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## AGENDA

<b>Committee</b>	STANDARDS & ETHICS COMMITTEE
<b>Date and Time of Meeting</b>	WEDNESDAY, 30 SEPTEMBER 2020, 5.00 PM
<b>Venue</b>	REMOTE MEETING VIA MS TEAMS
<b>Membership</b>	Independent Members: James Downe (Chair) Jason Bartlett, Hollie Edwards-Davies, Arthur Hallett and Chrissie Nicholls Councillors Cunnah, Sandrey and Williams Community Councillor Stuart Thomas

### 1 **Apologies for Absence**

To receive apologies for absence.

### 2 **Declarations of Interest**

To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.

### 3 **Minutes** (*Pages 3 - 6*)

To approve as a correct record the minutes of the meeting held on 11 December 2019.

### 4 **Hearing Outcome & Recommended Amendments to Procedural and Administrative Arrangements for Hearings** (*Pages 7 - 124*)

*Report of the Director of Governance and Legal Services and Monitoring Officer.*

### 5 **Member Protocol on Safeguarding Vulnerable Children and Adults** (*Pages 125 - 142*)

*Report of Director of Governance & Legal Services and Director of Social Services.*

### 6 **Cardiff Undertaking** (*Pages 143 - 150*)

*Report of the Director of Governance and Legal Services and Monitoring Officer*

- 7 Members Survey 2019 - 2020** (Pages 151 - 190)  
*Report of the Director of Governance and Legal Services and Monitoring Officer.*
- 8 Senior Officers' Personal Interests** (Pages 191 - 214)  
*Report of the Deputy Monitoring Officer*
- 9 Whistleblowing Reports 2018/19** (Pages 215 - 226)  
*Report of the Director of Governance and Legal Services and Monitoring Officer.*
- Appendix 1 and 2 of the report is exempt from publication as it contains exempt information of the description contained in paragraph 13 and 14 of Part 4 of Schedule 12A of the Local Government Act 1972.**
- 10 Code of Conduct Complaints - Quarters 3 & 4 of 2019/2020 and Quarter 1 of 2020/21** (Pages 227 - 230)  
*Report of the Director of Governance and Legal Services and Monitoring Officer*
- 11 Adjudication Panel for Wales - Presidential Guidance** (Pages 231 - 246)
- 12 Observations of Meetings** (Pages 247 - 250)  
*Report of the Director of Governance and Legal Services and Monitoring Officer.*
- 13 Forward Work Plan 2020 - 2021** (Pages 251 - 254)  
*Report of the Director of Governance and Legal Services and Monitoring Officer.*
- 14 Urgent Items (if any)**
- 15 Date of next meeting - to be confirmed.**

**Davina Fiore**  
**Director Governance & Legal Services**  
Date: Thursday, 24 September 2020  
Contact: Kate Rees,  
02920 872427, KRees@cardiff.gov.uk

STANDARDS & ETHICS COMMITTEE

11 DECEMBER 2019

Present: Independent Members: James Downe (Chair),  
Jason Bartlett, Hollie Edwards-Davies, Arthur Hallett and  
Chrissie Nicholls

Councillors Sandrey and Williams

Community Councillor Stuart Thomas

47 : APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Stephen Cunnah.

48 : DECLARATIONS OF INTEREST

The Director of Governance & Legal Services declared a potential conflict of interest in item 11.

49 : MINUTES

The minutes of the meeting held on 30 July were approved by the Committee as a correct record and signed by the Chairperson.

50 : WELCOME TO THE NEW INDEPENDENT MEMBERS

The Committee noted that Council on 28 November 2019 appointed Chrissie Nicholls, Jason Bartlett and Arthur Hallett as Independent Members of the Committee for a term of four years.

51 : OBSERVATION OF MEETINGS

The Committee considered the feedback provided by Committee Members following observation of meetings of Council and Community Councils.

The Committee discussed the benefits of name plates being available for Community Council Members to help members of the public feel more at ease and address their questions to the relevant Council Member.

The Committee noted that oral questions at Council are published in advance of the meeting and are available on the Council's website, however, believed that questions should be shown on screens to ensure context for members of the public present or watching, and if questions cannot be shown on screens, that the question be asked at the meeting before the answers are given.

RESOLVED:

- 1) To note the meetings observation feedback and responses received, as set out in appendices;

- 2) To continue to observe appropriate meetings of the Council, Committees and Community Councils and provide feedback to a future meeting of the Committee; and
- 3) Recommend to Constitution Committee that questions at full Council should be displayed on screens or read out orally at the meeting.

## 52 : MEMBERS' GIFTS AND HOSPITALITY REGISTER

The Committee noted the extract from the Register of Member's Hospitality, Gifts & Other Benefits for the period 17 November 2018 to 31 October 2019

The Committee noted that the value of some of the hospitality remains unquantified and discussed the need for an estimate to be provided if the precise value is unknown. The Committee discussed the means by which Members could be reminded of that; raising it with group leaders and whips and Member Briefings. The Committee did note that in respect of events attended by the Lord Mayor, it is much more difficult for an estimate to be provided.

Whilst the Committee discussed the current threshold for registration of gifts and hospitality, £25 and whether the figure should be increased, it was decided that it would not be amended.

RESOLVED: to note the information supplied in the appendices on registration of hospitality, gifts and other benefits received by Members.

## 53 : CODE OF CONDUCT COMPLAINTS QUARTER 4 2018/19, QUARTER 1 & QUARTER 2 2019/20

The report provided the Committee with an update on complaints made during Quarter 4 of 2018/19 and Quarters 1 & 2 of 2019/20 (the period running from 1<sup>st</sup> January 2019 to 30<sup>th</sup> September 2019) against Members of Cardiff Council or any of Cardiff's Community Councils, alleging a breach of the Members' Code of Conduct. Details of the complaints were set out in the report. During that period a total of ten complaints alleging a breach of the Members' Code of Conduct were reported to the Monitoring Officer.

The committee discussed the procedure for hearings arranged under the local resolution protocol and noted that Elected Members were unable to sit on such Hearings panels. A query was raised about legal advice for Elected Members, the Committee were advised that the political parties can provide support for their Members.

There was a discussion in respect of the manner in which low level complaints are dealt with, there could be discussion with Group Leaders and Party Whips.

The nature of complaints was discussed by the Committee bearing in mind the figures provided, in particular in relation to the number of Member on Member complaints.

A Member of the Committee expressed concern about having a discussion with the Party Whip, feeling that in most instances contact with the Monitoring Officer would be the best course of action.

The Committee discussed the number of complaints that arose as a result of Social Media. It was noted that the WLGA had issued updated guidance on the subject and it has been forwarded to all Elected Members.

RESOLVED: To note the content of the report.

#### 54 : STANDARDS AND ETHICS COMMITTEE ANNUAL REPORT 2018/19

To enable the Committee to consider the content of its Annual Report 2018/19 before being presented to full Council in January.

RESOLVED:

- 1) To note the content of the Committee's Annual Report;
- 2) To delegate authority to the Monitoring Officer, in consultation with the Chair, to draft and finalise the Annual Report; and
- 3) That the Chair presents the Annual Report to Council in January 2020.

#### 55 : FORWARD WORK PLAN 2019/20

The Committee discussed a number of items contained in the Forward Work Plan, during that discussion a number of points were raised:

- A log of Members Briefings is being maintained;
- Code of Conduct training has been provide for newly elected members;
- Refresher training will be provided if there are any changes;
- It was noted that the potential date of the Annual Meeting with Group Leaders and Whips was on a Wednesday afternoon. Wednesday is difficult for some Members of the Committee but it is hoped that all Members will be present;
- The results of the Members Survey will be provided to the Democratic Services Committee. The Committee noted that dates of the future meetings of that Committee will be provided.

RESOLVED: To note the content of the Work Plan.

#### 56 : SENIOR OFFICERS' PERSONAL INTERESTS

The Director of Governance and Legal Services reaffirmed her conflict of interest in this item and left the meeting. The report was presented by the Deputy Monitoring Officer.

Members of the Committee previously expressed the view that Senior Officers should be subject to the same disclosure requirements that apply to elected Members, as they exercised significant decision making powers. Specifically, Senior Officers should be required to publicly disclose Trade Union membership and home addresses and this information should be published on the Council's website. The Committee were advised that Directors have indicated that they will not consent to publication of their Trade Union Membership as there are concerns that it would compromise their ability to negotiate effectively with Trade Unions on behalf of the Council. Further, in respect of home addresses, the Committee were advised that there were data protection, safety and employment law implications around the publication of home addresses and that the duty to protect employees outweighs any potential public interest arguments for the disclosure of Senior Officers' home addresses.

The Committee discussed the information provided and confirmed that they would accept the recommendation of the Deputy Monitoring Officer and take no further action, but suggested instead that the information contained in The Senior Officers' Personal Interests Declaration Form, save for information relating to a Senior Officer's Trade Union membership status and home address, be brought to the Committee annually for them to review.

The Deputy Monitoring Officer agreed to consult with the Senior Management Team (SMT) on this proposal and to bring a further report to Committee.

RESOLVED: to make no changes to the current disclosure requirements for Senior Officers' Personal Interests, and instruct the Deputy Monitoring Officer to consult with SMT on the information contained within the Senior Officers' Personal Interests Declaration Form, save for information relating to a Senior Officer's Trade Union membership status and home address, being brought to Committee on an annual basis as an exempt item.

57 : URGENT ITEMS (IF ANY)

No urgent items were tabled.

58 : DATE OF NEXT MEETING - 18 MARCH 2020

The next meeting of the Committee is scheduled for Wednesday 18 March.

The meeting terminated at 6.30 pm



**CARDIFF COUNCIL  
CYNGOR CAERDYDD**

**STANDARDS AND ETHICS COMMITTEE**

**30<sup>th</sup> SEPTEMBER 2020**

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES AND MONITORING OFFICER**

**HEARING OUTCOME & RECOMMENDED  
AMENDMENTS TO PROCEDURAL AND  
ADMINISTRATIVE ARRANGEMENTS FOR HEARINGS**

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**Reason for this Report**

1. To inform the Committee of the outcome in relation to the complaint referred to the Committee by the Public Services Ombudsman for Wales; and, in light of experience gained from the hearing, to consider:
  - (a) amendments to the Committee's Hearings Procedure; and
  - (b) improvements made to administrative arrangements for hearings.

**Background**

2. The Standards and Ethics Committee's terms of reference (paragraph (i)), include the responsibility:
  - i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise.
3. On 7<sup>th</sup> June 2019, the Monitoring Officer received a referral from the Public Services Ombudsman for Wales ('the Ombudsman') in relation to misconduct allegations made against a Councillor.
4. The duties and powers of the Monitoring Officer and the Standards and Ethics Committee in relation to any misconduct complaints referred by the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
5. On 1st July 2019, the Standards and Ethics Committee resolved to set up a sub-committee, 'the Hearings Panel', comprised of three members of the Committee, including at least two independent members, to consider the

Ombudsman's referral and determine the matter on behalf of the Committee, in accordance with the Committee's approved Hearings Procedure.

6. A Hearings Panel was duly convened and met on 30th July 2019 to consider the evidence presented in the Ombudsman's investigation report and to make its initial determination (as required under Regulation 7 of the Regulations). The Panel was advised by the Deputy Monitoring Officer, because the Monitoring Officer had declared a potential conflict of interest in the matter as she was named in the evidence submitted by the Councillor during the course of the Ombudsman's investigation. The Panel made its initial determination that the Councillor should be given an opportunity to make representations, either orally or in writing, in respect of the Ombudsman's investigation findings and the allegations. The Panel asked the Deputy Monitoring Officer, in consultation with the Chair, to make all necessary arrangements to prepare for a hearing, in accordance with the provisions of the Hearings Procedure.
7. The Panel met, in closed session, on 15<sup>th</sup> October 2019, 16<sup>th</sup> December 2019 and 3<sup>rd</sup> January 2020 to discuss administrative and procedural matters in preparation for the hearing,

## Issues

8. A full hearing was held on 6th, 7th, 8th, 13th and 14th January 2020 at City Hall, Cardiff. The hearing was attended by the Councillor and a representative of the Ombudsman, and heard evidence from five witnesses, in addition to the Councillor. The hearing was open to the public, except for certain parts of the proceedings when the Panel resolved to exclude the public. The hearing attracted considerable attention from the public and was reported in the press and on social media.
9. On the final day of the hearing, 14<sup>th</sup> January 2020, the Panel deliberated in private with its legal advisor, and at 5pm the Chair announced the Panel's decision. The Panel's decision was that the Councillor had breached the following duties of the Members' Code of Conduct:
  - i Paragraph 4(b), duty to show respect and consideration to others;
  - ii Paragraph 4(c), duty to not using bullying behaviour or to harass any person; and
  - iii Two separate breaches of paragraph 6(1)(a), duty to not conduct yourself in a manner which could reasonably be regarded as bringing the office of Councillor or the authority into disrepute.
10. After hearing representations from the parties in respect of potential sanctions, and deliberating in private with the Panel's legal advisor, the Chair announced that the decision of the Panel was that the Councillor would be suspended as a Councillor for 4 months.
11. The draft minutes of the hearing and of the preliminary Panel meeting on 3<sup>rd</sup> January 2020 are appended as **Appendix A**.

12. The Panel's written decision, with a full account of the facts and reasons, was issued on 24<sup>th</sup> January 2020 and sent to the Councillor, the Complainant and the Ombudsman. The timescale for issuing the Panel's decision was extended by the Chair, by variation of the Procedure, as permitted under paragraph 7(a) of the Procedure), to ensure it fully reflected all the evidence considered during the 5 day hearing. A copy of the Panel's decision is attached as **Appendix B**.
13. Under the Regulations, any period of suspension takes effect after the end of the appeal period (21 days from the full written decision), or after any appeal is concluded.
14. On 18th February 2020, the Monitoring Officer received notification from the Adjudication Panel for Wales (APW) that an application for permission to appeal against the Panel's decision had been submitted on 14<sup>th</sup> February 2020. The APW subsequently refused permission to appeal against the Panel's findings on breach of the Code of Conduct, but granted permission for an appeal against the sanction imposed.
15. On 22<sup>nd</sup> June 2020 the Monitoring Officer received a Notice of Decision from the APW, giving notice that the APW had, in accordance with Cllr McEvoy's wishes, determined the appeal by way of written representations at a meeting held remotely. The APW decided by unanimous decision to endorse the decision of the Standards Committee that Cllr McEvoy should be suspended as a Councillor for 4 months. The APW's decision is appended as **Appendix C**.
16. Cllr McEvoy's suspension took effect the following day, 23<sup>rd</sup> June 2020, and continues until midnight on 22<sup>nd</sup> October 2020. His suspension was reported to full Council on 25<sup>th</sup> June 2020.
17. During the period of his suspension, Mr McEvoy may not exercise any of the rights, powers or duties of a Cardiff Councillor. The entitlement to a Member's allowance and use of Council resources, including ICT systems and equipment is suspended. However, Mr McEvoy may continue to raise matters with the Council in his role as Assembly Member or as a member of the public.
18. As required under the Regulations, the Hearings Panel has produced a report on the outcome of this matter; arranged for the report to be published on the Council's website and made available for public inspection for a period of 21 days; and published a newspaper notice informing the public about the availability of the report (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).

## **Arrangements for Hearings**

19. In light of the experience gained from this hearing, a number of potential improvements to procedural and administrative arrangements have also been identified, for the Committee's consideration, as follows:

### **Recording of the Hearing**

20. There is currently no provision for audio recording of hearings. As the Hearings Panel is a sub-committee of the Standards and Ethics Committee, a clerk produces minutes of the proceedings in line with standard practice for committee and sub-committee meetings. The minutes are not a verbatim record of the proceedings, but they record the decisions made and information (evidence) upon which those decisions are based. During the recent hearing, it was suggested that hearings should be digitally recorded. Members are invited to consider whether provision should be made for audio recording of hearings, to avoid any dispute over the evidence heard or discussions during the proceedings.
21. The recording of hearings is not universal, and practice varies depending on the type of proceedings concerned. Hearings before the Adjudication Panel for Wales are audio recorded. Where an audio recording is made, clear rules are needed to clarify which parts of the hearing will be audio recorded, for example, to make clear that the Panel's deliberations will not be recorded. Also, to set out when, how and by whom the recording may be accessed. It is suggested that recordings should only be made available after the end of the hearing, to avoid the proceedings being disrupted and delayed by requests to listen to the recording whilst the hearing is in progress.
22. As the Hearings Panel is a sub-committee of the Standards and Ethics Committee, the Committee Meeting Procedure Rules apply. Rule 18 of the Committee Meeting Procedure Rules states that committee meetings may be webcast (in accordance with the Webcasting Protocol set out in Part 5 of the Constitution), although Standards and Ethics Committee meetings are not included in the list of committees which are currently webcast. Rule 18 also permits other filming, recording and use of social media during committee meetings, as long as the meeting is being held in public, and the recording is not disruptive or hidden, and subject to various other conditions. The Chair is given discretion to prohibit recording if he/she thinks it appropriate, after considering legal advice and representations from the parties.
23. In respect of hearings, it is possible that recordings by third parties could distract witnesses, raise questions about the purpose for the recording and the risk of misrepresentation or information being presented out of context. For these reasons, it may potentially impede the administration of justice. Private recording is not permitted in civil or criminal court proceedings; nor in misconduct hearings before the Adjudication Panel for Wales. If an official audio recording is available, then this may obviate any need for private recording.

24. Members are invited to give views on whether provision should be made for audio recording of hearings, and if so, the rules to be applied. A draft rule for consideration is shown within the marked up copy of the Hearings Procedure, attached as **Appendix D**.

#### Late evidence

25. It is important that advance notice is given of all evidence and documents which are to be relied upon at the hearing, so that they can be shared with both parties and properly considered, allowing an opportunity for response. This is important in order to ensure a fair hearing. If evidence is submitted after the hearing has commenced, the proceedings will be delayed whilst the Panel considers whether the evidence is relevant to the allegations, and if so, to share it with the other party and allow time for proper consideration and response.
26. It is recommended that the Hearings Procedure rules should be amended to make it clearer that late evidence must be provided at the earliest opportunity (and no later than 2 days prior to the hearing, as currently stated); and that late evidence will only be accepted at the hearing in exceptional circumstances. The marked up copy of the Hearings Procedure (at **Appendix D**) includes draft amendments to this effect. Members should note, however, that in practice, the Panel may be advised to accept late evidence which is relevant to the alleged breach, in order to comply with principles of natural justice and avoid giving grounds for appeal.

#### Timescale for written decision

27. The Hearings Procedure currently states that the Panel's written decision, with full reasons, will be issued within 5 working days from the end of the hearing. However, for complex, multi-day hearings, this timescale is too short. It is important that the Panel's decision is fully and clearly set out, including all the evidence considered, the Panel's assessment of the evidence and reasons for its decision. This enables all parties to understand the basis for the Panel's decision and to inform any prospective appeal.
28. It is recommended that the timescale should be extended to 'within 10 working days' and amended to include explicit provision for the timescale to be extended if necessary. It should be noted that this amendment will not, in any way, delay the issue of decisions on less complex cases. Draft amendments are included in the amended Hearing Procedure appended as **Appendix D**.

#### Administrative arrangements

29. A detailed checklist has been drawn up for officers' internal use, informed by feedback from Panel members and officers involved in the recent hearing, to improve the administrative arrangements for hearings. The checklist includes matters such as scheduling of the hearing; rooms and layout; security; equipment and stationery; refreshments; contents and checking of the hearings bundle; training, advice and support for Panel members; and

clarification of roles. The new checklist will be used to facilitate arrangements for all future hearings.

### **Legal Implications**

30. The duties and powers of the Standards and Ethics Committee and the Monitoring Officer, and the procedure to be followed in dealing with a misconduct complaint referred by the Ombudsman, are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
31. Subject to any express provisions in the Regulations (or the Standards Committees (Wales) Regulations 2001), the procedure to be followed by a Standards Committee in exercising its functions under the Regulations is for the Committee to decide (Regulation 8).
32. Other relevant legal implications are set out in the body of the report.

### **Financial Implications**

33. There are no direct financial implications arising from this report. Any costs associated with the proposed changes to the Procedure for Hearings, through the provision of audio recordings, are to be contained within the Democratic Services budget.

### **Recommendations**

The Committee is recommended to:

- (i) Note and approve the minutes of the hearing held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020; and the preliminary Panel meeting held on 3<sup>rd</sup> January 2020, appended as **Appendix A**;
- (ii) Note the decision of the Hearings Panel appended at **Appendix B**; and the decision of the Adjudication Panel for Wales in respect of the appeal, appended at **Appendix C**; and
- (iii) Consider the draft amendments to the Hearings Procedure set out in **Appendix D**, provide any further comments, and authorise the Monitoring Officer, in consultation with the Chair, to finalise the revised Hearings Procedure.

**DAVINA FIORE**  
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER**

21<sup>st</sup> September 2020

## **APPENDICES**

- Appendix A Draft minutes of the Panel's preliminary meeting held on 3<sup>rd</sup> January 2020; and the full hearing held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020
- Appendix B Decision of the Hearings Panel, Case Reference CDC 18/003, dated 24<sup>th</sup> January 2020
- Appendix C Decision of the Adjudication Panel for Wales in respect of the appeal:  
<https://adjudicationpanel.gov.wales/apw0022019-020at-councillor-neil-mcevoy>
- Appendix D Standards and Ethics Committee, Procedure for Hearings (Ombudsman Referrals) – marked up to show proposed amendments

### Background papers

Standards and Ethics Committee report 'Hearings Panel and Procedure', 1<sup>st</sup> July 2019  
Standards and Ethics Sub-Committee report 'Ombudsman Referral – Alleged Breach of the Code of Conduct by a Councillor', 30<sup>th</sup> July 2019  
Minutes of Hearings Panel meetings held on 15<sup>th</sup> October 2019 and 16<sup>th</sup> December 2019  
Letter from APW to the Monitoring Officer, dated 18<sup>th</sup> February 2020  
Councillor Suspension, Report to Council, 25<sup>th</sup> June 2020

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## 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

STANDARDS & ETHICS SUB-COMMITTEE

MINUTES OF HEARINGS PANEL MEETING 03/01/2020, 11am

ATTENDEES:

Panel Members

James Downe, Independent Member (Chair)  
Hollie Edwards-Davies, Independent Member  
Community Councillor Stuart Thomas

Officers: Leanne Weston, Legal advisor; and Kumi Ariyadasa, Note-taker (attending remotely via telephone)

1. APOLOGIES: None
2. DECLARATIONS OF INTEREST: None
3. MINUTES

RESOLVED: To approve the minutes of the previous meeting held on 16<sup>th</sup> December 2019.

4. ARRANGEMENTS FOR HEARING (OMBUDSMAN REFERRAL OF COMPLAINTS AGAINST COUNCILLOR NEIL MCEVOY)

The Panel discussed arrangements for the Hearing scheduled for 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> January 2020, in light of updates provided by the legal advisor, and RESOLVED as follows:

- i. Witnesses – Noted that both parties had been informed on 18/12 of the Panel's decisions in relation to witnesses to be called to give evidence, and allowed the opportunity to make any further representations by noon on 23/12. No further representations had been received from either party by the deadline. An email was subsequently received from the Councillor indicating that he was not happy with the Panel's refusal to allow certain witnesses, but providing no further explanation or representations. Accordingly, the Panel's decision of 16/12 would stand. The Panel noted the timetable for witnesses to give evidence, which had been updated to accommodate witnesses availability.
- ii. Hearing dates – Panel was informed that correspondence had been received from Cllr M at 4pm on Christmas Eve, 24/12, indicating that he was unable to attend the hearing on 7<sup>th</sup> and 8<sup>th</sup> January even though the dates had been notified to him on 03/11. However, the Councillor indicated that he would attend on 6<sup>th</sup> January, had not requested any postponement and subsequently indicated that he may be able to attend on 7<sup>th</sup> January. Noted that the Panel had made clear that the hearing dates had been scheduled to accommodate the Councillor's personal circumstances and availability as far as possible, and would not be further postponed other than in exceptional circumstances. The hearing would proceed on the scheduled dates.

- iii. Cllr M's assistant – Panel was informed that Councillor McEvoy had said would be assisted at the hearing by JH, the social worker he employed, and that it had been clarified that JH would be assisting, not representing him. Agreed this should be confirmed with the Councillor by email prior to the hearing and noted as a preliminary matter at the start of the hearing.
- iv. Remit of hearing – Panel was informed that correspondence had been received from the Councillor saying that his defence was that he was responding to allegations of child abuse. The Panel was advised that considering the substance of those allegations was outside its remit, but this could be taken into account as relevant context and or mitigating circumstances if appropriate. However, every effort should be made to retain the focus of the hearing on the conduct issues complained about, and this should be made clear to the parties as a preliminary issue at the start of the hearing.
- v. Public / Private – the Panel discussed the representations which had been received from solicitors acting on behalf of the Care Home requesting that the names of the Care Home and its staff giving evidence should not be disclosed during the hearing. Agreed that these representations should be shared with Councillor M and the Ombudsman and the parties invited to provide representations on this issue as a preliminary issue at the start of the hearing.
- vi. Recording – the Panel were concerned that private recording of the proceedings may distract witnesses, risk being used inappropriately and impede the aim of a fair and effective hearing. Agreed the Panel would allow the parties to make any representations on this issue prior to confirming its decision in this regard.
- vii. Procedure – in order to accommodate Councillor M's availability, that the procedure would be varied by hearing Stage 1 (facts) and Stage 2 (breach of Code) together, pursuant to the Chair's powers under paragraph 7(b) of the Procedure.

5. URGENT BUSINESS: None

**COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF**

**STANDARDS & ETHICS COMMITTEE**

**HEARINGS PANEL**

**Prof. James Downe (Chair); Hollie Edwards-Davies; and Community Councillor Stuart Thomas**

**OMBUDSMAN'S REFERRAL OF COMPLAINT AGAINST COUNCILLOR NEIL McEVROY**

**CASE REFERENCE CDC 18/003**

**DECISION OF THE HEARINGS PANEL**

**1. INTRODUCTION**

- 1.1 In a letter dated 7<sup>th</sup> June 2019, the Monitoring Officer received a referral from the Public Services Ombudsman for Wales ('the Ombudsman') in relation to misconduct allegations made against Councillor McEvoy ('Cllr McEvoy').
- 1.2 A Hearings Panel (sub-committee of the Standards and Ethics Committee) was convened, in accordance with arrangements approved by the Committee on 1<sup>st</sup> July 2019, to consider the allegations in relation to Cllr McEvoy.
- 1.3 A hearing was held on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2020 at City Hall, Cardiff. The hearing was open to the public, except for certain parts of the proceedings when the Panel resolved to exclude the public.
- 1.4 Cllr McEvoy attended, and chose not to be legally represented, but was assisted by Ms Jacqueline Hurst, a social worker employed by Cllr McEvoy.

**2. PRELIMINARY DOCUMENTS**

**2.1 Hearings Procedure**

The Standards and Ethics Committee Procedure for Hearings (Ombudsman Referrals), revised on 1<sup>st</sup> July 2019 ('the Hearings Procedure'), sets out the procedures to be followed by the Council in dealing with Member misconduct referrals from the Ombudsman.

**2.2 Reference from the Ombudsman**

- 2.2.1 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 provisions of 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.

2.2.2 Having investigated the allegations, the Ombudsman concluded, considering all the evidence available to him, that there was evidence to suggest that Cllr McEvoy's conduct may amount to a breach of the Members' Code of Conduct, specifically:

2.2.3 On 29<sup>th</sup> April 2018, there was evidence of a breach of paragraphs 4(b), 4(c) and 6(1)(a) of the Code; and on 11<sup>th</sup> May 2018, there was evidence of a breach of paragraphs 4(b) and 6(1)(a) of the Code.

### **2.3 Hearings Panel's Initial Determination**

On 30<sup>th</sup> July 2019, the Hearings Panel met, in closed session, to consider the evidence presented in the Ombudsman's investigation report. The Deputy Monitoring Officer was the legal advisor to the Panel at this meeting, due to the fact that the Monitoring Officer had declared a potential conflict of interest, as she had been named in correspondence submitted by Cllr McEvoy to the Ombudsman. The Panel's initial determination (pursuant to Regulation 7 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001) was that Cllr McEvoy should be given the opportunity to make representations, either orally or in writing, in respect of the Ombudsman's investigation findings and the allegations. The Panel asked the Deputy Monitoring Officer to prepare for a hearing, in consultation with the Chair.

### **2.4 Councillor's Written Response**

2.4.1 Councillor M was notified of the Panel's initial determination by letter dated 31<sup>st</sup> July 2019 and invited to submit a written response to the findings of the Ombudsman's investigation report by 21<sup>st</sup> August 2019 (in accordance with the Hearings Procedure, paragraph 5.2). Cllr McEvoy was informed that his written response need not set out the Councillor's position in full, but that it should indicate all areas of the Ombudsman's investigation report that the councillor intends to dispute, with brief reasons; attach all written evidence they intend to rely upon; indicate any witnesses the councillor wishes to call and reasons for doing so; and indicate any dates or times when the councillor or any witnesses he wishes to call will be unavailable to attend a hearing.

2.4.2 The Panel subsequently agreed, on three separate occasions, to grant Cllr McEvoy an extension of time to submit his written response. The deadline for submission of Cllr McEvoy's written response was initially extended to 17<sup>th</sup> September 2019, then to 27<sup>th</sup> September 2019 and finally to 11<sup>th</sup> October 2019, due to various personal reasons put forward by Cllr McEvoy.

2.4.3 On 16<sup>th</sup> October 2019, Cllr McEvoy's written response was received, giving brief comments on various paragraphs of the Ombudsman's investigation report which he disputed. Cllr McEvoy's comments are summarised below:

- i. Cllr McEvoy said that on the dates in question (29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018), he was acting in his dual capacities of Welsh Assembly Member and Cardiff Councillor; and he accepted, therefore, that he was acting in his capacity as a Councillor.
- ii. He did not accept the legal authority of the Council's Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults ('the Protocol'). He said it 'has no legal implications and carries no weight. It is not uncommon for councillors to routinely ignore protocols'; and also that 'Cllrs may be expected to follow protocols but are not obliged to do so'.
- iii. He made various references to details in relation to the case of Child X, specifically, that the Child had made several allegations of abuse, not just one allegation; that the therapy review meeting (scheduled for 11<sup>th</sup> May 2018) was not in fact a review, because the Deputy Director had stated there would be no change before the meeting; alleging 'dishonesty of the Deputy Director'; and saying that the social worker had lied about the case, and had not responded to him. He did not provide any further explanation about how these points were relevant to his alleged misconduct or the Ombudsman's investigation findings.
- iv. In relation to his telephone call on 29<sup>th</sup> April 2018 with Witness 2, he commented that it was unacceptable not to allow councillors access (to the care home). He disputed the Ombudsman's view that the evidence that Cllr McEvoy had told Witness 2 he would raise the matter before the Welsh Assembly; that he would be attending with a colleague; that he gave Witness 2 one hour to ring someone at a higher level and return to him; and persistently said he 'would' be visiting the home, suggested that Cllr McEvoy was attempting to pressurise Witness 2 to allow his visit and to undermine her position / advice. He also submitted that Witness 1 had not heard the whole of the telephone conversation.
- v. With regard to events on 11<sup>th</sup> May 2018, specifically his interaction with Witness 4, he disagreed with the Ombudsman's description of his tone as 'abrupt, forthright and curt' and said instead he was 'assertive'; and submitted that he had identified himself to Witness 4.
- vi. With regard to his interaction with Witness 3 on the same date (11<sup>th</sup> May 2018), Cllr McEvoy said that he did not 'demand' information from Witness 3; and in relation to his description of Witness 3 as 'overweight', that being overweight is not something to be ashamed about.
- vii. Cllr McEvoy contended that the Ombudsman's report did not give sufficient regard to his own evidence, nor to the evidence given by the Father. He submitted that the question posed in relation to whether or not the Cllr's behaviour was capable of bringing the Council or the authority into disrepute, was a leading question; and took issue with the Ombudsman's views in relation to the evidence, saying the Ombudsman was 'prejudiced', 'casting doubt on my word', 'defamatory', 'accepting allegation as fact', and 'ultra vires'. These comments suggest that Cllr McEvoy did not understand that the statutory role of the Ombudsman is to gather and consider the evidence and take a view on whether or not there is sufficient evidence to suggest a

breach of the Code of Conduct; and that the Hearings Panel's role was to consider the evidence and make its own determination as to whether or not the Code had been breached.

## **2.5 Listing of Hearing**

On 15<sup>th</sup> October 2019 the Panel met and agreed to list the hearing for 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> January 2020, having regard to Cllr McEvoy's personal circumstances (the expected birth of a child in the middle of November, allowing time for paternity leave and the Christmas period). The Panel resolved that there should be no further postponement of the hearing, unless there were exceptional circumstances. Cllr McEvoy was notified of the hearing dates on 3<sup>rd</sup> November 2019.

## **2.6 Hearings Panel's Determinations on 16<sup>th</sup> December 2019 (Procedural matters)**

2.6.1 Having regard to the representations received from Cllr McEvoy on 16<sup>th</sup> October 2019, the Panel decided which witnesses would be called to give evidence at the Hearing. The parties were notified of the Panel's decision in relation to witnesses on 18<sup>th</sup> December 2019 and asked to make arrangements for their witnesses to attend the hearing. Cllr McEvoy was provided with reasons for the refusal of his request in relation to his proposed witnesses who had not witnessed the events in question and was given an opportunity to make any further written representations to the Panel in this regard by 23<sup>rd</sup> December 2019. No further representations were received from Cllr McEvoy in relation to witnesses before this date.

2.6.2 The Panel also determined that the Hearing should be held in public, except when hearing evidence from the Father of Child X, when the public would be excluded. Witnesses would be reminded of the need to avoid identifying or disclosing any personal information about the family and child involved. The Panel resolved that recording of the hearing should not be permitted, as this may distract witnesses, risk recordings being used inappropriately and impede the aim of a fair and effective hearing; and asked that Cllr McEvoy should be notified of this. Cllr McEvoy was informed of the Panel's decision on recording of the hearing on 18<sup>th</sup> December 2019.

## **2.7 Hearings Panel Determinations on 3<sup>rd</sup> January 2020 (Procedural matters – Names of witnesses and care home)**

The Panel was advised of representations which had been received from solicitors acting on behalf of the children's home requesting that the names of the children's home and its staff giving evidence should not be disclosed during the hearing. The Panel agreed that these representations should be shared with Cllr McEvoy and the Ombudsman and that the parties should be invited to provide representations on this issue as a preliminary issue at the start of the hearing.

## **2.8. Applications and Determinations on commencement of Hearing**

### **Adjournment**

- 2.8.1 Cllr McEvoy advised the Panel that Child X's case had returned to the Family Court and that information contained within the bundle, was likely to be before the Court. He suggested that the Panel should not consider this information as it would amount to contempt of court. On that basis, Cllr McEvoy invited the Panel to adjourn the hearing until the conclusion of the family matter before the Court. Cllr McEvoy was invited to advise the Panel as to what information contained within the bundle would be before the Court. Cllr McEvoy advised the Panel that he could not be specific but likely to be correspondence consisting of the emails he provided to the Ombudsman in support of his case.
- 2.8.2 Ms Shaw on behalf of the Ombudsman confirmed that the Local Government Act 2000, section 63, sets out the powers of the Ombudsman in respect of disclosing information in relation to matters such as these. The Standards Committees (Wales) Regulations 2006 also allow the Panel to restrict publication of information shared with it for the purposes of the hearing. Consequently, it was submitted on behalf of the Ombudsman that this hearing could proceed and the fact that there were ongoing family Court proceedings was not relevant to this hearing.
- 2.8.3 The legal advice given to the Panel, which had already been sent to Cllr McEvoy on 5<sup>th</sup> January 2020 via email correspondence, was that the purpose of the Panel was to make a determination in respect of the complaint relating to Cllr McEvoy's alleged failure to comply with the Code of Conduct, which has been referred to the Committee by the Ombudsman. The remit of the Panel is no wider. The complaint in respect of Cllr McEvoy is a separate issue to any matters before the family court. Information contained within the bundle was permitted to be shared with the Panel as set out by the Ombudsman's submission in this regard.
- 2.8.4 The Panel therefore concluded that they were entitled to receive the information contained within the bundle and any decision it made had no bearing on the Family Proceedings case, as this hearing was to consider the alleged conduct of Cllr McEvoy as per the Ombudsman's referral.

### **Councillor's Witness**

- 2.8.5 Cllr McEvoy raised an issue with the Panel that father to Child X had not been notified of the hearing. Cllr McEvoy was reminded of correspondence sent via email on 18th December 2019, where Cllr McEvoy was advised that the father to Child X would be permitted to give evidence, the Panel's reasons for this and that it was the Cllr McEvoy's responsibility to ensure his Witness attended the hearing.

### **Late Evidence**

- 2.8.6 Cllr McEvoy also made an application to the Panel to submit late evidence. This late evidence consisted of further disagreements with relevant facts in the Ombudsman's report and a letter sent to Cllr McEvoy's office from Child X's Independent Reviewing Officer (IRO). This letter was

undated but recorded to have been received by Cllr McEvoy's office on either 29<sup>th</sup> or 30<sup>th</sup> November 2018. A copy of the letter was provided to the Panel for their consideration. Furthermore, a copy of the letter was shared with the Ombudsman.

- 2.8.7 Cllr McEvoy provided the following reasons to the Panel as to why letter should be permitted:-
- It was Cllr McEvoy's opinion that it was evidence that the All Wales Child Protection Procedures had not been followed
  - The strategy meeting held was outside of timescales
  - Action was taken as a result of Cllr McEvoy's involvement

The Ombudsman did not object to this application. The Panel considered the letter and had no objection to Cllr McEvoy relying upon it in his case.

#### Hearing in Public / Private

- 2.8.8 The Panel raised with Cllr McEvoy and the Ombudsman that in respect of Witness 1-4, submissions had been received by their solicitor inviting the Panel to pseudonymise the name of the care home and witnesses. It was confirmed that these submissions had been shared with Cllr McEvoy and the Ombudsman via email on 5th January 2020 and therefore all parties were aware of the reasons for the request. The Ombudsman and Cllr McEvoy both made submissions in respect of their positions.
- 2.8.9 The Ombudsman invited the Panel to consider having the hearing in private on the basis that Cllr McEvoy had already disclosed the name of the care home that weekend, despite being aware that the Panel was to make a determination on such matters on the first day of the hearing. The Ombudsman said this was reckless behaviour by Cllr McEvoy. The Ombudsman advised the Panel that there was a need for the best possible evidence to be available for the Panel to make a determination in respect of this matter. In having the best possible evidence, there was a requirement for the Witnesses to have available to them the best conditions in order to provide their oral evidence. The Ombudsman submitted that a running commentary of twitter would not provide the best evidence for the Panel, and therefore consideration should be given to the hearing being held in private.
- 2.9 Cllr McEvoy responded accordingly and submitted that this matter should be held in public and the information should be in the public domain. Cllr McEvoy stated in his view the Ombudsman has stated that private companies should not be scrutinised at the same level as public bodies, which was an outrageous comment to make. Cllr McEvoy submitted that it was unacceptable for this matter to be held in private, people have told lies, they will be named and the public will know they have lied. Cllr McEvoy stated that the Assistant Director had lied to him and there will be ramifications for the Council. It was unacceptable for private companies not to be held to account. It is in the public interest for this matter to be held in public.
- 2.10 The Panel retired to consider this decision and determined that the hearing should be held in public, but that the name of the care home and employees, who were witnesses must be pseudonymised. The Panel noted that the care home was not requesting the hearing be held in private and concurred with the submissions made by the legal advisor for the care home.

### Recording of proceedings

- 2.11 Cllr McEvoy enquired with the Panel as to whether the hearing was being digitally recorded. It was Cllr McEvoy's submission to the Panel that the hearing should be recorded to ensure all evidence is recorded accurately and no errors occur in respect of what is said. The Panel advised Cllr McEvoy that on 18<sup>th</sup> December 2019, it was communicated to Cllr McEvoy that recording of the hearing will not be permitted. The reason provided to Cllr McEvoy on 18<sup>th</sup> December being it may distract witnesses and impede the administration of justice. Cllr McEvoy had not sought to challenge this or make any request for the hearing to be recorded until now. The Panel reminded Cllr McEvoy that he was entitled to instruct a lawyer to represent him at this hearing and it was his decision not to do so. He had chosen to appoint Ms Hurst as his assistant within these proceedings, and she could make her own notes of the evidence accordingly. In considering this matter further and the points raised by Cllr McEvoy, the Panel confirmed its decision that the proceedings would not be recorded.

### Hearings Procedure

- 2.12 The Chair of the Panel advised that, having taken advice from the Legal Advisor to the Panel, it was proposed to vary the hearings procedure (referred to under paragraph 2.1 above) in the interests of ensuring an efficient hearing, as permitted by paragraph 7(b) of the procedure. **Stages 1 and 2** of the hearing would be combined, so that both the Councillor and the Ombudsman give combined submissions on both the facts and whether the facts amounted to a breach of the Code of Conduct. The combined procedure was outlined and both Cllr McEvoy and the Ombudsman indicated they were content with this variation.

### Applications during the Hearing

- 2.13 On day three of the hearing, Cllr McEvoy sought to introduce new evidence in respect of the care home. Cllr McEvoy had undertaken some searches on Companies House and wished the Panel to consider the documentation, as it was his view that alleged financial interests of some directors of the care home were relevant to his case. Cllr McEvoy advised the Panel that Witness 3 was a director of the care home and therefore had lied in his statement and oral evidence about his financial interests. Cllr McEvoy also submitted that Witness 3 was related to another director of the care home, who submitted the complaint about him to the Ombudsman. It was Cllr McEvoy's submission that the financial interests of these two directors were matters the Panel should consider. The Ombudsman submitted that Witness 3 was asked about these questions in evidence and had confirmed that he was not a director at the time of the events in question or when making his witness statement. His evidence was that he had been appointed as a director in 2019. Furthermore, the Panel's remit was to consider the conduct of Cllr McEvoy and goes no further. If Cllr McEvoy wished to pursue these areas of concern, then this was open to him, but the hearing was not the appropriate channel to do this. Having taken into account the submissions of Cllr McEvoy and the Ombudsman, the Panel concluded that the information provided by Cllr McEvoy did not assist them in respect of reaching a determination regarding his alleged conduct on 29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018. The information had no evidential weight in respect of addressing Cllr McEvoy's alleged conduct.

### Evidence in Private

- 2.14 A further application was made by Cllr McEvoy on day three of the hearing, to request that part of his evidence should be held in private. Cllr McEvoy advised the Panel that he wished to introduce evidence regarding another case in which he had been involved. Cllr McEvoy provided the Panel with some details of this case, which involved complex child protection concerns and was case sensitive, hence the Panel provides no further information in this document regarding this matter. Cllr McEvoy wished to introduce this evidence as he considered that the Cardiff Council Protocol on safeguarding was introduced to prevent Cllr McEvoy from exposing matters of this nature. The Ombudsman submitted that this information was not relevant to the hearing again reiterating the purpose and remit of the Panel. The Panel's decision in respect of this application was that Cllr McEvoy's involvement in another case had no bearing on matters before the Panel. The remit of this Panel is contained with Cardiff Council Standard and Ethics Committee Procedure for hearings (Ombudsman referrals), of which all parties had received a copy. This procedure makes it abundantly clear that the Panel's role is to make a determination on the complaint referred by the Ombudsman. The information Cllr McEvoy has in respect of another case carried no evidential weight and would not be considered.

### **3. ORAL EVIDENCE**

- 3.1 The Panel considered the contents of the hearing bundle and heard oral evidence as follows:

#### **3.2 Public Services Ombudsman for Wales**

- 3.2.1 Ms Shaw presented the report of the Ombudsman's investigation into this matter. The background set out was as outlined in paragraph 2.2 above. 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 and had taken legal advice upon this issue.
- 3.2.2 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.
- 3.2.3 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 telephone 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 will 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.

3.2.4 The second issue arose in relation to events on 11th May 2018 and a therapy review meeting 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 provides 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).

3.2.5 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).

3.2.6 In relation to the Member's duty to not bring the office of Councillor or the Council into disrepute, the Ombudsman 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.

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

3.3.1 Mr Alam confirmed his witness statement was true and correct. 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.

3.3.2 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.

#### Telephone Call on 29<sup>th</sup> April 2018

- 3.3.3 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. 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.

#### Therapy meeting on 11<sup>th</sup> May 2018

- 3.3.4 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.
- 3.3.5 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 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 Cllr to leave, but the Cllr 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.
- 3.3.6 Mr Alam said a meeting was later held (in June 2018) with the Cllr and the Corporate Director to discuss the impact of the Cllr'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, the Cllr 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 the Cllr and went into the case detail. 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 the Cllr that the right decisions had been made. He said they explained the concerns expressed by the courts and the adverse impact of the Cllr's involvement on the parents and Child X. Unfortunately, the Cllr took no heed of this and continued to undermine the Care Plan.
- 3.3.7 Mr Alam said that Cllrs 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 Cllr. The meeting would have been dealing with highly sensitive information. He felt the Cllr 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.
- 3.3.8 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.
- 3.3.9 During 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 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. He maintained that he could hear the conversation 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. Mr Alam was also referred to his witness statement (paragraph 16) and asked 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'.

#### **3.4 Witness 1**

- 3.4.1 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.

3.4.2 During 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.

3.4.3 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.

3.4.4 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.

### **3.5 Witness 2**

3.5.1 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 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 was 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 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.

3.5.2 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.

3.5.3 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.

3.5.4 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. She 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.

3.5.5 During 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 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.
- 3.5.6 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.
- 3.5.7 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.
- 3.5.8 Cllr McEvoy 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 who told 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.
- 3.5.9 She said that she called her colleague (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. She 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.
- 3.5.10 Witness 2 was asked 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.

### 3.6 Witness 3

- 3.6.1 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. They 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.
- 3.6.2 During 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.
- 3.6.3 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. He 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.

- 3.6.4 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. He was asked why he was unwilling to give Cllr McEvoy the information he had asked for, and 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.
- 3.6.5 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.

### **3.7.1 Witness 4**

- 3.7.2 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.
- 3.7.3 In 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.
- 3.7.4 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.
- 3.7.5 Witness 4 said his second interaction was when Cllr McEvoy was knocking on the office door. He said that from the entrance buzzer there are 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. He said that Cllr McEvoy was speaking in a raised voice, more raised than normal. He said Cllr McEvoy's body language was aggressive, and his arms

were out. He said he felt uncomfortable and panned 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.

- 3.7.6 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.

### **3.8 Father of Child X**

- 3.8.1 The father of Child X gave evidence that he had approached Cllr McEvoy because he was getting no help from the Council. He said he had tried other Members but Cllr McEvoy was the only one who would help him. He said the parents had a very bad relationship with the Council, and felt the Council had let them down, never looking at the things they should have looked at. He got to know Jacqueline Hurst (JH), a social worker employed by Cllr McEvoy (and Cllr McEvoy's assistant at the hearing) through Cllr McEvoy and said that she had put them on the right path. He said that X's mother was treated very badly by social services, saying she was a bad mother, but taking no account of Child X's previous operations and the lack of oxygen to his brain, which was found out by JH. He said that Cllr McEvoy and JH had encouraged the parents to engage with the Council, but that it had been difficult, because they were not given copies of paperwork, and had been knocked back without giving reasons. He said they had no access to the social worker's notes or contact centre notes and their subject access request had been rejected. He said they needed this documentation for the court process. He said that Children's Services were not honest with them and agreed with Cllr McEvoy's suggestion that they often told lies. He said he had full parental responsibility for Child X.
- 3.8.2 The Father said he wanted Cllr McEvoy to attend the therapy meeting with him, because at every meeting they were pressurised to sign documents without reading them. He said he had concerns about X's care plan, and felt that X wasn't getting the right therapy, as he had a special needs statement which the therapist was not aware of. He said he had tried to raise this with the Council.
- 3.8.3 The Father said that they had buzzed the entrance door on 11<sup>th</sup> May 2018, but he did not know who had let them in. He said the first person they saw was Witness 4, and that they saw Witness 3 later on. Witness 4 had told them that Cllr McEvoy could not attend the meeting, and that it would be cancelled. He said Witness 4 was very aggressive, putting himself forward, and his eyes were rolling around. He could not remember if Cllr McEvoy had suggested they record the conversation at this point.
- 3.8.4 He said the second interaction they had was with Witness 3, who had told them the meeting was cancelled, but did not give a reason. He said Witness 3 told them the social worker was not on site, but the Father and Cllr McEvoy saw the social worker's car outside the building,

and when they drove round the one-way system outside the building, they saw the social worker getting into his car. He said Cllr McEvoy had taken a photograph of this.

- 3.8.5 He said Cllr McEvoy's manner was professional and direct, and his behaviour was fine, he just wanted answers. He agreed that Cllr McEvoy was generally demanding with people in positions of authority, but said he was not irate. He said that Witness 4's behaviour was threatening, standing over Cllr McEvoy, which made him wonder if he was going to head butt or punch Cllr McEvoy.
- 3.8.6 The Father also referred to another incident when he said that the parents had been asked by Social Services to sign something about expectations, but they were not allowed to read it or to give a copy to their solicitors or to JH. He said they had been told that their solicitors could apply for a copy. Following this, their contact with their children was stopped.
- 3.8.7 During cross-examination, the Father confirmed that he had recorded the interactions on 11th May 2018, because Cllr McEvoy asked him to do so. He said he recorded using his phone which was in his pocket, and that the other people were not aware they were being recorded. He said he always recorded meetings, but did not record the first interaction with Witness 4 because he did not know he would come out and have a go at them. He recorded the second interaction with Witness 4 because of their first interaction. He did not know who had buzzed them into the building and said he did not announce himself or say anything.
- 3.8.8 The Father confirmed that Witness 3 was polite and co-operative and wrote down his name when he asked politely. He said that Witness 4 was the one who was threatening. Having listened to the recording of the conversation, he conceded that he could not hear Witness 4 shouting whilst he was speaking with Witness 3, as he had said in his witness statement. He said that he was standing next to Cllr McEvoy whilst he was recording. He confirmed that Cllr McEvoy had followed Witness 3, because he wanted to get more answers and that he had followed also because he was recording the conversation.
- 3.8.9 He said he had told the social worker that Cllr McEvoy would be accompanying him for the meeting and that the social worker had raised no concerns. He said the social worker's response on the phone was 'yes, that's fine'. He said that JH had also attended a number of meetings with the parents and he thought that JH had also told the therapist that Cllr McEvoy would be attending the meeting with him. He said that after the interactions, he felt very upset. He was expecting to get answers, but came away with nothing.
- 3.8.10 The Father said he had not had any assistance or support from anyone else and that's why their kids were removed. The only help they had was from Cllr McEvoy. He said they had always had a poor relationship with the Council and it had not improved over time, and that is why they were going back to court.
- 3.8.11 He confirmed that his witness statement was given verbally to the Ombudsman, using his own words.

### 3.9 Cllr McEvoy

- 3.9.1 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 (JH) 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.
- 3.9.2 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.
- 3.9.3 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.
- 3.9.4 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.
- 3.9.5 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.
- 3.9.6 During 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.
- 3.9.7 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.
- 3.9.8 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.

3.9.9 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 that the Ombudsman'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.

3.9.10 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 the Ombudsman'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.

3.9.11 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. The Ombudsman 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.

3.9.12 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.

3.9.13 In relation to Witness 2's evidence that she felt bullied and intimidated, and she felt sick during her telephone conversation with Cllr, 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.

3.9.14 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 (the Ombudsman clarified that Witness 4 had said the Cllr was initially silent in respect of providing his name, rather than quiet).

3.9.15 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.

- 3.9.16 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 the Cllr 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.
- 3.9.17 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.
- 3.9.18 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.
- 3.9.19 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.

- 3.9.20 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).
- 3.9.21 Cllr McEvoy was asked 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.
- 3.9.22 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.
- 3.9.23 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.
- 3.9.24 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, JH 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.

- 3.9.25 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.
- 3.9.26 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.
- 3.9.27 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.
- 3.9.28 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.
- 3.9.29 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.
- 3.9.30 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.

- 3.9.31 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. He was asked why Father had not recorded the first interaction with Witness 4; and said he didn't know, possibly it was because Cllr McEvoy was recording.

#### **4. PANEL'S ASSESSMENT OF THE WITNESSES**

- 4.1 In relation to events on 29th April 2018, the Panel considered the relevant witnesses were Witness 1, Witness 2 and Cllr McEvoy. The Panel do not intend to reiterate the evidence of Witness 2 here, as it will simply be repetition and serves no purpose. The Panel found Witness 2 to be a reliable and credible witness. The Panel considered the written statement with her log made on the day as well as her oral evidence. Witness 2 was prompt in her responses to questions and clearly explained to the Panel her decision-making process in respect of Cllr McEvoy's request to visit Child X. Witness 2 was consistent in respect of what information she shared with Cllr McEvoy and why. Witness 2 gave detailed oral evidence in respect of the telephone call that took place between Witness 2 and Cllr McEvoy. Cllr McEvoy was able to put his case to Witness 2 and these questions were answered without hesitation. Witness 2 was able to provide reasons as to why some information contained within her statement was not written in her daily log. The evidence from Witness 2 has been consistent since 29th April 2018; the only additional information has come from questioning by statement takers. One matter put to the witness was in relation to police attendance at the home on 28th April 2019 where there was some confusion about the number and timing of visits. Witness 2 wrote an email to Child X's social worker advising the police had attended that day, namely at 16.50pm and advised that police attended after 8.30pm. Initially it appeared as though Witness 2 had made an error, which she accepted during cross examination. However, the Panel now know, after requesting further information about police visits to the home on the 28<sup>th</sup> April 2018 that the police attended three times that day and therefore Witness 2 evidence in respect of the police visit at 16.50pm was indeed correct. We agree with Ms Shaw's submission that Witness 2 answered every question, did not deflect or detract from the questions put to her. Witness 2 was clear in her evidence as to the impact Cllr McEvoy's conduct during the telephone conversation had upon her.
- 4.2 In respect of Witness 1, his evidence is limited in terms of hearing the entire conversation that took place between Witness 2 and Cllr McEvoy. Witness 1 accepts this position as he advised

during his evidence that he only heard one line of a conversation namely 'I'm going to come down today'. Witness 1 did however witness the reactions of Witness 2 during parts of the discussion he was present for and Witness 2's presentation immediately following the conversation ending. We note Cllr McEvoy's assertion that Witness 1's witness statement is more detailed than his recording, but we accept that this is a direct result of questioning by statement takers and is the same for all witnesses. For the purposes of where Witness 1 assists, we found Witness 1 to be a reliable and honest witness.

- 4.3 Cllr McEvoy's evidence in respect of events leading up to the telephone call with Witness 2 was detailed and precise. Cllr McEvoy was able to recall his actions and who he spoke to in response to child X's mother contacting him on 28th April 2018. With regard to the telephone conversation that took place between Cllr McEvoy and Witness 2, Cllr McEvoy was evasive in respect of whether he advised Witness 2 that he was a member of the Welsh Assembly, and that he would be bringing a colleague to the care home that day. Cllr McEvoy advised the Panel that he was not sure if he has said that and would prefer to answer questions on what he could remember. Cllr McEvoy also could not be certain whether he advised Witness 2 that he would raise the matter in the Welsh Assembly the following Tuesday, but that he was acting in the best interests of the child. Cllr McEvoy could also not recall what exact timescale he gave Witness 2 to respond to him. However, Cllr McEvoy was able to recall how Witness 2 presented to him, without any hesitation. It is Panel conclusion that in respect of the incident on 29th April 2018, Cllr McEvoy was selective in terms of the information he shared with the Panel, which therefore undermines his credibility.
- 4.4 Fundamentally, this was a case where the Panel has to decide, on balance, whose evidence to prefer. For the reasons set out above, the Panel preferred the evidence of Witness 1 and 2.
- 4.5 In respect of the 11th May 2018, the relevant witnesses were Witness 3, 4, 5, Mr Irfan Alam and Cllr McEvoy.
- 4.6 In respect of Witness 3, he confirmed that he only had one interaction with Cllr McEvoy for the purpose of advising him that the meeting had been cancelled. Witness 3 confirmed that he declined to provide Cllr McEvoy with the complaints procedure. Witness 3 confirmed that Cllr McEvoy failed to identify himself and was presenting himself quite aggressively. Witness 3 informed the Panel that if Cllr McEvoy had asked in a more professional manner, he would have helped. As Witness 3 left, Cllr McEvoy was on his mobile telephone and he heard Cllr McEvoy describe his appearance to a person unknown to Witness 3. Witness 3 confirms in his statement that Cllr McEvoy 'used derogatory phrases to describe me like balding and overweight'. Within oral evidence, Witness 3 advised the panel that Cllr McEvoy described him as scruffily dressed, balding and overweight'. From the recording of the interaction between Cllr McEvoy and Witness 3, the Panel did not hear the word 'scruffy' or 'scruffily dressed' being said and neither did it hear any reference to balding. Witness 3 accepted that the word 'scruffy' had not been used. It was not put to Witness 3 about the use of the word 'balding'. The recording revealed that Witness 3 was "unwilling" to provide information on the complaints procedure when requested. When pressed by Cllr McEvoy, Witness 3 also admitted to "embellishing" his evidence re the phrase used to describe him. It is the Panel's assessment that there was an unpleasant situation that arose between Cllr McEvoy and Witness 3, which resulted in both parties standing their ground which only created a further hostile environment.

- 4.7 In respect of Witness 4, he was not present at the point that Cllr McEvoy described Witness 3 and therefore is not a witness of fact in that regard. Therefore his evidence does not assist the Panel in respect of making a determination in relation to whether Cllr McEvoy was in breach of Paragraph 4(b) of the code of conduct.
- 4.8 Witness 5 is the father of Child X. He was present for the duration on 11th May 2018 and overall supports Cllr McEvoy's version of events in the interactions between Cllr McEvoy and the witnesses. Witness 5 also advised the Panel that when he requested Witness 3's name, Witness 3 was polite and cooperative. It seems clear to the Panel, that Witness 3 responded to the father of child X and Cllr McEvoy in accordance with how he was treated by them. It is to father's credit, that despite a clearly difficult meeting, he remained calm and polite. Witness 5 during his evidence confirmed that he always recorded meetings, however, he then went on to confirm that he only recorded the second and third interaction as a direct result of the first interaction with Witness 4. Furthermore, within Father's statement, he states that 'It was my decision to record these conversations', which is in contrast to his oral evidence in which he confirmed Cllr McEvoy requested that he do so. Father of Child X is clearly very grateful to Cllr McEvoy for the support he provides to the family and the Panel observed that he was prompted to provide positive answers.
- 4.9 Mr Irfan Alam, was the person on the telephone to Cllr McEvoy on 11th May 2018 during Cllr McEvoy's interaction with Witness 3. This telephone call was conducted via loudspeaker. Mr Alam provided the Panel with information regarding Child X, his family and Cllr McEvoy's involvement. Centrally, Mr Alam did hear the interaction between Cllr McEvoy and Witness 3 albeit the Panel are mindful that this was on a mobile telephone using a loudspeaker. In respect of what Mr Alam heard, he confirmed Cllr McEvoy raised concerns regarding staff members stating they were rude, dismissive and intimidating. Mr Alam advised he could hear one member of staff and he did not consider him to be rude towards Cllr McEvoy and was requesting that Cllr McEvoy leave. Mr Alam stated that Cllr McEvoy was talking over them. In Mr Alam's view he did not hear raised voices and staff dealt with the situation professionally and appropriately. Mr Alam within his very detailed statement stated that 'I got the impression from the conversation that whoever was present was trying to move away from him'. This supports Witness 3's account and is also corroborated by father in his evidence. In respect of the description Cllr McEvoy used to describe Witness 3 to Mr Alam, Mr Alam does not mention hearing of this description and neither were these matters put to Mr Alam in evidence.
- 4.10 Overall, the Panel observed that Cllr McEvoy was also unwilling to answer some questions put by the Ombudsman's legal representative and attempted to answer questions which had not been put to him. Indeed when the Legal Advisor for the Panel sort clarity on evidence provided by Cllr McEvoy, as opposed to answering the question, Cllr McEvoy first sort to challenge this by questioning the Legal Advisor's role within the hearing.

## 5. FINDING OF FACT

- 5.1 The Panel found the following **undisputed** material facts:

- 5.1.1 At the relevant times, Cllr McEvoy was a member of Cardiff Council and was acting in his capacity as a Cardiff Councillor (albeit, apparently in a twin-hatted capacity, in relation to his role as a Welsh Assembly Member).
- 5.1.2 In January 2016, the Council adopted a Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults, which includes the following provisions:
- (a) The Council as a whole is 'the corporate parent' of all Looked After Children, which means that elected Members, relevant Council managers and staff all need to work together to discharge their different roles and responsibilities (paragraph 3.3)
- (b) It is not generally appropriate for an elected Member to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the Member is acting (paragraph 4.5)
- (c) If a Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Children's Access Point or, if outside of office hours, to the Emergency Duty Team (paragraph 5.1).
- 5.2 In relation to the telephone call on 29<sup>th</sup> April 2018, the Panel found the following undisputed material facts:
- 5.2.1 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.
- 5.2.2 Cllr McEvoy introduced himself as Assembly Member and Corporate Parent and said he wanted to visit Child X at the care home that day.
- 5.2.3 Witness 2 said that Cllr McEvoy could not visit Child X because he was not named on the child's care plan and she advised Cllr McEvoy to arrange a visit through the social worker.
- 5.2.4 Cllr McEvoy said that he would be attending that day and that he would be bringing a colleague with him.
- 5.2.5 Witness 2 maintained that Cllr McEvoy was not authorised to visit Child X.
- 5.2.6 Cllr McEvoy said that he would be raising the matter at the Welsh Assembly.
- 5.2.7 Witness 2 said that if Cllr McEvoy attended at the care home without authorisation, she would have to call the police, because of her duty to safeguard the residents of the home.
- 5.2.8 Cllr McEvoy asked Witness 2 to speak with her Director and get back to him within a deadline that day.
- 5.2.9 Witness 2 called Cllr McEvoy back and repeated her previous advice.
- 5.2.10 Cllr McEvoy did not attend at the care home that day.

5.3 In relation to the telephone call on 29<sup>th</sup> April 2018, the Panel found the following **disputed material facts**:

- 5.3.1 We are persuaded that Witness 1 was physically present to witness part of the telephone 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.
- 5.3.2 We found Witness 2 to be a credible and persuasive witness as to the event on 29<sup>th</sup> April and on the basis of her evidence that Cllr McEvoy insisted that he would be attending the care home, bringing a colleague with him, would raise the matter at the Welsh Assembly and giving her deadline to speak to a Director and arrange authorisation for his visit, we accept that Witness 2 felt bullied and intimidated by Cllr McEvoy.
- 5.3.3 We also accept that Witness 2 felt undermined by Cllr McEvoy's insistence, against her advice, that he would be attending the home.

5.4 In relation to events on 11<sup>th</sup> May 2018, the Panel found the following **undisputed material facts**:

- 5.4.1 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 X. They gained access to the building.
- 5.4.2 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.
- 5.4.3 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.
- 5.4.4 Cllr McEvoy and the Father subsequently had an interaction with Witness 3. 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.
- 5.4.5 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.
- 5.4.6 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'.
- 5.4.7 Cllr McEvoy left the building with Father.

5.5 In relation to events on 11<sup>th</sup> May 2018, the Panel found the following **disputed material facts**:

- 5.5.1 Did Cllr McEvoy behave aggressively towards Witness 3, in particular, by speaking with a raised voice or following him back to his office?

- 5.5.2 This is the first and only interaction Cllr McEvoy had with Witness 3. This was however, the third interaction for Cllr McEvoy and staff, having previously had two interactions with Witness 4. The Panel find by this stage, matters had escalated and the situation had become heated within an increasingly hostile environment. Cllr McEvoy had telephoned the Assistant Director due to his concerns and part of that telephone call took place in front of Witness 3, who was also discussed in the telephone call. Part of this interaction was covertly recorded but the recording does not help the panel in terms of facial expressions, body language and positioning of those involved. We are also aware of the discussions that took place between Cllr McEvoy and witness 4 and what ensued to be a difficult interaction. Given the evidence of both Witness 3 and Cllr McEvoy and the clear inconsistencies, on balance we do not consider Cllr McEvoy behaved aggressively in terms of speaking with a raised voice. However, we do find that Cllr McEvoy followed Witness 3 back to the office, as Child X father confirmed in his evidence that this is what took place and within the statement of Mr Alam, he gained the impression that the witness was trying to move away from Cllr McEvoy. This was reaffirmed during his oral evidence.
- 5.5.3 Did the social worker agree to Cllr McEvoy's attendance at the therapy meeting?
- 5.5.4 Having considered the written and oral evidence, we find that the social worker did not agree to Cllr McEvoy attending the therapy meeting. Had the social worker agreed to Cllr McEvoy's attendance on 11<sup>th</sup> May, then the events of 11<sup>th</sup> May simply would not have taken place and the meeting would have proceeded on the basis that all those who were invited and permitted to attend would have been present.

## **6. BREACH OF THE CODE**

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

- 6.1.1 Cllr McEvoy provided the Panel with his written submissions consisting of 14 pages. A bundle was annexed to this document, which consisted of the key documents Cllr McEvoy sought to rely upon in respect of his case. The documents were drawn from the bundle prepared by the Ombudsman. No new evidence was provided and indeed no further applications were made by Cllr McEvoy to reply upon any other evidence.
- 6.1.2 Cllr McEvoy presented his submissions orally to the Panel. In summary Cllr McEvoy in support of his position confirmed:-
- 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 has never alleged 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 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 in his submissions advised the Panel that 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, is 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 Witness 2 did not make any mention of Witness 1 in her original statement (by original statement, the Panel understand this to mean a written log of the event prepared by Witness 2 following the incident). 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 (which Witness 1 advised during hearing) and that it was his professional opinion that it was inconceivable that Witness 1 did not receive assistance in providing his statement.
- Cllr McEvoy advised the Panel 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 2019.
- Cllr McEvoy drew the Panel's attention to what Witness 1 stated he heard.
- With regard to events in respect of 11<sup>th</sup> May 2018, Cllr McEvoy provided 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 Witness 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. It is Cllr McEvoy submission 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 advised the Panel that Witness 3 had 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, Cllr McEvoy submitted to the Panel that his evidence was consistent with his statement and that Cllr McEvoy has 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.
- 6.1.3 Following Cllr McEvoy's submissions relating to the evidence of Witness 1 to 5, Cllr McEvoy advised the Panel of the fact that he thought a member of staff from the care home was going to assault him. Cllr McEvoy had concerns in respect of events on 11<sup>th</sup> May 2018 and it was Cllr McEvoy submission that Cardiff Council did not act on his almost immediate complaint. Cllr McEvoy advised the Panel, that the Council had been playing with the parents and playing with Cllr McEvoy. Cllr McEvoy invited the Ombudsman to investigate 'these people' and stated 'how can you not act upon these concerns'.
- 6.1.4 Cllr McEvoy made oral submissions in respect of Mr Iran Alam's evidence and pointed out what he considered were inaccuracies, which was 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 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 it is 'trope' which he had had to put up with in politics. Cllr McEvoy view was that he did not have enough time to cross examine Mr Alam. Cllr McEvoy reiterated to the Panel that despite Mr Alam's evidence, Cllr McEvoy has never attended the care home in question and that was still a bone of contention. Cllr McEvoy submitted that he

was not interfering but as an elected member he is a corporate parent and he has responsibilities.

6.1.5 Finally, Cllr McEvoy made submissions in respect of the Ombudsman's report. In summary he presented the following information:-

- 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.

6.1.6 During his oral evidence session, Cllr McEvoy also made the following submissions:

- Cllr McEvoy said that his behaviour was governed by the behaviour of Children's Services and could not be looked at in isolation. The system to protect children is broken, this is what should be focussed on, not my 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.
- The Ombudsman is making Wales less safe for children in pursuing the complaints against me, using the Ombudsman's office to stop important questions being asked.
- The Ombudsman's report was biased and flawed. The Ombudsman misunderstands the duties imposed by the Children Act, specifically, section 47 and the scope of the Protocol.

- The protocol is advisory, it has no legal weight and does not apply to me 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, he has a legal obligation, it is his role to go to the 'nth degree' to see that children are protected. He submits the Ombudsman has a fundamental misunderstanding of the role of a Corporate Parent. When he was elected in 1999, councillors were encouraged to visit children's homes. He wanted to go with another councillor colleague at a later date, but that never happened.
- Submits that the Ombudsman says 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. In relation to the therapy meeting, he wanted 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.
- 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.

## 6.2 The Ombudsman's Submissions

- 6.2.1 It was contended by Ms Shaw 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 is in relation to Cllr McEvoy's behaviour and he has 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 exclusive. Ms Shaw contended that events on 29<sup>th</sup> April and 11<sup>th</sup> May 2018, is a matter for the Panel to determine. Cllr McEvoy comment that the Ombudsman is in 'cahoots' with the First Minister was 'ludicrous' in Ms Shaw's submission. The Panel were advised that the Ombudsman obtained witness statements and in doing so used the same process throughout, including the Father of Child X, who was Cllr McEvoy's witness for the purpose of this hearing. Ms Shaw submitted on behalf of the Ombudsman 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 and 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 Witness 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 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 Witness 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 Witness 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. With regard to events of 29<sup>th</sup> April 2018, Ms Shaw advised the Panel that in light of the evidence and the fact that Cllr McEvoy was not credible and vague in his evidence, the evidence before the Panel suggested that Cllr McEvoy bullied and harassed Witness 2 and breached the code of conduct. It was also submitted that Cllr McEvoy also failed to show respect despite Cllr McEvoy advising that he did have respect for Witness 2. Ms Shaw submitted that Cllr McEvoy attempted to undermine Witness 2 and failed to pay her respect during the telephone conversation.

6.2.2 In relation to the events on 11<sup>th</sup> May 2018, Ms Shaw reminded the Panel there was no recording of the first interaction with Witness 4 and the recordings provided which, consisted on the second and third interaction 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 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 there is nothing wrong in Cllr McEvoy making complaints, however when matters do not go accordingly to Cllr McEvoy's plan, he seeks to intimidate others. Ms Shaw invited the Panel not to be deflected by side issues raised by Cllr McEvoy namely the issue of Witness 4 being a director of the care home now and financial benefits as a consequence. Ms Shaw again reiterated that the Ombudsman obtained statements from the witness using the same process. Ms Shaw drew upon the evidence of Witness 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.

6.2.3 Ms Shaw contended that Cllr McEvoy's conduct brought Cardiff Council in to 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 to 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. There was the suggestion that Cllr McEvoy was a corporate parent to the individual child and therefore allowed him access to the care home – this was plainly wrong. The Ombudsman was not suggesting that Councillors generally could not attend care home. However, to suggest that elected members can attend care homes to visit children as 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.

6.2.4 To conclude, Ms Shaw drew the Panel's attention to a letter provided by Cllr McEvoy by the Independent Reviewing Officer of Child X and referred the Panel 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*'.

6.2.5 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*'.

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

6.3.1 In response to the submissions made by Ms Shaw on behalf of the Ombudsman, Cllr McEvoy made the following observations 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 taken place in that of the family.
- If Cllr McEvoy had not found out what was going on, then this inaction would have brought the Council in to disrepute.
- Cllr McEvoy 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 reiterates 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.

## **6.4 Panel's Decision**

- 6.4.1 Paragraph 4(b) of the code of conduct states that a Councillor must show respect and consideration for others, and Paragraph 4(c) of the Code of Conduct states that a Councillor must not use bullying behaviour or to harass any person
- 6.4.2 On the basis of the findings of fact, the Panel found by a unanimous decision that Cllr McEvoy failed to show respect and consideration (4(b)) for Witness 2 on 29<sup>th</sup> April 2018 and also used bullying behaviour and harassment (4(c)) – his conduct was intended to undermine her in her role and exert pressure to ensure she agreed to permit him to visit the care home that day. Cllr McEvoy would not accept the witness's decision that she was not going to allow him into the care home to visit the child as he was not mentioned on the child's care plan. Cllr McEvoy persisted with his view that he would be attending the care home that day to the extent where Witness 2 advised Cllr McEvoy that she would contact the police if he attended the care home. During the telephone conversation, Cllr McEvoy advised Witness 2 that he would be attending

the care home with a colleague. Witness 2 was a senior residential care worker in contrast to Cllr McEvoy who was an elected Councillor and Assembly Member and there is a power imbalance between them. Cllr McEvoy was aware of this power imbalance between himself and Witness 2 as he advised Witness 2 that he worked for the Welsh Assembly and was a corporate parent for Child X and used his position in any attempt to gain access to Child X.

6.4.3 The Panel did not find that Cllr McEvoy's conduct amounted to a lack of respect and consideration of others (4(b)) in respect of the incident on 11<sup>th</sup> May 2018. The Panel heard two recordings, which were covertly recorded by Child X's father on the instruction of Cllr McEvoy. These recordings were of a second and third interaction with staff members of the care home. There was a first interaction between Cllr McEvoy and Witness 4, however, this recording was not presented to the Ombudsman or the Panel for the purposes of the investigation or this hearing. The Panel considers this first recording, may have put the second and third interaction into context as in analysing the evidence from this first interaction set the scene for the interactions that followed thereafter.

6.4.4 Cllr McEvoy placed great reliance on the covert recordings in respect of the two interactions with the witnesses. The Panel heard these recordings and whilst the recordings corroborated what was said in terms of content, the Panel agreed not to place significant weight on these recordings for the following reasons:-

- a. The recordings were covertly undertaken therefore allowing Cllr McEvoy to temper his conduct and behaviour
- b. The recordings have not captured entire conversations that have taken place between Cllr McEvoy and the witnesses
- c. The recordings are of the second and third interactions only and the Panel consider the first interaction to be the one that set the context for what then follows. The third interaction appears to be only partially recorded. The first recording was not provided despite Cllr McEvoy advising the Panel that he took a 'belt and braces approach' by requesting the Father of Child X recording all conversations, although Father advised that he recorded the second and third interaction as a result of the first interaction
- d. The recordings do not provide any clarity on the positioning of the parties, body language or facial expressions.

6.4.5 The Panel consider that events on the 11<sup>th</sup> May were difficult for both the care home staff and Cllr McEvoy. Having listened to the recording of the third interaction, given the witness would not provide his name to Cllr McEvoy it inevitably followed that a physical description would be necessary given that Cllr McEvoy wished to complain. However, the Panel did give consideration to the fact that this description did not necessarily have to be given in the presence of the witness himself.

6.4.6 In the Panel's view, there were inconsistencies in both Cllr McEvoy's and Witness 3's recollection of how Witness 3 was described by Cllr McEvoy. The interactions between Cllr McEvoy, and Witnesses 3 and 4 were difficult exchanges, which created tensions for all parties. It is unfortunate that Cllr McEvoy chose to use the description he did of Witness 3, but the Panel balanced this with the hostile environment that clearly existed during the interaction between them, in terms of Cllr McEvoy requesting information and Witness 3 not

- readily providing this. Having considered the written and oral evidence provided, the Panel are not satisfied that this amounted to a breach of the Code of Conduct.
- 6.4.7 Paragraph 6(1)(a) of the Code of Conduct states that you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. The Panel considered whether Cllr McEvoy had brought Cardiff Council into disrepute on both the 29<sup>th</sup> April and 11<sup>th</sup> May 2018.
- 6.4.8 With regard to 29<sup>th</sup> April 2018, Cllr McEvoy persisted in his telephone call with Witness 2 that he would be attending the care home that day and continued to challenge the witness's decision. Cllr McEvoy also gave the witness a deadline to return his call on the issues he raised and would not accept the decision made that he could not attend the care home to the extent that the witness referred to requesting police assistance in the event that Cllr McEvoy did attend. This telephone call went on for approximately 15 minutes and given the limited issues discussed, it is the Panel's view that this evidences persistence on part of Cllr McEvoy. Whilst Cllr McEvoy may not have liked the decision of the witness, as a Councillor he should have accepted the decision that he could not attend the home and recognised that the witness was doing her job in safeguarding the children in her care. In the Panel's opinion, Cllr McEvoy should have understood that it was inappropriate to attend a care home to visit a child he had never met without the parents or the social worker present. His conduct had the potential to cause difficulties in the relationship between the parents and the child and Cardiff Childrens Services and the care home who were responsible for safeguarding and meeting the needs of Child X and others in their care
- 6.4.9 In respect of 11<sup>th</sup> May 2018, Cllr McEvoy could provide no evidence that he had agreement to attend the meeting. He instructed Child X's father to record Cllr McEvoy's interactions with staff members and the telephone discussion with Mr Alam. This recording was done covertly without all parties present being aware of it at the time. There were three unfortunate interactions that took place in the presence of Child X's father and the father was also privy to a telephone conversation between Cllr McEvoy and the former Assistant Director of Cardiff Children Services. It is the Panel's view that the father should not have witnessed these events. Father is vulnerable in his own right, as advised by Cllr McEvoy and witnessing these events would not have assisted him in his relationship with either Cardiff Children Services or indeed the care home staff particularly in light of the allegations made by Child X to his mother. The Father in his evidence advised the Panel that he had a poor working relationship with Cardiff Children Services, but that Cllr McEvoy had always encouraged them to engage with the service. Cllr McEvoy's conduct on 11<sup>th</sup> May 2018 would not have served to promote a positive working relationship with Child X's father, Cardiff Children Services or indeed with the care home.
- 6.4.10 Additionally, the interactions between Cllr McEvoy and Witness 3 and Witness 4, led to a hostile environment, where Witness 3 actively made a decision not to share information with Cllr McEvoy about how to make a complaint. Given the confrontation, Cllr McEvoy should have removed himself from the building when initially asked to leave and pursued making a complaint through formal channels.
- 6.4.11 Cllr McEvoy said that he feared Witness 4 was about to assault him and he was considering using judo moves to throw Witness 4 to the ground. The Panel find it difficult to accept that a

person who had genuine fear of being assaulted would choose to remain in that situation when he had the opportunity to leave.

6.4.12 It is the Panel's view that it was not appropriate for Cllr McEvoy to continue to challenge staff, who were in effect delivering a message on behalf of Cardiff Children Services, given that Cllr McEvoy was acting as a representative for Cardiff Council in his capacity as an elected member.

6.4.13 The Panel found by a unanimous decision that Cllr McEvoy brought Cardiff Council into disrepute on both the 29th April and 11th May 2018 (in breach of paragraph 6(1)(a) of the Code of Conduct).

## **7 SUBMISSIONS ON ACTION TO BE TAKEN**

### **7.1 Ombudsman's Submissions**

7.1.1 Ms Shaw on behalf of the Ombudsman contended that the Panel should consider both mitigating and aggravating factors. Ms Shaw provided the Panel with two documents, namely the Adjudication Panel for Wales Sanction Guidance and a Decision report in respect of Cllr McEvoy dated 14<sup>th</sup> March 2017. Ms Shaw confirmed these documents acted a guide to assist the Panel in reaching any 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 which were summarised as follows:-

- Cllr McEvoy is not an inexperienced member
- There are repeated breaches of the Code of Conduct
- Cllr McEvoy conduct was reckless
- Bullying of others is a serious breach
- Cllr McEvoy has no insight of the impact of his behaviour upon Witness 3
- There is an unwillingness of Cllr McEvoy to accept the impact his conduct had upon Witness 2
- There is an unwillingness for Cllr McEvoy to accept fact 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

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

## **7.2 Councillor's Submissions**

- 7.2.1 Cllr McEvoy advised the Panel that he had no interest in making submissions to the Panel in respect of sanctions.

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

- 7.3.1 The Panel considered all of the written and oral evidence and submissions made in relation to the events on 29<sup>th</sup> April 2018 and 11<sup>th</sup> May 2018. The Panel was not persuaded that no action should be taken, in light of the impact of Cllr McEvoy's behaviour upon Witness 2, and the potential risks to child X's placement ending if Cllr McEvoy continued to engage with the care home staff in such a manner. The Panel took account of his previous sanction of one month suspension by the Adjudication Panel for Wales, which was for similar misconduct (breach of the Code paragraphs 4(b) and 4(c)). Cllr McEvoy has displayed no insight into his behaviour and impropriety, particularly on 11<sup>th</sup> May 2018, when the events took place in front of child X's father, where Cllr McEvoy actively involved him in covertly recording interactions between Cllr McEvoy and care home staff. There have been four breaches of the Code of Conduct on two separate occasions during April and May 2018, and therefore the Panel considered action was required.
- 7.3.2 The Panel considered whether suspension was the proportionate and appropriate sanction in the circumstances. In mitigation, Cllr McEvoy is committed and passionate about his duties as a councillor. Cllr McEvoy was concerned about allegations of physical abuse reported by Child X to his mother and Cllr McEvoy advised the Panel that he was responding to this as it was his duty to do so. The Panel agree that allegations of abuse are an extremely important matter, which must be investigated and that councillor's should not ignore such allegations. However, Cardiff Council have a Safeguarding Protocol which councillors should adhere to, whether they accept the protocol is correct or not. Protocols exist to provide rules about the correct way to act in formal situations and councillors should use such protocols to act as a guide to deal with serious situations in the correct and appropriate manner. The Panel considered that some clarification in the Protocol itself and additional training for all Councillors on child protection procedures and corporate parenting would be helpful.
- 7.3.3 The Panel found there were also aggravating factors. Cllr McEvoy has long experience as a councillor and he is also an Assembly Member. He is in a position of responsibility and trust. Throughout the whole process, Cllr McEvoy has not reflected upon his own behaviour and continued to blame others. Cllr McEvoy has not acknowledged the errors he has made. Cllr McEvoy has accused every witness of lying during the hearing, save for Child X's father, who was Cllr McEvoy's witness.

- 7.3.4 In March 2017, Cllr McEvoy was suspended from acting as a member of Cardiff Council for a period of one month for bullying behaviour and failure to show respect and consideration. The Panel were of the view that this previous sanction should have informed Cllr McEvoy about standards of conduct expected of elected Members.
- 7.3.5 Furthermore, the Panel considered that during the lead up to this hearing and during the hearing itself, Cllr McEvoy failed to engage appropriately. The Panel were disappointed by some of the content on Cllr McEvoy's twitter account during the hearing. He made several statements that were untrue, and the Panel were unable to respond to this content, although the Chair did advise Cllr McEvoy on day two of the Hearing that this behaviour was unhelpful. The Panel were also disappointed that Cllr McEvoy decided to name the care home when he knew that submissions had been received inviting the Panel to pseudonymise the name of the home and witnesses. The Panel were also concerned by the actions of Cllr McEvoy during the hearing in attempting to outline issues that were beyond their remit. Finally, while Cllr McEvoy had several months to provide supporting documentation he would have liked the Panel to consider, he decided to submit several documents on the day of the hearing which led to delays in the process.
- 7.3.6 The Panel concluded by unanimous decision that Cllr Neil McEvoy should be suspended from acting as a member of Cardiff Council for a period of four months. This period marks the severity of the misconduct and reiterates the need for high standards when acting as a member of Cardiff Council. The Code of Conduct must be adhered to and Councillors must treat all individuals with respect and consideration, particularly when they are not senior officials, and not subject them to bullying behaviour. Councillors must also be aware of how their behaviour and conduct may be perceived by individuals and the general public. It is not acceptable for their conduct to take place in a manner, which could reasonably be regarded as bringing their office or authority into disrepute.
- 7.3.7 Cardiff Council and its Standards Committee are notified accordingly.
- 7.3.8 Cllr McEvoy has the right to seek permission to appeal this decision and a copy of the appeals procedure has been provided to Cllr McEvoy. A person considering an appeal is advised to take independent legal advice about how to appeal.

SIGNED:



PROFESSOR JAMES DOWNE

CHAIRPERSON OF THE HEARINGS PANEL

*H & M Edwards-Davies,*

HOLLIE EDWARDS-DAVIES

PANEL MEMBER

A handwritten signature in black ink, appearing to read 'Stuart Thomas', with a long horizontal flourish extending to the right.

COMMUNITY COUNCILLOR STUART THOMAS

PANEL MEMBER

DATE: 24<sup>th</sup> January 2020

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**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/002/2019-020/AT

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

**APPELLANT:** Councillor Neil McEvoy

**RELEVANT AUTHORITY:** Cardiff County Council

**1. INTRODUCTION**

1.1 An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Cllr Neil McEvoy (“Cllr McEvoy”) against the decision of Cardiff County Council Standards Committee (“the Committee”) of 14<sup>th</sup> January 2020 that he had breached the Cardiff County Council Code of Conduct and should be suspended as a Councillor for four months.

1.2 In accordance with the direction of the President of the Adjudication Panel for Wales dated 5<sup>th</sup> March 2020, the Appeal Tribunal only considered the sanction imposed, based on the findings of the Standards Committee about facts and breach alone.

1.3 In accordance with Cllr McEvoy’s wishes, the Appeal Tribunal determined its adjudication by way of written representations on 22<sup>nd</sup> June 2020 at a meeting held remotely.

**2. PRELIMINARY DOCUMENTS**

**2.1 Appeal Against Decision of Standards Committee**

2.1.1 This is an appeal against a decision of the Standards and Ethics Sub Committee (Hearings Panel) of the County Council of the City and County of Cardiff taken on 14<sup>th</sup> January 2020, to suspend the Appellant, Councillor Neil McEvoy, as a Councillor, for a period of four months. The Appellant is an elected Member of Cardiff Council. He is also Member of the Senedd Cymru for South Wales Central, a constituency that covers the area he represents as a Councillor.

2.1.2 In his signed declaration of acceptance of office dated 8th May 2017, the Appellant undertook:

“to observe the Code for the time being as to the conduct which is expected of Members of the County Council for the City and County of Cardiff and which may be revised from time to time.”

2.1.3 On 25th May 2017 and again on 24th May 2018, the Appellant signed “The Cardiff Undertaking for Councillors” in which he formally recognised his duty to uphold the law and undertook to:

- a. “Adhere to and respect the Members’ Code of Conduct and have proper regard to the advice and guidance issued by the Standards & Ethics Committee; and
- b. Adhere to and respect the provisions of any Local resolution Protocol proposed by the Standards & Ethics Committee and adopted by Council.”

2.1.4 The Code of Conduct for Members and Co-opted Members of the County Council of the City and County of Cardiff (“The Code of Conduct” or “Code”) was adopted by the Authority on 15th May 2008 and amended on 26th May 2016. At Part II, paragraph 4 of the Code of Conduct reads as follows:

“You must –

- b. Show respect and consideration for others.
- c. Not use bullying behaviour or harass any person.”

2.1.5 Paragraph 6(1) of the Code of Conduct reads as follows:

“You must –

- a. Not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

2.2.1 By letter dated 7th June 2019, the Monitoring Officer for Cardiff Council received a referral from the Public Service Ombudsman for Wales (“The PSOW” or “Ombudsman”) in relation to misconduct allegations made against Cllr McEvoy. 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 on 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.

2.2.2 Having considered the complaint, the Ombudsman decided to investigate whether Cllr McEvoy had failed to comply with those provisions of the Code of Conduct requiring him:

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

2.2.3 Having investigated the allegations, the Ombudsman concluded that there was evidence to suggest that Cllr McEvoy's conduct may have amounted to a breach of the Members' Code of Conduct, specifically:

- a. On 29th April 2018, there was evidence of a breach of paragraphs 4(b), 4(c) and 6(1)(a) of the Code; and
- b. On 11th May 2018, there was evidence of a breach of paragraphs 4 (b) and 6(1) (a) of the Code.

2.2.4 A Hearings Panel (sub-Committee of the Standards and Ethics Committee) was convened, in accordance with arrangements approved by the Committee on 1st July 2019, to consider the allegations in relation to Cllr McEvoy. A hearing was held between 6th and 14th January 2020 at City Hall, Cardiff. The hearing was open to the public, except for certain parts of the proceedings when the Committee resolved to exclude the public. Cllr McEvoy attended the hearing. He chose not to be legally represented, but he was assisted by Ms Jacqueline Hurst, a social worker employed by Cllr McEvoy.

2.2.5 On 14th January, given its findings of fact, the Committee decided that:

- a. In respect of the incident on 29th April 2018, Cllr McEvoy breached paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct; and that
- b. In respect of the incident on 11th May 2018, Cllr McEvoy breached paragraph 6(1)(a) of the Code of Conduct.

2.2.6 The Committee then further decided that having regard to the number of aggravating circumstances, as well as the mitigation, Cllr McEvoy would be suspended as a Councillor for four months.

2.3.1 Notice of the Committee's decision was emailed to the Appellant on 24th January 2020. On 14th February 2020, the Appellant gave written Notice of Appeal against the Committee's decision, within 21 days, under Regulation 10 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales)) Regulations 2001. The Appellant's notice was received on 14th February 2020. He did not send a copy of the Committee's decision with his appeal form but the President of the Adjudication Panel for Wales decided that it would be in the interests of justice to ask for a copy from both the Appellant and the Monitoring Officer of Cardiff Council. This was provided to the President by the relevant authority on 18th February 2020, together with the bundle of papers provided to the Committee (including late evidence submitted during its hearing), draft minutes, and a copy of its hearing procedure (together with email correspondence with the Appellant regarding the issuing of the decision report).

2.3.2 In her decision dated 5th March 2020, the President considered all the grounds of appeal raised by the Appellant. At paragraph 8h of the Notice of Decision on permission to appeal, the President gave permission to appeal in the following terms:

“While the Appellant framed his objection to the sanction imposed primarily in terms that it was disproportionate due to discrimination, he did also comment that it was harsh in light of the findings made by the standards Committee. I cannot say in all the circumstances that there is no reasonable prospect of success for this ground of appeal, given an Appeal Tribunal considering the findings made by the standards Committee on both facts and breach of the Code may conclude that the sanction is disproportionate. I also note that there is no evidence as to whether the standards Committee took into account any sanctions guidance when reaching its decision, though it appears to have considered relevant factors and the use of such guidance is not mandatory. I make the decision to allow an appeal on this point, notwithstanding the fact that the Appellant refused to make any submission to the standards Committee on the issue of sanction. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards Committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. It therefore will be considered by an Appeal Tribunal in due course, but its consideration will be based on the findings of the standards Committee about facts and breach alone.”

2.3.3 This Appeal Tribunal has therefore been convened by the President of the Adjudication Panel for Wales to consider the remaining ground of the Appellant's appeal.

### **3. THE HEARING**

#### **3.1 The role of this Appeal Tribunal**

3.1.1 Noting the President's direction to this Tribunal, and that its "...consideration will be based on the findings of the standards Committee about facts and breach alone", the Tribunal has considered the question of sanction afresh, setting on one side the reasoning of the Committee in order to form its own independent determination.

3.1.2 We remind ourselves that per Regulation 11 of the said Regulations: -

(1) Appeals from a determination of a Standards Committee will be conducted:

(b) by way of an oral hearing unless every person who has given notice of appeal consents to the appeal being conducted by way of written representations...

As noted, Cllr McEvoy has consented to this appeal being conducted by way of written representations.

3.1.3 We further remind ourselves that per regulation 12 of the said Regulations: -

An appeals tribunal must:

(a) uphold the determination of the relevant authority's Standards Committee that any person who was subject to the investigation breached the code of conduct and either:

(i) endorse any penalty imposed, or

(ii) refer the matter back to the Standards Committee with a recommendation that a different penalty be imposed;

....

and must inform any person subject to the investigation, the Local Commissioner for Wales and the Standards Committee of the relevant authority accordingly, giving reasons for the decision.

#### **3.2 The findings of facts and breach**

3.2.1 The Appeal Tribunal examined the Committee's findings on facts and breach. The Committee found that the following material facts were undisputed.

a. At the relevant time, Cllr McEvoy was a member of Cardiff Council and was acting in his capacity as a Cardiff Councillor (albeit, apparently in a “twin-hatted” capacity, in relation to his role as (then) a Welsh Assembly Member).

b. In January 2016, the Council adopted a Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults, which includes the following provisions:

i. The Council as a whole is ‘the corporate parent’ of all Looked After Children, which means that elected Members, relevant Council managers and staff all need to work together to discharge their different roles and responsibilities.

ii. It is not generally appropriate for an elected Member to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the Member is acting.

iii. If a Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Children’s Access Point or, if outside of office hours, to the Emergency Duty Team.

3.2.2 In the case relating to the events of 29th April 2018, the Committee found that the following material facts were undisputed.

a. On 29th April 2018 a telephone call was made by Cllr McEvoy to a residential children’s care home and the telephone call was answered by “Witness 2”.

b. Cllr McEvoy introduced himself as Assembly Member and Corporate Parent and said he wanted to visit a resident, Child X, at the care home that day.

c. Witness 2 said that Cllr McEvoy could not visit Child X because he was not named on the child’s care plan, and she advised Cllr McEvoy to arrange a visit through a social worker.

d. Cllr McEvoy said that he would be attending that day and that he would be bringing a colleague with him.

e. Witness 2 maintained that Cllr McEvoy was not authorised to visit Child X.

f. Cllr McEvoy said that he would be raising the matter at the Welsh Assembly.

g. Witness 2 said that if Cllr McEvoy attended at the care home without authorisation, she would have to call the police, because of her duty to safeguard the residents of the home.

h. Cllr McEvoy asked Witness 2 to speak with her Director and get back to him within a deadline that day.

i. Witness 2 called Cllr McEvoy back and repeated her previous advice.

j. Cllr McEvoy did not attend at the care home that day.

3.2.3 In relation to the telephone call on 29th April 2018, the Committee found the following disputed material facts to have been proved.

a. Another witness, "Witness 1" was physically present to witness part of the telephone call but could only hear a limited amount of the conversation. However, Witness 1 did provide evidence about the impact of the telephone call upon Witness 2.

b. Witness 2 was a credible and persuasive witness as to the event on 29th April.

c. On the basis that Cllr McEvoy insisted that he would be attending the care home, bringing a colleague with him, would raise the matter at the Welsh Assembly and giving her a deadline to speak to a Director and arrange authorisation for his visit, Witness 2 felt bullied and intimidated by Cllr McEvoy.

d. Witness 2 felt undermined by Cllr McEvoy's insistence, against her advice, that he would be attending the home.

3.2.4 On the basis of these findings, the Committee found that Cllr McEvoy failed to show respect and consideration for Witness 2 on 29th April 2018, in breach of paragraph 4(b) of the Code.

3.2.5 The Committee also found that Cllr McEvoy used bullying behaviour and harassment towards Witness 2, in breach of paragraph 4(c) of the Code. His conduct was intended to undermine her in her role and to exert pressure to ensure that she agreed to permit him to visit the care home that day. Cllr McEvoy would not accept the witness's decision that she was not going to allow him into the care home to visit the child as he was not mentioned on the child's care plan. Cllr McEvoy persisted with his view that he would be attending the care home

that day to the extent where Witness 2 advised Cllr McEvoy that she would contact the police if he attended the care home. During the telephone conversation, Cllr McEvoy advised Witness 2 that he would be attending the care home with a colleague. Witness 2 was a senior residential care worker in contrast to Cllr McEvoy who was an elected Councillor and Assembly Member and there is a power imbalance between them. Cllr McEvoy was aware of this power imbalance between himself and Witness 2 as he advised Witness 2 that he worked for the Welsh Assembly and was a corporate parent for Child X and used his position in an attempt to gain access to Child X.

3.2.6 Finally, in relation to the incident that took place on 29th April 2018, the Committee also found that Cllr McEvoy brought Cardiff Council into disrepute, in breach of paragraph 6(1)(a) of the Code. Cllr McEvoy persisted in his telephone call with Witness 2 that he would be attending the care home that day and continued to challenge the witness's decision. Cllr McEvoy also gave the witness a deadline to return his call on the issues he raised and would not accept the decision made that he could not attend the care home to the extent that the witness referred to requesting police assistance in the event that Cllr McEvoy did attend. This telephone call went on for approximately 15 minutes and given the limited issues discussed, it was the Committee's view that this evidenced persistence on the part of Cllr McEvoy. Whilst he may not have liked the decision of the witness, as a Councillor he should have accepted the decision that he could not attend the home and recognised that the witness was doing her job in safeguarding those children in her care. In the Committee's opinion, Cllr McEvoy should have understood that it was inappropriate to attend a care home to visit a child he had never met without the parents or a social worker present. His conduct had the potential to cause difficulties in the relationship between the parents and the child and Cardiff Children's Services and the care home who were responsible for safeguarding and meeting the needs of Child X and others in their care.

3.2.7 In the case relating to the events of 11th May 2018, the Committee found that the following material facts were undisputed.

- a. On 11th May 2018, Cllr McEvoy attended the head office of the care home with the father of Child X with the aim of attending a scheduled therapy meeting for X. They gained access to the building.
- b. 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.
- c. Cllr McEvoy and the father were met shortly after entering the building by "Witness 4". Cllr McEvoy and the father had two interactions with Witness 4.

d. Cllr McEvoy and the father subsequently had an interaction with “Witness 3”. Witness 3 passed on a message to the father and Cllr McEvoy telling them that the therapy meeting had been cancelled by a (referred to as “the”) social worker.

e. 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.

f. 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’.

g. Cllr McEvoy left the building with father.

3.2.8 In relation to the events of 11th May 2018, the Committee found the following disputed material facts to have been proved.

a. By the time Cllr McEvoy interacted with Witness 3, matters had escalated, and the situation had become heated within an increasingly hostile environment. The Committee did not consider that Cllr McEvoy behaved aggressively in terms of speaking with a raised voice. However, the Committee found that Cllr McEvoy followed Witness 3 to an office.

b. The social worker involved did not agree to Cllr McEvoy attending the therapy meeting.

3.2.9 On the basis of these findings, the Committee did not find that Cllr McEvoy’s conduct amounted to a lack of respect and consideration of others. The events that took place on 11th May were difficult for both the care home staff and Cllr McEvoy. Given that the witness would not provide his name to Cllr McEvoy, it inevitably followed that a physical description would be necessary, given that Cllr McEvoy wished to complain. The Committee considered the fact that this description did not necessarily have to be given in the presence of the witness himself. There were, however, clear inconsistencies in both Cllr McEvoy’s and Witness 3’s recollection of how Witness 3 was described by Cllr McEvoy. The interaction between them were difficult exchanges, which created tensions for all parties. The Committee found that whilst it was unfortunate that Cllr McEvoy chose to use the description he did of Witness 3, that was to be balanced with the hostile environment that clearly existed during the interaction between them, in terms of Cllr McEvoy requesting information and Witness 3 not readily providing this. Therefore, having considered the evidence, the Committee

was not satisfied that this amounted to a breach of paragraph 4(b) of the Code of Conduct.

3.2.10 However, the Committee was satisfied on the basis of these findings that Cllr McEvoy's conduct on 11th May 2018 brought Cardiff Council into disrepute, in breach of paragraph 6(1)(a) of the Code. Cllr McEvoy provided no evidence that he had the agreement to attend the meeting. He instructed Child X's father to record Cllr McEvoy's interactions with staff members and a telephone discussion. This recording was done covertly, without all parties present being aware of it at that time. There were three unfortunate interactions that took place in the presence of Child X's father and the father was also privy to a telephone conversation between Cllr McEvoy and the former Assistant Director of Cardiff Children's Services. In the Committee's view, the father should not have witnessed these events. He was vulnerable in his own right, as advised by Cllr McEvoy and witnessing these events would not have assisted him in his relationship with either Cardiff Children's Services or indeed the care home staff, particularly in light of the allegations made by Child X to his mother. The father in his evidence advised the Committee that he had a poor working relationship with Cardiff Children's Services, but that Cllr McEvoy had always encouraged them to engage with the service. Cllr McEvoy's conduct on 11th May 2018 would not have served to promote a positive working relationship with Child X's father, Cardiff Children's Services or indeed with the care home.

3.2.11 The Committee also found that the interactions between Cllr McEvoy and Witness 3 and Witness 4, led to a hostile environment, where Witness 3 actively made a decision not to share information with Cllr McEvoy about how to make a complaint. Given the confrontation, Cllr McEvoy should have removed himself from the building when initially asked to leave and pursued making a complaint through formal channels.

3.2.12 The Committee found it difficult to accept Cllr McEvoy's suggestion that he feared he would be assaulted, given that he chose to remain in a situation he had opportunity to leave.

3.2.13 It was the Committee's view that it was not appropriate for Cllr McEvoy to continue to challenge staff, who were in effect delivering a message on behalf of Cardiff Children's Services, given that Cllr McEvoy was acting as a representative for Cardiff Council in his capacity as an elected Member.

3.2.14 The Committee therefore concluded in the light of these findings on breach that Cllr McEvoy should be suspended from acting as a member of Cardiff Council for a period of four months.

### **3.3 Further evidence and documents submitted to and considered by the Tribunal**

3.3.1 From Cllr McEvoy, correspondence to the Adjudication Panel for Wales:

- a. Cllr McEvoy's Notice of Appeal, in so far as it relates to sanction.
- b. An email dated 21st April 2020 in response to the President's decision on permission to appeal.
- c. An email dated 5th June 2020 in response to the Tribunal Chair's direction to both parties on further submissions.

3.3.2 From Cllr McEvoy, character evidence provided by:

- a. Lady Lloyd Jones, of Cardiff.
- b. Anne O'Regan, of Cardiff.
- c. Bethan Phillips, a former employee of Cllr McEvoy.

3.3.3 From the PSOW:

- a. Their response to Cllr McEvoy's Notice of Appeal, in so far as it relates to sanction.
- b. A letter dated 11th June 2020 in response to the Tribunal Chair's direction to both parties on further submissions.
- c. Two previous standards decisions, taken in relation to other Councillors.

3.3.4 From Cardiff Council by letter dated 9th April 2020 copies of:

- a. A Hearings Panel decision made regarding Cllr McEvoy on 26th May 2014, following referral from the Ombudsman. This Tribunal notes that this finding was on a very different matter and was relatively minor, reflected in the fact that the Panel imposed no sanction.
- b. A Hearings Panel decision made regarding Cllr McEvoy on 3rd October 2014, made under the Council's Local resolution Protocol. This Tribunal notes that that the Hearings Panel found no breach of the Code of Conduct in this case but did make a number of recommendations to Cllr McEvoy in respect of his conduct.

3.3.5 The decision report of the Adjudication Panel for Wales APW/002/2016-017/CT in re Cllr Neil McEvoy, dated 14th March 2017.

3.3.6 'Sanctions Guidance' issued by the President of the Adjudication Panel for Wales under 75(1) of the Local Government Act 2000.

#### 3.4 Submissions to the Tribunal

3.4.1 The Appellant submits that a suspension of four months is "undemocratic", "excessive" and may have been unduly influenced by the disruptive behaviour of others, responding to the Committee's decisions, for which he was in no way responsible. If anything, he submits, he sought to calm others down and to assist.

3.4.2 Cllr McEvoy submits that those who would suffer from the sanction are those in the community who would benefit financially from his Councillor allowance, which he further submits that he donates to community and political causes and does not spend on himself. He nonetheless committed to representing his constituents as their elected Member of the Senedd in any event.

3.4.3 Cllr McEvoy also submits that "any reasonable person, without prejudice, would not approve of a 4 months suspension."

3.4.4 The Ombudsman disputes that the sanction was disproportionate due to discrimination; and further disputes that it was harsh in the light of the findings made. The Ombudsman submits that the sanction was considered in the light of the 'Sanctions Guidance'.

3.4.5 The Ombudsman further submits that the sanction is proportionate when considered in the context of other comparable cases; and when considered in the context of earlier findings against the Appellant.

3.4.6 The Ombudsman submits on the Committee's findings that the nature of the behaviour which has resulted in the breaches found clearly falls below the standards of behaviour expected of an elected member and is capable of undermining public confidence in the role of elected member more generally and ultimately the Council itself. The Ombudsman notes the potential impact on relations between Cardiff Council and the family at the heart of this complaint. They also noted the effect of Cllr McEvoy's behaviour, particularly on Witness 2, given the awareness of the "power imbalance" between them.

3.4.7 The Ombudsman submits that the Appellant's conduct demonstrated "a blatant disregard" for advice provided to members of Cardiff Council in the

Protocol explaining the role of elected Members in safeguarding vulnerable children and adults.

3.4.8 The Ombudsman also conducted an analysis of mitigating and aggravating factors involved.

#### **4. THE APPEAL TRIBUNAL'S DECISION**

4.1.1 Whilst they may be persuasive, the Tribunal attaches little weight to decisions taken by other panels or Committees on different facts in relation to different people, preferring instead to apply the 'Sanctions Guidance' in conjunction with directly relevant material and the operation of its collective judgment. This approach accords with best practice in other areas of law where sanctions guidance or guidelines have largely overtaken the citation of previous decisions. The Tribunal prefers to assess the facts of the case against the 'Sanctions Guidance' and come to a view as to any available range; and as appropriate, the Appellant's position within the available range.

4.1.2 Per paragraph 18 of the 'Sanctions Guidance', the purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

- a. Provide a disciplinary response to an individual member's breach of the Code.
- b. Place the misconduct and appropriate sanction on public record.
- c. Deter future misconduct on the part of the individual and others.
- d. Promote a culture of compliance across the relevant authorities.
- e. Foster public confidence in local democracy.

4.1.3 The sanctions available to an appeal tribunal that has found a breach of the Code are:

- a. Censure.
- b. To suspend or partially suspend the member from the authority concerned for up to 6 months.

4.1.4 The Guidance offers broad principles for consideration, whilst respecting the details that make each case different. It does not propose a firm tariff from which to calculate the length of, for example, suspension that should be applied

to specific breaches of the Code. This Tribunal therefore exercises its own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors and taking into account the Tribunal's wider judicial obligations in regard to fairness, the public interest, proportionality, consistency, equality, impartiality and relevant human rights law.

4.1.5 This Tribunal adopts the five-stage process referred to in paragraph 33 of the Guidance.

4.1.6 The first step is the assessment of the seriousness of the breach and any consequences for individuals and/or Cardiff Council.

4.1.7 Whilst not of the utmost severity, the Tribunal considers this series of breaches to nonetheless be quite serious, bordering on very serious when considered in themselves and against other types of breach. Taken in the round, Cllr McEvoy's behaviour was perhaps not persistent, but it was certainly repeated. The Tribunal observes that he had time to consider his position and his actions between 29th April and 11th May but nonetheless he acted as he did on two occasions, incurring a total of four breaches of the Code. These incidents were not isolated, nor can they be considered sporadic, given the fact that Cllr McEvoy has been subject to previous sanction by the Adjudication Panel for Wales in March 2017 for a not-dissimilar matter.

4.1.8 However well they were intended, Cllr McEvoy's actions bore the potential to damage the Council's relationship with both a vulnerable child and a vulnerable family. To disregard protocols enacted to assist Councillors, families and Looked After Children is a serious feature of this case. The right approach to this situation was that identified by the Council and the sense in the relevant protocol was self-evident. Cllr McEvoy's taking matters into his own hands was very much the wrong approach. The protocol was not a matter for him to disregard. Cllr McEvoy is an experienced Councillor, not the mention, at that time an Assembly Member, now Member of the Welsh Parliament. To bring the Council and/or his office into disrepute in such a manner on two separate occasions was quite wrong.

4.1.9 Turning to the effect on others, we note the findings that Witness 2 felt "bullied", "intimidated" and "undermined" by Cllr McEvoy's behaviour. There was a clear differential of power between Cllr McEvoy and Witness 2, that would have been obvious to both parties. We accept the submission that she should not have been subject to such behaviour when providing advice in the performance of her duties in safeguarding the children in her care.

4.1.10 We also accept the submission by the PSOW that it should be noted that because of Cllr McEvoy's refusal to accept her advice, Witness 2 requested

police assistance in the event that he did attend. The potential for causing disrepute in this incident was exacerbated and aggravated by Cllr McEvoy's later behaviour on 11th May, when, as found, it was not agreed that Cllr McEvoy could attend the therapy meeting.

4.2.1 The Tribunal then moves to step two, to identify the broad type of sanction considered most likely to be appropriate, having regard to the severity of the breaches found. The Tribunal notes paragraph 39 of the Guidance and that in line with the principles of fairness and proportionality, the Tribunal should start its consideration of possible sanctions with that of least impact.

4.2.2 Given the Tribunal's assessment of the severity of this case taken together with the fact that none of the suggested circumstances at paragraph 39.1 of the Guidance apply to this case, the Tribunal cannot find that this is a case where no action is appropriate. Nor is it a case where a warning or the seeking of assurances as to future behaviour would be appropriate, given repeated breaches of the Code over a substantial period of time, because the Tribunal is not confident that there would not be a repeat of the misconduct, given the lack of insight shown.

4.2.3 The Tribunal therefore considers the options of suspension, for up to six months, and partial suspension. Cllr McEvoy's behaviour brought his office or authority into disrepute more than once, and other breaches of the Code have been incurred. His correspondence demonstrates that he shows no insight into his behaviour and offers no apology.

4.2.4 The Tribunal notes the observation in the Guidance at paragraph 39.5 that:

"A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions"; and that

"It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee".

4.2.5 Taking these observations together with the fact that Cllr McEvoy has already been suspended as a Councillor for a month by the Adjudication Panel for Wales, the Tribunal takes the view that this is a case that:

- a. Merits suspension from office.
- b. For a period of more than one month; and that
- c. Partial suspension is not appropriate.

4.2.6 The Tribunal has then considered the range of sanction applicable, bearing in mind the maximum period of suspension possible is six months. Given findings to that point, this Tribunal takes the view that the appropriate range for sanction in this case that is quite serious, bordering on very serious, is a period of suspension of three to four months, subject to further adjustment as appropriate within that range, allowing for aggravating and mitigating circumstances (step three); and any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions such as the wider public interest (step four).

4.2.7 Given that the original decision was taken before the current national emergency, this Tribunal has considered the wider effect of suspension for such a period on Cllr McEvoy's electorate at this time.

4.2.8 Unusually, Cllr McEvoy's Council electorate has a voice in him, even if he is suspended as a Councillor because he is a member of the Welsh Parliament. Cllr McEvoy noted as much in his most recent correspondence to this Tribunal. Accordingly, the effect of any suspension in his case is not as harsh on his electorate as it might otherwise be at this time.

4.2.9 Using the Tribunal's knowledge and experience, upon which it is entitled to rely in its judgment, it also seems likely that for the period of any suspension, Cllr McEvoy may well be able to refer his constituents to another Councillor who may be able to take that constituent's concerns forward.

4.2.10 For these reasons, having considered the current national emergency, the Tribunal does not consider that it makes a material difference to the nature and quality of sanction in this case.

4.3.1 The Tribunal has then addressed step three and considered any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration. The Tribunal has worked through the examples set out at paragraph 42 of the Guidance, reminding itself that the list is not exhaustive, and reminding itself not to "double-count" any feature already accounted for in an earlier step.

4.3.2 In fairness to Cllr McEvoy, the Tribunal has considered neutrally the manner in which he conducted himself both at first instance and on appeal, preferring to simply deal with that as subject to his general right to argue his case and bring an appeal should he so wish, a process which he chose to invoke and to deal with by way of written submissions.

4.3.3 Mitigating features

- a. Whilst the Tribunal accepts that Cllr McEvoy acted out of genuine concern and in the interests of a child, he did so in a manner that was badly misguided. This point is therefore of limited assistance to him.
- b. The Tribunal does however note the character evidence relied upon and the general suggestion that Cllr McEvoy supports the rights of others, particularly the vulnerable. That is to his credit.
- c. We therefore specifically reject any possible suggestion that Cllr McEvoy sought to assist Child X's family for their personal benefit.
- d. The PSOW agrees that Cllr McEvoy has co-operated with their investigation into this case.

#### 4.3.4 Aggravating features

- a. Cllr McEvoy has long experience as a Councillor. We note that he had seniority due his position (then) as an Assembly Member. This factor has already been accounted for in the assessment of seriousness.
- b. However, Cllr McEvoy has conducted himself before those who decided his case, it is nonetheless true that he has sought to unfairly blame others for his own actions and mistakes.
- c. As already observed, Cllr McEvoy's behaviour, if not persistent, involved repeated and numerous breaches of the Code and engaging in a pattern of behaviour that involved repeatedly failing to abide by the Code; and recklessly and repetitiously ignoring the Council's protocol. In fairness, this factor has already been considered in the assessment on severity and so is of limited effect at this point.
- d. Cllr McEvoy has shown a lack of understanding or acceptance of his misconduct and any consequences thereof.
- e. As already noted, Cllr McEvoy's actions have brought Cardiff Council into disrepute.
- f. The previous finding by the Adjudication Panel for Wales of failure to follow the Code is also an aggravating feature.

4.3.5 The Tribunal has taken the view that the seriousness of the case, taken together with the number of aggravating factors pushed this case towards the top of the available range.

4.4.1 The Tribunal then turns to step four, considering any further adjustment necessary to ensure the sanction achieves and appropriate effect in terms of fulfilling the purposes of the sanctions.

a. The public interest in upholding the standards of conduct in public life and maintaining confidence in local democracy is engaged, when reviewed against the previous decision taken by the Adjudication Panel for Wales against Cllr McEvoy; and considered against the value of a deterrent effect upon Councillors in general and wider public credibility.

b. The impact on the electorate has already been considered in so far as it is relevant. For the reasons already expressed, it does not act to mitigate the available sanction at this stage.

4.5.1 Taking all matters into account, the Tribunal therefore has moved to step five of the process and unanimously confirmed the decision on sanction taken at first instance. This was a serious case, that merited a sanction at the top of the identified, appropriate range.

4.5.2 This Appeal Tribunal therefore finds that Cllr McEvoy's suspension from office for four months was therefore justified, proportionate and appropriate in all the circumstances, given the findings of the Standards Committee about facts and breach alone. We endorse the sanction imposed. Therefore, this appeal is dismissed.

4.5.3 Cardiff County Council and its Standards Committee are notified accordingly.

Signed:  Date: 26 June 2020

Mr T Mitchell  
Chairperson of the Appeal Tribunal

Mrs S McRobie  
Panel Member

Mr E Jones  
Panel Member



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CARDIFF COUNTY COUNCIL  
STANDARD AND ETHICS COMMITTEE

PROCEDURE FOR HEARINGS (OMBUDSMAN REFERRALS)

***Adopted by Standard and Ethics Committee on 1<sup>st</sup> July 2019***

**1. Introduction**

- 1.1 The Standard and Ethics Committee ('the Committee') needs to have in place effective and efficient procedures for dealing with Hearings in respect of an allegation that a County Councillor, Community Councillor or co-opted member of any committee or sub committee in Cardiff has failed to comply with the Code of Conduct adopted by his/her respective Authority.
- 1.2 The Committee has adopted a separate procedure for conducting hearings under the Local Resolution Protocol.
- 1.3 Standard and Ethics Committee Hearings may also be required to determine a complaint referred to the Committee by the Ombudsman under Part 3 of the Local Government Act 2000 ('the Act'). This may occur as the result of either:
- (a) The Ombudsman ceasing an investigation and referring the matter to the Council's Monitoring Officer (under section 70(4) of the Act). The Monitoring Officer must then investigate the matter and report on the conclusion of his/her investigation to the Standard and Ethics Committee; ~~or-~~
  - (b) The Ombudsman undertaking an investigation and then referring the matters which are the subject of the investigation to the Monitoring Officer (under section 71(2) of the Act), for reporting to the Standard and Ethics Committee.
- 1.4 The following procedure should be used in respect of both instances of Ombudsman referrals set out above and provides the Standard and Ethics Committee with a consistent approach in determining matters locally.

**2. Interpretation**

- (a) "Councillor" means the Member or former Member of the County or Community Council or the co-opted member of any committee or sub committee who is the subject of the allegation being considered by the Standards and Ethics Committee, unless stated otherwise. Unless the context requires otherwise it also includes the Councillor's nominated representative.
- (b) "Investigating Officer" means the Public Services Ombudsman for Wales and includes his/her nominated representative. In the case of matters that have been referred to the Monitoring Officer for investigation, references to the "Investigating Officer", means the Monitoring Officer, or a person appointed by the Monitoring Officer to undertake the investigation, and his/her nominated representative.

- (c) "Legal Advisor" means the person- responsible for providing legal advice to the Hearings Panel.

### **3. Hearings Panel Sub-Committee**

- 3.1 A sub-committee of the Standards and Ethics Committee, referred to as 'the Hearings Panel' or 'the Panel', shall be set up to consider investigation reports, conduct hearings, make determinations, impose any sanctions and exercise any associated powers of the Committee granted by law or under this Procedure.
- 3.2 The Hearings Panel shall be composed of three members of the Committee, at least two of whom must be independent members of the Committee.
- 3.3 For complaints about a member of a community council, the Panel shall include the community council representative on the Committee, unless the complaint concerns a member of his/her own community council.
- 3.4 The Hearings Panel shall elect one of the independent Panel members to serve as Chair for each meeting.
- 3.5 Except for any decisions that may be expressed in this Procedure to be taken by the Chair, any decision of the Hearings Panel shall be made on the basis of a simple majority vote.

### **4. Initial Determination**

- 4.1 Following receipt of a report and any recommendations from the Monitoring Officer, or a report from the Ombudsman, together with any recommendations of the Monitoring Officer, the Hearings Panel must make an initial determination, either:
- (a) that there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned (and must then notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly); or
- (b) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant Authority's Code of Conduct.
- 4.2 If the Hearings Panel makes a determination under paragraph 4.1(b) above, the Panel will instruct arrangements to be made for a Hearing in accordance with the rules below.

## 5. Prior to the Hearing

- 5.1 The Investigating Officer shall set out in writing the results of their investigation, including copies of all written evidence the report relies upon in an 'Investigation Report'; and send copies of the Investigation Report to the Committee and to the Councillor.
- 5.2 The Panel shall write to the Councillor to notify him/her of the Panel's initial determination (made under paragraph 4.1 above); provide information about the possible sanctions open to the Hearing if a breach of the Code of Conduct is found; and invite a written response to the findings of the Investigation Report to be submitted to the Panel within three weeks from receipt of the Panel's notification letter.
- 5.3 The Councillor shall be informed that his/her written response need not set out the Councillor's position in full, but it should:
  - (a) indicate whether or not the Councillor will be represented and if so, by whom;
  - (b) indicate whether the Councillor intends to apply to the Panel to have the press and public excluded from the hearing and any grounds for doing so;
  - (c) indicate all areas of the Investigation Report that the Councillor intends to dispute, with brief reasoning;
  - (d) attach all written evidence the Councillor intends to rely upon;
  - (e) indicate any witnesses the Councillor wishes to call (which may include any witnesses referred to in the Investigation Report) and brief reasons for doing so (if any); and
  - (f) indicate any dates or times when the Councillor, the representative and any witnesses they wish to call will be unavailable to attend a Hearing.
- 5.4 The Panel shall also write to the Investigating Officer to notify him/her of the Panel's initial determination (made under paragraph 4.1 above), and to:
  - (a) request that the Investigating Officer should attend the Hearing to present the Investigation Report and explain any matters in it, if the Panel considers it appropriate OR to ask if the Investigating Officer wishes to attend the Hearing for this purpose;
  - (b) ask if there are any dates or times when the Investigating Officer will be unavailable to attend a Hearing; and
  - (c) ask the Investigating Officer to indicate any witnesses he/she wishes to call and brief reasons for doing so (if any).

5.5 Following receipt of the Councillor's and the Investigating Officer's written response (or after the end of the three weeks allowed for the Councillor's written response, if no response is received), the Panel shall write to the Investigating Officer and the Councillor confirming the following:

- (a) the date, time and location set for the hearing (having taken reasonable steps to accommodate the availability of the Councillor and the Investigating Officer);
- (b) whether the witnesses the Investigating Officer and the Councillor wishes to call will be allowed (giving reasons and allowing opportunity to respond if any witnesses are not to be allowed); and
- (c) any other steps the Panel may in its discretion require prior to the Hearing.

**Commented [AK1]:** Inserted to make clear that the Panel may proceed to make arrangements for a hearing, even if the Cllr does not provide a written response.

## 6. The Monitoring Officer

- 6.1 The Monitoring Officer, Deputy Monitoring Officer or another Legal Advisor shall be in attendance to advise the Hearings Panel.
- 6.2 If the Monitoring Officer has investigated a complaint, he/she (or a nominated representative) will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another Legal Advisor will be present to advise the Committee.

## 7. Powers of the Hearings Panel

- (a) The Chair, having taken legal advice from the Legal Advisor, may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
- (b) The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
  - (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the Councillor and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
  - (j) the ability to request that the proceedings be conducted by exchange of written submissions only if the Councillor so agrees.

- (c) The members of the Panel may question anyone taking part in the proceedings on a point they raise in their representations or to seek clarification of views on points raised by others appearing at the Hearing. They may also request advice from the Legal Advisor.
- (d) The Panel may also require the attendance of a particular witness or the production of specific documentation where it appears that such additional material may resolve conflict on facts.
- (e) The sanctions and other powers available to the Panel are set out under paragraph 14 below.

## **8. Representation**

The Councillor and the Investigating Officer may be represented or accompanied during the Hearing by Counsel or a Solicitor, or any other person he or she desires. The Councillor and the Investigating Officer are responsible for meeting the cost of any representation.

## **9. Legal Advice**

The Committee may take legal advice from its Legal Advisor at any time before or during the Hearing or while the outcome is being considered. The substance of any legal advice given to the Panel should be shared with the Councillor and the Investigating Officer, if they are present, but not the detail of the request for legal advice.

### **9A. Recording**

9A.1 An audio recording of the hearing proceedings shall be made by the Council, but no recording shall be made at any time during the Panel's deliberations or when the Panel is seeking advice from its legal advisor.

9A.2 Access to the recording made under paragraph 9A.1 may be granted, upon request, at any time after the hearing has ended, provided that no exempt or confidential information shall be publicly disclosed.

9A.3 Save for the recording made under paragraph 9A.1, no other digital recording, audio or visual, or use of social media, shall be permitted during the hearing.

## **10. Introductions at the Hearing**

- 10.1 At the start of the Hearing, the Chair shall introduce each of the Members of the Hearings Panel and everyone involved in the Hearing.
- 10.2 The Chair shall then explain the procedure which the Panel is to follow in its conduct of the Hearing and should obtain confirmation from

everybody taking part in the Hearing that they have understood the procedure.

### 11. Preliminary Procedural Issues

- (a) The Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- (b) If either party want to adduce further information to the Panel they should make an application to the Panel for permission to do so prior to the commencement of the formal part of the Hearing. ~~It will assist if the Legal Advisor and the other party have been provided with details of the~~ Any late information must be relevant to the alleged breach/es and must be provided to the Monitoring Officer as early as possible, ~~but~~ and at least two days before the commencement of the Hearing. Late evidence will not be accepted at the hearing, unless the Panel is satisfied that there are exceptional circumstances. The Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Panel.
- (c) If the Councillor fails to attend the Hearing, the Panel may, depending on the reason for such non-attendance, continue with the proceedings or adjourn the Hearing to another date to give the Councillor a last opportunity to make representations.

### 12. Stage 1 — Formal Findings of Fact

- (a) After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
- (b) If there is no disagreement about the facts, the Panel can move on to the next stage of the Hearing.
- (c) If there is a disagreement about the facts, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the Report (for the avoidance of doubt, the Investigating Officer may choose to invite the Panel to consider the evidence given in the Investigation Report and not make any further submission). With the Panel's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Panel may allow the Councillor an opportunity to challenge or comment

upon any evidence put forward by any witness called by the Investigating Officer.

- (d) The Councillor should then have the opportunity to make representations to support his/her version of the facts and with the Panel's permission, to call any necessary witnesses to give evidence.
- (e) At any time, a Member of the Panel may question any of the people involved or any of the witnesses. The Panel may allow the Investigating Officer an opportunity to challenge or comment upon any evidence put forward by a witness called by the Councillor.
- (f) If the Councillor disagrees with any relevant fact in the Investigation Report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the Hearing. If the Investigating Officer is not present, the Panel will consider whether or not it would be in the public interest to continue in his/her absence. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Panel may then:
  - (i) continue with the Hearing, relying on the information in the Investigation Report;
  - (ii) allow the Councillor to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (iii) adjourn the Hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present, if he or she is not already present.
- (g) The Panel shall then retire to consider their decision. Depending on the number of persons attending the Hearing, the Panel will either move to another room to deliberate on the representations and evidence in private or request the parties to leave the room during the deliberations.
- (h) Once the decision is reached and the meeting re-convened, the Chair will announce the Panel's findings of fact.

**13. Stage 2 — Did the Member fail to follow the Code?**

- (a) The Panel then needs to consider whether or not, based on the facts it has found, the Councillor has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Councillor or the Investigating Officer an opportunity to re-examine the facts of the case in question.
- (b) The Councillor should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.

- (c) The Panel should then consider any verbal or written representations from the Investigating Officer.
- (d) The Panel may, at any time, question anyone involved on any point they raise in their representations.
- (e) The Councillor should be invited to make any final relevant points.
- (f) The parties shall then retire or the Panel will then move to another room to consider the representations and make its decision as to whether or not the Member has failed to follow the Code of Conduct.
- (g) Once the Panel has reached its decision, the Hearing ~~being~~will be re-convened, and the Chair will announce the Panel's decision as to whether or not the Councillor has failed to follow the Code of Conduct.

#### **14. Stage 3 — Breach of the Code and Sanctions**

##### **14.1 If it is found that the Councillor has not failed to follow the Code of Conduct.**

If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the Panel can nevertheless consider whether it should make any general recommendations to the Authority in question.

##### **14.2 If it is found that the Councillor has failed to follow the Code of Conduct (representations on sanction)**

- (a) If the Panel decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Councillor as to:
  - (i) whether or not the Panel should set a sanction; and
  - (ii) what form any sanction should take.
- (b) The Panel may question the Investigating Officer and the Councillor and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
- (c) The parties shall then retire or the Panel will then move to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be.
- (d) On reconvening the Hearing, the Chair will announce the Panel's decision.

14.3 If it is found by the Standards and Ethics Panel that a Councillor has failed to comply with an Authority's Code of Conduct (potential sanctions)

14.3.1 If the Panel finds that a Councillor has breached the Code, it can decide.

- (a) that no action needs to be taken in respect of that failure; or
- (b) that the Councillor should be censured; or
- (c) that the Councillor should be suspended or partially suspended from being a Member or Co-opted Member of the Authority in question, for a period not exceeding six months.

14.3.2 The Panel may request the Cllr to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

**15. Recommendations to the Authority**

After considering any verbal or written representations from the Investigating Officer and the Councillor (should it choose to do so), the Panel will consider whether or not it should make any recommendations to the Authority concerned, with a view to promoting high standards of conduct among Councillors.

**16. The Written Decision**

The Panel will announce its decision on the day the decision is made and provide a short written confirmation of its decision on that same day. It will issue a full written decision, with reasons, within five-ten working days of from the end of the hearing, although this time may be extended by the Chair, in consultation with the Monitoring Officer, if necessary- and The written decision will be formally notified to all parties ('the Decision Notification')

**17. Appeals**

17.1 Where the Standards and Ethics Panel determines that a person has failed to comply with the Code of Conduct, that person may seek permission to appeal against the determination to an Appeals Tribunal drawn from the Adjudication Panel for Wales. The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended).

17.2 Any such application must be instigated by giving notice in writing to the President of the Adjudication Panel for Wales within 21 days of receiving notification of the Hearings Panel's determination (the Decision Notification).

**18. Publication**

18.1 The Panel will produce a report on the outcome of the investigation and send a copy of this report to all parties, the Ombudsman and the Monitoring Officer within 14 days after the period for an appeal or after the appeal process has been completed, whichever is the later.

18.2 Upon receipt of the Panel's report, the Monitoring Officer shall arrange for the report to be published on the Authority's website for a period of 21 days, make copies of the report publicly available upon request and publish a notice in a newspaper circulating in the area to explain the availability of the report.

**STANDARDS & ETHICS COMMITTEE****30<sup>th</sup> SEPTEMBER 2020**

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**REPORT OF DIRECTOR OF GOVERNANCE & LEGAL  
SERVICES AND DIRECTOR OF SOCIAL SERVICES**

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**MEMBER PROTOCOL ON SAFEGUARDING  
VULNERABLE CHILDREN AND ADULTS****Reason for this Report**

1. To consider a revised draft of the Protocol which aims to provide guidance and advice to elected Members on their roles and responsibilities in relation to safeguarding vulnerable children and adults.

**Background**

2. In December 2015, the Standards and Ethics Committee recommended a Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults ('the Protocol'), in line with the recommendations of an Independent Review into the role of Members in dealing with parent's complaints and acting as advocate in child protection proceedings. The Protocol aims to provide guidance and advice to elected Members on their roles and responsibilities in relation to safeguarding vulnerable children and adults.
3. The Council adopted the Protocol in January 2016.

**Issues**

4. The Protocol has been independently reviewed and updated, under the oversight of the Director of Social Services, and following extensive discussion with Members, to ensure it remains fit for purpose. Flowcharts have been incorporated to clarify the process for Members to make a safeguarding referral or to raise general safeguarding concerns. The revised draft Protocol, with appended flowcharts, is attached as **Appendix A**.

5. The Committee is invited to consider the revised draft Protocol attached at **Appendix A**, and make any comments or suggested amendments prior to its submission to full Council for approval.
6. In order to reinforce the importance and effectiveness of the Protocol, it is recommended that the Committee recommend to Council that the approved Protocol should be incorporated within the Constitution and the Cardiff Undertaking.
7. Members should note that at the recent hearing held to determine the complaint referred by the Ombudsman (reported to Committee under Agenda item 4, the Councillor sought to argue that Councillors are not obliged to follow the Safeguarding Protocol as it is not legally binding. However, the Council obtained a Counsel's opinion on this issue in August 2016, which concluded that 'given it has been duly adopted, then it binds all Council Members'. Members of the Hearings Panel recommended that this should be clarified and confirmed by incorporating a commitment to comply with the Safeguarding Protocol within the Cardiff Undertaking.
8. A number of other amendments to the Cardiff Undertaking have been recommended and this is the subject of a separate report to this committee meeting.
9. Any amendment to the Cardiff Undertaking or the Constitution will require the approval of full Council.

### **Legal Implications**

10. Relevant legal implications are set out in the body of the report and in the Protocol at **Appendix A**.

### **Financial Implications**

11. There are no direct financial implications arising from this report.

### **Recommendations**

The Committee is recommended to:

1. Note and provide any comments on the revised draft Protocol on the Role of Members in Safeguarding Vulnerable Children and Adults, attached at **Appendix A**;
2. Authorise the Monitoring Officer, in consultation with the Chair, to make any appropriate amendments to the Protocol and recommend it to Council for approval; and

3. Recommend to Council that:
  - (a) the approved Protocol should be incorporated within Part 5 of the Constitution; and
  - (b) the Cardiff Undertaking should be amended to include a commitment to comply with the Protocol.

**Davina Fiore**

**Director of Governance & Legal Services and Monitoring Officer**

23<sup>rd</sup> September 2020

**Appendices:**

Appendix A: revised draft Protocol – The Role of Elected Members in Safeguarding Vulnerable Children and Adults

Background papers:

Standards and Ethics Committee report, 'Member Protocol on Safeguarding Vulnerable Children and Adults', December 2015

Council report, 'Member Protocol on Safeguarding Vulnerable Children and Adults', January 2016

Counsel's Opinion, Ruth Henke QC, 18/08/2016

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## **PROTOCOL**

### **THE ROLE OF ELECTED MEMBERS IN SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

#### **1. Purpose of the Protocol**

To provide guidance and advice to Elected Members on:

- their roles and responsibilities in relation to safeguarding children and vulnerable adults and
- how Members should raise any concerns and receive assurance about children and adults who may be at risk.

#### **2. Introduction**

Safeguarding and Protection is not something that can be achieved by one person or organisation. The emotional reaction of the public when children and adults have been harmed, neglected or exploited is understandable and experienced by those people who are professionally skilled practitioners who are directly working with and responsible for safeguarding and protecting people from harm.

Key public statutory agencies, together with independent, private and third sector organisations that provide services to the public who are vulnerable, have a critical role in safeguarding and protecting children and adults.

Responsibility for protecting people, who through no fault of their own are vulnerable, rests with parents, families, and those professional staff who have a duty to care. Analytical and accurate assessments, good, relevant and focused communication, dynamic multi agency intervention and treatment is critical in safeguarding and protecting vulnerable children and adults.

#### **3. The All Wales Safeguarding Procedures (2019)**

The All Wales Safeguarding Procedures has been developed to ensure policy and practice in Wales consistently applies the legislation and statutory guidance as required by The Social Services and well-being (Wales) Act 2014.

The procedures are designed and intended to standardise practice across Wales. Awareness amongst policy makers and practitioners has emphasised the need for common systems and processes to protect both children and adults at risk of abuse and neglect.

The procedures identify arrangements for responding to safeguarding concerns about practitioners and people in a position of trust, power or influence. The procedures provide a clear process for investigation where the nature of activity that a practitioner or person who is in a position of trust has raised concerns.

#### **4. The Members' Code of Conduct**

The Members' Code of Conduct places a number of duties on Elected Members, which will apply whenever they are responding to the concerns raised by their constituents. The Code of Conduct requires Elected Members to ensure their comments do not disclose confidential information. They must not conduct themselves in a manner likely to bring the Council (or the office of councillor) into disrepute. They should show respect and consideration for others, and not use bullying behaviour or harass anyone. They should not use their position, or Council resources, improperly. The application of the Code is explained further in paragraphs 7.3 to 7.7 below.

Breaches of this protocol by elected members may lead to complaints that the Cardiff Council Member Code of Conduct has been breached. Complaints about a breach of the Code of Conduct will be dealt with by the Council's Monitoring Officer and/or the Public Services Ombudsman for Wales and may lead to a public hearing at a Hearings Panel of the Council's Ethics and Standards Committee. If an elected member is found to have breached the code of Conduct a sanction may be imposed of up to six months suspension from office and forfeiture of the members allowance for the relevant period.

#### **5. Social Media**

The Welsh Local Government Association (WLGA) Guide for Councillors provides helpful guidance and advice about issues to consider when using social media. The WLGA guidance helpfully refers to The Ombudsman's Code of Conduct offers an overview and important detail to consider when dealing with complex casework matters.

The Ombudsman's Code of Conduct guidance applies to Elected Members when conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority. The Code also applies if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute.

Key messages include:

- Maintaining respect for others and not disclosing confidential information about individuals or the council.

- Negative comments about or to individuals which could be interpreted as bullying or intimidation.

## **6. The Role of the Council and its Elected Members**

6.1 All Members of the Council have a strategic role in relation to Social Services and the need to satisfy themselves that the Council as a whole is discharging its statutory responsibilities and demonstrates good practice wherever possible.

6.2 A number of high profile public inquiries have highlighted the importance of ensuring that safeguarding services are prioritised and adequately resourced, and all Elected Members have responsibility in this regard.

6.3 The Council as a whole is the 'corporate parent' of all Looked After Children. This requires Elected Members, relevant Council managers and staff to work together to discharge their different roles and responsibilities, to ensure the best possible care and opportunities are provided for children receiving Care and Support and Looked After Children.

6.4 Elected Members have an important role to play in safeguarding children and vulnerable adults, as the eyes and ears in the community. This particularly applies where ward surgeries and local ward networks enable Members to be alerted to early signs of safeguarding concerns, whether general patterns of behaviour or concerns about a particular child or vulnerable adult.

6.5 The Members of the Cabinet, the Corporate Parenting Advisory Committee, the Children and Young People's Scrutiny Committee and the Community and Adults Scrutiny Committee have additional specific responsibilities, as outlined in section 8 below.

## **7. Responsibilities of Elected Members**

7.1 It is the responsibility of all Elected Members to bring concerns they have about vulnerable children or adults to the attention of the responsible officer. **If a Member is concerned that a child or vulnerable adult may be at risk of harm, this should be reported immediately please refer to Section 8, and the contact list at the end of this Protocol. Briefly:**

**Children – Multi Agency Safeguarding Hub (MASH).**

**Adults – The Adult Safeguarding Team.**

**Out of Hours – The Emergency Duty Team (EDT).**

**Note: Flowchart at Annex 1. Making a Safeguarding Referral.**

7.2 Where constituents have sought advice/assistance from a Member, the Elected Members may also wish to make written/oral representations in order to satisfy themselves that concerns or problems are being dealt with appropriately.

7.3 **Members' Code of Conduct** - Whilst local ward Members have an important role to play in responding to the concerns of their constituents, they must be mindful of their obligations under the Members' Code of Conduct, in particular:

7.4 **Personal Interests** – Members must be mindful of their duty under the Members' Code of Conduct to disclose any personal interest in a particular case in which they may be making representations. For example, a personal interest may arise from the Member's personal relationship with a service user or from the Member's involvement in a particular organisation. Members must ensure that their personal or private interests do not conflict with their public duties, to the Council as a whole or to all ward constituents.

7.5 **Advocacy for Service Users** – It is not appropriate for an Elected Member, unless exceptional circumstances apply, to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the Member is acting. Elected Members are part of the Council and have a duty to represent all ward constituents fairly and equally; whereas the role of an advocate is to provide emotional support to an individual and help them to understand the process and to raise questions and issues as necessary. An Elected Member seeking to act as an advocate is likely to have an actual or perceived conflict between his/her duties to:

- (i) the Council and its Officers.
- (ii) the individual service user, and
- (iii) other ward constituents.

An Elected Member's involvement may also create an impression to those involved of undue influence being exerted in any relevant decision making process, in view of the Member's position within the Council. The Council has a responsibility to ensure that service users have access to advocacy services wherever necessary, and can provide contact details of independent advocacy service providers and professional advocates upon request. In court proceedings, service users will also have the benefit of accessing legal advice, should they choose, and can be legally represented in Court, therefore always having a voice in Court and their interests protected.

It is only in exceptional circumstances (such as where a Member is a family member of a service user or is a professional advocate), that it may be appropriate for an Elected Member to act as an advocate for a service user. However, any such exceptional circumstances must be explained and

agreed in advance with the Director of Social Services or the Monitoring Officer.

**7.6 Criticism of Officers** – Elected Members should ensure that any concerns about Council officers are raised with the relevant Director (or the Chief Executive) in accordance with the Protocol on Member/Officer Relations, as staffing issues are the statutory responsibility of the Chief Executive, as Head of Paid Service. Elected Members should note that case law regarding a Councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights (Heesom v. Public Services Ombudsman for Wales 2014) has held that:

- Council officers are not expected to tolerate the same level of criticism as politicians during political debate
- Unwarranted criticism of officers by Councillors damages the mutual duty of trust and confidence between Councillors and officers, and that,
- There is a public interest in ensuring that officers are not subjected to unwarranted criticism which could undermine the performance of their public duties and public confidence in the administration.

**Note: Flowchart at Annex 2. Process for Raising Safeguarding Concerns with Officers.**

**7.7 Political/Public Debate** – When raising issues politically in public debate, during Council meetings, using social media etc, Members must ensure their comments do not disclose confidential information or personal information about identifiable individuals; must not make unwarranted criticism of officers, and must not conduct themselves in a manner likely to bring the Council (or the office of Councillor) into disrepute.

## **8. What to do if you are concerned that a child or vulnerable adult may be at risk of harm?**

**8.1 Children** - If an Elected Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Multi Agency Safeguarding Hub (MASH) or, if outside office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an appropriately trained Social Worker will ensure Children in Need of Care and Support or Child Safeguarding Procedures are initiated if needed, and will provide you with any required advice or guidance.

**8.2 Adult** - If any information raises concerns about harm or potential harm to a vulnerable adult, these concerns should be reported immediately to the Adult Safeguarding Team or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an appropriately trained Social Worker will ensure that any

appropriate procedures are initiated, and will provide you with any required advice and guidance.

**8.3 If a Member has concerns about immediate danger needing a emergency response or thinks a crime is being committed, the police should be contacted on 999. You should never delay taking emergency action to safeguard a child or vulnerable adult.**

## **9. Who else to Contact?**

If an Elected Member has a general safeguarding concern, which is not related to a specific child or vulnerable adult, the Member should bring this to the attention of the Operational Manager for Service Improvement and Strategy, the Assistant Director of Children's Services, the Assistant Director of Adult Services (as appropriate), or the Director of Social Services.

## **10. What to Expect?**

10.1 All concerns will be investigated and assurances given to the Councillor that the welfare of the child or vulnerable adult is being safeguarded.

10.2 All referrals of children or vulnerable adults at risk of harm will be promptly investigated in accordance with the timescales provided for in the **All Wales Safeguarding Procedures** and a response will be given to the Councillor within 24 hours to confirm that relevant/appropriate action has been taken. The Council will not, however, be able to confirm the outcome of any particular investigation due to confidentiality and data protection laws.

10.3 Any other safeguarding queries or non specific casework concerns will be carefully considered and a response will be given to the Councillor within 10 working days. If a full response cannot be provided within 10 working days, the response will indicate a reasonable timescale within which a full reply will be given.

10.4 Any complaints made by or on behalf of the service users will be considered in accordance with the council's complaints procedures, which fully comply with all relevant statutory provision and best practice.

- (i) Complaints about the handling or outcomes of child protection conferences will be dealt with under the "Procedure for handling complaints from parents, caregivers, and children about the functioning of the child protection conference". This procedure is appended as Annex 3 to this Protocol.
- (ii) All other complaints about Cardiff Social Services will be dealt with under the 'Social Services Complaints Policy and Procedure' (established in accordance with The Social Services Complaints

Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014). This procedure is appended as Annex 4 to this Protocol.

## **11. Members' Rights to Information and Information Sharing**

11.1 The Protocol on Members' Rights of Access to Information and Documents (set out in Part 5 of the Constitution), sets out Members' rights to information held by the Council and how to access such information.

11.2 **Personal Information** - Access to personal information is restricted by data protection legislation (see below); and any information provided under the "need to know" principle must only be used in connection with the Member's duties as a Councillor, and must not be disclosed to any other persons (unless and until the information properly enters the public domain).

Under the "need to know" principle, all Members have a right to inspect any Council documents if access to the documents is reasonably necessary to enable the Member to properly perform their duties as a Member of the Council.

11.3 The Council will ensure that all Elected Members have access to general information about trends and issues affecting children and vulnerable adults as well as the quality and range of services provided.

### **Personal information/information about individual cases**

11.4 Information relating to individuals is protected (as 'personal data') under data protection legislation, and such information may also be confidential. Personal data includes any information relating to an identifiable individual, even if the individual is not explicitly named. General advice on Members' data protection responsibilities is set out in the 'Data Protection' section of the Members' Handbook.

11.5 The Council is legally responsible (as the 'Data Controller') for personal information held by the Council (or held by Members for the purpose of Council business). Each Elected Member is legally responsible (as 'Data Controller') for personal information held for constituency work purposes. The Council and all Elected Members must carefully consider, on a case by case basis, their legal obligations in respect of any particular personal information they may hold.

11.6 The law requires that all personal information must be handled fairly, lawfully and securely. In particular, personal information about individual cases **must not be disclosed without the consent of the individual/s**, concerned, unless a legal exemption applies. This means that the Council can only disclose information about individual cases to Members if it is

satisfied that the individual/s concerned have consented to such disclosure and that the individual has the capacity to give such consent.

11.7 In their ward Member role, if a Member is asked by a ward constituent to assist them in resolving a social services matter, the Member will be dealing with personal information, some of which will be sensitive personal information 'special category data', defined by law as information about a person's racial or ethnic origin; political opinions religious or philosophical beliefs; trade union membership; physical or mental health or condition; genetic or biometric data; or sexual life or orientation; and 'criminal offence data' meaning information about alleged criminal activity; or court proceedings, and subject to additional legal protection and restrictions.

11.8 Members must ensure that:

- The individual/s concerned understand how the Member intends to use their personal information and have consented to this. Members should be mindful that some service users' level of understanding require further consideration and assistance due to their vulnerabilities.
- If the Member intends to make enquiries with the Council about a particular case, then the Member must obtain written consent from all individuals involved, expressly authorising the Council to disclose their personal information to the Member; and provide a copy of this consent to the Council.
- All personal information relating to individual cases must be used only as necessary and appropriate in order to take the agreed action on behalf of the individual; and must not be used or disclosed for any other purpose, for example, political purposes.
- Members must have robust systems for holding personal information securely and only for as long as necessary.

11.9 Further advice is available from the Council's Information Management Operational Manager. The Information Commissioner's Office website also publishes helpful guidance for Councillors on their data protection responsibilities (see Background Documents listed at the end of this Protocol).

## **12. Decision Makers and Accountability**

In addition to the strategic role of full Council, referred to in section 2 above, the key decision makers and their accountabilities are as follows:

### **Cabinet; Cabinet Member, Children and Families; and Cabinet Member, Social Care, Health, and Wellbeing**

12.1 The Cabinet has a collective corporate leadership role and decision making powers in respect of children's and adult' services, subject to

compliance with the Council's approved Policy Framework. The Cabinet Member for Children and Families has particular responsibility to lead and inform the Cabinet's work on safeguarding, child protection, corporate parenting and looked after children matters. The Cabinet Member for Social Care, Health and Well-being has particular responsibility to lead and inform the Cabinet's work on adult social care and safeguarding vulnerable adults matters. Both Cabinet Members are regularly briefed by the Statutory Director of Social Services on the performance of Social Services functions, any identified weaknesses and recommended improvement actions.

### **Statutory Director of Social Services**

12.2 The Statutory Director of Social Services is responsible for providing professional leadership and discharging core responsibilities in respect of all Social Services functions of the Council. The Director submits a Statutory Annual Report to Cabinet on the discharge of the Council's Social Services functions, including a report on all Social Services complaints.

### **Corporate Parenting Advisory Committee**

12.3 The Corporate Parenting Advisory Committee is responsible for advising the council and the Cabinet on the discharge of the authority's corporate parenting functions. The Committee provides advice and makes recommendations to the Cabinet or Council regarding the discharge of corporate parenting functions. The Committee ensures that Corporate Parenting has a role and status within the Council.

### **Children and Young People Scrutiny Committee**

12.4 The Children and Young People's Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to children and young people, including children's social services.

### **Community and Adult Services Scrutiny Committee**

12.5 The Community and Adult Services Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to community and adults' services, including adult's social services.

#### **CONTACT LIST:**

The Multi Agency Safeguarding Team (MASH)-	029 2053 6490
The Adult Safeguarding Team	029 2233 0888

Emergency Duty (out of hours) Team (EDT)	029 2078 8570
Assistant Director of Children's Services	029 2087 3803
Assistant Director of Adult Services	029 2083 7601
Director of Social Services	029 2083 7601
Operational Manager, Information Management	029 2087 3988

#### APPENDICES:

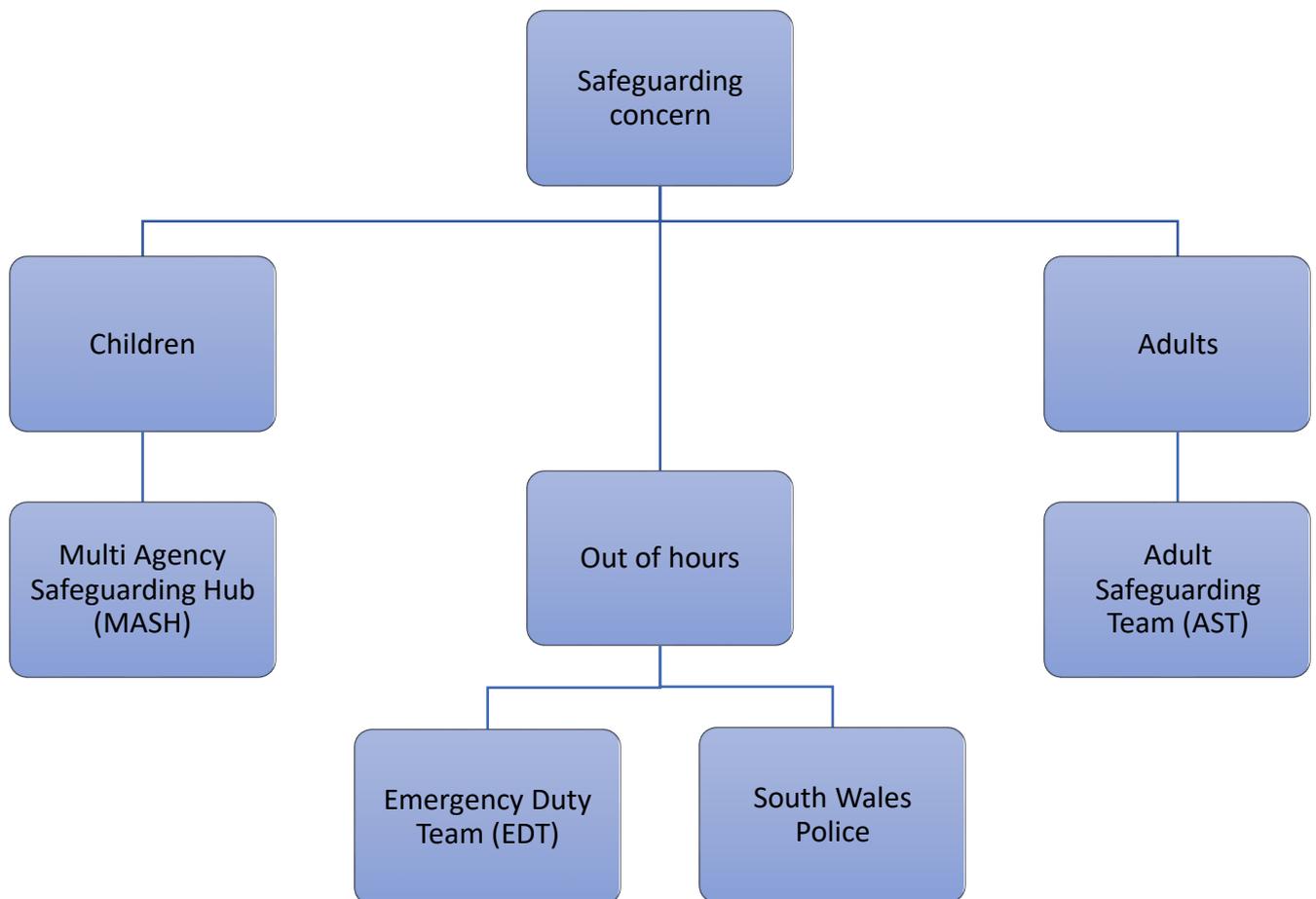
- Annex 1. Flowchart – Making a Safeguarding Referral.
- Annex 2. Flowchart – Process for Raising Safeguarding Concerns with Officers.
- Annex 3. "Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference", Cardiff and Vale of Glamorgan Local Safeguarding Children Board.
- Annex 4. 'Social Services Complaints Policy and Procedure', City of Cardiff Council.

#### BACKGROUND DOCUMENTS:

- Members' Code of Conduct.
- WLGA Social Media Guidance.
- Protocol on Member/Officer Relations.
- Protocol on Members' Rights of Access to Documents and Information.
- Members' Handbook, 'Data Protection' section.
- Information Commissioner's Office, 'Advice for elected and prospective councillors'.
- GDPR and Data Protection Act.

**Protocol: The role of Elected Members in Safeguarding**

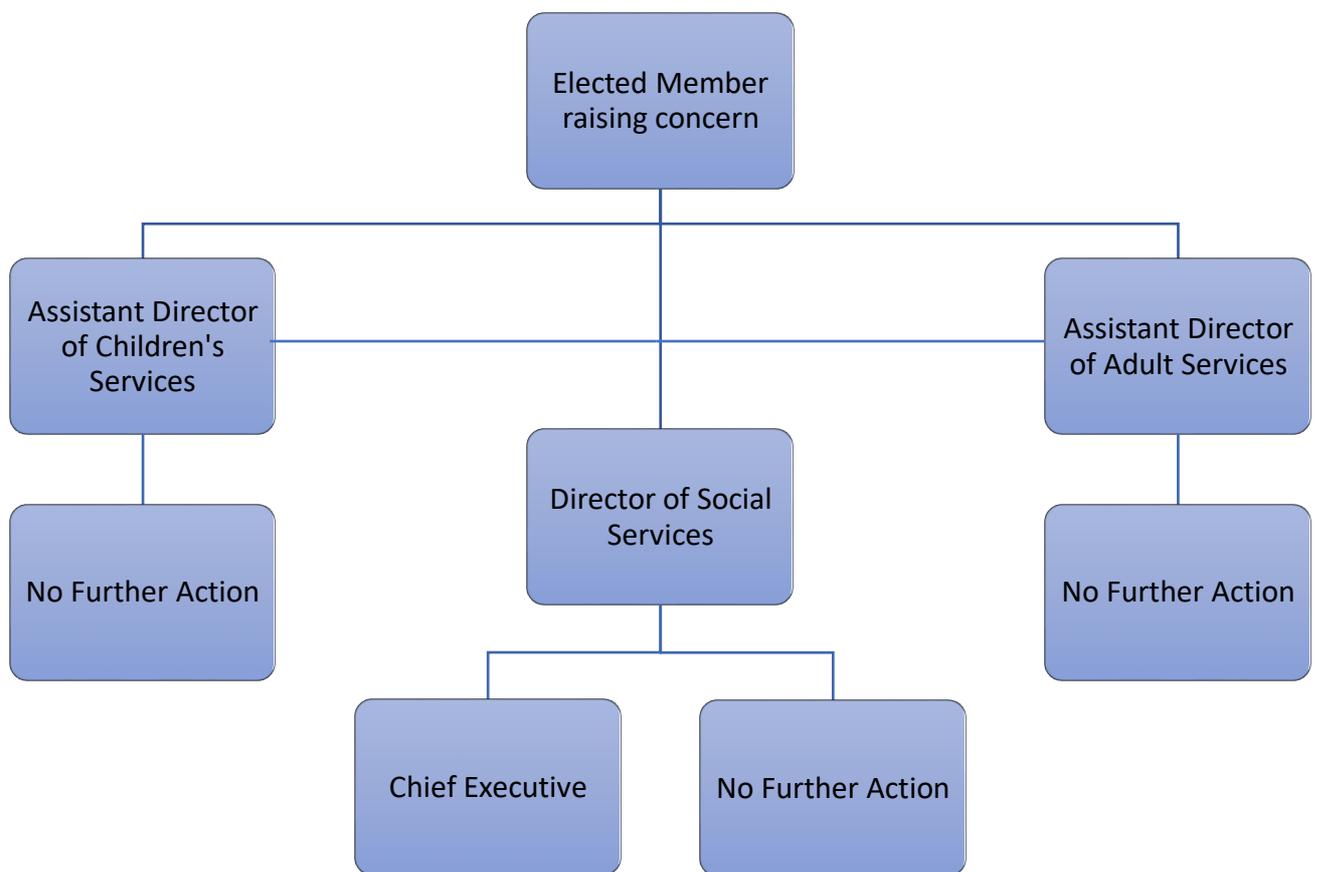
**Making a Safeguarding referral**



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**Protocol: The role of Elected Members in Safeguarding**

**Process for raising Safeguarding concerns**



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**STANDARDS AND ETHICS COMMITTEE****30<sup>th</sup> SEPTEMBER 2020**

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES AND MONITORING OFFICER****CARDIFF UNDERTAKING**

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**Reason for this Report**

1. To enable Members to consider proposed amendments to the Cardiff Undertaking.

**Background**

2. The ethical framework for the conduct of Members is set under Part 3 of the Local Government Act 2000. Under powers granted in the Act, the National Assembly for Wales has made an order specifying principles governing the conduct of Members ('the Principles of Conduct' SI 2001/2276); and issued a model code regarding the conduct expected of Members, reflecting the Principles of Conduct. The model statutory code has been adopted by Cardiff Council, without variation, and is enshrined, as the Members' Code of Conduct, within the Council's Constitution. Members must comply with the duties set out in the Members' Code of Conduct. Sanctions may be imposed on any Member found to be in breach of the Code.
3. The Cardiff Undertaking was adopted by the Council in 2004, on the recommendations of a Corporate Governance Commission. It provides an opportunity for Members to publicly commit to using their term of office to work for the Council, the City and its citizens, and to commit to the standards of conduct expected by the Council, and has been amended from time to time. The Council's ethical code is comprised of the Members Code of Conduct and the Cardiff Undertaking, both of which are incorporated within the Council's Constitution (Part 5).
4. In accordance with the recommendations of the Standards and Ethics Committee, Elected Members have been asked, since 2008, to reaffirm their commitment to the Cardiff Undertaking at each Annual Council meeting.

## Issues

5. The Council's Internal Audit team has recently completed a review of Codes of Conduct. The review considered the Cardiff Undertaking alongside the statutory Principles of Conduct and found that:

*'The Cardiff Undertaking is considered as sound, although in the following areas consideration could be given to reviewing and expanding some of the content:*

- *'Stewardship' - The principle is included within the Cardiff Undertaking, and some stewardship responsibilities are particularly emphasised, namely safeguarding and corporate parenting; however, the following definition from the principles of public life is not incorporated - "In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently."*

- *'Leadership' - This principle is not included within the Cardiff Undertaking, and consideration should be given to its inclusion, incorporating the following definition - "Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence."*

6. The statutory Principles of Conduct are appended, for Members information, at **Appendix A**.
7. A marked up copy of the Cardiff Undertaking is attached as **Appendix B**, incorporating suggested amendments in respect of:
  - (i) The additional commitments recommended by Internal Audit, set out in paragraph 5 above;
  - (ii) A commitment to complying with the Protocol on the Role of Members in Safeguarding Vulnerable Children and Adults (subject to approval of the recommendation in this respect under the separate agenda item 5); and
  - (iii) A number of other minor drafting improvements.
8. Members are invited to consider and comment on the suggested amendments to the Cardiff Undertaking as set out in **Appendix B**; and to recommend any agreed amendments to full Council for approval.
9. Under the Council Meeting Procedure Rules, Rule 2(b)(vi), all Members are asked to publicly affirm their commitment to the Cardiff Undertaking at Annual Council each year. If the Committee is minded to recommend amendment of the Cardiff Undertaking, then subject to the approval of full Council, all Members would be asked to affirm their commitment to the revised Undertaking at the Annual Council meeting which has been provisionally scheduled for November 2020.

## Legal Implications

10. Relevant legal implications are set out in the body of the report.

## **Financial Implications**

11. There are none arising from this report.

## **Recommendations**

1. The Committee is recommended to consider the suggested amendments to the Cardiff Undertaking set out in **Appendix B**; and
2. Delegate authority to the Monitoring Officer, in consultation with the Chair, to finalise the revised draft Undertaking, for submission to full Council for approval.

**DAVINA FIORE**  
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING**  
**OFFICER**

23<sup>rd</sup> September 2020

## **APPENDICES**

Appendix A Statutory Principles Governing Conduct of Members  
(SI 2001/2276)

Appendix B Cardiff Undertaking, marked up to show suggested amendments

### Background papers

Internal Audit review. Codes of Conduct – July 2020

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## **STATUTORY PRINCIPLES OF CONDUCT FOR MEMBERS (SI 2001/2276)**

### **1. Selflessness**

Members must act solely in the public interest. They must never use their position as members to improperly confer advantage on themselves or to improperly confer advantage or disadvantage on others.

### **2. Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

### **3. Integrity and Propriety**

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

### **4. Duty to Uphold the Law**

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

### **5. Stewardship**

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

### **6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

### **7. Equality and Respect**

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

### **8. Openness**

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

## **STATUTORY PRINCIPLES OF CONDUCT FOR MEMBERS (SI 2001/2276)**

### **9. Accountability**

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **10. Leadership**

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

**PART 5 – CODES AND PROTOCOLS**

**THE CARDIFF UNDERTAKING FOR COUNCILLORS**



This undertaking should be considered in conjunction with the Members' Code of Conduct and forms part of the ethical code which binds all members of the City & County of Cardiff.

As a Councillor elected to the County Council of the City and County of Cardiff, and in accordance with the principles of public life:-

***I UNDERTAKE TO:-***

**Promotion of equality and respect for others**

1. Represent Cardiff and all the people of Cardiff ~~and to hold this duty of representation equally to all the people of Cardiff equally.~~

**Commented [AK1]:** Suggested drafting improvement.

**Objectivity and propriety**

2. Consider all issues and cases brought to me on their merits.
3. Balance the interests of my Ward with the interests of the Council and the people of Cardiff as a whole.

**Selflessness and stewardship**

4. ~~When acting as a Cardiff Councillor, Give~~ priority to the interests of the Council, Cardiff and of the people of Cardiff.

**Commented [AK2]:** Amended to reflect the fact that Members may have different duties when acting in different roles, eg. when acting as a company director, a Member must act in the best interests of the company.

5. When discharging my duties and responsibilities, I will ensure that the Council's resources are used both lawfully and prudently.

6. Safeguard and promote the life chances of children looked after by the Council and diligently discharge my responsibilities as Corporate parent of those children, acting always in accordance with the Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults.

Updated 23-March-2017

**Integrity**

7. Act according to the highest standards of probity in carrying out my various duties as a Councillor.

**Duty to uphold the law**

8. Adhere to and respect the Members' Code of Conduct and have proper regard to the advice and guidance issued by the Standards & Ethics Committee.

9. Adhere to and respect the provisions of any Local Resolution Protocol proposed by the Standards & Ethics Committee and adopted by Council

**Accountability and openness**

10. Not to disclose information given to me in confidence

11. Support and promote the conduct of the Council's business being carried out in an open and transparent manner.

**Leadership**

12. Promote and support these commitments by leadership and by example, and act in a way that secures or preserves public confidence.

In order to enable me to carry out my duties I further undertake that I will commit to appropriate training, to include all training which has been identified as ~~essential-mandatory~~ in the Member ~~Induction Programme/Member Training and Development PlanProgramme~~, or equivalent, to equip me to carry out my duties as a Councillor.

**Commented [AK3]:** Amended to reflect current Member Development Programme

Name: ..... Date: .....

Signed: .....

Updated 23-March-2017

**STANDARDS & ETHICS COMMITTEE: 30 SEPTEMBER 2020**

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**REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES**

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**2019-20 MEMBERS SURVEY**

**Reason for this Report**

1. To provide the Standards and Ethics Committee with the analysis of information gathered from the 2019-20 Members Survey under which falls within the remit of the Committee.
2. For the Committee to identify any trends or matters which require further consideration or action.

**Background**

2. In 2016, Democratic Services undertook an Exit Survey to enable lessons to be learned about the experiences of Councillors during their five year term of office, and reasons for leaving or not standing for re-election. All Elected Members (81) who had held the Office of Councillor during the period 2012 to 2017 were invited to participate in the Exit Survey in early 2017.
3. The Standards & Ethics Committee in 22 March 2017 (Min No: 30) considered the responses from the Exit Survey 2017 and one of the recommendations was that a repeat survey of the Elected Members from May 2017 be undertaken at the end of the 2017. This would allow the Committee to review and analyse responses and any trends.
4. As part of the 2017-18 Survey all 75 Councillors were invited to complete the survey either electronically or in hard copy from 30 November 2017 to 2 January 2018. 47 out of 75 Councillors (63%) answered all or part of the survey. 21 Councillors of the 47 who responded were newly elected in May 2017.
5. The 2017-18 Survey provided Members feedback mainly on the Members Induction and to establish training and development needs, as well as identify some of the challenges Members may have encountered during the first six months of their term of office.
6. The Standards and Ethics Committee considered the outcomes of the 2017-18 Survey on 5 December 2018. The report was noted but it was requested that future Members Surveys should include a question specifically related to resilience and/or wellbeing. (Min No: 9).

## The 2019-20 Survey

7. The latest survey was developed in 2019 and primarily intended to seek Members views on the effectiveness of the services provided to them and the delivery of appropriate member development opportunities. As part of this survey, Members were also asked the same questions about their experiences of bullying, discrimination, and other unacceptable behaviours as in the previous surveys.
8. The survey was launched electronically on 27 January 2020 to all Elected, Independent and Co-opted Members which was a total of 89 individuals. The survey was able to be completed using a range of devices including laptops, tablets and smartphones. Members were also offered assistance to complete the survey should it be needed. Reminders were included on the Members Weekly Diary and targeted emails were sent to those who had not been recorded as completing the survey.
9. A closing date for the survey was set for 9 February 2020 when a review of completions was undertaken. It was considered prudent to leave the survey open and to follow up with individuals who had not been recorded as completing the survey. Democratic Services staff contacted individuals by email and telephone which led to an increase in the total number of completions. The survey was finally closed on 14 February 2020.
10. A detailed analysis of 2019-20 Survey responses to the questions within the remit of the Standards and Ethics Committee was undertaken and are included in the Members' Survey 2019-20 Outcomes Report set out in **Appendix A**. It should be noted that the Independent and Co-opted Members did not respond to these questions and were not considered with the data from Elected Members to ensure that appropriate comparisons could be made with the previous surveys.

## The Outcomes

11. Appendix A, (Charts 1 – 5) provides a detailed analysis of the profiles of the Elected Members who responded to the survey by gender, political group, new and returning members and age group. The Committee will note that:
  - a) A greater number of Elected Members (40) completed the “unacceptable behaviours” section of this survey than in previous years (39 & 33). It also shows that a larger percentage (95%) of Elected Members who undertook this survey completed this section compared to the 2017-18 Survey figures (44%).
  - b) The number of female respondents to the 2019-20 survey (15) was slightly higher than in both Exit Survey (14) and the 2017-18 Survey (9) although the percentage of female respondents was reasonably consistent.
  - c) The distribution of respondent by political group is consistent with the political make-up of the Council.

- d) The number of new and returning Elected Members was comparable with the level of responses provided in the 2017-18 Survey.
  - e) The age range of respondents showed an increase in the number of respondents who were in the 35-55 year age bracket which reflects the current average age of Councillors which is approximately 50 years old.
12. Charts 6-9 illustrate the Members' experience of bullying, discrimination and unacceptable behaviours as follows:
- a) The number (12) and proportion (30%) of respondents who have experienced unacceptable behaviours in the 2019-20 Survey is lower than in previous years (45% in the 2017-18 Survey and 56% in the Exit Survey).
  - b) 12% of Members identified that they have experienced bullying since January 2018. This is comparatively lower than those reported during 2017-18 Survey (21%) and the Exit Survey (36%).
  - c) A number (6) or proportion (15%) of respondents confirmed that they have experienced discriminatory behaviours. These figures are comparatively lower than the number or proportion of those who have confirmed experiencing discrimination in the Exit Survey and the 2017-18 Survey.
  - d) The percentage of respondents who experienced other types of unacceptable behaviours which are listed in Paragraph 3.13 of Appendix A, has declined since the Exit Survey and the 2017-18 Survey.
13. Charts 10 - 13 illustrate the experiences of unacceptable behaviours by gender type as follows:
- a) A significant proportion of female respondents (43%) have confirmed that they had experienced some form of unacceptable behaviour including bullying or discrimination. Compared to the previous 2017-18 Survey (5), there is a slightly higher total number of female respondents (6) in the 2019-20 Survey who experienced these behaviours. However, this number is much lower figure when compared to the results in the Exit Survey. It should be noted that the percentage of female respondents who have experienced unacceptable behaviours has reduced from 55% (5) in 2017-18 to 43% (6) in 2019-20.
  - b) Of the total number of female respondents (6) who experienced unacceptable behaviours, most of them (67%) have indicated they had experienced discriminatory behaviours. Half of them (50%) indicated that they have experienced bullying, with one (17%) stating that she had experienced "Other" unacceptable behaviour. This represents a slight decrease in bullying and other unacceptable behaviours identified from previous surveys but a corresponding increase in the level of discrimination experienced.

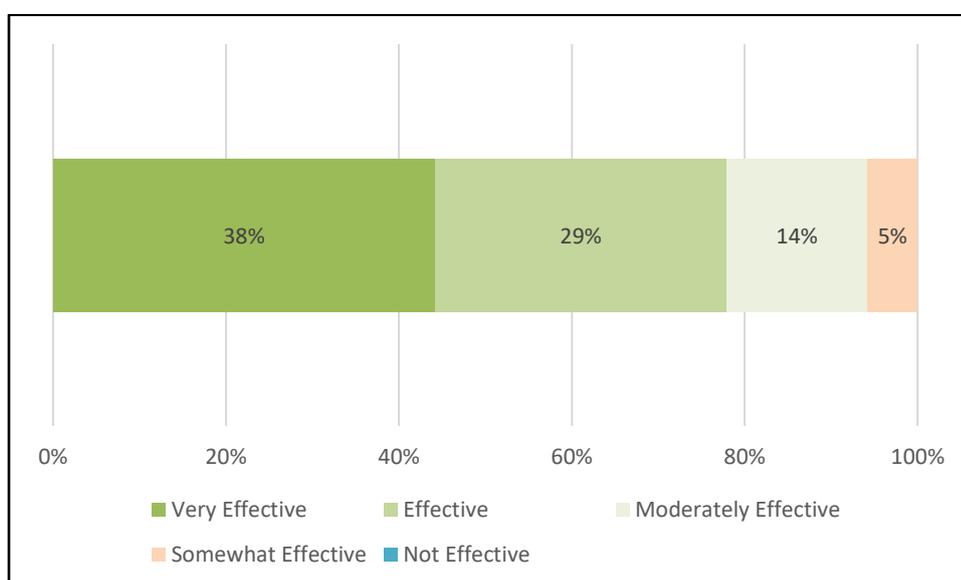
- c) 20% (5 of male respondents who have experienced some form of unacceptable behaviour. The results show that the percentage of male respondents who have experienced unacceptable behaviours has decreased from 50% in the Exit Survey and 35% in the 2017-18 Survey.
  - d) Of the 5 male respondents who confirmed experiencing unacceptable behaviours, only 1 (20%) indicated that they have experienced bullying whilst 2 (40%) experienced some form of discriminatory behaviours. Three male respondents (60%) indicated that they experienced other forms of unacceptable behaviours. A comparison of the 2019-20 results with the findings from previous years show that the total number and percentage of male respondents who have experienced bullying and discriminatory behaviours has declined.
14. Charts 14 - 18 illustrate the experiences of unacceptable behaviours by age group as follows:
- a) Less than a third of respondents (27%) over the age of 55, identified that they had experienced some form of “unacceptable behaviours”. A comparison of the survey results from previous years show that the number and percentage of the over 55 respondents who have experienced unacceptable behaviours had declined from 72% in the Exit Survey and 54% in the 2017-18 Survey.
  - b) Of the 4 respondents, aged over 55 only 2 (50%) of them confirmed that they experienced bullying whilst 2 (50%) experienced discriminatory behaviours. One of the respondents also indicated that they had experienced “other” unacceptable behaviours.
  - c) The number and proportion of respondents under 55 years of age who indicated that they had experienced bullying and other unacceptable behaviours (33%) was not dissimilar to those reported in the Exit and 2017-18 Surveys.
  - d) 7 respondents aged under 55 in the 2019-20 Survey experienced unacceptable behaviours. Two (29%) experienced bullying whilst 4 (57%) experienced discriminatory behaviours. Three respondents (43%) stated that they had experienced “other” unacceptable behaviours which included: sexist language; patronising condescending behaviours; unwanted attention / friendliness and heckling and goading at Council meetings.
15. Charts 18 – 20 illustrate the reporting of experiences of unacceptable behaviours as follows:
- a) The results of the 2019 -2020 Survey show that more than half of respondents (58%) did not report their experience of unacceptable behaviours at the time. These figures are quite significant as this suggests that more respondents have chosen not to report these incidents.

- b) The percentage of those reporting their experience of unacceptable behaviours in the 2019-20 Survey (42%) showed a marked improvement when compared with the results of the 2017-18 Survey (27%).
  - c) The reasons that incidents were not reported are listed in Paragraph 3.4.2 of Appendix A. Some these incidents were identified as being a political issues or because the incidents were witnessed so did not need reporting.
  - d) A total of 5 respondents in the 2019-2020 Survey reported incidents that they had experienced. Most of these respondents (60%) reported the incidents to the Monitoring officer. Another respondent (20%) reported to their Group Leader whilst one (20%) did not disclose to whom they reported the incident the experienced.
  - e) Of the 5 respondents who reported the incidents they experienced, 3 were reported to the Monitoring Officer with another being reported to a Group Leader. One respondent did not identify who they reported the incident to. All who reported the incident to the Monitoring Officer or Group Leader were satisfied with how this was dealt with by them.
16. Charts 21- 24 illustrate the responses of Members' who witnessed unacceptable behaviours as follows:
- a) 18 respondents confirmed witnessing unacceptable behaviours. This included; 8 respondents (44%) who had witnessed bullying with 9 respondents (50%) who witnessed discriminatory behaviours. A total of 10 respondents (55%) witnessed "other" unacceptable behaviours.
  - b) The number of respondents (18) who indicated that they had **witnessed** unacceptable behaviours (45%) was greater than the 12 Elected Members who stated that they had **experienced** unacceptable behaviours (30%).
  - c) The other types of unacceptable behaviours which were witnessed are listed in Paragraph 4.1 of Appendix A. The majority of these responses related to unacceptable behaviours in Council or other formal meetings.
  - d) Of the 18 individuals who witnessed unacceptable behaviours, only 2 indicated that they had reported the incidents. There were 6 respondents who indicated that they did not report these incidents and a further 10 individuals who did not respond to this question. This suggests that more work is needed to establish the reasons why Elected Members are reluctant to report these incidents and to encourage them to report any unacceptable behaviours that they witness.
  - e) The reasons for not reporting witnessed incidents are listed in Paragraph 4.3 of Appendix A. The respondents identified that the incident had been dealt with by others or had been recorded so that no further action was needed by them,

- f) Of the 18 respondents who witnessed unacceptable behaviours only one (1) reported the incident to the Monitoring Officer and was satisfied with how the matter was dealt with. The other respondent did not indicate to whom they reported the incident they witnessed.
17. A list of suggestions regarding what could be done to prevent bullying and other unacceptable behaviours is shown in Paragraph 5 of Appendix A. The Monitoring Officer has provided feedback on these free text comments which is shown at Appendix B.

18. In the 2019-20 Survey the following question was included:

“Please rate the effectiveness of the support and services provided by the Democratic Services team in relation to your personal safety and wellbeing”.



The responses indicate that although the personal safety and wellbeing of members is supported that further work is needed to identify what support is lacking for some of the Elected Members who responded to this question.

### Further Consideration

19. Further consideration may be needed to determine how some of the issues raised in the 2019-20 Members’ Survey could be addressed:
- a) With 42 responses to the 2019-20 survey and only 40 completed responses to the unacceptable behaviours questions, it would be beneficial to identify how more Elected Members could be encouraged to complete all elements of the next survey. The Head of Democratic Services has indicated that the next survey could potentially be held in 2021-22 and be an Exit Survey). However this would need to be discussed in more detail with the Democratic Services Committee. The views of the Standards and Ethics Committee would be welcomed as to when the next survey should be held.

- b) Are there additional questions which could be included in the next survey to enhance or clarify information from the survey. Is greater clarification needed for what constitutes “unacceptable behaviour”.
- c) What measures are needed to further reduce the levels of experienced and witnessed unacceptable behaviours identified in the survey and in particular the small increase in incidents of:
  - discrimination experienced by female councillors.
  - bullying experienced by male councillors.
  - discrimination experienced by those under the age of 55.
- d) What measures are needed to increase the levels of reporting for witnessed incidents of unacceptable behaviours and to promote the reporting of incidents to the most appropriate person.
- e) Other than “Members’ Code of Conduct”, “Chairing Skills” and “The Council’s Decision Making Process” identified by the Monitoring Officer in Appendix B as planned learning for Elected, Independent and co-opted members, are there additional Member Learning opportunities which would improve the outcomes from the survey.

### **Legal Implications**

20. There are no direct legal implications arising from the content of this report.

### **Financial Implications**

21. There are no direct financial implications arising from this report.

### **Recommendations**

The Committee is recommended

- (1) to consider the analysis of the responses received from the 2019-20 Member Survey which fall within the remit of this Committee;
- (2) to consider potential actions to support responses received; and
- (3) to consider whether any areas require further consideration by the Committee as part of its 2020/21 Work Programme.

**DAVINA FIORE**

**Director of Governance & Legal Services**

24 September 2020

Appendix A – Members’ Survey 2019-20 Outcomes Report

Appendix B – Monitoring Officer Responses to Free Text Comments

Background papers: Member Exit Survey (2017)  
 Member Survey 2017-18  
 Minutes of Standards & Ethics Committee dated 22 March 2017 and 5 December 2018.

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**MEMBERS' SURVEY  
2019-20  
OUTCOMES REPORT**

DRAFT



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## 1. Background and introduction

In 2017, a Members' **Exit Survey** sought the views of all Elected Members who had held the office of Councillor on their experiences during their term in office (which for most members was five years up to May 2017). As part of this survey, Members were asked about their experiences of bullying, discrimination, and any other unacceptable behaviours.

Following the Local Elections in May 2017, a survey of Members was undertaken to establish their training and development needs, as well as identify some of the challenges that they encountered during the first six months of their term in office. In this survey, Members were also asked about their experience of bullying, discriminatory and unacceptable behaviours.

To allow for comparability of responses, the **2017-18 Survey** used the same questions that were used during the Exit Survey. In addition to the questions in respect of "*Member's experience*" that used in the Exit Survey, a question on whether "*Members have witnessed*" an incident of bullying, discrimination and other unacceptable behaviours was also included in the 2017-18 Survey. The data from the Members' Exit Survey in 2017 and the 2017-18 Members' Survey was the basis for this comparative analysis.

This methodology was also used to compile the **2019-20 Survey** with the findings from each of the surveys being considered where this is appropriate and using cross-tabulation of variables such as gender, age or political party have been presented.

## 2. Member Respondents' Profile

### 2.1 Number of respondents

**Chart 1** displays the total of 39 Members who responded to the bullying, discriminatory and unacceptable behaviours questions in the Exit Survey at the end of the political term in 2017.

Following the elections in 2017, 47 out of 75 Elected Members responded to the 2017-18 Survey. Of this number, 33 Members (44%) responded to the bullying discriminatory and unacceptable behaviours questions.

In 2019-2020 a total 42 respondents completed the survey and of this number, 40 (95%) responded to the questions on bullying, discriminatory and unacceptable behaviours.

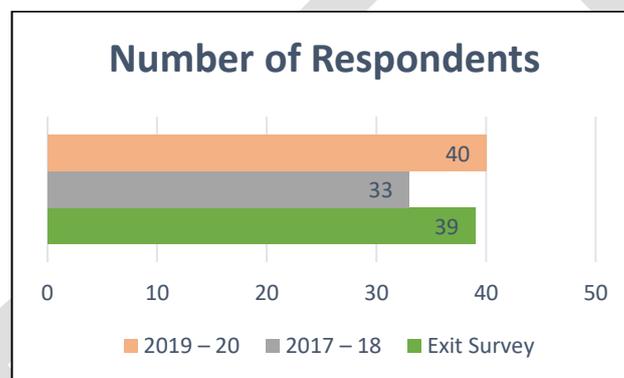


Chart 1

### 2.2 Respondents by Gender Type

The results in **Chart 2**, shows that most of the respondents to the surveys were "Male".

Males represented 54% of respondents in the Exit Survey and nearly two-thirds (61%) in the 2017-18 Survey. There was a greater proportion (36%) and number of Female (14) respondents who completed the Exit Survey compared with the 2017-18 Survey where they represented just over a quarter (27%) of respondents. Similarly, in both surveys, a few respondents did not disclose their gender category.

The results of the 2020 Survey indicate a similar distribution of respondents by gender categories. The majority of respondents were "Male" (62%) with just over a third (36%) declaring as "Female". One of the respondents did not disclose their gender.

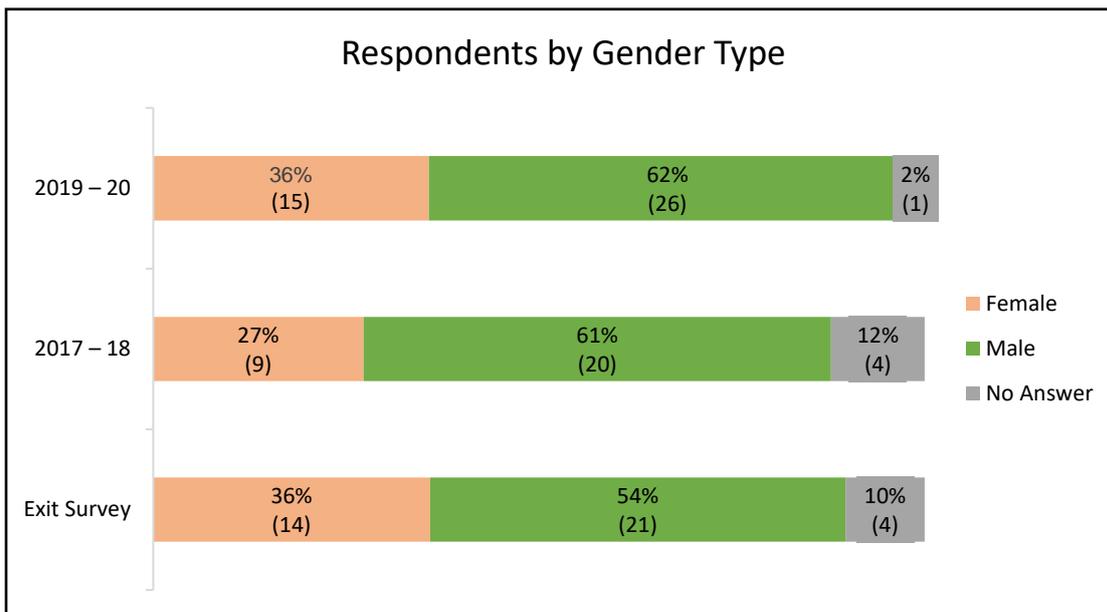


Chart 2

### 2.3 Distribution of Respondents by Political Group

There were more respondents to the bullying and other discriminatory behaviour questions in the Exit Survey (44%) and the 2017 Survey (45%) from the Labour group.

There were also more respondents from the Conservative group in the 2017-18 survey (27%) compared to (17%) in the Exit Survey. This was likely to be as a result of the increase in Conservative Councillors following the Local Government Elections in May 2017 which saw their representation on the Council rise from 11 to 20.

The distribution of respondents by political party in the 2019-2020 Survey as shown in **Chart 3**, reflects a similar trend to the previous surveys. Most of the respondents (45%) represent the Labour group, with a significant proportion (30%) from the Conservative group. A total of 3 respondents did not disclose the political group that they are affiliated to.

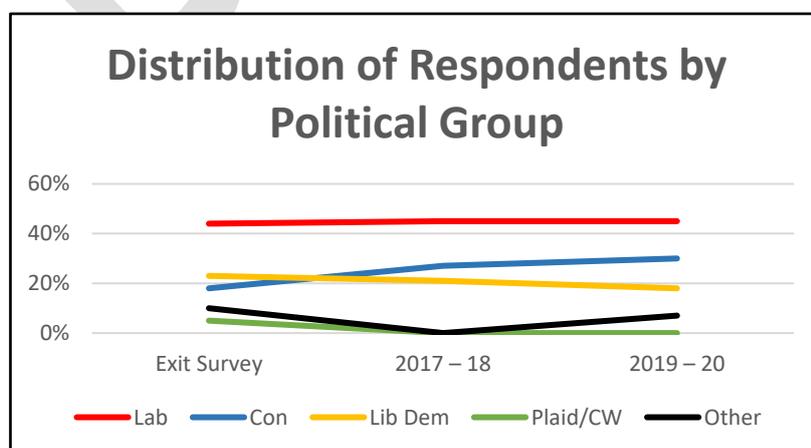


Chart 3

## 2.4 Number of Returning and New Councillors

Of the 75, Elected Members, a total of 47 responded to the 2017-18 Survey. Of this number, only 33 Members responded to the bullying, discriminatory and unacceptable behaviours questions. The majority (58%) of those who completed these questions were “Newly Elected” Members (19) with “returning” Members (14) accounting for 42% of total respondents.

In the 2019-20 Survey more than half (55%) were elected at or since the Local Government Elections in 2017. **(See Chart 4)**

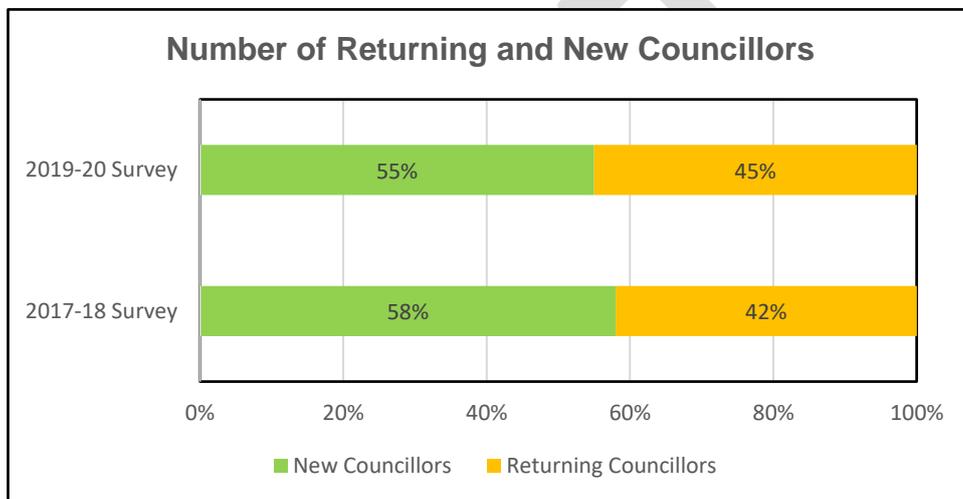


Chart 4

## 2.5 Number of Respondents by Age Group

In **Chart 5**, slightly over a third (36%) of respondents to the Exit Survey were under 55, while nearly half (46%) were over 55. In comparison, the age distribution of respondents in the 2017-18 survey showed that most of the respondents (45%) were under 55 years old. Those who were over 55 years old accounted for 33% of total respondents.

In both the Exit Survey (18%) and the 2017-18 Survey (15%), several respondents did not disclose their age.

As with the previous surveys, the largest proportion of respondents in the 2019-20 survey were over 55 years old. The percentage of respondents who were between 35 – 55 years old was 35% (14) and represents a significant proportion.

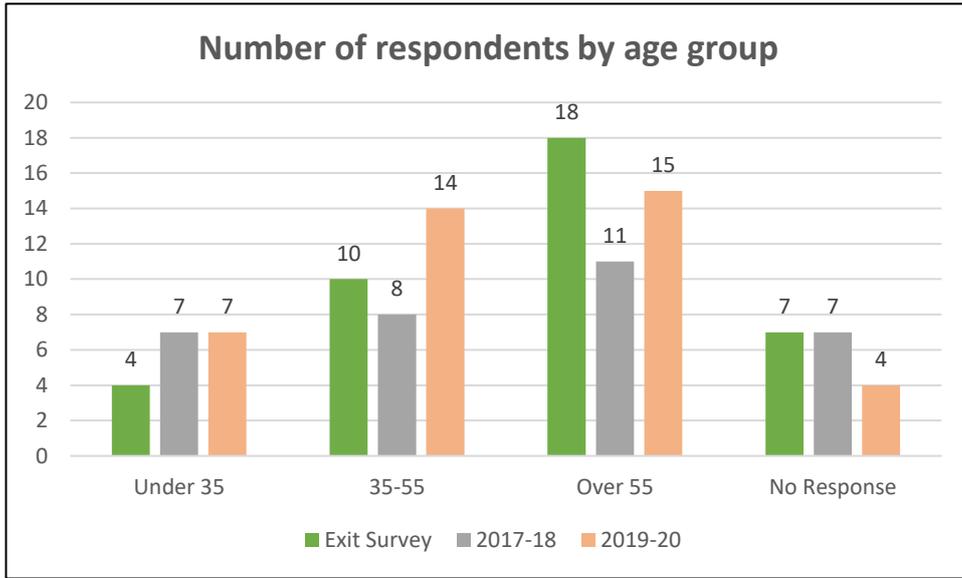


Chart 5

### 3. Member’s Experience of Unacceptable Behaviours

#### 3.1 Respondents Experience of Unacceptable behaviours

As part of the Exit Survey and the 2017-18 Survey, respondents were asked, “During your term in office have you personally experienced bullying, discriminatory or any other unacceptable behaviours?”

In **Chart 6** a proportion (in the range of 45% - 56%) of Members indicated that they have experienced either bullying, discriminatory or other unacceptable behaviours. A higher proportion of respondents (56%) to the Exit Survey identified that they had experienced an incident compared to respondents (45%) in the 2017-18 Survey.

The results of the 2019-20 Survey show that there is a proportion of respondents who indicated that they have experienced some form of bullying, discriminatory or other unacceptable behaviours.

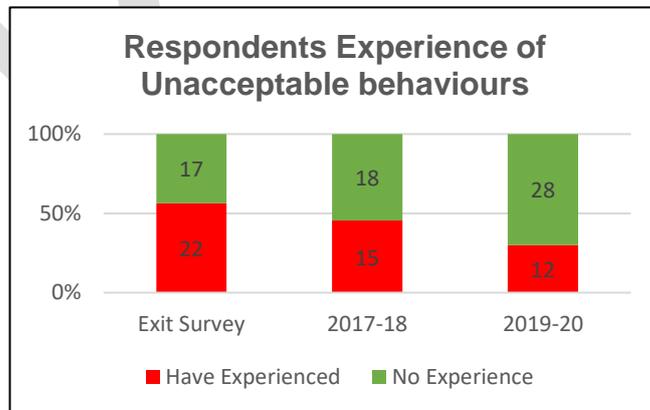


Chart 6

The number (12) and proportion (30%) of respondents who confirmed that they had experienced these behaviours in the 2019-20 survey was lower in comparison with previous years (45% in 2017-18 and 56% in the Exit Survey).

During the previous administration, as indicated by the results of the Exit Survey, a higher proportion of Members had experienced bullying (36%) and or discrimination (31%).

The results show that a proportion of Members elected at the Local Government Elections 2017 had experienced bullying (21%) and discrimination (15%) other unacceptable behaviours (21%).

### 3.1.1 Bullying

The results from the 2019-2020 Survey in **Chart 7** that a proportion of Members (12%) confirmed that they have experienced bullying since the period from January 2018. This is comparatively lower than those reported during 2017-18 Annual Survey (21%) and the Exit Survey (36%).

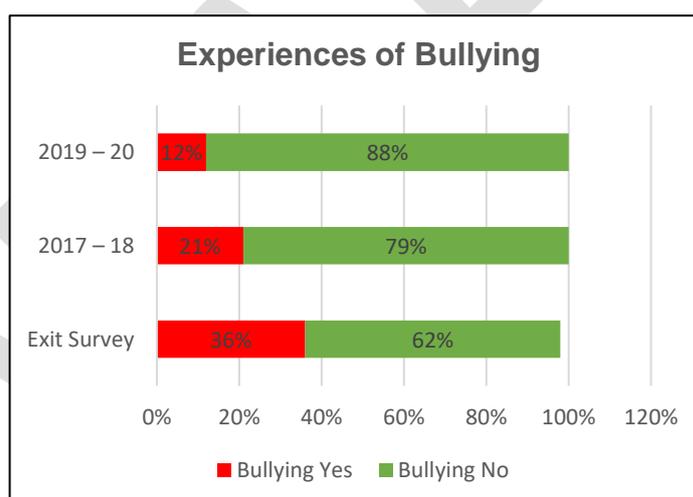


Chart 7

### 3.1.2 Discrimination

In the 2019-2020 Survey there was a number (6) or proportion (15%) of respondents who experienced discriminatory behaviours. **Chart 8** indicates that this figure is comparatively lower than the number or proportion of those who experienced discrimination in the Exit Survey and the 2017-18 Survey

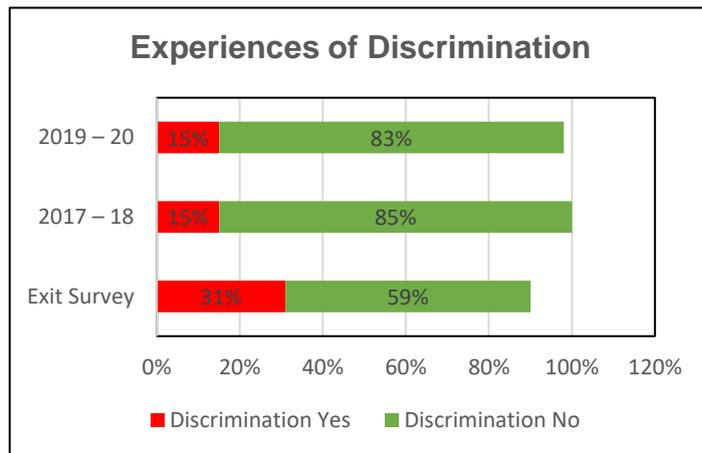


Chart 8

### 3.1.3 Other Unacceptable Behaviours

The comparative data in **Chart 9** shows that the percentage of respondents who experienced various types of unacceptable behaviours has declined since the Exit Survey and the 2017-18 Survey.

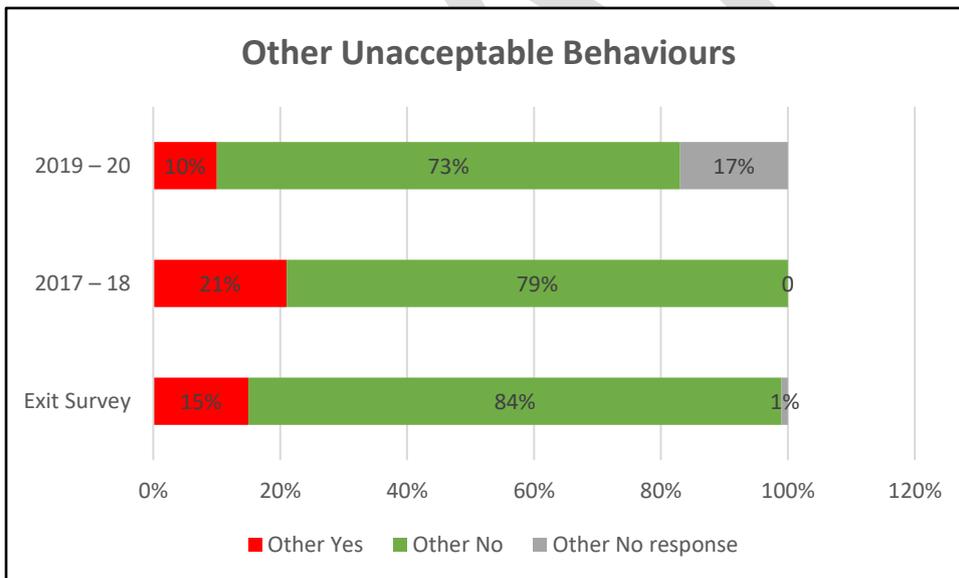


Chart 9

Those respondents (4) who responded that they had experienced other types of unacceptable behaviours have described these as:

- Patronising and condensing attitudes, dismissing concerns
- Very friendly
- Voicemail left by one Member and formal complaint being considered Heckling and goading at council meetings. Although this is accepted as normal within

political environments it is not a respectful way to behave and engage with your peers

It must be noted that there is a significant number of respondents (7) who have not responded to either confirm or deny whether they have experienced any “Other” types of unacceptable behaviours. This may suggest that these respondents were reluctant to disclose whether they experienced what is regarded as unacceptable behaviour. Furthermore, this may also suggest that there are respondents who are unclear or unsure of what constitutes or could be regarded as unacceptable behaviours.

### 3.2 Experience of Unacceptable Behaviours by Gender Type

#### 3.2.1 Female Respondents experience of Unacceptable Behaviours

The results from the Exit and 2017-18 Surveys show that majority of the female respondent’s experienced bullying, discrimination, or other unacceptable behaviour.

In the Exit Survey, as many as 10 (71%) female respondents experienced such incidents. There is a slightly smaller proportion (56%) of female respondents in the 2017-18 Survey who had similar experiences. Although the figures are lower in the 2017-18 Survey, the results from both surveys would suggest that most female Elected Members have experienced either bullying, discrimination or other unacceptable behaviours. See **Chart 10** below.

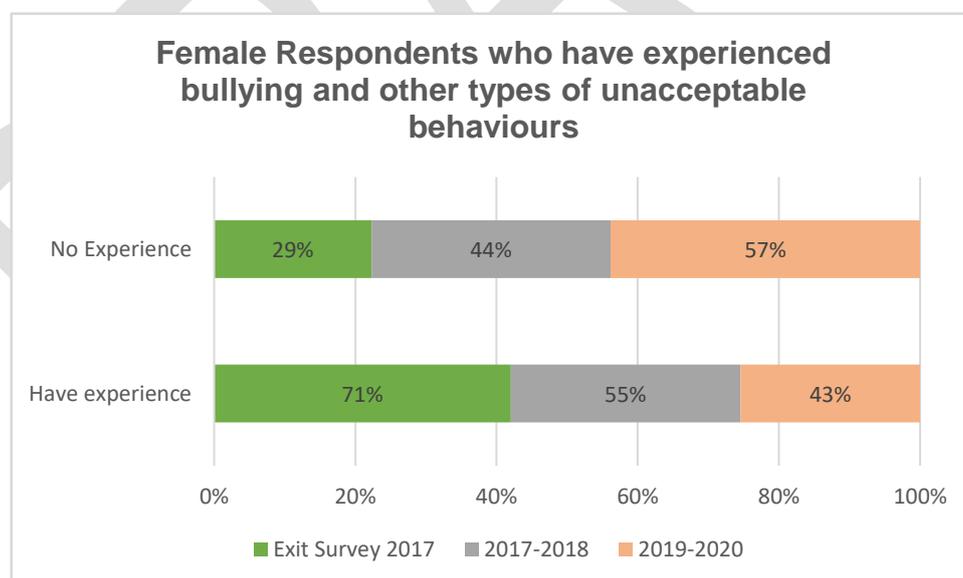


Chart 10

The 2019-20 survey results show that a significant proportion of female respondents (43%) had experienced some form of unacceptable behaviour including bullying or discrimination. Compared to the previous 2017-18 Survey (5), there is a slightly higher total number of female respondents (6) who experienced these behaviours. This number is, however, a much lower figure when compared to the results in the Exit Survey. It should be noted that the percentage of female respondents who have

experienced unacceptable behaviours has reduced from 55% in 2017-18 to 43% in 2019-20.

### 3.2.3 Incidents Experienced by Female Respondents

**Chart 11** shows that of the 6 female respondents who experienced unacceptable behaviours, most of them (67%) indicated that these were discriminatory behaviours. Half of the female respondent (s) also indicated that they had experienced bullying. One respondent (17%) stated that she had experienced “Other” unacceptable behaviour and had described this as “heckling and goading at Council meeting” which she regarded as a disrespectful way of behaving and engaging with peers.

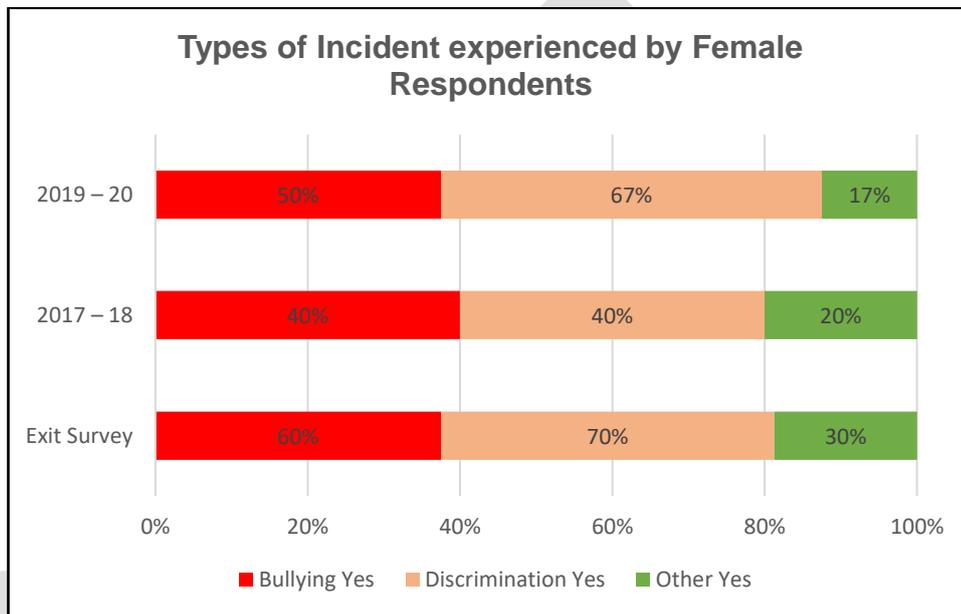


Chart 11

### 3.2.4 Male Respondents Experience of Unacceptable Behaviours.

The results in Chart 12 show that half of male respondents (50%) in the Exit Survey experienced bullying or other unacceptable behaviours. There is a smaller proportion of male respondents (35%) in the 2017-18 Survey who experienced similar incidents.

The 2019-20 survey results show that there is a smaller proportion (20%) of male respondents who experienced some form of unacceptable behaviours.

A comparison of the findings from the various surveys show a decreasing trend in the number and proportion of male respondents who “experienced” unacceptable behaviours. The results show that during the Exit Survey as many as 50% experienced these behaviours with the figures declining to 35% in the 2017-18 Survey, and have decreased further to 20% in the 2019-20 Survey.

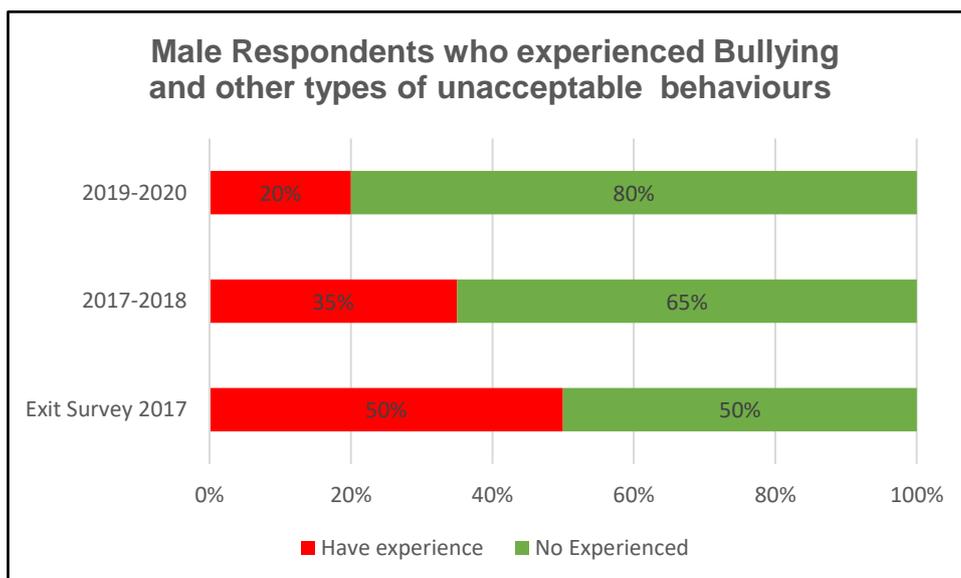


Chart 12

### 3.2.5 Incidents Experienced by Male Respondents

**Chart 13** illustrates the percentage and distribution of male respondents who have experienced various types of unacceptable behaviours.

The results show that in the Exit Survey a greater number and proportion of male respondents experienced bullying and other unacceptable behaviours compared with those in the 2017-18 Survey.

Of the 5 male respondents who experienced unacceptable behaviours, only 1 (20%) indicated that they had experienced bullying, whilst 2 (40%) experienced some form of discriminatory behaviours. Three of the 5 male respondents (60%) experienced other forms of unacceptable behaviours. The “other” unacceptable behaviours that were cited by these male respondents included: “Patronising and condensing attitudes, dismissing concerns”; unwelcome attention that is referred to as “very friendly” and unwelcome/unacceptable telephone messages.

A comparison of the 2019-20 results with the findings from previous years show that the total number and percentage of male respondents who had experienced bullying and discriminatory behaviours had declined.

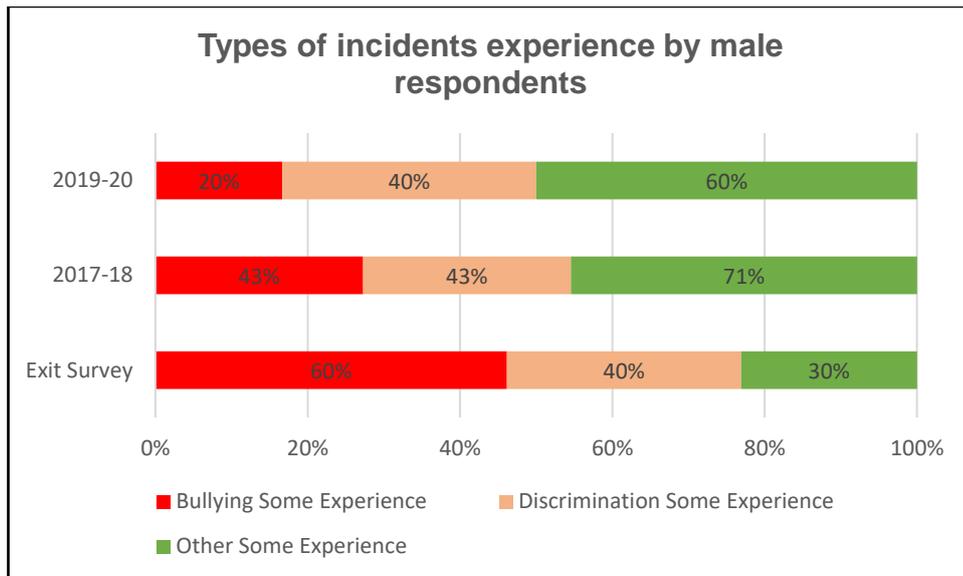


Chart 13

### 3.3 Experience of Unacceptable Behaviours by Age Group

#### 3.3.1 Over 55's Experience of Unacceptable Behaviours

Chart 14 illustrates the distribution of respondents and their experience by age group.

The results from the previous surveys shows that the majority of respondents over the age of 55 had experienced an incident of bullying, discrimination, or other unacceptable behaviour. In the Exit survey, this accounts for 72% of respondents and for 54% in the 2017-18 Survey.

The 2019-20 Survey result show that less than a third of respondents over the age of 55 experienced some form of “unacceptable behaviours”.

A comparison with the survey results from previous years the number and percentage of the over 55 respondents who have experienced unacceptable behaviours has been declining. In the Exit Survey as many as 72% had experienced these behaviours, but this figure had decreased to 54% in the 2017-18 Survey and declined further to 27% this in the latest survey.

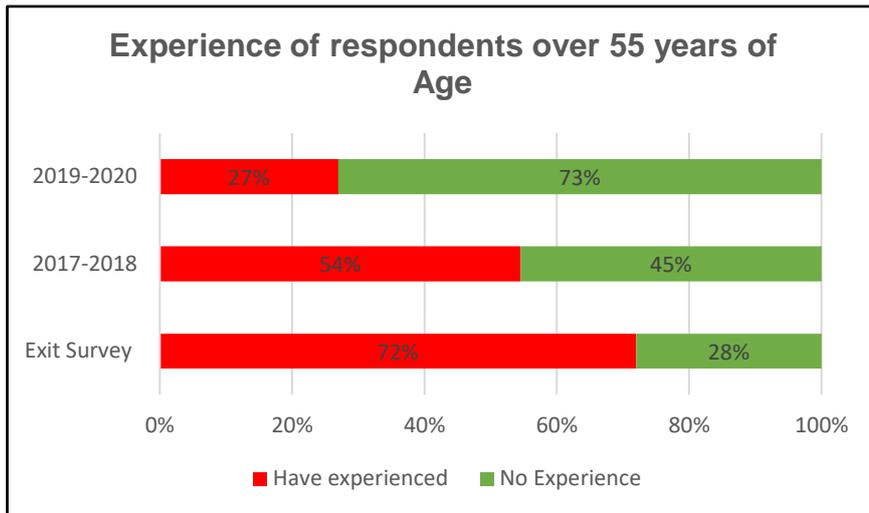


Chart 14

### 3.3.2 Incidents Experienced by over 55 year olds

**Chart 15** shows that in the 2017-18 Survey a smaller number and proportion of male respondents over 55 years old had experienced bullying or unacceptable behaviours.

Of the 4 respondents aged over 55, only 2 (50%) of them confirmed that they experienced bullying whilst two (50%) respondents experienced discriminatory behaviours. One of these respondents also indicated that they had experienced “other” unacceptable behaviours and had described this as “unacceptable telephone messages”.

The results of the 2019-20 survey showed that the number and percentage of the aged over 55 respondents who experienced these behaviours were generally lower when compared to the survey findings in previous years.

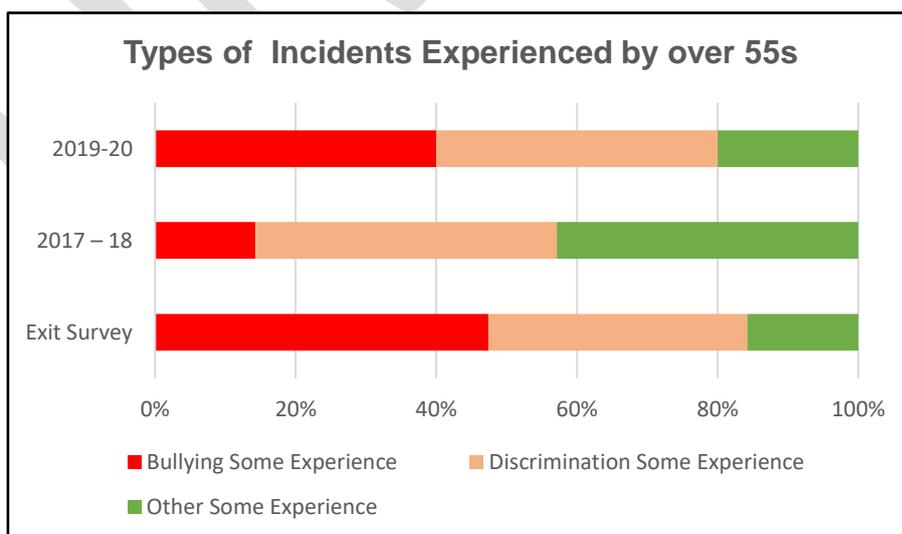


Chart 15

### 3.3.3 Under-55 year olds Experience of Incidents of Unacceptable Behaviours

**Chart 16** shows the number and proportion of respondents in Exit Survey (36%) and 2017-18 Survey (33%) under 55 years of age who had experienced bullying and other unacceptable behaviours were not hugely dissimilar.

The results of the 2019-20 survey show that a third (33%) of respondents aged under 55 years had experienced some form of unacceptable behaviours.

The total number of under 55 respondents in the 2019-20 Survey who experienced these behaviours is slightly higher compared to those in previous years. However when analysed as a proportion of total respondents, the percentage under 55 respondents this year (33%) who have had these experiences is the same (33%) as the in the previous 2017-18 Survey.

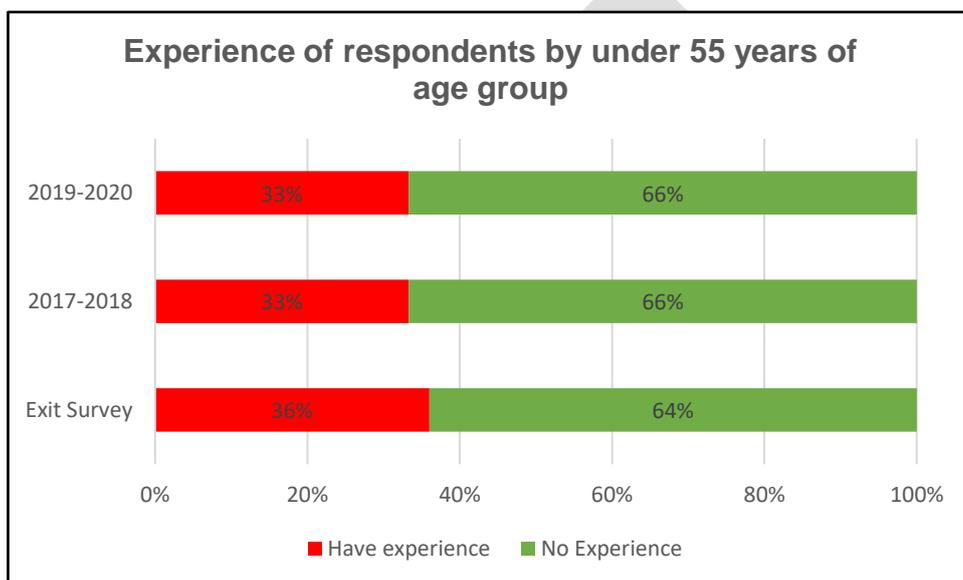


Chart 16

### 3.3.4 Types of incidents experienced by under-55's

In **Chart 17**, of the 7 respondents aged under 55 in the 2019-20 Survey who had experienced unacceptable behaviours, 2 (29%) experienced bullying whilst 4 others (57%) experienced discriminatory behaviours. Three respondents (43%) stated that they had experienced "other" unacceptable behaviours. These included: sexist language; patronising condescending behaviours; unwanted attention/friendliness and heckling and goading at Council meetings.

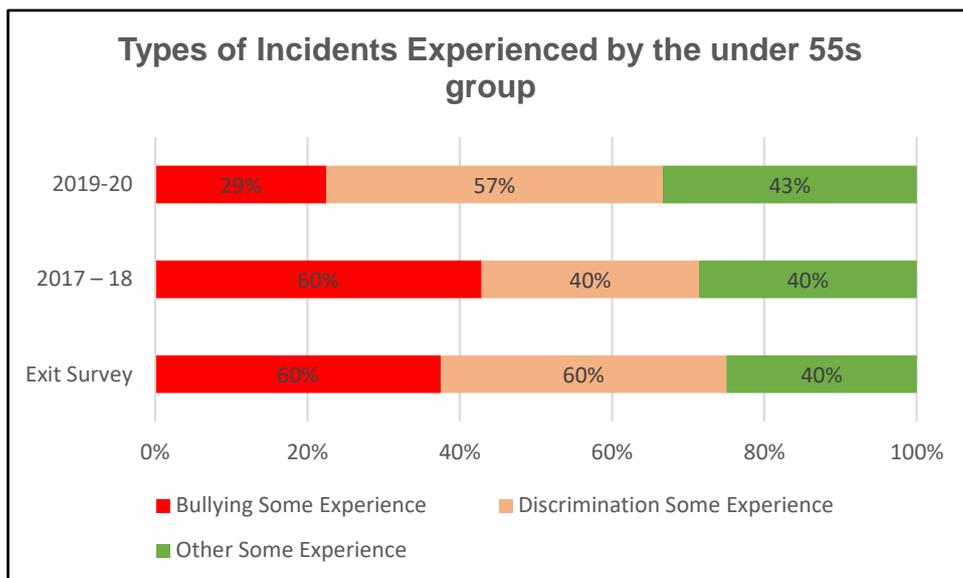


Chart 17.

### 3.4 Reporting of Experienced Incidents

#### 3.4.1 Reporting Experience of Unacceptable Behaviours

When asked whether they had reported the incidents which they had witnessed or experienced, the results **Chart 18** show that the majority of respondents in both the Exit Survey (56%) and the 2017-18 Survey (in the range of 73% - 85%) did not report these incidents.

Compared to the Exit Survey, there was a greater proportion of respondents to the 2017-18 Survey who did not report the incidents that they experienced (73% of respondents) or witnessed (85% of respondents).

The results of the 2019-2020 Survey show that more than half of respondents (58%) did not report their experience of unacceptable behaviours. These figures are quite significant as this suggests that more respondents have chosen not to report these incidents. When compared with the results of the 2017-18 Survey a marked improvement (27% in 2017/18, increasing to 42% in 2020) in the percentage of respondents who reported their experiences of unacceptable behaviours.

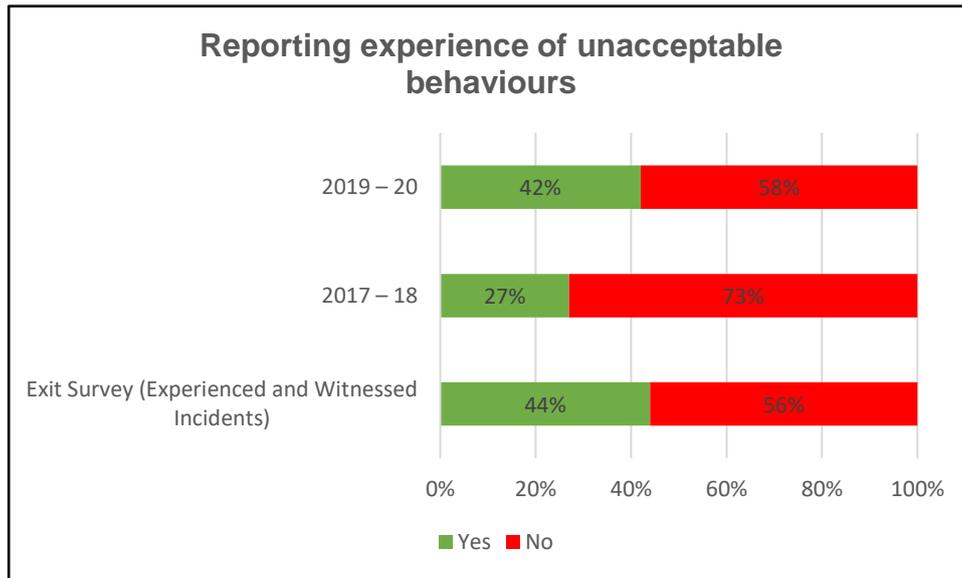


Chart 18

### 3.4.2 Reason Why Experience was Not Reported

- It involved a member of the public.
- It was in full council - in my view sexist language - and I intend to complain but as it was witnessed no need to report as such
- Anticipate that the response will just be "that's politics".
- Why do you think? Party on Party issues are never dealt with properly I dealt with personally
- Not sure
- Doesn't actually break any code of conduct.

### 3.4.3 To Whom the Incident was Reported

When asked to whom did they report the incident that they had experienced, most respondents in the Exit Survey and the 2017-18 Survey stated that they reported this to the Monitoring Officer and/or the Group Whip.

The results from the 2017-18 Survey also showed that only 2 respondents who experienced an incident indicated that they had reported this to the Group Whip. Other respondents in this category reported their experience to the Monitoring Officer (1 respondent) and to an undisclosed person (1 respondent).

In **Chart 18**, a total of 5 respondents to the 2019-2020 Survey confirmed reporting incidents that they had experienced. The results in **Chart 19** showed that most of these respondents (60%) reported the incident they had experienced to Monitoring officer. Another respondent (20%) reported it to their Group Leader while one (20%) of the respondents did not disclose to whom they reported the incident they experienced.

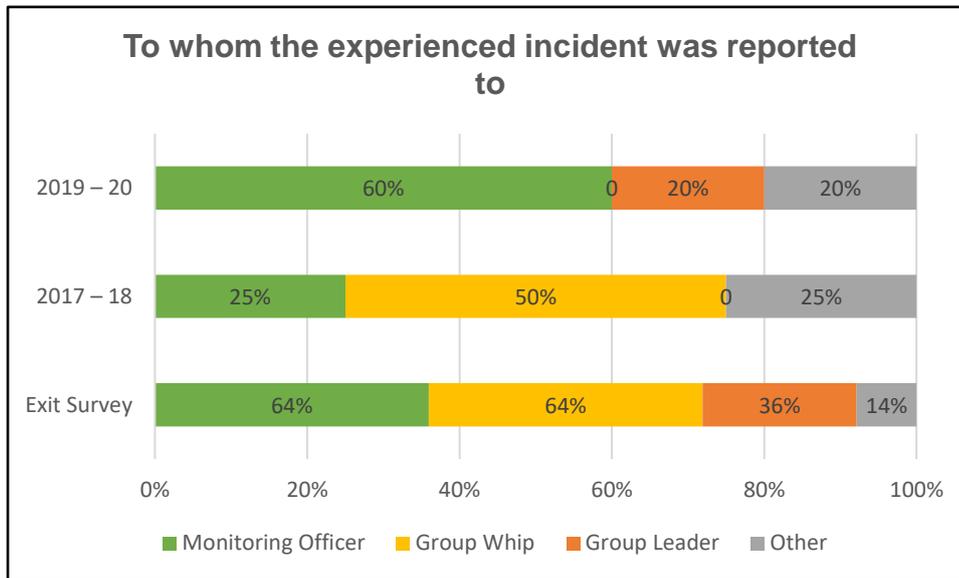


Chart 19

### 3.4.3 Satisfaction on how the Incident(s) was Dealt with

**Chart 20** shows that the four respondents in the 2017-18 Survey who experienced an incident had different views on their satisfaction of how the incident was dealt with.

The respondent (1) who reported to the Monitoring Officer was satisfied with how the incident was dealt with. Of the (2) respondents who reported to their Group Whip, one stated that they were not satisfied with how the incident was dealt with while the other respondent did not provide any response. It must be noted that the number of respondents who have reported an incident as with the number of respondents who confirmed their satisfaction of how this was dealt with are very small.

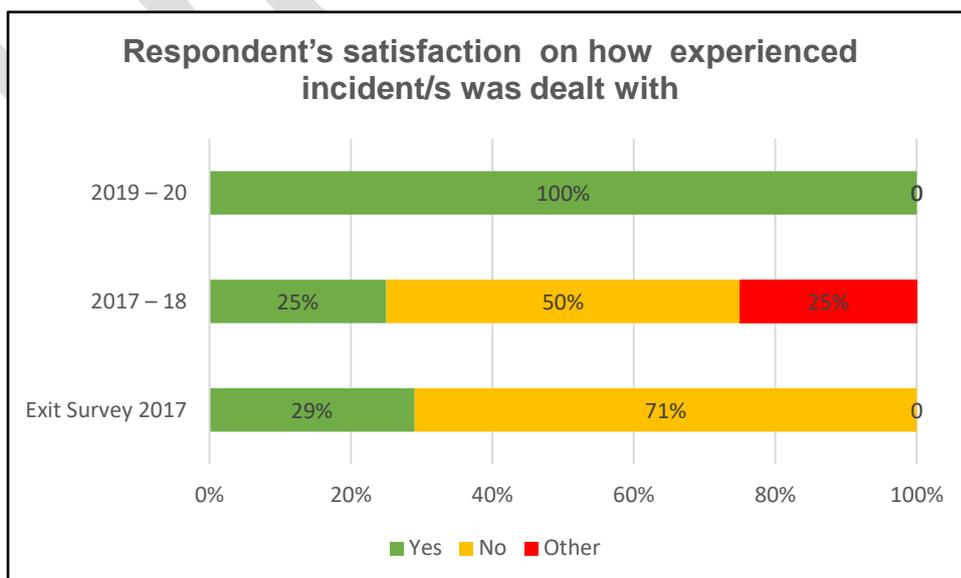


Chart 20

The results of the 2019-20 Survey show that a total of 4 respondents reported the incident they had experienced. Three (3) reported the incident to the Monitoring Officer and one (1) to a Group Leader, resulting in all of these respondents being satisfied with how this was dealt with.

#### 4. Respondents who Witnessed Unacceptable Behaviours

**Chart 21** shows that of the 18 respondents who confirmed witnessing unacceptable behaviours, 8 respondents (44%) had witnessed bullying, while 9 respondents (50%) witnessed discriminatory behaviours. A total 10 (55%) also specified “other” unacceptable behaviours that they had witnessed.

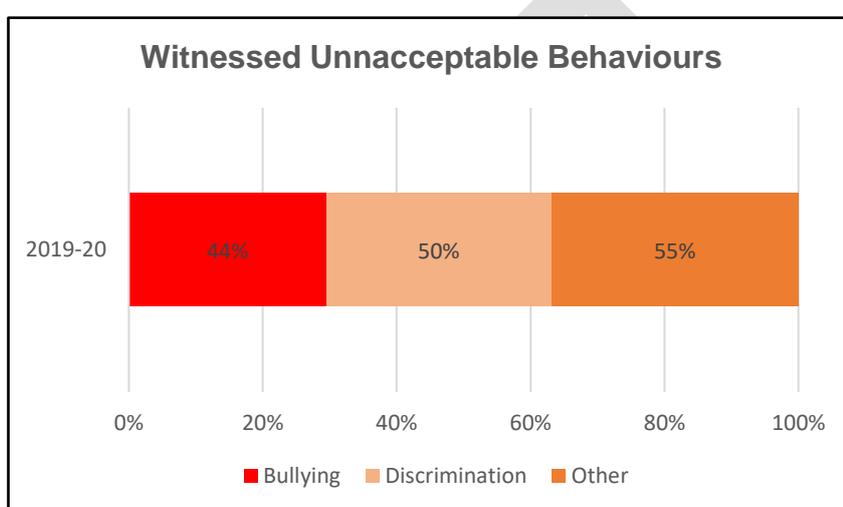


Chart 21

The results of the 2019-20 survey show that nearly half of respondents (45%) had witnessed some form of unacceptable behaviours. Only 1 respondent did not provide a response.

A comparison in Chart 22a and 22b shows that there were a greater number of respondents who reported that they have witnessed various unacceptable behaviours compared to those who had experienced unacceptable behaviours. A total of 12 female and male respondents (30%) had experienced unacceptable behaviours. In contrast to a total of 18 respondents (45%) who indicated that they had witnessed unacceptable behaviours.

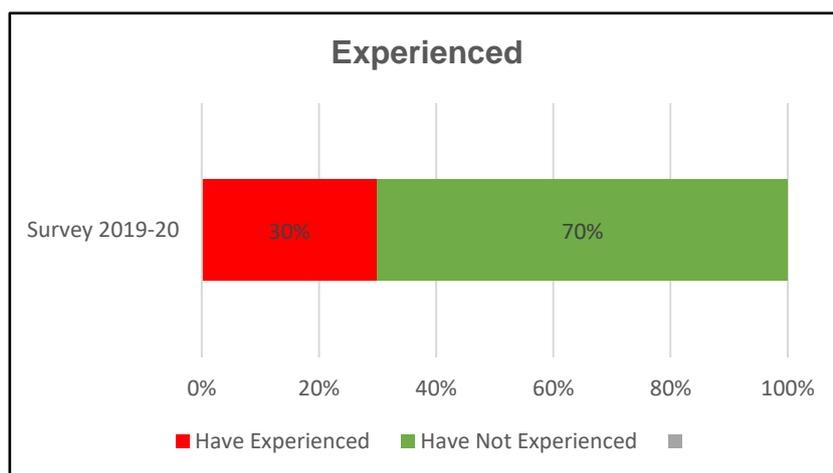


Chart 22a

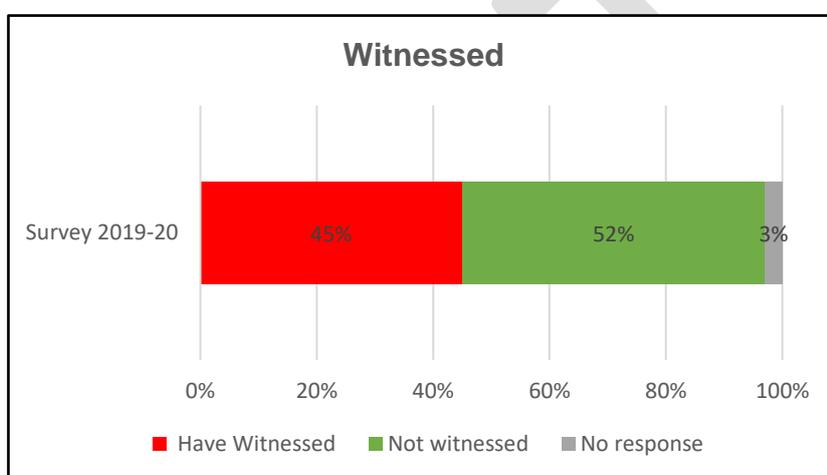


Chart 22b

#### 4.1. Other Types of Witnessed incidents:

- Instigated by an external party
- Treatment of backbench members, particularly from cabinet members in the chamber.
- Occasionally some slightly poor behaviours in council and extremely poor behaviour by "Councillor *Named*".
- Some general rudeness and shouting In meetings
- I've watched the "*the individual*" in action often at council meetings
- Hearing Panel 14/1/2020
- Councillors who make their point either in meetings or on line in a bullying and aggressive way Councillors who say and do things without thinking of the consequences to other councillors, staff, residents and service users
- General comments made in committee and council
- Hectoring in Council meetings.

## 4.2 Reporting of Witnessed Unacceptable Behaviours

The results in the 2019-20 Survey illustrated in **Chart 23** that only a small number of respondents (2) who had witnessed unacceptable behaviours reported these incidents.

**Chart 22** shows that a total of 18 individuals confirmed that they had witnessed various types of unacceptable behaviours, however only 2 of them had reported the incidents that they had witnessed. There were 6 respondents who did not report the incidents that they had witnessed and an additional 10 others who did not respond to this question. This suggests that more work needs to be done to establish the reasons why they are reluctant to report these incidents and to encourage Members to report any unacceptable behaviours that they witness.

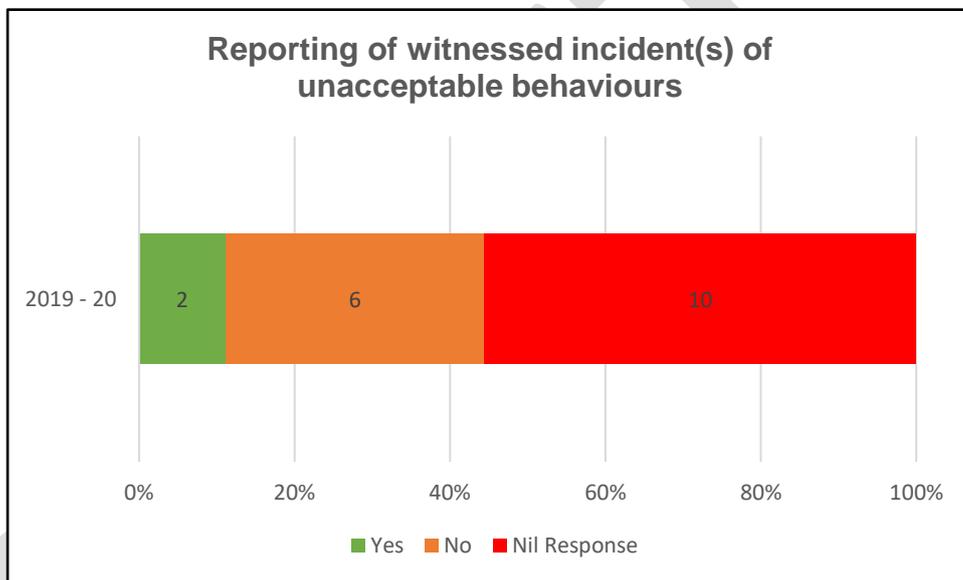


Chart 23

## 4.3 Reasons For Not Reporting Witnessed Incidents

Respondents in the 2019-20 survey have provided the following reasons for not reporting the incidents they witnessed

- It was at a public meeting and was recorded. Just answered!
- Not always possible None witnessed
- Same as my previous answer
- Most were being addressed by others and other incidents the victim did not want to take it further I don't want

#### 4.4 To Whom the Witnessed Incident was Reported To

Of the 18 respondents in **Chart 22b** who witnessed unacceptable behaviours only one (1) reported this to the Monitoring Officer as shown in **Chart 24**. The other respondent did not indicate to whom they reported the incident they had witnessed.

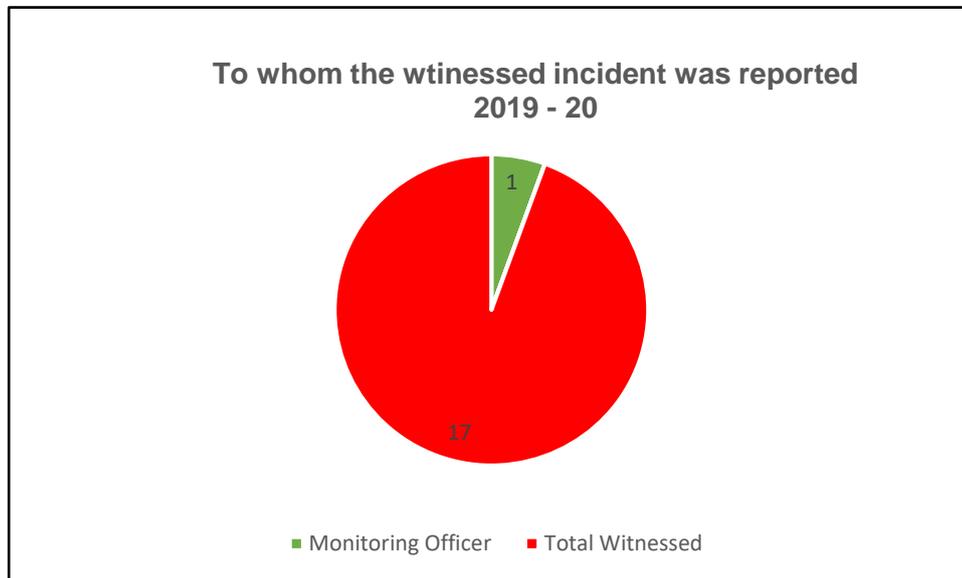


Chart 24

#### 4.5 Satisfaction of How Witnessed Incident Was Dealt With

The respondent who reported the unacceptable behaviour they have witnessed to the Monitoring Officer was satisfied with how it was dealt with.

#### 5. What should be done to prevent bullying and discriminatory behaviours

- Educate individuals as to what are classified as discriminatory views and actions. Continue the status quo that seems to work very well
- Be much stricter on those who exhibit bullying behaviour. Training for those identified displaying those kinds of behaviours.
- I think sexist, patronising or bullying behaviour in the chamber should be called out as it happens and the person asked to withdraw it. Groups should be challenging that kind of behaviour with their own members too
- Educate politicians that politics does not have to be a game of personal insults suspend offenders
- Zero tolerance. Zero tolerance
- Those who do breach behaviours should be quickly told they have
- Learn how to respond appropriately & remember that the perpetrator will not change With the consent of the complainant, name and shame
- You can protect officers as employees but you can't protect councillors as they are politicians, and the rules of normal decency do not apply to politicians
- Have clear guide lines and if they cross that line then ban them from those meetings until they apologise.

- Effective sanctions and swifter S&E response
- The council should engage political parties and other interested parties in the code of conduct and the principles of public life to ensure that any prospective candidate is aware of these prior to being approved or selected.
- Some could have been reported but if it is dealt with and does not reoccur I am satisfied.
- It is helpful to reissue guidance so that new members of the council are aware of the policy.
- Have a workshop on what constitutes bullying and unacceptable behaviour as I'm not sure people necessarily understand what some people class as such behaviour.
- Good quality awareness training that specifically looks at types of discriminatory behaviour and how it manifests itself.
- Members training and protocol needs to be mandatory Effective chairing.
- Training on respectful behaviours and expectations of behaviour. Calling out any inappropriate behaviour. Over time I think a culture change is needed to address dis-respectful behaviours between political members (this is widely accepted as normal in a political environment). Wider structural changes are needed throughout the council to address all forms of inequality - this should be part of every departments role, senior managers portfolio to normalise discussion on these issues, and address
- Code of conduct should be adhered too

**COMPARATIVE ELECTED MEMBER ANNUAL SURVEY DATA FOR STANDARDS AND ETHICS**

**Monitoring Officer Responses to “Free Text” Comments**

<b>Comments</b>	<b>Monitoring Officer Responses</b>
Patronising and condensing attitudes, dismissing concerns	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Very friendly	
Voicemail left by one Member and formal complaint being considered	
Heckling and goading at council meetings. Although this is accepted as normal within political environments it is not a respectful way to behave and engage with your peers	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
It involved a member of the public	
It was in full council - in my view sexist language - and I intend to complain but as it was witnessed no need to report as such	The Monitoring Officer often raises unacceptable behaviour with members when she has witnessed it, but without a formal complaint it is not formally recorded and no formal action is taken.
Anticipate that the response will just be "that's politics".	If the behaviour has been in breach of the Code of Conduct, it will not be ignored as “that’s politics”. However robust challenge and criticism of policies is not a breach of the code of conduct in the cut and thrust of debate in the Council Chamber, but personal attacks are not acceptable.
Why do you think? Party on Party issues are never dealt with properly I dealt with personally	
Not sure	
Doesn't actually break any code of conduct	
Instigated by external party	

Comments	Monitoring Officer Responses
Treatment of backbench members, particularly from cabinet members in the chamber	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Occasionally some slightly poor behaviours in council and extremely poor behaviour by Cllr <i>Named</i> in particular at his Standards hearing.	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
Some general rudeness and shouting In meetings	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
I've watched " <i>the Individual</i> " in action often at Council meetings	
Hearing Panel 14/1/2020	
Councillors who make their point either in meetings or on line in a bullying and aggressive way Councillors who say and do things without thinking of the consequences to other councillors, staff, residents and service users	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
General comments made in committee and council heckling in Council meetings	All members are asked to challenge these at the time if they witness them and feel able to do so. They are also asked to report them to the Monitoring Officer who will take action if there has been a potential breach of the Code of Conduct.
It was at a public meeting and was recorded	
Not always possible None witnessed	
same as my previous answer	
Most were being addressed by others and other incidents the victim did not want to take it further	

Comments	Monitoring Officer Responses
Educate individuals as to what are classified as discriminatory views and actions. Continue the status quo that seems to work very well	
Be much stricter on those who exhibit bullying behaviour Training for those identified displaying those kinds of behaviours.	If formal complaints are made and a Cllr is found to have been in breach of the Code of Conduct by bullying or failing to respect others, an elected member can be asked to attend a training course. Otherwise training on the Code of Conduct is compulsory and provided for all Cllrs.
I think sexist, patronising or bullying behaviour in the chamber should be called out as it happens and the person asked to withdraw it. Groups should be challenging that kind of behaviour with their own members too	The Lord Mayor chairs the meeting robustly to try to prevent this type of behaviour. Challenge and “behind the scenes” action from Group Whips and Group Leaders is encouraged and the Monitoring Officer will provide support for this if requested. For example, Groups could withdraw the group whip and membership of committee places for a period of time.
Educate politicians that politics does not have to be a game of personal insults suspend offenders	Code of Conduct training does cover this point. If formal complaints are made in relation to serious or repeat breaches of the Code of Conduct and a Hearing Panel finds that there has been a breach, the Panel may suspend a Cllr. Or if a member behaves improperly or offensively in a meeting, the Chair may move that the member be not heard, or that the member leaves the meeting. However, this can be difficult to enforce.
Zero tolerance. Zero tolerance	
Those who do breach behaviours should be quickly told they have	
Learn how to respond appropriately & remember that the perpetrator will not change With the consent of the complainant, name and shame	The Chair of a meeting, Group Leaders, whips, other members, may call out unacceptable behaviour.
You can protect officers as employees but you can't protect councillors as they are politicians, and the rules of normal decency do not apply to politicians	Principles of Standards in public life do apply to Cllrs and politicians and we should not tolerate unacceptable behaviours.

Comments	Monitoring Officer Responses
<p>Have clear guide lines and if they cross that line then ban them from those meetings until they apologise.</p>	<p>The Code of Conduct for Cllrs is clear, and breaches of the Code have to be dealt with in accordance with an agreed process. Unless a member is suspended as a result of that process, or the group decides to withdraw the group whip or a committee place, there is no power to ban a Councillor from a meeting, and even then they may attend as a member of the public to observe (unless they have declared a personal and prejudicial interest).</p>
<p>Effective sanctions and swifter S&amp;E response</p>	<p>The process for dealing with complaints is set out and includes having an investigation and following a prehearing process giving the Cllr complained of and the complainant the opportunity to put forward their case. Hearings then need to be set up taking into account the availability of witnesses. Unfortunately it is not always possible to progress smoothly and swiftly through the process.</p>
<p>The council should engage political parties and other interested parties in the code of conduct and the principles of public life to ensure that any prospective candidate is aware of these prior to being approved or selected.</p>	<p>The Monitoring Officer did offer to the Group Whips to hold seminars for would be Cllrs /candidates making them aware of the help available and requirements made of councillors, including the Code of Conduct. The Groups did not take this up.</p>
<p>Some could have been reported but if it is dealt with and does not reoccur I am satisfied.</p>	
<p>It is helpful to reissue guidance so that new members of the council are aware of the policy.</p>	<p>All newly elected members attend a training session with the Council's Monitoring Officer on the member Code of Conduct and Council decision making requirements.</p>
<p>Have a workshop on what constitutes bullying and unacceptable behaviour as I'm not sure people necessarily understand what some people class as such behaviour.</p>	<p>A refresher session on Council decision making and the Code of Conduct is being planned.</p>
<p>Good quality awareness training that specifically looks at types of discriminatory behaviour and how it manifests itself.</p>	

<b>Comments</b>	<b>Monitoring Officer Responses</b>
Members training and protocol needs to be mandatory Effective chairing.	<p>The member Code of Conduct and training on it is mandatory.</p> <p>A Member development session has recently been held on chairing skills.</p>
<p>Training on respectful behaviours and expectations of behaviour. Calling out any inappropriate behaviour. Over time I think a culture change is needed to address disrespectful behaviours between political members (this is widely accepted as normal in a political environment). Wider structural changes are needed throughout the council to address all forms of inequality - this should be part of every departments role, senior managers portfolio to normalise discussion on these issues, and address</p>	
Code of conduct should be adhered too	

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# CYNGOR CAERDYDD CARDIFF COUNCIL



**STANDARDS AND ETHICS COMMITTEE: 30<sup>th</sup> September 2020**

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## REPORT OF THE DEPUTY MONITORING OFFICER

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### SENIOR OFFICERS' PERSONAL INTERESTS

#### Reason for this Report

1. To enable the Committee to review the Council's arrangements in relation to Senior Officers' personal interests disclosures.

#### Background

2. All Council employees are obliged, under the Employees' Code of Conduct, to ensure that their private interests do not conflict with their public duties, and to comply with the Council's rules on the registration and declaration of financial and non-financial interests (paragraph 8(1) of the Code).
3. The Standards and Ethics Committee has responsibility to advise the Council on this issue, pursuant to paragraph (c) of its approved terms of reference:
 

“(c) To advise the Council on the effective implementation of [its Ethical] Code including such matters as the training of Members and employees on the Code's application.”
4. The Council's policy on Officers' Personal Interests and Secondary Employment (“the Policy”), adopted in February 2015, says the Monitoring Officer is responsible for reviewing the policy, in consultation with the Standards and Ethics Committee, to ensure it is effective.
5. At its meeting in March 2019, the Committee reviewed the Council's rules and resolved to recommend publication of a Register of Senior Officers' Outside Business Interests with effect from April 2019. This recommendation has been implemented. The information can be found on the Council's Register page of its Website: <https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/registers/Pages/default.aspx>
6. Members of the Committee also expressed the view that Senior Officers should be subject to the same disclosure requirements that apply to elected Members, as they exercise significant decision-making powers. Specifically, Senior Officers should be required to publicly disclose Trade Union membership and home addresses and this information should be published on the Council's website. It was agreed that the Committee should receive a further report in this regard.

7. A further report was brought to Committee on 11<sup>th</sup> December 2019 by the Deputy Monitoring Officer who recommended that the Committee make no changes to the current disclosure requirements for Senior Officers' Personal Interests on employment law and data protection grounds.
8. The Committee accepted this recommendation, and suggested instead, that the information contained in The Senior Officers' Personal Interests Declaration Form (**Appendix A**), save for information relating to a Senior Officer's Trade Union membership status and home address – should be brought to the Committee annually for them to review.
9. It was agreed that the Deputy Monitoring Officer would consult with the Senior Management Team on this proposal and that the Committee should receive a further report in this regard.

### Issues

10. The Council should not interfere unnecessarily with the private lives of its staff, but it needs to have effective arrangements in place to ensure Council staff carry out their duties in a fair and unbiased way, without being influenced by their own personal interests.

### Current disclosure requirements

11. The Council's Policy on Officers' Personal Interests and Secondary Employment (**Appendix B**) aims to provide rules and guidance to help protect the Council and its staff from criticism, misunderstanding and allegations of impropriety; and to ensure that any conflicts of interest are managed effectively and transparently.
12. Under the Policy, Senior Officers (defined as Chief Officers, Assistant Directors and above, in keeping with the definition of Chief Officers under the Localism Act 2011 and reflected in the Council's Pay Policy) are subject to additional disclosure requirements in the interests of transparency and accountability. They are required to disclose any:
  - a) Outside business interests – this requirement is imposed in employment contracts and, in accordance with the Information Commissioner's Office model Publication Scheme, a register of such interests is published on the Council's website;
  - b) Conflicts of interest between their personal interests and duties to the Council – this duty is imposed in the statutory Employees Code of Conduct (paragraph 8);
  - c) Financial interests in a Council contract (existing or proposed) – this is a statutory requirement imposed by section 117 of the Local Government Act 1972; and
  - d) Details of any company or body owned or controlled by the Senior Officer or their spouse or partner or any of their children or dependents (this is an audit requirement) in relation to 'related party' disclosures for the Council's

Statement of Accounts, imposed by the CIPFA Code of Practice and section 21(2) of the Local Government Act 2003.

13. The Senior Officers' Personal Interests Declaration Forms are held by the Monitoring Officer and officers are asked to update their declarations annually.
14. The Council's Policy provides detailed guidance on what constitutes a conflict of interest and which must be avoided or disclosed. This includes the requirement for Officers to:
  - i. Disclose any apparent conflicts as well as actual conflicts of interest.
  - ii. Seek advice from their line manager in the case of any doubt about a possible conflict of interest.
  - iii. Include the personal interests of close family and friends when considering if they have a potential conflict of interests
  - iv. Disclose any links with (i) Council suppliers or contractors (or those tendering for a Council contract); (ii) any organisations which campaign, lobby or seek to influence the Council's policies; and (iii) any organisation applying for Council grants, if the officer is involved in the grant allocation process.
  - v. Disclose any personal interest in a matter being dealt with at the Council (eg. regulatory applications) by anyone with whom the Officer has any connection or personal relationship.

#### The Law

15. The rules governing officers' personal interests are set out above and reflected in the Council's current Policy, as noted in paragraphs 12 and 14, above.

#### Employment issues

16. Senior Officers have been consulted, through discussions at Senior Management Team, about the information contained in The Senior Officers' Personal Interests Declaration Form being made available to the Committee.
17. Senior Officers have raised no objections on the basis that Officer's home address and information relating to their trade union membership status be excluded from the information provided to the Committee.

#### Data protection / privacy issues

18. Data Protection laws (the General Data Protection Regulation 2016, 'GDPR', and Data Protection Act 2018) control the use of personal information (any information about living identifiable individuals). Information about officers' home addresses and membership of other organisations is 'personal data' – meaning it may only be processed, for specified purposes, if there is a lawful basis for the Council to do so.

19. Where there is a statutory requirement for officers to disclose certain personal interests (eg. interests in Council contracts and 'related party disclosures' required under audit rules), the legal obligation provides the GDPR lawful basis for the Council's processing of this information. GDPR also allows the Council to process certain personal information about its staff (home address, next of kin, bank details etc) in order to discharge its employment rights and duties under its contracts of employment. However, this information may not be used for other purposes unless the Council can demonstrate it has a lawful basis to do so.

### **Legal Implications**

20. As the Monitoring Officer is one of the Council's Senior Officers, she has a conflict of interest in this matter, so this report and the legal advice have been provided by the Deputy Monitoring Officer.
21. Whilst there is no legal requirement for Senior Officer's to disclose their interests to anyone other than the Monitoring Officer in accordance with the Policy outlined in paragraph 12; the Deputy Monitoring Officer has advised that the Senior Management Team have been consulted, and are in agreement with the proposal that the information contained in The Senior Officers' Personal Interests Declaration Form (save for information relating to Trade Union membership status and officer home address) be brought to the Committee on an annual basis.
22. The information contained within The Senior Officers' Personal Interests Declaration Form is 'exempt information' as defined by Paragraph 12 of Schedule 12A, Part 4 of the Local Government Act 1972, i.e. 'information relating to a particular individual.' Given that the Council's Policy already provides for the scrutiny of Senior Officer's interests by the Monitoring Officer who has a statutory duty to uphold the standards of officers, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Deputy Monitoring Officer therefore advises that the public should be excluded when this information is brought to Committee.
23. Members may wish to note that the Monitoring Officer is authorised to make minor amendments to ensure the effectiveness of the Policy, but any substantive changes would require further consultation with staff and Trade Unions and then a report to Cabinet for approval.
24. Other relevant legal provisions are set out in the body of the report.

### **Financial Implications**

25. There are no direct financial implications arising from this report.

## **RECOMMENDATIONS**

The Committee is recommended to:

1. Agree to recommend that the information contained in the The Senior Officers' Personal Interests Declaration Form, except for information relating to Trade Union membership status and the officer's home address, is brought to the Committee to review on an annual basis as an exempt report.
2. Note that minor amendments to the Policy may be agreed by the Monitoring Officer, but any substantive amendments will require consultation with staff and Trade Unions, and approval by Cabinet.

**James Williams**

**Operational Manager, Litigation & Deputy Monitoring Officer**

24<sup>th</sup> September 2020

## **Appendices**

Appendix A Senior Officers Personal Interests Declaration Form

Appendix B Officers' Personal Interests and Secondary Employment Policy

## **Background Papers**

1. Standards and Ethics Committee report 'Officers' Personal Interests and Secondary Employment Policy', March 2019

2. Standards and Ethics Committee report 'Senior Officers' Personal Interests, December 2019

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**SENIOR OFFICERS' PERSONAL INTERESTS DECLARATION FORM**

**(TO BE COMPLETED BY ALL ASSISTANT DIRECTORS, CHIEF OFFICERS & ABOVE)**

<b>Name:</b>	
<b>Post Title:</b>	

**SECTION A. Your Other Business Interests or Appointments**

Please list all outside business (trade or professional) interests or appointments, including any Council appointments to outside bodies. Please note, it is a condition of your contract of employment that you seek written consent from the Council before engaging in any other business or taking up any other appointment.

**The information provided in this section is likely to be made available to the public, as part of the Council's commitment to transparency and accountability, and is required for purposes of the Council's Statement of Accounts.**

<b>Position</b>	<b>Name and Address of Company / Organisation</b>	<b>Details of your interest or appointment, including work undertaken, responsibilities, time commitment, whether you are appointed by the Council etc</b>

**SECTION B. Any companies or bodies owned or controlled by your Spouse or Partner, or the Children or Dependents of either of you**

Please note: This information is a ('Related Parties') audit requirement for the purpose of the Council's Annual Statement of Accounts. The term 'control' includes joint control. The Council's finance officers will assess whether reference should be made in the Statement of Accounts and seek further information from you if necessary. Individual or company names are not disclosed in the Statement of Accounts.

<b>Spouse / Partner / Dependent / Child</b> (please give name and relationship)	<b>Name and Address of Company / Body</b>	<b>Details of interest</b>

**SECTION C. Other Potential Conflicts of Interest**

Please Note: You only need to disclose other personal interests which conflict, or may conflict, with your duties to the Council. If you are at all unsure, you should disclose your interest using this form or discuss this with your Manager.

<b>Membership or management of a club, organisation, charity, professional association or other body</b>	
<b>Land or property interests</b>	

<b>Other financial interests</b>	
<b>Any other potentially conflicting personal interests</b>	

<b>Notification of Changes</b>	<b>I undertake to notify the Council in writing of any changes which may occur within 28 days from the date of the change.</b>		
<b>Signature:</b>		<b>Date:</b>	

**COMPLETED FORMS (INCLUDING 'NIL RETURNS') SHOULD BE RETURNED TO THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES**

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# OFFICERS' PERSONAL INTERESTS & SECONDARY EMPLOYMENT POLICY

<b>APPROVED BY</b>	Cabinet
<b>APPROVAL DATE</b>	19/02/2015
<b>DOCUMENT OWNER</b>	Monitoring Officer

## Contents

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<b>Procedure</b>	<b>What do I need to do?</b>	<b>10</b>
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## INTRODUCTION

1. The public is entitled to expect the highest standards of conduct from all Council staff. In performing their duties, staff must act with integrity, honesty, impartiality and objectivity, as set out in the Nolan principles of public life.
2. The Council is committed to undertaking its work in a fair and professional way. Whilst the Council does not wish to interfere unnecessarily with its staff's private lives or activities outside of their contracted hours, it is essential that staff do not allow any private or personal interests, including interests arising from any other employment or business outside of the Council, to conflict with their duties to the Council.

### Aim of this Policy

3. The aim of this Policy is to provide rules and guidance that will help to protect the Council and its staff from criticism, misunderstanding and any allegations of impropriety.
4. The Policy aims to ensure that all conflicts of interest are managed transparently, and that an officer's secondary employment does not undermine the performance of their Council duties in any way.

### Scope - Who is covered by this Policy?

5. This Policy applies to all Council staff (including interim staff and school based employees other than teachers), irrespective of their employment status or grade.
6. Agency workers must comply with the requirements for disclosing conflicts of interests (paragraphs 16 to 24 of this Policy), but do not need to disclose any other work, unless that work also presents a conflict of interest.
7. The Policy is also commended to School Governing Bodies.

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## RULES and REQUIREMENTS

### Key Requirements

8. All Council staff are required under this Policy to disclose:
- i) any personal interest which conflicts, or may conflict, with their duties to the Council;
  - ii) any secondary employment; and
  - iii) any financial interest in a contract with the Council.

Guidance on these requirements is set out below.

### The Law

9. All Council employees are required to comply with the statutory Code of Conduct for Local Government Employees, which is embedded within the Council's Constitution and published on the Council's website (except teachers, who have their own Code of Conduct).
10. Under paragraph 8 of the Employees Code of Conduct, employees are under a duty not to allow private interests to conflict with their public duties and to comply with the Council rules on declarations and registration of interests.
11. The Code of Conduct is incorporated by law into the employment contracts of all Council employees, and failure to comply with the Code may result in disciplinary action.
12. Employees' contracts of employment also impose legal obligations in respect of any other employment (see paragraph 26 (i) and paragraph 27 below).
13. Council officers have a statutory duty (under the Local Government Act 1972, section 117) to give written notice of

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any financial interest they may have in a Council contract (any contract which has been, or is to be, entered into by the Council). Failure to do so is a criminal offence.

14. The Council has a duty of care under the Working Time Regulations to monitor the number of hours worked by its staff.
15. Senior Officers (Chief Officers and above) are subject to additional disclosure obligations in respect of their outside business interests, to meet the legal requirements of the Council's annual Statement of Accounts (see paragraph 28 below).

### Conflicts of Interest

16. You must not:
  - i) allow your private interests or beliefs to conflict with your professional duty; or
  - ii) misuse your position within the Council or information acquired in the course of your job to advance your personal interests or the interests of others.
17. In order to protect the reputation of the Council and its employees, you are required to formally disclose all potential conflicts of interest (as well as actual conflicts) – this means you must disclose any interest which may, or may be seen to, conflict with your Council duties, using **Form 1** (or for Senior Officers, Form 2). If you are unsure about a possible conflict of interest, you should seek advice from your line manager.
18. Private and personal interests include those of your close family and friends (that is, anyone with whom you have a close personal association), as well as those arising through business and financial interests and membership of clubs, societies or other organisations.
19. It is impossible to list every situation in which a conflict of interest may arise, as this will depend on the particular circumstances of each case, but guidance is given below.

20. You must formally disclose any links you may have (including, but not limited to, as a director, company secretary, trustee, partner, shareholder, owner, contractor or employee) with an outside organisation which may:
- i) receive (or be applying for) grants or other benefits from the Council, IF you are involved in the grant allocation process
  - ii) work for the Council, or supply goods and services to it (or tendering for such work or preparing to do so)
  - iii) campaign, lobby or seek to influence the Council's policies
21. You must formally disclose:
- i) any regulatory applications made to the Council by yourself or any person or body with which you are associated, IF you have any connection or personal relationship with a member of staff within the relevant section dealing with the application
  - ii) any personal interest you may have in a matter being dealt with at the Council by yourself or a member of staff with whom you have any connection or personal relationship.
22. You must ensure that if you enter into a personal relationship with an Officer or a Councillor, who is able to apply influence to your benefit, you declare this to your line manager, to avoid accusations of favouritism and bias.
23. You must avoid:
- i) Involvement in any appointment decision or other decision relating to discipline, promotion, pay and conditions for any other employee (or prospective employee) to whom you are related or with whom you have a close personal relationship outside work. This includes appointments to, and employees of, Cardiff

Works. If you have any such relationship, you must disclose it to your manager and HR.

- ii) Acting as a professional representative on behalf of a friend, partner or relative in their dealings with the Council, except in relation to disciplinary or grievance proceedings so long as this does not conflict with your normal duties to the Council.

24. It is a fundamental principle that no related people should be employed in Council jobs where one is involved in the ordering of goods and services and the other passes the invoices for payment.

### **Private or Other Work, Business or Employment**

25. You must not engage in any other work if there is a conflict of interest with the Council. Before you take up any other work, whether it is paid or unpaid, for yourself, other organisations or other parts of the Council, there are some rules which you must follow to ensure that this does not conflict with the interests of the Council or affect your ability and credibility to do your job.

26. You must:

- i) Formally disclose any other employment (whether inside or outside the Council) – this is a requirement of your contract of employment with the Council. You should note that the Council reserves the right to advise you that you may not carry out any additional employment, IF this may create a conflict of interest or health and safety / duty of care implications.
- ii) Ensure that any other work is done in your own time and not:
  - a) During Council time (or the contracted hours for that job)
  - b) Use Council property (including information which belongs to the Council), premises or equipment (other than for the job for which it has been supplied)

- c) When you are on sick leave (unless your manager has given written consent or you can demonstrate to the Council's satisfaction that this is reasonable)
  - d) When it may adversely affect performance of your Council duties (or your main job within the Council)
  - e) When it may be seen to be against the interests of the Council or reduce public confidence in the Council
- iii) Ensure there is no conflict of interest (please see paragraphs 16 to 24 above).
  - iv) Get formal written permission from your manager before you take up any (paid or unpaid) private work for any person or organisation that supplies, or is tendering to supply, goods or services to or from the Council or its contractors and suppliers.
  - v) Declare in writing to your manager any fees paid to you from outside bodies for any work you do in the course of your job and on behalf of the Council (for example, fees for a lecture). You should be entitled to retain any fees paid for work done during your own time.
27. Senior officers (Chief Officers, Assistant Directors and above), must obtain consent from the Council before engaging in any other business or taking up any other appointment – This requirement is imposed in their contracts of employment.
28. Senior officers (Chief Officers, Assistant Directors and above) must also disclose any companies or other bodies in which they, or a close member of their family, have control or ownership – This is an audit requirement for the Council's annual Statement of Accounts (and further advice on these audit requirements is available from the Technical Accountancy Team in Financial Services).

## ROLES and RESPONSIBILITIES

29. It is important that everyone clearly understands their roles and responsibilities within this process.

### Staff Responsibilities

30. All staff must:
- i) Consider whether their private and personal interests conflict, or have the potential to conflict, with their official duties; and avoid such conflicts wherever possible
  - ii) Formally disclose all actual or potential conflicts of interest
  - iii) Formally disclose all secondary employment
  - iv) Disclose any relevant changes as and when they occur.

### Management Responsibilities

31. Managers must:
- i) Comply with the policy in respect of your own conflicts and potential conflicts of interest and any secondary employment.
  - ii) Facilitate compliance by your staff by being aware of the risks inherent in the type of work they do and monitoring the work of staff and the risks to which they are exposed.
  - iii) Forward any Form 1 completed by staff to your Operational Manager
  - iv) Report breaches of this Policy to your Operational Manager or next level of management (if appropriate), HR People Services and external agencies where appropriate.

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32. Operational Managers and above – You must:
- a) Consider, determine and manage conflicts of interest and secondary employment of your staff
  - b) Ensure that records of disclosures under this Policy are kept, regularly reviewed and kept up to date.

### **Monitoring Officer Responsibilities**

33. The Monitoring Officer will:
- i) Establish a system for managing conflicts of interest in the form of a clear policy for all staff to follow
  - ii) Review the Policy, in consultation with the Standards and Ethics Committee, and have authority to make any minor amendments, to ensure that it is effective
  - iii) Advise on any specific queries regarding the implementation of the Policy, as necessary
  - iv) Maintain a register of personal interests disclosed by Senior Officers.

### **HR People Services Responsibilities**

34. HR People Services will advise on any employment or staffing issues arising from the operation of this Policy, for example, disciplinary action in the event of a breach.

## PROCEDURE

### What do I need to do?

35. You must complete Form 1\* to disclose:
- (i) Any actual or potential conflict of interest – please note, you only need to disclose a personal interest if it conflicts, or may conflict, with your duties to the Council;
  - (ii) any secondary employment – all secondary employment must be disclosed, inside or outside of the Council; and
  - (iii) any changes in the above information, which must be notified within 28 days of the change.

You do not need to complete Form 1 in any other case.

[\*Senior Officers, that is, Assistant Directors and above, must complete Form 2.]

36. The Operational Manager (or next level of management, where appropriate), in consultation with the staff member, will determine whether:
- i) a personal interest exists; and
  - ii) the personal interest (if one exists) is such that there is a conflict with the staff member's duties,

And will notify the staff member of their decision within 10 working days from receipt of the Form (“the Decision Notification”).

37. If it is determined that a conflict does exist, the Operational Manager (or next level of management, where appropriate) will need to assess whether there can be an adjustment of duties, or any other action should be taken, to avoid the conflict.
38. If it is not possible for management to readjust work duties or take other precautions to avoid the conflict, the staff member

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will be notified within 10 working days from the Decision Notification (“the Conflict Notification”) and given the opportunity to appeal against this decision – see paragraphs 40 to 46, ‘Appeal Rights’ below.

39. Where a staff member declines to cease the activity pending the appeal, the Manager shall consider whether it is possible to agree a temporary reallocation of tasks to remove the conflict, failing which, the Manager may instigate a disciplinary investigation in accordance with the Council’s Disciplinary Policy, and will consider whether the staff member should be suspended from duty.

## APPEALS

40. Where the Operational Manager (or next level of management, where appropriate) has confirmed that there is a conflict, the staff member shall have a right of appeal.
41. The staff member must indicate the grounds for their appeal e.g. that there is no personal interest or there is no conflict, and explain the reasons for their view.
42. The appeal must be submitted within 10 working days from the Conflict Notification (see paragraph 38 above).
43. The appeal will be considered by the next level of management within the Directorate, or by another Director, as appropriate.
44. The staff member will be contacted with the outcome of the appeal within 10 working days from submission.
45. If the appeal is not upheld and the conflict is still considered to exist, then the staff member will have the option of immediate cessation of the activity or resignation from their post within the Council.
46. If the staff member chooses to remain employed by the Council and it is found that the activity has not ceased then a Disciplinary Investigation will be instigated in accordance with the Council’s Disciplinary procedure.

## OTHER GENERAL PROVISIONS

### Data Protection

47. Information held in relation to this Policy will be managed in accordance with data protection law.

## RELATED DOCUMENTS

Form 1 Declaration of Personal Interests and Secondary Employment  
Form 2 Senior Officers' Personal Interests Declaration Form

Employee Code of Conduct

Code of Guidance Working Time Regulations

Disciplinary Policy

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER****WHISTLEBLOWING REPORTS 2018-2019****APPENDICES 1 & 2 ARE EXEMPT FROM PUBLICATION PURSUANT TO THE LOCAL GOVERNMENT ACT 1972, SCHEDULE 12A, PART 4 PARAGRAPHS 13 & 14**

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**Reason for this Report**

1. To provide the Committee with information to enable it to oversee and monitor the Council's whistleblowing procedures and to consider any ethical issues arising.

**Background**

2. The Standards & Ethics Committee has responsibility to 'oversee and monitor the Council's Whistleblowing procedures and to consider ethical issues arising' (paragraph (e) of the Committee's terms of reference).
3. The Whistleblowing Policy sets out the arrangements adopted by the Council aimed at ensuring that workers are able to raise concerns in the public interest about a danger, risk, malpractice or wrongdoing within the Council without fear of adverse consequences. The Policy explains the statutory protection available to workers under the Public Interest Disclosure Act 1998, and is intended to encourage and enable workers to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.
4. The Whistleblowing Policy was revised and approved by Cabinet in October 2014 on the recommendations of this Committee, to reflect legislative changes, clarify certain provisions and adopt best practice. The Policy is publicised through posters in all core Council buildings, and articles in the Core Brief, an information bulletin disseminated to all staff; and guidance for staff and managers is published on the Council's intranet.

5. Under the Policy, the Monitoring Officer is required to keep a record of all reports made and their outcomes and to report periodically to the Standards Committee. At its meeting in March 2018, the Committee considered a report on whistleblowing reports made during 2017, with brief details of the concerns raised and outcome in each case.

## Issues

6. The number of whistleblowing reports notified to the Monitoring Officer during 2018 and 2019, along with comparative numbers for the two previous years, is set out below:

<b>YEAR</b>	<b>NUMBER OF WHISTLEBLOWING REPORTS</b>
2016	4
2017	3
<b>2018</b>	<b>1</b>
<b>2019</b>	<b>6</b>

7. Further information on the concerns raised and the outcomes in each case are set out in **Appendices 1 & 2 (Exempt from publication)**.
8. The Committee is invited to note the contents of this report and further information provided at the meeting, and make any observations considered appropriate.
9. Members are also invited to note that a review of the Whistleblowing Policy is being programmed for 2020/21 and will be reported to Committee this year.

## Legal Implications

10. The legal implications are contained within the body of the report.

## Financial Implications

11. There are no direct financial implications resulting from this report.

## RECOMMENDATIONS

The Committee is recommended to note the information provided and make any observations as appropriate.

**Davina Fiore**

**Director of Governance and Legal Services and Monitoring Officer**

22<sup>nd</sup> September 2020

## **Appendices**

Appendix 1 – Whistleblowing Reports 2018/19 – **EXEMPT FROM PUBLICATION**

Appendix 2 - Whistleblowing Reports 2017 (Updated) – **EXEMPT FROM PUBLICATION**

The following Background Papers have been taken into account:

Report of Monitoring Officer to the Standards & Ethics Committee - 'Whistleblowing Reports 2017'  
March 2018

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By virtue of paragraph(s) 13, 14 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 13, 14 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972.

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**STANDARDS AND ETHICS  
COMMITTEE****30<sup>th</sup> SEPTEMBER 2020**

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES & MONITORING OFFICER**

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**MEMBERS' CODE OF CONDUCT COMPLAINTS – QUARTERS 3 & 4 OF  
2019/20; AND QUARTER 1 OF 2020/21****Reason for Report**

1. To provide the Committee with an update on complaints made during Quarters 3 & 4 of 2019/20 and Quarter 1 of 2020/21 (the period running from 1<sup>st</sup> October 2019 to 30<sup>th</sup> June 2020) against Members of Cardiff Council or any of Cardiff's Community Councils, alleging a breach of the Members' Code of Conduct.

**Background**

2. The Committee receives quarterly reports from the Monitoring Officer on complaints, made against Members of Cardiff Council and Community Councils within its area, alleging a breach of the Members' Code of Conduct. (There are six Community Councils in Cardiff: Lisvane; Old St. Mellons; Pentyrch; Radyr and Morganstown; St. Fagans; and Tongwynlais.) These reports provide information to assist the Committee to discharge its functions, in particular:
  - i. To monitor and scrutinise the ethical standards of the Authority, its Members, employees and any associated providers of the Authority's services, and to report to the Council on any matters of concern;
  - ii. To advise the Council on the effective implementation of the Code including such matters as the training of Members and employees on the Code's application; and
  - iii. To undertake those functions in relation to community councils situated in the area of the Council and members of those community councils which are required by law',

(paragraphs (a), (c) and (g) respectively, of the Committee's terms of reference).

3. The Committee considers the number of complaints made and any themes or patterns emerging, but does not consider the specific details of each individual case, unless the complaint is formally referred to the Committee for a decision.
4. Complaints received during Quarter 4 of 2018/19 and Quarters 1 & 2 of 2019/20 were reported to the Committee meeting on 11<sup>th</sup> December 2019.

## Issues

5. During Quarters 3 & 4 of 2019/20 and Quarter 1 of 2020/21, covering the period running from 1<sup>st</sup> October 2019 to 30<sup>th</sup> June 2020, a total of four complaints alleging a breach of the Members' Code of Conduct were reported to the Monitoring Officer.
6. The table below shows the type of complaints received during this period and includes comparative figures for the previous four quarters.

	Q1 Apr, May, Jun 2019	Q2 Jul, Aug, Sept 2019	Q3 Oct, Nov, Dec 2019	Q4 Jan, Feb, Mar 2020	Q1 Apr, May, Jun 2020
Member on Member	1	4	0	0	1
Public on Member	2	0	1	1	1
Officer on Member	0	0	0	0	0
Community Councillors	0	0	0	0	0
<b>Total</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>2</b>

7. The single complaint received during Quarter 3 of 2019/20 was submitted by a member of the public and alleged that a Member had made unsubstantiated comments about that individual to the public, which besmirched their character within the local community. It was alleged that this constituted a breach of various duties in the Code of Conduct, including the duty to treat others with respect and consideration; not to use bullying behaviour; to have regard to equal opportunities; and not to use the position of Member improperly. It was also alleged that the Member had misused Welsh Assembly resources and had breached Data Protection laws. The Monitoring Officer responded to the complainant by explaining the scope of the Members' Code of Conduct (which applies to Members when they act, or give the impression they are acting, in the role of a Councillor, except for certain

limited parts of the Code which apply at all times, namely, the duty to not bring the office of Councillor or the Council into disrepute, or to use their position improperly to obtain an advantage/disadvantage for themselves or others). The complainant was advised, in relation to the complaints raised, of the respective remits of the Public Services Ombudsman for Wales, the Standards Commissioner for Wales and the Information Commissioner, and advised to refer the complaints to those bodies, as appropriate.

8. During Quarter 4 of 2019/20, the single complaint made was submitted by a member of the public and alleged that comments made by a Member on a public Facebook page were aggressive and inappropriate. The complaint was considered by the Ombudsman who decided not to investigate because there was insufficient evidence of a breach of the Code.
9. During Quarter 1 of 2020/21, two complaints were made. One complaint was made by a Member about material posted on Facebook by another Member, which were alleged to be offensive. This complaint was resolved informally by the Monitoring Officer, who spoke with the Member concerned who agreed to remove the offending material. The second complaint was made by a member of the public and alleged that comments made by a Member on Twitter were offensive towards Welsh language speakers and breached statutory duties under the Welsh Language Act. The Ombudsman decided that it would not be in the public interest to investigate this complaint, because 'it is not the purpose of the Code to inhibit freedom of speech or the robust expression of different opinions even where the substance of those comments may be controversial. It is my view that Councillor X's comments fall within this category and for that reason, it would not be proportionate for the Ombudsman to investigate.'

### **Legal Implications**

10. There are no legal implications arising from the recommendations of this report.

### **Financial Implications**

11. There are no direct financial implications arising from this report.

### **Recommendation**

The Committee is recommended to note the contents of the report.

**Davina Fiore**

**Director of Governance and Legal Services, and Monitoring Officer**

21<sup>st</sup> September 2020

#### Background papers

Standards and Ethics Committee report 'Member Code of Conduct Complaints, Quarter 4 of 2018/19 and Quarters 1 and 2 of 2019/20', 11<sup>th</sup> December 2019

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**CARDIFF COUNCIL  
CYNGOR CAERDYDD**

**STANDARDS AND ETHICS COMMITTEE**

**30<sup>th</sup> SEPTEMBER 2020**

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**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL  
SERVICES AND MONITORING OFFICER**

**AGENDA ITEM:**

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**ADJUDICATION PANEL FOR WALES – PRESIDENTIAL  
GUIDANCE**

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**Reason for this Report**

1. To allow Members to consider the Presidential Guidance which has been updated and issued by the President of the Adjudication Panel for Wales (APW).

**Background**

2. The ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct. The operation of the Panel is governed by Regulations issued by the Welsh Government.

**Issues**

3. The Adjudication Panel for Wales has issued updated Presidential Guidance on:
  - (i) The Role of the Monitoring Officer (**Appendix A**);
  - (ii) Anonymity (**Appendix B**); and
  - (iii) Disclosure of evidence (**Appendix C**),
 within APW proceedings ('the APW Guidance').
4. The Guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings:

5. Although the APW Guidance does not apply to proceedings before the Committee's Hearings Panel, the Committee may nevertheless find it helpful to consider the general principles it sets out.

### **Legal Implications**

6. There are no direct legal implications arising from the report.

### **Financial Implications**

7. There are no direct financial implications arising from the content of this report.

### **Recommendations**

The Committee is recommended to note the updated Presidential Guidance issued by the Adjudication Panel for Wales.

**DAVINA FIORE**  
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING**  
**OFFICER**

22<sup>nd</sup> September 2020

### **APPENDICES**

- Appendix A – Adjudication Panel for Wales, Presidential Guidance on the Role of the Monitoring Officer, September 2020
- Appendix B - Adjudication Panel for Wales, Presidential Guidance on, Anonymity, September 2020
- Appendix C – Adjudication Panel for Wales, Presidential Guidance on Disclosure, September 2020

### **Presidential Guidance: The role of the Monitoring Officer in APW proceedings**

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand the role of the monitoring officer within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and monitoring officers are reminded that this guidance does not supersede their duties, the requirements of the Code of Conduct for Employees or professional obligations.

#### The position of the monitoring officer

1. The monitoring officer of a relevant authority whose Code of Conduct is at the centre of APW proceedings is not a party to the proceedings, but is present to assist and inform the tribunal. They are notified of the proceedings and the hearing date, and receive copies of the listing directions and final decision. The monitoring officer normally adopts a neutral role.

#### Attendance at the final hearing

2. The monitoring officer is invited to attend the final hearing (or to send a deputy) to assist the tribunal and to make an appropriate observation or comment if they so wish at each stage of the proceedings. This is an opportunity for the monitoring officer to clarify any procedural points regarding the business of the relevant authority or to provide factual information to the tribunal in relation to any evidence already before it. It is open to the officer to make no comment.
3. The tribunal’s invitation to speak at the oral hearing is not an opportunity for the monitoring officer to adduce new evidence not previously disclosed; any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the Public Services Ombudsman for Wales (“PSOW”) for his consideration (see the disclosure section below).
4. The monitoring officer may ultimately be asked to provide or arrange further training to the councillor or to action matters relating to the exercise of the authority’s functions, the authority’s Code, or the authority’s standards committee if so recommended by the tribunal. Their attendance at the hearing will also enable the monitoring officer to give a detailed report to the standards committee and Council and to deal with any press enquiries as appropriate.

### Information required from the monitoring officer

5. Routine enquiries that may be made of the monitoring officer by either the PSOW or the tribunal through its directions or correspondence through the Registrar include confirmation as to when the councillor agreed to be bound by the Code, when the councillor received training on the Code or if the councillor is also a member of another relevant authority, such as a town or community council or national park authority. They will also be asked to confirm the dates of full council meetings or relevant council business that might affect the listing of the hearing, and their personal unavailability dates.
6. The Registrar of the APW will ask the monitoring officer to confirm if there have been any previous adverse findings made by a standards committee regarding a breach of the Code by the councillor; this information will not be disclosed to the tribunal unless it reaches the sanctions stage of the proceedings. At this stage, the clerk will provide this information to the tribunal but the monitoring officer will be given an opportunity to comment, amplify or update the information supplied orally at the hearing.

### Disclosure

7. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
8. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
9. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.

10. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
11. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.
12. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

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### **Presidential Guidance: Anonymity**

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

#### **Power to anonymise**

1. The APW does not have the power to issue restricted reporting orders or control what is reported by the press or through social media. However, it does have the power to control its own proceedings and give directions to the parties, witnesses and third parties.
2. The law on the reporting of sexual offences and the naming of alleged victims (s.1 of the Sexual Offences (Amendment) Act 1992) applies to those publishing information about APW proceedings where relevant; where possible, the tribunal considering such matters will remind those in attendance of these provisions, but they apply whether or not such a reminder is given. The APW will give consideration about how to approach matters involving the possible commission of sexual offences and give the necessary directions to the parties prior to the start of the final hearing.
3. While in appropriate cases, the identity of a complainant, witness or third party may be anonymised at the direction of a APW tribunal or the President for the purposes of the hearing and decision, the identity of that individual will be known to the parties and the tribunal. The identity of the member subject to the proceedings will not be anonymised.

#### **European Convention on Human Rights**

4. The paramount object of the APW is to do justice in accordance with the right to a fair hearing, but if it is strictly necessary to withhold either evidence or the identity of an individual from public consideration because it is in the interests of justice to do so, this can be directed following a balanced consideration of the various rights of those involved and the open justice principle. The Convention entitles parties to a fair and public hearing, but the press and public may be excluded from all or part of the hearing where the interests of the parties so require, or to the extent strictly necessary where publicity would prejudice the interests of justice.

5. Rights that may be engaged include the right to privacy and the right to a family life, as well as the right to freedom of expression, which is generally always engaged in APW proceedings. Examples of when such rights may be engaged could include the disclosure of medical information pertaining to a witness (such information being confidential), painful and humiliating disclosure of personal information about a witness where there is no public interest in its being publicised, or disclosure of information affecting minors.

#### The approach of the APW

6. APW final hearings take place in public, except where the tribunal considers that publicity would prejudice the interests of justice. However, anonymisation can allow all or the majority of the hearing to take place in public, enabling the public to fully understand the proceedings without breaching the rights of the individual whose identity has been concealed. This is compliant with the open justice principle; it is less restrictive to anonymise individuals than to have a private hearing in whole or in part.
7. It is appreciated that some complainants will only make a complaint if anonymisation at the hearing is likely. The quality of the evidence given at a hearing may be diminished due to fear or distress if anonymity is not granted. Only the tribunal hearing the case or the President can make such a direction – no party can guarantee anonymity to a complainant, witness or third party.
8. When considering whether to direct anonymisation, the tribunal will consider and balance the rights of the individual involved against the open justice principle and the right to a fair hearing in public, and the likely effect of anonymisation (or failure to do so) on the evidence to be adduced. It will also consider whether the identity of the individual is already widely known, rendering anonymisation pointless. Reasons will be provided to the parties for its decision.
9. If an interested person, such as the press, wishes to apply to set aside the anonymity order, they may apply to the tribunal for the application to be heard. It is a matter for the tribunal when the application is considered, but the views of the parties will be sought and considered. The view of the individual themselves may or may not be sought, depending on the approach adopted by the tribunal.

#### Practical measures

10. To guard against inadvertent disclosure, at the outset of the hearing and at the start of a relevant witness' evidence the chair will remind the parties, witnesses and the public that a particular individual's identity has been anonymised and they should be referred to as "Witness A/B/C/ etc" or "Mr/Ms A/B/C etc".
11. The hearing bundle may be redacted or altered to ensure that the name of the anonymised person is as directed, depending on the directions of the tribunal. The witness bundle and any press bundle (if prepared) must be so redacted or altered to avoid disclosure of the identity if inspected by the press or public.

12. The tribunal may direct use of special measures, such as a screen or video link, to enable the witness to give their evidence without disclosure of their identity.
13. Prior to the commencement of APW proceedings, if the parties anticipate that it is highly likely the identity of a witness or third party will be anonymised while gathering evidence, they may submit a suitably redacted version of the evidence (only anonymising the name of the individual and replacing with an appropriate anonymised name) to the APW for inclusion within the bundle. However, the original evidence must be disclosed to the other party, either before the matter is sent to the APW or when the redacted evidence is disclosed to the APW. The redaction must be brought to the tribunal's attention in a covering letter, and the letter must also include the reasons for the redaction and an application for directions permitting the anonymisation as sought.
14. The APW expects the parties to attempt to agree the issue of anonymisation before submitting an anonymised bundle to the panel, but if agreement cannot be reached, provided the process outlined above is followed, one party may request anonymity for an individual/s and submit an anonymised bundle for the approval of the panel or President.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

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### **Presidential Guidance: Disclosure**

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

#### **General**

1. Unlike *inter partes* litigation (litigation where one party is suing another), the APW deals with references made by the Public Services Ombudsman for Wales (“PSOW”) and appeals brought by members following a decision by a standards committee on the issue of whether the Code of Conduct for members has been breached (and if so, the appropriate sanction). In all cases, the member and the PSOW are parties and entitled to submit evidence, ask for witnesses to be called, and make representations. However, it is a matter for the tribunal to determine what evidence is before it, provided that a fair hearing is undertaken.
2. The tribunal may receive evidence of any fact which appears to the tribunal to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law. It shall not refuse to admit any evidence which is admissible at law and is relevant. In other words, the tribunal should allow evidence to be adduced if it is fair to do so (in the interests of justice) and the evidence is relevant to the determinations it must make; it can exclude irrelevant evidence.
3. The parties are reminded that disclosure is key to a fair hearing and that evidence should be provided to the other party and the APW in advance and in good time before a final hearing; attempts to “ambush” the other party are not in accordance with the spirit of modern litigation practice. It is also inappropriate to ask those who are approached to give or supply evidence to keep the approach confidential from the other party or the APW, particularly monitoring officers, other officers or members of a relevant authority; this does not mean such a person cannot be asked to generally keep the approach confidential, but not in relation to the other party or the APW.

#### **Before APW proceedings start**

4. Prior to the commencement of APW proceedings, in the vast majority of cases the PSOW will have undertaken a full investigation (monitoring officers can conduct

investigations in certain circumstances, but generally they ask the PSOW to do so). The PSOW will have gathered evidence from the member, witnesses and relevant third parties, carried out interviews, and asked the member to comment on the draft report.

5. A final report is issued by the PSOW, setting out the allegations originally made, the evidence gathered, and his conclusions. The evidence relied upon by the PSOW is exhibited to the final report and served upon the member and either the standards committee or APW.
6. The PSOW has agreed to serve upon the member (and the APW when a reference is made) a schedule setting out what unused material exists to its knowledge (this is material not used to prepare the final report), what it is, and its location (as the PSOW may not hold such material; for example, the monitoring officer may hold it) when the final report is issued. The schedule of unused material may be in two sections – ordinary evidence and sensitive evidence. Sensitive evidence is defined for these purposes as evidence relating to national security, given in expectation of confidence, relating to a criminal investigation or proceedings, relating to a minor, or relating to the private life of a witness (not the member) or third party. If the member seeks disclosure of evidence listed within the unused material schedule, it should be sought within 28 days of receipt of the schedule to avoid unnecessary delay by the member or his representatives. The tribunal may also direct disclosure of a document from the unused material schedule, but it is not obliged to do so.

#### Once APW proceedings start

7. Once the reference is made by the PSOW or permission to appeal has been given by the President of the APW (or their delegate), the Panel becomes responsible for deciding what evidence may be adduced. It will give directions where appropriate, but broadly the following principles apply:
  - a) The final report and evidence exhibited with it will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to paragraph *h* below);
  - b) The response of the member or their application to appeal will form part of the hearing bundle;
  - c) Evidence submitted by the member with their response will form part of the hearing bundle if it is relevant and in the interests of justice to be considered by the tribunal (attention is drawn to point *h* below);
  - d) Any decision made by the standards committee and supporting evidence where provided by either the parties or monitoring officer (if not already within the PSOW's final report) will form part of the hearing bundle;
  - e) Correspondence between the APW and the parties will form part of the hearing bundle, as will listing and other directions or orders;

- f) Submissions from the parties may form part of the hearing bundle (unless made orally), but is not evidence;
- g) Any additional evidence the parties wish to be considered, apart from paragraphs a – e, must either be the subject of an application made to the tribunal or included by way of directions from the tribunal on its own initiative. Applications should be made in good time before the final hearing commences to allow the tribunal to seek the view of the other party and deliver its decision; such applications should be made no later than 28 clear days before the final hearing commences, but the expectation is that such applications should be made before the listing conference. Applications to adduce evidence made at the final hearing or within the 28 day period preceding the start of the final hearing will be viewed as a late application and good reasons as to why the application could not have been made earlier will be required to be given, as will an explanation as to why late disclosure is in the interests of justice;
- h) The tribunal has the right to exclude irrelevant evidence from the hearing bundle and to determine which witnesses will be called to give evidence. It is expected that the parties will be notified in advance and given reasons if evidence is to be excluded.

#### Powers of the APW

- 8. The APW has the power to require documents or ask for particulars from any person, whether or not they are a party or interested party to the proceedings. If a party requires evidence or information from any person in order to fairly put forward their case to the APW, and they have not been able to obtain it directly themselves (attention is drawn below to the special position of monitoring officers), they should apply to the APW for directions or an order to obtain the evidence or particulars.
- 9. Applications should be made in good time before the final hearing, and ideally before the listing conference. Such applications should not be made at the final hearing or within the 28 day period before the start of a final hearing as costs will already have been incurred by the parties and the APW which may be wasted (the parties should note that the APW does in certain circumstances have the power to make costs orders). The parties should bear in mind that sufficient time should be given to allow submissions to be made by the other party and for the tribunal to make a decision – this is likely to take at least 28 days.

#### The monitoring officer

- 10. The monitoring officer is notified of the proceedings and invited to attend the final hearing. The monitoring officer's role is set out in more detail in the Presidential Guidance "*The role of the Monitoring Officer in APW proceedings*". The section relating to disclosure and monitoring officers is repeated below for convenience and to ensure that the parties understand that the monitoring officer is neutral and has a key role in upholding standards.

11. Generally, monitoring officers are not expected to take an active part in APW proceedings. Prior to proceedings, the PSOW is likely to have collected relevant evidence from the relevant authority, including from the monitoring officer, and this evidence will either be exhibited to the PSOW's final report or set out in an unused material schedule provided with the report.
12. However, it is possible that the monitoring officer may hold relevant evidence that has not been disclosed to the PSOW or is approached by the councillor or his representatives to disclose evidence. Monitoring officers should not "*descend into the arena*" and are expected to remain neutral in accordance with the requirements of their role. It is appropriate for a monitoring officer to correct a factual mistake made by a witness (as part of their role outlined above to provide factual information to the tribunal in relation to any evidence already before it), but they should not adopt a position about the decision to be made by the tribunal. Equally, it is appreciated that the monitoring officer may need to be a witness in their own right if they witnessed a disputed event or made the initial complaint (for example on behalf of junior officers); this is not regarded as outside their neutral role provided the evidence only deals with factual matters.
13. Monitoring Officers are reminded that if they carried out the investigation (as opposed to the PSOW), Regulation 5 of Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the Regulations") will apply, and the APW is not listed as an entity that can lawfully be a direct recipient of information obtained by the monitoring officer when conducting the investigation, unlike the PSOW. The APW does have the power to require evidence from any person through directions and orders under Regulation 7, including information gathered by the monitoring officer under Regulation 5.
14. The standard direction given to monitoring officers in correspondence from the Registrar is that any evidence which they wish to provide should generally be provided either direct to the Registrar when directed by the tribunal or to the PSOW for his consideration. This addresses any concerns that may be raised by either the regulations or data protection legislation in the overwhelming majority of cases about the disclosure of documents by the monitoring officer.
15. Once APW proceedings are underway, it is the tribunal which decides what evidence is within the hearing bundle (subject to applications by the parties where relevant). If a monitoring officer is concerned that they hold relevant evidence which has not been previously disclosed to the PSOW and APW proceedings have commenced, they should either consider making an application to the tribunal seeking directions on their own initiative to enable disclosure to the PSOW, the councillor/councillor's representatives and the tribunal, or disclose the evidence to the PSOW (who has undertaken to ensure the councillor then receives such evidence). Disclosure applications to the tribunal should be made at the earliest possible opportunity to avoid delay to the final hearing.

16. If a monitoring officer is requested to keep a request for disclosure confidential by one of the parties, it is a matter for their professional judgment whether to agree, but the APW expects that disclosure should not be made outside of its directions (whether through the direction set out in its standard letter to monitoring officers or case-specific directions made by the tribunal) or this guidance once its proceedings have commenced. This is to ensure a fair hearing once the APW proceedings are underway and to enable both parties to receive disclosure.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020

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CYNGOR CAERDYDD  
CARDIFF COUNCIL



STANDARDS AND ETHICS COMMITTEE:

30<sup>TH</sup> SEPTEMBER 2020

**REPORT OF THE DIRECTOR OF GOVERNANCE & LEGAL SERVICES AND  
MONITORING OFFICER**

**OBSERVATION OF MEETINGS**

**Reason for this Report**

1. To allow the Committee to consider the feedback provided by Committee members following observation of meetings of the Council.

**Background**

2. The Committee has agreed that observation of Council, Committee and Community Council meetings is helpful for members, in particular the Independent Members of the Committee, to gain experience of the Council and Committee processes, and to provide opportunities for first hand feedback to the Committee of any issues relating to standards and conduct.
3. The Committee has approved a feedback profroma for use by the Members of the Committee when observing meetings. Members have been asked to complete a form for each meeting they attend and submit it for consideration at the next appropriate Committee meeting.

**Issues**

4. A completed meeting observation feedback form has been received in respect of the full Council meeting on 30<sup>th</sup> January 2020. The completed Observation form is appended as **Appendix A**.
5. Members will note that the feedback is generally positive in relation to standards of conduct. The feedback has also been shared with the Lord Mayor, as Chair of Council, for his information. In relation to comments about the public screens, Members may wish to note that the Council is in the process of planning replacement of the systems used in the Council chamber and will seek to ensure the screens can display more information.
6. All forthcoming Council and Committee meetings are listed in the calendar of meetings, which is regularly circulated to Standards and Ethics Committee

members and is published on the Council's website, here:

<http://cardiff.moderngov.co.uk/mgCalendarMonthView.aspx?GL=1&bcr=1&LLL=0>

Independent members, and in particular, newly appointed members, are encouraged to observe a full Council meeting and a Committee meeting.

7. Details of forthcoming Community Council meetings are published on the respective Councils' websites. Members are similarly encouraged to observe a Community Council meeting. Before attending a Community Council meeting, Members are advised to contact the Clerk to confirm the meeting is going ahead and, as a courtesy, to inform the Clerk they will be attending. Community Council website links and Clerks contact details are accessible here:

<https://www.cardiff.gov.uk/ENG/Your-Council/Voting-and-elections/Community-councils/Pages/Community-councils.aspx>

### **Legal Implications**

8. There are no direct legal implications arising from the content of this report.

### **Financial Implications**

9. There are no direct financial implications arising from this report.

### **RECOMMENDATION**

The Committee is recommended to:

- (1) Note the meeting observation feedback received, as set out in **Appendix A** to the report, and provide any further comments in this regard; and
- (2) Continue to observe appropriate meetings of the Council, Committees and Community Councils and provide feedback to a future meeting of the Committee.

**Davina Fiore**

**Director of Governance and Legal Services and Monitoring Officer**

23<sup>rd</sup> September 2020

#### Appendix

Appendix A Meeting Observation Feedback Form for Council meeting January 2020

#### Background papers

Standards & Ethics Committee report, 'Observation of Council, Committee and Community Council Meetings, 11<sup>th</sup> December 2019

# STANDARDS AND ETHICS COMMITTEE

## FEEDBACK ON OBSERVATIONS OF COUNCIL & COMMITTEE MEETINGS

Meeting:	FULL COUNCIL
Date:	30.1.20

Please provide feedback on the following:

Topic	Comments
Room Layout:	COUNCIL MEETING
Name plates/ identification of Committee; Witnesses and Officers:	✓ ALL NAME PLATES AVAILABLE + VISIBLE
Ability to hear proceedings:	✓
Agenda and reports availability:	✓
Management of meeting:	EXCELLENT. WELL + FAIRLY CHAIRED
Clarity of decision making:	✓

Possible Code of Conduct/ Standards and Ethics Issues: GENERAL FEEDBACK

INFORMATION PROVIDED ON PUBLIC SCREENS COULD BE IMPROVED:

- ABBREVIATION OF "PARTIC" FOR INDEPENDENT MEMBERS WOULD NOT BE KNOWN TO OBSERVERS e.g: CWI
- WOULD HELP UNDERSTANDING OF PROCEEDINGS TO GIVE MORE INFORMATION. E.G: 1) STATE THE CLR IS STATING A REFERENCE BACK. 2) BRIEF OF WRITTEN ~~QUESTION~~ QUESTION ON SCREEN - 1 LINE OF WHAT IT IS + WHAT NO. & IT IS.

ON THE WHOLE STANDARDS WERE GOOD, HOWEVER SOME PERSONAL REPROCHES USED. WOULD NOT WANT TO SEE THIS ESCALATED. IN THESE CIRCUMSTANCES WOULD BE VALUE IN CHAIR REMINDING CLRS + CHALLENGING BEHAVIOUR.

I agree that my feedback can be shared with the Council and/ or the Community Council (if applicable).

Name:	C. NICHOLLS
Date:	30.1.20

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**CYNGOR CAERDYDD  
CARDIFF COUNCIL**



**STANDARDS AND ETHICS COMMITTEE:**

**30 SEPTEMBER 2020**

**REPORT OF THE DIRECTOR OF GOVERNANCE & LEGAL SERVICES  
AND MONITORING OFFICER**

**WORK PROGRAMME 2020 - 2021**

**Reason for this Report**

1. To consider the Committee's Work Plan and agree the items for consideration by the Standards and Ethics Committee in 2020/21.

**Background**

2. The Standards and Ethics Committee's Terms of Reference set out the remit of the Committee to monitor, review and advise on matters relating to the Ethical code; Members Code of Conduct; matters of governance and probity; and compliance of Members in completing the essential Code of Conduct session.
3. To enable the Committee to fulfil its role an annual work plan is developed to reflect the Council's Annual Governance Statement; give consideration to standard monitoring reports; and any issues arising from the Committee's work in promoting high standards of conduct and managing complaints. The views of this Committee assist in the development of an ongoing work plan.

**Issues**

4. Attached **as Appendix A** is the Work Plan for 2020/21 which reflects ongoing priorities and standard reports and the frequency of reporting. The Committee is invited to review the plan taking into account available resources, and add or remove items and agree the frequency of reporting.

**Legal Implications**

5. There are no direct legal implications arising from the content of this report. However, the Committee is reminded of its statutory role contained in the extract from the Local Government Act 2000 set out below which should be considered alongside its terms of reference when setting the Forward Plan:

#### 54 Functions of standards committees

- (1) *The general functions of a standards committee of a relevant authority are--*
- (a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and*
  - (b) assisting members and co-opted members of the authority to observe the authority's code of conduct.*
- (2) *Without prejudice to its general functions, a standards committee of a relevant authority has the following specific functions—*
- (a) advising the authority on the adoption or revision of a code of conduct,*
  - (b) monitoring the operation of the authority's code of conduct, and*
  - (c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.*

6. The Committee has the same statutory functions in relation to Community Councils and Community Councillors as it has in relation to the County Council and County Councillors (pursuant to section 56(1) of the Local Government Act 2000).

#### **Financial Implications**

7. There are no direct financial implications arising from this report.

#### **RECOMMENDATION**

The Committee is recommended to consider the Work Plan as set out in Appendix A, and, taking into account its terms of reference and available resources, to agree with the Director of Governance and Legal Services and Monitoring Officer any amendments and how it wishes to progress the various items or topics contained therein.

**Davina Fiore**

**Director of Governance and Legal Services and Monitoring Officer**

**23 September 2020**

#### Appendix

Appendix A                      Work Programme 2020-21

Background Papers  
Standards & Ethics Committee Annual Report 2018/19.

**STANDARDS AND ETHICS COMMITTEE – WORK PLAN – 2020/21**

**APPENDIX A**

<b>TOPIC</b>	<b>OBJECTIVE/OUTCOME</b>	<b>WHO IS RESPONSIBLE?</b>	<b>PRIORITY</b>	<b>STATUS</b>	<b>REPORT TO COMMITTEE</b>
(1) Gifts and Hospitality  <i>Frequency of reporting – annual</i>	(1) To consider the Council’s procedures for Officers’ gifts and hospitality; and  (2) To monitor and review the acceptance of gifts and hospitality by Members.	Monitoring Officer	Medium	Scheduled	December 2020
(2) Code of Conduct Complaints  <i>Frequency of reporting – quarterly</i>	To receive information on complaints made against Members of the Council alleging breaches of the Code of Conduct.	Monitoring Officer	Medium	Ongoing	ON AGENDA
(3) Member Briefings	To publish Member Briefings on the work of the Committee and member conduct issues	Chair / Monitoring Officer	Medium	Annual Report presented to Council in February 2020, with reminders and guidance for Members	December 2020
(4) Training	To consider refresher training on the Members’ Code of Conduct	Monitoring Officer	High	Ongoing	As necessary
(5) Feedback from Observation of Council & Committee meetings	Independent Members to attend Council, Committee and Community Council meetings to become more acquainted with the work of the Councils; and report feedback for consideration by the Committee	Independent Members of the Committee	Medium	Ongoing	ON AGENDA

<b>TOPIC</b>	<b>OBJECTIVE/OUTCOME</b>	<b>WHO IS RESPONSIBLE?</b>	<b>PRIORITY</b>	<b>STATUS</b>	<b>REPORT TO COMMITTEE</b>
(6) Whistleblowing Policy	To monitor and review the operation of the Council's whistleblowing arrangements; and consider any ethical issues arising.	Monitoring Officer	Medium	Scheduled	ON AGENDA
(7) Officers Personal Interests	To review the Council's rules in relation to senior officers' personal interests	Monitoring Officer / HR	Medium	Scheduled	ON AGENDA
(8) Annual Meeting with Group Leaders and Whips	To facilitate ongoing engagement with representatives from all political groups.	Elected Members	Medium	Scheduled	September 2020
(9) Annual Report 2019/20	Prepare Annual Report 2019/20	Committee Chair/ Monitoring Officer	Medium	Scheduled	December 2020
(10) Member Survey	To consider the results of the Members Survey in relation to conduct and ethical issues	Head of Democratic Services / Monitoring Officer	Medium	Scheduled	ON AGENDA