Name of meeting: Standards Committee

Date: 10th October 2022

Title of report: Cases and News Update

Purpose of report

To brief the standards committee on any news and cases of interest since March 2022.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	**not applicable**
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	**no**
The Decision - Is it eligible for call in by Scrutiny?	**no**
Date signed off by Strategic Director & name **Is it also signed off by the Service Director for Finance IT and Transactional Services?** **Is it also signed off by the Service Director for Legal Governance and Commissioning Support?**	**Rachel Spencer-Henshall – 27th September** **Eamonn Croston – 23rd September** **Julie Muscroft – 26th September**
Cabinet member portfolio	**Cllr Paul Davies**

Electoral wards affected: All

Ward councillors consulted: None

Public or private: Public

Has GDPR been considered? Yes

1. Summary

1.1 This report is intended to brief members on any developments and news on matters of local government ethics.

1.2 It will look at news items and any relevant case law, as well as any recent published decisions from other local authorities or any of the existing standards boards.

1.3 It will also provide an update on the work of the CSPL, in particular that which follows on from their report 'Ethical Standards in Local Government'.

2. Information required to take a decision

2.1 News since March 2022

2.1.1 A number of sources have been checked for details of any news items that are of relevance or may be of interest to the committee.

2.1.2 These include Local Government Lawyer, Lawyers in Local Government, the various standards boards' websites, websites of other local authorities as well as local and national media.

2.1.3 There are a number of articles, from various sources, which may be of interest to the committee, even if all are not directly relevant to the work of the committee. Copies of the articles are at appendix A, but the following are of particular interest.

2.1.4 In March, The Guardian reported on a number of reports commissioned by Handforth Parish Council, following the problematic parish council meeting. A number of reports were prepared by Bevan Brittan and it was resolved in March that these should be published. The Guardian headline is that '*Jackie Weaver had no authority after all'*.

2.1.5 In April 2022, Brighton and Hove City Council reported that there had been an increase in the number of complaints about member conduct, with more complaints made in the first three months of 2022 than the whole of 2019. Social media complaints made up the majority of the 14 complaints made.

2.1.6 Hull Live reported on the abuse that members can face from the public, giving a number of examples.

2.1.7 A Westminster councillor accepted an offer of damages when she was wrongly identified as being accused of housing fraud in a BBC report.It was case of mistaken identity, but the BBC clearly accepted that there were reputational issues.

2.1.8 The LGA reiterated its call for virtual and hybrid meetings to be reintroduced. This was a year after the Government's call for evidence closed. The Government is yet to publish its conclusions to the evidence.

2.1.9 Following on from this, the County Councils Network surveyed councillors on the subject of hybrid meetings, reporting that 87% of those surveyed wanted their councils to be able to hold hybrid meetings.

2.1.10 The government has ruled out Ombudsman reform. A Parliamentary Committee had proposed to create a 'People's Ombudsman' by joining the Local Government and Social Care Ombudsman with the Parliamentary and Health Service Ombudsman.

2.2 Recent published decisions

2.2.1 Some Local Authorities in England publish their decisions on member complaints, as do the Standards Boards in Wales, Scotland and Northern Ireland.

2.2.2 The Standards Commission for Scotland has continued to work, holding hearings remotely.

2.2.3 Since March 2022, the Commission has considered 15 cases, taking no action in respect of 12, with three resulting in hearings, one of which is yet to take place.

2.2.4 Both hearing resulted in findings of no breach having occurred. One of the cases, a copy of which is at Appendix A, related to Twitter posts.

2.2.5 The Commissioner for Standards in Northern Ireland has had 8 cases referred to it since March 2022, the majority of which are yet to be heard.

2.2.6 The one case that has been heard again relates to a post made on Twitter. The member argues that his post was a retweet and that this did not necessarily indicate that he supported or endorsed the original Tweet. The report is interesting in as much as it discusses the operation of Article 10 of the ECHR and the limits of free speech. A clear distinction was made between Tweets that might support a controversial political opinion and those were simply personally abusive. A copy of the Commissioners notice is at Appendix A.

2.2.7 The Public Services Ombudsman for Wales publishes its finding directly to its website.

2.2.8 Since the last report, there have been no Code of Conduct cases referred to the Ombudsman.

2.2.10 In England, publication of decisions still remains discretionary, although the CSPL did support publishing these, so it may be the case that we see more decisions from English local authorities being published in due course.

2.2.11 Two reported cases have been identified on local authority websites. One involved allegations of bullying and harassment levelled against a former councillor and the other also involved allegations of threatening and abusive behaviour, which resulted in the member being censured, after having failed to comply with the original sanctions.

2.2.12 The Local Government Ombudsman has also reported that two standards matters had been referred to them, one from a member of the public, the other from an elected member who had been the subject of a complaint. In both cases, the Ombudsman was clear about the extent of their powers and found no evidence of fault in either matter on the part of the Council and Monitoring Officer.

2.3 Case Law

2.3.1 One reported case has been identified that considered the status of someone posting on social media.

2.3.2 The case - *Diggins v Bar Standards Board* - actually involved a non-practising barrister who was the subject of a complaint about a Tweet. The BSB and then the Court on appeal considered the extent to which Diggins was acting as a private individual, versus as a representative of the Bar. The allegation made by Diggins was that the BSB were attempting to police his private life. A significant factor in the decision was that Diggins placed a link in his Twitter 'bio' to a personal website, in which he identified himself as a barrister.

2.4 The work of the Committee on Standards in Public Life

2.4.1 Since the last report to Committee, a formal response from the then Minister has been sent to the CSPL.

2.4.2 The Chair of the CSPL welcomed the response, but expressed disappointment that its recommendations had not been accepted. He later urged local government to continue to work with the government.

2.4.3 The 2022 Annual Report contains just two paragraphs on the outcome of the *Ethical Standards 2019 report.* The commentary reflects the view of the CSPL that this was a missed opportunity.

3. Implications for the Council

3.1 Working with People

N/A

3.2 Working with Partners

N/A

3.3 Place Based Working

N/A

3.4 Climate Change and Air Quality

In order to minimise any impact, printing is kept to a minimum.

3.5 Improving outcomes for children

N/A

3.6 Financial Implications for the people living or working in Kirklees

N/A

3.7 Other (eg Legal/Financial or Human Resources)

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have reputational implications.

3.8 Do you need an Integrated Impact Assessment (IIA)?

No

4. Next steps and timelines

4.1 The Monitoring Officer will continue to monitor any relevant news and cases and will report back to this committee. She will also continue to monitor and report back on the work of the CSPL.

5. Officer recommendations and reasons

5.1 Members are asked to consider the report and comment on its contents (as applicable) and note its contents.

6. Cabinet portfolio holder's recommendations

N/A

7. Contact officer

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8. Background Papers and History of Decisions

8.1 N/A

9. Service Director responsible

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Appendix A

News items

Jackie Weaver had 'no authority' after all, investigation finds

A year after the chaotic Handforth parish council Zoom call, reports find meeting facilitator was in the wrong

Jackie Weaver – if you recall the dialogue from the jaw-droppingly chaotic parish council meeting – had "no authority" to remove councillors from the meeting. "No authority at all."

More than a year on, newly published independent investigation reports have revealed the complainants were correct: the muting of microphones and removal of individual councillors "was without authority". Weaver, it seems, did not have the authority to do what she did.

But the report also has considerable sympathy for Weaver's situation. Its author writes: "Faced with what were unusual and difficult circumstances, and the deep-seated issues underpinning those circumstances, we can understand why JW [Weaver] acted as she did, despite her action being without any formal footing in terms of appropriate process and procedure."

The Handforth parish council zoom meeting of December 2020 was one of the internet sensations of lockdown, shared by millions across the world.

Weaver, employed by the Cheshire Association of Local Councils, had been brought in to help run the parish council meeting amid accusations of poor councillor behaviour.

The low-quality footage shows Weaver being told by the council chair that he was the only one who could remove people from the meeting. "You have no authority here Jackie Weaver. No authority at all."

Soon after, he was removed.

Another councillor urged Weaver to read the standing orders, yelling: "Read them and understand them."

Other councillors could be heard muttering under their breath. One gets up to answer the door. Some struggled with their mute button. In the background was the sound of a flushing toilet.

The viral success of the meeting led to T-shirts being made that read: "You have no authority here Jackie Weaver." Weaver herself published a self-help book titled "You Do Have the Authority Here!"

The chaos led to six independent investigation reports into councillor misconduct that were published in May 2021, but not publicly released. The audit and governance committee of Cheshire East council agreed this year that those reports should be published.

The six reports investigating multiple complaints run to 146 pages in total and are dizzying in their detail of local government process. Three of the reports focus on the infamous meeting.

It emerged earlier this month that the formal investigations into Handforth councillor behaviour had cost Cheshire East council more than £85,000.

Reacting to the reports Weaver told the BBC that she felt the jury was still out on precise procedure.

“We were still very vague about how virtual council meetings worked and I did not actually remove them from the meeting, in my opinion, I moved them to the waiting room,” she said. “A little later in the meeting the remaining councillors voted to remove them.

“So I welcome the findings of the report but am deeply saddened that it took so long and cost so much to get there.”

The Guardian

More people complain about councillors’ conduct, according to report

More official complaints have been made about councillors’ conduct in the past three months than in the whole of 2019.

Fourteen complaints were lodged in the first quarter of this year, compared with 13 in 2019, – although the annual number jumped in 2020 to 33 and rose again last year to 36.

Nine complaints were made about comments on social media by Conservative councillor Robert Nemeth in online exchanges about a story in the Daily Mail in February.
The story was headlined: “Parent fury as Brighton primary schools tell staff NOT to say ‘mum’ and ‘dad’ and use ‘grown ups’ instead to avoid stigmatising ‘non-traditional’ families.”

Brighton and Hove City Council published a statement saying: “Recent reports claiming four Brighton schools are not allowing the words ‘mum’ and ‘dad’ to be used are untrue.”
As well as nine complaints about Councillor Nemeth’s comments, another complaint was made about fellow Conservative councillor Dawn Barnett who was quoted in the press on the same subject.

The complaints are logged – without naming the two councillors – in a report to the council’s Audit and Standards Committee which is due to meet next week.

Previously, Labour councillor Daniel Yates, who chairs the committee, has identified himself as the subject of complaints.

The latest update is understood to include two complaints made by Labour and Conservative members about the conduct of Green councillor Hannah Clare when she chaired the council's Children, Young People and Skills Committee on Monday 7 March.

Councillor Clare said that she was not aware of any complaints and declined to comment on the matter.

Two members of the public have also submitted complaints about councillors failing to treat them "with respect".

A further seven complaints from last year have yet to be resolved, with four of the outstanding complaints having been made about one councillor.

Last year the council revised its code of conduct and encouraged councillors to take refresher training so that they might "promote and maintain high standards of conduct".

And a specialist external trainer was brought in to help councillors use social media without breaching the council's code of conduct.

Every council is required to adopt a code of conduct which "must conform to the seven 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership".

But since the Localism Act 2010, the council's Standards Committee has had no power to suspend councillors although it can censure members and recommend training which they can ignore.

The latest standards update includes a letter to the council from government minister Kemi Badenoch, who studied at Sussex University.

Ms Badenoch, the Minister of State for Equalities and Levelling Up Communities, said: "Vibrant local democracies flourish where the reputation of the local authority is held in high regard, where councillors' decision-making is transparent, valued and trusted by the communities they serve and where people are willing and confident to put themselves forward as potential candidates.

"The standards and conduct framework within which local authorities operate must drive out corruption and promote commitment to the principles on standards in public life and tolerance to the differing views of others."

She underlined the government's commitment to the importance of protecting free speech, adding that ministers had no intention of bringing back the previous "flawed regime", which allowed for councillors to be suspended.

She said: "There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct and this was a deliberate policy decision by the

coalition government at the time of the Localism Act 2011 to differentiate from the previous failed ‘Standards Board’ regime.

“The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government.”

And she added: “All councillors are ultimately held to account via the ballot box.”

Brighton and Hove News

Council leader says he was called a 'Liberal Demotw*t' as councillors reveal abuse

A senior councillor has spoken out about the abuse he has received as civic chiefs revealed the unacceptable comments they can face on a daily basis. A recent Local Government Association found that seven out of ten councillors across councils in England and Wales have experienced abuse over the last year.

And on Wednesday night, (July 20) Cotswold District Council unanimously agreed to denounce such behaviour which they feel is spreading from social media into real life. They also pledged to set an example of good behaviour for others.

Council leader Joe Harris (LD, St Michael's) said it was great that the council was shining a light on the abuse that councillors get. He said such behaviour is unacceptable and explained how councillors across the UK have had their cars hit with firebombs and dog excrement posted through their letter box. He also went into great detail about how he personally has been targeted on many occasions.

Cllr Harris said: "These instances are not acceptable and should be called out. It happens here as well. I myself have had threats of physical abuse online, I've had general abuse. It's quite common if you're on Twitter it can be quite a cesspit at times."

Cllr Harris read out an anonymous letter he received last year and said it was important for people to understand the nature of abuse councillors receive. The letter reads: "To Joe Harris, as a Liberal Demotwat, sorry, my mistake, a Liberal Democrat who's barely out of nappies and knows it all already. You haven't got a clue have you?

"As a majority of now in this town, we all suggest that you crawl back in to your play pen and play with your toys for now. Maybe when you are a lot older and have left school and have a proper job like the rest of us then you can preach to others and see if they will listen to your ludicrous fancies."

He said the letter was just one example of the messages he gets on a semi-regular basis. Cllr Harris also explained he received quite a nasty anonymous email in April which he had to report to the police and had an appalling impact on his mental health.

"It still upsets me just thinking about it. This is the abuse many of us face on a day to day basis and we shouldn't put up with it."

He thanked Conservative Councillor Gina Blomefield (C, Campden & Vale) for bringing forward the motion. She told the council that it is wrong for people to be rude and intimidating towards those who stand for election to make a positive contribution to their society and make a difference.

"It's an issue which can affect anyone who gets involved with public life. We all know of the appalling murders of Jo Cox and Sir David Ames who were killed when carrying out their surgeries.

"It seems probable that some people have become emboldened and encouraged from their rants on Twitter, Facebook, etc or influence others to carry them forward as a way to behave in face to face encounters. This is totally unacceptable. I hope we give a clear steer by adopting debate not hate will stifle this unacceptable behaviour."

The council agreed to endorse the LGA's Debate not Hate campaign and will write to town and parish councils to remind everyone that while democracy thrives on good, frank discussions these should never turn into personal abuse.

Hull Live

Welsh councillor who falsely claimed to be eligible to stand for election disqualified for two years

A former Pencoed Town Council councillor has been barred from holding office for two years after declaring he was eligible to stand for election even though he had a criminal record, disqualifying him from running under the Local Government Act 1972.

The Adjudication Panel for Wales said that the actions of the former councillor, Gordon Lewis, who served as a member for a year and eight months before stepping down, warranted a "significant period of disqualification".

In 2015, Mr Lewis was convicted of affray and two counts of common assault. He was sentenced to a total of 16 months imprisonment, suspended for 24 months.

Three years later, he stood for election to the council. He submitted a 'nomination pack' which included the following declaration: "I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000."

Section 80 of the Local Government Act 1972 provides that:

"a person shall be disqualified for being elected or being a member of a local authority if he –
(d) has within five years before the day of election or since his election been convicted [...] of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine"

Almost two years into his tenure, a national newspaper published a news story referencing his conviction, alerting the council to his criminal record for the first time. He resigned from his role soon after.

The Public Services Ombudsman for Wales investigated the case and submitted a report to the Adjudication Panel for Wales, which then conducted a Case Tribunal.

The Ombudsman's report alleged that the former councillor had misled the council as to his eligibility to be a councillor and that his dishonesty, both when signing the declaration of acceptance of office and during the time that he acted as a councillor, was a serious abuse of office.

The Ombudsman considered that Mr Lewis's actions amounted to "serious disreputable conduct" and suggested that he was "entirely unfit for public office". In light of this, the Ombudsman called upon the panel to consider disqualification to be the most appropriate form of sanction.

The ensuing tribunal found that the breach was serious in nature as the conduct could reasonably be regarded as conduct which would seriously undermine the public's faith in the Code and the standards regime.

It noted that Mr Lewis had been in office for a lengthy period of time and was likely to have voted in significant council decisions and to have received sensitive information in his role, despite being disqualified from being elected.

"Section 80(1)(d) was in place for a reason, so that an individual would be disqualified for a substantial amount of time if s/he had been convicted and sentenced of certain offences," the tribunal said.

"By nevertheless signing his Declaration of Acceptance of Officer and acting as a Member for 1 year and 8 months, the Case Tribunal considered this to be a matter which merited a significant period of disqualification under the standards regime."

The panel concluded by unanimous decision that Mr Lewis should be disqualified for 24 months from being or becoming a member of Pencoed Town Council or any other relevant authority within the meaning of the Local Government Act 2000.

Mr Lewis did not engage with either the Ombudsman or the Adjudication Panel. The tribunal noted that he had displayed a "degree of recognition of the seriousness of the matter" in view of his prompt resignation following press reporting, "however there was no evidence of any real insight shown or evidence of any accompanying apology".

Local Government Lawyer

Former Welsh community councillor barred from office for a year over “wanton and furious driving” conviction

A former Llansantffraed Community Council councillor has been barred from holding office as a councillor for a year by the Adjudication Panel for Wales after being found guilty of causing bodily harm by wanton and furious driving.

In May 2019, Caryl Vaughan was involved in an incident in which she drove her car "at speed" on private land at a council contractor while he was undertaking his duties for the council. The incident took place just three days after Vaughan signed her declaration of acceptance of office.

"Her car struck two minors during the incident; at least one suffered bodily harm," according to a report from the Public Services Ombudsman for Wales.

The police investigated the incident, leading to her being charged with causing bodily harm by "wanton and furious driving".

She pleaded guilty to the offence and was handed a suspended sentence of 10 weeks' imprisonment in December 2020 but continued in her role as a councillor and did not report her conduct to the Monitoring Officer or the Ombudsman.

Vaughan then resigned later that same month after the story gained media attention.

The Public Services Ombudsman for Wales investigated a complaint about the former councillor in regard to the case. The Ombudsman referred its report to the Adjudication Panel for Wales, which conducted a Case Tribunal.

The tribunal found that Vaughan had breached paragraph 6(1)(a) of the Code of Conduct by bringing her office as councillor into disrepute.

"It was obvious from the evidence that former Cllr Vaughan only resigned, not because she felt any remorse or shame, but in order to avoid an investigation by the Ombudsman," the tribunal noted.

It added: "The likely view by the public of such conduct would be that former Cllr Vaughan had no regard or respect for the principles of public service, including integrity, openness, and leadership."

The tribunal concluded by unanimous decision that former Cllr Vaughan should be disqualified for 12 months from being or becoming a member of Llansantffraed Community Council or of any other relevant authority within the meaning of the Local Government Act 2000.

In response to the tribunal's decision, the Public Services Ombudsman for Wales, Michelle Morris, said: "We hope that lessons will be learned from this case. On that note, it is especially helpful that the panel also recommended that all Councillors of the Community Council and the Clerk should attend training on the Code to ensure they understand its provisions, including paragraph 6(1)(b)."

The only response from Vaughan made during the investigation by the Ombudsman, and the panel's tribunal was made in November 2021 when she informed the Ombudsman by email that she would not attend an interview. In it, she said: "I wish not to attend the interview as its a busy time for me with work commitments and unable to find time that would be adequate for the interview. I would like to draw a line underneath it all and move forward. I joined the parish council to have a young voice representing the village and after discussing with the clerk and other people was better to resign to avoid the interviews as for me would feel more pressure and would not be worth the worrying and stress."

She was invited to make submissions to the tribunal but failed to do so.

Local Government Lawyer

Councillor wins £30k damages after BBC misidentified her as politician accused of housing fraud

A Westminster councillor has received damages in a libel case against the BBC after the news organisation misidentified her as another BAME politician who had been accused of housing fraud.

Cllr Liza Begum obtained £30,000 in libel damages for the defamatory allegation broadcast on BBC1 that "there are reasonable grounds to suspect that [Cllr Begum] had engaged in housing fraud".

However, the BBC report mistook Cllr Begum – who is Westminster City Council's Cabinet Member for Housing Services – for Apsana Begum, the Labour Member of Parliament for Poplar and Limehouse.

In October 2020, on the main 6:30 pm BBC1 London News programme, a presenter introduced a report with: "I understand housing fraud allegations have been made against a Labour MP". The Political Correspondent replied: "Yeah, this is Apsana Begum who is a Labour MP for Poplar and Limehouse, being the MP for just under a year and it follows an investigation into how she got the tenancy to her housing association flat. She faces 3 charges of dishonesty, failing to disclose information to make a gain for herself".

Simultaneously, the BBC broadcast a video not of Apsana Begum MP (who has since been cleared of all charges) but of Cllr Begum addressing Labour Party's 2019 General Election Race and Faith Manifesto launch.

After a complaint from Cllr Begum, the BBC broadcast a statement the following day apologising. The BBC admitted its mistake and added that it "would like to make it clear that Liza Begum has nothing to do with the story".

Cllr Begum then brought a libel claim contending that she was defamed by the video footage identifying her to viewers as the MP accused of housing fraud despite the MP's correct name being used.

The BBC subsequently made an offer to make amends, admitting to having defamed her by imputing that "there are reasonable grounds to suspect that [she] had engaged in housing fraud".

Cllr Begum accepted an offer from the BBC of £30,000 in damages and successfully argued that the authorities entitled her to explain how the BBC increased her upset by how it responded.

Following a High Court order granting her permission to read a statement in open court, the councillor said that the misidentification caused her further distress because it seemed another example of the BBC - and the media generally - misidentifying BAME people, which fed into racist tropes.

The High Court heard that the BBC had explained, when making its offer of amends, that: "Here, the error arose because the video in question was incorrectly labelled as identifying your client because she and Apsana Begum appeared at the same Labour event where the recording in question was captured. That was what caused the original confusion in the archive. That does not make the mistake 'racist' as your client has claimed online."

Despite this explanation, Cllr Begum called upon the BBC to state it would put in place processes to prevent the organisation from mistaking BAME individuals again.

However, the BBC said that it could not agree to the statement proposed by Cllr Begum because to "report to her on processes that it will put in place to guard against such misidentification" would be inconsistent with its independence and accountability to its regulator.

At the High Court hearing, Collins Rice J stated that it was "a most unfortunate case of mistaken identity". She said that the BBC's apology and payment of substantial damages vindicated Cllr Begum and underlined the BBC's responsibility for its mistakes and that Cllr Begum had formally placed on the Court record the wider and deeper effect of the confusion between women of colour.

In a statement, Cllr Liza Begum said: "It is right that the BBC has publicly apologised for the mistake they made in their report. It is already harder to be heard as a woman of colour and we are often underestimated. When you speak up, people's attitudes seem to change, and this must be challenged."

She added: "I hope that the BBC will now implement processes to ensure mistakes such as this do not happen again and improve diversity within the organisation. It's time the diversity of our communities is reflected in our country's media and workplaces generally.

"I now look forward to focusing on my new brief as Cabinet Member of Housing Services at Westminster Council. I will be committed to improving the conditions of our social homes, providing more homes for our residents, and ensuring we continue to promote social justice and tackle inequality in Westminster."

A BBC spokesperson said: “We are very sorry for the distress this has caused. It was a genuine mistake during a live programme that arose from archive footage being incorrectly labelled in our system. We apologised on air at the first opportunity and took immediate steps to correct our system. We recognise we must do better so have taken steps internally to avoid similar situations occurring.”

Local Government Lawyer

LGA urges Government to address future of remote and hybrid council meetings

The Local Government Association has renewed its call for virtual and hybrid council meetings to be “an integral part of the future of local democracy”.

The call was made a year after the Department for Levelling Up, Housing and Communities's call for evidence for remote meetings closed. The Government is still to publish its conclusions.

The LGA said: "With national lockdown and COVID-19 safety measures preventing groups of people from meeting, the Government introduced remote meetings in April 2020 under emergency legislation to enable councils to make critical decisions democratically and without delay during the pandemic.

"The introduction of legislation proved successful, with councils highlighting an increase in participation from both elected members and residents due to better equity of access and an increase in the transparency of decision-making processes.

"However, the Government has rejected calls from councils to make the rules permanent and councils were forced to return to in-person meetings, resulting in increased costs on already stretched council budgets and reduced participation from councillors and the public."

The LGA said the failure to release the results of the call for evidence or to set out a plan to take the issue forwards had left "councils uncertain and unable to plan effectively for the future of their organisations, despite much of its workforce successfully having adapted to a virtual and hybrid working patterns".

It added that councils wanted the flexibility to offer hybrid and virtual meetings so they could continue to work in the most accessible and resilient way possible, "especially in times of emergency such as when there is adverse weather or flooding".

The LGA also argued that flexibility was also vital in attracting a wider range of people to stand as candidates in local elections. It pointed to recent research highlighting that 72% of councillors surveyed in a new poll stating that moving to a hybrid model could attract more younger people, ethnic minorities, and women to stand in local elections.

Virtual and hybrid meetings also better support the attendance of councillors with disabilities or chronic illnesses and enable councillors with caring responsibilities to balance their role and personal lives, it said.

LGA Chairman, Cllr James Jamieson, said: "It has been a year since the Government's call for evidence around remote and hybrid meetings, but it has yet to publish the results or take any steps to address this issue, which is a priority for councils up and down the country.

"The pandemic proved that using virtual meeting options can help councils work more effectively and efficiently and can in fact increase engagement from both councillors and residents, which is a vital part of local democracy.

"We urge the Government to act quickly and take the next steps to introduce legislation that would empower local authorities to make the most suitable choice for their organisation and communities and bring them in-step with the residents' expectations of organisations that provide local services in the 21st century."

Local Government Lawyer

Moving permanently to a hybrid model of council meetings would improve the diversity of local councils, a new survey says

Over two-thirds of councillors believe that moving to a hybrid model where meetings can be attended both online and in-person would improve the diversity of local councils, a new survey shows.

In total, 72% of councillors surveyed in a new poll from the County Councils Network (CCN) said that moving to a hybrid model where some meetings are held online and some are held in-person could attract more younger people, ethnic minorities, and women to stand in local elections. In total, 87% of respondents agreed that they would like their council to be able to adopt a hybrid set up going forward – something which the government has said it is considering.

The findings are in new report released today by the CCN and Zoom. Just 45% of respondents to the survey, which was filled in by councillors from the 36 local authorities CCN represents, said they were either self-employed or in full-time work. In addition, less than half of respondents said they had caring responsibilities.

Of those, nine in ten respondents with caring responsibilities said that a hybrid model would allow them to better balance their role as councillors with the rest of their lives, whilst eight in ten without caring responsibilities said a hybrid model would provide a better councillor-life balance. A majority of respondents said that adopting a hybrid model would make it easier for them to attend more meetings.

Legislation in the Coronavirus Act 2020 allowing local authorities to do this during the pandemic lapsed in May 2021 and it did not feature in last week's Queen's Speech, but the government has previously committed to re-introducing this legislation in Parliament at a later date.

The survey was answered by 479 councillors – which is almost a fifth of all councillors within the 36 councils CCN represents. Respondents said that hybrid meetings could improve local accountability, engagement with residents, and reduce carbon emissions and costs for councils.

The survey found:

- In total, 92% of councillors under the age of 44 and 61% of those aged 65 and over said that adopting a hybrid model would help improve the diversity of councils. In total, 85% of female councillors said such a model would enable a better councillor-life balance. Just 11% of respondents to the survey were under the age of 44.
- A majority of councillors (51%) said adopting a hybrid model which enables local people to watch all meetings online would make their council more accessible and accountable to their residents. In total, 69% of respondents said video conferencing had helped them engage with community groups during the pandemic.
- Over two-thirds of councillors (70%) said a hybrid model would cut down on travel expenses for their local authority, and three quarters (76%) said it would cut down on their carbon footprint. One councillor in a rural county estimated such a model could cut down on 1,000 miles for them a year.
- In total, 71% of councillors said they expect their local authority to adopt a hybrid model which mixes remote and office working for most of their staff. During the pandemic, 83% of respondents said that they spent at least six hours a week video conferencing during the pandemic's lockdowns – with 27% doing at least fifteen hours a week. Before that pandemic struck, just 12% of councillors said they had participated in council meetings online.

Cllr Julian German, Rural Spokesperson for the County Councils Network, said:

"One of the most defining features of first lockdown was the rise of video conferencing, and councils embraced this technology, turning the way they operate upside down almost overnight with meetings going virtual.
"Whilst councillors will always want the ability to meet, discuss and scrutinise in person, when reflecting on the lessons learned from the last two years, there are clear benefits to councils offering a hybrid model. There is a clear consensus that hybrid meetings could open the door to attracting a younger, more diverse set of councillors, who are able to effectively balance their councillor and caring or employment responsibilities.
"Councillors across the country are also clear such a model would also increase transparency and accountability, encouraging more residents to engage in council business, as well as providing cost and environmental benefits to the public sector. This should be viewed as a win-win scenario for government, with a hybrid model offering the best of both worlds. We urge ministers to consider including legislation to enable such a model."

County Councils Network

Government rules out wide-scale Ombudsman reform in response to select committee report

A parliamentary committee's proposal to create a 'People's Ombudsman' by uniting the Local Government and Social Care Ombudsman with the Parliamentary and Health Service Ombudsman has been rebuffed once more by the Government.

The call for fundamental Ombudsman reform was first made in 2014 by the Public Administration Select Committee (PASC).

In May (20 May 2022), PASC's successor, the Public Administration and Constitutional Affairs Committee, renewed the call in a scrutiny report.

The scrutiny report, *Parliamentary and Health Service Ombudsman Scrutiny 2020–21*, said the reform should include:

- own initiative powers for the PHSO;
- the need to unite the PHSO and the Local Government and Social Care Ombudsman;
- complaints standard authority powers; and
- the MP filter (as part of any change to remove the MP filter, the role of Members in assisting complainants must be secured).

The committee called the lack of action from the Government since the publication of the Draft Public Service Ombudsman Bill six years ago "as unacceptable as it is untenable in the long term".

In a letter published this week (26 July 2022) Cabinet Office Minister Lord True said he agreed that Ombudsman reform was "an important matter".

However, he added: "The Government has a number of key priority areas for its legislative programme and..... wide-scale Ombudsman reform is not included at the current time."

The Government continues to consider options for Ombudsman reform, Lord True said.

Local Government Lawyer

Recent Published Decisions

STANDARDS COMMISSION FOR SCOTLAND

INTEGRITY IN PUBLIC LIFE

EDINBURGH COUNCILLOR

Decision of the Standards Commission for Scotland

On receipt of a report from the Ethical Standards Commissioner (ESC), the Standards Commission has three options available, in terms of Section 16 of The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act). These are: (a) to direct the ESC to carry out further investigations; (b) to hold a hearing; or (c) to do neither.

In this case, the Standards Commission determined to **do neither**.

Background

The Standards Commission is a statutory body established under the 2000 Act. The 2000 Act created an ethical standards framework, under which councillors and members of devolved public bodies in Scotland are required to comply with Codes of Conduct. It provides that complaints about breaches of these Codes are to be investigated by the ESC and adjudicated upon by the Standards Commission.

Report to the Standards Commission

The Acting ESC investigated a complaint (reference LA/E/3595) concerning an alleged contravention of the Councillors' Code of Conduct dated July 2018 (the Code) by a councillor of the City of Edinburgh Council (the Respondent). He referred a report to the Standards Commission subsequently, on 27 May 2022, in accordance with section 14(2) of the 2000 Act.

The Complainer alleged that the Respondent had publicly accused him of sexism in a tweet posted in August 2021.

In his investigation report, the Acting ESC investigated whether the Respondent's conduct would amount to a contravention of paragraph 3.2 of the Code, which states:

Paragraph 3.2: *You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.*

The Acting ESC advised that:

1. The Respondent's Twitter name and handle referred to him as being a councillor and his account referenced the Ward he represented. As such, the Acting ESC was satisfied that the Respondent would be perceived to be acting in the capacity of a councillor when posting the tweet in question. As such, the Code applied to him at that time.

2. There was no factual dispute that the Respondent posted a blog, on his Twitter account, about why it was important to wear a helmet when cycling. In a post commenting on the blog, the Complainer stated "Meanwhile teenage girls won't cycle because they don't look cool with a helmet." The Respondent replied to the Complainer's comment: "That's a bit of a sexist comment tbh." [the Acting ESC noted that "tbh" is understood to be shorthand for "to be honest"].

3. The Respondent had not called the Complainer sexist and had not made a personal attack. Instead, he had referred to the Complainer's comment as "a bit sexist". The Respondent's position was that he had said that as he considered the Complainer's comment about how people might feel wearing cycling helmets could have been made without any references to gender.

The Acting ESC advised that he did not consider the Respondent's remark to be disrespectful or discourteous in nature. Instead, he was of the view that the Respondent had merely provided his opinion on a comment made by the Complainer. Accordingly, the Acting ESC concluded the Respondent had not breached paragraph 3.2 of the Code.

Reasons for Decision
Having considered the terms of his report, the Standards Commission did not consider that it was necessary or appropriate to direct the Acting ESC to undertake any further investigation into the matter.

In making a decision about whether to hold a Hearing, the Standards Commission took into account both public interest and proportionality considerations, in accordance with its policy on Section 16 of the 2000 Act. A copy of the policy can be found at: https://www.standardscommissionscotland.org.uk/cases.

In assessing the public interest, the Standards Commission noted that a breach of the respect and courtesy provisions in the Code could have the potential to lower the tone of political discourse and to bring the role of a councillor and the Council itself into disrepute. In this case, however, the Standards Commission was of the view that, on the face of it, there was no evidence of any such breach of the Code.

The Standards Commission noted that holding a Hearing (with the associated publicity) could promote the provisions of the Code, if it was found that the Respondent's conduct amounted to a breach of the Code. There could, therefore, be some limited public interest in holding a Hearing. Regardless of this, the Standards Commission was, however, also required to consider whether it would be proportionate to do so.

In considering proportionality, the Standards Commission noted that the Respondent had called the Complainer's comment sexist. The Standards Commission noted that the Respondent had not made any personal remark about the Complainer himself. The Standards Commission noted that the Acting ESC, in his report, had reached the conclusion that the Respondent had merely proffered an opinion and that his conduct did not amount, on the face of it, to a breach of the Code. Having reviewed the evidence before it, the Standards Commission found no reason to depart from that conclusion.

The Standards Commission noted that the option to take no action had been included in the 2000 Act to ensure that neither the ethical standards framework, nor the Standards Commission, was brought into disrepute by spending public funds on unnecessary administrative or legal processes in cases that did not, on balance, warrant such action.

The Standards Commission took the above factors into account, and in particular the fact that it was not satisfied that the alleged conduct could amount to a breach of the Code. The Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to hold a Hearing. The Standards Commission determined, therefore, to take no action on the referral.

Date: 30 May 2022

Lorna Johnston
Executive Director

Northern Ireland
Local Government
Commissioner for Standards

Local Government Act (NI) 2014

In the matter of Councillor Marc Collins (Mid and East Antrim Borough Council)
Ref: C00449

Decision of the Northern Ireland Local Government Commissioner for Standards on Stages 1, 2 and 3 of the Adjudication Hearing process by Mrs Katrin Shaw, Acting Commissioner.

By virtue of section 55(1)(a) of the Local Government Act (NI) 2014, the Commissioner may investigate a written allegation made by any person that a Councillor (or former Councillor) has failed, or may have failed, to comply with the Northern Ireland Local Government Code of Conduct for Councillors ("the Code"). The Commissioner may also investigate, under Section 55(1)(b) of the 2014 Act, other cases in which she considers that a Councillor has failed, or may have failed, to comply with the Code and which have come to her attention as a result of an investigation under Section 55(1)(a).

A complaint was made to the Northern Ireland Local Government Commissioner for Standards in relation to the alleged conduct of Councillor Marc Collins ("Councillor Collins/the Respondent"). The complaint related to a retweet by the Respondent on 19 November 2019, promoting banners erected in the Shankill area of Belfast which contained allegations against several members of the Finucane family. During the course of the investigation, a related tweet on 18 November 2019 by the Respondent was provided by John Finucane which claimed Mr Finucane '*supports and promotes the IRA'* and *'isn't innocent by any means.'*

The Investigation

The Commissioner's Director of Investigation (now Acting Deputy Commissioner) commenced an investigation pursuant to section 55(1)(a) of the 2014 Act on 5 December 2019. Her investigation was extended in accordance with Section 55(1)(a) in relation to the related tweet which was provided by Mr Finucane during the investigation.

Following her investigation, the Acting Deputy Commissioner submitted the Investigation Report to the Commissioner in accordance with section 55 and 56 of the 2014 Act. She concluded that evidence suggested potential breaches of the following paragraphs of the Northern Ireland Local Government Code of Conduct and that the Commissioner should make an adjudication on the matters which were the subject of the investigation.

Paragraph 4.2:
'*You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute*'.
Paragraph 4.6:
'You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers'.

Paragraph 4.13(a):
'*You must:*
(a) Show respect and consideration for others'.
Paragraph 4.13(b):
'*You must not … use bullying behaviour or harass any person.'*
Paragraph 4.16(c):
'You must not use, or attempt to use your position improperly to… create a disadvantage for any other person.'

The Acting Deputy Commissioner also considered that the following Principles of the Code are relevant to the complaint:

'Principle of 'Respect':
'It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and councils. You should therefore show respect and consideration for others at all times'.

Principle of 'Promoting Good Relations':
'*You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms*'.

Having considered the contents of the Investigation report, the Acting Commissioner determined to hold an Adjudication Hearing in relation to the Respondent's conduct in order to determine whether or not he had failed to comply with the Code, and, if she found that he had done so, what Sanction should be imposed.

It should be noted that the organisation and functions of the Director of Investigations/Acting Deputy Commissioner and the Adjudication functions of the (Acting) Commissioner are entirely separate and operate independently of one another at all times.

The Adjudication Procedures permit the Commissioner to determine whether or not there has been a breach of the Code without an Adjudication Hearing in certain circumstances. Paragraph 25 to 27 of those procedures state as follows:

'Determination of Adjudication without an Adjudication Hearing

25. The Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if she considers that she requires no further evidence and any one of the following circumstances apply:
a. If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or
b. If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or
c. The Respondent does not dispute the contents of the investigation report.

26. If the Commissioner decides not to hold an Adjudication Hearing to determine whether there has been a breach she will send to the Respondent a list of the facts, together with any other supporting evidence, that she will take into account in reaching her decision. The Respondent will have 15 working days to submit any further written representations before the Commissioner makes her adjudication.

The Acting Commissioner's Decision to adjudicate in the matter was notified in writing to the Respondent by email and recorded delivery post on 14 December 2021, and he was invited to complete a Response Form outlining his response to the Acting Deputy Commissioner's Investigation Report and to return it to the Acting Commissioner by 11 January 2022. No Response Form was received from the Respondent. The Respondent was also similarly notified on 14 December 2021 of the Acting Commissioner's decision to hold a Pre-hearing review of the matter on 18 January 2022. He did not attend this review, although he had informed the Acting Commissioner's office by e-mail on 17 January 2022 that he would be unable to attend on 18 January 2022.

At the Acting Commissioner's direction, the Respondent was notified by e-mail on 18 January 2022 of the opportunity to attend a further review on 8 February 2022, and that the time for the return of his Response Form had been extended to 4 February 2022. No Response Form was received. The Respondent did not attend the review on 8 February 2022, nor did he request that the review should be rescheduled to enable him to attend.

As no response was received from the Respondent to the notification of the decision of the Acting Commissioner to hold an Adjudication Hearing, the Acting Commissioner decided on 8 February 2022 that she required no further evidence and that it was appropriate to use the expedited procedure in accordance with Paragraph 25(a) of the Adjudication Procedures. She also determined that, in the event that she was to find the Respondent in breach of the Code, the Adjudication Hearing on Sanction would be held on 16 March 2022.

On 11 February 2022 the Respondent was notified by way of e-mail and recorded delivery post of the Acting Commissioner's decision to use the expedited procedure and to determine whether or not there had been a breach of the Code by him without a public hearing as to the facts. He was provided with a Statement of Facts and the other supporting evidence that the Acting Commissioner would take into account in reaching her decision in accordance with Paragraph 26 of the Adjudication Procedures. He was given the opportunity to comment and provide submissions on these facts to the Acting Commissioner to consider in advance of her deciding whether he had breached the Code. He was also invited to provide submissions on the application of Article 10 of the European Convention on Human Rights which encompasses the right to freedom of expression. The Respondent was requested to respond by 4 March 2022 but did not do so.

Stage 1 - Findings of Fact
The following facts have been obtained from the Investigation Report.

1. On 22 November 2019 the Local Government Ethical Standards (LGES) Directorate received a complaint from a member of the public in accordance with Section 55(1)(a) of the Local Government Act (Northern Ireland) 2014 (the 2014 Act). The complaint alleged that Councillor Marc Collins, a member of Mid and East Antrim Borough Council (MEABC) had, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code).

2. Councillor Collins, by way of letter sent by email on 22 November 2019, was informed that the complaint had been received and would be assessed to determine whether or not it would be accepted for investigation.

3. It was decided on 5 December 2019 that the complaint should be investigated and both Councillor Collins and the complainant were informed of this decision by letter dated 5 December 2019.

4. The complaint concerned a retweet from Councillor Collins' Twitter handle '@marccollinsDUP' on 19 November 2019. The original tweet promoted a banner erected in the Shankill area of Belfast. The banner referenced in the tweet made allegations against several members of the Finucane family, including John Finucane who was Sinn Féin's Westminster election candidate for North Belfast at that time.

5. In accordance with Section 55(1)(b) of the 2014 Act the investigation was subsequently broadened to include a tweet posted by Councillor Collins on 18 November 2019 which referenced John Finucane.

6. Councillor Collins has served as a councillor on MEABC since 4 May 2019.

7. Councillor Collins signed the 'Declarations of Acceptance of Office' on 4 May 2019 in which he agreed to observe the Local Government Code of Conduct for Councillors.

8. Councillor Collins attended training on the Code of Conduct on 16 and 17 May 2019.

9. On 18 November 2019 pm Councillor Collins, in response to the account @mcdaid, tweeted that John Finucane *'supports and promotes the IRA'* and that *'he isn't innocent by any means'*.

10. On 19 November 2019 Councillor Collins retweeted @theblackdub's tweet which stated:
"Well done to the Shankill loyalists who erected the banner today. It has SF foaming at their collective mouths. They don't like the truth."

11. The banner displayed photos of members of the Finucane Family under the title "*The Real Finucane Family*". The tagline underneath the title read *"Human Rights Abusers steeped in the blood of our innocents".*

12. The banner also displayed the following text under each member of the Finucane Family:
    - *John Sr:- Section leader in F company, 1st Battalion, Belfast Brigade of the IRA, killed on "active service" in a hijacked car, Falls Road, June 1972*
    - *"Dermot:- Provisional IRA GHQ Staff, sentenced to 18 years imprisonment for*

possession of a weapon with intent to endanger life. Maze escapee who murdered a prison officer with a chisel."

- *"Seamus:- Belfast brigade Staff of the Provisional IRA, fiancé of IRA terrorist Mairead Farrell of the Gibraltar 3, arrested with Bobby Sands in October 1976 following a bomb attack on a Balmoral furniture factory."*
- *Pat:- "Pat Finucane was first and foremost an IRA volunteer, and he exploited his position ruthlessly to wage war on the State."*
- *Sean O'Callaghan former head of the IRA southern Command*
- *John Jr:- Sinn Fein IRA's Golden Boy, handpicked by the Provisional Army Council, refused to condemn the Shankill Bomb and instead has Shankill Bomber, Sean Kelly, canvassing for him in North Belfast.'*

13. Councillor Collins' twitter account at the relevant time identified him as a Councillor. It specifically referred to Councillor Collins as *'Cllr Marc Collins'* with a Twitter handle *'@MarcCollinsDUP'*, and part of his Twitter bio included reference to him as '*DUP Councillor for Knockagh DEA'*.

14. Councillor Collins provided his comments on the complaint on 16 December 2019 which related to the tweet on 19 November 2019. He stated that this tweet was *'a retweet, therefore, this content did not originate from [his] account and [he] did not write it [him]self'*. Councillor Collins also stated that '*a retweet does not necessarily indicate support. I have retweeted a number of different posts, pictures, articles, statements, etc. which are of interest to me. This does not mean I support everything which I retweet, it means that it is either of current significance or personal interest to me. At the time of this retweet the story of these banners was current and was appearing in the news, hence they were significant and of interest to me in the political world, but as I have already said this does not mean that I support the content.'*

15. Councillor Collins further denied that he had subsequently deleted his Twitter account to avoid public scrutiny and accountability. He stated the '*temporary de-activation of [his] account (not deleting) is down to the sheer amount of vile and personal abuse I was receiving from nameless accounts on the platform… De-activating [his] account for a while seemed like the only option for [him].'*

16. The Acting Deputy Commissioner wrote to Councillor Collins, via email, on 17 September 2020 and 29 September 2020 in an attempt to schedule an interview on 30 September 2020. In that letter, she also explained to Councillor Collins that she had broadened the scope of the investigation as per Section 55(1)(b) of the 2014 Act to include the 18 November 2019 tweet. The Respondent did not respond to either email, or to a voicemail left on 28 September 2020.

17. The Acting Deputy Commissioner's office again wrote to Councillor Collins, via email, on 14 July 2021 to invite him to a rescheduled interview. A follow up email was sent to Councillor Collins on 22 July 2021, requesting that he confirm whether he would attend but no response was received.

18. The following paragraph was included in the 17 September 2020 and 14 July letters: *'Section 4.6 of the Northern Ireland Local Government Code of Conduct requires you to "comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers". Therefore a failure to comply with such a request could, in itself, amount to a breach of the Code of Conduct'*.

19. The Acting Deputy Commissioner set out her findings in a Draft Investigation Report

and this was sent, by e-mail, on 1 October 2021 to Councillor Collins for his comment. Despite follow up phone calls to Councillor Collins on 18 and 27 October 2021, Councillor Collins did not respond or provide comment on the Draft Report.

20. In a Witness Statement dated 17 September 2020 John Finucane stated (inter alia):
    a. *(In relation to the tweet of 19 November 2019) "I understand the reference to the banner to relate to a number of banners that were erected during my candidacy as an MP in November 2019. I am unsure if I was made aware of that particular tweet or not. At the time of the banners being erected and the corresponding social media activity there was a level of toxicity in North Belfast that I have never experienced before. I was still Mayor of Belfast at the time and had concerns for my own and my family's personal safety."; and*
    b. *I would emphasise that the situation at the time had an impact on my entire family, my mother, my sister, my kids, my brothers - right across the Board. It was a very worrying escalation when the banners were erected. I understand politics can be dirty but this was on a different level and the banners were central to that.*
    c. *(In relation to the tweet of 18 November 2019) 'There was a lot of volume of social media at the time which was not always necessarily identifiable… [t]his particular tweet, however, from Councillor Collins was interpreted by me very differently given that he was an elected representative. I had received few threats throughout my time as mayor. However, during my candidacy as an MP a campaign was run against me similar to that which had resulted in the death of my father; specifically trying to associate him with the people he represented and as an IRA member. Councillor Collins' tweet stood out in this regard as it was directly and unequivocally making these associations. Such was the mood and level of toxicity I spoke to my older two children in relation to personal safety and to explain what was going on.'; and*
    d. *'[a]s an elected representative you are under more responsibility to act responsibly and you are held to a higher standard. I consider what Councillor Collins tweeted to be a very deliberate thing in an already aggravated situation. Councillor Collins has attempted to identify me with the alleged actions of others'.*

21. The banners in question attracted broad condemnation in the media across the political landscape, including the most senior political figure in Northern Ireland, the Secretary of State, who referred to the banners as '*utterly offensive'*. These articles also highlighted Councillor Collins' retweet in support of the banner. Nigel Dodds, then deputy leader of Councillor Collins' own party, the DUP, also condemned the banners, stating '*the banners have nothing to do with our campaign'* and *'anything that is personally abusive or offensive, inaccurate and smearing of any candidate in any political party is to be condemned'.*

Stage 2 - The Acting Commissioner's decision on whether there had been a breach of the Code

Article 10 of the European Convention on Human Rights ('the ECHR") and case law.

The Acting Commissioner has considered Article 10 ECHR throughout her deliberations at Stage 2 of the Adjudication. Article 10, which is not an absolute right, states as follows:

10.1 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers….'

10.2 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society….in the interests of …public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others….'

The Acting Commissioner has also considered the following caselaw during her deliberations at Stage 2:

Sanders v Kingston [2005] EWHC 1145 ('Sanders') which sets out a three stage test as follows:

(i) Did the Respondent's conduct breach Paragraphs of the Code of Conduct?
(ii) Would the finding, in itself, comprise of a prima facie breach of Article 10?
(iii) If so, was the restriction one which was justified by reason of the requirements of Article 10(2)?

Ken Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin) ('Livingstone')

R (on the application of Woolas) v The Parliamentary Election Court and Watkins and The Speaker of the House of Commons [2010] EWHC 3169 (Admin) ('Woolas')

R (on the application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172 (Admin) ('Calver')

Heesom v Public Services Ombudsman for Wales [2014] EWGC 1504 (Admin) ('Heesom')

Re Jolene Bunting's Application [2019] NIQB 36 ('Bunting')

Lee Brown v the Public Prosecution Service for Northern Ireland [2022] NICA 5 ('Brown')

Applying the three-stage test set out in *Sanders,* the Acting Commissioner, having established the facts and considered all of the available evidence before her, found as follows:

(i) Did the Respondent's conduct breach the Code of Conduct?

Paragraph 4.13(a):
'You must show respect and consideration for others'.

Paragraph 4.2
'You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.'

1. In relation to the 19 November 2019 retweet, whilst the Respondent stated that *'a retweet does not necessarily indicate support'* for the original tweet, the Acting Commissioner found that there was no evidence that he made any effort to distance himself from the original tweet.

2. The Acting Commissioner considered the Commissioner's Guidance on Social Media and the Code of Conduct which states (at page 36, paragraph 4):

   'Think about the comments you 'like' or 're-tweet'. You are responsible for what you share so don't share something inappropriate. You could be perceived as endorsing the original opinion, comment or information…'

3. Furthermore, given that the Respondent created and published the tweet the day before (18 November 2019) in which he said Mr Finucane *'supports and promotes the IRA'* and *'isn't innocent by any means'*, the Acting Commissioner was satisfied that the content of the tweet on 18 November 2019 and the retweet on 19 November 2019 could be considered in the round. As such, the Acting Commissioner considered that in the absence of any further explanation from the Respondent, his retweet of @TheBlackDub's tweet '*Well done to the Shankill loyalists who erected the banner today. It has SF foaming at their collective mouths. They don't like the truth*' amounted to an endorsement of this tweet and the banners which had been erected.

4. Dealing first with the requirement for councillors to show respect and consideration to others, the Acting Commissioner considered the Principle of Respect which states that:

   '*the exchange of ideas and opinions on policies may be robust but that this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and councils. You should therefore show respect and consideration for others at all times'.*

5. The Acting Commissioner considered that on the balance of probabilities, the Respondent's twitter activity failed to show respect for Mr Finucane and his family in breach of paragraph 4.13(a) of the Code. In view of this, the Acting Commissioner also considered that on the balance of probabilities, the Respondent failed to comply with the Respect Principle which underpins the Code.

6. In considering whether the Respondent's conduct also amounts to a breach of the 'disrepute' provision in the Code, the Acting Commissioner considered the *Livingstone* case which set out the distinction between an elected representative bringing themselves personally into disrepute, as opposed to bringing his or her office or their Council into disrepute.

7. The Acting Commissioner considered the Commissioner's Guidance on the Code of Conduct that elected representatives are subject to a higher level of expectation and scrutiny. In particular, paragraphs 4.5.3 & 4.5.4 state:

   'As a councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a councillor or your council.'

   ……

   'When considering whether conduct is such that it could reasonably be regarded as bringing your position, or your council into disrepute, the commissioner will consider:

   - *Whether that conduct is likely to diminish the trust and confidence the public places in your position as a councillor, or your council, or is likely to result in damage to the reputation of either; and*
   - *Whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as a Councillor, or your council, into disrepute.'*

8. The Acting Commissioner found that as well as bringing himself personally into disrepute, the Respondent's conduct was such that it brought his office as a councillor into disrepute in breach of paragraph 4.2. In reaching her decision, the Acting Commissioner noted the fact that the banner at the heart of the Respondent's tweet of 18 November 2019 was widely condemned on a cross party basis by political figures and the Secretary of State for

Northern Ireland; this condemnation was reported widely in the media; the Respondent's status as a councillor and his endorsement of the banner was also reported on in the media.

9. Whilst the cross-party political and media criticism of the offending banner is relevant, it is not of itself determinative of the Acting Commissioner's decision. However, taking everything into account, she considered that the Respondent had contributed to the toxic discourse during the election campaign which made Mr Finucane feel that his own and his family's personal safety was in jeopardy. The Acting Commissioner was satisfied on the balance of probabilities that a member of the public knowing these facts would consider that the Respondent had brought his office as a councillor into disrepute.

10. Given that neither the media reporting on the Respondent's tweets nor the tweets themselves associated the Respondent's views or his endorsement of the banner with the position of the Mid and East Antrim Council but focussed on his role as a councillor, the Acting Commissioner did not consider that the Respondent had also brought his Council into disrepute.

11. Although at paragraph 3 above the Acting Commissioner states that she has taken the Respondent's tweet and retweet of 18 and 19 November 2019 in the round, she is also satisfied that, if taken and analysed separately on the basis set out at paragraphs 4 to 10 above, both the tweet and retweet would on the balance of probabilities evidence the same breaches of paragraphs 4.13(a) and 4.2 of the Code.

(ii) Would the finding of breach, in itself, comprise of a prima facie breach of Article 10?

Judicial interpretation of Article 10 has provided a number of principles relevant to its application in this case. These include:

- Enhanced protection of freedom applies to all level of politics, including local politics;
- Political expression is a broad concept;
- In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative (and other behaviours), that would not be acceptable outside that context, is tolerated;
- The right to freedom of expression is not absolute;
- Any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued.

Whilst the Acting Commissioner found that that the Respondent had breached Paragraphs 4.13(a) and 4.2 of the Code, in applying the second stage of the *Sanders* test and taking into account the judicial interpretation noted above, she concluded that both findings did comprise a prima facie breach of Article 10 of the ECHR, in that each finding could be deemed to restrict the Respondent's right to freedom of expression.

(iii) If so, was the restriction one which was justified by reason of the requirements of Article 10(2)?

The Acting Commissioner considered the right to freedom of expression set out in Article 10 and the caselaw referred to above very carefully. Enhanced protection of freedom of expression applies to 'political debate'. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in a non-political context, be regarded as

inappropriate or unacceptable. However, whilst political speech is a 'broad concept, gratuitous personal comments do not fall within it' (see *Heesom*).

The Respondent has not provided any legitimate basis for either his tweet of 18 November 2019 alleging that Mr Finucane "*supports and promotes*" the IRA or his retweets of 19 November 2019 which endorsed multiple statements including the allegation that he was "*handpicked by the Provisional Army Council*".

The Acting Commissioner noted the guidance in *Sanders*…that '*…simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.'* She decided that the tweet and retweet did not amount to a political opinion or the importation of information because, individually and together, they amounted to a personal attack on John Finucane and his family. Furthermore, both the tweet and retweet amounted to what Maguire J in *Bunting* referenced as '*…simply abusive and…[disclosing] no true contribution to political discourse.'*

The Acting Commissioner was satisfied that neither the tweet nor retweet represented the promotion of a broader political discourse, and she was also satisfied that they left John Finucane with concerns for his own and his family's personal safety. It was notable, although not of itself determinative of this issue, that there was widespread political and media condemnation of the offending banner.

The Acting Commissioner noted that the tweet and retweet were made at the time of a general election and in the context of an already toxic atmosphere in North Belfast. This speaks to the context in which the right of freedom of expression may be restricted in a manner prescribed by law and one which is necessary in a democratic society for the protection of the rights and interests of others. As noted in the *Bunting* case the question is *'…whether the restriction responds to a pressing social need and is proportionate to the legitimate aim being pursued.'*

In these circumstances, the personal effect both on John Finucane, whose father had been murdered, and on his family, highlight what was identified by Keegan LCJ in the *Brown* case when she stated that '*..[t]he context of each case is clearly the most important factor'*.

Taking all of this into account the Acting Commissioner concluded that any interference with the Respondent's freedom of expression for the protection of the rights and interests of others was a necessary and legitimate aim as envisaged in Article 10(2).

Paragraph 4.13(b):
'You must not use bullying behaviour or harass any person'

The Acting Commissioner considered the Commissioner's Guidance which defines bullying and harassment as '*unwanted behaviour that makes someone feel intimidated or offended.".* and that it makes clear that although all the facts of the case will be taken into account, '*allegations of bullying and harassment will be considered from the perspective of the alleged victim. The most significant factor is therefore whether the alleged victim was reasonably justified in believing* [he] *was being bullied or harassed; whether or not a councillor intended to bully or harass that person is not relevant*' and informs councillors if their criticism …"*is a personal attack on a councillor…, or is of a highly offensive nature, this is likely to be considered bullying and harassment and therefore a breach of the Code*.'

Whilst the Acting Commissioner was clear that the Respondent's conduct failed to show respect and consideration for Mr Finucane and was serious misconduct which brought his office as a Councillor into disrepute, she did not consider the threshold for finding bullying behaviour had been met in this instance. She considered the test set out in *Heesom* that

bullying "*does not require any lengthy course, but does require some intention on the perpetrator's behalf to undermine the individual who is the object of the conduct and (i) some effect on the individual, in terms of intimidation, upset or detriment to his or her confidence, capability or health*". She also considered the fact that Mr Finucane interpreted the tweet he was aware of at the time of the events (the 18 November tweet) very differently to others because the Respondent was an elected representative. The Acting Commissioner had no doubt that that the Respondent's twitter activity played a part in the creation of a toxic atmosphere during the Westminster election campaign and contributed to the reasons why Mr Finucane felt that his own and his family's personal safety was in jeopardy. However, she determined that the circumstances of this case were such that the Respondent's tweets were not mainly responsible for the situation which Mr Finucane faced and the impact on his family. The situation as a whole, instigated by the erection of the banners, had also contributed to this. The Acting Commissioner did not find that the threshold for bullying behaviour in breach of Paragraph 4.16(c) had been met.

Paragraph 4.16 (c):

'You must not use, or attempt to use your position improperly to... create a disadvantage for any other person.'

The Acting Commissioner noted that as the Respondent did not engage with the Commissioner's investigation or this adjudication process, he has not explained his justification for making the tweets. However, she decided that whilst the tweets were intended to attack Mr Finucane and his family and the Respondent's standing as a councillor was clearly identifiable in the tweets, there was no evidence that he specifically *used his position as a councillor* when making the tweets. The Acting Commissioner therefore decided that the Respondent had not breached Paragraph 4.16(c) of the Code.

Paragraph 4.6 *'You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers'.*

The Acting Commissioner took into account the Commissioner's Guidance on the Code which says that:

> '*Your failure to co-operate with any request made by the LGES Directorate in relation to an investigation is likely to result in a breach of the Code. You can expect the LGES Directorate to take account of unavoidable or urgent circumstances such as illness, or holiday bookings that you have made. However you must still co-operate fully with the investigation.'*

On the basis of the findings of facts, the Acting Commissioner found that the Respondent failed to cooperate with the Commissioner's investigations in breach of paragraph 4.6. Whilst Councillor Collins initially responded to the enquiries of the Commissioner's staff, he failed to attend for interview despite four requests and did not respond to the Draft Report.

Stage 3 - Sanction Hearings

Having found that Councillor Collins breached paragraphs 4.2, 4.13a and 4.6 of the Code in accordance with Stage 3 of the Adjudication process, the Acting Commissioner made arrangements for an Adjudication Hearing to take place solely to determine sanction.

Following the issuing of the Acting Commissioner's Decision of Stages 1 & 2 on 9 March 2022, a hearing was arranged to take place on 16 March 2022. Having been notified of the Decision and of the Hearing date, the Respondent wrote to the Acting Commissioner's office on 14 March 2022.

"I am writing to you in reference to complaint C00449 which is due to be heard on 15th March 2022 (sic) at 9:30am.

First of all I would like to apologise for my lack of engagement with NILGCFS regarding this case. I had informed [the Acting Commissioner's office] via email on 17th January 2022 that I had become overwhelmed with the amount of correspondence received and had, for the most part, struggled in gaining access to the secure system where mail was delivered to.

I understand that not engaging with the investigation can in itself be viewed as a breach of the code, however as stated above I found myself overwhelmed with the investigation and other personal issues which were, and still are, ongoing.

I have never tried to refute that the tweet and retweet were posted by myself, however I do refute the incinuation (sic) that by retweeting a picture of the banners in question, this automatically infers support for them. At the time I would have regarded it an unwritten rule that retweets are not necessarily endorsements however in hindsight I now recognise that a disclaimer probably should have been placed in my Twitter bio indicating this.

As I stated in my original correspondence to your office, these banners were a current affair and of significant public interest. At no point did I intend any harm on Mr Finucane or his family however, in my opinion, for him to claim that one retweet from me caused him concern for his and his family's safety is pretty disingenuous.

Mr Finucane has put him and his family in the spotlight on numerous occassions (sic) recently including in 2018 when he gave the oration at the Ardoyne Easter Commemoration, a commemoration which traditionally remembers and celebrates the IRA, where to finish his speech he proclaimed "up the rebels".

Mr Finucane also came under heavy criticism, and rightly so, for having convicted IRA man and Shankill bomber Sean Kelly canvassing for him in North Belfast, another action which clearly gives merit to my separate tweet that claims he supports and promotes the IRA.

I'm afraid I may not be able to attend the sanctions hearing on 15th March (sic) due to work commitments, which is why I wanted to send you this letter in advance as it hopefully gives some more light on the situation."

The Acting Commissioner's office responded by email saying as '*he had been advised earlier this morning, the Sanctions Hearing is scheduled to take place on Wednesday 16th March (not 15th March).*

Please can you advise the Acting Commissioner whether you are able to attend the hearing on Wednesday 16th March?

If you are not able to attend, please confirm whether you are content for the hearing to proceed in your absence on 16th March, or whether it is your wish to attend the hearing and are requesting that an alternative hearing date be set?"

As no response was received, the Acting Commissioner decided to reconvene the hearing. At 16.10 on 15 March 2022 the Respondent was informed by email "*As we have not received any further response to our email the Acting Commissioner has taken the decision to adjourn the Hearing due to take place tomorrow to a date to be determined in mid-May".* Councillor Collins responded at 09.35 on 16 March 2022 saying *"my apologies, I thought I had replied. Please keep me informed of any new date".*

Councillor Collins was notified of the fresh hearing date of 13 May 2022 by email on 16 March 2022 at 10.38.

The Acting Commissioner invited both the Respondent and the Acting Deputy Commissioner to make submissions on sanction, including on the application of Article 10 of the European Convention of Human Rights, by 5pm on 6 May 2022.

The Acting Commissioner's office emailed Councillor Collins on 9 and 10 May 2022 reminding him of the hearing on 13 May 2022 and asking him to confirm his position on making submissions because none had been received. An officer in the Acting Commissioner's office again contacted Councillor Collins by email on 12 May 2022, at 12.35 who said "*I had attempted to phone you earlier today in respect of the Sanctions Hearing which is taking place tomorrow, in order to confirm your attendance and your intention regarding the making of a submission regarding the Sanctions determination by [the Acting Commissioner].*

In accordance with hearing procedures, [the Acting Commissioner] is permitted to proceed in your absence.

I am available to be contacted by telephone ….. should you wish to clarify any of aspects of this email."

The Respondent responded by email at 12.42 on 12 May 2022 *"Apologies I have not been receiving calls or emails as I was (and still am) on holiday in the USA."* At 13.27 he was asked by email whether he wished to make a submission and be heard at the hearing. The Respondent replied at 01:56 on 13 May 2022 requesting "*a deferral on the matter due to my inability to attend*".

The Acting Commissioner's office notified the Respondent by email on 13 May 2022 at 10:38 that the Acting Commissioner had "*with some reluctance, decided to adjourn …[the] hearing."*

On 17 May at 15.17 the Respondent was informed by email that:

"*As you were informed the Acting Commissioner decided, with some reluctance, to adjourn Friday's hearing.*

In order to give you an opportunity to attend, the Acting Commissioner has set a fresh date for the hearing at ***10am on Friday 24 June 2022.***

Please note that this date has been set on a peremptory basis. This means that it is unlikely that the hearing date will change if you cannot attend on 24 June.

The Acting Commissioner encourages you to attend the Sanctions Hearing on 24 June ……..

The Acting Commissioner invites you to make written submissions on the issue of Sanction 7

days before the hearing, ***by 4pm on Friday 17 June 2022***

Please acknowledge receipt of this email."

On 21 June 2022 at 15:13 the Respondent was reminded by email of the hearing date of 24 June 2022 and that the hearing date had been set on a peremptory basis. He was asked to confirm whether he intended to make submissions in relation to sanction. No response was

received from Councillor Collins and he did not attend the remote Sanctions Hearing on 24 June 2022.

The Acting Commissioner considered that the Respondent had had ample notice of the hearing date and sufficient opportunity to contact the Acting Commissioner's office if he wished to do so. In addition, the Acting Commissioner noted that the Respondent had been afforded a number of opportunities to attend the hearing, but had failed to do so. The Acting Commissioner therefore decided that it was appropriate to proceed with the hearing in the Respondent's absence on 24 June 2022, and that, in all the circumstances, it was not unfair to him to do so.

Submissions on Sanction by the Acting Deputy Commissioner

1. In written submissions and at the hearing on 24 June 2022, the Acting Deputy Commissioner referred to the purpose of sanction and the Commissioner's Sanctions Guidelines. She referred to the sanctions available to the Commissioner in ascending order of severity and she drew attention to mitigating and aggravating factors in this case and the fact that the list of factors at page 9 of the Sanctions Guidelines are not exhaustive and that other factors may be taken into account by the Acting Commissioner in reaching her determination. The question of sanction is a matter for the Acting Commissioner in the exercise of her discretion.

2. **Mitigating factors**
Councillor Collins had no prior history of breaching the Code, which provided some evidence of a previous record of good service in compliance with the Code. Also he was a relatively new councillor at the time, although this could in addition be considered as an aggravating factor.

3. **Aggravating factors**
An important factor in this case is the protection of the public interest in terms of public confidence in the institution of local government through those democratically elected to represent constituents. The legitimate aim being pursued by the Code is to provide for and secure the high standards required from elected councillors. In turn, the purpose of sanction is preservation of confidence in local government representation.

In terms of aggravating factors, which are listed in the Sanctions Guidelines, the Acting Deputy Commissioner said there were several aggravating factors which were applicable to this case, and, in addition, there were a few further factors which were not on the non-exhaustive list, but which were relevant to the facts and the circumstances of this case as follows:

1. Councillor Collins had brought the role of the councillor into disrepute. Whilst the Sanctions Guidelines refer specifically to the Council having been brought into disrepute, she submitted that bringing the role of councillor into disrepute is also an aggravating factor. She said that 'disrepute' is a breach of special character insofar as it is specifically mentioned within the suspension categories of sanction.

2. The Respondent's pattern of behaviour of repeatedly failing to cooperate with the investigation, pursuant to Code paragraph 4.6. She said that the Respondent's sole communication at the outset of the investigation in many ways was unhelpful and served more to mislead than assist the investigation. The Respondent was invited for interview on four separate occasions and did not attend, neither did he respond to the draft report.

3. Paragraph 6, page 2, of the Sanctions Guidelines states that:

"The Acting Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct, and will also consider what the potential consequences might have been even if these did not occur."

The Acting Deputy Commissioner said that although the Acting Commissioner has not heard directly from the Complainant, Ms. O'Reilly or Mr. Finucane, the subject of the impugned social media material, a witness statement provided by Mr Finucane outlined the impact of Councillor Collins' conduct. Mr. Finucane described speaking with his two older children in relation to his personal safety and whilst Councillor Collins' actions were not the sole cause of the toxic environment described by Mr. Finucane, his actions were certainly contributory.

4. In terms of the categories of sanction which are available, the options available in ascending order of severity were as follows.

No action - the Acting Deputy Commissioner suggested that no action was not a suitable outcome to these proceedings given the very deliberate nature of the conduct which had given rise to the breach of the Code. This was not an inadvertent failure. This was conduct that was a result of the Councillor's own action in tweeting his serious and inflammatory allegations against Mr. Finucane.

Censure – in setting out the aggravating factors in this case the Acting Commissioner drew attention to the seriousness of the conduct and the finding that Councillor Collins brought himself in his role as councillor into disrepute. Councillor Collins had refused to engage with the investigation, and therefore had refused to accept that his behaviour was inappropriate.

Partial suspension – partial suspension would result in a councillor's conduct being restricted to a particular activity or section of council business, and from business which he could be easily extracted. Rather, the conduct in this case involved a failure to show respect and consideration for others via the use of social media leading to the disrepute of the Office of Councillor, and that was conduct that went into every aspect of business of the Council, and was not one therefore that he could be easily extracted from as it went to the very heart of public representation and the role of a councillor at every level and on every matter.

Suspension - the disrepute provisions are an aggravating factor in itself and identified in the Sanctions Guidelines within the suspension category. Suspension may be adequate in addressing the public interest, insofar as it upholds public confidence in the standards regime and local democracy. It would reflect the severity of the matter and convey that the matter should not be repeated because the likelihood of further failure to comply with the Code is something that needs to be taken into account.

The Acting Deputy Commissioner referred the Sanctions Guidelines which acknowledge that a democratically elected councillor has been elected to undertake certain tasks, and their ability to serve the public and perform those tasks should only be restricted where such a restriction is justified in the particular circumstances of the case.

The Acting Deputy Commissioner relied on the case of *Sanders* where the Court decided on a partial suspension of one year for a breach of the English Code. The Court recognised the statements made by Councillor Sanders constituted conduct which was a kind that would either attract a suspension or partial suspension. While the conduct at issue here might not have attracted the same level of media attention as Councillor Sanders, both Councillor Sanders and Councillor Collins made highly disrespectful comments about an extremely sensitive issue for the respective impacted families. Councillor Sanders was

issued a partial suspension. However, Councillor Sanders' comments were in the context of him having been engaged as a leader of the Council, and so a partial suspension sanction was appropriate. This important contextual point was not present in this case with Councillor Collins. He was not engaged to provide any comment through any position he had within the Council, and so the Acting Deputy Commissioner suggested that a partial suspension was not an appropriate sanction and suggested that a full suspension would be an appropriate sanction. Although the Court in *Sanders* issued a 12 month partial suspension, a full suspension was inherently more restrictive than partial suspension, and therefore a 12 month suspension for the breach of the Code would be unduly restrictive in the context of Article 10 in this case. In considering an appropriate suspension sanction the Acting Commissioner's attention was drawn to other cases recently adjudicated by the Adjudication Panel for Wales:

Councillor Perry Morgan (Ref: APW/005/2021-022/CT) received a 10 month suspension for making disparaging remarks about a fellow councillor and failed to engage with the Ombudsman's investigation.

Councillor William Roy Owen (Ref: APW-006-2021-022-CT) was suspended for 9 months because he had persisted in a course of conduct of exaggerated, unsubstantiated and malicious complaints, and had failed to cooperate with the Ombudsman's investigation.

The Acting Deputy Commissioner suggested that a period of suspension in relation to the breaches of paragraphs 4.2, 4.13 and 4.6 of the Code would be appropriate. She drew the Acting Commissioner's attention to the delays caused by Councillor Collins' refusal to engage with the investigation and the associated costs, including but not limited to obtaining a process server, and she also recommended a period of suspension to reflect the disregard that Councillor Collins has shown to the process, and therefore the Code itself.

Disqualification- is the most severe of the options available. The Acting Deputy Commissioner had not identified that Councillor Collins' conduct fell within any of the circumstances listed A to H in the Sanctions Guidelines for which disqualification may be an appropriate outcome. She referred to the Adjudication Panel for Wales' recent decision in the matter of former *Councillor Phillip Baguley* *APW/002/2020-021/CT*. Former Councillor Baguley was disqualified for 15 months for three Facebook post which were so egregious, inflammatory and violent that they offended against all notions of peace, safety, decency and democracy within society.

The Acting Deputy Commissioner submitted her view that Councillor Collins' case fell within the suspension category in that his comments were certainly egregious, but possibly not to the extent of those made by Councillor Baguley, who was disqualified.

Decision on Sanction

The Acting Commissioner considered very carefully the Sanctions Guidelines, relevant case law, the submissions made by the Acting Deputy Commissioner and the content of the Respondent's letter dated 14 March 2022. In making her decision she paid careful regard to the seriousness of the breaches of the Code and the mitigating and aggravating circumstances of this case.

The Acting Commissioner referred to the aims of the ethical standards framework and sanctions regime, namely that the principal purpose was to preserve public confidence in local government representatives and their standards of conduct, to prevent the Respondent from any future failures, and to discourage similar conduct on the part of others. She took into account the following Mitigating and Aggravating Factors.

Mitigating Factors:

1. Councillor Collins had no previous record of breaching the Code and otherwise he had a record of good service and compliance with the Code since he took up office in 2019.
2. The matters raised in Councillor Collins' letter of 14 March 2022, including his comment that at no point did he intend to harm Mr Finucane or his family, and his apology in that letter for not engaging with the investigation and adjudication process.

Aggravating factors:

1. The serious nature of the breaches of the Code found, including a finding that the Respondent had brought his role as a councillor into disrepute (in breach of paragraph 4.2 of the Code); his failure to show respect and consideration for others (in breach of paragraph 4.13(a) of the Code), and his failure to engage with the investigation and adjudication process (in breach of paragraph 4.6)

2. The Respondent's failure to engage in the process to date had resulted in unnecessary costs to the public purse. Whilst the Acting Commissioner gave Councillor Collins some credit for the apology in his letter of 14 March 2022, and noted his comment that he found himself overwhelmed with the investigation and other personal issues, she also noted that the Respondent still did not engage in the adjudication process after this time. The Acting Commissioner had adjourned the sanctions hearing on two occasions to give him an opportunity to engage and attend but he did not do so. As an elected councillor, he holds a position which carries with it a duty to abide by the Code and a responsibility to protect the public interest and preserve confidence in local government. The Acting Commissioner therefore considered that Councillor Collins' prolonged and ongoing failure to engage in the investigation and adjudication process was a serious aggravating factor.

3. The Respondent's conduct which led to the breaches of the Code were made at the time of a general election and in the context of an already toxic atmosphere in North Belfast. The Acting Commissioner considered that it was a serious aggravating factor that Councillor Collins's tweets contributed towards that toxic atmosphere and resulted in Mr Finucane being personally affected by the events; he felt his own and his family's safety were in jeopardy.

4. The lack of insight or acknowledgement of the potentially serious ramifications his conduct could have had on Mr Finucane or his family. Whilst in the letter of 14 March 2022 the Respondent said he did not intend to harm Mr Finucane or his family, his further comments including that he considered it '*disingenuous for Mr Finucane to claim that his retweet caused him concern for himself and his family*' demonstrated this lack of insight or appreciation of the serious ramifications his conduct could have had.

In considering the options available:

The Acting Commissioner said that in view of the seriousness of the breaches found, **no action** was not an appropriate sanction, the breaches of the Code were not an inadvertent failure on Councillor Collins' part.

She also did not consider a **censure** was an appropriate response in view of the seriousness of the conduct, the finding of disrepute, and the failure to engage in the investigation and adjudication process.

Before determining if partial suspension or suspension was the appropriate sanction in this case, the Acting Commissioner considered carefully whether the Respondent's conduct, in the context of the facts found and the Sanctions' Guidelines, was sufficiently serious to warrant **disqualification**. The Acting Commissioner noted that the Deputy Commissioner had not considered that the matter was sufficiently serious to warrant disqualification and that this was the most severe sanction that could be imposed. The Acting Commissioner agreed with this. The Acting Commissioner noted in particular that she had determined that the Respondent's actions had not brought his Council into disrepute and that, despite the serious nature of his conduct, there was no evidence that he was unfit to hold public office.

The Sanctions Guidelines indicate that **partial suspension** may be appropriate where the conduct in question is not sufficiently serious as to warrant disqualification but is of a nature that:

(a) it is necessary to uphold public confidence in the standards required of local democracy;
(b) there is a need to reflect the severity of the matter; and
(c) there is a need to make it understood that the conduct should not be repeated.

The Acting Commissioner noted that partial suspension was more likely to be appropriate where the conduct related to a particular activity or Council business from which the relevant Councillor could be easily removed. Therefore, in relation to the option of partial suspension, given that the breaches related to Councillor Collins' general conduct on social media, the Acting Commissioner did not consider partial suspension from a particular activity or from a part of his role in the Council to be appropriate in the circumstances.

In her consideration of **suspension,** the Acting Commissioner took into account that the Respondent may be denied payment of allowances during any period of suspension. She also took into account the Sanctions Guidelines which state that the sanction of suspension is to be considered where the conduct is not sufficiently serious to warrant disqualification but the conduct is of a nature that:

(a) it is necessary to uphold public confidence in the standards regime and on local democracy;
(b) there is a need to reflect the severity of the matter; and
(c) there is a need to make it understood that the conduct should not be repeated.

The Acting Commissioner considered the applicability of the objectives identified in paragraph 3 of the Sanctions Guidelines and that the following objectives were relevant to the consideration of sanction in this case:

(i) the public interest in good administration;
(ii) upholding and improving the standard of conduct expected of councillors; and
(iii) the fostering of public confidence in the ethical standards regime introduced by the 2014 Act.

Therefore, any sanction imposed must be justified in the wider public interest and should be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code or to discourage similar conduct by other Councillors.

The Acting Commissioner was also entitled to take into account not only the actual consequences that have followed as a result of the Respondent's conduct but also what the potential consequences might have been, even if they did not in fact occur.

The seriousness of the disrepute breach and the potential ramifications the Respondent's conduct could have had for Mr Finucane and his family were such that the Acting

Commissioner determined that, although disqualification from office was a sanction which was available to her because it is prescribed within the law for the protection of the rights and reputation of others in democratic society, a period of suspension was the minimum necessary in response to the seriousness of the breaches in this case.

The Acting Commissioner had paid careful regard to the Respondent's rights under Article 10 of the ECHR , relevant case law and the fact that such a sanction could be deemed to restrict the Respondent's right to freedom of expression. She also took into account that the purpose of a sanction was not to punish the Respondent. However, the purpose of, and the legitimate aim being furthered by the Code, was to provide for and secure the high standards required from elected Councillors thereby seeking to protect the rights of others. In relation to Article 10, the Acting Commissioner was satisfied that in construing the Code in the present case, any restriction upon the Respondent's freedom of expression in the context of the facts which she had established, was a necessary and proportionate restriction and did not inhibit the Respondent's right under Article 10 'to hold opinion'.
In addition to the Sanctions Guidelines and in line with judicial guidance (*Heesom*) the Acting Commissioner considered previous cases of a similar nature including:

A case concerning *Alderman Ruth Patterson (C00129 decided on 8 March 2019)* where the NI Commissioner for Standards imposed a suspension of 6 months in respect of similar breaches of the Code as in this case (noting that in this case the Alderman had co-operated with the investigation).

The Adjudication Panel for Wales's decision concerning *Cllr Perry Morgan (Ref: APW/005/2021-022/CT)* who was suspended for 10 months in response to disparaging remarks he made about a fellow councillor; he also failed to engage with the Ombudsman's investigation.

Adjudication Panel for Wales's decision concerning *Cllr William Owen (Ref: APW-006-2021-022-CT)* who was suspended for 9 months in relation to a persistent course of conduct making malicious and unsubstantiated complaints and failing to engage in the investigation.

The Acting Commissioner also noted that the Respondent's Article 10 right was not absolute and that any restriction such as the imposition of a sanction of suspension must be proportionate and justified.

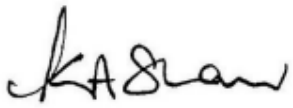
Length of Suspension
Taking into account the Sanctions Guidelines and relevant case law, the facts and circumstances of the case, the Submissions of the Acting Deputy Commissioner, the content of the Respondent's letter dated 14 March 2022, and balancing the public interest against the Respondent's personal interest and his Article 10 rights, the Acting Commissioner considered that suspension in this instance was not disproportionate.

Having regard to previous decisions and the seriousness of the breaches, the Acting Commissioner considered that a period of suspension of **8 months** was a necessary and proportionate response to the actions of the Respondent and the breaches found.
The Acting Commissioner said that an 8 month suspension was necessary to uphold public confidence in local democracy, reflected the severity of the matter, was aimed at preventing the Respondent from any future failures and was intended to discourage similar conduct on the part of others. It was the Acting Commissioner's view that a period of 8 months' suspension was an appropriate and proportionate interference because what the Respondent said on social media went beyond the acceptable bounds of proper political debate and was unnecessary and personally abusive.

Councillor Collins' suspension will run for a period of 8 months from the date of this written Decision.

Leave to Appeal
The Respondent may seek permission of the High Court to appeal against a decision made by the Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Commissioner's full written decision.

Other Matters
The Acting Commissioner trusts that this Decision conveys to all councillors the importance of understanding the purpose of the Code of Conduct and of adhering to its provisions, as well as the importance of engaging in any investigation and adjudication process of an alleged breach of the Code.



Katrin Shaw
Acting NI Local Government Commissioner for Standards
29 June 2021

Complaint against former councillor upheld

On Tuesday 7 June, the Standards Committee considered an investigation into a complaint concerning the conduct of former councillor, Tony Elias.

The complaint alleged Mr Elias breached the Members' Code of Conduct and that the Council was aware of a situation of bullying and harassment and failed to stop it.

Based on the evidence gathered, the independent Investigating Officer concluded a number of the former councillor's actions and comments towards the complainant were inappropriate, disrespectful and served to undermine their position within the Council, which constituted a breach of the Members' Code of Conduct.

In respect of the allegation of bullying and harassment, the Investigating Officer concluded the evidence submitted by the complainant did not support the claim the former councillor's behaviour was discriminatory or bullying in nature.

Following deliberations and taking into account the views of the Council's Independent Person, (who is a member of the public appointed to the committee), the committee agreed with the Investigating Officer's findings that former councillor, Tony Elias, breached the following clauses of the Members' Code of Conduct which applied at the time of the complaint:

2.1. Do treat others with respect. In particular, you should promote equality by not discriminating unlawfully against any person and by treating people with respect regardless of their race, age, religion, gender, sexual orientation or disability. You should also respect the impartiality and integrity of the Council's employees.

2.2 Do not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Members.

In addition, the committee issued the following apology to the officer:

"The Chair of the Committee apologises wholeheartedly regarding the behaviour of former councillor, Tony Elias, towards you, which was found to be in breach of the code and for the time it has taken for this matter to be determined."

The committee also agreed the outcome would be communicated to all councillors and staff and made public, as part of the duty imposed on the Council by Section 27(1) of the Localism Act 2011 to promote and maintain high standards of conduct by councillors.

Tandridge District Council

Councillor Ford censured for refusal to apologise for actions that fell short of Members Code of Conduct

Torridge District Council Ward Member for Appledore, Councillor Len Ford, has been censured by the Councils Standards Committee for breaches of the Councils Members code of Conduct. The original complaints against Councillor Ford were heard at a Standards Committee Hearing in August 2021. The committee, which comprised of seven serving councillors and three independent persons, had also received a report conducted by an independent outside investigator, which Councillor Ford had agreed to and cooperated with.

Councillor Ford was invited to submit his own evidence for the hearing and invited to attend, which he chose not to exercise. The committee subsequently upheld eight out of ten complaints made against him as "proven".

Five of the upheld allegations of misconduct were submitted by the public with the remaining four from fellow Torridge District Council members. They included:-

threatening, intimidating and verbally abusive behaviour both in person and at public places;

threatening, intimidating and verbally abusive behaviour at a complainant's home address

threatening, intimating and verbally abusive behaviour through emails and other literature.

Some of the actions also resulted in the threat of potential legal action against the Council.

In summary the committee found that Councillors Ford's actions contravened the Member Code of Conduct in the following areas:

- A requirement to treat others with respect, including members of the public, officers of the Council and any other person whom they come into contact.
- Not to act in a way which could reasonably be regarded as bringing either their office or Member of the Council into disrepute.
- Not to bully or intimidate or attempt to bully or intimidate any person.
- Not to use the resources of the Council for purposes which conflict with the Councils requirements or for political or personal purposes.
- To treat everyone equally, impartially and fairly and represent the residents of the whole of the Council area (not just the ward in which they were elected).

The resolutions from the Standards Committee were endorsed by Full Council, which excluded Councillor Ford from access to Council offices with the exception of meeting rooms for attending committees and full council meetings or to offices by prior arrangement with the Chief Executive.

The resolution also required Councillor Ford to apologise in writing to people where the complaints were upheld and to other complainants where Councillor Ford had accepted during the course of the investigation that his behaviour towards them was unacceptable.

Because Councillor Ford did not comply with this latter directive his case was automatically referred back to the Standards Committee for further consideration. The committee met on Wednesday 5th January and after debate voted to censure Councillor Ford by making the previous findings in the case public.

The matter was thereafter referred to Full Council for ratification on the 31st January 2022, where Full Council unanimously supported the further recommendation from Standards Committee and added an additional recommendation to remove Councillor Ford's ability to use his Torridge District Council email address for an initial period of 6 months to indicate Torridge's dissatisfaction with Councillor Ford using his official Torridge email account to assist him in breaching the Code of Conduct. Councillors voted unanimously to support this.

Westward Ho! Ward Member and Chair of Torridge District Councils Standards Committee - Councillor Nick Laws said:

"I wholeheartedly support every Councillors right to support causes that are close to their own beliefs or that of the electors they represent. However this needs to done at the right forums and in a way that doesn't intimidate and respects other people's rights to have a different view. I feel sad that despite accommodating Councillor Ford through meetings with the leader, deputy leader, chief executive, other members and senior officers we have not been able to navigate a different path and outcome to these issues. However standards in public life are important and no one should expect their behaviour to go unchallenged if they contravene the basic principles of how to conduct themselves with other Councillors and particularly members of the public."

Torridge District Council

Complaint to LGO

South Kesteven District Council

I have called the complainant Mr X. He complains about the way the Council investigated his concerns about a possible breach of the Councillors' code of conduct by an elected councillor. And in the way a councillor has recorded their register of interest under the Council's new code of conduct adopted in 2021. Mr X says this has caused him upset and distress.

I have read the papers submitted by Mr X and spoken to him about the complaint. I considered the Council's response to Mr X's complaints and its code of conduct complaints procedure.

Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

Background to the complaint

In January 2022 Mr X complained to the Council about the actions of Councillor Y in a Planning Committee meeting. Mr X said in 2021 Councillor Y failed to declare a conflict of interest at a Planning Committee meeting while considering a planning application. Mr X said Councillor Y was a director of a community organisation which could benefit because of a planning permission. Mr X was unclear whether the councillor was paid or not for the role. But the position as a director could conflict with councillor duties and influence decisions. Mr X said Councillor Y had not entered the role of director on the Council's register of interests or declared an interest at the planning meeting. But had spoken at the meeting which approved the application.

Mr X also complained the Council's code of conduct was limited, out of date and did not meet the Local Government Association's model code of conduct. Mr X asked the Council to:

- ensure Councillor Y correctly completed the register of interests.
- ensure it provided Councillor Y with guidance on the code of conduct, how to act with integrity and declare and manage conflicts of interests.
- tell Councillor Y to remove themselves from planning decision where they have a conflict of interests
- withdraw the planning decision and rehear it.

The Council's Monitoring Officer responded to Mr X's concerns in January 2021 and spoke to Councillor Y. The officer said the Council had implemented a new code of conduct from November 2021 in line with the model code. So had an appropriate code now in place. The officer explained the Council was entitled to appoint a councillor to the board of the organisation and it appointed Councillor Y to act on its behalf. The councillor acted on the board solely in their role as a councillor.

The Planning Committee complained about took place while the old code of conduct was effective. The Monitoring Officer explained under that code there was no requirement for the councillor to register such as interest as a DPI. So, no DPI to declare.

The Monitoring Officer did not consider 'board membership of the organisation constituted inclusion' on the register of interests under the old code. The officer said the councillor did not consider the board membership significant enough to prejudice their judgement and so did not include it in the register of interests.

The officer said Councillor Y confirmed no financial interest in the organisation, clarified comments made at the meeting and attended the meeting as a member of the Planning Committee. The officer considered Councillor Y an experienced member of the Council and Planning Committee. So aware of the need to consider applications with an open mind. The officer did not consider it necessary for the councillor to declare a DPI in the matter so no need to withdraw the planning decision on the application. The officer concluded no breach of the code of conduct and did not intend to take further action.

The officer confirmed all members of the Council had been provided with training on the new code of conduct which included completing the register of interest and disclosure of interest. It was also conducting separate sessions for Planning Committee members as part of their compulsory training.

Mr X raised further issues with the Monitoring officer in January 2021. Mr X said the model code required members to register DPI's and also 'Other Registerable Interests' (ORI). This included interests such as unpaid Directorships and a body a councillor was a member of or nominated or appointed by their authority.

Mr X considered Councillor Y's appointment to the organisation was an ORI so should be included in the Councillor's register of interests. And should have been added within 28 days of the new code of conduct. Mr X asked the Council to add Councillor Y's position as a member of the organisation and be reminded of their responsibilities about doing so. Mr X also asked the Council to update the code of conduct on its website as it was still showing the old version.

The Monitoring Officer confirmed the Council was reviewing registers of interest due to the change in the new code of conduct and advising councillors on their responsibilities. It was covered in training provided to Councillors including Councillor Y. The Monitoring Officer said he would be reviewing Councillor Y's register of interest to see if there were any omissions to recommend for inclusion.

The Monitoring officer advised Mr X the Council was in 'the process of comprehensively reviewing and updating' the Council's constitution which included the previous code of conduct. The officer said he would ensure the code was replaced on the website as soon as possible.

The Council's website shows it updated the code of conduct in March 2022. Mr X recognises the update, but considers the Council took too long to do so after approving the new code in November 2021. Mr X considers the Council's delay unreasonable.

Mr X also raises concerns about the way Councillor Y registers interests on the Council's website. Mr X says Councillor Y includes directorship of the organisation in 'Other disclosable interests' and an 'appointment outside of the Council'. Mr X believes these are the wrong categories and obscures the Councillor's conflict of interests. Mr X alleges the Council created the 'appointments outside of the Council' category specially for Councillor Y.

My assessment

In this case, the documents show the Monitoring Officer reviewed Mr X's complaint, relevant documents and spoke to Councillor Y. The officer decided not to take further action as they did not consider the councillor had breached the code of conduct in place at the time. I understand Mr X may disagree, but this was a decision the Monitoring Officer was entitled to make. As the Monitoring Officer dealt with Mr X's concerns in line with the Council's criteria for code of conduct complaints and the evidence available, I do not consider there is any fault by the Council in the way it considered Mr X's complaint.

The Council has now replaced the code of conduct on its website with the one approved in November 2021. The Council advised Mr X it was comprehensively reviewing its constitution which included the code of conduct. The Council is likely to take some months to carry out such a review and to implement changes. This is because the Council needs to have any changes formally approve at Council meetings, and it may take some time. While Mr X may be unhappy it took the Council four months to replace its code of conduct on the website, I do not consider it has caused a significant injustice to him to warrant us investigating the matter further. And the Council has now updated its code of conduct on the website which was the outcome Mr X was seeking.

The Council's documents show the Council has carried out training for councillors about the new code and their responsibilities. Councillor Y was included in the training. The website shows Councillor have updated their registers of interest which was also part of the outcome Mr X was seeking. Because of this I do not consider I can add anything through further investigation.

The Council's website shows other Councillors have the category of 'appointments to outside bodies' listed on their register of interests. And so, it is not limited to Councillor Y. However, I have not seen any evidence that Mr X has raised this and his concerns about the way Councillor Y's interests are recorded on the website as a formal complaint to the Council to consider. Any such issues and complaints about listing a councillor's interests are part of the code of conduct. As such they are matters for the Monitoring Officer to consider and so Mr X should direct his concerns about this to the Council.

I am completing my investigation. I have found no evidence of fault in the way the Council investigated Mr X's concerns about a possible breach of the Councillor's code of conduct by an elected councillor.

Hinckley & Bosworth Borough Council

Mr X complained about the way the Council investigated a complaint into his conduct at parish council meetings. Specifically, Mr X complained:

- The Council would not tell him who complained about him.
- The complaint took seven months to investigate, causing him worry and upset.
- The Council leaked details of the investigation, which damaged his reputation and local standing.

As part of the investigation I have considered the following:

- The complaint and the documents provided by the complainant.
- Documents provided by the Council and its comments in response to my enquiries.
- The Council's procedure for dealing with complaints about the member code of conduct.

Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

The Council's procedure confirms that members will usually be told who has made a complaint against them. However, in exceptional circumstances the Monitoring Officer (MO) will agree not to disclose the complainant's identity. Examples of exceptional circumstances include:

- the complainant has reasonable grounds for believing that they will be at risk of harm (physical, reputational or property) if their identity is disclosed.
- the complainant is an officer who works closely with the Member, and they are afraid of the consequences to their employment if their identity is disclosed.

Where a complaint cannot be resolved informally, the MO will undertake a fact-finding exercise, which may include speaking to the subject member and complainant.

In deciding whether to recommend a complaint merits further investigation, the MO will consider:

- Whether the complaint is about the conduct of a member or co-opted member of the Borough Council or one of the 27 Parish/Town Councils in the Borough who was in office and the Code of Conduct in force at the time of the alleged conduct.
- Whether the conduct would, if proven, be a breach of the Code of Conduct.
- Whether the complaint is sufficiently serious to merit further action.

Where a complaint has been referred for investigation, the MO, or another person appointed by the MO, will conduct an investigation.

I have summarised below some of the events leading to Mr X's complaint. This is not intended to be a detailed account of what took place.

On 16 November 2020 the Council received an email complaining about Mr X's conduct.

The Council's MO spoke to the complainant on 17 November to try to bring about an informal resolution. The complainant said this was not possible. They asked the Council to investigate the complaint and to withhold their identity from Mr X. The complainant gave reasons why they wished to remain anonymous, and the MO agreed. The MO then told Mr X of the complaint.

On 7 December, Mr X made a counter complaint. He said the complaint against him was baseless, retaliatory, and politically motivated.

The Council's Ethical Governance & Personnel Committee (EGPC) met on 17 December to consider the complaint. The meeting was delayed because the MO had COVID-19. The EGPC decided the complaint should be investigated.

The Council told the parties that it would appoint an investigator in the new year.

In January 2021, a MO from another council agreed to investigate. However, they then went on long term sick leave in March. The Council appointed a new investigator on 30 April.

The investigator contacted the complainant on 8 May seeking more information. They also contacted Mr X to confirm the process and to tell him the investigation could take twelve weeks.

The investigator received more information from the complainant on 11 May.

Mr X sent the investigator statements from the parish clerk and assistant clerk on 13 May. He asked the investigator to decide matters swiftly.

The investigator then contacted the clerk and assistant clerk to verify their statements. They responded on 17 May.

Mr X emailed the Council on 19 May complaining about delays finishing the investigation. He said if the investigation was not closed by 30 June, he would tell his solicitor to take action for libel and reputational damage.

The Council said it would ask the investigator if they could expedite the complaint. It asked for more detail about the reputational damage Mr X alleged. It also asked Mr X for evidence if he was concerned a Council member had discussed the matter outside the committee.

Mr X said the longer the complaint hung over him the more reputational damage he would suffer. He said he had been contacted by residents and political opponents who found out about the investigation. He gave the Council evidence of this. He said he had other messages and would gather statements to pass to his solicitor.

The investigator sent follow up questions to the clerk and assistant clerk on 25 May. The assistant clerk responded the same day. The clerk replied on 1 June.

The investigator confirmed to the parties that their fieldwork was complete on 6 June, and they did not need to do interviews. The investigator asked Mr X for details of his counter complaint and Mr X provided further information.

The investigator completed their report and sent it to the MO on 20 June. They concluded Mr X had no case to answer.

The chair of the EGPC and an independent person agreed with the investigator's findings. The Council confirmed the decision to Mr X on 23 June.

Mr X asked the Council for the name of the complainant. The Council refused. Mr X again said he was referring the matter to his solicitor.

Mr X brought his complaint to the Ombudsman on 29 June 2021.

The Council told me it has a duty to consider all complaints received. As the MO could not resolve the complaint, it was presented to the EGPC. The EGPC felt, if the allegations were true, it would constitute a breach of the code of conduct. It decided, due to the vague nature of the complaint, the only way to get full details was to investigate.

The Council said it assigned the investigation to a MO from another council, who then went on long term sick leave. The Council was not immediately aware of this but appointed an external investigator as soon as it could. It said it kept Mr X updated throughout and told him of the result without delay.

The Council denied sharing information about the complaint. When Mr X said he placed it in the hands of his solicitor, the Council did not look into it further.

Mr X is unhappy the Council did not disclose the name of the complainant. The Council's policy states it will only withhold the complainant's details in exceptional circumstances. It is not my role to decide whether there were exceptional circumstances here. I can only assess whether the Council has properly considered the issue. On the evidence seen, I am satisfied the Council gave due consideration to the circumstances and it was therefore entitled to decide not to disclose the complainant's name.

Overall, it took the Council about seven months to decide the complaint. However, the investigation itself took about eight weeks to complete. That was less than the twelve weeks the investigator estimated, and I consider this was a reasonable length of time.

The investigation was delayed at the outset, but I consider the delays were outside the Council's control. First, the MO officer caught COVID-19, which delayed the EGPC meeting. Then when the Council appointed an investigator, they went on long term sick leave and the Council was not told.

The Council's policy does not mention timescales for investigating member code of conduct complaints. While I can appreciate it was distressing for Mr X that there was not a swift resolution, I have not seen evidence of any unreasonable delays by the Council.

Mr X suspected a Council member shared information about the complaint. That is because he received messages about the complaint from people who were not involved in the investigation. While I do not dismiss Mr X's complaint, I have not seen evidence showing a Council member shared information. I therefore do not find the Council at fault.

Being the subject of a complaint was always going to be distressing for Mr X. However, I did not find evidence his distress resulted from any fault by the Council.

I have completed my investigation. The Ombudsman did not find fault with the Council's actions.

Case Law

Unregistered but not unregulated: non-practising barrister disciplined over offensive tweeting

If you hold yourself out as a barrister on social media, then you'd better behave like one. Even if you're not practising, you should still abide by the Code of Conduct. Offensive tweets can land you in trouble, as a recent case demonstrates.

The case of *Diggins v Bar Standards Board* [2020] EWHC 467 (Admin) establishes, among other things, that someone who has been called to the Bar and is a member of one of those Honourable Societies known as the Inns of Court, continues to be regulated and subject to the disciplinary jurisdiction of the Bar Standards Board, even though they do not currently hold a practising certificate. That means they are subject to the Code of Practice of the Bar, including Core Duty 5 which states:

"You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession…".

Martin Diggins, an unregistered (ie non-practising) barrister, who had been called to the Bar by Middle Temple in 1992, was the subject of disciplinary proceedings for breaching Core Duty 5 in respect of an offensive tweet which he posted, under the handle "@martindiggins", on 25 October 2017. The content of the tweet and the circumstances in which he posted it need not concern us: you can read about it in the first two paragraphs of Mr Justice Warby's judgment of 28 February 2020.

That judgment gave reasons for the dismissal by the High Court of an appeal by Mx Diggins from the decision of the BSB that the tweet amounted to Professional Misconduct, in respect of which he was reprimanded and fined £1,000. The court was not re-hearing the complaint; it was merely reviewing the disciplinary process to see if it contained an error of

law or fact or discretion which affected the outcome. If the decision was properly made, then it would not be for the court to substitute a different view.

Warby J concluded that Mx Diggins had failed to identify any misdirection or error of law on the part of the panel in this case. In particular, he rejected the argument that the Tweet was a purely private matter that the BSB had no business to be policing. It was, the panel had said, (1) a tweet to the world at large, which was (2) "seriously offensive", accompanied by (3) a link to the appellant's website, on which he identified himself as a barrister, which was (4) likely to diminish trust and confidence in the profession. The judge said he had "reservations about the third element of this reasoning" but that, "the panel's decision was not wrong in this respect". As he explained, at paras 72 and 73, there was no "bright line" between the public and the private conduct of a professional:

"72 … Ultimately, the question for the Panel in a case under CD5 is whether the conduct admitted or proved is likely to undermine trust and confidence in an individual barrister (as a barrister) or the profession. That is a question for assessment on the basis of the facts of the individual case…"

73 … It cannot be necessary for a barrister to be immediately or readily identifiable as such, before a charge under CD5 can be brought or made out. Nor can the link to the website in this case be the key factor, that takes the Tweet into the public domain. But I do not believe that is what the Panel was suggesting in its para 32. As it found, the Tweet was in the public domain anyway, as a public tweet, accessible to anybody. The URL, enabling a reader to travel from the Tweet to the appellant's website and identify him as a barrister, is an element of the factual matrix that was relevant to the Panel's assessment of whether his conduct met the test of being 'likely to undermine trust and confidence'…"

What this means in practice is that anyone called to the Bar can, theoretically, for the rest of their life, be disciplined by the Bar Standards Board if their conduct brings the profession into disrepute. No doubt the fact that Mx Diggins (as he perhaps tendentiously insisted on being pronounced) drew attention to his barristerial status via his profile in the blog to which he linked in the tweet added to the likelihood of his being disciplined by the BSB, but that appears not to have been determinative of the existence of their jurisdiction.

However, a person who does not call attention to their barristerial status is perhaps less likely to be the subject of a complaint to the barristers' disciplinary body. By the same token, they are also less likely to diminish the "trust and confidence which the public places in … the profession". So ultimately it is not so much a question of whether you practice or are registered, but the fact that you hold yourself out to be a barrister, and supposedly member of an Honourable Society, that behoves you to behave like one.

Barrister fails in appeal over "seriously offensive" tweet

The High Court has upheld the reprimand and fine issued to a barrister who sent a "seriously offensive" tweet in a private capacity that was "racially charged and derogatory to women".

Mr Justice Warby rejected the argument that the Bar Standards Board (BSB) and Bar disciplinary tribunal had gone too far and were trying to police Martin Diggins' private life.

The tribunal found him in breach of core duty 5 (CD5), which says barristers "must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession". He was reprimanded and handed a 'low level' fine of £1,000.

On 14 June 2017, a young black female student at Cambridge University posted on Twitter an open letter to the English faculty.

The letter stated that it was "the result of a meeting that took place amongst students about the need for the faculty to decolonize its reading lists and incorporate postcolonial thought alongside its existing curriculum… a call to not be so arrogant as to assume civilization began with the writing of white men and so this should be the basis of our learning".

Mx Diggins [as he was referred to in the ruling] "is a believer in the Canon of Western literature and culture", Warby J said, and was upset by the letter.

On 25 October, he replied on Twitter: "Read it. Now; refuse to perform cunnilingus on shrill negroids who will destroy an academic reputation it has taken aeons to build." The BSB launched its investigation following a complaint that this was racist and sexist.

Mx Diggins appealed on multiple grounds attacking both the form and substance of the prosecution and decision.

Abuse of process was an "appropriate label" for a number of separate complaints and criticisms, attributing political motivation to those involved in the case, said Warby J.

"The appellant describes himself as a Native-British, White-Skinned Heterosexual Conservative Male. His case is that he has been 'singled out for prosecution' by the BSB, which is 'seeking to make an example of me to demonstrate that the most discriminatory profession… is passionate about non-discrimination'. The BSB's prosecution is said to exhibit 'the rankest hypocrisy and nauseating virtue-signalling'."

Warby J said this ground was not properly open to Mx Diggins because he did not raise it before the tribunal, but that he would have dismissed it on its merits in any event.

"Mx Diggins characterises the standpoint of which he complains in various ways, including the 'liberal fascism' of 'self-hating whiteys'. There is no evidence from which I could infer this state of mind, or the alleged intention to make an example of Mx Diggins for a 'political' motive, on the part of the BSB.

The finding was similar in relation to bias, which again was not argued before the tribunal. Mx Diggins submitted that, as the chair of the tribunal panel – Jonathan Glasson QC – was from Matrix Chambers, he could not be relied on fairly to assess his 'critique' of the open letter.

"The argument includes the assertions that 'unlike 99% of all other chambers', Matrix specialises in discrimination law; and that it has a number of policies on race and discrimination, including a mandatory requirement to attend equality and diversity training.

"I have no evidence about these matters, but I am satisfied that they could not be enough to show actual or apparent bias, so as to disqualify Mr Glasson from chairing the panel."

Mx Diggins argued that the BSB and tribunal overstepped their boundaries by policing his private life, but Warby J agreed with the panel that there was not a 'bright line' to be drawn here.

He explained: "Ultimately, the question for the panel in a case under CD5 is whether the conduct admitted or proved is likely to undermine trust and confidence in an individual barrister (as a barrister) or the profession.

"That is a question for assessment on the basis of the facts of the individual case. The range of factual scenarios that could properly raise such a question has no theoretical limits.

"Some public conduct may be too trivial to satisfy this requirement. Some private conduct may clearly cross the line. Some conduct may be hard to categorise as either public or private. A panel will have to evaluate the conduct in all the circumstances.

"It cannot be necessary for a barrister to be immediately or readily identifiable as such, before a charge under CD5 can be brought or made out."

A link in Mx Diggins' profile to his website, which identified him as a barrister, was a relevant factor.

Warby J said that while the tweet may not have been easy for all to understand without its full context, "it plainly expresses hostility to people whom the appellant describes as 'shrill', and who he claims 'will destroy an academic reputation'. Those who are criticised in these ways are identified only as 'negroids', a term which defines more than one person exclusively by reference to their appearance and racial or ethnic origin.

"The tweet provides no indication why those characteristics might justify, support, or be relevant to the criticism. It was legitimate for the BSB to describe this as 'offensive race-based language', and equally proper for the panel, applying ordinary community standards, to find that it was 'racially charged'."

The tweet also did not explain relevance of the gender of the 'negroids', "or why such a sexual metaphor might be considered fitting", but again it was legitimate for the BSB to describe this as "offensive… gender-based language" and for the panel to conclude that it was "derogatory to women".

Warby J accepted that Mx Diggins was not acting in a professional capacity or in a professional place at the time, and was communicating on a topic of legitimate public interest in a way that did not target or defame anyone.

But there were "countervailing factors", particularly that the public expected, and trusted, members of the profession to exercise judgment, restraint and a proper awareness of the feelings of others.

"Having now reviewed the case in detail, I do not consider the panel was wrong to strike the balance between the appellant's free speech and privacy rights, and the rights of others, in the way that it did."

Deciding too that the fine could not be described as manifestly excessive, Warby J dismissed the appeal.

Neil Rose

Committee on Standards in Public Life

Government rejects standards watchdog call for power to suspend councillors found in breach of code of conduct, but backs additional protections for monitoring officers

The Government has rejected a recommendation by the Committee on Standards in Public Life (CSPL) that local authorities should be able to suspend councillors without allowances for up to six months for breaches of the code of conduct.

In its *Local Government Ethical Standards* report, issued in 2019, the CSPL had recommended:

- *Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.*
- *Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.*
- *Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.*
- *Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.*

- *Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.*

However, the **Government response** said: "There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.

"It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors."

The response insisted that "on the rare occasions" where notable breaches of the code of conduct had occurred, local authorities were not without sanctions under the current regime.

"Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box."

The Department for Levelling Up, Housing and Communities (DLUHC) noted that as part of its response to the CSPL's report on intimidation in public life, the Government had recommended that every political party establish their own code of conduct for party members, including elected representatives.

The response added that the Government would engage with sector representative bodies of councillors and officers of all tiers of local government "to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour".

The CSPL had also called on the Government to clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. "These powers should be put beyond doubt in legislation if necessary," it had said.

In its response the Government said: “The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.

“The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.”

The Government meanwhile said it agreed in principle with a CSPL recommendation that The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.

The response said the Government “recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations”.

It said the government would engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

In other comments the Department for Levelling Up, Housing and Communities said:

- The government agreed with the principle behind a CSPL recommendation that candidates standing for or accepting public offices should not be required publicly to disclose their home address. It considereed that amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it. “Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.”

- On a CSPL recommendation that councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly

accessible social media, the DLUHC said it was for individual local authorities to consider if their code of conduct is adequate in addressing the issue of councillors' inappropriate use of social media. "It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two."

- A recommendation that the Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once, "would be likely to be unworkable". Discussions with Monitoring Officers had indicated that in practice most local authorities would likely find servicing this rate of turnover unachievable. "There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council."

- The Government agreed in principle with a recommendation that local authorities should provide legal indemnity to Independent Persons if their views or advice were disclosed. It endorsed the provision of legal indemnity but did not currently see the need to require this through secondary legislation.

- The Government did not agree that criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished, “but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption”. The high bar of police involvement had served to discourage politically motivated and unfounded complaints.

- The Government did not agree that section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. It has no plans to repeal Section 27(3). “The government considers that the adoption of the principal authority’s code or the new model code is a matter for local determination.”

Responding to the Department for Levelling Up, Housing and Communities response, Cllr James Jamieson , LGA Chairman, said: “We are pleased that the Government’s response to the Committee for Standards in Public Life report acknowledges the work the LGA has undertaken to address the issues outlined in the report through the development of a Model Councillor Code of Conduct and supportive guidance in consultation with the sector.

"We agree that there is still more to do to, but that a locally-led standards and conduct system, supported by guidance, training and good practice is the best approach. In addition, it is positive to see that the Government agrees with the principle of safeguarding elected representatives in relation to the disclosure and publishing of councillors home addresses.

"We look forward to working with government and councils to determine the best mechanisms to support improvement in areas of continued focus outlined in the response and to ensure the continuination of high standards of conduct and appropriate protections for councillors and councils in the future.”

Lord Evans, chair of the CSPL, said: “While we note the government’s commitment to further work to support local government, the Committee is disappointed that many of its

careful recommendations have not been accepted. It was clear from our evidence that the sector backed our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach.

"We are pleased that many local authorities have already reviewed their approach as a result of this work and are adopting the best practice points from the report. Across all tiers of local government, decisions are taken about a wide range of local services using public funds, so it is important that there are robust governance arrangements that command public confidence."

Cllr Keith Stevens, chair of the National Association of Local Councils, said: "I am bitterly disappointed by the government's light touch, totally inadequate response to the CSPL report on local government ethical standards. It will do nothing to help stamp out poor behaviour in councils at all levels where it exists, and I would strongly urge ministers to have a rethink.

"Coming over three years since the committee published its thorough 110-page report, the government's 12-page response simply fails to properly address its recommendations and dismisses nearly all of them.

"The response falls woefully short of taking seriously the changes needed to address and improve standards in local government, including the introduction of sanctions for poor behaviour which NALC called for and the committee agreed with."

Cllr Stevens added: "There is an obvious gulf between the high standards of conduct and behaviour the local (parish and town) council sector wants to see and which is supported by a more effective regime, and the kind of standards in public life the government expects.

"It is only by taking the committee's recommendations forward as a complete package, rather than simply a commitment to further work to support local government, will we be able to continue to promote and uphold the high standards of conduct we all expect and to tackle poor behaviour where it exists."

Watchdog chair urges councils to engage with Government amid disappointment at ministerial response to local government ethical standards report

The Chair of the Committee on Standards in Public Life (CSPL) has called on those in local government to take up the Government's stated commitment to work with local authorities and representative organisations "to ensure the hard work done by those in local government is not put at risk by a small minority of individuals who do not live up to high standards of public life".

Lord Evans' comments came in an exchange of correspondence this month with Cllr Richard Cotton, Chair of Camden's Standards Committee.

Cllr Cotton had written to the CSPL after the committee he chairs had considered the Government's response to the CSPL 2019 report Local Government Ethical Standards.

He said Camden's Standards Committee had noted that the Government's decision not to implement the watchdog's recommendations on sanctions had left the local government standards regime with very few powers at a local level.

"In effect, the most severe sanction available to local authorities is a finding of a breach of the Code of Conduct. While in councils such as Camden with already high standards, group discipline and close media scrutiny, this does not have any detrimental effect, in other councils without such controls councillors who have behaved very badly will remain in office," Cllr Cotton said.

"Standards Committee requested that I write to you to express its disappointment in the Government's response, encourage you to continue to push for new, stronger sanctions, and ask you what the Committee on Standards in Public Life's next steps in this area will be."

In his response Lord Evans said: "We were similarly very disappointed that the Government decided not to implement our recommendations. It took over three years for them to respond and then to accept just a few in principle.

"We aimed in that report to produce a balanced, considered package of recommendations to strengthen the arrangements in place whilst respecting the benefits of a localised approach. I do understand your committee's frustration at the limited powers within the local government standards regime to address poor behaviour."

In relation to what the CSPL's next steps might be, Lord Evans said: "The Committee is not based in statute, we cannot therefore enforce our recommendations.

"However, although we are not a campaigning organisation, we try to exert influence where we can. We have, for example, published our own update on councils adopting our best practice recommendations, and I have spoken at local government events in the past year, most recently at the Lawyers in Local Government Leadership conference on 13 May.

"We made public our disappointment with the Government's response and reiterated our regret in our 2021/22 annual report."

Lord Evans said the CSPL also intended to write to the Secretary of State once the new Prime Minister has been appointed. He also encourage those in local government to take up the Government's stated commitment to work with local authorities.

Extract from CSPL Annual Report 2022

Local Government Ethical Standards

15. It took the government over three years to respond to our review on local government ethical standards. Our evidence-based report was welcomed by the sector, backing our call to strengthen the arrangements in place to support high ethical standards, whilst respecting the benefits of a localised approach.

16. The government response accepted just a few of our recommendations in principle and rejected most. We believe this is a missed opportunity to update and improve the locally-based standards regime in local government. We would encourage those in local government to take up the government's stated commitment to work with local authorities and representative organisations to ensure the hard work done by many working at a local level is not put at risk by a small minority of individuals who do not live up to the high standards expected.