Appendix A

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Councillor hits out after 'Nazi politician' election tweet faces no further action

A picture of Joseph Goebbels was posted on social media following the recent elections

SHARE COMMENTS

By **George Torr Local Democracy Reporter**
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Doncaster Council will take no further action after one if its employees who tweeted a meme of Nazi propaganda minister Joseph Goebbels following local election results.

Independent councillor Sean Gibbons who was elected again in the Mexborough ward said the council employee posted a picture of Goebbels which had the caption: "Accuse the other side of which you are guilty."

Coun Gibbons lodged a formal complaint and said the post was tweeted a day after Mexborough First beat all three of Labour's candidates in the ward.

The tweet read: "Nothing has changed and nothing will, and people wonder why. Tories in disguise. #Mexborough."

The councillor also said the employee had been out canvassing for Labour during the election campaign.

But in an email seen by the Local Democracy Reporting Service, DMBC monitoring officer Scott Fawcus said the employee is a junior member of staff and 'does not occupy a politically restricted post as set out in law'.

Mr Fawcus added: "The twitter account does not identify them as being a DMBC employee and therefore does not reflect upon the organisation.

"As much as I may personally not approve of their content, the tweets are not a disciplinary matter for their employer to become involved in. I understand that having now seen the potential for offence (the person in question) has since deleted the tweets.

"The council does have a social media policy and guidance for employees and intend to do some reminder work with staff on the implications of posting on sensitive subjects and the potential reputational issues which may arise from that."

In response, Coun Gibbons said: "I have to say that despite your response below and explanations of the authority's position on this serious matter and assurances, I am not at all happy with your conclusions.

"The fact (the person in question) is a junior member of staff and does not occupy a politically restricted post makes no difference to the fact that this tweet he posted on May 7, 2021 is wholly unacceptable and offensive."

The Labour party has been contacted for comment.

Town council to pay £70k+ over defamatory statements about two councillors (May 2021)

Attleborough Town Council has agreed to pay more than £70,000 in costs and damages after it issued a “profound and unreserved apology” to two councillors who it said it had defamed.

A council statement offered the apology to Taila Taylor and Edward Tyrer “for the publishment [sic] of defamatory statements concerning false allegations of both councillors sustaining a ‘campaign of harassment, bullying and intimidation’ on fellow councillors, staff and employees of Attleborough Town Council. We accept that all such allegations were false and wrong”.

The council admitted that in February 2020 members passed an unlawful motion to remove both councillors from their positions and prevent them from being appointed as either vice-chairman or mayor for two years.

There had been “procedural impropriety and complete disregard to the due process” required for investigating the allegations against them.

Attleborough said the unlawful motion was passed following several code of conduct complaints made to the monitoring officer at Breckland District Council - in which Attleborough is situated - and the issue of a formal letter of grievance by Miles Hubbard, regional officer of the Unite trade union.

It said the two councillors issued judicial review proceedings and had “been vindicated of all allegations relating to ‘harassment, bullying and intimidation’ and had all their previous positions held within the council reinstated”.

The statement added: “The council would like to make it clear that both Cllr Taylor and Cllr Tyrer have never been found to have harassed, bullied, or intimidated fellow councillors, staff and employees of the council and the council sincerely apologises for the hurt, suffering and stress that has been caused to both councillors.”

Attleborough’s bill comprises an agreed payment of £10,000 to a local charity, £20,000 in damages to Cllr Taylor, £7,500 to Cllr Tyrer and £41,200 as costs of the judicial review claim.

A court consent order was made that provided that the judicial review proceedings would be withdrawn if Attleborough set aside its earlier decision on the two councillors' roles and admitted “that it does not have the power formally to investigate or impose sanctions in respect of any allegation that the claimant has engaged in conduct which is either alleged to be, or would be, contrary to the member code of conduct and that any such allegations must be dealt with under the relevant arrangements of Breckland District Council”.

A summary of the consent order from the judicial review and the extensive council proceedings and correspondence that formed the dispute, has been published by the town council.

It reveals a long series of sulphurous exchanges and allegations that defamatory statements were made.

The summary noted that at one point supporters of Cllrs Taylor and Tyrer refused despite police intervention to leave a meeting at which a confidential report on the matter was due to be discussed

Mr Hubbard said: “Unite was completely justified in standing by our members over allegations that a number of councillors had waged a systematic and sustained campaign of bullying and harassment against staff employed by Attleborough Town Council. We stood by them then and do so now.”

He said the payments to the two councillors should be investigated by “relevant regulatory authorities” as to whether this was a proper use of the council’s money.

Council leader defends his conduct after public interest report into pay-off of former chief executive (April 2021)

City of York Council’s Leader has been criticised in a public interest report by auditor Mazars over how former chief executive Mary Weastell came to receive a £377,118 pay off.

The report by Mark Kirkham, a Mazars partner, said that when Liberal Democrat Keith Aspden became leader in May 2019 Ms Weastell “began a period of absence and did not return to work”.

In February 2020 the council’s Staff Matters and Urgency Committee approved her request for retirement at a meeting chaired by Cllr Aspden.

The committee was told the settlement agreed with Ms Weastell was negotiated after she issued an Employment Tribunal claim that named the council and Cllr Aspden as respondents.

This claim referred to a series of events including “allegations of bullying and victimisation especially by Councillor Aspden”, which he and the council denied.

Mr Kirkham said this involved “alleged detrimental treatment followed an investigation that was commissioned by the chief executive in response to complaints she had received in March 2017 which included allegations about a series of breaches of the council’s Code of Conduct by Councillor Aspden in connection with a recruitment matter for another person”.

An independent investigator had then concluded that Cllr Aspden used his position improperly to obtain an advantage for an applicant.

York’s Standards Sub-Committee though did not agree that Cllr Aspden had a close association with the person involved and no sanctions were imposed.

Ms Weastell was eventually offered the £377,118 package but Mr Kirkham said he had “not seen clear evidence that the council considered the arrangement and the ex-gratia payment to be in the interests of taxpayers”.

It had been put to the committee that the cost of defending a tribunal action would be significantly larger.

But the report said: “A local authority should not enter a settlement agreement simply to avoid embarrassment to the authority or individual elected members, or the cost of defending proceedings.

“It is only where there is a risk that a claim has a reasonable chance of success that it may be compromised. The business case [for the payment to Ms Weastell] refers to potential legal costs of contesting the Employment Tribunal claim but we have seen no clear evidence that demonstrates members challenged the limited information provided, or asked about the source of the estimate, or considered other options.”

Termination of Ms Weastell’s contract was marked by “ambiguity in the nature of the severance…accompanied by a lack of transparency and objectivity in approving the discretionary elements of the agreement”. Several Nolan principles were breached, Mazars found.

The report said some committee members may not have been informed that Cllr Aspden was a respondent in the Employment Tribunal claim and were, “therefore, unaware of that aspect of the conflict of interest”.

It went on: “We can reasonably expect, however, that they would have been aware of the earlier investigation arranged by the chief executive and might, therefore, have been sceptical about the propriety of the decision to approve an incomplete business case during a meeting [Cllr Aspden] chaired.”

Mazars said the failure to manage the conflict of interest “arguably means that the discretion involved in approving the severance has not been properly exercised”.

It said there had been several cases of conflicts “that have led to audit action or media coverage in recent years”, which suggested “a pattern or evidence of systemic weakness”

A review in progress of York’s constitution should be used to clarify how self-interest risk are managed, it said.

It made a number of other recommendations to improve processes and decisions recording.

Ian Floyd, the council’s chief operating officer, said: ‘We have developed an action plan to deliver each of the recommendations made by the auditor and this action plan will be considered at the same time as full council considers the Mazar’s report in May.”

Cllr Aspden said he relied on advice from council legal officers concerning any conflict of interest at the meeting about Ms Weastell’s payment, which “on this occasion was that there was no pecuniary or financial interest to declare on the specific decision being made”.

He said York’s code of conduct said councillors did not have a prejudicial interest in any council business where this “does not affect your financial position”. He would have been indemnified had he and the council lost the tribunal case.

Cllr Aspden said: “We know that there is certainly more that can be done at City of York Council to improve upon governance arrangements and, more widely, bolster existing processes.

“Work has already started to address this, including the new director of governance role and investment to update the council’s constitution. The action plan will complement the work already underway and must include creating a revised constitution, a new model code of conduct, template reports and decision logs.”

He said the deletion of the posts of chief executive post and one council director saved some £200,000 a year which would “be invested back into taxpayers’ priorities, not just as a one-off, but annually”.

Leader of borough council steps down after report from external lawyers on planning issues (April 2021)

A report by a law firm has led to the resignation of a council leader over planning issues.

Castle Point Borough Council’s Conservative leader Norman Smith stood down as a councillor after the report by law firm Wilkin Chapman raised concerns about his conduct in relation to planning applications lodged by his son and a personal friend.

A council statement said: “Due to pressing business demands requiring his full and undivided attention which meant he was unable to carry out his responsibilities as a councillor and leader of the council, Councillor Norman Smith has today resigned as councillor representing the Boyce Ward and leader of the Castle Point Borough Council.”

Castle Point in April 2019 received a peer challenge report on planning that found “a widespread perception concerning weakness in probity in relation to planning decision making”.

That report highlighted evidence of collusion among some councillors on planning decisions and this consequently became a sensitive issue for Castle Point.

“How planning applications like Luke Smith’s were dealt with by the committee related to what was at the heart of those concerns”. Wilkin Chapman said.

Mr Smith’s son Luke Smith had submitted a planning application to replace a house on a Green Belt site with a larger one.

A planning officer recommended refusal and the development control committee agreed with this but some councillors later complained that Cllr Smith had “attempted to encourage support” for his son’s application.

The second planning application was a residential one on Canvey Island from Bernard Litman - who owns a property in Barbados where Mr Smith often holidayed. The report said he was “well known to have used the villa”.

A planning officer refused this application under delegated powers but Mr Smith sought to persuade another Conservative councillor Charles Mumford to call the matter in.

The report said Cllr Mumford believed this was because Mr Smith wanted to help Mr Litman, against whom there is no suggestion of impropriety.

It found it was “evident that Councillor Smith spoke to the chief executive regarding this application and also to the planning officer” and that since he had a non-pecuniary interest in his son’s project “by lobbying members and officers he attempted to confer on or secure an advantage for his son…that lobbying was improper”.

There was also a non-pecuniary interest in Mr Litman’s application because of the friendship between the two men, and lobbying in that case was also held to be improper.

David Marchant, who was the council’s chief executive until his death in February, told the law firm during its enquiries that he “had been very concerned about” Luke Smith’s application and although he had not attended the planning committee meeting in question he had watched a webcast which he found “very uncomfortable viewing, especially the second webcast where some members had clearly behaved in an extraordinary way”.

Mr Marchant had been chief executive for 16 years and said he had never previously experienced “so many members of the controlling group had gone forward and expressed their concerns about the pressure they had been put under to support a planning application”.

After Mr Litman’s application was turned down Mr Smith approached Mr Marchant and asked “can you see if there is a middle way through this for me please, David”.

Mr Smith was though found not to have compromised the impartiality of a planning officer or to have breached the protocol on councillor/officer relations.

London borough says planning decision cannot stand after problems with broadcast stream for committee meeting (March 2021)

The monitoring officer at Ealing Council has advised the chair of its planning committee that a decision taken at a meeting on 10 March 2021, which saw an "unexpected problem" with the broadcast stream, cannot stand.

The council said the last 40 minutes of the meeting, which included part of the debate and the vote, was not broadcast publicly on the council’s *YouTube* stream.

Ealing said the planning committee would need to meet afresh to consider the application, which relates to the redevelopment of a 1.36ha site including its Perceval House offices. “Steps are being taken to confirm a suitable date for as soon as possible, to allow this to happen, in circumstances where the public will be able to witness the full debate and the vote.”

The local authority, which has taken measures to prevent a re-occurrence of the problem, said: “The monitoring officer gave her advice following full consideration of what happened at the 10 March planning committee meeting and also, consideration of the legal position.

“It has always been a fundamental principle of Ealing Council’s decision making that it be completely transparent, and it is disappointing that, due to technical problems outside the council’s control, that did not happen at the 10 March meeting.”

Senior officers threaten defamation action against councillors over remarks at meeting on staff transfer (May 2021)

Two Bristol councillors have said they face defamation actions from senior council officers over remarks made at a meeting considering a staff reorganisation.

The BBC has reported that Conservative Richard Eddy and Liberal Democrat Gary Hopkins respectively compared the officers to the Nazi propaganda chief Josef Goebbels and accused them of not telling the truth.

Monitoring officer Tim O’Hara is reported to have referred the matter for investigation, but the council refused to confirm this or comment on any other aspect of the case.

According to the BBC, lawyers for the council's director of workforce and change, John Walsh, and head of facilities management, David Martin, have served the two councillors with claims demanding a retraction, public apology and damages.

The dispute concerned the proposed transfer of some staff to the council’s wholly-owned Bristol Waste operation.

Cllr Eddy said: “Cllr Gary Hopkins and myself utterly reject the allegations.

“Moreover, Bristol City Council’s director of legal services agrees with us that the comments were made by us at a formal council meeting at which we were representing Bristolians and our constituents.

“Accordingly, we are covered by the council’s insurance cover and the council has put us in touch with outside lawyers and the insurance company will cover any legal expenses and, potentially, any legal damages (which we very much doubt).”

Cllr Hopkins said: “I will have plenty to say in the near future, but not now.”

Welsh council agrees to accept Ombudsman recommendations in full despite Monitoring Officer report advising payment of £15k less in proposed compensation to complainant (May 2021)

Councillors at Flintshire County Council came close to rejecting a recommendation from the Public Services Ombudsman for Wales after the local authority's monitoring officer advised councillors to pay a complainant £5,000 instead of the proposed £20,000.

An investigation by the Ombudsman found that the council's planning department caused injustice to a homeowner when it gave permission for an annexe with living accommodation to be built in their neighbour's garden.

Flintshire's monitoring officer agreed with all but one of the recommendations that the Ombudsman made in its report, which was published last month. However, councillors this week voted to accept all of the recommendations.

The report found that the development proposed by a Certificate of Lawfulness of Proposed Use or Development (a "s192 certificate" for an "annexe" containing primary living accommodation to be built in the garden of the next-door property) was not within a class for which planning permission was not required. Therefore, it was not a lawful development and the application should not have been granted, the Ombudsman said.

As a result, the watchdog recommended that Flintshire assess the impact of the development on the complainant's property and pay her the difference in the value of her property before and after the development as compensation. This amounted to £20,000. It also recommended the council apologise and check that the conditions on the planning permission had been followed.

However, speaking in a council committee meeting on Tuesday (25 May 2021), Flintshire's Monitoring Officer, Gareth Owens, said he disagreed with the Ombudsman on how much compensation should be paid and suggested the neighbour's development would receive permission on appeal anyway.

"There are limits to having some sympathy for the claimant's situation for two significant reasons," Mr Owens said. "The first is the neighbours' right of appeal, and further because of the neighbours' right to construct under what is called a 'permitted development'".

The Flintshire MO said that it is "highly likely" the neighbour would have had permission on appeal had the council refused it. He also said that it is possible that a visually similar but "potentially much larger building could have been constructed within the back garden under permitted development rights".

Mr Owens added: "As officers, we disagree with the Ombudsman's recommendation about compensation. The Ombudsman is recommending that we compensate the complainant based on the perceived loss of value to her property from having the visual intrusion of this building constructed.

"Officers are suggesting compensation, but we believe we are offering compensation at a more realistic value given that it is very likely that a building would have been constructed anyway."

Mr Owens recommended that the council:

- accept the Ombudsman's findings;
- issue an apology;
- check that the conditions on the planning permission have been followed;
- does not accept the valuation;
- pay to the complainant £5,000 to reflect the time taken to resolve the complaint the upset, distress and uncertainty.

Despite Mr Owen's report, councillors voted to accept the Ombudsman's complete recommendations, including paying £20,000 to the complainant, by a margin of 29 votes to 25, and 3 abstentions.

Tribunal upholds decision by council to refuse to disclose views of independent persons on complaint about councillor (June 2021)

The First-Tier Tribunal has dismissed a legal challenge to a district council's decision to refuse, in response to a freedom of information request, to provide the views of two independent persons on a complaint about the conduct of a councillor.

In *Cyril Bennis v Information Commissioner (Dismissed)* [2021] UKFTT 2017_0220 (GRC) the appellant had made a complaint to Stratford-upon-Avon District Council about the conduct of the councillor ('Councillor A').

The complaint was considered by Stratford's monitoring officer, who sought the views of the two IPs appointed under the Localism Act 2012. On 13 January 2017 the monitoring officer informed the appellant by letter that his complaint would not be investigated any further.

On 23 January 2017 Mr Bennis made a request for information in the following terms: *"I have requested under the Freedom of Information Act all correspondent (sic) relating to my complaint."*

Stratford provided the majority of the information held but refused to provide the IPs' views on the complaint. In doing so, it relied on ss. 36(2)(b) & 36(2)(c), s. 40(2) and s. 40(3)(a)(i) of the Freedom of Information Act 2000 ('FOIA').

On 4 September 2017 the Information Commissioner upheld the council's decision in relation to ss. 36(2)(b) and 36(2)(c).

The Commissioner concluded that it was reasonable for the Stratford to have withheld information comprising the IPs' views on the complaint, on the basis that publication would be likely to inhibit the free and frank provision of future advice, and would be likely to be otherwise prejudicial to the effective conduct of public affairs.

The Commissioner went on to apply the public interest test set out in s.2(2) FOIA and decided that the public interest in the withheld information being disclosed was outweighed by the public interest in the exemption being maintained.

Mr Bennis appealed but this has now been rejected by the FTT.

The FTT said it was satisfied that the focus of the appellant's grounds of appeal was the public interest balancing test (the second stage identified in *Malnick*) rather than the reasonableness of the qualified person's opinion as to prejudice (the *Malnick* threshold question).

The tribunal also noted the generalised nature of the appellant's case, which relied on the public interests of transparency, openness and accountability in relation to public sector activities.

The FTT said these were always important public interests but was satisfied that they should not be afforded especial weight in the context of local democracy. “Rather, the weight afforded must always be fact dependant and varies according to context.”

It was further satisfied that the council’s usual practice, notwithstanding its flexible approach but in line with that of other local authorities, was that IPs’ opinions would generally be treated as confidential and would only be published when a complaint proceeds to a public hearing.

“We find that, in the context of this case, the IPs provided their opinions on the merit of the complaint with a reasonable expectation that these views would not be made public,” the FTT said.

The tribunal also considered whether, in light of the council’s flexible approach and the possibility of a public hearing, the candour with which IPs express their opinions might already be inhibited by the possibility of publication. “We conclude that it is not, noting Mr Grafton’s [Stratford’s monitoring officer’s] evidence that an outcome that includes publication rarely arises, if at all.”

The FTT further concluded that there was a significant risk that the candour, and therefore the quality, of the IPs’ advice to the council would be diminished were it to become more likely that it would be made public.

“This is because we accept the Respondents’ submissions as to the risk of self-censorship were an IP to become concerned that their views are likely to be made public. We find in addition that this risk is particularly acute in the context of local democratic activities, where the IPs are named and are members of the local community.”

The FTT said it was satisfied that the ability of the IPs to provide candid and uncensored advice to the monitoring officer was an important part of the council’s complaint system. “We find that any inhibition of the IP’s advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken.

“We find in addition that there is a strong public interest in avoiding detriment to the Council’s process for dealing with complaints made against elected officials.”

Having considered all of these factors, the FTT concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the IPs’ candid advice, and in maintaining the effectiveness if the council’s complaint process that might otherwise be undermined.

On s.40(2) the tribunal considered that both Councillor A and the IPs had a legitimate expectation of privacy in relation to the withheld material. It also found that the appellant had failed to identify any consideration in favour of publication that amounted to a “pressing social need” or any other reason capable of overriding Councillor A’s right to respect for her private life.

The FTT was satisfied that publication would be unfair to Councillor A. “We find in addition that publication of an unsubstantiated complaint against an elected official gives rise to a risk of reputational damage.”

Stratford submitted that similar considerations applied to the IPs' personal data. However, the FTT noted that the role is a formal appointment and appeared, from submissions, to be public facing. It also appeared that the names of the IPs in the case were already known.

"It is not immediately apparent how the Council's reliance on s40(2) distinguishes the personal data aspects of the IPs' advice to the Council from that of senior civil servants, whose names are publicly known and whose advice on matters affecting central government policy are regularly the subject of information requests, where s. 40(2) is not relied upon."

The FTT concluded that there was insufficient information available to it about the role and function of the IPs for it to determine the third question in *IC v Rodriguez-Noza and Foster* in relation to their personal data, as it seemed to it that a different balancing exercise may be required. "However, a determination of the Council's reliance on s. 40(2) in relation to the IPs is not required for present purposes."

The tribunal dismissed that appeal and upheld the decision notice of 4 September 2017.

Inews July 2021

Disabled councillors blocked from accessibility vote — because they are disabled

The pair were told they had to leave the room during the vote among councillors on Thursday evening

A council ballot turned sour when two councillors were blocked from voting in an accessibility debate — because they are disabled.

Councillors Katie Lomas and Ashley Mason were told by York City Council they had "a prejudicial interest" in vote on improving accessibility in the town centre because they are Blue Badge holders.

The pair were told they had to leave the room during the vote among councillors on Thursday evening, and they would have to declare the reasons in front of their colleagues as a conflict of interest.

Labour's Ms Lomas told i she "was physically shaking" when told the meeting room, and told her colleagues that the exclusion was "discrimination."

She said: "I was nervous [about delivering the speech] because I'm a woman in politics, and I know that women in politics are often targets for abuse.

"I was nervous because I'm disabled, and there is a public narrative sometimes about the community being scroungers, and being entitled to things they shouldn't.

"But I am absolutely certain there were other people who were sitting in that room yesterday evening, who might drive into the city centre and use parking, and none of them were prevented from participating in the debate.

"I've taken steps today to confirm that that my view remains that that needs to be properly investigated."

After Ms Lomas shared her outrage, she and Liberal Democrat Mr Mason were told they could receive "dispensation" to vote on the matter this once — but not if the topic came up again.
"I feel that probably compounds, the hurt, to me, because they weren't accepting that they were discriminating against me on the grounds of a disability," she added.

Mr Mason told i: "Until Councillor Lomas delivered her speech, the reality of the exclusion hadn't sunk in.

"In the future we need to ensure on a national level that nobody else is put in this position again."

Disability campaigner Helen Jones called the exclusion "absolutely shocking."

The York Disability Rights Forum member told i: "In a debate about disability they were silencing disabled counsellors.

"It's already hard enough for disabled people to take part in local politics.

"There will be some people out there who voted for their counsellor because they are a disabled voter and this is a disabled candidate. The council needs to listen to people who have lived experience of being disabled."

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A spokesperson for York Human Rights City Network told i: "We have looked carefully at the Council's current plans for access to the city centre and Blue Badge parking, in the context of the UN Convention on the Rights of Persons with Disabilities, the Human Rights Act (1998) and the Equality Act (2010).

"We have concluded that a human rights approach has not been adopted in developing the current plans."

Former council leader suspended after code of conduct breach (July 2021)

The former leader of Caerphilly County Borough Council has been suspended for five months for using confidential information to buy shares.

Labour councillor David Poole was found to have breached the councillors' code of conduct by the Adjudication Panel for Wales (APW). Cllr Poole resigned as leader in September 2019.

Part of Cllr Poole's duties was to represent Caerphilly on the board of the Cardiff Capital Region City Deal.

In the course of this he became aware that councils in the area wished to support the construction of a semiconductor factory in which a company named IQE would be involved. A confidential report made predictions about IQE's profitability. The project attracted a £38m grant from the city deal and the Welsh Government to transform a disused building in Newport.

A few days after the city region board considered the matter Cllr Poole bought shares worth £2,034.55 in IQE. The APW said that in January 2019, Cllr Poole tried to amend his register of interests entry to include the IQE shares but "following advice from the monitoring officer, no amendment was made.

"He was advised that, because of the level of his shareholding and the fact that the business was based outside the council's area, it was not necessary to make any amendment."

Cllr Poole in January 2019 reinvested his dividends by buying further IQE shares worth £111.57, and another £111.33 that May.

He sold the shares in September 2019 and referred himself to the Public Services Ombudsman, noting "..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area".

The APW found in mitigation that Cllr Poole had not previously breached the code and that he did seek to register an interest in IQE in January 2019, “but failed to do so as a result of the monitoring officer’s advice”.

It also found that Cllr Poole had not tried to influence decisions concerning IQE at a February 2019 meeting and left later meetings at which it was discussed.

There were though a number of aggravating factors. These included his influential position as leader, that he had used confidential, price sensitive information to attempt to secure a personal advantage and had “shown no real insight into his wrongdoing and/or acceptance of guilt” and had in the latter stages of the process failed to engage with the APW.

It suspended him as a councillor for five months and for two months concurrently for failing to disclose interests.

Standards watchdog calls on Government to respond to recommendations in 2019 local government ethical standards report “as a matter of urgency” (July 2021)

The chair of the Committee on Standards in Public Life has said the watchdog remains concerned that the Government has not formally responded to its local government ethical standards report, some two and a half years after it was published.

In the CSPL’s Annual Report 2020/21, Lord Evans of Weardale urged the Government to look at the recommendations made – including the need for greater sanctions, where appropriate, in the rare cases of significant or repeated breaches of the code of conduct – “as a matter of urgency”.

The chair of the committee did, however, praise the Local Government Association for acting "promptly" to take forward the recommendation of a model code of conduct for local councils.

“We wanted to enhance the consistency and quality of local codes, and to support action against bullying and harassment,” Lord Evans said.

The report added: “This is vital support for local authorities as they ensure councillors and officers adopt and maintain high ethical standards and we see this as an important step towards encouraging good conduct and safeguarding the public’s trust in local government. The importance of an ethical culture in every local council to maintain public trust and confidence in local democracy should not be underestimated.”

Lord Evans separately said the Committee recognised that the need for immediate action at a time of crisis meant that the normal way of doing things might have to be set aside. But he warned that there were some areas of concern “where important norms had been disregarded”.

He noted that “demonstrating the principles of public life, and showing a sense of fairness in carrying out its duties, has a critical impact on the ability of government to take the public and business with them and is necessary for building consensus.”

Lord Evans added that the Committee would continue to monitor the impact of the pandemic on ethical standards in public life.

The majority of the Committee’s time and work during the period covered by the 2020/21 report was on two major reviews: one on election finance, the other covering the standards landscape (“Standards Matter 2”).

Its next review, to be launched later this year, will identify best practice in education, culture, and leadership on ethical standards. It will report to the Prime Minister in 2022.

The Cabinet Office meanwhile this week (15 July) announced that the Prime Minister had appointed Professor Gillian Peele, Emeritus Professor of Politics in the University of Oxford, and Ewen Fergusson, a former partner in the finance division at City law firm Herbert Smith Freehills, as members of the Committee, with effect from 1 August 2021.

High Court quashes decision by deputy monitoring officer that parish councillor had breached code of conduct (July 2021)

A parish councillor has won a High Court challenge over a decision by a Deputy Monitoring Officer (DMO) to uphold a complaint that he had breached its Code of Conduct for Members (PC Code).

The background to the case of *Robinson, R (On the Application Of) v Buckinghamshire Council* [2021] EWHC 2014 (Admin) was that Farnham Royal Parish Council had complained about the claimant, Cllr Clive Robinson, to South Bucks Council (whose functions are, following local government reorganisation, now carried out by Buckinghamshire Council).

The parish council accused the claimant of breaching paragraph 3.1 of the PC Code (behaving in a respectful way and not acting in a way that could bring the council into disrepute).

The principal basis of the challenge was that the decision was in breach of section 6 of the Human Rights Act 1998 as it violated Cllr Robinson’s right to freedom of expression under Article 10 of the European Convention on Human Rights.

The claimant had been refused permission to challenge the defendant’s decision in respect of a complaint against another councillor, Trevor Clapp, but he was given permission to rely on the contrast between the defendant’s treatment of the two complaints.

The complaints arose out of a public meeting of the parish council, chaired by Cllr Clapp, on 17 April 2018 to discuss the Green Belt. The parish has a large area of Green Belt land within its boundaries.

South Bucks Council had, in March 2016, published its review of Green Belt land in which it stated that most of the Green Belt land in Farnham Royal only contributed weakly to the Green Belt, due to the intensification of housing on it, or adjacent to it.

“The prospect of development on the Green Belt in and around Farnham Royal generated some interest among developers, but was controversial among local residents who wanted to preserve the Green Belt,” the judge noted.

The complaint against Cllr Robinson, who had addressed the meeting from the floor, was that he had made misrepresentations about the motivation and intentions of other councillors, namely that they were minded to allow development of the Green Belt.

It was also said that he had met with residents and repeated those misrepresentations, he had refused to apologise or retract those misrepresentations and had added further claims against the clerk.

In the complaint the clerk to the parish council said it had decided that Cllr Robinson’s actions were in breach of the PC Code by bringing the council into disrepute and failing to show respect to other councillors.

The complaint also noted that as a result of a public backlash whereby the integrity of the chairman and the clerk had been questioned, Cllr Clapp had already asked for himself to be referred to the Monitoring Officer for a determination as to whether he had been in breach of the Code of Conduct.

Subsequent efforts to resolve the issue with Cllr Robinson were unsuccessful.

South Bucks’ Monitoring Officer wrote to the claimant in July 2018 inviting his comments. He responded by denying the allegations made against him.

An external solicitor was asked to assess the complaint on the papers and made recommendations in a report dated 18 February 2019.

The Deputy Monitoring Officer agreed with the assessor’s conclusion that Cllr Robinson had breached the Code of Conduct against five councillors and Cllr Clapp. She also agreed that there was no evidence to justify Cllr Robinson’s accusations that these councillors were secretly supporting development on the Green Belt.

The DMO added: “Having considered all the evidence, it appears Cllr Robinson's objective was to prove to the public that the Council and/or other councillors were not being truthful about their position regarding the green belt. I find this to be damaging to the Council especially as the Council had formally adopted a policy on the Green belt, one which Cllr Robinson had been privy to through all the stages before adoption.

“Further I also find that his allegations that the Parish Council's Policy statement on the Green Belt was being used to allow development to be disrespectful and was sufficient to damage the reputation of the office of the Councillors and/or the Council.”

She also noted that the allegations were made in an open forum where members of the public were present.

The DMO concluded that the claimant was in breach of the PCC Code, but also that the complaint did not warrant a referral for investigation.

Cllr Robinson brought a claim for judicial review over the DMO's decision.

Ground A was that the DMO's decision failed to make any clear findings as to what the claimant actually said at the meeting.

Grounds B and C alleged that the DMO failed to consider Article 10 in sufficient detail, in particular, there was insufficient regard given to the wider importance of freedom of expression, rigorous debate, scrutiny of decision-making and public accountability in local government.

Specifically, ground B alleged that paragraph 8 of the DMO's decision which suggested that, if the claimant had raised the issues of concern in private, the findings against him might not have been made, was wholly inappropriate. It was submitted that it was entirely proper for the claimant to raise concerns about issues affecting the parish at a properly convened meeting in a public forum, with other councillors, and in his capacity as a councillor.

Ground C meanwhile alleged that the DMO erred in law in paragraph 9 of the decision, when she observed that "if criticism is a personal attack or of an offensive nature, it is likely to cross the line of what is acceptable behaviour".

Ground D alleged that the defendant acted unreasonably, inconsistently and unfairly in adopting a different approach to freedom of speech in complaints against the claimant and Cllr Clapp.

In relation to Cllr Clapp, the DMO concluded that Cllr Clapp appeared to be aggrieved that he had been challenged in public by Cllr Robinson and in retaliation he attacked the person of Cllr Robinson when making a statement to the parish council on 25th June 2018. She said Cllr Clapp should be invited to respond to those allegations.

However, the DMO did not consider that Cllr Clapp's actions met the threshold for a breach of the Code of Conduct. She concluded that, as she had found no substantive breach on Cllr Clapp's part, it was not in the public interest to refer the complaint for investigation, and the costs of doing so would be disproportionate.

In the High Court Mrs Justice Lang concluded that the claim should succeed.

In relation to Ground A, both [the external solicitor] and the DMO had rightly been critical of the failure to record full and accurate minutes of the public meeting of 17 April 2018, and in particular, the failure to refer at all to the statements made by the Claimant.

"However, [the external solicitor] accepted that [the clerk until she resigned in 2018] had kept her own notes of what the Claimant said, and she set them out in paragraph 5.4 of her assessment. The Claimant gave his account of what he said at the meeting, which partly corresponded with [the clerk's] account and partly differed from it," the judge said.

"Neither [the external solicitor] nor the DMO made clear findings as to what the Claimant actually said at the meeting. The DMO said in paragraph 12 that the Claimant accepted that he made "those statements", which I take to mean the statements which [the clerk] attributed to him, based on her private notes. This was not entirely accurate. Given the importance that was placed upon his statements, for the purposes of the PC Code and Article 10, I consider that this was a significant

failing in the assessment and decision-making process. It is not possible to say what difference it would have made to the outcome if this exercise had been properly undertaken."

In relation to Grounds B and C, Mrs Justice Lang found that the DMO's interpretation and/or application of Article 10 was flawed, and she failed to give effect to the claimant's enhanced right of political expression.

"In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive," the judge said.

"Although no further action was pursued against the Claimant, beyond recommending that he apologise, it was a violation of Article 10 to subject the Claimant to the complaints procedure, and to find him guilty of a breach of the PC Code. Therefore Grounds B and C succeed."

Finally, in relation to Ground D, Mrs Justice Lang said that whilst the factual differences between the cases [involving Cllr Robinson and Cllr Clapp] may have resulted in a different outcome, the approach should have been the same in both. "Councillor Clapp was more favourably treated. Therefore I consider that Ground D succeeds."

Finding that there had been a violation of Article 10, the judge quashed the decision.

Appendix B

10 May 2021 ***AMENDED MEDIA RELEASE***

RENFREWSHIRE COUNCILLOR DISQUALIFIED FOR MISCONDUCT

A Renfrewshire Councillor, Paul Mack, has been disqualified by the Standards Commission for misconduct following a Hearing held online on 3 May 2021, at which he was found to have behaved repeatedly in a manner which was harassing, threatening and offensive towards two other councillors, as well as to the Chief Executive and other officers.

At the Hearing, which was held in Councillor Mack's absence, the Panel heard that Councillor Mack had made a number of serious and unfounded allegations about the allocation of a council property to the family member of another councillor. The allocation was the subject of a review by the Council's Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member.

Despite this, and without any evidence to the contrary, Councillor Mack had embarked upon a course of conduct in which he made wholly unwarranted accusations of corruption and cronyism, and of covering up criminal activity, towards the other councillor, the Chief Executive and senior Council staff. Councillor Mack had further demanded the suspension of senior officers, again without any justification.

Mr Paul Walker, Chair of the Hearing Panel, said: "Even when confronted with independent findings which confirmed him to be in the wrong, Councillor Mack compounded his misconduct by continuing to make offensive and damaging allegations. A fundamental element of the Code of Conduct is the requirement for Councillors to behave with courtesy and respect towards fellow Councillors and staff. Councillor Mack has shown little regard for his obligations, not just in these cases, but on previous occasions when he was suspended for breaches of the Code for disrespect. He has provided no justification, no apology, and no undertaking to avoid similar conduct in the future, and indeed his participation in the whole process has been minimal. Imposing a sanction of disqualification is not one we have come to lightly but the Panel is satisfied, in the circumstances that it is fully warranted and necessary to protect others and to reflect Councillor Mack's repeated wilful misconduct and unwillingness to change his behaviour."

The Hearing Panel accepted that Councillor Mack was entitled to raise concerns about the allocation of council housing, particularly if he was doing so on behalf of a constituent. However, having heard evidence, reviewed emails sent to other councillors, senior officers and a journalist over a period of some seven months in 2019, and watched a video recording of comments made in public at a Council meeting on 27 June 2019, the Panel was satisfied that Councillor Mack had sought repeatedly to allege serious wrongdoing by a widening

number of individuals. This was despite no evidence of wrongdoing being found during any investigation (including the independent inquiry). The Panel noted that Councillor Mack had not produced any evidence to support his claims at any stage.

The Panel was satisfied that Councillor Mack's accusations amounted to offensive and abusive personal attacks and were persistent and unwarranted. The Panel also considered that, in copying in all elected members to some of the emails, in sending one to a newspaper and in making comments at full Council meetings, Councillor Mack had sought to inflict reputational harm.

The Panel was further satisfied that Councillor Mack had made a number of gratuitous and unwarranted personal comments to a second councillor in an email of 24 April 2020. In addition, the Panel found that Councillor Mack had made threatening and intimidating remarks in that email in making reference to someone going to the second councillor's house and inflicting personal harm on him.

The Panel found that Councillor Mack's actions contravened the Councillors' Code of Conduct, which states that elected members must treat officers and their colleagues with respect, that they must avoid any conduct that amounts to bullying and harassment; and that they should refrain from raising matters relating to the conduct or capability of officers in public.

The finding and sanction take into account that the Standards Commission had previously suspended Councillor Mack for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. Despite this, the Panel did not consider there was any evidence that he had made any attempt to moderate his behaviour or that he gave any consideration to how it could impact others.

The Panel noted that Councillor Mack had repeatedly indicated that he should not have to abide by the Code and did not recognise the Standards Commission and its role in the ethical standards framework.

The Panel determined that Councillor Mack's behaviour was deliberate and serious in nature. The Hearing Panel considered that the manner in which Councillor Mack had raised his concerns was unacceptable and that it amounted to personal attacks on officers and fellow councillors. The Panel considered that, as such, it was likely that Councillor Mack's behaviour would have seriously undermined public confidence in local government and have a significant detrimental impact on working relationships within the Council. The Panel did not consider, therefore, that a more lenient sanction than disqualification was appropriate in the circumstances.

Notes:
At a hearing on 4 February 2021, a Sheriff Principal considered an appeal lodged by a Respondent against a decision made by a Panel of the Standards Commission about the same complaints, at a Hearing on 10 September 2020, to find him in breach of the Councillors' Code of Conduct and to disqualify him. The Sheriff Principal did not consider, or

make any finding, on the Panel's decisions on breach and sanction, but determined that the Standards Commission should not have proceeded with the Hearing in the absence of the Respondent, who stated he was self-isolating from 9 September 2020 (having been in close contact with an individual who had tested positive for Covid-19).The Sheriff Principal remitted the matter back to the Standards Commission to consider at a new Hearing.

A full written decision in respect of the Hearing will be issued and published on the Standards Commission's website within 14 days. The disqualification will remain in place until September 2022.

The Standards Commission for Scotland works independently of Government and political parties. It promotes and enforces Codes of Conduct for councillors, as well as for individuals appointed to a wide range of national and regional public bodies across Scotland such as the Accounts Commission, the Scottish Qualification Authority, SportScotland, Scottish Water and the Scottish Police Authority and many other organisations, including NHS Boards and further education colleges.

Further information on the work of the SCS can be found at www.standardscommissionscotland.org.uk.

A previous press release issued on 3 May 2021 incorrectly stated that the disqualification would remain in place until July 2022. This was due to an error in the verbal decision read at the Hearing, which was subsequently recognised by the Hearing Panel and corrected in the written decision, a copy of which can be found at: https://www.standardscommissionscotland.org.uk/cases/case-list.

ENDS

Issued by the Standards Commission for Scotland. For further information please contact the Standards Commission on 0131 348 6666 or enquiries@standardscommission.org.uk