a home for children potentially with behavioural difficulties next door to the Respondent's home. It is difficult to imagine a factual scenario existence of a prejudicial interest ought to have been more obvious. The potential for characterisation of the Respondent as a NIMBY really ought to have been entirely clear. Certainly, a member of the public with knowledge of the relevant facts would reasonably regard the fact that the Respondent and his family lived next door to this proposed home as a factor likely to prejudice the Respondent's judgement of the public interest. The potential for the location of the Inspire & Support home to have a detrimental effect on house value within its vicinity is a factor which suggests a possible financial interest.*" [Bundle Further Submissions page 97]. The tribunal notes that this representation was made in relation to the second stage but it is of equal relevance to the factual determination of the prejudicial interest. There is a congruence between the tribunal's finding of fact that there was a prejudicial interest and the tribunal's view on whether as a matter of law there was a prejudicial interest.

**3.4.1 The Monitoring Officer advised the Respondent in August 2018 that he had a very clear prejudicial interest in the matter of the property, St**

**Dauids, Luther Lane and that he should not front any type of focus or lobbying group or be involved with this.**

3.4.2 The Monitoring Officer, Carys Kennedy, says in her statement *"I first became involved in this matter when Ellis Cooper, the then Deputy Chief Executive, and I were asked to see him and advise as to the extent to which he could become involved in this. I advised him that, whatever the Independent Group's views were and the agreed stance was, he had a very clear prejudicial interest in the matter. I tried to make it very clear that because of his interest he could not front any type of focus or lobbying group or be involved in this. He told Ellis and I that he would be representing the views of people in the community who viewed him as a figure head and were approaching him for help over this. He said that he felt it was impossible for him to back away because of the people coming to him. Nevertheless, our clear and strong advice to him was that he should do so and that he should refer people on to his fellow ward member. He was told that he should not be the person leading this issue on behalf of the public. He appeared to me to be very caught up in what seemed to be considerable public disquiet about it. The issue was, in my opinion, being driven out of proportion by a social media frenzy. A series of wholly inappropriate and derogatory comments was being made on social media about the type of people who might occupy the type of property and types of public action which would be taken if these people lived there. In effect it turned into what I would describe as a "witch-hunt". I very much doubt that any young person living in that property after that would have been safe. This was an enormously volatile situation. It escalated to an extent that the adverse publicity led to a call from the public and other Councillors to identify the location of any other properties in the County used for this purpose. The response generated was a real cause for concern. Councillor O'Neill indicated during our discussions that he felt he had to find a way out of this and that his Cabinet, and not officers, should be the people seen to resolve this problem."* [B.1] paragraph 7 pages 266/267].

3.4.3 In interview, the Respondent accepted that the Monitoring Officer had said this to him [top of page 422, B.2L] when asked if he recalled receiving that advice he said "I think so", and although he then expresses doubts and says that his recollection is normally very clear, he then says *"...it sounds like a bit of conflict about me being there"* and shortly afterwards he says *"... I mean, some of the things is with these conversations, er, that I had with er, Carys and others; **if I hadn't had that conversation with Carys, maybe I would have been a bit more vocal. Maybe I would have got involved in it more. But she... I listened to her advice and her counsel, I thought, yeah, yeah, I really need to stand back here. But I was still convinced I should have been there.**"* [page 423 B.2L] [our emphasis].

3.4.4 The Respondent says in his response to the APW of 13<sup>th</sup> August 2020, that the precise communication between him and the Monitoring Officer is disputed and that his position is that he heeded the Monitoring Officer's advice and recognised the need 'to stand back' but does not recall any legal language regarding a 'prejudicial interest' being used. He says that the accounts of Councillors Hughes and Barry, of Ellis Cooper and Lisa Curtis Jones are more closely aligned with his account than the Monitoring Officer's. [ Bundle section C pages 8/9].

3.4.5 The Ombudsman points out that the date of the meeting between the Respondent and the Monitoring Officer is unclear but that neither party has suggested that it took place at the pre-meeting in the presence of other people, and that the Monitoring Officer's statement suggests that her advice was given in the presence of Ellis Cooper which was not disputed during the investigation. The Ombudsman also noted that the Respondent has questioned the Monitoring Officer's independent status as he asserted that she had a close relationship with the former chief Executive but found that there was no evidence to justify his concerns.

3.4.6 The tribunal, on the balance of probabilities accepts the account given by the Monitoring Officer in her statement. It is clear from the interview that the Respondent accepts that he was given advice by the Monitoring Officer and equally clear that he cannot, on his own account, fully recall that advice. The Monitoring Officer is clear on what she told the Respondent, that she felt that there was a very clear prejudicial interest, and there is no reason to doubt her account. The statements that the Respondent says are more consistent with his account (from Councillors Hughes and Barry, Mr Cooper, and Lisa Curtis Jones) do not assist him with regard to the Monitoring Officer's advice. In fact, Councillor Hughes in his second statement says that the former Chief Executive was at the meeting [B.3e page 730 paragraph 3] and raises concerns about the impartiality of the Monitoring Officer [B.3e. Page 731 paragraph 8]. The former Chief Executive Mr Chapman was not at the meetings on 15<sup>th</sup> August as he was on holiday, which casts doubt on the reliability of Councillor Hughes' evidence. Likewise, there is no evidence to support Councillor Hughes' questioning of the Monitoring Officer's impartiality.

3.4.7 The case tribunal further note that the Respondent in his interview as noted above, "was still convinced I should have been there". This is consistent with him having been given advice that he should not have been there but deciding for himself that he should be.

**3.5. The Monitoring Officer advised the Respondent that he should not attend at the meetings on 15<sup>th</sup> August 2018. When the Respondent made it clear that he was going to attend, the Monitoring Officer advised that upon that basis, he should not contribute to the meeting and only be a facilitator.**

3.5.1 In addition to the Monitoring Officer's evidence recorded at paragraph 3.4.2 above, she further says "*We agreed that a meeting should be arranged as a way forward but I was clear that I felt that he shouldn't be at the meeting. He took the view that he should be there, that it would be a falsehood to suggest that he was not involved. He expressed the view that **because he was so involved the public saw it as something he should resolve** and so he had to be there. **On this basis I gave him advice that if he had to be there he should not contribute to the meeting.** I believe the phrase used was that he should just be the facilitator of the meeting. Going into the meeting I understood that this was going to be the extent of his involvement."* [Our emphases]. [Bundle B.1] page 26 paragraph 8].

3.5.2 As noted, the Respondent's position is *"that he heeded [the Monitoring Officers] advice and recognised the need to "stand back" [Bundle C, page 9.] Further his comments in interview, recorded and highlighted at paragraph 3.4.3 above, clearly demonstrate that he had had a conversation with the Monitoring Officer and that if he had not had that conversation with her, that "Maybe I would have been a bit more vocal. Maybe I would have got involved in it more."* [ Bundle B.2L page 423]. He had earlier said in his interview *"Because the other thing I said, is there are a lot of things I can bring to the table and nobody else can. Because I've spoken to people and people have come to me. But I said 'I have to be there', again as a ward councillor, that's what I felt, in a sense. But I.... again, I opened the meeting and sat back."* [Bundle B.2L page 422].

3.5.3 During the Respondent's interview, the Interviewing officer Annie Ginwalla, talking about the inter-agency meeting of 15th August 2018, and noting that there were comments attributable to the Respondent at the meeting says *"So my next question is, obviously you'd had Carys's advice beforehand, saying sit there but don't, don't contribute in any way. Why did you think it was appropriate to contribute? Particularly as you said, that you were there too, to hear about the genesis."* The Respondent does not take issue with or contradict the statement in the question about having received that advice, but replies with an answer about the minutes of the meeting not always presenting the actual detail of the conversations. He says that he was surprised how little he did contribute which was very difficult for him. [Bundle, B.2 L Page 437]. He further adds that he was going to be left to deal with the fallout of the situation *"So I wanted to be clear of that information. I don't think I was going against Carys's advice."* [Bundle B.2L page 438].

3.5.4 The tribunal, on the evidence, accept the account given by the Monitoring Officer and that her advice was that the Respondent should not be at the meeting(s) at all, but that once the Respondent made it clear that he felt that he should be there, the Monitoring Officer then advised that if he had to be there then he should not contribute and should be the facilitator only. The accounts of the Respondent and the Monitoring Officer are consistent on this as noted in the extracts from the evidence and interview in the preceding paragraphs. The tribunal accept that the Monitoring Officer had advised that the Respondent had a prejudicial interest in the matter of St David's, Luther Lane.

**3.6. The Monitoring Officer gave her advice to the Respondent as per 3.4.1 and 3.5.1 above, orally to the Respondent on a date in August 2018 that has not been recorded, but that was before the meetings of the 15<sup>th</sup> August 2018.**

3.6.1 The Ombudsman points out that the date of the meeting between the Respondent and the Monitoring Officer is unclear but that neither of them suggested that this discussion took place during the pre-meeting on 15 August in the presence of others, and that the statement of the Monitoring Officer suggests that the meeting was arranged following her advice. The Monitoring Officer's statement suggests that her advice was given in the presence of the former Deputy Chief Executive Mr Cooper. This was not disputed by the Respondent during the Ombudsman's investigation. [Bundle D.1 page 6]. This

is not confirmed or denied by Mr Cooper in his statement, who makes no comment on the matter.

3.6.2 The Respondent suggests that the discussion between the monitoring officer and himself was witnessed by five others at the pre-meeting [Bundle C.1 page 8 and 9] and refers to the witness statements of Councillors Hughes and Barry, the former Deputy Chief Executive, and Lisa Curtis Jones. However, none of these statements contain evidence of the discussion between the Monitoring Officer and the Respondent and any advice given to him.

3.6.3 The tribunal was surprised to note that the Monitoring Officer did not record her advice in writing either contemporaneously or immediately after the meeting that she had with the Respondent, when she gave him the advice about prejudicial interests and not to attend at the meeting as found above. It cannot be said with certainty, upon the evidence presented by both parties, the date and time of the meeting when this advice was given, but it was at some point before the meetings of 15th August 2018.

**3.7 At the inter-agency meeting of the 15<sup>th</sup> August 2018, the Respondent was an active participant and his role went beyond that of merely a facilitator.**

3.7.1 The Ombudsman's report says that the minutes of the inter-agency meeting demonstrate that the Respondent opened the meeting, went on to ask for an explanation of the 'acquisition' of the property, commented that he should have had 'oversight' of the proposal and work with the Council, and spoke of his concerns about speaking to the public afterwards. The Ombudsman notes that the evidence received from the majority of those present is also suggestive that the Respondent was an active participant during the meeting, albeit that many recognise his involvement may have been more limited than usual. The minutes of the meeting record that the Respondent spoke on at least thirteen occasions whereas Councillor Barry spoke twenty-four times and Councillor Hughes the then cabinet member for Social Services, spoke four times. [Bundle B1a page 42, paragraphs 137-139].

3.7.2 The Ombudsman concluded that, based upon the evidence from those present at the meeting and the minutes themselves, that he was satisfied that the Respondent spoke and contributed to the inter-agency meeting beyond the role of a facilitator. [Bundle B1a page 42 paragraph 141].

3.7.3 The Respondent submitted that him speaking on thirteen occasions during the meeting must be considered in the context of the meeting as a whole. The majority of these thirteen occasions were minor/completely innocuous statements/questions and a significant number of the interventions related to his "compromised" position. It is submitted that his contributions must be read against the global, qualitative contributions of all attendees and that a simple quantitative analysis is not relevant or possible. [Bundle C.1 page 11].

3.7.4 The statement of Ellis Cooper of 8<sup>th</sup> October 2019 stated that "*Councillor O'Neill was hosting the meeting but was in an awkward position because the property was next door to his home. Because he had a direct interest in this*

*matter, I believe he made a statement at the start of the meeting to the effect that he was hosting the meeting only and would not be participating. I can't recall Councillor O'Neill's exact words, but he indicated that he would be taking a back seat and others would take a lead because of this interest..... I think Councillor O'Neill may have gone on to participate in the meeting by asking questions albeit to a lesser extent."* [Bundle B.1i, page 250, paragraph 4]. Mr Cooper exhibited the minutes from the inter-agency meeting to his statement [Bundle B.1i pages 254- 261].

3.7.5 The Monitoring Officer Carys Kennedy said of the inter-agency meeting; *"This was a formal meeting; it was not open to the public and all Councillors in attendance were there in an official capacity. I do not recall hearing Councillor O'Neill declare a personal and/or prejudicial interest at the start of the meeting in the usual sense and he remained in the room throughout the meeting. However, I believe that he did refer to the situation that he was in. I believe that Councillor O'Neill tried very hard at the start of the meeting not to contribute, most of the questions asked of those present came from Councillor Barry, but as the meeting progressed, he did ask and answer questions and contributed to the discussions. Despite, what I believe may have been his best intentions, he did allow himself to become involved contrary to the fact that he had a prejudicial interest at the time."* [Bundle B.1j page 267/268, paragraph 9.]

3.7.6 Although it is not clear who recorded the minutes of the inter-agency meeting, they are comprehensive and appear to be verbatim minutes or at least close to verbatim minutes. It is clear that the Respondent opened the meeting by saying *"I'm the Leader of the Council I want to ask yourselves that you explain the purchase of the property at Luther Street. We are trying to work out how we find ourselves here today."* After those present had introduced themselves, including James Guy the Inspire & Support Chief Executive, and Melanie Dennis, Manager at Inspire & Support, the Respondent asked them to explain *"what you are about, how the acquisition came about?"*. Mr Guy explains the intention of his company and the services that they provide. He explains that people believe the company was opening a hostel for sex offenders and that information was on Facebook. He also observes that *"I have never had this kind of meeting where the Police are represented."* He later explains that the Facebook page has given them cause for concern and asks the meeting if they are aware of it? The Respondent answers *"Yes, acutely aware."* There is further conversation about potential young residents with criminal records and whether the placement would be for offenders and the Respondent says *"There should have been a political oversight from GC [the former Chief Executive]. I have not had oversight on what you have highlighted."*

3.7.7 The Respondent then talks about the crux being that locally we have to speak to the public and that he needs to look at the groups involved in these matters. There is further discussion about the business needs and the company and how Mr Guy wishes to offer placements to children in the borough first, and he and Ms Dennis talk of support for young people who may be at risk of drugs and alcohol, and the significant problem with Spice. Councillor Barry complains that the company has gone about the process in the wrong way. Mr Guy apologises and explained that they would not want older people being concerned. The Respondent then becomes involved again and says that when he spoke to

Ms Dennis she said “troubled youths”. Ms Dennis says “I would never define them as troubled” and the Respondent says “*You used the term troubled. If you read my post I’m compromised there is an issue where I stand, I’m approaching this from Leader of the Council. A group of individuals has been banned from the site they turned it into something else that came from communication from me. I want to clear that up regards this sinister element.*”

Although it is not clear from the evidence, it seems likely that the Respondent is referring to an entry that he made on Facebook. No extracts from Facebook appear anywhere in the evidence, but the Monitoring Officer later on in the minutes refers to people becoming entrenched in a negative position and removing people from Facebook means that they will find another forum.

3.7.8 Mr Guy asks if the sinister element has been banned and the Respondent says he will speak to the independent group about that this evening. He then says “*It has always been 16–18, troubled children, it was turned on Facebook to something else that is not beneficial to you or the community. You know about my background I get the intention that we do not care, we do care others in that street cannot exclude themselves from that information. There is a massive swell of people who do not know what is going on, the school is very close, there is a mass of people making it something, so from our point of view we have to communicate and the void has been filled by others with another agenda. This conversation would have been helpful early on.*”

3.7.9 There is then a further discussion about information and misinformation, consultation and planning or other processes and the age group of residents in the home. The Respondent says “*We have looked at this for some time. We understand the business imperative and social imperative, we said we have not been in a position like this, we are a different type of leadership group, consultation is very big to us, it is not just about you. We do not want to do anything without people having full picture. We back our actions with our words. I’m grateful for you both coming here today I know it might have felt like a cross examination. I cannot present myself as a resident, it is difficult, there are a lot of things I can give you clarity on.*” [Our emphasis, Bundle B.1i page 261].

3.7.10 Councillor Barry, who was present at the meeting, describes it in his witness statement dated 15th of January 2020; “*This meeting took place in the Leader’s office and he was present. I believe that Councillor O’Neill declared an interest at the start. Kevin is someone who always declares in fact I would say that he is paranoid about interests. He did not leave the room, but he mostly sat back and listened. I do not recall him specifically asking questions or commenting at all. He sat away from the group at his desk. There was a lot of discussion about the need of the County to provide homes for this type of children and social services expenditure in respect of the same, which we were all in agreement with, however it was clear that this was not an appropriate scheme.*” [Bundle B.2i page 371, paragraph 7].

3.7.11 Councillor David Hughes was present at the meeting and said “*During the meeting Councillor O’Neill said that he had an interest in this matter and could not lead on it as it was next to his home. He said that he was concerned to understand the rationale behind the decision to have a house of this kind in this location. The other Councillors present and I explained that we all felt that houses*

*of this nature needed to be placed carefully in an appropriate location.” [Bundle B.2j page 375 paragraph 6]. “Councillor O’Neill **contributed to the meeting to a limited extent he did ask some questions relating to process and consultation and was involved in the discussions.** I consider he was entitled to do this as no decisions or votes were being taken I did not see anything wrong with him being there and involved.” [Our emphasis].[Bundle B.2j page 375 paragraph 8].*

3.7.12 The tribunal have carefully considered the evidence and submissions upon this disputed fact including what the Respondent said in interview. The general accuracy of the minutes of the meeting have not been criticised by the parties in submissions, it has not been suggested that they are incorrect. It can be seen that although the Respondent mentioned that he was compromised, this was not until some way into the meeting when he had already made contributions, and he did not say this at the outset. Councillor Barry’s witness evidence does not accord with the minutes or the other evidence. The Respondent did not declare an interest at the start of the meeting and he did make comments. Councillor Hughes confirms that the Respondent became involved asking questions and becoming involved in the discussions. The evidence of the Monitoring Officer’s statement also accords with the minutes. It is clear that the Respondent did play an active role in the meeting which went beyond that of merely a facilitator. He opened the meeting and sought an explanation of how the property had been purchased, he contributed information, complained at the lack of political oversight and discussed the Facebook situation as well as the approach of the leadership group. He was an active participant – he was not neutral as a facilitator might be. The Respondent was not passive but was giving his opinion and making comments and asking questions. He did not make any comments that were supportive of the proposal and so his comments were not balanced as one would expect a facilitator’s to be.

**3.8. The Respondent did make comments at the inter-agency meeting on 15<sup>th</sup> August 2018 that were capable of influencing others present and any decision associated with it.**

3.8.1 The Ombudsman said in his report at paragraph 141 “*The comments attributable to him were also capable of giving the impression that he was not supportive of the proposal for this property and were therefore, at the very least, capable of influencing others present and any decisions associated with it.*” [Bundle B.1a page 42]. The Respondent argues that no decisions were to be made by the Council in relation to the Inspire plans.

3.8.2 As noted above, the Respondent played an active role at the meeting, making clear that he was the Leader, that there should have been political oversight and that he had not had oversight upon matters, seeking an explanation as to how the purchase came about and discussing the campaign upon Facebook. The Respondent says it would have been helpful to have had the conversation earlier on, and, in an indication of the likely tone of the meeting he tells the representatives of Inspire & Support that it might have felt like a cross examination. With regard to the submission that no decisions were to be made, this could not have been known in advance of the meeting, even if the meeting was primarily to seek information. A decision was made in connection with



proceeding with consultation at a public meeting, and there was the possibility, given the range of attendees, that other decisions may have been made at the meeting, or later on, and flowing from or associated with the meeting. Such decisions could include decisions made by Inspire & Support as to how to approach matters and the next steps or whether to continue with the project at all. In fact, upon the evidence, later in August 2018 and also after the public meeting, Inspire & Support did take the decision not to provide children and young people's services in the property.

3.8.3 The tribunal agree with the Ombudsman's observations in his report, cited above, that, as Leader of the Council who lived next door to the property, that the comments, in our judgment, were capable of influencing others and any decision associated with it.

### **3.9. The Respondent's conduct towards the former Chief Executive at the meeting of the 5<sup>th</sup> March 2019 failed to show respect and consideration to the former Chief Executive.**

3.9.1 The Ombudsman's report describes how the former Chief Executive Gareth Chapman and the Monitoring Officer understood that the meeting on 5 March 2019 was to discuss 'Cabinet Cover' and issues discussed in an email exchange of 26th February 2019. The then Deputy Chief Executive said that he did not know what the meeting was intended to cover and Councillor Thomas said he was asked by the Respondent to attend shortly before the meeting started. The former Chief Executive said that the Respondent ambushed the meeting and used the opportunity to have a go at him, raising several issues related to his performance as Chief Executive and advice that he had given. Mr Chapman said that he was given no prior knowledge or understanding of the concerns raised by the Respondent, who also referred to himself as Mr Chapman's line manager, despite the Respondent not having undertaken or attempted to complete any of the duties of a line manager. Mr Chapman felt that such a reference was intended to "belittle and intimidate me".

3.9.2 Mr Chapman says in his statement "*I had had enough by then and left the meeting. I had not anticipated being subjected to such criticisms particularly in front of members of my management team. I had no prior knowledge or understanding of his concerns about my performance or that he planned to discuss them at this meeting. This was appalling behaviour and I felt completely ambushed. He did not give me the chance or pause at any point for me to respond. He spoke to me as if I were a child. His tone of voice was very commanding and dictatorial. I felt demoralised and bullied. I am a professional have been throughout my career. At the level I am at, it should not have been done in front of others. There should have been a 1-1, I should have been briefed, forewarned and forearmed, there should have been open dialogue. If I have failings I need to know and understand what they are, I would of course want to put them right but this was denied to me. It could have been done in a review format. It should not have been a one-sided conversation, I had no right of response. I was shell shocked.*" [Bundle B.1h page 211, paragraph 25].

3.9.3 The Monitoring Officer in her statement says; “He *did not afford anyone in the room the chance to respond to any of the issues raised. At this point Gareth stood up and said that he couldn’t take anymore and left the room. I have the impression that all of us in the room were shellshocked by what we had observed. It was a very uncomfortable environment for us all. After Gareth left Councillor O’Neill continued in a similar vein he said that he shouldn’t be stopped from airing these issues, these things had to be said and resolved. I spoke and said that I agreed that matters did need to be resolved but that I felt it was a really inappropriate way for it to have been done.*” [Bundle B.1j page 270, paragraphs 16 and 17.

3.9.4 The Monitoring Officer continues “*I can appreciate why Gareth felt that he was ‘ambushed’ at the meeting of 5th of March. It was clear to all present that this was what Councillor O’Neill intended to do. I would describe it as an ‘attack’. There had been no pretext set for this meeting. I was astounded and shocked by the approach taken by Councillor O’Neill. Councillor O’Neill spoke in a heightened manner and you could tell that he felt very strongly about the issues raised. In my opinion Councillor O’Neill’s behaviour during this meeting was inappropriate and certainly disrespectful..... even if Councillor O’Neill had the best of intentions, his actions in attempting to discuss issues about an officer’s performance without advance notice, in the presence of others who are subordinates is wholly wrong in my opinion.*” [Bundle B.1j page 271 paragraph 20]. The Monitoring Officer made contemporaneous notes about this meeting which were exhibited to her statement. [B.1j pages 292-297].

3.9.5 Mr Cooper the former Deputy Chief Executive confirms that if the Respondent’s purpose for calling the meeting had been to hold Mr Chapman to account this was not communicated in advance and did not come across in that way. He says that the Respondent had not sought advice from him as to how to raise performance issues. He says that he did not really know what the meeting was for but it transpired very quickly that the purpose of the meeting was not what any of the officers in attendance including Mr Chapman were expecting. He describes the Respondent effectively going through a list of issues for 10 minutes and says “*I was surprised by Councillor O’Neill’s approach at this meeting and it was not what I was expecting. **He was clearly not going to be interrupted.** It was uncomfortable, and it placed me and the others in the room in a difficult situation. Although, I could tell from the way things were between Gareth and Councillor O’Neill that it was going to come to a head at some point, I was not expecting it that day. There are valid points on both sides, rightly or wrongly, tensions were building, **and it was coming but this clearly was not the right way for it to have done so.** I do have some sympathy with Councillor O’Neill and the other politicians and really do consider that he may have been attempting to act with the best of intentions.*” [Our emphasis] [B.1j page 252 paragraph 13].

3.9.6 At interview, the Respondent described his demeanour at this meeting as “assertive” but denied that he had behaved in a bullying, demoralising, intimidating, undermining and disrespectful manner towards Mr Chapman. The Respondent said “*I think it was appropriate. It was reasonable. Um, some would say, long overdue.*” [B.2L page 537]. It was put to the Respondent that Mr Chapman felt ambushed and did not know what he was going into and there was personal criticism. The Respondent said that “*.. my view was to take it on the*

*chin, you move forward... be adult and professional about it.”* The Respondent said he was right to have the Monitoring Officer at the meeting and when it was put to him that both the Monitoring Officer and the Deputy Chief Executive expressed the view that it was not the most appropriate forum for Mr Chapman’s behaviour or performance to be scrutinised the Respondent said *“I should have done it earlier. And it was appropriate. I’m not being true to myself or the people who elected me, if I can’t challenge something in that fashion, in a reasonable way.”* [B.2L page 543].

3.9.7 This was a view later repeated by the Respondent *“I believe I should have challenged Gareth much, much earlier. I believe the format in which I challenged him was right and proper at that time I felt the attendance was right and proper at that time. I felt I was professional and assertive when I did it. It hadn’t been done before. Not in that way, it happened twice in meetings where I’d made almost like a one line challenge.”* [B.2L page 549].

3.9.8 The Respondent was asked by the Investigating Officer why he did not use the authority’s officer/member Protocol Process to pursue concerns with Mr Chapman either previously or on 5 March 2019. [B.2.L page 528], but he did not offer any answer and the point was not pursued in interview.

3.9.9 The Respondent submitted that the clear and consistent evidence including from Mr Cooper was that there had been a reciprocity of challenge and that the foundation for the Respondent’s challenge in terms of the former Chief Executive’s conduct in office was a fair one.

3.9.10 The Member Code of Conduct of the authority includes the Protocol that governs Officer/ Councillor relations. This requires that Councillors and Officers should treat each other with respect at all times and that

*“2.7 All dealings between Councillors and Officers should observe reasonable standards of courtesy and neither party shall seek to take advantage of their position.*

*2.8 If there are any concerns where Councillors may have reason to complain about the conduct or performance of an Officer, all such complaints should be made in person or in writing, either to the Chief Executive, Director or Monitoring Officer as appropriate and in the case of the Chief Executive to the Monitoring Officer.”*

3.9.11 The tribunal note that it is not in dispute that the Respondent failed to follow the Protocol, and did not give the former Chief Executive any indication prior to the meeting of 5 March 2019, that he intended to raise performance issues with him. The tribunal note that in the statement of Councillor Geraint Thomas [B.2g page 350 and 351], he described the meeting of 5 March 2019 as very relaxed and open with a fine and comfortable atmosphere. He described the way in which the Respondent spoke to Mr Chapman as being “in a relaxed and reasonable manner”. These descriptions are at odds with the rest of the evidence, including the Respondent’s own evidence of his assertive tone and manner. Accordingly, we do not accept that Councillor Thomas’s account of the meeting is reliable. The tribunal prefers the accounts of the former Chief Executive and the Monitoring Officer and Mr Cooper. The Monitoring Officer says of this meeting that she attempted to explain a point and *“Councillor O’Neill told*

*me “you will get your turn”. I do not think he was trying to be aggressive towards me but had got himself so worked up he didn’t want to be stopped by me.....He did not afford anyone in the room the chance to respond to any of the issues raised. At this point Gareth stood up and said that he couldn’t take anymore and he left the room.” [B.1j paragraph 16 page 270].*

3.9.12 The tribunal find that the Respondent’s conduct towards Mr Chapman at the 5th March 2019 meeting clearly failed to show respect and consideration to him. No warning was given to Mr Chapman about the contents of the meeting and the way in which he was spoken to, upon the evidence of Mr Chapman, Mr Cooper and the Monitoring Officer, which we prefer, was inappropriate, hectoring and uninterruptible, and went beyond assertiveness.

#### **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

**The inter-agency meeting of 15<sup>th</sup> August 2018.**

##### **Allegation 1.**

**Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15<sup>th</sup> August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.**

##### **4.1 The Ombudsman’s Submissions**

4.1.1 The Ombudsman said that *“the minutes of the meeting suggest that the Respondent did not disclose his interest at the start of the meeting despite the fact that this was the only item for consideration and that the meeting had been planned for the purpose of discussing this issue only. The PSOW submits that his interest would have been apparent to CO’N at the outset. Whilst noting that C O’N refers to his position much later in the meeting after he said ‘I want to ask yourselves that you explain the purchase of the property’ and expressed his views, i.e. ‘There should have been a political oversight from GC’, this is not in keeping with the spirit and strict requirements of this provision of the Code.”* [D.1 page 9]. The Ombudsman’s report makes the same point at paragraph 180 *“On 15th August, whilst acknowledging Councillor O’Neill’s assertion that everyone knew of the location of the property and of his interest in it, in the interests of openness and transparency Councillor O’Neill should have at the very least made a formal declaration concerning his personal interest, at the start of agency meeting, or as soon as possible afterwards, given that this interest was apparent to him at the outset.”* [ B.1a page53]

##### **4.2 The Respondent’s Submissions**

4.2.1 The Respondent submitted that he consistently considered and pronounced his interest in advance of and at every opportunity, (often more often than once). [C1 page 14]. Reference was made to the evidence of Councillor

Barry and his description that the Respondent was almost “paranoid” about it [B.2i page 371 paragraph 7]. The Respondent argued that the consistent evidence, even from witnesses more aligned to the former Chief Executive (Lisa Curtis Jones and Carys Kennedy), and from contemporaneous documents where they exist, is that he declared his interest more than once in the 15th and 20th of August meetings. (We are not concerned with the meeting of 20th August 2018).

### **4.3 Case Tribunal’s Decision on Allegation 1**

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority’s code of conduct as follows:

4.3.2 Paragraph 11 (1) of the Code of Conduct states that where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

4.3.3 The minutes to the meeting that have been previously referred to were exhibited to the statement of Ellis Cooper and it has not been suggested by either party that these minutes are inaccurate (indeed the Respondent refers to them and relies upon them for some of the points that he makes). Those minutes make it clear that the Respondent did not at the commencement of the meeting, orally declare the existence and nature of his personal interest- he introduced himself as the Leader of the Council and asked Inspire & Support to explain the purchase of the property. Much later in the meeting the Respondent, apparently referring to Facebook says that *“If you read my post I’m compromised there is an issue where I stand, I’m approaching this from Leader of the Council.”* [B.1i page 259]. Later, near the end of the meeting the Respondent says that *“I cannot present myself here as a resident, it is difficult”* [B.1i page 261].

4.3.4 The tribunal agrees with the Ombudsman’s submissions at 4.1.1 above. The Respondent did not behave as he should have done to have complied with the Code. He did not disclose his personal interest before or at the commencement of consideration of the matter. He should have unequivocally done so at the outset, at the beginning of the meeting. His declaration of interest, such as it was, was a reference to being compromised and came some way through the meeting. The minutes demonstrate that the evidence of the Monitoring Officer was accurate and the tribunal prefers this to the evidence of Councillor Barry, relied on by the Respondent, who said that *“I believe that Councillor O’Neill declared an interest at the start. Kevin is someone who always declares. In fact I would say that he is paranoid about interests.”* [B.2i page 371 paragraph 7]. On the evidence of the minutes, Councillor Barry was wrong; the Respondent failed to declare an interest at the start, although implicit in Councillor Barry’s remarks is the recognition that the Respondent should have done so.

## **Allegation 2**

**Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15<sup>th</sup> August 2018.**

### **4.4 The Ombudsman's representations.**

4.4.1 The Ombudsman submitted that the requirements of paragraph 14(1) of the Code applied since the property and the issues associated with it were being **considered** at the meeting and it was irrelevant that the parties at the meeting were not required to make any 'decisions' associated with the property/development at that meeting. The Ombudsman's view was that the Respondent's *"personal and prejudicial interest in this matter meant that he should not have been involved in any business of the Council relating to this matter. However, the concession made by the MO provides mitigation for any breaches associated with his attendance at the meeting on 15<sup>th</sup> August."* [D page 10]. The Ombudsman in final submissions also made the comments cited in full at 3.3.17 above [Further Submissions page 97 paragraph 6] in which it is asserted that the factual context speaks for itself and *"it is difficult to imagine a factual scenario where the existence of a prejudicial interest ought to have been more obvious."*

### **4.5 The Respondent's submissions.**

4.5.1 The Respondent submitted that he did not have a prejudicial interest since, broadly there was no Council decision to be made at the inter-agency meeting, and that in any event the "ordinary person" test (in paragraph 12 (1) of the Code) is not met in that the ordinary informed member of the public would not consider that the Respondent had a prejudicial interest in any matter where the Council had no decision or remit. [ Further Submissions page 75 paragraph 3].

### **4.6 The Case tribunal's decision on allegation 2.**

4.6.1 On the basis of the findings of fact and that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane, the tribunal unanimously found the allegation proven and there was a failure to comply with the authority's Code of Conduct as follows.

4.6.2 Paragraph 14(1) of the Code of Conduct states that *"... where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee-*

*(a) withdraw from the room, chamber or place where a meeting considering the business is being held -"*

4.6.3 The Case Tribunal found that the Respondent had a prejudicial interest and did not withdraw from the room at the inter-agency meeting on the 15<sup>th</sup> August 2018 when the Luther Lane property was being discussed in breach of

paragraph 14(1) (a) of the Code. The case tribunal agrees with the Ombudsman that in the absence of a dispensation from the standards committee, that the Respondent should not have been present at any meeting where the prejudicial interest was under consideration at all but notes the mitigating factors that are addressed further below.

### **Allegation 3**

**That the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15<sup>th</sup> August 2018.**

#### **4.7 The Ombudsman's submissions.**

4.7.1 The Ombudsman's report at paragraph 181 makes the point that paragraph 14 of the Code required the Respondent to withdraw from the room, not to seek to influence a decision about that business or make any oral representations about that business. The Ombudsman observes "*The Code requires those with a prejudicial interest to withdraw in such situations so that their contributions and/or mere presence cannot influence others. His failure to do so is clearly contrary to those requirements.*" [B.1a page 53]. The Ombudsman further says that all and any oral representations are precluded where a member has a personal and prejudicial interest in any business of the authority unless in receipt of a dispensation. The Ombudsman rejects any anticipated submission that representations are "arguments in an attempt to persuade". [D.1 page 10].

4.7.2 The Ombudsman further noted that decisions of the authority are not confined to statutory decisions such as the grant of planning permission, and that the authority makes other non-statutory decisions all the time. Such decisions include, for example whether an authority expresses support for or disapproval of a private proposal within the authority area. These submissions on decisions were made in the context of the stage one consideration of the facts but are also relevant here (Further Submissions page 95).

#### **4.8 The Respondent's submissions.**

4.8.1 The Respondent submits that there was no Council decision to be made, or to influence, or to seek to influence. The small planning matter associated with the proposal (disability adjustment) had already been resolved. The Respondent submits that the evidence consistently demonstrates that Inspire's decision to withdraw was its own and was not influenced by the Respondent's position. [C.1 page 7]. The Respondent further invites the tribunal to review the notes taken by the former Deputy Chief Executive on this matter, and that there were multiple vociferous views in the room which were not the Respondent's. The Respondent repeatedly refers to the complexities of his position and that on most of the occasions the Respondent spoke it was two to three words. Further, the Respondent says that the primary reason for the Ombudsman's conclusion that he sought to influence the matter, was the Respondent's own evidence about being approached by members of the public and their perceptions, which the Respondent consistently corrected. It was submitted that his volunteering of this

information was not evidence of him seeking to influence, but was evidence of the opposite. [C.1 page 15].

4.8.2 These submissions were repeated in the written submissions of 27<sup>th</sup> November 2020 [Further Submissions page 75/76]. In the Respondent's final submissions of 9<sup>th</sup> December 2020, he attaches a letter from Inspire and Support on which he relies, addressed 'Dear Residents', which although undated, says that following the information sharing event on 20<sup>th</sup> August 2018 (which was a public meeting that is not the subject of any allegations for the tribunal's consideration), that the company shared 'all of your views' with our board of directors and completed a risk assessment, 'the result of which is that we will drop all plans to support Children and Young people at the property and will instead redevelop it for general sale.' [Further submissions page 90]. The Respondent, as part of his submissions on this point, notes the Ombudsman's submission that the decision of the company to withdraw their plans is very likely to have had a beneficial impact on the Respondent and his family, over and above that of other members of the community, as an immediate neighbouring property owner. The Respondent says that, to the extent that it is relevant, there was no obvious beneficial impact for the community of the development: it was intended for children who would come from outside the community. The Respondent makes the point that the Ombudsman did not take any evidence from Inspire & Support, but such evidence as exists and was confirmed by third parties indicates that Inspire's decision was entirely its own. [Further submissions page 86].

#### **4.9 The Case Tribunal's decision on allegation 3.**

4.9.1 The Case Tribunal unanimously found that the allegation was proved and that there had been a failure to comply with the Code as follows; Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority, states that a member must "*not seek to influence a decision about that business*".

4.9.2 The tribunal has found that the Respondent had a prejudicial interest and the inter-agency meeting was, as noted above at 3.3.16, considering the business of the authority. The decision about that business does not need to be a formal decision of the authority that is subject to a vote or to committee approval or other formal process. There are a range of decisions that can be made 'about that business' and associated with that business. For example, one such decision could be whether to place children or young people from the authority with that care provider.

4.9.3 The tribunal notes that the Respondent in his comments on the draft Ombudsman report said that "*.. it was always made clear the property was to support troubled children from outside Wales. It is clear this will not provide any benefit for the residents of Merthyr Tydfil and only support the business aims of the company.*" [B.2n page 595]. This point was also made in the representations as noted in paragraph 4.7.2 above. In fact, at the inter-agency meeting, Mr Guy of Inspire & Support said that his company was set up with the express intention of supporting young people and children in South Wales and their research had looked at the whole of Wales and they had found that Merthyr Tydfil was the only Borough that did not have any small group registered homes for a small number



of children to live as a family. He was aware that lots of young people have to leave the Borough because they can't be supported and some people have to go to other boroughs. That is what had led them to Merthyr where they were looking to set up a normal family home. [B.1.i page 254/255]. It is clear from Mr Guy's comments therefore that they were looking to house children from the Merthyr area.

4.9.4 Inspire & Support were a new and small company called to a meeting at which the Police were in attendance which clearly surprised them, as commented on by Mr Guy. The Ombudsman's report says at paragraph 141, of the Respondent's contribution to the meeting "*The comments attributable to him were also capable of giving the impression that he was not supportive of the proposal for this property and were therefore, at the very least, capable of influencing others present and any decisions associated with it.*" [B.1a page 42]. The tribunal agrees. The Respondent, as leader, did not have to get involved at all with this matter as there were two other Councillors, Hughes and Barry also present at the meeting who could and should have dealt with the matter. But, as is noted later under sanction, the Respondent clearly felt that neither could do as effective a job as him.

4.9.5 Paragraph 14(1)(e) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must "*not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.*" The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and made oral representations in the inter-agency meeting on the 15<sup>th</sup> August 2018 in breach of paragraph 14 (1) (e) of the Code.

4.9.6 The Case Tribunal has found as a matter of fact that the Respondent went beyond the role of facilitator at the interagency meeting on 15 August 2018 and made a number of interventions. It is clear from the minutes of that meeting that the Respondent's contributions were not confined to two or three words as he contends and we refer to our comments at 3.7.13 and 3.8.3 above. The Respondent was making oral representations at that meeting- he did not cease to make comments after declaring that he was compromised, and, given that his prejudicial interest was apparent at the outset, he should not have made any comments. He started by saying that he wanted the company to explain the purchase of the property and 'how we find ourselves here today'. The comments he made related to there not having been political oversight on this matter and that he has not had oversight on what has been highlighted. He talks of Facebook and a massive swell of people who do not know what is going on, and are making it something, that the Council has to communicate on this as the information void has been filled by others with another agenda. He says "*we have not been in a position like this, we are a different type of leadership group, consultation is very big to us, it is not just about you. **We do not want to do anything without people having the full picture.***" [Our emphasis] [B.1i page 261]. These comments constitute oral representations. For example, that there should have been and should be political oversight of this matter. The Respondent talks of the need to provide information because of the response on social media, he says that consultation is important to his leadership group. The words highlighted in bold

above also give the clear impression that the leadership group and/ or the Council will be taking some action that will require a decision once people have the full picture. The Respondent has made it clear that he is the leader of the Council. He is in a position of authority and has opened the meeting seeking to know how the situation (of Inspire & Support purchasing a building in a residential area to support children and young adults, of which he was until recently unaware), has come about.

4.9.7 By making the comments and being involved in a meeting about a property next door to his home in which he had a prejudicial interest, and as leader of the Council, the case tribunal are satisfied that the Respondent was seeking to influence a decision about that business. The Respondent said in his comments on the draft Ombudsman's report *"I could not influence the matter as there was nothing anyone could do to stop Inspire & Support, as they had complied with regulations and were 'ready to go' to start business at St David's. After this time, Inspire & Support recognised the public disquiet and arranged a public meeting."* [B2.n page 595]. In fact, it can be seen that the company did not proceed, and in that sense was stopped from proceeding, apparently after recognising the strength of public feeling against their proposal. Public feeling that was highlighted by the Respondent in his comments at the interagency meeting.

#### **Allegation 4**

**4.10 That the Respondent's e mail to the Director of Social Services on 16<sup>th</sup> August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the e mail sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.**

#### **The Ombudsman's submissions.**

4.10.1 The Ombudsman's report at paragraph 85 records that the Respondent said *"that he did not consider whether he needed to expressly state that he had a personal interest in the application when emailing the Director of Social Services on 16 August, as it was 'glaringly obvious'. He said that he had spoken to her about it, his position had been clear since 'day one'. He said that the questions he raised in the email were focused on finding out what influence the organisation had in the town. He said he suspected that he and the other members of his group had not been given enough information about the extent of the involvement by Officers and previous discussions with Inspire & Support to reach a decision."*

4.10.2 The Ombudsman noted that the email does not contain a declaration which would satisfy the provisions of 11 (2) (a) and *"Additionally, in view of his prejudicial interest in this matter, I do not consider that it was appropriate for Councillor O'Neill to make written representations of this nature. I can see no justifiable reason for his conduct in doing so. Councillors Barry and Hughes were extensively involved in this matter and could have engaged with the Director of Social services in this way. I consider that doing so, in the full knowledge of the*

*Monitoring Officer's advice that he had a personal and prejudicial interest, was inappropriate and unnecessary. Whilst acknowledging Councillor O'Neill's strong feelings about the need to respond to questions posed by members of the community and his desire to be open and transparent, his conduct in involving himself in such a controversial matter in the knowledge that he was 'compromised', was capable of negatively impacting on the reputation of the Council and its elected members. I am mindful that Councillor O'Neill himself advised that some members of the public see that he had been able to influence this matter. I am therefore satisfied that his actions in sending this email are suggestive of a failure to comply with paragraphs 14 (1) (c) and (d) of the Code."* [B.1a pages 54 and 55 paragraph 185].

4.10.3 The Ombudsman says that the proximity of the email to the meeting, and the comments made by the Respondent towards the end of the meeting the previous day, do not relieve the Respondent of his responsibility to declare his interest. The declaration is required in the promotion of the principle of honesty and to ensure transparency and openness. The email does not in the Ombudsman's view, contain an appropriately worded declaration sufficient to demonstrate compliance with the Code (11)(2)(a). [D.1 page10].

#### **The Respondent's submissions.**

4.11.1 The Respondent points out that he sent the email to Lisa Curtis Jones the Director of Social Services who had been present at the meeting on 15 August, and that she was well aware of his interest and position as a resident. It is submitted that the context has to be relevant to the application of this paragraph of the Code and that the Ombudsman's conclusion that the email does not contain the declaration that would satisfy 11(2)(a) would be absolutely right were it not for the proximity of the meeting. The email was not a surprise or unannounced and thus did not need more context. There was no attempt whatsoever at deception or lack of transparency. [C.1 page 14]. The Respondent submits that the email cannot be seen in isolation and that the content is important as the Respondent was not raising issues of personal concern to him but was seeking clarity on issues which arose at the meeting and which affected the community. [Further submissions page 74].

#### **4.12 The Case Tribunal's decision on allegation 4.**

4.12.1 It was not in dispute that the email sent by the Respondent on 16<sup>th</sup> August 2018 to Lisa Curtis Jones did not include any declaration of his personal or prejudicial interest in the matter of the Luther Lane property. The Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority's Code of conduct as follows:

4.12.2 Paragraph 11(2)(a) of the Code of Conduct states that "(2) *Where you have a personal interest in any business of your authority and you make- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;*"

4.12.3 The Respondent in effect argues that since the email was sent in such close proximity to the meeting and that the recipient was aware of his interest, that, in this context, there is no need to comply with the Code. The tribunal agrees with the submission of the Ombudsman at 4.10.3 above. The requirements of the Code are straightforward and should not be difficult to comply with, and if complied with, offer protections against allegations such as allegation 4. When emails or written representations in other form are made, there is the possibility or likelihood that they may be referred to at a later date and/or shared with others, not just the immediate recipient. Those others will not be aware of a personal or prejudicial interest if, as here, the Code is not complied with. It is not for the Respondent or anyone else bound by the Code, to pick and choose compliance with the Code depending on proximity to meetings and the perceived knowledge of others. To do so breaches and undermines the Code and its purpose.

4.12.4 Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must *“not seek to influence a decision about that business”*. Paragraph 14(1)(d) of the Code of Conduct states that where a member has a prejudicial interest in any business of the authority that the member *“must not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business”*

4.12.5 The Case Tribunal unanimously found that the Respondent had a prejudicial interest in the property at Luther Lane and sent an email to the Director of Social Services on 16<sup>th</sup> August 2018 in breach of paragraphs 14(1) (c) and (d) of the Code. The breach of 14(1)(d) is straightforward. The email sent by the Respondent [B.2f page 131/132] clearly makes representations about the business of the authority in which the Respondent has a prejudicial interest. The Respondent in the email says that the meeting asked more questions than it answered and said that he had very little clarity of business intent or historical success in the chosen field from Inspire & Support. He sought the answer to a number of questions be provided to him before 5 pm on Monday, 20 August 2018 at the latest and expressed the view that he suspected that this model of service provision, that he described as the ‘St David’s type model’, has never been discussed in any particular detail or in the format presented by Inspire & Support on the previous day. The Respondent talked of his suspicions that this model had been developed away from political scrutiny and asked for details of when there were specific conversations between social services and the Commissioning Manager in relation to St Davids, and he wanted to know if there were any other projects of a similar nature in existence where Social Services were aware of them and the elected members were not. The email talked of wanting more transparency to the process and an early oversight by the appropriate members. The email says *“As I stated yesterday as an Elected Member and Leader it is my responsibility to hold service leads and ultimately the Chief Executive to account for the services and to be able to report back to the public whatever details they require where appropriate.”*

4.12.6 The email in response from Lisa Curtis Jones on 16<sup>th</sup> August 2018 told the Respondent, amongst other things, that Annabel Lloyd (Head of Service for Children) was emailed on 2nd August 2018 and the address of the placement

was included. A meeting was put in the diary for 28th August 2018 to discuss these plans. Annabel Lloyd texted Lisa Curtis Jones straight away to tell her where the address was, and Lisa Curtis Jones said that she went to inform the Respondent who was in a meeting, so she spoke to Councillor Hughes who said that he would inform the Respondent. [B.2f page 134]. The tribunal notes that the meeting planned for the 28<sup>th</sup> August to discuss this does not appear to have taken place, or at least was preceded by the meetings being set up on the 15<sup>th</sup> August 2018.

4.12.7 The contents of the Respondent's email, in making clear his displeasure and suspicions that the proposed model of service delivery in this case was developed away from political scrutiny, and asking for further information, does seek to influence a decision about that business. The tribunal refers to the earlier discussions on decisions within this determination- the fact that this email request for information and expression of the Respondent's views, was made after the meeting on 15<sup>th</sup> August 2018, does not mean that there was no decision to influence. The email from the Respondent seeks clarity about conversations between the commissioning agent and the Social Services Department and in the tribunal's judgement, the rest of the email points to decisions to be made about the future process for developing the 'St David's model' so that there is transparency and early oversight by the elected members. It cannot be said, at this stage of the Respondent's knowledge of the matters, and given his request for more information, that there will be no decision to be made on this business of the authority.

## **Allegation 5**

**4.13 Whether the Respondent's actions in speaking at the meeting of the 15<sup>th</sup> August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16<sup>th</sup> August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.**

### **The Ombudsman's submissions.**

4.13.1 The Ombudsman's report at paragraph 186 says; *"...I consider that Councillor O'Neill's actions involving himself in this matter to such an extent, contrary to advice received, is also capable of bringing the authority into disrepute. His involvement in this matter has been viewed by members of the public as having been influential. According to Councillor O'Neill, the impression gleaned by members of the public that he 'stopped' the development in his own street can only serve in my view to negatively impact upon the reputation of the Council and the public perception of its elected members. In this context, I am satisfied that Councillor O'Neill's actions and speaking at the meeting, sending written correspondence to an officer and seeking to influence the matter is suggestive of a breach of paragraph 6 (1) (a) of the Code."* [B.1a page 55].

4.13.2 The Ombudsman points out that actual evidence of disrepute is not required and suggests that the Respondent's conduct could **reasonably be regarded** as bringing the office or authority into disrepute. [D.1 page 9].

### **The Respondent's submissions**

4.13.3 The Respondent denies that his behaviour went beyond that of facilitator at the inter-agency meeting, and denies the Ombudsman's suggestion that his conduct breached Code 6(1)(a). The Respondent submits that *"The only apparent reason for this conclusion was C O'N's own honest evidence that the community had the impression that he could or should be stopping the planned home at St.David's – an impression is clear from his evidence that he sought to stop and correct at every opportunity. C O'N cannot be held culpable for a wider community understanding that he discourages at every opportunity. Further, there is no actual evidence (and none was referred to by PSO) that his role as resident in this context had the effect – or even came close to having the effect or potential to – bringing his office or authority into disrepute."* [C.1 page 13].

### **The Case Tribunal's decision on allegation 5**

4.14.1 The Case Tribunal unanimously found that the Respondent's conduct in speaking at the inter-agency meeting on 15<sup>th</sup> August 2018 and sending the email to the Director of Social Services on 16<sup>th</sup> August 2018 in relation to business of the authority in which he had a prejudicial interest amounts to a breach of Paragraph 6(1)(a) of the Code. *"6.-(1) You must - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."*

4.14.2 The Respondent had a clear prejudicial interest in the matter. As he noted himself in interview, he had invested a lot of money in his property, right next door. The issues with the potential use of St. David's as accommodation for troubled children and young people would be similar to a planning application, in that this matter had the potential to affect the value of the Respondent's property. The Respondent submits that it was others who had the impression that he could or should be stopping the planned home at St David's and that he sought to correct this at every opportunity. The Respondent also continued to maintain that he did not have a prejudicial interest. At the same time that the Respondent was proclaiming this view he was attending at a meeting and making written representations contrary to the Code. However, the tribunal's findings of fact and of the prejudicial interest mean that the Respondent should not have been involved at all at the inter-agency meeting on the 15<sup>th</sup> August 2018. He should not have been present. He should not have been emailing the Director of Social Services for the authority demanding information on the process that led to the development next door to his home and demanding to know when the authority had first become aware of it.

4.14.3 The tribunal's task is to assess whether the Respondent's conduct in breaching the Code in the manner found, could also 'reasonably be regarded as bringing your office or authority into disrepute'. In the tribunal's assessment it could- the Ombudsman has observed elsewhere that the potential for the

Respondent to be characterised as a NIMBY ought to have been entirely clear. That the Respondent remained involved in the way that the tribunal has found could reasonably be regarded as bringing his office, as leader, and the authority into disrepute. As Leader, the public perception is likely to be that he has a level of influence and ability to influence the business of the authority.

## **Allegation 6**

### **4.15 Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5<sup>th</sup> March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.**

#### **The Ombudsman's submissions.**

4.15.1 This issue has been explored from paragraph 3.9 above. The Ombudsman has not disputed that there appears to have been a breakdown in the relationship between the Respondent and the former Chief Executive, but rejects that the nature and history of the relationship provided a fair and just foundation for the Respondent's approach in holding the former Chief Executive to account at the meeting on 5 March 2019. The Ombudsman notes that there are appropriate mechanisms in place in the Council for elected members to hold officers to account, and that such processes were not used by the Respondent [D.1 pages 5 and 8 and paragraph 198 of the Ombudsman's report B.1a page 59].

#### **The Respondent's submissions.**

4.15.2 The Respondent has said that there was a reciprocity of challenge from the former Chief Executive and that the foundation for the Respondent's challenge in terms of the former Chief Executive's conduct in office was fair. The Respondent argued that it was the content of the criticism that caused offence and led the former Chief Executive to complain to the Ombudsman, rather than the manner of the delivery of it. The Respondent accepts that the meeting could have been handled differently, but says it was not an obvious breach of the relevant part of the Code when the wider context is considered. [C.1 page 13]

#### **The Case Tribunal's decision on Allegation 6.**

4.15.3 The case tribunal unanimously find that the Respondent's conduct towards the former Chief Executive of the Authority at the meeting of 5<sup>th</sup> March 2019 breached paragraph 4(b) of the Code which states that a member must "*(b) show respect and consideration for others.*"

4.15.4 The case tribunal note the contents of paragraphs 3.9.1 - 3.9.13 and the finding of fact on this issue above. The Respondent's argument that he had good reason to raise the issues with the former Chief Executive does not prevent the manner of them being raised from being a breach of the Code.

## **5. SUBMISSIONS ON ACTION TO BE TAKEN**

### **5.1 The Respondent's Submissions**

**[C.1 pages 18-29, Further Submissions pages 74-80, 86-89]**

5.1.1 The Respondent contended that if any breaches are found then they are at the lower end of the spectrum of seriousness. They principally demonstrate naiveté by an officer new to an immediately senior role in local government, and at an authority where political tensions between parties and individuals have historically been complicated and fraught. The Respondent has since worked very hard to improve himself and his understanding of his position and responsibilities and he will continue to do so in the service of his community.

5.1.2 There was no intention to deceive nor any indication of dishonesty – there is no accusation that the Respondent is trying to conceal an interest in connection with the St David's property.

5.1.3 The Respondent maintained that save for the 16th August email, where the context was obvious, the Respondent disclosed his interest and his discomfort at his 'compromised' position on every occasion/meeting relating to the Inspire proposals for the property.

5.1.4 The Respondent has been candid and open in giving evidence, and his concern and interest with regard to the Inspire proposals was not simply out of self-interest, but out of his genuine concerns for a community of elderly people and a nearby school.

5.1.5 The incidents which were the subject of the complaint were isolated, the St David's property allegations took place over a period of no more than two weeks and there are no allegations or findings of incompetence or systemic failings or breaches. They are not indicative of any pattern of behaviour.

5.1.6 The Respondent regrets the lack of notice of his criticisms of the former Chief Executive at the March meeting, but stands by the facts of his criticisms and the need for those matters to have been addressed and corrected.

5.1.7 The Respondent has a long and unblemished history of serving the public, having previously had a distinguished decorated four-decade career in the South Wales Police, retiring in 2014 as Chief Superintendent Divisional Commander Northern Division.

5.1.8 The Respondent made a request for statutory support for the authority from Welsh Government in June 2019. As a result, an external adviser, John Gilbert, provided a report in September 2019 setting out a framework for improved governance, leadership and accountability. The Respondent is committed to implementing the recommendations and making positive change to improve operations and the culture at Council.

5.1.9 The Council is continuing to make progress and the Respondent has an excellent positive and productive working relationship with the new Chief Executive, Ellis Cooper.



5.1.10 The Respondent has undertaken various leadership training during his time in office including the WLGA Leadership course, and he is committed to continuing training.

5.1.11 The Respondent now has greater insight into the events which were the subject of the original complaint and recognises the importance of concepts such as personal interest and prejudicial interest. He has a greater understanding of the Code.

5.1.12 The Respondent has not and did not recklessly or deliberately ignore the advice of the Monitoring Officer.

5.1.13 A suspension would be inconsistent with Case Tribunal decisions. Suspensions have been imposed for conflict-of-interest offences or deliberate acts to obtain a personal benefit or attempts to deceive/dishonesty. That is not the case here.

5.1.14 Against the background of progress being made by the Council, the public interest would not be served by issuing a sanction beyond a warning in this matter. A more serious sanction would risk halting the significant progress the Respondent has made in his own learnings and his contribution to the Council's progress.

## **5.2 The Ombudsman's submissions**

### **[Further Submissions pages 66-70, 94-97]**

5.2.1 The Ombudsman contended that the purpose of the ethical standards framework is to promote high standards amongst members of councils in Wales and that the Code of Conduct is of central importance in maintaining public confidence in local democracy. Sanction is a matter for the Case Tribunal but the Ombudsman wished to highlight relevant factors from the Adjudication Panel for Wales' Sanctions Guidance ("the Guidance").

5.2.2 In terms of the seriousness of the breaches, Evidence suggested three breaches of the Code in relation to the inter- agency meeting, a further three in relation to the email of 16 August 2018, and a breach of paragraph 6(1)(a) in respect of his involvement on these two occasions in the Luther Lane matter.

5.2.3 Whilst the Respondent's conduct at the inter-agency meeting and in sending the email of 16th of August may not have been motivated exclusively by personal gain, the decision made by Inspire & Support to withdraw their plans is likely to have had a beneficial impact on the Respondent and his family over and above other members of the community, as an immediate neighbour.

5.2.4 It is reasonable that discussions at the inter-agency meeting may have at the very least contributed to Inspire & Support's decision not to proceed with their plans, potentially resulting in a loss of accommodation for troubled teenagers who needed a home.

5.2.5 The Respondent's blatant disregard for the advice of the Monitoring Officer at the inter-agency meeting is a relevant factor in assessing the seriousness of any breaches associated with it.

5.2.6 The nature of the Respondent's conduct at the inter-agency meeting of 15 August 2018 clearly falls below the standards of behaviour expected of an elected member and would be capable of undermining public confidence in the role of elected members more generally and ultimately the Council itself, to such an extent that it would at the very least have the potential to bring the Council or office into disrepute.

5.2.7 With regard to the meeting of 5 March 2019, the nature of the breach, including the Respondent's expressed pre-determined intention and motivation to confront the complainant at the meeting, should be taken into consideration. Further the Ombudsman directs the tribunal to the impact and actual consequences on the complainant, the former Chief Executive, detailed in his statement.

5.2.8 The Respondent's blatant disregard for the member/officer protocol is another relevant factor to be taken into consideration in assessing the seriousness of the breach in relation to 5 March 2019 meeting.

5.2.9 Whilst the nature of any sanction is a matter for the Case Tribunal, the purpose of the sanction is to provide a disciplinary response to an individual member's breach of the Code; to place the misconduct and appropriate sanction on public record; to deter future misconduct on the part of the individual and others; to promote a culture of compliance across the relevant authorities; to foster public confidence in local democracy.

5.2.10 Having regard to the breaches found, a 'no action' decision would not be appropriate and a disciplinary response is merited. The breaches took place over a period of time were not isolated events.

5.2.11 The Ombudsman notes that the Respondent has indicated that he is now more familiar with prejudicial interests and would take a different approach if placed in the same situation, but the Ombudsman is disappointed to note that this recognition was not made during the course of the investigation, including when presented with the proposed findings in the draft report. No such hindsight appears to have been offered in respect of the meeting of 5 March 2019.

5.2.12 The Ombudsman noted the protestations of regret in the Respondent's submission of 27th of November 2020, but suggested that such protestations might have greater force if the Respondent was clearly conceding breaches of the Code. *"It does not sit easily in the mouth of the Respondent to on the one hand deny the breaches and on other state that if there were breaches he genuinely regrets them."*

5.2.13 It is submitted that any sanction that a Case Tribunal is inclined to impose, needs to be proportionate to deter such future action as may be found to be in breach, recognising the Respondent's position of seniority and influence, as Leader of the Council.

5.2.14 The Ombudsman suggested the following mitigating factors. That the Respondent cooperated with the investigation and the APW; that he was a relatively new member at the time of the offence; that he may in part have been motivated to attend the inter-agency meeting of 15th of August 2018 based on concerns for his community; his recent recognition and understanding of the context of what constitutes a prejudicial interest, albeit this was at a late stage in the proceedings. The Ombudsman also acknowledged the submissions made on the Respondent's behalf as to his commitment to the authority and his work with the Improvement and Assurance Board.

5.2.15 The Ombudsman suggested the following aggravating factors are relevant. The Respondent, although a relatively newly elected member, was an experienced public servant who works at a senior management level within the Police force; the Respondent is the Leader of the Council and in a position of seniority and had a personal responsibility to understand his role. He had a duty to understand his obligations under the Code and the position of Leader is highly influential and sets the culture of the standards of conduct which are to be expected/tolerated within the Council.

5.2.16 Further aggravating factors are that the Respondent continues to demonstrate a lack of understanding or acceptance of his misconduct and any consequences of it, in respect of the 5th March meeting; the Respondent has sought to blame the former Chief Executive for the Respondent's actions at the 5th March meeting; the number of breaches found; deliberately or recklessly ignoring advice from the Monitoring Officer.

5.2.17 The Ombudsman submitted that the breaches do not warrant a section of disqualification at the highest end of the spectrum available to the Case Tribunal, but that any sanction imposed should fulfil the purpose of the sanctions regime and remind the Respondent and others within the authority about the importance of their obligations under the Code. A Sanction is in the public interest as a means of maintaining public confidence in local democracy and transparency in council business.

5.2.18 There is a need to balance the seriousness of the breaches identified with the necessity to ensure the public have the right to local representation, and the need to maintain public confidence in elected members. The Ombudsman submits that the Council has a Deputy Leader and the ward served by the Respondent has two other independent members to attend to ward matters, thereby mitigating any prejudice caused in order to achieve the purposes of the sanctions regime.

### **5.3 Case Tribunal's Decision**

5.3.1 The Case Tribunal considered all the facts of the case and in particular the number and nature of the breaches, the Ombudsman's submissions and the Respondent's submission in mitigation. It considered the sanctions guidance issued by the President under section 75(10) of the Local Government Act 2000 ("the Guidance").

5.3.2 The Case tribunal has followed the five-step process in the Guidance in order to determine sanction. The first task is to assess the seriousness of the breach. There were nine breaches of the Code found in the six allegations.

5.3.3 Looking at the proven breaches, in relation to the inter-agency meeting, failing to declare a personal or a prejudicial interest is a serious matter. The meeting is discussing a house that is next door to the Respondent's home and it is hard to justify this failure. The Respondent does not have a momentary lapse of thought, he stays throughout the meeting. He was hosting the meeting; he opened it and asked the first question. He not only failed to declare his personal and prejudicial interest but then proceeded to take part in the meeting. If, for example, he had failed to make the declaration of interests but then remained silent or he had been merely an observer then that would have mitigated the seriousness of the breach, but the Respondent was not capable of doing that.

5.3.4 The Respondent was advised that he had a prejudicial interest and should not attend but he made it clear that he was going to attend. In this context, the Monitoring Officer advised that if that was the case then he should play no part in the meeting save as facilitator. The Respondent had made it clear to the Monitoring Officer that he had heard her advice and that he needed to stand back but he was still convinced he should have been there. He felt that he should be there as a ward councillor notwithstanding the advice given and that there were two other ward councillors. The Ombudsman felt that there is limited mitigation for the Respondent's attendance owing to this concession by the Monitoring Officer, with which the Ombudsman disagreed.

5.3.5 The mitigation afforded by the Monitoring Officer's concession is limited. Whilst it may provide the Respondent with some mitigation for going to the meeting, it affords none for his speaking at the meeting and failing to declare his interests. In fact, it increases the seriousness of the breach because the Respondent attends at the meeting and in taking an active role, then proceeds to do the things that he has been advised not to do.

5.3.6 The Case Tribunal's view is that this was not a particularly complex issue and the Monitoring Officer's advice was that the Respondent had a clear prejudicial interest in relation to the property next door to his home and she gave clear advice that could not have been misinterpreted. It was not advice on some new or controversial area where there was room for error, but on a straightforward issue. In effect the Respondent said that he was going to attend the meeting anyway.

5.3.7 The Ombudsman's own guidance on the Code for members of Local Authorities in Wales [B.3a at 609/610] stresses the importance of members following advice given by an authority's officers, especially advice from the Chief Executive or Monitoring Officer where it is given under their statutory duties. The Ombudsman's guidance says *"I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so."* The Case Tribunal do not consider that there were strong reasons for not following the Monitoring Officer's advice. The Case Tribunal has seen no evidence that the Respondent recorded his reasons for not following the advice.

5.3.8 The Sanctions Guidance at paragraph 37 says that *“Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer).....are all likely to be regarded as **very serious breaches**.”* [Our emphasis]. The Respondent took exception to the Ombudsman’s use of the term ‘blatant disregard’, but it mirrors both the Guidance and the conduct of the Respondent in relation to the advice he was given regarding the prejudicial interest.

5.3.9 In relation to the meeting of the 5<sup>th</sup> March 2019, there was no attempt to abide by the member/officer protocol and the manner in which the Respondent conducted himself, with a degree of pre-planning against the former Chief Executive was a serious breach. The Case Tribunal does not however, have the evidence before it to be satisfied, on the balance of probabilities, that it was the Respondent’s conduct at that meeting that resulted in the former Chief Executive ultimately not returning to his post.

5.3.10 The second part of the process is to identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach and any consequences for any individual and the Council. The breaches of the Code that have been proven, and on the facts, found by the Case Tribunal, are serious. The tribunal considered whether no action would be appropriate but the sort of factors that would justify no action, as set out in the Guidance, do not apply here. The Respondent had suggested that a warning may be appropriate in the event of breaches of the Code being proven, but in the light of the seriousness of the breaches the tribunal does not agree.

5.3.11 The Case Tribunal considered that suspension was appropriate noting the contents of paragraphs 39.4 and 39.5 of the Guidance, in particular the reminder to tribunals that a suspension of less than a month is unlikely to meet the objectives of the sanctions regime and that the highest sanction available to local Standards Committees is six months suspension.

5.3.12 The next part of the process is to consider any relevant mitigating and aggravating factors and how these might affect the level of sanction under consideration.

### **Mitigating factors.**

5.3.13 The tribunal noted the mitigating factors on the Respondent’s behalf and as conceded by the Ombudsman. The Case tribunal take particular note of the Respondent’s excellent record of public service with the police force and the extremely positive character reference supplied on his behalf from the former Chief Constable of South Wales Police, Mr Peter Vaughan, dated 23<sup>rd</sup> November 2020. He says of the Respondent; *“..he was a true professional who was committed to providing the best service to the public. He also had a reputation as being one of the best investigators in South Wales Police, I have to say he certainly matched up to this reputation..... For me to run a successful*

*organisation you need key people in key roles. Kevin was one of my top team and had a significant role to play in moving the organisation from being one of the poorest performing forces in Wales and England to one of the best..... The Northern Division which covers the area of Merthyr and Rhondda Cynon Taf had not been performing as well as I would have liked..... I promoted Kevin to Chief Superintendent of the Division, and he went on to be the longest serving and most effective Divisional Commander I had. In his time in the Division he made a huge difference, he reinvigorated the professionalism of his team yet ensured they were friendly and made a positive impact..... He was always engaging and expected the highest standards and positive results. Kevin is an individual who wears his heart on his sleeve and is passionate about making a difference. I have no hesitation in providing a positive character reference for an individual I regard so highly.” [Further Submissions pages 79/80].*

5.3.14 The tribunal take into account the Respondent's political inexperience as a relatively new member of the authority at the time of the breaches. The Respondent has also undertaken impressive work with the authority and is highly motivated to continue to work for the people of Merthyr Tydfil as noted in the Gilbert Report. He is working co-operatively with the new Chief Executive Ellis Cooper with whom he has an excellent professional relationship and who has provided two additional statements detailing the positive progress being made. [C.2 page 28-29, Further Submissions page 78].

5.3.15 The Respondent has cooperated fully and openly with the Ombudsman and the APW into this investigation and has signalled his willingness to attend future training. The breaches of the Code found by the tribunal do not involve dishonesty and the tribunal accept that the Respondent is motivated by a concern for the community that he serves. Since the events giving rise to the adjudication, the tribunal has not been provided with any other evidence of breaches of the Code. The breaches of the Code arose from two separate and time limited circumstances and in the tribunal's judgement, do not demonstrate a pattern of ongoing behaviour.

### **Aggravating factors.**

5.3.16 The tribunal considered the potential aggravating factors within the Guidance, whilst noting that they are not exhaustive and found the following to be of application in the Respondent's case.

5.3.17 The Respondent was in a position of seniority and responsibility as Leader of the Council. Whilst he did not have a long record of political experience as an elected member, he did have a long record of public service with the police, in a senior position that was subject to professional standards and an ethical framework. Moreover, although the Respondent was in the unusual position of becoming elected Leader of the Council shortly after becoming elected as a ward Councillor for the first time, he signed his declaration of acceptance of office and undertaking to abide by the Code on 10<sup>th</sup> May 2017, and the breaches of the

Code took place sometime later in August 2018 and March 2019. As Leader, the Respondent had a responsibility to ensure that he was familiar with and understood the Code.

5.3.18 Whilst the Respondent did not entirely seek to blame the former Chief Executive for his own actions at the meeting on 5 March 2019, he repeatedly maintained that concerns about Mr Chapman's performance were justified and in the submissions on his behalf dated 9th of December 2020, he directs the tribunal to the various witnesses' own assessments of the complainant's failings, [ Further Submissions, page 87] and says that the complainant was not blameless here and that the criticisms directed against the complainant, aside from the appropriateness of the forum, were not unjustified.[Further Submissions, page 88]. This has been a consistent theme on the Respondent's part throughout. For example, in his reply to the APW to the Notice of Reference from the Ombudsman, the Respondent disputed the Ombudsman's findings that he failed to show respect and his consideration to the former Chief executive, saying " *The clear and consistent evidence, including that from the former Chief Executive's Deputy (now Interim Chief Executive) is that there was a reciprocity of challenge and that the foundation for C O'N's challenge (in terms of the former Chief Executive's conduct in office) was a fair one.*"

5.3.19 The tribunal finds the Respondent's approach to his conduct at the meeting on 5 March 2019 to be an aggravating factor. The Respondent has continued to dispute that he failed to show respect and consideration to the former Chief Executive and disputed that he breached the Code, throughout and including up to December 2020. The Respondent remains of the view that he did nothing wrong. This is clear from his interview and from the representations made on his behalf. The Respondent may well be right in stating that there was a reciprocity of challenge generally between himself and the former Chief Executive, and it is an undisputed fact that their relationship was strained and poor. However, the Respondent has continued to confuse the general tenor of their relationship with his specific behaviour at the meeting on 5 March 2019.

5.3.20 Contrary to the Respondent's assertions, there is no clear or consistent evidence, to use the Respondent's term, that there was any 'reciprocity of challenge' **at the meeting on 5 March 2019**. Whatever the background to the relationship between the Respondent and Mr Chapman, there is no suggestion from any witness (including the Respondent himself) that the latter behaved in any way improperly at the meeting on 5 March 2019. The thrust of the Respondent's evidence and submissions is that because he had genuine concerns about the performance of the former Chief Executive, that he was entitled to raise those concerns in whatever way he considered appropriate, irrespective of whether his approach breached the officer/member protocol and/or the Code.

5.3.21 The Listing Direction in this case, dated 6<sup>th</sup> November 2020 included in the undisputed facts that the Respondent did not give the former Chief Executive,

the former Deputy Chief Executive or the Monitoring Officer, any indication that he intended to raise the former Chief Executive's performance at the meeting on 5 March 2019 and that the Respondent did not follow the Member Code of Conduct Protocol for the authority paragraph 2.8, in the manner in which he raised his concerns at the meeting. These facts remained undisputed and yet the Respondent continued to dispute that his behaviour was inappropriate and failed to show respect and consideration to the officer.

5.3.22 This tribunal is not required to determine whether the former Chief Executive's performance was deficient, nor could it do so, although it is noted that, as the Ombudsman says, this is certainly not accepted by the former Chief Executive. The tribunal does accept that the Respondent held genuine concerns about this, but his way of dealing with it constituted a clear breach of the Code and the officer/member protocol. The tribunal is concerned that, notwithstanding the Respondent saying that he now regrets the lack of notice that he gave to the former Chief Executive about his criticisms, he still does not accept that he breached the Code, repeating that the criticisms were justified.

5.3.23 It would have been a simple matter for the Respondent to accept that he breached the Code and the Protocol in his conduct at the meeting on the 5<sup>th</sup> March 2019 and to assert that if he were in a similar position again, he recognises that they must both be followed and that it would not be appropriate to raise performance concerns in front of subordinates without warning. He does none of these things, preferring to repeat that his criticisms were justified. Again, it is to prevent precisely the sort of conduct exhibited by the Respondent at the meeting of the 5<sup>th</sup> March 2019, that the Code and the protocol exist. It is simply not acceptable for the Respondent, particularly as the Leader of the Council, to in effect assert that having justifiable concerns means that the Code can be ignored.

5.3.24 The tribunal notes that the Respondent and witnesses favourable to him seek to impugn the independence of the Monitoring Officer's testimony and advice on the basis that she was said to have had a very close relationship with the former Chief Executive. Upon the written evidence available to this tribunal, such suggestions are baseless and entirely rejected. On the occasions noted earlier in this determination where there have been conflicting accounts, we have preferred the evidence of the Monitoring Officer.

5.3.25 In becoming involved in the business of the authority relating to the property next door to his home at Luther Lane, despite having a clear personal and prejudicial interest, the Respondent could be seen to benefit himself and his family, even accepting, as the Ombudsman did, that he was not motivated exclusively by personal gain and was also motivated by the interests of the community. The result of the withdrawal of Inspire and Support had a more beneficial impact on the Respondent and his family than other members of the community. The Ombudsman says that the discussions at the meeting on the inter-agency meeting of 15<sup>th</sup> August 2018 may have at the very least contributed to Inspire & Support's decision not to proceed. Whilst this is a reasonable



comment to make the tribunal note that the Respondent is correct when he says that there is no direct evidence from the company about this before us.

5.3.26 The aggravating factors in the Guidance include at (v) abuse or exploitation of a position of trust. In this regard the tribunal note that the Respondent confirmed in his interview that he had asked the builders at St David's who was employing them and could they get in touch with them, and that afternoon the manager (Melanie Dennis of Inspire & Support) was in his living room and the Respondent said that the first words that he said to her were that he had to identify himself. [B.2L page 413]. Whilst the Respondent says that he then has to step back from it because he was not sure if he had signed off any policies or strategies on it, he then goes on to say that he is going to ask her questions but 'as a resident'. It is clear that the Respondent had made his position as leader of the Council clear and then purported to ask questions as a resident, but he later held a pre-meeting in the Leader's office about this and then the inter-agency meeting in the authority's premises that he opened as Leader of the Council. Given that the Respondent should not have been at, or taking part in any such meeting, this, in the tribunal's judgement, on the facts, would have put more pressure on Inspire & Support than if the Respondent, as Leader, had stayed away from the business and the meeting.

5.3.27 Repeated breaches. There are a number of breaches associated with the inter-agency meeting. The Respondent should not have attended at all. However, once he does attend, he then participates, does not declare the personal and prejudicial interest and emails the next day in breach of the Code. Having said that, the breaches associated with the meeting have only happened once, within a 24-hour period as the Respondent submits, and there has been no repeat and no persistent pattern of behaviour in breach of the Code.

5.3.28 Lack of understanding or acceptance of the misconduct and any consequences. The Respondent has continued to submit that there was no prejudicial interest and no breach of the code in his behaviour at the meeting of 5<sup>th</sup> March 2019. This demonstrates a lack of understanding and acceptance of misconduct, and that the Respondent has not considered the consequences for the reputation of the authority if he is seen to be involved in the matter in which he has a clear prejudicial interest.

5.3.29 Deliberate conduct with little or no concern for the Code and deliberately or recklessly ignoring advice, training and/or warnings as to conduct. (Aggravating factors x and xi in the Guidance). These are factors here. The Respondent ignored the Monitoring Officer's advice that he had a prejudicial interest and made it clear that he was going to attend at the inter-agency meeting on the 15<sup>th</sup> August 2018. The Respondent did not like the advice given to him and persuaded the Monitoring Officer that he should go to the meeting. The Respondent recognises that the ultimate assessment of whether he has a prejudicial interest lies with himself. [Further Submissions page 75].

5.3.30 Aggravating factor xiv in the Guidance is a refusal to accept the facts despite clear evidence to the contrary. Here, the Respondent has continued to refuse to accept that he had a prejudicial interest and had refused to accept that his behaviour towards the former Chief Executive was a breach of the Code in the March 5<sup>th</sup> meeting. The Respondent submitted a further statement dated 13<sup>th</sup> August 2020 in which he said *"It is only from this investigation process and specific mentoring since the events that I understand what the phrase 'prejudicial interest' means and when it is relevant. If I found myself in a similar situation in the future, then I would certainly replace the term 'compromised' with the more legal phrase 'prejudicial interest' and quote it at every appropriate opportunity should similar situations arise."* [C.2 page 26 paragraph 7.] The tribunal finds that these are encouraging, but, at present, hollow sentiments.

5.3.31 There is force in the Ombudsman's comments cited at 5.2.12 above. The Respondent denies breaches and yet regrets them. Here the Respondent says that he has had specific mentoring and now understands the term prejudicial interest. Yet the Respondent has continued to deny and argue forcefully against the fact that he had a prejudicial interest throughout, up to and including his final submissions on 9<sup>th</sup> December 2020. The Case Tribunal therefore, notwithstanding his assertion, does not have evidence before it to demonstrate that the Respondent does understand what 'prejudicial interest' means. It is a serious aggravating factor that he continues to deny his clear prejudicial interest in the Luther Lane matter. As previously noted, the tribunal agrees with the Ombudsman's observation that *"It is difficult to imagine a factual scenario where the existence of a prejudicial interest ought to have been more obvious."* The Respondent at interview simply refused to accept that he had a prejudicial interest, and later sought to rely on a technical argument about decision making at meetings, which has not been accepted, to deny it.

5.3.32 The Monitoring Officer in her statement describes the attitude of the independent group, of which the Respondent is Leader, to advice: *"..... When either myself or Gareth gave advice they viewed this as a starting position rather than something they could not do or had to follow. In situations where the advice given, either by myself or Gareth, was opposed to something they wished to do, they would often seek alternative advice to the contrary."* [B.1j page 265 paragraph 4]. *"I have had several discussions with Councillor O'Neill over the last 2 years about the status of my advice and that he as a member must have "due regard" to it and should "give reasons" when making decisions which are contrary to it."* [B.1j page 266 paragraph 6] She adds *"...It became clear to me very quickly they did not necessarily want advice in order to understand the Council's processes and how to follow them but to an extent wanted to understand the processes in order to understand how to depart or find a way around them."* [B.1j page 268 paragraph 11]. She also said, talking of the difficult relationship between the Respondent and the former Chief Executive *"Councillor O'Neill is a person who does not, in my view, do well with being told that he cannot do something. In my experience as an officer, it is preferable to find a way to talk to*

*him to make him feel that he is being enabled do things.” [B.1] page 268 paragraph 11].*

5.3.33 The tribunal accept the Monitoring Officer’s evidence as reliable. Support for her evidence comes from the Respondent himself in his interview. Whilst talking of another matter (which does not form the basis of any allegations before the tribunal), where certain advice had been given to the Respondent by the Monitoring Officer, he says: “...*And it comes back to something key in relation to dealing with officers, is that we are... We must listen to their advice.. And have cognizance of it, but we don’t always have to act on it.*” [B.2L pages 488/489].

5.3.34 Whilst the tribunal has already noted and accepted the Respondent’s outstanding record of public service and achievement in the police force, it is clear that the Respondent has a high opinion of his own abilities and there remains an element of grandiosity in some of his pronouncements. For example, when discussing at interview the advice of the Monitoring Officer that he should not attend at the August 15<sup>th</sup> meeting because of his prejudicial interest he says “..*It sounds like a bit of conflict about me being there. Because the other thing I said, is **there are a lot of things I can bring to the table and nobody else can.** Because I’ve spoken to people and people have come to me. But I said, ‘I have to be there’, again as a ward councillor, that’s what I felt in the sense.*” [Our emphasis] [B.2L page 422]. The Investigating Officer asks the Respondent why the other ward councillors did not just attend the meeting and why the Respondent felt that he had to go and he replies “***I’m the one, do I make myself clear, I’m the one they come to. I’ve got certain skills, I’ve got certain....** You know, I’ve been a police officer for this town, they know me, if I say I’m going to do something, I’ll do it for them, I see it through the end, I don’t let go of it. Um, **John is a very good local councillor, but he is what I call a foot soldier, he is a local councillor. Anything particularly strategic or difficult, John wouldn’t get involved. He, he hasn’t built up that skill set.** When you look at Andrew, Andrew is also my financial lead. Um, Andrew runs his own business, you won’t get hold of Andrew like you’d get hold of me.*” [Our emphasis] [B.2L page 431].

5.3.35 The Respondent says that members of the public may go to other representatives first, but they are told to go and speak to him. “*I don’t...I mean, again **it is often a conversation where I’ve had with Carys, turn them away, I, I can’t do that. How can I turn people away?** Because people come to me about no end of things. I’ve built..... People have got confidence in me er, to deal with matters from both, this occupation and my other occupation. And it’s, it’s an easy to say, point them towards somebody else. So, you come to me, I don’t want this to sound arrogant, right, I don’t, you get gold service. I would not let you down. And I will stay with it to the end. I got complaints that have been with me for 3 years, I’m still with them, I’m still pursuing, it’s a long, drawn out matters,.... Some of the other guys haven’t got it, they wouldn’t stay with it. I’ve got a reputation anyway.*” [Our emphasis] [B.2L page 432].

5.3.36 Later in the interview, the Respondent, in talking about why he did not declare his interest in the e mail of the 16<sup>th</sup> August 2018 to Lisa Curtis Jones says *"I thought it was glaringly obvious, but I'd spoken to her so much about it, she knew. I'd made it very, very clear from day one, about my position, about, my, my interest in the matter. It's an ongoing thing for me, but there may be themes through this, about how you deal with issues that end up being close to you? Because if you can imagine, I coached for 40 years, er, karate. I played football, rugby, I boxed, I was a policeman in this town, there's not many people I don't know. So when people come to me with an interest, I know something about them. I might live by them. I might coach them. I might have arrested them, yeah. So this perspective of a prejudicial interest is a very difficult one for me. **Because actually the people who are most at risk come to me..... Because they come to me because everybody else has failed them. This wouldn't be resolved by anybody else.** Our team had to go for it, everybody else has dropped out of it. And, actually the good that's come out of it, we've now got two houses that we are providing a service for, well they wouldn't have done before, and we got another one on the way. So, out of maybe a bad idea, that wasn't badly.... was, wasn't well-managed, we've turned it round."* [our emphasis] [B.2L page 446] Later when asked if he had used his position improperly to gain an advantage for himself or others in the context of the Luther Lane property he says *"Absolutely not. I gained advantage for all those involved."* [B.2L page 545].

5.3.37 There is a clear tone of individual exceptionalism and self-importance in the foregoing statements made by the Respondent at interview, which are entirely consistent with the Monitoring Officer's evidence about his attitude to advice. They fortify the tribunal's view that he has his own views and has refused to accept the facts despite clear evidence to the contrary, an aggravating factor. It may well be the case that the qualities that made him a successful high ranking police officer, making pressured operational decisions, need tempering in order to be used to best advantage in the political arena.

5.3.38 The tribunal found that the Respondent's actions have brought the office and the authority into disrepute.

**5.4** The fourth part of the process is to ensure that the sanction achieves an appropriate effect in terms of the purpose of the sanctions regime. The public interest is served by upholding the standards of conduct in public life and maintaining confidence in local democracy. The Case Tribunal have considered the chosen sanction of suspension against previous decisions of the APW. The case tribunal note that in the case of APW/002/2018-019/CT, 20<sup>th</sup> November 2019, the Respondent was suspended for four months for five breaches of the Code in relation to two allegations which he admitted and did not contest the facts before that Case tribunal. In APW/001/2019-020/CT the Respondent was suspended for three months for breaches of the Code and in APW/003/2017-018/CT the Respondent was suspended for two months for breaches of the Code in the content of three emails. The case tribunal has considered other older

decisions of the APW for example APW/002/2014-15/CT where the Respondent was suspended for three months for two breaches of the Code.

**5.5** The Case Tribunal note that there is a Deputy Leader of the authority and two other ward councillors, who with the Council's officers, and having been aware of these proceedings for some time, are able to continue with the work of the authority and to represent the interests of the Respondent's constituents.

**5.6** The Case tribunal determine that for the breaches of the Code proved and found in this case, that the starting point would be suspension for nine months. However, having taken into account the mitigating and aggravating factors, and in particular the Respondent's exemplary character witness, long record of public service, and relative inexperience as a Councillor and Leader, the Case Tribunal concluded by unanimous decision that Councillor O'Neill **should be suspended from acting as a member of the Relevant Authority for a period of seven months or, if shorter, the remainder of his term of office from the date of the decision notice.**

**5.7** The Relevant Authority and its Standards Committee are notified accordingly.

**5.8** 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.

## **6. CASE TRIBUNAL RECOMMENDATIONS**

**6.1** The Case Tribunal makes the following recommendation to the authority;

**6.1.1** That the Monitoring Officer or their delegate provide further training to the Respondent on the Code of Conduct, the meaning of 'prejudicial interests' and the approach to be taken to, and the status of, the advice of the Monitoring Officer. Such training to be undertaken within one month of the Respondent returning to his post following the service of his suspension.

Signed R. Payne

Date 29<sup>th</sup> January 2021

Richard Payne  
Chairperson of the Case Tribunal

S. Hurds  
Panel Member

H. E Jones  
Panel Member