

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/004/2023-024/CT

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

RESPONDENT: Councillor Bernie Attridge

RELEVANT AUTHORITIES: Flintshire County Council
Connah's Quay Town Council

1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 For the reasons set out in paragraphs 1.4 and 1.5 of the Listing Direction of 26 February 2024, the Case Tribunal determined its adjudication by way of written representations at a meeting held on a 26 April 2024. The meeting was not open to the public.

1.3 Unless otherwise stated, page references below are to the electronic page numbers of the Final Bundle, comprising the Ombudsman's bundle and report, and have been cited in square brackets.

Restrictions to factual details reported

1.4 Although no applications had been made by the Respondent or the Ombudsman, the Tribunal has not named two members of the public within this Report and has further limited the detail provided by the Respondent in respect of some of the evidence which he alleged caused some of his behaviour.

1.5 In relation to the names of the two individuals (Ms M and Mr B), a local family who were housed by the Flintshire County Council (Family X) and the detail of the Respondent's childhood experiences, it was not in the interests of justice for such evidence to have been provided in such a public document; *"It would be in the interests of justice to protect a party to proceedings from painful and humiliating disclosure of personal information .. where there was no public interest in its being publicised"* (A-v-BBC [2015] AC 588. Such an approach also sought to ensure

protection of the ECHR Article 8 rights of Ms M, Mr B and/or the Respondent.

- 1.6 The Tribunal recognised the need for open justice, but the evidence was not important and/or necessary to an understanding of the decision reached in this case (see, further, paragraph 3 of the *Presidential Guidance* of September 2020).

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 11 December 2023, the Adjudication Panel for Wales received a referral from the Public Service Ombudsman for Wales ('the Ombudsman') in relation to allegations made against the Respondent. The allegations were that he had breached the Authorities' Code of Conduct by attempting to develop a relationship with someone who, whilst not in his ward, had wanted help with a family member's housing problem. Once he had indicated that he was attempting to help, his messages to the individual became sexually explicit as he hoped for reciprocation. When he did not get the help and cooperation that he had hoped for from Housing Officers, he became rude and threatening and subsequently adopted a similar approach to the Monitoring Officer when the issues came to light.

2.2 The Councillor's Written Response to the Reference

- 2.2.1 Cllr Attridge provided a written response to the Ombudsman's Report on 4 January 2024 [539-555]. He added further information by email on 16 January [589-590].
- 2.2.2 He was given the opportunity to make any further representations in writing to the Case Tribunal by 28 March 2024 (see paragraph 1.3 of the Listing Direction [3]). He then supplied some medical evidence [597-599].

3. FINDINGS OF FACT

- 3.1 Having considered the documentary evidence, the Case Tribunal found the following material facts on the balance of probabilities. This was not a difficult task as the evidence was largely contained within emails. The Tribunal approached its task by addressing the main factual areas which underpinned the allegations of breach of the Code of Conduct
- 3.2 In addition to the sources of the Respondent's account referred to in paragraph 2.2.1 above, the Ombudsman's investigation included the taking of witness statements from the following witnesses;
- Mr Owens, Monitoring Officer [270-273];
 - Ms M [288-290];
 - Ms Griffiths, Service Manager [294-296];

- Mr Cockerton, CEO [308-9].

- 3.3 The Respondent has been a member of the County Council since 2004 and is the current Leader of the Independent Group. He has been a Member of the Town Council for approximately 30 years.
- 3.4 He received Code of Conduct training and agreed to abide by it in 2017 [178-9] and May 2022 [178-9].
- 3.5 The Respondent had known a local resident, Ms M for many years. She did not, however, regard him as a 'friend' and did not recall ever having met him in person. Mr B, another local resident, was a mutual friend of them both. By 2021, Ms M had moved out of the Respondent's ward and he was not then her local councillor.
- 3.6 Between 14 July 2021 and 9 May 2022, Ms M and the Respondent exchanged a number of messages on Facebook Messenger. During some of the initial exchanges, he made a number of sexualised comments to her, whilst discussing her relationship with Mr B (for example, "*bet misses getting in your knickers*"). Those exchanges, particularly around birthdays and health, reflected a level of significant familiarity and friendship.
- 3.7 On 19 March 2021, Ms M asked the Respondent in another message if he could assist her granddaughter in obtaining a council property [122]. He supplied his email address and asked her to email him directly [122]. There followed an exchange with the granddaughter directly in which he repeatedly indicated that he was trying to assist her [140-2].
- 3.8 Meanwhile and following on from a further exchange with Ms M in April, the Respondent raised a question about another family's housing situation with two Housing Officers on 26 April. He asked for information about Family X, a family whose circumstances had previously been covered in unfavourable press reports [298]; they had held a tenancy at a council property in Bryn Road, Connah's Quay until March 2012 when Mrs X and her family were evicted. The Council cancelled a £15,168 recharge (related to the property) in 2011, as it was considered not to have been properly raised. It wrote off a rent arrears debt of £1,686 after the eviction. As an evicted tenant Mrs X would have been unable to go on the Council's waiting list for 24 months, which was the policy in place at the time. Mrs X died in 2016.
- 3.9 The Respondent then messaged Ms M later that day (the 26th) and told her that Family X owed the Council a "*30k recharge*" in respect of their previous Council property at Bryn Road [118]. As far as the Tribunal could discern, that information was not publicly available. He then sent a further email to the two Housing Officers, and asked if the family had paid the Council "*the 20k plus recharge for the Bryn Road FCC council house they trashed?*" [298].

- 3.10 On 27 April, the Service Manager explained to the Respondent that she could not share details about Family X with him unless he was enquiring on their behalf [303]. He then asserted that he had been treated like “*a naughty school boy getting shouted at for asking a difficult question*” and that the answer might have been different if it had been given after 6 May (the date of the local government elections) [297].
- 3.11 During a further Facebook Messenger exchange in early May, the Respondent sent a series of sexualised messages to Ms M. “*I bet he would love to lick your pussy if he could*” (referring to Mr B) [129], “*So when did you get your pussy eaten last? x*” [128], “*So when are you going to let me eat you out then?*” [127] and “*you got me feeling all horny now...*”, to which she replied “*you have a Wife xx*” [130]).
- 3.12 Ms M disclosed the Respondent’s exchanges to Council officers and confirmed that she wished to pursue a complaint. According to the Monitoring Officer, Mr Owens, the complaint surfaced through Ms M’s Social Worker. She was in receipt of support from social services since she had been identified as a vulnerable adult.
- 3.13 The Council held a safeguarding strategy meeting with North Wales Police in May in accordance with the Wales Safeguarding Procedures 2019. The Police discussed the matter with Ms M and her support workers the following day and advised that the threshold for criminal prosecution had not been met. A safeguarding review meeting was held on 20 May at which it was concluded that there was a safeguarding risk, and it was resolved that senior Council officers would meet the Respondent and that, if Ms M wished to make a complaint, the Monitoring Officer would assist her. Mr Owens met her on 23 May. Although distressed, she indicated that she wished to pursue her complaint.
- 3.14 Mr Cockerton, the Chief Executive, then advised the Respondent about the nature of the allegations and that the Monitoring Officer would be supporting Ms M with making a complaint to my office. The Monitoring Officer met the Respondent the same day of the steps he should take to protect himself, his reputation and that of his Group and the Council. Mr Owens then assisted Ms M in completing the complaints process to the Ombudsman in June.
- 3.15 The complaint was submitted on 8 June [60-67]. On 13 July, the Respondent was informed of the intended investigation by the Ombudsman [184-187]. Later that day and on 14 July, in emails to Mr Owens, he asserted that individuals, including council officers ‘had it in for him’ and that Mr Owens had been the author of the complaint. He asked that he did not to contact him again [276]. On 14 July too, he raised a formal complaint to the Chief Executive about Mr Owens’ conduct; that he was being bullied and treated differently from other members [318]. He was pressed by Mr Cockerton to supply evidence but, later that month, he withdrew the complaint [314]. In a later email to the Chief Executive on 3

January 2023, however, he further alleged that Mr Owens had ‘grassed him up’ and was “*doing all he can to ruin my career*” [346].

- 3.16 The Respondent also commented upon Ms M’s actions in public (on Facebook) in July 2022, although she was not named [264]. He also wrote about continuing to challenge officers where he considered that he was right to do so;

“Nothing worse than you bending over backwards over 25 years helping families in Connahs Quay and across Flintshire, for them to try and shaft you when you cannot help them with a Housing issue.... So before you decide to try and shaft me think of all the times I have been able to help you or a family member sometimes I have gone above and beyond for you, that is because I have the Quay running through my veins.”

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

5.1 The Code of Conduct

- 5.1.1 The relevant parts of the Code of Conduct were as follows;

Paragraph 4 (b), (c) and (d);

“You must-

(b) show respect and consideration for others;

(c) not use bullying behaviour or harass any person;

(d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.”

Paragraph 5 (a);

“You must not-

(a) Disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent of a person authorised to give such consent, or unless required by law to do so;”

Paragraph 6 (1)(a);

“(1) You must –

(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;”

Paragraph 7 (a);

“You must not –

(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other

person, an advantage or create or avoid for yourself, or any other person, a disadvantage;”

Paragraph 11 (2)(a);

“Where you have a personal interest in any business of your authority and you make —

(a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;”

Paragraph 14 (1)(d);

“Subject to sub-paragraphs (2), (2A) (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority’s standards committee —

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business;”

5.2 The Ombudsman’s Report

5.2.1 It was contended that the following breaches of the Code of Conduct had occurred [48-55];

(i) Paragraph 4 (b), (c) and (d);

It was alleged that, during the Respondent’s exchanges with Ms M about her granddaughter’s housing issues, he held himself out as a councillor and, in his subsequent sexualised messages, he demonstrated a lack of consideration or respect for her. Further, given that she had reminded him of his marital situation, she appeared to have been an unwilling participant and his conduct therefore amounted to harassment.

It was further alleged that the Respondent’s communications with the Housing Officers and the Monitoring had been unduly threatening, intimidating, disrespectful and personal and, consequently, in breach of these paragraphs also.

(ii) Paragraph 5 (a);

It was asserted that the information which the Respondent shared with Ms M about Family X’s housing situation (that they owed a “30k re charge” [118]) was confidential. There was no indication that such information was in the public domain and/or that Ms M was in any way entitled to it. It was financial

information related to someone else's tenancy and ought to have been regarded as confidential.

(iii) Paragraph 6 (1)(a);

The Ombudsman's case was that the exchanges with Ms M could reasonably have been regarded as having brought his office a as a councillor and/or the Authorities into disrepute. Similar allegations were made in respect of his communications with the Housing Officers and, subsequently, the Monitoring Officer.

(iv) Paragraph 7 (a);

It was alleged that the over sexualised exchanges with Ms M after she had requested help with her granddaughter's housing situation appeared to have been an attempt by the Respondent to have obtained an advantage by way of a potential sexual relationship with Ms M in return.

(v) Paragraphs 11 (2)(a) and 14 (1)(d);

These allegations concerned the representations that the Respondent made to the Housing Officers on Ms M's granddaughter's behalf whilst failing to declare the interest that he had in Ms M and/or a potential relationship with her.

5.3 The Respondent's position

5.3.1 In relation to the confidentiality which might have attached to the information which he gave to Ms M about Family X's, on 1 September 2022, the Respondent initially produced press reports and had sought to argue that the information was not "*private and confidential*" [224-230].

5.3.2 He also sent a further email on that day in which he said that the "*sexualised comments I made to [Ms M] were inappropriate and totally out of character*" [220]. He went on to attribute his conduct to childhood trauma (see, further, below).

5.3.2 It was relevant to note what the Respondent had said when interviewed on 3 May 2023 as part of the Ombudsman's investigation [359-427]. Amongst his responses;

- He wholly accepted that his communications with Ms M had been wrong. He said that he had "*wanted a woman*" ([372] and [378]) but he "*knew it was wrong*" and "*should not have*" communicated as he had [372]. He accepted that "*It was disgusting. I shouldn't have. I shouldn't have said it*" [384]. In retrospect, he said that he was 'horrified' [385] and he

'absolutely' accepted that it was a safeguarding issue [406]. All of that said, he did not consider that his actions had amounted to bullying and/or harassment [418];

- He, however, continued to deny the alleged confidentiality of the information relating to Family X which was shared with Ms M, asserting that it had been "*in the public domain*" ([370], [381], [390] and [420]);
- He also 'absolutely' agreed that his communications with the Housing Officers might have been seen to contain a 'veiled threat' as to how they might have acted differently post-election. He had added that "*in the heat of the moment*" as he was fighting the election. He accepted that he should not have sent it (the email) ([398] and [419]). His reference to having been treated like a 'naughty school boy' stemmed from the frustration of being on the back benches [400]. He said that he tended to blow up "*like a bottle of pop*" and then go back to apologise [408];
- He described having a poor relationship with the Monitoring Officer, Mr Owens, since he lost the Deputy Leadership [403]. He complained that he had been poorly treated and "*betrayed*" by him ever since [410-1]. He specifically referred to an occasion when Mr Owens had reported him to North Wales Police. He did not initially recognise the suggestion that he had personalised Mr Owens's involvement in the matter but he did accept that the reference in his email to officers 'having it in for him' [276] had been a reference to him [410] and, later on in the interview, he accepted that he had failed to recognise his statutory role when he had assisted Ms M [411]. He did not accept, however, that his complaint to Mr Cockerton could have been seen as bullying ([412] and [416]);
- He considered that he had no personal prejudicial interests to declare [417];
- He attributed much his conduct in relation to Ms M to the psychological consequences of events which had occurred during his childhood (considered in more detail below) ([367] and [384]).

5.3.3 In the Respondent's initial Reply to the Ombudsman's Reference on 4 January 2024, he stated that he accepted the findings in broad terms and without qualification [542].

5.4 The Case Tribunal's Decision

5.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there were failures to comply with the relevant authorities' code of conduct as follows:

- (i) Paragraph 4 (b), (c) and (d);

The Tribunal had little difficulty in concluding that, through his interactions with Ms M, the Respondent had failed to show respect and consideration for her and was in **breach of paragraph 4 (b)** of the Code of Conduct.

In relation to the allegation under paragraph 4 (c) (bullying or harassment), through much of the conversation, Ms M had appeared to be a willing participant; at one point, she seemed to have given encouragement ('im always horny' [127]) and, even when she had reminded him of his marital status, the message had concluded with two written kisses [130].

The type of conduct covered by paragraph 4 (c) was repeated behaviour which caused upset and/or annoyance (harassment) or was offensive, intimidating, malicious, insulting or humiliating behaviour, often directed at a weaker person or someone over whom the perpetrator had actual or perceived influence (bullying (see the definition provided in the *Guidance from the Public Services Ombudsman for Wales in relation to the Code of Conduct*, August 2016 ('the Ombudsman's Guidance'))).

Although the Respondent's conduct in the exchanges was reprehensible, the Tribunal did not conclude that it ought properly to have been characterised as bullying and/or harassment. Those were strong words which implied a level and character of conduct which was not evident within the messages. According, there was **no breach of paragraph 4 (c)** of the Code of Conduct.

In respect of the Respondent's interaction with the housing officers, appropriate challenges to the manner in which non-elected senior public servants do their job are protected by Article 10. The right to freedom of expression was not, however, without limit. Article 10 (2) provided for restrictions when necessary in a democratic society, for the protection of the reputation and rights of others. In *Heesom-v-Public Services Ombudsman for Wales* [2014] EWGC 1504 (Admin), it was determined that it was a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect upon good administration. Officers should not therefore be subject to unwarranted comments which may be reputationally damaging or that hamper their ability to

carry out their duties or undermine public confidence in the administration.

Cases of this nature often required a tribunal to separate a respondent's firmly held, if misplaced, concerns about the running of council affairs and their right to express them, from an excessive and personal attack on one or more of its officers. As the *Ombudsman's Guidance* indicated, members are, however, always expected '*to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives*'.

The particular email of concern was the Respondent's of 27 April [297] in which he complained that he had been treated like a 'naughty schoolboy' and suggested that the response to him might have been different if he was to have asked the question after the election. The recipient, Ms Griffiths, described the communication as 'pointed' and that it made her feel 'threatened' and 'disrespected' and that his response 'was challenging my professionalism and that my integrity was being called into question' [293-6].

The Tribunal considered that the Respondent had not shown respect and consideration for the Officer and he had therefore committed a **breach of paragraph 4 (b)** of the Code of Conduct. The email could also be properly defined as bullying or harassment; the Respondent accepted in interview that it contained a 'veiled threat', particularly with reference to the elections. It was intimidatory and there was therefore a **breach of paragraph 4 (c)** also.

As to the further allegation under paragraph 4 (d), despite its contents, the Tribunal was not convinced that the email had compromised, or is likely to have compromised, Ms Griffiths' impartiality. Although we accepted that the *Ombudsman's Guidance* suggested that the wording of the paragraph could include an *attempt* to compromise, that seemed to be too liberal an interpretation of the wording of the paragraph. A wholly fruitless attempt, which might never have been likely to have compromised impartiality, would be covered if that were the case. There was no suggestion that Ms Griffiths was ever going to have acceded to the Respondent's request. Her reply was firm [297], was based upon the CEO's advice [300] and her subsequent email of 28 April indicated that there had been little doubt as to how she was going to have treated the request [300]. Accordingly, there was **no breach of paragraph 4 (d)** of the Code of Conduct.

It was further alleged that the Respondent's interactions with the Monitoring Officer had put him in breach of paragraph 4 (b) of the Code of Conduct.

The Respondent had accused Mr Owens of 'having it in for him' [297] and subsequently complained to the CEO of differential treatment [318], an allegation which he then withdrew, only later to allege that Mr Owens had 'grassed him up' and was attempting to 'ruin his career' [346].

Apart from the first email, of course, the comments about the Monitoring Officer were not directed to Mr Owens personally. That which was, was far from the most serious email of its kind that the Tribunal had seen. It was, nevertheless, disrespectful and there was, just, a **breach of paragraph 4 (b)** of the Code of Conduct in that respect too.

(ii) Paragraph 5 (a);

This allegation concerned the information which was shared with Ms M about Family X's housing situation. The Tribunal could see nothing within the information produced by the Respondent and/or elsewhere in the Hearing Bundle which descended to the detail given to Ms M by him. It was reasonable, therefore, to conclude that the Respondent had come by that information in his role as a councillor and there was no suggestion that he had the relevant housing department's authority to release it and/or that he was required by law to do so. Accordingly, he was in **breach of paragraph 5 (a)** of the Code of Conduct.

(iii) Paragraph 6 (1)(a);

The Tribunal was satisfied that the Respondent's interactions with Ms M could have brought his office or the authorities into disrepute. The level of disgust and revulsion shown by the Respondent himself in interview and elsewhere was, perhaps, sufficient to suggest how a member of the public might receive his conduct. It constituted a **breach of paragraph 6 (1)(a)** of the Code of Conduct.

(iv) Paragraph 7 (a);

Once the Respondent had offered to assist Ms M with her granddaughter's housing issue, the nature of his messaging became more sexualised and the messages strongly indicated that he was courting some sort of sexual relationship or favour in return. In interview, he accepted that he had 'wanted a woman' [372] and the power imbalance demonstrated that he had therefore attempted to use his position as a councillor improperly

in order to obtain an improper personal advantage. He therefore acted in **breach of paragraph 7 (a)** of the Code of Conduct.

(v) Paragraphs 11 (2)(a) and 14 (1)(d);

These allegations were a little more nuanced and, having considered them at length, the Tribunal did not consider that they were made out and/or added anything to the nature of the case overall.

It was suggested that, when the Respondent had forwarded Ms M's granddaughter's emails to the Housing Officers, he did not declare the personal interest that he had in Ms M at the time.

We did not see how the Respondent necessarily had a 'personal interest' in the housing matter being resolved in Ms M's granddaughter's favour, as that term was defined in paragraph 10 of the Code of Conduct. It was a strained interpretation of the facts to say that a favourable a decision upon the granddaughter's housing matter 'might have been regarded as affecting his well-being or a person with whom he had a close personal association' (paragraph 10 (2)(c)(i)). Could it really have been said an expectation of a closer relationship with Ms M constituted part of his 'well-being'? We thought not. He certainly did not have a 'close personal association' with Ms M, who was the one whose well-being was to have been improved had he succeeded. That phrase was defined to include "*people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives*" in the *Ombudsman's Guidance*. Ms M's granddaughter did not fall within the category described in paragraph 10 (2)(c)(ii).

In the absence of a personal interest, the Respondent did not have a prejudicial interest and there were **no breaches of paragraphs 11 (2)(a) and 14 (1)(d)** of the Code of Conduct.

That was not to say that what the Respondent did was not wrong. It was. The wrongdoing was reflected in other breaches of the Code, considered above.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 In communications with the Ombudsman and the Panel, the Respondent repeatedly referred to the effects of childhood trauma as a motivation for his conduct, trauma for which he had sought counselling.

6.1.2 On 16 January 2024, the Respondent set out further details in relation to his physical and mental health; a period of hospitalisation, resulting

in abdominal surgery and permanent disability and psychological effects of a boundary commission change and a significant traumatic childhood event [589]. He stated that *“the breaches of my code of conduct was a direct result of my nervous breakdown and trigger and the lowest point of my life.”*

6.1.3 He concluded the email as follows;

“I am sorry to everyone who I have put through this process but I am confident through the therapy and professional help I’ve received and am still receiving will help me with my childhood trauma and give me strength when able to help others and encourage them to speak out earlier than I did. Being a county councillor has been my full time job for nearly 16 years as I’ve held many senior positions at FCC and I am so worried that this could lead to disqualification of which I am begging the panel not to consider as the Council is my life I wake up everyday wanting to make a difference to peoples lives.”

6.1.4 By a letter dated 25 March 2024, Dan Phillips, an Advanced Clinical Practitioner, Psychotherapist and Clinical Supervisor, confirmed that the Respondent was being treated by the East Flintshire Psychological Trauma Service, and had been since December 2022 [597]. The letter confirmed that some of his symptoms included high levels of anxiety, problems regulating mood and his executive function. Extracts from his medical records further corroborated his account [598-9].

6.2 Case Tribunal’s Decision

6.2.1 The Case Tribunal considered all the facts of the case and the Sanctions Guidance issued by the President of the Adjudication Panel for Wales under s. 75 (10) of the Local Government Act 2000. It also considered the Nolan Committee’s Principles for Public Life from which the National Assembly for Wales’ core principles were derived. Those principles set standards of conduct and behaviour which were expected of councillors in the Respondent’s position and which included honesty, integrity, respect and openness, all of which had been brought into focus here.

6.2.2 The Case Tribunal considered the case against the Respondent to have been over-charged. There were, in essence, two main allegations which concerned, first, the Respondent’s interactions with Ms M and, secondly, his further interactions with Council officers. The Tribunal wondered whether 1 or 2 breaches in respect of each factual scenario might have been a more pragmatic approach to the case overall. Certainly, when it came to sanction, the Tribunal focused upon the conduct and wrongdoing, not the number of allegations.

6.2.3 First, the Case Tribunal had to assess the seriousness of the breaches and their consequences. It started by considering whether it could take no action or impose a partial suspension but, in the case of the former,

it considered the conduct had been too serious and, in the case of the latter, there was no particular aspect of the Respondent's conduct which made a partial suspension appropriate. At the other end of the scale, the Tribunal did not consider that the case was sufficiently serious to justify a disqualification. In that regard, it paid particular attention to paragraph 39.13 of the Sanctions Guidance.

- 6.2.4 The Tribunal considered that the Respondent's conduct merited a suspension. It then considered the aggravating and mitigating circumstances and whether that affected the level of sanction or, if not, to what extent it indicated a particular level of suspension.
- 6.2.5 The Tribunal was informed that the Respondent had no prior record of misconduct with the Ombudsman or the relevant Monitoring Officer.
- 6.2.6 The Tribunal considered that the following aggravating factors applied;
- (i) That the Respondent had lengthy experience as a councillor and had held positions of seniority;
 - (ii) That his conduct was reckless;
 - (iii) That he had sought to abuse a position of trust which he had garnered with Ms M, a position in which there was a significant imbalance of power;
 - (iv) That he had initially sought to blame the Monitoring Officer for having brought about or contributed to the complaint, albeit that he was not seeking to blame others for the actions which were the subject of the complaint;
 - (v) That he appeared to have taken some steps to disadvantage Family X, albeit not a particularly strong or concerted manner;
 - (vi) That he appeared to lack an understanding, at least initially, in relation to all elements of his wrongdoing. He certainly failed to show contrition at the outset, as perhaps best exhibited through his Facebook post [264].
- 6.2.7 The Tribunal considered that the following mitigating factors applied;
- (i) The Respondent's physical and, particularly, his mental ill-health. Whilst those matters did not excuse his conduct, it provided some context and explanation for it;
 - (ii) His past record of good service;
 - (iii) The fact that he cooperated with the Ombudsman in relation to the investigation and has now shown contrition, recognition, and regret;
 - (iv) Whilst it could not be said that the Respondent's conduct was truly isolated (particularly in relation to his communications with Ms M), neither could it be said that he had behaved wilfully and/or had ignored advice or warnings by continuing in a particular vein.
- 6.2.8 The Case Tribunal unanimously concluded that the appropriate sanction in all of the circumstances was for the Respondent to be

suspended for a period of 4 months from acting as a member of the relevant authorities or, if shorter, the remainder of his term of office.

6.2.9 The authorities and their Standards Committees are notified accordingly.

6.2.10 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.

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Tribunal considered whether it ought to make a recommendation that the Respondent specifically apologise to Ms M and the officers for his conduct but, having considered the Sanctions Guidance (paragraphs 54 and 55), it concluded that such recommendations ought to have been directed to the authorities and/or their Standards Committees. The Tribunal nevertheless hoped that the Respondent would act upon its desire for him properly make amends for his wrongdoing.



Signed.....

Date...26 April 2024.....

Mr J Livesey
Chairperson of the Case Tribunal

Mr HE Jones JP
Panel Member

Mrs S McRobie, Member
Panel Member