

**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 McEVOY**

**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

*Hollie 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