

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 14th 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 5th 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 22nd 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 14th 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

