

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2023-024/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Former Councillor Donald Jenkins

RELEVANT AUTHORITY: St. Harmon Community Council

1. INTRODUCTION

1.1. A Case Tribunal was convened by the President of the Adjudication Panel for Wales ('APW') to consider a reference in respect of the above Respondent, which was made by the Public Services Ombudsman for Wales ('PSOW').

1.2 On 3 April 2023, the Tribunal Registrar wrote to the Respondent and, in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the letter required the Respondent to send a written acknowledgement, indicating whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.

1.3 On 23 May 2023, the Case Tribunal issued Listing Directions which, amongst other matters, afforded an opportunity for the parties to apply for leave to attend or to be represented at an oral hearing. Neither party lodged any application in this respect.

1.4 The Case Tribunal therefore exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 4 July 2023 and was conducted by means of remote attendance technology.

2. ALLEGATIONS

2.1 By letter and Report dated 23 March 2023, the PSOW made a referral to the APW in relation to allegations made against the Respondent. The allegations were made in the context of a Report of Audit Wales ('AW') dated October 2021 which was critical of the Relevant Authority as a whole, as well as specific individuals, including the former Clerk, Ms West, and the Internal Auditor, as well as the Respondent. Whilst the AW Report identified irregularities in governance and financial processes, the PSOW Report focused upon certain narrow and specific issues from the AW Report. During the Respondent's interview, the PSOW's representative made it clear; *'...although the Audit Wales report covered a vast range of different topics, this interview will only deal with those two specific allegations...'*

2.2 The specific allegations contained in the PSOW Report were that; -

2.2.1 In relation to a certain tender notice for the refurbishment of bus shelters and an amended annual return and governance statement ('ARGS'), the Respondent attempted to mislead AW. The PSOW alleged that he did so to cover up poor governance at the Relevant Authority and to lessen criticism by Audit Wales about his own conduct. The PSOW alleged that the Respondent did so for his own benefit to create an advantage or to avoid a disadvantage for himself by lessening the impact of the AW investigation findings on his own reputation as Chair of the Relevant Authority. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraph 7(a) of the Code of Conduct.

2.2.2 Members of the public and press attended a meeting of the Relevant Authority on 3 November 2021 in which the AW Report was considered. The PSOW alleged that the strength of public opinion and publicity following the meeting indicated that the Respondent may have brought his Council and/or his office as a Councillor into disrepute. The PSOW considered that the Respondent's actions were therefore also suggestive of breach of paragraph 6(1)(a) of the Code of Conduct.

2.3 The available evidence was contained in the Tribunal Bundle which comprised the PSOW's Report and linked correspondence.

3. FINDINGS OF FACT

3.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed and Disputed Material Facts.

Undisputed Material Facts

3.2 There being no further representations made as to the Undisputed Material Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Undisputed Material Facts on the balance of probabilities: -

- 3.2.1 The Respondent was elected to the Council in May 2017.
- 3.2.2 The Respondent was the Chair of the Council between August 2017 and December 2021. Whereas the PSOW Report indicated that the Respondent had been appointed Chair in July 2017, it was clear from the relevant Minutes in the Tribunal Bundle that the appointment took place in August 2017.
- 3.2.3 The Respondent signed a Declaration of Acceptance of Office and an undertaking to abide by the Code of Conduct.
- 3.2.4 The Respondent attended training on the Code of Conduct.
- 3.2.5 The Respondent was the Acting Clerk and responsible financial officer ('RFO') between the resignation of one Clerk in late 2017/January 2018 and the appointment of Ms West in April 2018.
- 3.2.6 The Council was subject to an investigation by AW on the 2018 – 2019 financial year.
- 3.2.7 The Respondent was acting in his capacity as an elected Member during his contact with AW.
- 3.2.8 The AW Report was critical of specific actions taken by the Respondent.
- 3.2.9 The Report identified many irregularities in processes which were instigated by the Respondent.
- 3.2.10 The appointment process for the refurbishment of the bus shelters occurred before Ms West was appointed Clerk.
- 3.2.11 Ms West provided AW with a copy of a tender notice for the refurbishment of the bus shelters in July 2019 on a memory stick containing a number of Council documents.
- 3.2.12 The tender notice provided to AW contained Ms West's contact details for response.
- 3.2.13 Ms West was not in post when the contractor appointment process for the bus shelter refurbishment began.
- 3.2.14 Bus shelter refurbishment work was approved at a Council meeting on 30 January 2018.
- 3.2.15 The Respondent was invited by both AW and the PSOW's office to supply a copy of the correct tender notice that he said he displayed in the community, but he did not do so.
- 3.2.16 AW received a copy of the Council's ARGS on 24 June 2019.
- 3.2.17 The ARGS was certified by the Respondent and dated 28 May 2019.
- 3.2.18 Amendments were made to the ARGS using correction fluid.

3.2.19 Certain amendments made to the ARGs were initialled by the Respondent.

3.2.20 The approval of the amended ARGs was not included in the minutes of the Council meeting on 20 June 2019.

3.2.21 Members of the public attended a public Council meeting on 3 November 2021 and raised concerns about the AW Report, both in writing and orally.

3.2.22 Details of the Report and its criticism of the Respondent were published in the press.

3.2.23 The Respondent made a covert recording of a meeting with the staff from AW.

3.2.24 Although not formally identified in the PSOW Report as an Undisputed Material Fact, the Case Tribunal was satisfied that the parties concurred that the Respondent had resigned as Chair of the Relevant Authority in December 2021 and did not stand for election in May 2022.

Disputed Material Facts

3.3 There were four Disputed Material Facts outlined in the PSOW Report as follows: -

3.3.1 Did the Respondent create and display a tender notice in the community for the refurbishment of the bus shelters?

3.3.2 Was the tender notice for the bus shelter refurbishment provided to AW by Ms West a copy of the actual tender notice that the Respondent said was displayed by him?

3.3.3 Did the Respondent attempt to mislead AW in relation to the bus shelter refurbishment tender notice?

3.3.4 Did the Respondent attempt to mislead AW in relation to whether the ARGs was approved by Council after the amendments were made to it during the June 2019 Council meeting?

Submissions

3.4 The Case Tribunal noted the following submissions by the parties as regards the Disputed Material Facts

The PSOW's submissions

3.4.1 The PSOW's submissions in this respect were contained in the Report dated 23 March 2023.

3.4.2 The PSOW Report stated that the Respondent informed AW that he created a tender notice regarding work to bus shelters and displayed it on notice boards at some point between December 2017 and January 2018. He also maintained that position on further questioning by AW. He did not provide a copy of the relevant tender notice, and the PSOW was of the view that the tender notice provided to AW was not created and displayed at the time that the procurement process apparently took place, as it required

tenders to be returned to Ms West. However, Ms West was not in post at the relevant time, and as such, the version of the tender notice provided to AW could not have been the version that was allegedly displayed in the community by the Respondent and the Respondent acknowledged this point. The PSOW did not accept that the first the Respondent was aware of the discrepancy was when he was shown the tender notice by AW in October 2019 or that he did not know how it was among the Relevant Authority's documents.

3.4.3 The PSOW Report stated that the Respondent had offered a number of explanations for not being able to provide a copy of the relevant tender notice. The PSOW considered that these were contrary to all previous claims about the notice and lacked credibility as explanations. The PSOW was therefore not persuaded that the Respondent created and displayed a tender notice for this work as claimed. The Respondent also said that he did not provide AW with a copy of the tender notice as he; *"would have stood accused of preparing it after the event"*. He had agreed with the PSOW that he would look through his records, however he was unable produce evidence of any tender notice displayed in the community, whether a copy, or any evidence in a parish magazine.

3.4.4 The PSOW stated that the Respondent later claimed that he did not post a tender notice, and that it was someone else who created the tender notice and posted it. This was at odds with the Respondent's original claims. The PSOW considered that this suggestion, at a late stage, lacked credibility and that the more likely version of events was that he did not create or post a tender notice at all. Finally, as to Ms West's role in the matter, the PSOW considered that the Respondent was responsible for guiding her as an inexperienced Clerk. PSOW considered that production of the tender notice was an attempt to evidence to AW; *"that the bus shelter contract was procured competitively, when it is likely that there was no competitive procurement for the refurbishment of the bus shelters..."*.

3.4.5 As to the ARGS, the PSOW referred to the AW Report conclusions that the Relevant Authority's ARGS was amended after it had been considered by members, and the Respondent had wrongly certified that the amended accounts had been approved by the Relevant Authority. The PSOW said that the Respondent initially conceded that the ARGS had not been approved by the Relevant Authority after it had been amended and told AW in both August and October 2019 that the amended ARGS had not been taken back to Council as there had been insufficient time to do so. The Respondent had also informed the Relevant Authority in December 2019 that the return had not been sent back to Council for approval before being sent to the auditor; *"therefore they had not been approved by council."*

3.4.6 The PSOW stated that in December 2020, some 18 months after the ARGS was submitted for audit, the Respondent informed AW that the amended ARGS had, in fact, been approved by Council at a meeting in June 2019, claiming that he could not have initialled them at any other time, because he had limited contact with Ms West. The PSOW considered that this directly contradicted his previous statement about the matter and that there was no record within the minutes of the June 2019 meeting to indicate that this was the case. The PSOW did not find this most recent account of

events plausible, and the PSOW considered that the amended explanation was most likely to have been an attempt to mislead AW about whether the amended ARGs was approved by the Council.

3.4.7 In light of the above, the PSOW was of the view that the Respondent attempted to mislead AW to cover up poor governance at the Relevant Authority and to lessen the criticism by AW about his own conduct. The PSOW was of the view that he did so for his own benefit to create an advantage or to avoid a disadvantage for himself by lessening the impact of the AW investigation findings on his own reputation as Chair of the Relevant Authority. The PSOW Report also noted that members of the public and press attended the Council meeting on 3 November 2021, in which the AW Report was considered. Details of the Respondent's conduct were reported in the press following the meeting and the PSOW considered that the strength of public opinion and the publicity following the meeting indicated that the Respondent had brought the Relevant Authority into disrepute through his actions.

The Audit Wales Report

3.4.8 The AW Report formed the basis of the PSOW investigation and, with regard to the bus shelter contract, it said amongst other matters, that the Respondent had failed to provide a credible or consistent explanation of how the services of a contractor to repair two bus shelters in the community area were procured. It said that the Respondent and Clerk submitted a false document to evidence that a contract had been subjected to competition.

3.4.9 The Report noted that the Respondent had told AW that at some point in December 2017 or January 2018, the Relevant Authority published a tender notice on notice boards in the Council area seeking tenders for the work. AW considered the notice format to be inadequate in several respects. The notice had stated that tenders were to be submitted to Ms West at her postal address although she was not in post at the relevant time, and neither the Respondent nor the Clerk could explain this anomaly. The AW Report said that the Respondent maintained that he had personally posted the tender notice on community notice boards.

3.4.10 The AW Report stated that on 18 November 2020, its auditors wrote to the Respondent to seek confirmation on how the contract was procured and he responded stating that the bus shelter refurbishment had been discussed all through 2017 and 2018, and a contractor had been engaged for this work, but that there was no evidence that tenders had been sought before the Respondent had arrived on the Council and that there was no response from the contractor.

3.4.11 It was concluded in the Report that the Respondent's representations on this matter lacked credibility as he had previously informed the auditors that he had personally fixed tender notices to notice boards in the community. It stated that the latest explanation that tenders were not in fact sought was irreconcilable with the Respondent's earlier account. In further correspondence with the PSOW, AW added that both in December 2020 and March 2021, the Respondent had responded to extracts in the Report and did not suggest that there was a different version of the tender notice.

3.4.12 AW concluded that the tender notice had been provided to it with the intention of misleading the auditors that the contract had been awarded on a competitive basis. In summary, it said that; *“In providing a false document for the purpose of audit and in failing to provide accurate explanations to my auditors, I consider that the conduct of the Chairman and former Clerk in respect of this matter fall well short of the standard the public has a right to expect.”* The relevant recommendation in the Report was; *“...that the Council consider whether there are matters raised in this report that should be referred to the Public Services Ombudsman for Wales as potential breaches of the Council’s Member Code of Conduct.”*

3.4.13 As to the ARGS, amongst other matters, the AW Report stated that it appeared that there was a misapprehension that the ARGS needed to be approved by the Council after the audit process was complete. It stated that this was incorrect as they were required to be approved by the Council before submission for audit. It stated that on 24 June 2019, its auditors received a copy of the Relevant Authority’s annual return as certified by the Respondent and the former clerk, although the accounting statements had been amended using correction fluid. Some of the amendments had been initialled ‘DJ’ and some ‘DWJ’ suggesting the amendments had been approved by the Respondent. AW stated that if amendments are made to the accounts after approval, they must be submitted to a meeting of the Council for re-approval.

3.4.14 AW stated that the Respondent had written to it on 21 August 2019, confirming that he had carried out a final check on the annual return prior to it going to the external auditor, so the alterations were carried out after the Council approved the return, but because of the deadline for the return there would not have been sufficient time to take it back to Council, and that on reflection, perhaps it would have been more appropriate to have sent it unaltered with an explanation as to the discrepancies.

3.4.15 Reference was also made in the AW Report to the fact that, in December 2019, the Respondent submitted a signed statement to a meeting of the Relevant Authority in which he stated that the 2018-19 annual return was altered on the return before sending it to the auditors, and that the auditors were informed of the purported reason why. It also explained that the return was not sent back to the Council before being sent to the auditor, therefore they had not been approved by the Relevant Authority.

3.4.16 The AW Report stated that on 14 December 2020, the Respondent wrote to the auditors contradicting his previous written statements, stating: *“I believe the amended accounts were brought to the council on the 20th of June 2019 and that the Council approved them prior to them going to the external auditor.”* AW considered that the Respondent’s explanations were implausible and inconsistent with his previous representations, and it considered that the evidence that the accounts were not re-approved at the Council’s 20 June 2019 meeting was overwhelming.

3.4.17 The Report concluded that the accounts submitted for audit were not the accounts that the Relevant Authority had considered at its meeting on 28 May 2019 and that the amended accounts should have been submitted to a meeting of the Council for approval before submitting them for audit. The AW concluded that the certification misled its auditors that the accounts presented for audit were those approved by the

Council. It concluded that the conduct of the Respondent and the former Clerk in this matter fell short of the standard the public has a right to expect, and that they had sought to further mislead its auditors with the evidence submitted for audit consideration.

The Respondent's submissions

3.4.18 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 3 April 2023, nor to the Listing Directions dated 23 May 2023. During his interview and in correspondence with both AW and the PSOW however, the Respondent provided responses as follows.

The bus shelter tender

3.4.19 The Respondent had made a covert recording of a meeting which he, the Clerk and the Vice-Chairman attended with AW representatives in October 2019 and extracts of this 2hour 45minute meeting were transcribed in summary by the PSOW office. The extract recorded that the Respondent said that the tender notice would have gone out before Christmas [2017]. In response to questions, the Respondent said he didn't have a clue why the Clerk's name and address appeared on the tender notice and said it could not have been the tender notice that was put up [on the community notice board] as they did not know that Ms West existed at that stage. He said it "*definitely was not right.*" The Clerk indicated that there had been a second tender exercise, however the Respondent appeared to disagree with her and said that she did not do the tender notice for the bus shelters. When asked about the parish magazine, the Respondent said he was not sure whether the bus shelters tender notice went in the magazine, but said he knew that this did happen for a tender regarding the telephone box.

3.4.20 The transcript recorded that the Respondent said; "*Yeah. I know that it definitely went out for tender but I, I honestly can't explain this. I don't know. I do know, because I put all the notices up, and I know that I put notices up for both the bus shelters and the phone box, you know, and also for the, the fixing the benches.*" The AW representative asked if the attendees could find anything to show this. The Respondent then went on to say that he was almost sure that the tender notice that went up was for both bus shelters and he said that the only name that would have been on tender was his own because he was the Clerk at the time. There was agreement that there was a gap in the document trail and the Respondent said; "*We'll have to go back and have a look*".

3.4.21 In a further response to AW in December 2020, the Respondent said that both the benches and bus shelters had been on the council's agenda for a number of years, with a previous contractor being engaged to repair both. He then said; "*there is no evidence that tenders were sort [sic] for this work which was before I arrived on the council.*" He said that discussion on both was ongoing all through 2017 and into 2018 and referred to unsatisfactory work and failed attempts to engage with the previous contractor at the time. In March 2021, the Respondent again wrote to AW. He referenced the tender notices having been posted in early 2018 for the refurbishment of the bus shelters and fitting of the benches and that this was to seek to appoint a new contractor, but only one tender was received, and this was approved by the Council.

3.4.22 The Respondent then took part in an interview with the PSOW on 9 January 2023. He described historical difficulties which the Relevant Authority had experienced regarding the previous bus shelter contract and which he said had been awarded in 2016 to a contractor who was related to a Councillor. The repair had been deemed unsatisfactory prior to him taking up the post. He said; *“so, that is why we took the decision to go to tender, to get these jobs done. As I said, unfortunately, we were unable to find someone during that tender notice to take on the job that we’d got, that we needed to get done...”*

3.4.23 He made it clear that he had personally never supplied any documents to AW but these were supplied by the Clerk who, he said, held all the files for the Council. He reiterated his previous assertion that *“I prepared the tender notice for the bus shelters...that was posted in January or December of 2017/18. It was not, however, the tender notice that went to the Welsh Audit Office.”* He believed that he may or should have a copy of the one that went and when asked if he could provide it, he said that he believed so and would make every effort to go back through his files to see if he could find it, although he said he had not been through those files for quite a long time. Later in the interview he conceded that the tender notice could be a problem because it was back in 2017/18 and he hadn’t been into the file since then, so did not know whether he still had it. He had also had a new computer since then. As to the tender notice which referenced Ms West’s name and address, he reiterated that until a copy was produced by AW in the relevant meeting, he had *“never seen that notice before”* and did not know where it had arrived from.

3.4.24 The Respondent confirmed that he would have prepared the tender notice. He also said that he would have placed it on the noticeboard. He then said that he was not sure of the date when the tender notice went up and that if the former Clerk was still in office, *“she would have probably prepared it, but I would have still put it up”*. He added however; *“But I don’t think [the former clerk] prepared that notice. I think that I was the one that prepared it.”*

3.4.25 As to the two lever arch files sent to AW, the Respondent said of AW’s representative: *“He listed the documents required, and [Ms West] sent him a file with those documents. I had nothing to do with that.”* The Respondent considered that AW had not asked the Respondent to provide the actual tender notice, as it was not until they met with the Respondent and AW produced the document that AW was made aware of the unfamiliar document. The Respondent had considered providing the correct version to AW but felt that by the time he was made aware that the document AW had was not the document it should have had, *“it was too late to provide it, because I couldn’t prove when that document had been prepared, and I would have stood to be accused of preparing it after the event.”*

3.4.26 As to whether his conduct brought his role and Council into disrepute, the Respondent considered the AW report to be spurious and that anybody reading it, who did not know what actually occurred, may well consider it was the case. He also asked the PSOW representative to take into account the fact that it had been nearly six years since these events took place, and that he had not previously reviewed the 2017 Minutes.

3.4.27 In a letter from the Respondent received by the PSOW on 23 January 2023, he supplied copies of the relevant 2017 Minutes. Those of October 2017 showed that the Relevant Authority asked for a quotation from the contractor who was eventually appointed. The Respondent also said that he had checked files on his computer and laptop and files on external hard drives out of old computers, but unfortunately could not find the tender notice. He said that *“Having found and revisited minutes of 2017, I realised that the tender notice I referred to in my interview, if there is one, would have been produced by [a previous clerk] and put up by [a former councillor]. This would explain why I am unable to find a copy of the tender in any of my files, Before I joined the Council, and up until her resignation in 2018, [the former councillor] put up the notices on the notice boards, not me, I was responsible for posting notices after that event.”* As quotes were requested in September 2017, he said that the previous clerk would have been expected to produce a tender notice.

The amended ARGS

3.4.28 In August 2019, in response to a request by AW for a copy of the annual return approved by the Council and for confirmation *“whether the amendments on the form occurred before or after the accounts were approved by the Council”*, the Respondent stated *“whether the copy you have was approved by the council after being altered I am not sure but I will get [Ms West] to confirm”*. In a further letter in August 2019, the Respondent said he had no knowledge of council accounts, was not familiar with all the procedures and regulations required of him at the time and he had been fulfilling the roles of Chairman, Clerk, and RFO along with other commitments outside of the Council. The Respondent said that the Clerk had confirmed that *“the alterations were carried out after the council approved the return but because of the deadline for the return there would not have been sufficient time to take it back to council, on reflection perhaps it would have been more appropriate to have sent it unaltered with an explanation to the discrepancies.”*

3.4.29 As for the meeting with AW on 3 October 2019, AW expressed concerns as to whether a lawful budget had been set. AW's hand-written notes recorded that in response to the question as to whether the accounts were amended pre or post approval, the Respondent answered *“After - not enough time to go back”*. However, the transcribed extract summary of the October meeting does not record this particular response.

3.4.30 In a response dated 13 December 2020 to the draft AW Report, the Respondent said that he had believed that the AGS had been voted upon and approved on 28 May and that this was confirmed by the Minutes, hence his signature and that of the Clerk. He noted that AW had spoken to only two of eight Councillors present and the two had claimed that they were not provided with an opportunity to approve the document. However, he said that the Minutes of the meeting of 20 June 2019 confirmed that the Minutes of 28 May were approved with no amendments and no votes against; *“further suggesting the inaccuracy of this statement.”*

3.4.31 The Respondent also stated that the annual return had not been completed because it had not yet been audited by the external auditor, but that he and the Clerk

were also aware that it needed to be approved by Council before it could go to the external auditor. He accepted that; *“I was under the misapprehension that the Accounts were to be approved at each stage of the audit process...before the internal audit and the AGS brought to council after the internal and external audits respectively for approval before being posted to the Web site.”* He said he did not personally amend the Annual Return and did not recollect initialling them. If he did, he said it would have been at the Council meeting on the 20 June 2019 where the minutes stated that the AGS was to be sent to the Auditors the next day, the 21st of June. He said that if he did carry out the amendments using erasing fluid, it would have been at that meeting in full view of the Council, meaning that the Council was aware of the amendments. He went on to observe; *“if those changes were made before the 20th of June, then they would have been b[r]ought to council for approval but there is no mention in the minutes to suggest that to be the case.”*

3.4.32 He then later stated; *“I believe that the amended accounts were brought to council on the 20th of June and that the council approved them prior to going to the external auditor.”* He said it was clear from the agenda for the meeting of June 2019 that the Council was to discuss the external audit and that the Annual Return had not yet been sent. He said this was also clear from the Minutes. He considered that *“the only purpose for that item was the approval of the annual return prior to it going to the external auditors.”* He stated that he did not make the amendments but had informed the Clerk that the figures were incorrect and suggested that they be altered.

3.4.33 In his interview with the PSOW in January 2023, the Respondent said that he had no experience of the roles he fulfilled and only did so because there was no other person willing to fulfil them and explained the difficulties in taking over the accounts. He said that the Clerk had taken advice from *“the agents for the Welsh Audit Office, that also advised her that she could alter them, so long as they were initialled.”* He went on to say that; *“Those alterations were not initialled until June, the June meeting of 2019, when it was presented to Council, and the Council were informed of the alterations.”* He said that the AW representative had assured him that both ‘DJ’ and ‘DWJ’ appeared next to the amendments. *“So, yes, I signed it. I, I initialled it, but it could not have been done before the June meeting, as I had not had any contact with [the Clerk] face-to-face, only [by] telephone.”* He also said that it was only the Clerk who was in possession of the original annual return, as supplied by AW.

3.4.34 The Respondent said that the form was then submitted to the auditors a few days after the June 2019 meeting. When asked about his previous explanation that he did not have time to take back discrepancies to the Council, he said; *“I don’t think that is correct... I may have said to them that on reflection it would probably have been better...not to amend it and alter it, but to send the correct figures with the report...”* He therefore thought it was incorrect that he did not have time to take the alterations back to Council *“because we did take it back to the Council.”* When asked by the PSOW representative about two occasions where AW had been told one version of events, he said he did not recollect telling them that there wasn’t enough time to go back *“so, I really can’t answer that question.”*

3.4.35 As to the June 2019 Minutes, the Respondent could not explain why they did not record any approval of the amended accounts. He referred to various deficiencies in the Minutes of the Relevant Authority, including deficiencies highlighted in the AW Report. He said that he had never said to AW that the accounts were not approved at the June 2019 meeting. He confirmed; *“They went to the June meeting and were approved.”*

3.4.36 The Respondent reminded the PSOW representatives that he had requested them to take evidence from people that would have countered allegations and *“attacks on my person”*. He said that if they had done so, they would have fully appreciated his character and honesty. He therefore considered that as they had chosen not to take any evidence from the people he requested; *“this interview and this investigation is biased and one-sided, because you only have evidence and documents from people that are opposed to myself and the way that the Council was conducted, which wasn’t to their satisfaction and didn’t meet with their agenda.”*

3.4.37 With regards to dealing with the accounts, the Respondent conceded that *“Naivety really is the problem there, in the fact that neither of us really had a great deal of experience in dealing with council accounts. And I suppose, in hindsight, seeking advice would have been a good process.”* He also said that there were lots of things that could have been done differently, had they been aware of them at the time.

Case Tribunal's determination as to the Disputed Material Facts

3.5 Firstly, the Case Tribunal considered the context and certain general background issues in relation to the Disputed Material Facts. It noted that the AW investigations had been ongoing since August 2019 in relation to events which stretched back to 2017, and a final Report was not issued until October 2021. In addition, the PSOW investigations had been ongoing since December 2021 and the final Report was not issued until March 2023. Whilst investigation processes are often unavoidably lengthy, the Case Tribunal was mindful that the factual background was extremely involved and that the Disputed Material Facts formed part of a complex factual picture and that this will inevitably have caused evidential difficulties.

3.6 It also noted that the AW investigations had been extremely wide-ranging, went into great technical detail and referenced historical as well as more recent issues within the Relevant Authority and extended to 64 pages. The First Recommendation in the Report was an action for the whole Council in terms of addressing numerous weaknesses and deficiencies in its governance and financial management arrangements. The Report recognised that the Relevant Authority was a small community council and that it was not unusual for accounts submitted for audit to contain errors and inaccuracies. However, the Second Recommendation nevertheless asked the Relevant Authority to consider whether there were matters within the Report which should be referred to the PSOW as potential breaches of the Code of Conduct. The PSOW Report was limited to two specific and narrow issues raised as a part of the AW Report.

3.7 The Case Tribunal also noted that extracts of a transcript summary had been provided by the PSOW from a recording of a meeting in October 2019 with AW lasting

for 2 hours 45 minutes. Whilst the Case Tribunal did not condone the fact that the Respondent produced a covert recording of the meeting, it nevertheless considered this evidence to be persuasive as to key parts of that meeting. The brief hand-written notes of the meeting as produced by AW appeared to be a summary only of the meeting and there appeared to be little correlation between the two sets of records.

3.8 The Case Tribunal then considered each of the Disputed Material Facts in turn as follows. As to the question; *'Did the Respondent create and display a tender notice in the community for the refurbishment of the bus shelters?'* the Case Tribunal determined that the Respondent had not done so, for the following reasons.

3.8.1 The Respondent had helpfully produced relevant Minutes from 2017 which, it seems, had not previously been requested during investigations. These clearly showed that in a meeting of 31 October 2017, it was agreed that a Councillor; *"was asked to approach her husband for a quote for work on the bus shelters...."* In the Minutes for a meeting on 28 November 2017, it was recorded that the Respondent *"met with another contractor at the bus shelters to examine the work completed which is considered sub-standard. The recommendation is that a new roof is required in addition to other work. The contractor is going to provide an estimate for work to be completed."* The Minutes for a meeting on 19 December 2017 recorded that *"Quotation delayed [due] to adverse weather conditions."* Finally, the Minutes of 30 January 2018 recorded that; *"Quotations were received for repair and refurbishment of the bus shelters...from [the new contractor]. These were approved with work to commence A.S.A.P, Pant-y-Dwr should be dealt with first."*

3.8.2 None of these sets of Minutes made any reference to a tender notice being issued or displayed, whereas Minutes of the Relevant Authority made specific reference to the display of tender notices in respect of other works. The Case Tribunal was satisfied that the above Minutes clearly demonstrated the informal approach which the Relevant Authority had taken to awarding the contract for refurbishment of the bus shelters. Having reviewed the 2017 Minutes, the Respondent also acknowledged that he could not have created and displayed a tender notice in the community for the refurbishment of the bus shelters, as it became clear that the process had commenced in October 2017 when the previous Clerk had been in post.

3.9 With regard to the question; *"Was the tender notice for the bus shelter refurbishment provided to Audit Wales by Ms West a copy of the actual tender notice that the Respondent said was displayed by him?"* the Case Tribunal determined it was not a copy of any purported actual notice for the following reasons.

3.9.1 There was no available evidence to support this notion. The Respondent was clear throughout, that once he had been made aware of the contents of the tender notice for the bus shelter refurbishment provided to AW by Ms West, that it could not be a copy of the actual notice. This was because the tender notice had asked interested parties to return tenders to Ms West at her home address and Ms West had not been appointed as Clerk at the relevant time.

3.9.2 Ms West was unable to explain this discrepancy. She stated in her Witness Statement of October 2022 that; *"I am unable to comment on whether the tender notice*

was prepared solely for the purpose of supplying it to Audit Wales as I was not the Clerk at the time.” During her interview with the PSOW representative, she stated that she did not remember when asked whether she had simply facilitated the transfer of documents from the Council to AW or had any involvement in gathering them or preparing them onto a ‘zip file’. She added that she did not; *“actually remember off hand how I came to be in possession of this memory stick...”* She said that this was several years ago, she was fairly new in role at the time and could not remember whether she just facilitated the transfer of the documents or if she had any involvement in gathering or preparing the documents for AW.

3.10 As to the question; *“Did the Respondent attempt to mislead Audit Wales in relation to the bus shelter refurbishment tender notice?”*, the Case Tribunal decided that, on the balance of probabilities, the Respondent had attempted to mislead Audit Wales in certain respects, for the following reasons.

3.10.1 AW alleged that; *“In providing a false document for the purpose of audit and in failing to provide accurate explanations to my auditors, I consider that the conduct of the Chairman and former Clerk in respect of this matter fall well short of the standard the public has a right to expect.”* Whilst the Case Tribunal considered that there was insufficient evidence for it to conclude that the Respondent himself had a role in creating and providing a false document as alleged in the AW Report, it concluded that the Respondent did nevertheless fail to provide accurate explanations to the auditors.

3.10.2 The Case Tribunal accepted that the tender notice sent to AW was not, nor could have been a genuine document for the reasons given above. However, it considered that there was insufficient evidence to conclude that the document was provided by the Respondent to AW with the intention of misleading its auditors that the contract had been awarded on a competitive basis. Neither the Respondent nor Ms West could explain why the document appeared in the two lever-arch files provided to the auditors, nor indeed who drafted it. The Respondent was adamant that it was the Clerk who had supplied all documents to AW. There was no evidence to suggest that the Respondent had drafted or directed drafting and transmission of this document. On the balance of probabilities however, the Case Tribunal concluded that it was the Clerk and responsible financial officer (‘RFO’) who had collated and prepared the paperwork for onward transmission following a specific request to her from AW.

3.10.3 In addition, the Case Tribunal considered that within the transcript of the recorded meeting with AW in October 2019, the flow of the discussion indicated that the Respondent was genuinely surprised and confused about the presence of this document amongst those which had been submitted by the Clerk, and to hear about the contents of the tender notice and he stressed that it could not be correct. As to the PSOW’s suggestion that the Respondent was the guiding hand for an inexperienced Clerk, the Case Tribunal was satisfied that the Council was her employer and not the Chairman. Whilst the Clerk may have been inexperienced, it accepted that the Respondent was also inexperienced and, without further evidence, it could not conclude that the Respondent was the ‘guiding hand’ in producing the document.

3.10.4 Nevertheless, the Case Tribunal noted that in the same transcript the Respondent provided an emphatic statement that; "... *I know that I put notices up for both the bus shelters and the phone box...*" On later occasions the Respondent provided a wholly different account of events. For instance, he later said that providing the correct notice after the event could have led to accusations of it being prepared after the event. On another occasion, he said that having reviewed the minutes, the tender notice, "*if there is one*", would have been prepared by the previous Clerk and displayed by another Councillor rather than himself. He said this explained why he was unable to find a copy of the tender notice that he had previously said he prepared and displayed.

3.10.5 On the balance of probabilities, the Case Tribunal concluded that the Respondent had provided his initial emphatic statement in attempt to mislead AW into thinking that the contract in relation to refurbishment of the bus shelters had been awarded on a competitive basis. In reality, the exercise appears to have been conducted through direct contact with one potential contractor and only one set of 'tenders' was received. In effect, a contractor who was allegedly related to one Councillor was replaced by a contractor related to another Councillor, and who was specifically approached following a decision of the Council to do so.

3.10.6 In addition to these factors, the Case Tribunal noted that the Respondent was provided opportunities both by AW and PSOW to locate and produce the 'correct' tender notice. The Respondent provided various reasons for not having done so despite saying that he thought he could do so. These ranged from the idea that producing them so long after the event could look suspicious, to the fact that he now had a different computer. Ultimately however, despite being provided with opportunities to produce evidence of the tender notice, whether by supply of a copy, photographs of the displayed notice, or a version in the parish magazine, the Respondent did not produce any such evidence. The Case Tribunal considered that there had been many opportunities for the Respondent to admit that the original emphatic response was clearly incorrect.

3.11 With regard to the question; "*Did the Respondent attempt to mislead Audit Wales in relation to whether the ARGS was approved by Council after the amendments were made to it during the June 2019 Council meeting?*", the Case Tribunal decided that, on the balance of probabilities, the Respondent did attempt to mislead AW in this respect, for the following reasons.

3.11.1 The Case Tribunal noted that the Respondent had stated in emphatic terms to AW that there had not been time to take amendments to Council. This appeared to be a reasonable initial concession that amendments had not been dealt with correctly. The AW Report had noted that the Respondent appeared to believe that accounts would need to go to external audit before approval by Council. However, the Respondent then changed his view on what had happened. His altered view was that the amendments had indeed been approved at the Council meeting in June 2019. The Case Tribunal concluded that the only plausible explanation for this complete 'about turn' was as an attempt to mislead AW and to give it the impression that the Respondent had, as Chairman of the Relevant Authority, ensured that amendments to the accounts had been accepted by the full Council.

3.11.2 The Case Tribunal considered the specific wording of the Minutes for the meeting of June 2019 as follows; *“External Audit - The accounts are to be sent to Grant Thornton tomorrow. [A Councillor] requested to see variances on accounts it was advised that these would be issued to all councillors when they are returned.”* This supports the initial explanation provided by the Respondent that he thought that the accounts needed to be sent for external audit before being finally approved by the full Council. Notwithstanding the fact that the AW had identified general deficiencies in the Relevant Authority’s Minutes, the Minutes were very clear in this instance. There is no indication whatsoever that the amended version of the accounts was before the Council for approval. It was quite the opposite, and the wording of the Minutes makes it clear that the ‘variances’ or amendments had not been shown to all Councillors and would only be issued to them *“when they are returned”*.

3.11.3 Whereas it was clear that the Council was aware that amendments had been made to the accounts, the Minutes do not reference approval of the amended accounts. Again, whilst it was clear that there was a discussion about the accounts, the recorded decision does not support the Respondent’s version of events. The wording of the Minutes clearly indicate that the amendments were not before the Council and were not properly approved.

3.11.4 The Respondent maintained a position for some time that he had not initialled any amendments. However once he was informed by AW that some of the initials appeared as ‘DJ’ and others as ‘DWJ’, he appeared to then adopt the position that he may indeed have initialled certain amendments but that he could only have done so at the meeting of 19 June 2019, as he had very limited in-person contact with the Clerk. He did not appear to have been asked to confirm that the initials next to the amendments were his own. He considered that if he had initialled anything, he would have initialled any amendments in full view of all Councillors. The Case Tribunal accepted that it may indeed have been the case that 19 June 2019 was the first opportunity for the Respondent to initial any amendments and this is borne out by the Clerk’s statement that she lived quite some distance from the community. Nevertheless, the Case Tribunal did not consider that this altered the fact that the available written evidence clearly showed that the amendments were not approved by the Council.

4. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE.

4.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with Paragraphs 6(1)(a) and 7(a) of the Relevant Authority’s Code of Conduct.

4.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle, the submissions outlined in Paragraph 3.4 above and Paragraph 4.7 below, as well as the Material Facts as found above.

Paragraph 6(1)(a) of the Code of Conduct

4.3 Paragraph 6(1)(a) of the Code of Conduct states that '*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute*'.

Guidance

4.4 In considering this matter, the Case Tribunal also had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct ('The Guidance'). As to paragraph 6(1)(a) it makes it clear that: -

'2.31 ...As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.

2.32 When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute...

2.33 Dishonest and deceitful behaviour will bring your Council into disrepute...'

Paragraph 7(a) of the Code of Conduct.

4.5 Paragraph 7(a) of the Code of Conduct states that; '*Members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person, a disadvantage*'.

Guidance

4.6 As to paragraph 7(a), the Guidance states: -

2.54 '... You should not use, or attempt to use, your public officer either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.

Submissions

4.7 The Case Tribunal noted the following submissions by the parties as to whether the Respondent had failed to comply with the Relevant Authority's Code of Conduct.

The PSOW's Submissions

4.7.1 The PSOW's submissions as contained in the Report dated 23 March 2023 are that the Respondent's conduct was suggestive of a breach of paragraphs 6(1)(a) and 7(a) of the Code of Conduct for the following reasons.

4.7.2 The PSOW noted that the AW Report was critical of the Council and specific actions taken by the Respondent as well as other individuals and said that his conduct fell well short of the standard the public had a right to expect from those who represent them. The PSOW considered that the Respondent had been less than candid during the AW and PSOW processes, attempting to cause confusion by offering alternative versions of events and claiming the existence of documents that he then did not present.

4.7.3 As to Paragraph 6(1)(a), the PSOW Report stated that, for a breach to be found, a member's conduct must go beyond affecting their personal reputation. The PSOW Report referred to the fact that members of the public attended the Council meeting on 3 November 2021 in which the Report was considered and expressed dismay at the findings of the Report in writing and during the meeting. Details of the Respondent's conduct were also reported in the press following the meeting. It concluded that the strength of public opinion and the publicity following the meeting indicated that the Respondent's behaviour was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

4.7.4 With regard to Paragraph 7(a), the PSOW Report concluded that the Respondent attempted to mislead AW and did so to cover up poor governance at the Council and to lessen the criticism by AW about his own conduct. It concluded that he did so for his own benefit to create an advantage or to avoid a disadvantage for himself, by lessening the impact of the AW investigation findings on his own reputation as Chair of the Council.

The Respondent's Submissions

4.7.5 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 3 April 2023 nor the Listing Directions dated 23 May 2023.

4.7.6 During his PSOW interview and further correspondence, the Respondent made additional submissions about the surrounding circumstances. He stated in his letter to the PSOW in January 2021 that he considered that certain Councillors had been instrumental in the AW Report and he considered that they should have declared interests. He also referred to argumentative behaviour and relationship issues on the Council. He made the point that there had been no-one else willing to take on the job of Chairman.

4.7.7 The Respondent also stated that, judging by the reaction from residents in St. Harmon, he thought that the impact on his reputation was very little. He remained Chairman of a residents' organisation and trustee and treasurer of a sports club and considered that he was held in high regard by people within the St. Harmon community. Out of 438 electors in the community, he thought that only a small number; "*eleven or twelve, most of which you've got documents from,*" did not hold him in high regard. He

said that he had offered to resign as treasurer of the sports club “...each time, the trustees have refused to accept the resignation and asked that I continue.”

Case Tribunal's determination as to alleged breach of paragraphs 6(1)(a) and 7(a) of the Code of Conduct.

4.8 The first question addressed by the Case Tribunal was whether the findings that the Respondent attempted to mislead AW as to the bus shelter tender and the ARGs amounted to conduct which was capable of bringing the Authority into disrepute. The second question was whether the Respondent had attempted to use his position improperly to avoid a disadvantage to himself. The Case Tribunal determined on a unanimous basis that the Respondent's conduct amounted to a breach of both Paragraphs 6(1)(a) and 7(a) of the Code of Conduct for the following reasons.

Paragraph 6(1)(a) of the Code of Conduct

4.9 The Case Tribunal considered that the Respondent had breached Paragraph 6(1)(a) of the Code for the following reasons.

4.9.1 By providing misleading information to AW in relation to two separate yet narrow issues, without providing any reasonable excuse or explanation for doing so, the Case Tribunal considered that it was inevitable and self-explanatory that such conduct would bring the Respondent's office and the Relevant Authority into disrepute. This was particularly the case in the light of AW's regulatory role and the expectation that it would be supplied with clear, accurate and consistent answers during its investigations into a public authority's financial affairs.

4.9.2 With regard to the relevant Guidance, the Case Tribunal was also mindful of the Respondent's seniority as Chairman of the Council and the attendant higher public expectations and inevitable greater scrutiny as to his actions than for ordinary Members. It was satisfied that inappropriate behaviour by the Chairman of a Council would be likely to damage public confidence. Deceitful behaviour however, which included providing misleading information to a public body, would clearly bring the Relevant Authority into disrepute.

4.9.3 The Case Tribunal also considered the Principles governing the conduct of elected Members of local authorities in Wales, including the Principle of Selflessness, Honesty, Integrity and Propriety, Openness and Leadership. These principles all underpin the Code of Conduct and require Members to act solely in the public interest and never to use their position as Members to confer advantage on themselves, to be as open as possible about all their actions and those of their authority and to lead by example, so as to promote public confidence in their role and authority. The Case Tribunal did not consider that the Respondent had upheld these Principles in this instance.

4.9.4 The Case Tribunal considered that the Respondent's actions had arisen in a situation where it is likely that the Relevant Authority had already been brought into disrepute in the light of the critical Audit Wales Report. It was a 64-page document

which focused in detail on the inadequacies of governance, financial management and internal control of the Council as a whole, whilst also referencing the role of three individuals connected to that Authority, including the Respondent. Nevertheless, the Case Tribunal considered that the conduct of the Respondent was also of a nature which would bring his role as well as his Authority into disrepute.

4.9.5 On the basis of the available evidence, The Case Tribunal considered that the media reporting of the critical AW Report had been fairly limited. It noted that the newspaper article that was supplied had singled out the Chairman for particular attention as one of the individuals referenced in the Report. It noted the Respondent's view that there had been vindictiveness towards him by certain individuals within the community and the Relevant Authority, as there had been two factions and that this may have accounted for this attention and negative reaction. It also noted that the article did not reference the specific allegations which were the subject of this adjudication. Nevertheless, the Case Tribunal did not consider that this altered the fact that the conduct in question could reasonably be considered capable of bringing the role and authority into disrepute

4.9.6 Finally, whilst the Case Tribunal concluded that there were undoubtedly factions within the community, it was clear that at least some members of the community were concerned, and reasonably so, about the specific issues which are the subject of this adjudication. The Minutes of the meeting of the Relevant Authority of 3 November 2021, record that a Councillor who the Respondent alleged to have been instrumental in the AW Report stated; *"It refers to contradictory or misleading information, false documentation..."* and *"quite serious documentation concerns"*. Members of the public who spoke at the meeting also made comments about the specific allegations such as; *"...the Chairman, has clearly been 'found out' in his attempts to pull the wool over the eyes of Audit Services."*

Paragraph 7(a) of the Code of Conduct

4.10 The Case Tribunal also considered that the Respondent had breached Paragraph 7(a) of the Code for the following reasons.

4.10.1 The Case Tribunal was satisfied that the Respondent was acting in his official capacity as Chairman of the Relevant Authority when he provided the information in question to the AW representatives. The AW Report made it clear that it was not unusual for there to be accounting errors. Nevertheless, in the light of its findings on the Disputed Material Facts above, and in the absence of any evidence to the contrary, the Case Tribunal considered that, on the balance of probabilities, the only plausible reason for the Respondent providing misleading information and for obfuscation was to try to present a more positive picture of the Relevant Authority's procurement and accounting practices. It considered that this was to reduce criticism of the Council as a whole and of the Respondent as Chairman in any AW Report. As such, the Case Tribunal found that the conduct had been deliberate conduct. The Case Tribunal noted that the Respondent had stated: *"there is no evidence that tenders were sort [sic] for this work which was*

before I arrived on the council,” which implied that he felt that matters had been resolved under his Chairmanship. It therefore concluded that the Respondent acted in this manner to reduce criticism of himself in his leadership role as Chairman. In other words, it considered that he had acted in the way that he did to create an advantage or indeed to avoid a disadvantage for himself.

4.10.2 It was noted that the AW Report referred to a wide range of issues, and that the audit investigation process clearly went into fine detail and would have been an exacting experience which continued for over three years. Nevertheless, even though the allegations related to two specific and narrow issues in the midst of a huge array of significant issues to be answered by the Relevant Authority, the Case Tribunal considered that it had no option but to make a finding of a breach of Paragraph 7(a). Whether a Chairman had provided misleading information in relation to two relatively minor issues which were unlikely to influence an AW opinion, or in relation to several very significant issues which could indeed influence an opinion, the conduct which it was considering involved provision of misleading information and obfuscation to try to limit criticism. Whilst it considered that the Respondent was attempting to minimise criticism in the face of a barrage of criticism on a range of matters, these attempts were nevertheless sufficient to reach a finding of breach of Paragraph 7(a).

4.10.3 The Case Tribunal concluded that the Respondent had tried to mislead AW, the PSOW and indeed his own Council in providing alternative accounts of events to cover governance, financial, and procurement errors.

5. FINDINGS IN RELATION TO SANCTION

5.1 The Listing Directions dated 23 May 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceeding was reached.

Submissions

5.2 The PSOW provided further submissions in a letter dated 5 June 2023. The Respondent did not provide formal submissions in response to the Tribunal’s letter dated 3 April 2023 nor the Listing Directions dated 23 May 2023. However, the Case Tribunal considered submissions which he had made during the AW and PSOW investigations as follows.

The PSOW’s Submissions

5.2.1 In the PSOW’s letter dated 3 June 2021, the PSOW made the following submissions

5.2.2 The PSOW referred to the purpose of the ethical standards framework being to promote high standards amongst members of councils in Wales and to maintain public confidence in local democracy. The PSOW also referred to the APW Sanctions Guidance and noted that the purpose of a sanction was to provide a disciplinary

response to an individual member's breach of the Code, place the misconduct and appropriate sanction on public record, deter future misconduct on the part of the individual and others, promote a culture of compliance across the relevant authorities and to foster public confidence in local democracy.

5.2.3 The PSOW suggested that a breach, if found in this case, would be serious and the PSOW highlighted certain mitigating and aggravating factors which were considered to be relevant in consideration of the five-stage process for determining sanction.

The Respondent's Submissions

5.2.4 The Respondent stated that he believed that *"a small number of individuals including the complainants conspired together to cause disruption and embarrassment to the council, conspired to attempt to intimidate and bully both the clerk and myself into doing their bidding resulting in the clerks resignation."* He went on to describe the behaviour of certain factions involved in applying for community funding awards from the Relevant Authority. He considered that the intention was to; *"disrupt embarrass and build a reason for complaint."* He considered that certain Councillors had complained to AW and had been instrumental in the Report, that they were in breach of the Code of Conduct and had also brought the Council into disrepute. He thought that in the context of a separate element of the AW Report that there had been *"commotion"* and *"intimidation"*, some of which *"was quite frightening"* and the Respondent was not surprised that mistakes were made in the circumstances.

5.2.5 The Respondent did not consider the report to be accurate in certain respects and also referred to it as being *"spurious"* and purely an attack on himself and the Clerk. He said that none of his comments on the two draft versions of the AW Report were taken into consideration and were completely dismissed so that none of the drafts changed in response. He considered that part of the Report was therefore false, and the Council should not have accepted the document. He said that; *"Whilst I accept that this council has never done things correctly for many years if ever and that many of the policies, procedures, and practices may be out-dated and not fit for purpose, the council is making efforts to address the situation."*

5.2.6 During his interview with PSOW representatives in January 2023, the Respondent said that in terms of experience to perform the relevant roles, he replied *"Nothing, really, with regards to Council financial affairs or being a council clerk."* He said that he only fulfilled the roles because there was no other person willing to do them, and he was left with no prepared accounts by the previous Clerk. The Respondent also referred to efforts to recruit a new Clerk which he said was not an easy task these days for any Council.

5.2.7 The Respondent said that since the age of 16, he had been involved in volunteer work helping in the communities in which he lived in unpaid roles and was brought up, to be honest, and plain-speaking. The Respondent said; *"I believe myself to be a good and honest citizen and have never knowingly tried to deceive anyone or any"*

organisation, my only desire since my teens have been to be of use to the community in which I live more often than not at my financial expense.”

5.2.8 The Respondent considered that since removal of the previous contractor regarding the refurbishment of the bus shelters and benches, and an altercation between the Clerk and an individual who became a Councillor, that there had been “*a vicious and vindictive attack on members of the council...*” resulting in the resignation of individuals “*due to intimidation*”.

5.2.9 The Respondent said that both he and the Clerk were put under considerable strain. He said that throughout 2018/19, due to “*the abuse and intimidation*”, he was “*not surprised mistakes were made*”. The Respondent gave his age and said that “*my memory is not as sharp as it was,*” however he considered that this was not taken into account in the PSOW report.

5.2.10 The Respondent had made a statement to the Council in December 2019 making a limited apology on behalf of the Council for discrepancies in the accounts. He also did accept responsibility, along with the rest of the Council, for lack of diligence paid to meeting Minutes as he thought that some of those lacked content.

5.2.11 Finally the Respondent made it clear that he no longer wished to engage in the investigation process with the PSOW. Unfortunately, he did not then engage with this separate, independent APW adjudication process. He said that he was caring for his wife who was suffering from serious ill-health issues. He did not therefore provide any specific mitigation, character references or any additional evidence to support his case with regard to any sanction to be imposed by the APW.

Case Tribunal's determination as to Sanction.

5.3 The Case Tribunal went on to consider the question of Sanction. In doing so, it considered all the facts and evidence. It also had regard to the APW's current Sanctions Guidance. It noted the purposes of Sanction which had been highlighted in the PSOW's submissions. It also had regard to the overriding purpose to “*uphold the standards of conduct in public life and maintain confidence in local democracy.*” The Case Tribunal also conducted the five-stage approach advocated in the Guidance.

5.4 In terms of the conduct which led to breach of Paragraphs 6(1)(a) and 7(a) of the Code, it noted that the conduct related to narrow and relatively minor issues in the context of the wider context of the AW Report. In view of the fact that the conduct involved the provision of misleading replies and information to a regulatory body however, and the senior role which the Respondent held, as well as the use of that position to try to limit any criticism of himself personally, the Case Tribunal considered the breach to be very serious and one which would normally attract disqualification or suspension for a significant number of months. In the circumstances, and in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a period of disqualification.

5.5 The Case Tribunal then considered any Mitigating or Aggravating circumstances which might adjust the level of Sanction, including those highlighted in the Guidance as follows.

Mitigating Factors

5.6 The Case Tribunal concluded that the following mitigating factors applied to the Respondent's circumstances:

5.6.1 a fairly short length of service and inexperience in the role of Chairman.

5.6.2 a previous record of good service. The Registrar notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

5.6.3 whilst there was more than one example of provision of misleading replies and information, the misconduct all related to the same AW investigation process.

5.6.4 the Respondent had co-operated with the PSOW's investigation officer in attending interview, and in responding to PSOW questions.

Aggravating factors

5.7 The Case Tribunal went on to consider any aggravating factors in this case. It concluded that the following factors applied to the Respondent. The Case Tribunal also took care not to duplicate factors which had formed the basis of a finding of breach of the Code of Conduct.

5.7.1 The Respondent was in a senior position of responsibility and trust at the relevant time.

5.7.2 Whilst the provision of misleading information arose from the same AW investigation process, the misleading responses did indicate a pattern of behaviour, where numerous opportunities had been given to the Respondent to provide an accurate account.

5.7.3 Provision of misleading information suggested an element of deception.

5.7.4 There appeared to be a lack of understanding or acceptance of the misleading conduct and its consequences.

5.7.5 The conduct was either deliberate or reckless and showed little or no concern for the Code.

5.7.6 The Respondent continued to refuse to accept the facts despite clear evidence to the contrary. He also showed very little regret for his actions, maintaining the view throughout that he had done nothing wrong in providing alternative accounts of events to cover for financial and procurement errors.

5.8 In addition to these mitigating and aggravating factors highlighted from the Sanctions Guidance, the Case Tribunal noted that there had been a limited apology by the Respondent to the Relevant Authority. It also acknowledged that the Respondent

had willingly taken on unpaid roles and responsibilities to try to assist and contribute to his community and that he may well have felt out of his depth. It appreciated that it was increasingly difficult for community councils to function without individuals willing to step up to these roles. It also accepted that although the Code breaches were serious as they involved misleading a public body, in the context of the all-encompassing AW Report, the breaches related to two narrow and relatively minor elements, where it was highly unlikely that the AW would have been deceived by the differing versions of events given by the Respondent. Finally, it had no reason to doubt the Respondent's reasons for not engaging with the APW process.

5.9 The Case Tribunal also accepted that the AW and PSOW processes over such an extended period would have placed the Respondent under a huge amount of pressure and would have caused the Respondent a considerable amount of stress and anxiety. This was particularly as the AW investigations had been wide-ranging and went into great technical depth as to governance, accounting and procurement requirements. It also considered that generally, the responses to various AW and PSOW correspondence and interviews appeared to be candid and open and that there had been requests for proactive advice and assistance from AW as evidenced in the meeting transcript of October 2019. It appeared that the Respondent was a proud man who may not have wished to admit to any errors on his part.

5.10 The Case Tribunal also noted what the Respondent said about vindictive and abusive attitudes towards him from a faction within the Council who he said wished to oust him through the AW process. Whilst the Case Tribunal had no doubt that the Respondent had to act as Chairman in a difficult and often unpleasant environment which reflected badly on the Relevant Authority as a whole, whatever the trigger for the AW process, this did not excuse the specific misconduct which has been found in this case. The Case Tribunal noted that the Respondent had resigned from the Relevant Authority in December 2021, however the reasons for his resignation were not included in the evidence. It nevertheless acknowledged that the Respondent had already been away from local government for a period of 18 months.

5.11 As the Respondent had not engaged with the APW process, the Case Tribunal could only consider the submissions which were provided during the AW and PSOW processes. The Respondent had provided no explanations whatsoever for giving entirely different accounts of events regarding the bus shelter tender and ARGS amendments. He did not claim ill-health, memory failure, confusion about the various tenders and documents, that he had made a mistake or that he had panicked and lied. In the circumstances the Case Tribunal had no option other than to conclude on the balance of probabilities that the conduct had been deliberate, as the accounts were so markedly different.

5.12 The Case Tribunal went on to consider the level of sanction which would be appropriate in this case. In view of the Respondent's resignation, the sanction of suspension was not a sanction available to the AW. As to former members, Paragraph 47 of the Guidance states '*In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification*

may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...'

5.13 The Case Tribunal considered that it was important to emphasise the purposes of sanction as referenced above. A sanction not only provided a disciplinary response to an individual member's breach of the Code but was also intended to deter future misconduct by others and promote a culture of compliance across authorities generally. It considered that it was necessary to reinforce the importance of the Code as well as the principles of honesty and integrity.

5.14 In the circumstances, the Case Tribunal considered whether '*No Action*' or '*Disqualification*' as detailed in the Sanctions Guidance was the appropriate outcome. It noted Paragraphs 39.1 and 39.2 of the Guidance in particular, which recognised that no action may be appropriate where there had been a resignation or ill health which rendered a sanction unnecessary and/or disproportionate. No ill health reasons had been put forward by the Respondent to support a finding of "*No Action*" and the Case Tribunal considered that the nature of the breach did render a sanction necessary in this case. There was an expectation that members and particular those in a senior role such as Chairman would act with complete candour and openness, act in accordance with the trust that the public placed in them, lead by example, and promote public confidence, even if that resulted in personal criticism for any governance, procurement or accounting process mistakes and errors.

5.15 In all the circumstances and bearing in mind the wider purpose of sanctions as outlined in the Guidance, the Case Tribunal considered that the sanction of disqualification was appropriate and necessary. A period of disqualification would allow the Respondent time to reflect upon the purpose and importance of the Code of Conduct and in particular Paragraphs 6(1)(a) and 7(a) of the Code. It was also mindful that the Guidance suggested that disqualification for a period of less than 12 months would be unlikely to have the necessary impact and effect. As the specific breaches involved provision of misleading information to a regulator, it considered the matter to justify a period of disqualification.

5.16 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 15 months** from being or becoming a Member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.17 St. Harmon Community Council and its Standards Committee are notified accordingly.

5.18 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed *C Jones*

Date; 1 August 2023

C Jones

Chairperson of the Case Tribunal

Mr D Morris

Panel Member

Mr H E Jones

Panel Member