

## STANDARD AND ETHICS SUB COMMITTEE - HEARING PANEL

6 JANUARY 2020

Present: Independent Members: Professor James Downe (Chairperson)  
Hollie, Edwards-Davies

Community Councillor: Stuart Thomas

Officers: Leanne Weston, Legal Advisor to the Panel  
Kumi Ariyadasa, Clerk

Ombudsman's Representatives: Katrin Shaw, Chief legal  
Advisor and Director of Investigations  
Louise Morland

Councillor Neil McEvoy, assisted by Jacqueline Hurst, Social  
Worker

1 : APOLOGIES FOR ABSENCE (IF ANY)

There were no apologies for absence for this meeting.

2 : DECLARATIONS OF INTEREST

No declarations of interest were made.

3 : OMBUDSMAN REFERRAL OF A COMPLAINT AGAINST COUNCILLOR NEIL  
MCEVOY

### **6<sup>th</sup> JANUARY 2020 - HEARING DAY 1 - CITY HALL, FUNCTION ROOM A**

The hearing commenced at 10.15 in public.

The Chairperson introduced the Panel Members and all parties in attendance. He explained that prior to commencement of the hearing, there were a number of preliminary matters to be determined by the Panel, including whether to allow late evidence submitted by Cllr McEvoy and to decide whether any part of the hearing should be conducted in private.

**RESOLVED:** to exclude the public and the press during the discussion of preliminary matters and the Panel's deliberation of its determinations on these matters, pursuant to paragraphs 12, 13, 18A and 18C of Schedule 12A to the Local Government Act 1972.

The Hearing was reconvened at 14.20 in public. The Chair welcomed everyone back and thanked them for their patience. He asked that phones be switched off. He advised that preliminary matters had been considered, with submissions from all parties, and he announced the Panel's decisions in respect of these procedural matters, as follows:

## RESOLVED:

- (1) The Chair confirmed that the remit of the Panel was to consider whether the alleged bullying and behaviour which had been complained about constituted a breach of the Code of Conduct. This would be the Panel's focus and it would not consider any wider matters.
- (2) That the hearing would be held in public, except during the evidence of the father of Child X, when the public would be excluded in order to avoid disclosure of personal information. However, the names of the care home and its employees who were witnesses would be pseudonymised as requested on behalf of the care home, as the purpose of the hearing was not to publicly examine the conduct of the care home and its staff. It was also emphasised that if members of the public conducted themselves in any way which could affect the quality of the evidence being given by witnesses, the public would be excluded, in the interests of ensuring a fair and proper hearing.
- (3) To allow the letter from the Independent Reviewing Officer in relation to the case of Child X, submitted by Cllr McEvoy after 10pm the previous night, to be considered as late evidence, even though this evidence had not been provided at least 2 days prior to the hearing, as required under the hearings procedure. However, the Panel did express concern that this information had not been provided earlier. In relation to Cllr McEvoy's further note on matters of dispute in the Ombudsman's report which had been provided that morning, the Panel noted that Cllr McEvoy had already provided representations on the Ombudsman's report in October 2019, but agreed that any further issues raised would also be considered and could be expanded upon during the councillor's oral evidence and submissions.
- (4) That the proceedings would not be recorded and no private or covert recording would be permitted.

### **Hearings Procedure**

The Chair confirmed that the hearings procedure to be followed was available on the Council's website, and gave the Chair discretion to vary the procedure in order to ensure an efficient hearing (under paragraph 7(b) of the procedure). The Chair announced that, having taken advice from the Legal Advisor, it was proposed to combine Stages 1 and 2 of the procedure, in the interests of ensuring an efficient hearing. The Chair explained that this meant that both the Councillor and the Ombudsman would give combined submissions on both the facts and whether the facts amounted to a breach of the Code of Conduct. Both Cllr McEvoy and the Ms Shaw, on behalf of the Ombudsman, indicated they were content with this variation.

The Chair reminded the public that they may observe, but not participate in the hearing, and asked them to show respect towards all parties, or they would be asked to leave. He reiterated that covert recording was not permitted; and also reminded the parties that care home staff should not be named during the hearing and that no confidential information should be shared outside of the hearing. He explained that the hearing was scheduled to end at 4pm but may run later, if necessary. He confirmed there were no scheduled fire drills, so if the fire alarm sounded, the building should be evacuated via the nearest fire exit.

The Chair invited the Ombudsman to present the investigation report.

### **Ombudsman's presentation of Investigation report**

Ms Shaw presented the report of the Ombudsman's investigation into this matter. She explained that the Ombudsman's referral followed an investigation carried out in relation to a complaint submitted to the Ombudsman by the Director of a private care home contracted to provide services to the Council. The complaint alleged that Cllr McEvoy's conduct on 29th April 2018 and 11th May 2018 towards three employees of the private care home and his involvement in the case of a child in its care (referred to as Child X) had been inappropriate, intimidating and bullying, in breach of the Members' Code of Conduct. Having considered the complaint, the Ombudsman decided to investigate whether Cllr McEvoy had failed to comply with any of the following duties set out in the Code of Conduct:

- paragraph 4(b), to show respect and consideration for others;
- paragraph 4(c), not to use bullying behaviour or harass any person; and
- Paragraph 6(1) (a), not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

The Ombudsman's investigation had noted that Cllr McEvoy had been elected as a Cardiff Councillor in 1999 and had re-affirmed his commitment to the Cardiff Undertaking in 2017. In January 2016, the Council had adopted a Protocol on Members' Role in Safeguarding Vulnerable Children and Adults ('the Protocol') and had taken legal advice upon this issue.

The parents of Child X had asked Cllr McEvoy for assistance in 2017. Child X was the subject of a full care order and was placed in a residential care home run by a private contractor under contract with the Council. Child X had alleged assault by the care home staff. On 28th April 2018, Cllr McEvoy had reported these allegations to the Police and asked them to make enquiries. The Police had visited the care home and confirmed to Cllr McEvoy that the conclusion of their enquiries was that no further action was required; and they advised Cllr McEvoy to contact Social Services if he required any further information.

The first issue arose in relation to events on 29th April 2018, the day after the Police had said they would take no further action. Cllr McEvoy had telephoned the care home and said he wanted to visit Child X. On reviewing the evidence of that telephone call, the Ombudsman considered there was evidence that Cllr McEvoy had failed to show respect and consideration to the care home employee with whom he spoke on the telephone (Witness 2) and that he had bullied her. A colleague of Witness 2 (Witness 1) who was in the room for part of the call would also give evidence about that telephone call. Whilst acknowledging that Cllr McEvoy was concerned about the welfare of Child X, the Ombudsman felt that Cllr McEvoy had behaved inappropriately. Cllr McEvoy was not named in the child's Care Plan and was told that he was therefore not authorised to visit the child. However, he persisted and when he was refused access to Child X, the evidence suggests he attempted to exert pressure and influence upon Witness 2, in breach of paragraphs 4(b) and 4(c) of the Code of Conduct.

The second issue arose in relation to events on 11th May 2018 when a therapy review meeting was scheduled to be held with the parents, Child X and a therapist. Cllr McEvoy had attended at the care home offices and had three interactions with staff of the care home. Cllr McEvoy had asked the child's father to record those interactions, without the consent of the staff members involved. The Ombudsman had considered those recordings

during investigation and given all parties the opportunity to comment on them. In relation to the first interaction (with Witness 4), the Ombudsman considered there was insufficient evidence to show a breach of the Code and therefore no referral was made in this regard. For the second interaction (also with Witness 4), the evidence suggested there had been a forthright exchange and a recording of part of this conversation was available. The Ombudsman's investigation found there was conflicting evidence about this interaction, and no referral was made in this regard. During the third interaction, Witness 3 spoke with Cllr McEvoy and told him and the Father that the therapy meeting would not be going ahead. A recording of part of this interaction had been provided and evidences this was a difficult conversation. However, the recording provided no evidence about the body language of the parties. The Ombudsman considered that Cllr McEvoy's comments about the physical appearance of Witness 3 did not amount to bullying, but were potentially in breach of the duty to treat others with respect and consideration (paragraph 4(b) of the Code).

Ms Shaw noted that Cllr McEvoy did not dispute that he was, on both occasions, acting in his capacity as a Councillor (and Assembly Member).

In relation to the Member's duty to not bring the office of Councillor or the Council into disrepute, Ms Shaw suggested that evidence from Mr Irfan Alam, the Council's former Assistant Director of Social Services, was key to assist the Panel to understand the Corporate Parenting role of the Council and its Members. The evidence suggested that Cllr McEvoy had ignored the Council's Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults on both occasions and brought the Council and the office of Councillor into disrepute.

Ms Shaw then called her first witness:

**Irfan Alam, Former Assistant Director of Social Services, Cardiff Council**

Cllr McEvoy said he had not expected Mr Alam to give evidence, so he requested 5 minutes to prepare his questions for Mr Alam. The Panel agreed to this request and adjourned for 10 minutes. The hearing resumed at 14.55 and Mr Alam gave evidence as follows.

Mr Alam introduced himself and confirmed his witness statement was true and correct. Ms Shaw, on behalf of the Ombudsman, asked Mr Alam to explain the general background to the role of the Council and Councillors in relation to Corporate Parenting. Mr Alam explained that it was the role of the Council to ensure that children were cared for safely and appropriately and to commission services where necessary. It was Members' role to ensure the Council is fulfilling its duties and to provide scrutiny where needed. He explained that Members are Corporate Parents; and may discharge duties on the Council's Corporate Parenting Committee, and scrutinise Children's Services' performance data. The Protocol on Members' Role in Safeguarding had been agreed by Council in 2016. It confirms that individual members have no decision-making role (paragraph 9 of the Protocol). The Corporate Parenting Advisory Committee advises the Council on the discharge of its corporate parenting functions but does not oversee individual child protection matters.

Turning to the matters at hand, Mr Irfan confirmed that Child X is subject to a full care order, following court proceedings. Once such an order is granted, the Council assumes parental responsibility over and above the birth parents. A Care Plan sets out how the Local Authority will care for the child. The Order does not permit individual Members to contact a child. The Care Plan sets out who has access to the child. Cllr McEvoy was not

named in Child X's Care Plan. Mr Alam said that the parents had been advised how to challenge a Care Order. As a Care Order is granted by Court, the parents had been advised to seek independent legal advice about their rights to lodge an appeal. Mr Alam said he had also reassured Cllr McEvoy that appropriate safeguards were in place for Child X. Cardiff was the lead authority for Child X, but a referral had also been made to Swansea Council as the child's placement was in their area. Swansea Council had conducted their own investigation and found no concerns.

In relation to the telephone call on 29<sup>th</sup> April 2018, Mr Alam said he had spoken with the Children's Services Emergency Duty Team (EDT) about Cllr McEvoy's telephone call to the home. He said the home had followed due process and acted appropriately, ringing the EDT to seek advice. An elected Member trying to access a child in a care home was highly unusual and it would have been a significant concern if they had allowed access to a child. The Police had also been involved because Cllr McEvoy had raised concerns about the safety of Child X. Due process had been followed in relation to incidents in the home. A strategy meeting was held, attended by the social worker, Police and staff at the home. Mr Alam felt that Cllr McEvoy's involvement in this case had been disruptive and destabilising for the child. He had instigated a late night visit to the child from the Police, which was unnecessary.

In relation to the therapy meeting on 11<sup>th</sup> May 2018, Mr Alam said the therapy meeting was planned for 11<sup>th</sup> May 2018 to be attended by the social worker, therapist and parents, to review progress made by Child X during therapy. There was concern that Child X was not settling, and that he was receiving mixed messages from his parents, influenced by Cllr McEvoy who was telling them that the Care Order was illegal and should not have been granted. The parents were then sharing this information with Child X.

Mr Alam said he was pulled out of a meeting to take a telephone call from Cllr McEvoy who was at the home wanting to attend the therapy meeting. The therapy meeting was therefore postponed. Cllr McEvoy had raised concerns with him about staff members at the home, saying they were rude, dismissive and intimidating. Mr Alam said he could hear one of them - he did not sound rude, and was asking the councillor to leave, but Cllr McEvoy was talking over him. Mr Alam said he also asked Cllr McEvoy to leave the home. He did not hear raised voices, and he thought the staff dealt with the situation professionally and appropriately.

Mr Alam said a meeting was later held (in June 2018) with the councillor and the Corporate Director to discuss the impact of Cllr McEvoy's intervention in this case. Child X had high levels of trauma and neglect which led to the making of the Care Order. The parents were engaging constructively and the Council was hopeful of family reconciliation. He said the parents were vulnerable with their own support needs. However, Cllr McEvoy had led the parents to believe the Care Order was illegal and should not have been made, which was unhelpful. Contact between the parents and the children then had to be suspended. At the meeting in June, Mr Alam said they tried to explain the process to Cllr McEvoy and went into the case details. They took advice and read some of the evidence from the siblings' Adoption Pack to explain the gravity of the child protection concerns and to reassure Cllr McEvoy that the right decisions had been made. He said they explained the concerns expressed by the courts and the adverse impact of the Councillor's involvement on the parents and Child X. Unfortunately, Cllr McEvoy took no heed of this and continued to undermine the Care Plan.

Mr Alam said that councillors represent the local authority, and that Cllr McEvoy's behaviour and the language used with the care home provider and the social worker had brought significant disrepute on the Council. It was embarrassing for the Council. A

councillor seen to be ambushing a therapy meeting was not appropriate behaviour for a councillor. The meeting would have been dealing with highly sensitive information. He felt that Cllr McEvoy had sought to disrupt the Council's discharge of its duties. A less experienced provider would have given notice, but fortunately, this provider was committed to the child and Child X was thriving.

Mr Alam also reported that Cllr McEvoy had emailed the Council's Chief Executive, requesting the suspension of Child X's social worker. He said that a junior officer being threatened with suspension by a Member is highly inappropriate, bordering on intimidation. Any concerns about the social worker's performance should have been raised appropriately. The social worker was very experienced, but had resigned because of the impact on his working relationship with Child X. Mr Alam felt this was a significant concern, and said that the person who lost out was Child X who had had a good relationship with the social worker.

At 15.20, Cllr McEvoy was given the opportunity to question Mr Alam. During this cross-examination, Mr Alam acknowledged there had been previous allegations of harm made by Child X in 2017, and said that Child X was clearly very unsettled in 2018, but was now happy and attending school full time. He maintained that parents are able to apply to discharge a Care Order at any time. He was asked about the IRO's recommendations, with reference to the letter submitted as late evidence by Cllr McEvoy; and the hearing was adjourned at 15.40 to allow Mr Alam time to read that letter.

The hearing was resumed 5 minutes later and Mr Alam maintained that the Independent Review Officer (IRO) had concluded there were no significant concerns, and said that the IRO's recommendations in relation to refresher training and increased staffing levels did not mean there were concerns about the care being provided to Child X. He said it was completely incorrect to say that the parents had been asked to sign a behaviour contract without giving them the opportunity to read it or take legal advice or threatened that their contact would be stopped if they did not sign it. Mr Alam accepted that the parents may have invited Cllr McEvoy to the therapy meeting, but maintained that the social worker was not aware that Cllr McEvoy was going to attend, and said that he would have been alerted if the social worker had been informed of this.

During Cllr McEvoy's questioning of Mr Alam, Cllr McEvoy named the father of Child X twice and was reminded that witnesses should not be named. He also repeatedly accused Mr Alam of lying and misleading the Panel and said he was not a credible witness. The Panel cautioned Cllr McEvoy about his manner of questioning and advised the councillor that he could make submissions about credibility of witnesses during his submissions. The Chair reminded Cllr McEvoy several times to restrict his questions to relevant facts; and noted that Cllr McEvoy had been allowed a longer time to question Mr Alam than the Ombudsman's representative. At 16.10, Cllr McEvoy was given the opportunity to ask his final question.

In response to Cllr McEvoy's questioning, Mr Alam maintained that he could hear the conversation on 11<sup>th</sup> May 2018 between Cllr McEvoy and the other person clearly and that he remembered vividly his distinct impression that the other person was trying to move away from Cllr McEvoy. Cllr McEvoy also referred Mr Alam to his witness statement (paragraph 16) and asked him to confirm that he would not describe Cllr McEvoy as aggressive. Mr Alam's reply was that he had said Cllr McEvoy may not be 'overtly aggressive'.

The hearing was adjourned at 16.15 for a short comfort break; and resumed at 16.35.

The Chair welcomed everyone back, reminded them to turn phones off and asked for continued good behaviour from the public and to refrain from clapping. It was agreed that, in view of the time, Witness 1 would be called to give evidence next; and Witnesses 2 and 3 would be released and asked to return the next day at 10am. [Ms Shaw left to inform witnesses accordingly.]

Ms Shaw then called her next witness:

### **Witness 1**

The Chair welcomed the witness, introduced the Panel and the parties and apologised for the delay. The Legal Advisor explained that witnesses' names were to be pseudonymised during the hearing, that he would be referred to as 'Witness 1' and should refer to his colleagues similarly and not name them or the care home.

Witness 1 confirmed his witness statement was true and correct. He gave evidence that he was employed as a registered care worker (RCW) at the care home. He said a telephone call had been received on 29th April 2018 at about 9.35am, and that his senior colleague (Witness 2) had answered the phone and then called him in to the office to witness the call. He said he was in the kitchen nearby at the time. He saw that his colleague became anxious during the telephone call. He said she normally sits down, but this time she was standing and seemed agitated. He said he could not hear every word, but he heard part of the conversation. He said he heard a louder voice on the phone saying he was going to come down to the home. Witness 1 said that although he cannot usually hear a person talking on the other end of the telephone, he could hear this person, so he must have been talking loudly. He said his colleague remained calm and professional, and he heard her say she would have to inform the police if he attended because of concern for the young people in her care. She was moving around and seemed uncomfortable.

Cllr McEvoy was then given the opportunity to question Witness 1. During this cross-examination, Witness 1 said he was working the day-shift on the morning of the telephone call, and had started work at 7.30am. He said he had heard about Cllr McEvoy because the Police had mentioned his name. He did not know exactly when the Police had been called and was not previously aware of the allegations made by Child X. He said the Police spoke with him when they attended at 8.30/9pm, but he was not on shift when the Police apparently attended at 2am.

During Cllr McEvoy's questioning of Witness 1, Cllr McEvoy named Witness 2 on three separate occasions. Cllr McEvoy apologised and said this was inadvertent, and asked for names of witnesses to be redacted in his bundle of papers. The Chair reminded Cllr McEvoy of the Panel's decision that witnesses should not be named, and that he had done so on five occasions, and warned that the public would have to be excluded if this happened again.

Witness 1 said that his colleague (Witness 2) had gestured to call him in to the office and he heard a voice on the other end of the phone saying, 'I'm going to come down today'. He said his colleague was moving around, but did not move away from him, as she was on a landline so she could not move very far. He said he was standing on the right hand side of his colleague, a few feet away. She was moving left and right. He heard the voice on the other end of the phone speaking quite loudly, but he could not hear every word. He said he suffers from dyslexia and cannot understand when two people are talking at the same time. He said he interpreted the caller as being threatening because of the way his colleague was responding. After the phone call had ended, he said he left to deal with the young people.

He said he drafted an initial note of the phone call the same day, on 29th April 2018, and later provided a witness statement to the Ombudsman. He confirmed the witness statement was his own. He said the witness statement was more detailed than his initial note because he had taken time to sit down and think about everything that happened and his seniors had asked him to include information about his colleague's body language.

A member of the public passed a note to Cllr McEvoy, which the Chair intercepted. The Chair repeated his warning that members of the public must not intervene in the hearing proceedings and asked that member of the public to leave, which she did.

Cllr McEvoy confirmed he had no other questions for Witness 1.

In response to Panel members' questions, Witness 1 said that he had left his colleague after the phone call as he had to deal with the other young people in the home. He also explained that the reason he interpreted Cllr McEvoy's behaviour towards his colleague (Witness 2) as threatening was due to seeing his senior and how she responded.

There were no other questions for Witness 1.

The Chair announced that the proceedings would be adjourned for the day and resume at 10am the next day.

RESOLVED: that the hearing be adjourned

Cllr McEvoy asked that arrangements be made for witnesses to be given separate waiting rooms at the hearing, so that they could not discuss the proceedings and confer. The Legal Advisor agreed that those arrangements would be made.

The hearing was adjourned at 17.10.

## **7<sup>th</sup> JANUARY 2020 - HEARING DAY 2 - CITY HALL, FUNCTION ROOM A**

The hearing convened at 10.30. The same Panel Members, Officers and Ombudsman's representatives were present. Councillor Neil McEvoy was also present and assisted by Jacqueline Hurst, Social Worker.

Cllr McEvoy was given another copy of the hearings bundle with the names of witnesses redacted, as requested the previous day.

The Chairperson welcomed everyone, introduced the Panel Members and all parties in attendance. He outlined the remit of the Panel and the hearings procedure, and reminded parties about the decision to anonymise witness names and not name the care home or disclose any confidential information. He explained that the hearing was scheduled to run until 16.00, with an hour's break for lunch at 13.00, although these timings would be flexible. The Chair reminded everyone that recording was not permitted and anyone found to be covertly recording would be excluded from the hearing. Similarly, any member of the public who distracted or intervened in the proceedings would be asked to leave. No fire drills were planned, phones should be switched off and everyone was asked to remove their belongings when leaving the room.

The Chair raised concern about social media comments posted about the hearing and asked Cllr McEvoy to confirm that he was not posting tweets during the hearing. Cllr McEvoy said he had not personally posted anything during the hearing, but said his office may have done so. The Chair expressed concern about inaccurate / untrue reports, eg. that the councillor would not be allowed to question the Ombudsman, that the public had

been excluded and references made to the Panel as being a 'kangaroo court'; all of which undermined the hearing process.

Cllr McEvoy raised his concerns about the evidence given by Mr Alam the day before, saying that he had been allowed to digress widely from the relevant issues, and that he felt Mr Alam had mocked his understanding of the legal process relating to care orders; and he asked the Legal Advisor to clarify the legal position. He also asked for legal advice on the status of the Safeguarding Protocol adopted by the Council. The Chair explained that the role of the Legal Advisor was to advise the Panel and that Cllr McEvoy had had the opportunity to bring his own legal representative who would be able to advise him if he required advice. The Chair reiterated that the focus of the Panel was on whether or not the councillor had failed to comply with the Code of Conduct and that the hearing should not stray outside these areas into child protection matters. He also explained again that Cllr McEvoy could make any points in relation to the evidence given by witnesses during his submissions.

Cllr McEvoy was asked to confirm whether he sought to introduce as further late evidence an email he had sent to the Legal Advisor at 10.27pm the previous day. He confirmed that he wished this email to be considered by the Panel as it was relevant to show that the reason the parents lost contact with their children was nothing to do with him, and to show the reason why he had asked for the social worker to be suspended. The Panel agreed to read this email during the next hearing break and confirm whether or not it would be admitted as late evidence.

Cllr McEvoy also asked whether Mr Alam was a public official, as he wished to pursue a complaint of misconduct in public office for deliberately misleading the Panel. Ms Shaw replied that Mr Alam attended as a witness and that his evidence could be challenged in Cllr McEvoy's submissions.

The Chair then asked Ms Shaw to call her next witness:

## **Witness 2**

The Chair welcomed the witness, introduced the Panel and the parties, explained the remit of the Panel and apologised for the delay. He explained that witnesses' names were to be pseudonymised during the hearing, that she would be referred to as 'Witness 2' and should refer to her colleagues similarly, ie. as Witness 1, and not name them, the child or the care home.

Witness 2 confirmed her witness statement was true and correct. She said that she was employed as a senior registered care worker at the care home on 29<sup>th</sup> April 2018, when she had received a telephone call that morning. She said the caller had identified himself as Neil McEvoy, Assembly Member and said she had never heard of Mr McEvoy before. Cllr McEvoy had said he would be visiting the home that day as there was a child at risk who he wanted to see. Witness 2 said she explained that her duty of care was to safeguard all the young people in her care and that she informed Cllr McEvoy that a visit that day would not be possible, but she said he would not accept that. She said he was adamant that he would be coming that day. She kept repeating that he should not come, and kept explaining her duty of care and that she could not allow him on the premises. She said that Cllr McEvoy said he was from the Welsh Assembly and would be bringing a colleague with him. He said he would raise the matter at the Welsh Assembly on Tuesday. He was going to come and she needed to change her mind, but she was adamant that he would have to make arrangements with the social worker, who would not be on duty that day, as it was the weekend. She said Cllr McEvoy kept saying 'I will be coming' and 'will be bringing a colleague', dismissing what she was saying. His tone

changed during the phone call, making her feel she needed to change her mind. She said she felt backed into a corner, so she brought in a colleague (Witness 1) as a witness and for support because she felt alone in the office, being intimidated by someone saying they would be visiting. She said that for the safety of the children in the home, she arranged for them to go out for activities so they would not witness anything. She said she felt that Cllr McEvoy should have accepted what she was saying. The young people needed to be safeguarded and it was her job to safeguard them. He should have respected that and arranged a proper visit on Monday with the social worker. When Cllr McEvoy said he would be bringing his colleague, she said she felt intimidated, as she didn't know who that was, and she felt threatened when Cllr McEvoy said he would bring the matter up at the Welsh Assembly. She said she felt anxious, and that she had never been in that position before.

She said she told Cllr McEvoy that if he turned up without permission, as he was not named in the Care plan and she didn't know him and needed to safeguard the young people at the home, she would call 999. She said Cllr McEvoy said he would speak with the Director to get authorisation, but she had replied that would not be possible because it was the weekend. She advised him to contact Social Services.

Witness 2 disagreed with the suggestion that the reason she felt uncomfortable during the telephone call was because of the allegations made by Child X. She said she wasn't involved in that incident, and that her worries and anxieties were solely because of the conversation with Cllr McEvoy. She said he gave her an hour to get back to him. She wasn't happy with that because she felt he was undermining her decision. She said he should have accepted what she said because she was just doing her job to keep everyone safe whilst she was running the shift.

She said she took her duties seriously. She confirmed that all young people in the home have an individual care plan and named people in the care plan who that child can have contact with. All staff at the care home are aware who each child can have contact with. If a name is added to a Care Plan, everyone working with that young person would be made aware, and care plans were updated as and when necessary. She said she knew her job well, but her conversation with Cllr McEvoy made her judge and doubt herself. She said it was the only time she had ever felt intimidated when making a judgement call. She said Cllr McEvoy had ended the call politely, but not in a kind manner.

The Chair reminded Cllr McEvoy not to interrupt whilst the witness was giving evidence and assured him he would have the opportunity to question her evidence later.

Witness 2 said she felt shaken up, and her colleague (Witness 1) supported her. She had some water, spoke with her colleague (Witness 1) and then spoke with her line manager. Her line manager and the EDT confirmed she had done the right thing and that if Cllr McEvoy had entered the premises, she should have called 999 because he had no authorisation. She said she made an initial note of the telephone call straight after speaking with her line manager.

Cllr McEvoy advised that his assistant, Jacqueline Hurst, would be questioning Witness 2, as he did not want her to feel intimidated by him.

Ms Hurst was then given the opportunity to question Witness 2. During this cross-examination, Witness 2 said that she had since been promoted, but at the time of the telephone call on 29th April 2018, she was a senior registered care worker (RCW). She said Cllr McEvoy had introduced himself as a Welsh Assembly Member and also Corporate Parent. She confirmed that the initial typed note of the telephone conversation and her later witness statement provided during the Ombudsman's investigation were both

her own words, made with no assistance from anyone else. She said she also logged the telephone call in the care home's daily log book, which is used to record every call and visitor at the home. She confirmed the time of the phone call was mid-morning; and said that after the call she had spoken to the social work manager and EDT, taken their names and logged their advice. She said the phone call felt like it lasted forever, but it was probably about 15 minutes long.

She explained that she had not mentioned Witness 1 in her initial log because she was recording key details about the incident, and it wasn't about Witness 1, it was about the phone call with Cllr McEvoy. For the purpose of recording the incident, she said the key people were Cllr McEvoy and the EDT. She was recording what happened and the EDT's advice and authorisation. She said her colleague was there to support her, not to advise her and he had no individual input.

In response to the suggestion that it was understandable that Cllr McEvoy's tone changed after she told him he would be removed by the Police, Witness 2 said she did not agree with this, and that if she had been told she had no authorisation to visit a care home, she would not go. She accepted there was no mention of a 'raised voice' in her initial note, but said that although there may be some small differences, it was overall the same account, and the omission of reference to a 'raised voice' did not mean she was not intimidated, because she was.

Ms Hurst asked Witness 2 whether she had told the child's mother about the incident on 18th April 2018, to which Witness 2 replied that she did not think that was relevant, but it was not her. She confirmed that she (and Witness 1) had told Child X about Cllr McEvoy to check if he wanted to talk to Cllr McEvoy.

Cllr McEvoy indicated that he had further questions he wanted Ms Hurst to ask Witness 2 on his behalf. Witness 2 confirmed she was happy to answer his further questions. Ms Hurst asked how her colleague, Witness 1, had supported her. Witness 2 said that she called Witness 1, who was in the kitchen next door, to come into the office during the phone call when she felt Cllr McEvoy was becoming intimidating. At this point, she felt she needed support, so she put the phone on loud speaker, and gestured to him, then put the phone back to normal because of confidentiality and the fact that there were other young people in the home. She maintained that she did put the phone on loudspeaker, briefly, just to call her colleague in, even though she had said in her witness statement (paragraph 7) that the phone was not on loudspeaker. She said that Witness 1 stood in front of her, slightly to her right side, and was in a position to hear the phone call.

At 11.50, Cllr McEvoy requested a 10 minute adjournment, to which the Chair agreed. The hearing was adjourned and Witness 2 retired to a separate room from other witnesses. The hearing resumed at 12.10.

In response to a question from the Panel, Witness 2 said that when Cllr McEvoy said he 'would raise this matter at Welsh Assembly', she understood he was referring to her refusal to allow him to visit Child X and that, because of his position, this made her question if she should be doing what he asked. She maintained that the way he thanked her at the end of the call was different to a genuine 'thank you'. She said that after the call ended, she talked with Witness 1 and her line manager who reassured her she had followed the right procedure. She then had a drink of water. She said that after the phone call, she felt nervous, anxious, and sick. She didn't know if she had made the right call. She accepted she was also angry, and said that she felt undermined for doing her job properly.

The Panel asked Witness 2 to clarify the timing of the Police visits, as the bundle contained an email she had sent referring to a police visit at 16.50 that day (page 272 of the bundle), whereas her witness statement (paragraph 4) said the police had visited the night before. Witness 2 said the Police had arrived after she had finished her shift at 8pm and that she wasn't aware of the Police visit until she came back to work the next day. She said she was told the Police had spoken with Child X who seemed fine and then they left.

Ms Hurst confirmed she had no more questions for Witness 2.

The Chair asked the Ombudsman's representative to call her next witness.

### **Witness 3**

The Chair welcomed the witness, introduced the Panel and the parties, explained the remit of the Panel and apologised for the delay. He explained that witnesses' names were to be pseudonymised during the hearing, that he would be referred to as 'Witness 3' and should refer to his colleagues similarly and not name them, the child or the care home. The Chair explained that the Ombudsman's representative, Ms Shaw, would question him first, followed by Cllr McEvoy and then the Panel may ask further questions.

Witness 3 confirmed his witness statement was true and correct. He said that he was, at the time of the events on 11th May 2018, the HR manager for the private care company. He said he was asked to pass on a message that the social worker had given to the therapist saying that the meeting had been cancelled. He said he went down and told Child X's father that the therapy meeting had been cancelled. The Father and Cllr McEvoy had both asked why the meeting was cancelled and he told them the reason he had been given was because Cllr McEvoy was there. He said that he was just there to deliver that message, and that when he did so, Cllr McEvoy had been confrontational towards him. He said that his interaction should have been over at that point. He said Cllr McEvoy pushed his phone towards his face and asked questions about the company's complaints procedure. Witness 3 said he asked Cllr McEvoy to identify himself, as he didn't know him. He said Cllr McEvoy was asking questions aggressively, so he declined to give him details of the complaints procedure. He said that as he was leaving to go back to his office, Cllr McEvoy described his appearance to the person on the phone: as 'scruffily dressed, balding and overweight'. Witness 3 said he was taken aback at this. He said he was not aware that a recording was being made and said that the recording supplied by Cllr McEvoy did not cover all parts of their interaction and did not reflect Cllr McEvoy's physical demeanour. He said he felt that Cllr McEvoy's manner was aggressive, that he was in 'my personal space' at first and that he felt that the way Cllr McEvoy spoke about him and followed him as he turned to return to his office were intended to goad him, and this was uncalled for and not very professional.

Cllr McEvoy was then given the opportunity to question Witness 3. During this cross-examination, Witness 3 confirmed that he had broken the news that the meeting had been cancelled, but no recording had been provided of this earlier part of their conversation. He said that Cllr McEvoy was speaking on the telephone normally when he had told them the meeting had been cancelled, and Cllr McEvoy had then put the speaker-phone on. He couldn't recall hearing the voice on the other end of the phone. He said he believed Cllr McEvoy had followed him because he came through the door behind him as he walked back towards his office.

He said his initial note was made soon after the event, when he was asked for a short statement, and said he was not aware that a complaint had been made about him, although he acknowledged that Cllr McEvoy had threatened to complain. He responded to various apparent discrepancies in his evidence as follows. He explained that he thought

Cllr McEvoy had spoken in a raised voice throughout, despite the transcriber's note of the recording, which suggested that Cllr McEvoy's voice did not appear to be raised, because he could still hear Cllr McEvoy when he was down the other end of the corridor with the Father. He said that he had asked Cllr McEvoy to identify himself, because he didn't know him. He acknowledged that the reference to Cllr McEvoy's description of him and the allegation that Cllr McEvoy had pushed his phone towards his face were not included in his initial note, but he denied embellishing the evidence in this regard. He replied that he felt shocked and expected more professional conduct from a councillor. Cllr McEvoy queried whether he knew he was a councillor at that time and Witness 3 replied he did know now. Cllr McEvoy then challenged Witness 3 on his use of the term 'scruffy' and Witness 3 conceded that the description of him heard on the recording did not mention being 'scruffy' and admitted that this may have been an embellishment.

Cllr McEvoy asked if the recording of their interaction could be played. Ms Shaw advised that the name of the child could be heard on the audio recording; and Witness 3 pointed out that his name could also be heard.

In order to not disclose personal information, the Panel RESOLVED to exclude the public whilst the recording was played (pursuant to the Local Government Act 1972, Schedule 12A, paragraphs 12 and 13).

The recording was played and the Panel then RESOLVED to readmit the public.

Cllr McEvoy asked Witness 3 if he would describe the councillor's manner as aggressive and irate. Witness 3 maintained that Cllr McEvoy's physical demeanour was aggressive, but said that he had not used the term 'irate'. He maintained that he had not seen the social worker on site and did not know to whose car Cllr McEvoy was referring. He said he had walked away when he had finished the interaction with Cllr McEvoy and the Father, and that he felt a bit shaken, as he had not expected to be confronted in that manner. He said he felt intimidated when he thought Cllr McEvoy was following him.

Panel members asked why Witness 3 was unwilling to give Cllr McEvoy the information he had asked for. Witness 3 said it was because Cllr McEvoy had failed to identify himself, and was presenting himself quite aggressively, so he gave him time to calm down. He said that he would have helped if Cllr McEvoy had asked in a more professional manner. He said that when he found out he had been recorded without his knowledge, he felt shocked and taken aback and that his privacy had been invaded.

In response to Cllr McEvoy's questioning about any financial interest in this matter, Witness 3 said that he had been appointed as a company director last November, but at the time of the incident and when he made his witness statement, he was not a director.

There were no further questions for Witness 3; and the hearing was adjourned for lunch.

The Panel RESOLVED to exclude the public to allow the parties to discuss procedural and scheduling issues (pursuant to the Local Government Act 1972, Schedule 12A, paragraphs 12 and 13).

At 14.50 the hearing resumed and the public was re-admitted. The Chair explained that various procedural and timetabling issues had been addressed and that the next witness to be called was Witness 4; followed by the Father, during whose testimony the public would be excluded.

The Chair asked Ms Shaw to call her next witness:

#### **Witness 4**

The Chair welcomed the witness, introduced the Panel and the parties, explained the remit of the Panel and apologised for the delay. He explained that witnesses' names were to be pseudonymised during the hearing, that he would be referred to as 'Witness 4' and should refer to his colleagues similarly and not name them, the child or the care home. The Chair explained that the Ombudsman's representative, Ms Shaw, would question him first, followed by Cllr McEvoy and then the Panel may ask further questions.

Witness 4 confirmed his witness statement was true and correct. He said he was employed as a Training Manager for the care company at the time of the events on 11<sup>th</sup> May 2018. He said that the recording of part of his conversation had been made without his knowledge and that he had felt shocked and upset about this. Ms Shaw had no further questions for Witness 4.

Cllr McEvoy was then given the opportunity to question Witness 4. During this cross-examination, Witness 4 said that he had two interactions with Cllr McEvoy. He met Cllr McEvoy and Child X's father in the corridor, had a discussion with them and left and went back to training room; and then had a second interaction with them a short while afterwards. He said he was not involved in Child X's Care Plan, but had been told by Witness 3 that Cllr McEvoy and the Father were not invited to the therapy meeting that day.

He said his first interaction with Cllr McEvoy was in the bottom end of the corridor. He did not know who had let Cllr McEvoy and the Father into the building, but he assumed someone else may have entered the building and that they may have followed them in. He said Cllr McEvoy told him that he was a councillor and was there to represent the Father, but did not properly introduce himself. He said that Cllr McEvoy told him he would be attending the therapy meeting. Witness 4 said he asked Cllr McEvoy and the Father to wait in the foyer. He said he did not tell Cllr McEvoy and the Father that the meeting had been cancelled. He said that during their first interaction, Cllr McEvoy was initially quiet, but became irate when he asked for his name. He said he thought Cllr McEvoy was irate because his arms were moving quickly, he was gesturing and flamboyant with his body language, his shoulders were back, and his chest was puffed out. He said Cllr McEvoy was telling the Father that 'we are going into the meeting'. Witness 4 said he then walked off, telling Cllr McEvoy and the Father to wait in the foyer.

Witness 4 said his second interaction was when Cllr McEvoy was knocking on the office door. He said that from the entrance buzzer there were three doors before the office door, depending on which entrance to the building is used. He said Cllr McEvoy's manner was irate, that he was fidgeting, finger pointing and coming towards him, stepping around the Father and coming within a couple of feet of him.

The hearing was paused briefly, as the Chair left to check on a member of the public who had walked out, to see if they needed any assistance. The Chair returned within 2 minutes and the hearing resumed.

Witness 4 said that Cllr McEvoy was speaking in a raised voice.

In response to a request from Cllr McEvoy, the recording of their second interaction was played. Cllr McEvoy asked again if his voice was raised, to which Witness 4 replied that it was more raised than normal. He said Cllr McEvoy's body language was aggressive, and his arms were out. He said he felt uncomfortable and penned in. He denied Cllr McEvoy's

suggestion that his own body language had indicated that he was looking for a fight and said that he did not display any aggressive body language at any point during their interaction. He said he was surprised to hear Cllr McEvoy saying that he felt threatened by his response.

He confirmed that he had made an initial note of their interactions on the same day and kept it on the file, then later gave it to the company's HR manager and forwarded it on to the Ombudsman during the investigation. He said that after his interactions with Cllr McEvoy, he felt questioned, intimidated, pressured and uneasy about it all. He was just doing his job, passing on a message.

There were no further questions for Witness 4; so the Chair asked Cllr McEvoy to call his witness, the Father of Child X.

The Panel RESOLVED to exclude the public whilst the Father gave evidence to avoid the disclosure of personal information about the family and child (pursuant to the Local Government Act 1972, Schedule 12A, paragraphs 12 and 13).

At 16.30 the hearing was resumed in public. The Chair announced that, as it had been a long day, hearing evidence from four witnesses, and the planned end time was 16.00, the parties had agreed to hear Cllr McEvoy's evidence the following day, in the interests of obtaining the best evidence and securing a fair and efficient hearing. The hearing would commence at 12 noon the following day, 8<sup>th</sup> January 2020, to accommodate another appointment Cllr McEvoy had in the morning.

RESOLVED: that the hearing be adjourned.

### **8<sup>th</sup> JANUARY 2020 – HEARING DAY 3 - CITY HALL, FUNCTION ROOM A**

The hearing convened at 12.45. The same Panel Members, Officers and Ombudsman's representatives were present. Councillor Neil McEvoy was also present and assisted by Jacqueline Hurst, Social Worker.

The Chair apologised for the late start and explained that Cllr McEvoy had raised a number of procedural issues since the hearing the day before.

The Panel RESOLVED to exclude the public to allow the parties to make their representations on these late procedural matters in private, so as not to disclose any personal information (pursuant to the Local Government Act 1972, Schedule 12A, paragraphs 12 and 13).

At 14.20 the public were re-admitted and the Chair announced that the Panel had dealt with a number of procedural issues; and had decided, with the agreement of all parties, that the hearing would be adjourned until Monday 13<sup>th</sup> January 2020. The Chair explained that the decision to adjourn had been made in the interests of securing a fair and efficient hearing and to allow time for reflection on the evidence. When the hearing reconvened on Monday, Cllr McEvoy would be invited to give his evidence; and then both parties would be invited to make submissions on whether or not the Code had been breached. The Panel would then meet in private on Tuesday 14<sup>th</sup> January 2020 to deliberate and aim to announce its decision later that afternoon.

Cllr McEvoy thanked the Panel for adjourning the hearing and giving him time to prepare his submissions.

RESOLVED: that the hearing be adjourned.

### **13<sup>th</sup> JANUARY 2020 – HEARING DAY 4 - CITY HALL, FERRIER HALL**

The hearing convened at 10.15. The same Panel Members, Officers and Ombudsman's representatives were present. Councillor Neil McEvoy was also present and assisted by Jacqueline Hurst, Social Worker.

The hearing was scheduled to start at 10am, but the start was delayed until 10.15 at Cllr McEvoy's request.

At 10.15, the hearing was convened, in private, for discussion of procedural matters (pursuant to the Local Government Act 1972, Schedule 12A, paragraphs 12 and 13).

At 10.30 the public were re-admitted for the formal hearing to re-commence.

The Chairperson welcomed everyone, introduced the Panel Members and all parties in attendance. He confirmed the remit of the Panel was to determine the complaint referred by the Ombudsman about Cllr McEvoy's conduct on 29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018. He emphasised that the evidence and submissions had to relate to events on the days in question, and that although some context may be relevant, the hearing was not an opportunity to air general views about the workings of Cardiff's Social Services.

The Chair reminded all parties about the Panel's decision to anonymise names of witnesses and the care home and warned against disclosure of any confidential information. He also reminded everyone that recording was not permitted, as it may distract witnesses, and that anyone found to be covertly recording would be excluded from the hearing. He made clear the Panel's expectation that everyone should be treated with respect and courtesy, and warned that any member of the public who distracted or intervened in the proceedings would be asked to leave. No fire drills were planned, phones should be switched off and everyone was asked to remove their belongings when leaving the room.

The Chair explained that the next stage of the hearing, under paragraph 12(d) of the hearings procedure, was for Cllr McEvoy to give evidence on the facts, and answer any questions from the Ombudsman and Panel members. Cllr McEvoy would then be given the opportunity to make his submissions about whether or not the evidence established a breach of the Code; the Ombudsman's representative, Ms Shaw, would then make submissions, and Cllr McEvoy would be given an opportunity for his final response.

The hearing was scheduled to finish at 16.00, with an hour's break for lunch at 13.00, although the timings would be flexible.

Cllr McEvoy was invited to give his evidence.

#### **Cllr McEvoy**

Cllr McEvoy said that his behaviour was governed by the behaviour of Children's Services and could not be looked at in isolation. He said the system to protect children is broken, and this is what should be focussed on, not his behaviour.

Cllr McEvoy maintained there were extraordinary circumstances in this case. The child had alleged abuse back in 2017 and told his mother he had been assaulted. As a

councillor, no-one was giving him answers. The social worker and the care home hadn't told the child's mother about another alleged attack when the child was hospitalised.

Cllr McEvoy accused the Ombudsman of having a political vendetta against him, trying to ensure the First Minister keeps his seat. He said his behaviour was driven by concern for the child's welfare. He was the victim of false allegations and this was a recurring pattern. Cllr McEvoy accused the Ombudsman of making Wales less safe for children in pursuing the complaints against him, using the Ombudsman's office to stop important questions being asked. He said the Ombudsman's report was biased and flawed. He said the Ombudsman misunderstands the duties imposed by the Children Act, specifically, section 47 and the scope of the Protocol.

He said that the Protocol is advisory, it has no legal weight and does not apply to him because it only covers meetings convened under section 47 of the Children Act (and is not applicable to other child protection meetings or the events in question) and Cardiff's Protocol does not apply in any event, as Child X's care home residence is in Swansea.

As a Corporate Parent, Cllr McEvoy said he has a legal obligation; it is his role to go to the 'nth degree' to see that children are protected. He submitted the Ombudsman has a fundamental misunderstanding of the role of a Corporate Parent. When Cllr McEvoy was elected in 1999, he said councillors were encouraged to visit children's homes. He wanted to go with another councillor colleague at a later date, but that never happened.

He said that the Ombudsman was saying that if a social worker says there are no concerns, he should accept that, but he would not accept what he was told because that's what councillors did in Rochdale and Rotherham. He simply asked for details and answers, which he wasn't given. He struggled to get any information.

As the former Assistant Director knew, he is an experienced teacher and lecturer, with training in child protection and law. He also has experience as a litigant and a McKenzie friend, assisting people who can't afford a lawyer. It was not unreasonable for him to contact the home and ask to visit the child.

Cllr McEvoy said that the context of the telephone call on 29<sup>th</sup> April 2018 was that the day before, on Saturday 28<sup>th</sup> April 2018, his staff member (Ms Hurst) had contacted him because the mother of Child X, an 11 year old, had telephoned his mother and told her that he had been badly assaulted, 'proper laid into', by staff at the care home. He said the mother was hysterical, and had said there was blood on the curtains, so there would be evidence on site. He said this was not an isolated allegation, other allegations had been made by Child X. The mother and father were not allowed to visit Child X to check he was OK. Cllr McEvoy said he was concerned. He didn't have enough information to know what had happened and wanted to make sure the child was OK.

He said he did ring the Police but they did not get back to him. The Police gave him hardly any information, just said that 'it's OK.' He said he wanted to know if the child had been taken to a safe place to talk about the incident, if there was a video recording and whether the child had had an advocate, but he said he was given no answer to these questions.

On Saturday 28<sup>th</sup> April 2018, he said he tried to call the Assistant Director of Social Services, but his phone was off. He said he left messages with senior managers.

He said that during the telephone call on 29<sup>th</sup> April 2018, Witness 2 was adamant that he could not visit the child. He said that he had not threatened her and she does not say that he did. He said that she threatened him with the Police. He said he did respect her position, as he did not go to the care home after their conversation.

In relation to events on 11<sup>th</sup> May 2018, Cllr McEvoy said he was not 'gratuitously offensive' towards Witness 3. He said he tried several times to get the identity of the person who had behaved offensively towards him, but Witness 3 would not identify himself. He said he gave a very bland, respectful description of Witness 3, with no derogatory comments. He described Witness 3 as slightly overweight, had a beard, was roughly 5'7", and was losing his hair. He said there was no innuendo in his description and he did not use a mocking tone. It was just a professional assessment of Witness 3 because he wanted to take it further and complain.

He said he wanted to attend the therapy meeting to discuss Child X's Special Educational Needs Statement. He said that he held a Post-Graduate Certificate in Education with an interest in special needs and that Child X has learning difficulties. He wanted to be there to reassure the parents that X was getting the right therapy. He was met with rude behaviour.

Cllr McEvoy said he did not believe his conduct brought disrepute on the Council or the office of councillor. If he had not telephoned the social worker in line with the Protocol or if he hadn't phoned the home as a Corporate Parent, that may have brought disrepute. He was simply trying to represent a person who didn't live in his ward.

Ms Shaw was then invited to put any questions to Cllr McEvoy. During this cross-examination, Cllr McEvoy accepted that he did not personally have parental responsibility for Child X, nor had the court granted him any other personal responsibility for Child X. He was not named in the court order or the care plan. Cllr McEvoy said the child's parents were named on the care plan, but they were not allowed to visit the home. He said that the parents asked him to find out how Child X was.

Cllr McEvoy said there were extraordinary circumstances in this case. Child X had alleged abuse back in 2017 and told his mother he had been assaulted. As a councillor, no-one was giving him answers. The social worker and the care home had not told the child's mother about another alleged attack when the child was hospitalised.

Cllr McEvoy acknowledged that the Police log and email correspondence with the Police (page 228 of the bundle) confirmed that Cllr McEvoy did know that the Police were making investigations that afternoon and that he was emailed and told the outcome of their investigation was that there were no concerns. However, Cllr McEvoy said that he had not been given information about action taken and whether the All Wales Child Protection Procedures had been followed. He said the parents were very concerned, as this was the fourth or fifth allegation made by Child X; and the police had referred him to the social worker. He said it was reasonable, in these circumstances, for him not to accept a simple reassurance. He said he now knew that the All Wales Child Protection Procedures had not been followed. The Police had told the Child off instead of properly listening to his concerns. Cllr McEvoy said he was doing his job. He said that if the Assistant Director had told him that the Police had visited the care home three times, he would not have called the home.

Cllr McEvoy said he did not accept the assurance in the letter from the Independent Review Officer (IRO) confirming that the All Wales Child Protection Procedures had been followed. Cllr McEvoy said that a strategy meeting should have been called within days following the alleged assault (alleged to have taken place on 18<sup>th</sup> April 2018), but the meeting was not held until 8<sup>th</sup> May 2018, which was outside the timescale given in the guidelines. He said that after the strategy meeting, Child X's care plan was changed. He did not accept that the IRO had concluded there were no concerns about the care of Child X or Ms Shaw's suggestion that the IRO recommendations in relation to training were made for the benefit of those caring for Child X, so that Child X would understand the constraints which may properly be used.

Cllr McEvoy said he did not know that the assault alleged by Child X had been raised by Child X 10 days earlier, and accepted that the concerns may not, therefore, have been urgent on 29<sup>th</sup> April 2018, but said he did not have this information at that time. In response to Ms Shaw's suggestion that the Police may not have been able to give him this information as he was not authorised to receive it, Cllr McEvoy said that the parents were also not given this information.

Cllr McEvoy said that his memory was that Witness 2 was adamant that he could not visit Child X and was very dismissive. He was met with a brick wall, and that's why he wanted to speak to the Director of the home. He said he was not sure if he had told Witness 2 he would be bringing a colleague and raising the matter at the Welsh Assembly. Cllr McEvoy said that he couldn't be 100% certain about this, but he said he was acting in the best interests of the child. He said he later spoke with a colleague and agreed a date to visit the home at a later date. He also raised the matter with the Minister for Children and the Children's Commissioner, but both had said they were not allowed to look at individual cases. Cllr McEvoy confirmed he had referred to his Assembly Member role and said that this was a natural way to introduce himself. It was not a threat. When asked again if he had said he was going to raise the matter at the Welsh Assembly after Witness 2 had told him he could not visit, and if he had also said he would be bringing another colleague, and if so, why he had done so, Cllr McEvoy said he was not sure if he had said those things, and he would prefer to answer questions on what he could remember. When asked to comment on the evidence given by Witness 2 that his repeated emphasis on 'I will' be attending was understood as an attempt to put pressure on her, Cllr McEvoy said that Witness 2 was an unreliable witness, for example, she had said in her witness statement that she did not put the speakerphone on during the call, but at the hearing gave evidence that she had put the speakerphone on. She also said she had a glass of water with Witness 1 after the phone call, but Witness 1 said he had left straight after the call. In response to Witness 2's evidence that he had kept repeating that he would be coming down, which she felt to be intimidating and threatening, Cllr McEvoy said he was intimidated by her constantly threatening him with the Police. Ms Shaw explained that Witness 2's evidence was that she had referred to calling the Police only after he appeared to be refusing to accept her advice that he should not come to visit the home, and had called her colleague in to witness the call, to which Cllr McEvoy replied that there was no evidence he had spoken to her in an untoward way. He said that if the phone was on speakerphone, of course his voice would have sounded loud. In response to a question of whether he had told Witness 2 she had one hour to get back to him, Cllr McEvoy said he thought it was reasonable to give someone a deadline. There was no implied threat. He said Witness 2 had called him back and he was very grateful for that. He was not sure about the timescale. He said he had respected what she said, and he did not visit the home. He denied that he had not respected her and tried to bully her into letting him attend the home.

Cllr McEvoy said that Child X's parents had been blamed in the Assistant Director's evidence for giving Child X inappropriate information, but he said that although Witness 2 initially said she would not have given that information to the child, she later accepted that she had given that information to Child X about him.

In relation to Witness 2's evidence that she felt bullied and intimidated, and she felt sick during her telephone conversation with Cllr McEvoy, Cllr McEvoy was asked if that was his intention. His response was that if the Assistant Director or the social worker had given him information, he would not have had to call the home. He also said that the person who kicked off the complaint to the Ombudsman was the person alleged by Child X to have assaulted him. Cllr McEvoy was asked if he had thought that Witness 2 would fold under pressure if he kept on and on. In reply, Cllr McEvoy said no, the recordings of 11<sup>th</sup> May 2018 proved he didn't. Child X was worth half a million pounds to the care home. The Council wouldn't tell him exactly how much money. He said he did not speak as the witness alleged.

Cllr McEvoy said that the reason he had asked the Father to covertly record the interactions after the first interaction with Witness 4, was because the Council had lied about the parents and had a history of lying. He said he had proof that Council officials had lied. Parents had had meetings cancelled at the last minute, they were very vulnerable and had been accused of not attending meetings which had been cancelled. He had no trust with the people they were dealing with, so he recorded them, but he made a mistake with his own recording, so was glad he had asked the Father to record as well. Cllr McEvoy was asked if he was trying to set up the staff, and asked him if what the staff had described about his aggressive body language (chest puffed out and finger pointing) was what Cllr McEvoy would call assertive. Cllr McEvoy said no, he had behaved professionally, and he said Witness 4 had described him as quiet (Ms Shaw clarified that Witness 4 had said the Councillor was initially silent in respect of providing his name, rather than quiet).

Cllr McEvoy said that Witness 4 had suggested his voice was raised in the corridor, but the recordings proved it was not raised and he was not aggressive. He said he had no recollection of pointing. Witness 4 had referred to Cllr McEvoy's arms being out which Cllr McEvoy said were not aggressive. He said that if he had gesticulated, it was not done aggressively. If he ever misbehaved, he would apologise immediately, as he had done when he apologised for pointing at the Chair during this hearing.

Cllr McEvoy said he had been initially quiet as he was going to observe the Father in case anyone made something up, but he said Witness 4 had behaved like a thug, and so he was thinking of what he should do if Witness 4 hit him. He said he had thought if he punched Witness 4 he would be charged with assault, so he planned to throw him down with a judo move and hold him down. He said he was horrified that this person may be about to attack him. He wanted to complain about Witness 4 but said the Council had misidentified him and told him that Witness 4 was Witness 3. Witness 4 was aggressive. Cllr McEvoy said he was going to ask the Father to call 999. He said he was shaken up, and he had never been made to feel like that in 30 years of his professional life. He said he immediately wrote to the Council, but the Council did not act on his complaint.

In response to the evidence that he had been aggressive during his first interaction with Witness 4, which was not recorded, Cllr McEvoy said that he had walked past Witness 4 because he wanted to leave and had to walk past him.

Cllr McEvoy was asked about his interactions with Witness 3, when he politely told him that the meeting had been cancelled. Cllr McEvoy said that Witness 3 was not polite to him when he asked who to complain to, although he was polite to the Father, but he agreed Witness 3 was not aggressive. He was asked why he had put the speakerphone on during his call to the Assistant Director. Cllr McEvoy replied that the recording proved he was not aggressive and the Assistant Director had confirmed that even though they had had many stressful dealings, he had never known Cllr McEvoy to be overtly aggressive. Cllr McEvoy was asked if he intended to intimidate Witness 3 when he said on speakerphone that he wanted to complain. Cllr McEvoy's reply was that Witness 3 knew who he was, as he said 'Neil McEvoy is not allowed to attend the meeting if he turns up with Dad.' He agreed that Witness 3 would not have known who he was speaking to on speakerphone. He was asked if it was necessary for him to say on speakerphone that he wanted to complain and to refer to Witness 3's appearance. Cllr McEvoy replied that he essentially wanted to describe Witness 3 to the Assistant Director, so that he couldn't deny he was there. He wanted to let the Assistant Director know who he was speaking to. He accepted that neither Witness 3 nor Witness 4 had any idea that he had been invited to the meeting by the Father or that he had contacted the social worker and therapist; and that all they knew was that a Neil McEvoy should not be attending the meeting. He said he believed this served as mitigation for their rudeness to some extent. He explained that he wanted to attend to discuss Child X's Special Educational Needs Statement. He said that he held a Post-Graduate Certificate in Education with an interest in special needs and that Child X has learning difficulties. He said he wanted to be at the meeting to reassure the parents that Child X was getting the right therapy. He said he was met with rude behaviour, but that he did not blame Witness 3, because he wasn't aware of the context.

Cllr McEvoy denied that he was irritated and took it out on Witness 3. He said he was slightly frustrated, not irritated. He said he gave a professional description, as he would give to a police officer and it was not meant to be pejorative. He denied that he was trying to make Witness 3 feel uncomfortable or being disrespectful. He maintained that he was trying to give a physical description. He said Witness 3 had not given his position in the organisation, so it was reasonable for him to try to describe him.

It was suggested to Cllr McEvoy that he had a pattern of behaviour (for example, as referenced in pages 235 and 243 of the bundle), that as soon as something does not go his way, he asks to speak to a Director. Cllr McEvoy's reply was that this was normal, professional behaviour, and that he had gone to some lengths to arrange the meeting, professionally and had turned up in good faith. He said he was bound by the Code of Conduct to complain about professional misconduct. He accepted that he had been given advice about appropriate channels to pursue a complaint (reference page 321 of the bundle).

The Chair then invited any questions from Panel members. A Panel member asked Cllr McEvoy how he was feeling before he made the telephone call on 29<sup>th</sup> April 2018. He said his concerns were not assuaged. He had called the EDT and got no response, he had tried the Assistant Director whose phone was off, and he had called the Police. He wanted details. He said that if he had been told about the three Police visits he would have felt much better and would have been able to pass this on to the parents. He doesn't know if Child X was taken off site or kept on site where the alleged abuse took place and the abuser could have been on site. All those questions were in his head.

He was asked to explain his comment (at page 343, in the transcript) that even if he wasn't able to visit Child X, attending the home and meeting with staff would have sent a message. Cllr McEvoy said the issue was scrutiny, he was a councillor trying to get a modicum of accountability in Children's Services, for them to know that they would be questioned and have to behave properly. He was asked to explain what he meant when he said that 'body language' would have given him a better understanding. Cllr McEvoy replied that 90% of communication is non-verbal and that you can get a sense of what type of person they are.

Cllr McEvoy was asked if there was any confirmation that he had contacted the social worker. He said there was an email from the social worker saying that he had had an email from Cllr McEvoy. Cllr McEvoy was asked to clarify whether he had contacted the care home before he rang the EDT or contacted EDT and then the care home, as the EDT log indicated he said he had contacted the home. Cllr McEvoy said he may have spoken to EDT after the home, then the Director and the social worker. He thought he contacted EDT on the Saturday. He was asked what he would have done if Witness 2 had not called him back within an hour. Cllr McEvoy said he didn't know, but he probably would have called again. Cllr McEvoy accepted he was 'demanding' and said that was his job, as long as he is assertive and professional. He wants answers. His concern was that Children's Services don't give answers. If they had said 'don't come today, we'll speak with the Director and try to fit you in another day', that would have satisfied him. His recollection was that there was no compromise on their part, they did not think they were obliged to allow a councillor to visit.

Cllr McEvoy was referred to his evidence that it was his job to challenge people in powerful positions and asked if he thought Witness 2 was in a powerful position. He said yes, she was in a powerful position over Child X. He asked to speak to the Director because he thought if this person can't help, who can help. Cllr McEvoy was asked to clarify if he was referring to power over Child X or power in relation to being a decision maker. He replied that Witness 2 had power over the child and the parents, who were not allowed to see where Child X lives, which amounted to a lot of power. He wanted to speak to the Director but never did. He would have liked to speak about how they could have done better. It would have been more effective if he had been invited to a meeting to reflect and move forwards instead of an aggressive response. Cllr McEvoy said his assistant, Ms Hurst, had been threatened with a complaint to her governing body, because she had caught them out on procedures, they had not followed Child Protection Procedures.

Cllr McEvoy was asked if he received confirmation that it was OK for him to attend the meeting on 11<sup>th</sup> May 2018. He said in his mind, he thought it was confirmed. His staff had gone to lengths to arrange the meeting and liaised with the therapist. X's Father had told the social worker about his attendance. Cllr McEvoy said he had no formal confirmation but no objection either. Every other time they have objected. In good faith he wanted to attend with Father and put questions to the therapist. He said he had no confirmation, they didn't call back.

It was noted that the meeting was originally planned to be without Cllr McEvoy's attendance and that there was evidence from the social worker that Father had been told during two telephone conversations that the meeting was for the parents only. Cllr McEvoy was asked if this did not raise a red flag for him. There was no confirmation that he had been notified his attendance was agreed. Cllr McEvoy said there was often no formal notification from Children's Services who are under strain. Father had confirmed there were no issues with him attending. He said if they had told him not to attend, he

would have responded that the parents have a right to an advocate of their choice. He said that the Protocol about Members not acting as advocates applies only to child protection conferences, not to other meetings, especially therapy meetings. He said it was wrong for the social worker to say that he could not attend. The parents had been bullied and emotionally provoked and misrepresented, so it was essential that they had someone with them, because of what could be written in reports. He said many reports were not honest.

Cllr McEvoy was asked who had told him that the therapy meeting had been cancelled, was it Witness 4 or Witness 3 or both. Cllr McEvoy said from memory, it was both. First, he was told he was not allowed to attend the meeting, Witness 4 passed that message to him. Then the question for them was if Father should attend the meeting without him, but this was then taken out of their hands because the meeting was cancelled.

Cllr McEvoy said he had later found out that the Council's Operational Manager was on site, but had not engaged with them. They were told the social worker was not on site, but he was there, they saw him walk out.

Cllr McEvoy was asked to clarify the sequence of events on 11<sup>th</sup> May 2018. First, there was an interaction with Witness 4, then Witness 4 went back into the office, and then there was a short delay of a few minutes before Witness 3 came out to see them. In that time, Cllr McEvoy had telephoned the Council's Assistant Director, who then came out of his meeting and called him back. Cllr McEvoy was asked why he didn't leave when he was told by Witness 4 that he could not attend the meeting, and if he feared for his safety, rather than rehearse judo moves. He replied that they had been told to wait, and that Father could have been accused of failing to co-operate if he had left, which could then lead to contact with X being refused. Cllr McEvoy said that Witness 4 was very aggressive, almost as if he were hyperglycaemic and that he felt in danger of being assaulted, but confident in his ability to deal with it.

Cllr McEvoy was asked if it were not possible that the social worker may have arrived after they had been told he was not on site. There was evidence that the therapist had said Cllr McEvoy was not allowed to attend the meeting and had rung the social worker. Cllr McEvoy maintained that it was inconceivable that the social worker was not in the office and that they had lied about the social worker not being on site and this raised concerns about what other lies had been told. He was asked if they had waited for the social worker. Cllr McEvoy said his recollection was imperfect, but they wanted to hang around because they didn't believe them, so they may have left more slowly. The one-way system took them past the social worker's car, which the Father knew, and he had taken a photograph and then saw the social worker leave the building.

Cllr McEvoy was asked if he had recorded both interactions with Witness 4 and the interaction with Witness 3, why he had done so and whether recordings were made by himself or Father. Cllr McEvoy replied that they both made recordings, as a belt and braces approach, because of their concern about a 'stitch-up'. However, the recordings made by Cllr McEvoy were not available as he hadn't downloaded them within the 6-week time limit for the recording application. He said that all three interactions on 11<sup>th</sup> May 2018 had been recorded, as well as the telephone call on 29<sup>th</sup> April 2018. The Legal Advisor asked Cllr McEvoy why the Father had not recorded the first interaction with Witness 4. Cllr McEvoy replied that he didn't know, possibly it was because Cllr McEvoy was recording.

There were no further questions for Cllr McEvoy.

At 13.05 the Chair announced the hearing would adjourn for lunch and reconvene at 14.05 for Cllr McEvoy to give submissions explaining why he did not consider he had breached the Code. Ms Shaw asked for a copy of Cllr McEvoy's written submissions, but Cllr McEvoy asked that they not be provided until he started his submissions after lunch.

At 14.15 the hearing was reconvened. The Chair reminded everyone that the same rules applied as for the morning session, in particular, he reiterated there should be no interruptions, phones must be switched off and no recording was permitted. He explained the next stage of the proceedings was to hear Cllr McEvoy's submissions, followed by the Ombudsman's submissions and then final submissions from Cllr McEvoy. The aim was to finish by 4pm. The Panel would then retire and consider its decision, which would be announced the following day in the afternoon.

### **Councillor McEvoy's Submissions**

Cllr McEvoy had provided written submissions consisting of 14 pages, with an annexed bundle of the key documents he sought to rely upon. These documents were drawn from the bundle prepared by the Ombudsman. No new evidence was attached to the written submissions.

Cllr McEvoy presented his submissions orally to the Panel. In summary, Cllr McEvoy's submissions were as follows:-

- The witnesses, save for father of Child X, were unreliable as result of contradictions and inaccuracies in their evidence.
- There was plenty of evidence to show Cllr McEvoy did not behave as alleged.
- The Ombudsman's report was flawed and biased.
- Cllr McEvoy said he has never said that abuse took place in this case, but abuse was alleged and the system for checking thoroughly on such allegations is broken in Cardiff. Cllr McEvoy submitted that the systems are broken all over Wales and the UK and he would like Wales to take the lead.
- Cllr McEvoy provided his version of events that led to his interactions with the care home on 29<sup>th</sup> April and 11<sup>th</sup> May 2018. Cllr McEvoy explained that before he contacted the care home on 29<sup>th</sup> April 2018, he had attempted to speak to the Assistant Director of Children Services, contacted the police and then followed the Protocol by contacting the Emergency Duty Team. Cllr McEvoy was of the view that no information was forthcoming.
- Cllr McEvoy said there were inconsistencies in the evidence of Witness 1 and 2 relating to how Witness 1 became involved; where Witness 2 was positioned during the telephone call; and how Witness 1 dealt with Witness 2 after the telephone call. Cllr McEvoy also submitted that the fact Witness 2 contacted her line manager after the telephone call, notified Cardiff Council and also wrote a statement via the Director, was not in keeping with a person who is in a bit of a state after the telephone call.

- Cllr McEvoy submitted that Witness 1 only heard one sentence of the telephone call and, in any event, that Witness 2 did not make any mention of Witness 1 in her original statement. Cllr McEvoy also submitted that Witness 2 introduced new evidence whilst giving evidence, some 20 months after the incident.
- Cllr McEvoy expressed his concern in respect of who wrote the statement of Witness 1 and how it was put together. Cllr McEvoy referred to Witness 1 as having a learning need, as admitted during the hearing, and said that it was his professional opinion that it was inconceivable that Witness 1 did not receive assistance in providing his statement.
- Cllr McEvoy said that all the witness statements of those employed by the care home were submitted by the complainant, which led to this investigation and subsequent referral to the Ombudsman. Cllr McEvoy questioned the independence of the statements.
- Cllr McEvoy submitted there were differences in the statement of Witness 1 and his statement dated 29<sup>th</sup> April 2018 and was of the view that Witness 1 lacked credibility based upon the fact that he claimed to have a better memory of events in November 2018, in comparison to April 2018.
- Cllr McEvoy drew the Panel's attention to inconsistencies in what Witness 1 said he heard – in his witness statement he had said he heard Cllr McEvoy say he was going to come to the home and bring someone with him, whereas in oral testimony he said he only heard Cllr McEvoy say he was going to come to the home.
- With regard to events on 11<sup>th</sup> May 2018, Cllr McEvoy reiterated his version of events in respect of the lead up to the events on that day.
- Cllr McEvoy made submissions in respect of the evidence of Witnesses 3 and 4. Cllr McEvoy reminded the Panel that two of the interactions, one with Witness 3 and the other with Witness 4, were recorded although the witnesses were not made aware of this, and therefore attempted to misrepresent Cllr McEvoy. He submitted that the recordings proved that Cllr McEvoy had not raised his voice and disputed the descriptions used by the witnesses in terms of Cllr McEvoy's behaviour and conduct.
- Cllr McEvoy said that Witness 3 had admitted that he embellished evidence claiming that Cllr McEvoy had called him 'scruffy' although this cannot be heard on the recording provided.
- In respect of Witness 4, Cllr McEvoy submitted he was the most confused witness, where he contradicted himself in respect of his evidence relating to Cllr McEvoy's body language and where Witness 4 and Cllr McEvoy were positioned during their interactions. Cllr McEvoy read to the Panel parts of the evidence he recorded of Witness 4 in support of these assertions.
- With regard to Witness 5 (the Father), Cllr McEvoy submitted to the Panel that his evidence was consistent with his statement and that Cllr McEvoy had asked the witness to write down his recollections, so he could rely upon it at a later date. Cllr McEvoy pointed out to the Panel the differences of opinion in respect

of the working relationship which existed between Child X's parents and Cardiff Children Services. Cllr McEvoy also drew the Panel's attention to the fact that the witness had approached other politicians but that Cllr McEvoy was the only politician to help the family. The witness referred to Cllr McEvoy as 'demanding' in the way he carried out his political role, which Cllr McEvoy took as a compliment.

Cllr McEvoy also reiterated to the Panel the fact that he thought a member of staff from the care home was going to assault him. He said he had concerns in respect of events on 11<sup>th</sup> May 2018 and it was his submission that Cardiff Council did not act on his almost immediate complaint. Cllr McEvoy said that the Council had been playing with the parents and playing with Cllr McEvoy. Cllr McEvoy invited the Ombudsman to investigate 'these people' and asked 'how can you not act upon these concerns?'

Cllr McEvoy made oral submissions in respect of Mr Iran Alam's evidence and pointed out what he considered were inaccuracies, which were relevant to his credibility. Cllr McEvoy provided the Panel with page references in support of his submissions. Cllr McEvoy submitted that Mr Alam misled him in respect of the term corporate parent and that Mr Alam did not have a good understanding of the case. In response to Mr Alam's view that he was embarrassed on 11<sup>th</sup> May 2018, Cllr McEvoy submitted that Mr Alam attempted to smear him and said it was 'tripe', which he had had to put up with in politics. Cllr McEvoy submitted that he did not have enough time to cross examine Mr Alam. Cllr McEvoy emphasised that despite Mr Alam's evidence, Cllr McEvoy had never attended the care home in question and said that was still a bone of contention. Cllr McEvoy submitted that he was not interfering, but said that as an elected member he is a corporate parent and he has responsibilities.

Finally, Cllr McEvoy made submissions in respect of the Ombudsman's report. In summary he submitted as follows:-

- The report included errors of fact and the section headed 'Events leading to the complaint' shows pre-judgment. Parts of the report are subjective and biased together with huge gaps in the evidence.
- The Ombudsman did not evaluate the credibility of witnesses
- The context for this whole complaint is that the person who Child X alleged had abused him initiated the whole complaint, merrily seized upon by the Public Services Ombudsman for Wales.
- There is no evidence I have behaved incorrectly, there is plenty of evidence to suggest that I just did my job, under very difficult circumstances. All independent evidence, that is the recordings, support me and prove the others to have misrepresented fact.
- The Ombudsman fundamentally misunderstands the role of a councillor, the role of a corporate parent and the Cardiff County Council Protocol.

The Chair thanked Cllr McEvoy for his submissions and announced there would be a 5 minute comfort break before resuming at 16.30 for the Ombudsman's submissions.

The hearing resumed at 16.30. The Chair reminded everyone to turn phones off and that previous rules continued to apply.

### **The Ombudsman's Submissions**

Ms Shaw, on behalf of the Ombudsman, submitted that it was the Ombudsman's role to investigate and provide evidence for the Panel to consider and assess in terms of credibility. This was not a review of Cardiff Children Services and not a case where alleged child abuse is being ignored. This investigation was in relation to Cllr McEvoy's behaviour and he had attempted to divert the Panel away from his conduct. Ms Shaw contended that Cllr McEvoy's understanding of the Protocol was incorrect. The Protocol was a guide for Members, and although it would apply to Section 47 investigations, it was not exclusively limited to this. Ms Shaw contended that events on 29<sup>th</sup> April and 11<sup>th</sup> May 2018, were a matter for the Panel to determine. She submitted that Cllr McEvoy's comment that the Ombudsman is in 'cahoots' with the First Minister was 'ludicrous'. She said that the Ombudsman obtained witness statements during the investigation and in doing so used the same process throughout, including for the Father of Child X, who was Cllr McEvoy's witness for this hearing.

Ms Shaw submitted that in respect of the incident on 29<sup>th</sup> April 2019, Cllr McEvoy had made his own mind up to attend the care home and had a complete misunderstanding of the role of corporate parent. Cllr McEvoy had no individual responsibility as part of the Care Order for Child X; there was no suggestion that Cardiff Council delegated authority to Cllr McEvoy; and neither was he mentioned on Child X's care plan. Ms Shaw submitted to the Panel that in respect of Witnesses 1 and 2, the Ombudsman had no role to play in assessing the credibility of witnesses and hence the referral to the Monitoring Officer of Cardiff Council. It was submitted however, that the evidence of the Ombudsman's witnesses in respect of events on 29<sup>th</sup> April 2018 was credible, consistent and compelling, compared to Cllr McEvoy evidence which was evasive and digressed from the matters at hand. Cllr McEvoy was unable to focus on what was said and could not remember events. In response to Cllr McEvoy assertion that there were inconsistencies in the evidence of Witnesses 1 and 2, Ms Shaw submitted that if the evidence of both witnesses mirrored each other, this would be suspicious. Ms Shaw added that the contemporaneous notes and witness statement of Witness 2 provided to the Ombudsman were consistent in terms of what was said and in terms of the impact Cllr McEvoy had upon the witness. Ms Shaw submitted that Witness 2 answered every question, did not deflect or detract and gave an honest account. As part of the submissions of the Ombudsman, Ms Shaw directed the Panel to the written and oral evidence of Witnesses 1 and 2, highlighting the consistencies in terms of how the witnesses described events of 29<sup>th</sup> April 2018 and the impact Cllr McEvoy's behaviour had upon Witness 2.

Ms Shaw submitted that there was evidence of Cllr McEvoy bullying Witness 2 and that she was reasonably entitled to take it that way. She submitted that in light of the evidence and the fact that Cllr McEvoy was not credible and was vague in his evidence, the evidence before the Panel suggested that Cllr McEvoy had bullied and harassed Witness 2 and thereby breached the Code of Conduct. It was also submitted that Cllr McEvoy had failed to show respect to Witness 2, despite Cllr McEvoy's assertions that he did have respect for her. Ms Shaw submitted that Cllr McEvoy attempted to undermine Witness 2 and failed to show her respect during the telephone conversation.

In relation to the events on 11<sup>th</sup> May 2018, Ms Shaw reminded the Panel that there was no recording of the first interaction with Witness 4; and that the recordings provided, which

consisted of the second and third interactions with Witnesses 3 and 4, were covertly recorded. The consequence being that Cllr McEvoy had the opportunity to temper his voice – the Witnesses had no knowledge and neither did they give their consent for these recordings. Ms Shaw submitted that Cllr McEvoy demonstrated a pattern of behaviour, which the Panel needed to make a determination on. It was put to the Panel that whilst there is nothing wrong in Cllr McEvoy making complaints, that when matters do not go according to Cllr McEvoy's plan, he seeks to intimidate others. Ms Shaw submitted the Panel should not be deflected by side issues raised by Cllr McEvoy, namely the issue of Witness 3 being a director of the care home now and alleged financial benefits as a result. Ms Shaw again reiterated that the Ombudsman had obtained statements from the witnesses using the same process. Ms Shaw drew upon the evidence of Witnesses 3 and 4 and reminded the Panel of their statements and oral evidence. Ms Shaw's submissions were that Cllr McEvoy's conduct meant that there were breaches to the Code of Conduct.

Ms Shaw contended that Cllr McEvoy's conduct brought Cardiff Council into disrepute for the following reasons:-

- Witnesses 1, 2, 3 and 4 were employees of a private company and were not Council officers who are used to certain levels of scrutiny. Witness 2 was not familiar with having interactions with Cllr McEvoy.
- The Assistant Director in his evidence referred to Cllr McEvoy's conduct as embarrassing and the relationship between Cardiff Council and the Care home could have been damaged.
- Cllr McEvoy had no authority to attend the care home. The suggestion that Cllr McEvoy was a corporate parent to the individual child and was therefore allowed access to him at the care home was plainly wrong. The Ombudsman was not suggesting that Councillors generally could not attend care homes. However, to suggest that elected members can attend care homes to visit children because they are corporate parents, when they are not named on care plans is plainly wrong.
- Child protection duties are such that Councillors hold officers to account, but this does not mean they have authority to become involved in individual cases. Cllr McEvoy did involve himself in an individual case and this supports a breach of the Code in respect of disrepute as it could damage Cardiff Council and have serious implications for Cardiff Council.
- At best, Cllr McEvoy has misled people and at worse, Cllr McEvoy's conduct was reckless.

To conclude, Ms Shaw drew the Panel's attention to the letter of the Independent Reviewing Officer of Child X and referred to page three of that letter which stated '*It would not help [child x] to have an elected member attend his home on an unplanned basis*'.

Finally Ms Shaw directed the Panel to the Ombudsman's report which referenced the investigator asking Cllr McEvoy whether he had pursued his concerns regarding Child X's case via the member officer protocol. Cllr McEvoy responded by advising that '*a lot of things are parked with this one*'.

The Chair thanked Ms Shaw for her submissions.

Cllr McEvoy requested a 5 minute adjournment, to which the Panel agreed.

At 17.30 the hearing resumed. The Chair invited Cllr McEvoy to make any final submissions, in line with paragraph 13(e) of the procedure, responding to the Ombudsman's submissions in relation to his conduct during the two events in question.

### **Councillor McEvoy's Closing Submissions**

Cllr McEvoy made the following final submissions to the Panel:-

- In respect of the Protocol, it is the decision of Councillors whether they follow it. Legal advice was obtained by Cardiff Council in respect of this; and the Ombudsman and Assistant Director should stay out of it. Councillors are able to attend care homes, but these visits simply do not take place.
- In respect of whether I said I was a member of the Welsh Assembly to Witness 2, the key point is that I do not deny saying it. My position is neutral on this and I would rather rely upon information I remember.
- My voice was not raised and I do not sulk, I try to remain professional. If Councillors respond robustly, we are accused of being aggressive and if we are not robust, then we are considered as passive aggressive, therefore Councillors simply cannot win. The only bullying that has taken place is that of the family.
- If I had not found out what was going on, then this inaction would have brought the Council in to disrepute.
- I was not aware that the allegations made by Child X were made some 10 days earlier.
- All the witnesses have set themselves up and are not reliable witnesses, with evidence being all over the place. It is on record that witnesses have lied and it is therefore questionable as to what else they have lied about. (Cllr McEvoy also reiterated inconsistencies in the evidence of witnesses).
- The Ombudsman has made comments about me complaining, but then has gone on to say there is nothing wrong in making complaints.
- In respect of disrepute, people here have suffered horrendous abuse and I am here as I am being told I am too demanding – a child could have been hurt and all I am doing is trying to find answers.
- My story is consistent with what I have always said.
- Everyone has a duty to follow the Children Act and the Ombudsman has not acted in a way for children. The children are at the centre of this and everything I have done in this case was in the interests of the child.

The Chair thanked Cllr McEvoy for his final submissions; and explained that the hearing would now be adjourned until the next day, when the Panel would reconvene in private, with its Legal Advisor, to consider its decision. The Chair noted that the Panel had also received approximately 450 pages of written evidence as well as late evidence submitted by Cllr McEvoy, and would therefore need some time to fully consider matters. The Panel would aim to announce its decision at around 3.30pm the next day, Tuesday 14<sup>th</sup> January 2020 and would then provide a full written decision, with reasons, within 5 working days.

RESOLVED: that the hearing be adjourned.

The hearing was adjourned at 17.55.

### **14<sup>TH</sup> JANUARY 2020 – HEARING DAY 5 - CITY HALL, FERRIER HALL**

The Panel met in private at 10.00, with its Legal Advisor, to deliberate over its determinations in light of all the evidence presented during the course of the 4 day hearing.

At 17.00 the hearing was reconvened, and all parties and the public were readmitted.

The same Panel Members, Officers and Ombudsman's representatives were present. Councillor Neil McEvoy was also present.

The Chair welcomed everyone and apologised for the delay. He asked all present to continue to observe the rules which had been applied throughout the hearing, specifically, asking for no interruptions, telephones to be turned off and there was to be no recording of the proceedings.

The Chair then announced as follows:

"This Standards and Ethics Hearing has been convened as a result of a referral made to the Cardiff Council Monitoring Officer following an investigation by the Ombudsman in respect of Cllr McEvoy's conduct on 29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018.

This matter was listed on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 13<sup>th</sup> January 2020 where the Panel heard evidence from witnesses to the events that took place on 29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018. The Panel have also heard submissions from the Ombudsman's representative and Cllr McEvoy in respect of why they consider breaches of the Code of Conduct have taken place or not.

The Panel has considered written evidence comprised of the Ombudsman's investigation report, a copy of which was provided to Cllr McEvoy. The Panel also accepted late written evidence provided by Cllr McEvoy. The Panel also had regard to the Procedure For Hearings (Ombudsman Referrals) which was adopted by the Standard and Ethics Committee on 1<sup>st</sup> July 2019, the Code of Conduct and Cardiff Council's Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults ('the Protocol') approved by Council in January 2016.

The role of the Panel in these referrals is clearly set out within the Procedure For Hearings (Ombudsman Referrals). The Panel combined Stages 1 and 2 of the hearing to consider the evidence in respect of the events that took place on 29<sup>th</sup> April and 11<sup>th</sup> May 2018 and the submissions of both parties in respect of whether Cllr McEvoy failed to follow the Code. It is not the role of this Panel to make any determinations outside the scope of this procedure. The Panel are aware of Cllr McEvoy's personal views in relation to Cardiff Children Services; and the Ombudsman and the Panel reiterates that should Cllr McEvoy have concerns, these need to be channelled through correct procedures.

Having carefully considered all the evidence, the Panel finds the following to be the relevant facts:

In respect of the telephone call on 29<sup>th</sup> April 2018:

- On 29<sup>th</sup> April 2018, a telephone call was made by Cllr McEvoy to the care home and the telephone call was answered by Witness 2 in the office.
- Cllr McEvoy accepts that he may have introduced himself as Assembly Member and Corporate Parent and said he wanted to visit Child X at the home that day.
- Cllr McEvoy says he was acting in a 'twin-hatted' capacity, as a Cardiff Councillor and Assembly Member.
- Witness 2 said that Cllr McEvoy could not visit Child X because he wasn't named on the child's care plan and she advised Cllr McEvoy to arrange a visit through the social worker and said that if he did attend without authorisation, she would have to call the police.
- Cllr McEvoy gave Witness 2 a deadline to get back to him.
- We are persuaded that Witness 1 was physically present for part of the call but could only hear a limited amount of the conversation. However, he did provide evidence about the impact of the telephone call upon Witness 2.
- We found Witness 2 to be a credible and persuasive witness as to the events on 29<sup>th</sup> April 2018, and on the basis of her evidence that Cllr McEvoy insisted that he would be attending the meeting, bringing a colleague with him, that he would raise the matter at the Welsh Assembly and gave her a deadline to speak to a Director and arrange authorisation for his visit, we accept that Witness 2 felt bullied and intimidated by Cllr McEvoy.
- We also accept that Witness 2 felt undermined by Cllr McEvoy.

In respect of the therapy meeting scheduled for 11<sup>th</sup> May 2018:

- On 11<sup>th</sup> May 2018, Cllr McEvoy attended the head office of the care home with the Father of the child with the aim of attending a scheduled therapy meeting for Child X. They gained access to the building.
- Cllr McEvoy says he was acting in a 'twin-hatted' capacity, as a Cardiff Councillor and Assembly Member.
- Cllr McEvoy was invited to attend the therapy meeting by the Father, but he did not personally receive confirmation from the Council agreeing to his attendance at the meeting.
- Cllr McEvoy and the Father were met shortly after entering the building by Witness 4. Cllr McEvoy and the Father had 2 interactions with Witness 4, an employee of the care home. The Ombudsman's investigation found insufficient evidence to suggest a breach of the Code of Conduct in relation to Witness 4, therefore the Panel makes no findings in respect of Cllr McEvoy's conduct in that regard.
- Cllr McEvoy and the Father subsequently had an interaction with Witness 3, another employee of the care home. Witness 3 passed on a message to the Father and Cllr McEvoy telling them that the therapy meeting had been cancelled by the social worker.
- Part of the interaction with Witness 3 was covertly recorded by the Father, under the instructions of Cllr McEvoy. During this recorded interaction, Cllr McEvoy was on the telephone to the Council's former Assistant Director of Social Services.
- Cllr McEvoy said to the Assistant Director that he wished to make a complaint about Witness 3 and gave a description of him, which included the term 'slightly overweight'.

We have carefully considered the detailed written and oral submissions made by Cllr McEvoy; and the oral submissions made on behalf of the Ombudsman, in considering whether Cllr McEvoy breached the Code of Conduct.

Specifically, the Ombudsman's referral contends that Cllr McEvoy's conduct on 29<sup>th</sup> April was such that it may amount to a breach of paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct; and breach of paragraphs 4(b) and 6(1)(a) of the Code of Conduct on 11<sup>th</sup> May 2018.

- Paragraph 4(b) relates to a councillor showing respect and consideration to others
- Paragraph 4(c) relates to a councillor not using bullying behaviour or to harass any person
- Paragraph 6(1)(a) relates to a councillor not conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute."

In respect of the alleged breaches, the Chair announced the Panel's decision as follows:-

RESOLVED: that

"In respect of the incident on 29<sup>th</sup> April, we consider that Cllr McEvoy has breached paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

In respect of the incident on 11<sup>th</sup> May 2018, we find no breach in respect of paragraph 4(b) of the Code.

In respect of Paragraph 6(1)(a), the Panel find that Cllr McEvoy on 11<sup>th</sup> May 2018 did bring the Council into disrepute, based upon the findings of fact made by the Panel."

Immediately following the Chair's announcement of the Panel's decision, there was a public outburst, with approximately 20 members of the public getting to their feet, walking towards the Panel and shouting at the Panel members, Ombudsman's representatives and Council officers. Security guards attempted to calm the crowd and keep the public back.

The Chair made efforts to continue the hearing, explaining that the Panel would now move to Stage 3 of the procedure, to consider what sanctions, if any, should be imposed. However, members of the public continued shouting at the Panel. The Chair announced that he was asking members of the public to leave so that the hearing could continue. The public remained and continued shouting. The Police were called. After approximately 5 minutes of shouting, members of the public eventually left the room.

Cllr McEvoy, the Ombudsman's representatives, the Panel, Legal Advisor and Clerk remained, along with press representatives and a couple of members of the public.

The Chair invited Ms Shaw to give the Ombudsman's submissions on sanctions, in accordance with Stage 3 of the hearings procedure.

### **Ombudsman's Submissions on Sanctions**

Ms Shaw, on behalf of the Ombudsman, submitted that the Panel should consider both mitigating and aggravating factors. Ms Shaw provided the Panel with two documents, namely the Adjudication Panel for Wales Sanctions Guidance and an Adjudication Panel for Wales Decision report in respect of Cllr McEvoy, dated 14<sup>th</sup> March 2017. Ms Shaw confirmed these documents served as a guide to assist the Panel in reaching its decision, but ultimately it was a matter for the Panel to decide upon the most appropriate sanction. Ms Shaw confirmed that it was the Ombudsman's position that the role of the Panel was to

promote high standards for Councillors within the community it serves. Ms Shaw submitted that Cllr McEvoy may wish to put forward any mitigating circumstances, but the Ombudsman accepted that Cllr McEvoy had the interests of the child at the heart of his actions and genuine concern about a child. Ms Shaw confirmed that there were also a number of aggravating factors, summarised as follows:-

- Cllr McEvoy is not an inexperienced Member
- There are repeated breaches of the Code of Conduct
- Cllr McEvoy's conduct was reckless
- Bullying of others is a serious breach
- Cllr McEvoy has displayed no insight into the impact of his behaviour upon Witness 3
- There was an unwillingness on the part of Cllr McEvoy to accept the impact his conduct had upon Witness 2
- There was an unwillingness for Cllr McEvoy to accept facts despite evidence to the contrary
- Cllr McEvoy's approach to the process was to propose several conspiracy theories
- Cllr McEvoy was previously sanctioned in March 2017 for failing to follow the Code of Conduct for similar behaviour

Ms Shaw concluded by reiterating to the Panel that any sanction should be to prevent repeat behaviours by Cllr McEvoy and set high standards generally for Members of Cardiff Council.

The Chair then invited Cllr McEvoy to make his submissions on sanctions.

### **Councillor's Submissions on Sanctions**

Cllr McEvoy reiterated to the Panel that the reason he had telephoned the home on 28<sup>th</sup> April 2018 was because a child in care had alleged abuse, back in September 2017 and in October and November 2017. The letter from the IRO outlined that there had been allegations of more abuse on 18<sup>th</sup> April 2018 and again on 1<sup>st</sup> May 2018. He said the Legal Advisor had confirmed that the IRO was incorrect, in that the All Wales Child Protection Protocol had not been followed. A strategy meeting should have been called almost immediately, not 20 days later.

He said that there were many cases of abuse in England, and he pointed at the Panel members, naming them individually, saying that abuse was being condoned by 'people like you'; and Katrin Shaw (the Ombudsman's representative), who he said had denigrated him yesterday.

The Chair warned Cllr McEvoy that his accusations and insults were not acceptable; and asked him if he had any submissions to make in respect of sanctions.

Cllr McEvoy replied that he would ask for no lesser sanction, but he would appeal against the decision. He said that children were being abused and the Panel had made Wales a much less safe place for children in Wales.

The Chair announced that the Panel would retire to consider sanctions.

RESOLVED: that the hearing be adjourned.

Cllr McEvoy replied that he had no interest in the Panel's sanctions; and asked that he be notified by email. He then left the room.

At 17.45 the Panel retired to consider sanctions.

### **Panel's Decision on Sanctions**

The hearing was reconvened at 18.50. Those in attendance were: Panel members; Legal Advisor and Clerk; the Ombudsman's representatives; and a couple of members of the public and the press.

The Chair announced that the Panel had carefully considered the submissions in respect of sanctions, and had RESOLVED that:

- having regard to the number of aggravating circumstances, as well as the mitigation, the Panel had determined that Cllr McEvoy would be suspended as a Councillor for 4 months.

The Chair confirmed that a written decision, with full reasons, would be sent to the parties within 5 working days.

The hearing was concluded at 19.00