

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/001/2021-022/CT

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

Respondent:

Councillor Jonathan Bishop

Relevant authority:

Taff's Well and Nantgarw Community Council

Representation and attendance:

Respondent: In person, supported by Mr F Bishop,
his father

Public Services Ombudsman for Wales: Mr G Hughes, counsel

1. INTRODUCTION

1.1 A Case Tribunal, convened by the President of the Adjudication Panel for Wales, considered a reference in respect of the above Respondent which had been made by the Public Services Ombudsman for Wales ('the Ombudsman').

1.2 References in square brackets within this Decision Report are to pages within the bundle of Tribunal Case Papers unless otherwise stated. A separate bundle had been produced for public and/or press access in accordance with paragraph 5.21 of the Listing Direction of 6 October 2021 [8].

Events prior to the Hearing

1.3 A substantial amount of additional material was produced by the Respondent after the Preliminary Hearing and in breach of the timetable set in the Listing Direction. The documentation was addressed by the Tribunal in the email of 1 November 2021 [2485] and the hearing bundle was compiled accordingly. That evidence has been referred to below where necessary (see Section G [2504-2959]).

- 1.4 On 3 February 2022, a further 25 documents were submitted together with a further document headed 'Submission on behalf of Mr FW Bishop'. Mr Hughes had not seen a copy of the latter document until the hearing itself but, once he had time to consider it, he did not object to its use.
- 1.5 In advance of the hearing, the Respondent had requested a postponement due to the unavailability of Dr Matthews. Her evidence had been provided in writing (her report of 10 March 2021 [523-527]) and was only relevant to the Third Stage of the hearing. The Tribunal considered that it was unlikely that the evidence was to have been challenged to any significant degree by the Ombudsman and that her inability to attend in person was not a great disadvantage to him. It was also unclear when she might have been able to attend. She was on maternity leave. The Tribunal nevertheless permitted the Respondent to renew his application at the hearing, which he did not.
- 1.6 Yet further, there was an application made by the Respondent, in his capacity as the stated Editor-in-Chief of Crocels News LLC (one of the Crocels group of companies discussed in more detail below), for disclosure of the press bundle which was prepared in accordance with paragraph 5.21 of the Listing Direction [8]. That application was also dismissed. The Respondent had, of course, received a copy of the complete bundle and the Tribunal explained that members of the accredited press were only entitled to access to those documents referred to during the hearing, if and when they were referred to and adduced into evidence. That matter was not raised again at the hearing either.
- 1.7 Finally, a number of late attempts were made by the Respondent's father to file an amended witness statement which were also dismissed. The matter was not raised again during the hearing.
- 1.8 These applications were time consuming, largely wholly unnecessary and/or in breach of the clear directions given at the Preliminary Hearing and in the Listing Direction.

The hearing

- 1.9 The hearing was held by the Case Tribunal on 7, 9 and 10 February 2022 by video conference (CVP). The hearing was open to the public, save for the receipt of evidence and submissions at Stage Three. It was conducted in English, except the evidence of Reverend Gethin Rhys which was given in Welsh.
- 1.10 Adjustments to the hearing were made to accommodate the Respondent's disabilities as discussed, agreed and recorded in the Listing Direction of 6 October, paragraph 5.20 [7].
- 1.11 The hearing proceeded in accordance with the timetable discussed at the Preliminary Hearing, although the Respondent had to be urged to

restrict his questioning of the Ombudsman's witnesses to matters which were relevant to the issues before the Tribunal.

- 1.12 Further, The Respondent's father had to be asked by the Tribunal not to prompt the Respondent's answers during his evidence on more than one occasion. The Respondent himself asked his father to leave the room that they had both been occupying so that he could give his evidence without interruption. He acceded to that request.
- 1.13 Finally, both the Respondent and his father wrote a number of emails to the Tribunal during the hearing in which further evidence was adduced and/or challenges were made to the findings at Stage One and/or Two. They have been referred to below where necessary.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Ombudsman

2.1.1 In a letter dated 31 March 2021 with an enclosed Report ([1776-7] and [16-61]), the Adjudication Panel for Wales received a referral from the Ombudsman in relation to allegations made against the Respondent. The allegations were that he had breached Taff's Well and Nantgarw Community Council's ('the Authority's') Code of Conduct by using language which had demonstrated a failure to show respect and/or which had constituted bullying and harassment and that he had submitted expenses claims in which false evidence was provided, thereby demonstrating a lack of integrity and honesty.

2.1.2 The actual allegations considered by the Tribunal were in three groups, identified within paragraphs 115, 124 and 125 of the Ombudsman's Report [56-58]. The details were that;

2.1.2.1 The Respondent used language in correspondence, both to the Clerk to the Council on 25 September [128] and 31 December 2019 [140] and 21 January [115] and 3 February 2020 [346, 349 & 350], and the Chairman, Councillor Fowler, on 11 September 2019 [370-1], which showed a lack of respect and/or consideration for the recipients and, in the case of Mrs Williams, had amounted to bullying and harassment;

2.1.2.2 The Respondent submitted expenses claims for Mr Edwards' support and attendance at Council meetings on 30 October [144-5] and 27 November 2019 [146-7]. It was alleged that Mr Edwards was never paid for such attendances, that the Respondent gave false evidence in relation to such claims and that they were not made in compliance with the relevant guidance and principles. Further, the Respondent indicated a desire to recover payment on behalf of his father for support that he

provided at another meeting and allegedly supplied false information about his father's relationship with a company with which he was involved. In those instances, it was alleged that he failed to act with honesty and integrity;

2.1.2.3 Following Mr Edwards's interview by the Ombudsman on 28 February 2020, a witness statement was sent to him for approval [399-400]. By a letter dated 2 March 2020 purportedly from Mr Edwards and apparently signed by him [824], he objected to the draft witness statement. The Ombudsman alleged that the Respondent had in fact written the letter, a matter which he refused to explain when interviewed. It was alleged that he had thereby, attempted to interfere with the course of the investigation.

2.2 The Councillor's Written Response to the Reference

2.2.1 The Respondent responded to the allegations on numerous occasions in correspondence and interview, the relevant parts of which have been set out below in respect of each allegation. The main sources of his responses were;

- The Ombudsman's interview on 21 October 2020 [436-514];
- His, response to the Ombudsman's report of 18 May 2021 [1732-1766].

2.3 The Ombudsman's Written Representations

2.3.1 In a letter dated 17 June 2021, further representations were made by the Ombudsman [1769-1774].

3. EVIDENCE

3.1. The Case Tribunal heard the following witnesses give evidence at the First Stage of the hearing;

- Councillor Alun Fowler, who gave evidence in accordance with his statement [371-3];
- Mrs Williams, former Clerk to the Authority, who gave evidence in accordance with her two statements [107-112];
- Mrs Cook, the Ombudsman's investigating officer, who explained the reasoning contained within paragraphs 97-8 of the Ombudsman's report [52];
- Mr F Bishop, the Respondent's father, who gave evidence in accordance with his statements [423-5, 2948-2950 and 2951-2959];
- The Respondent, who confirmed the accuracy of the evidence which had given at interview [437-504] and in response to the Ombudsman's report [1736-1752].

3.2 The Tribunal heard submissions and argument at the First Stage from both parties.

- 3.3 The Case Tribunal heard the following witness give evidence at the Third Stage of the hearing;
- Reverend Gethin Rhys;
 - Mr F Bishop again.
- 3.4 The Tribunal heard further submissions and argument at the Second and Third Stages from both representatives.

4. FINDINGS OF FACT

- 4.1 Having considered the evidence and both parties' submissions (including the Respondent's father's written submissions), the Case Tribunal found the following material facts on the balance of probabilities. The Tribunal approached its task by addressing the three factual areas identified within paragraph 2.1.2 above.

Language used in correspondence (paragraph 2.1.2.1)

- 4.2 In respect of the correspondence sent to, or in respect of, Mrs Williams, the Tribunal was satisfied that the following were sent by the Respondent;
- 4.2.1 An email dated 24 September 2019 to Mrs Williams, in which he described her as "*penny-pinching*" [758-760];
 - 4.2.2 A further email of 15 October 2019 to her in which he suggested that, if she could not calculate his entitlement to mileage expenses, she should "*redesign the form or use a calculator*" [739-740];
 - 4.2.3 A letter to Mrs Williams on 31 December 2019, in which he suggested that she should undertake a CILCA course "*so I can enjoy the same quality of service I get from the Clerk of Cam Parish Council*" [140];
 - 4.2.4 An email dated 20 January 2020 [115] in which he questioned the level of Mrs Williams' salary;
 - 4.2.5 An email of 21 January 2020 [114] which was sent to Mrs Williams and others in which he questioned her training once again;
 - 4.2.6 Several emails of 3 February 2020 in which he accused Mrs Williams of being a "*bully, always trying to force your position on a council made up of brain-dead sycophants who would eat poison if the chair or clerk suggested it*" [346], referred to her as "*a disgrace*" [349] and as "*part of the axis of evil that bullies me, trying to stop me getting allowances I'm entitled to*" [360].
- 4.3 There were a considerable number of additional pieces of correspondence which were written in a similar tone but which did not contain quite the same character of language. Mrs Williams had only worked 14 hrs/week and had found that much of her time was absorbed by issues raised by the Respondent in 2019/2020.

- 4.4 In respect of Councillor Fowler, the Tribunal was satisfied that two emails were sent by the Respondent on 11 September 2019 in which he stated as follows [384-5];

*“FUCK OFF YOU NOSEY FUCKING BASTARD!!!!
LEAVE ME ALONE YOU HARASSING CUNT!”*

and later that day

*“YOU ARE A FUCKING COUNCILLOR NOT AN OFFICER!!!!
FUCK OUT OF MY PRIVATE LIFE YOU FUCKING TWAT!!!!!”*

- 4.5 Although the reasons for the use of his language has been considered subsequently, there was no doubt that the communications referred to above were written and sent by him.
- 4.6 The Tribunal was also satisfied that they were sent by the Respondent whilst acting in his capacity as a councillor (see paragraph 2.2 of the Annex to the Listing Direction [14]); there was no personal capacity or reason in which the Respondent would have been communicating with Councillor Fowler or Mrs Williams that was drawn to the Tribunal’s attention. The emails themselves concerned his expenses claims in respect of his attendance at Council meetings. The Respondent confirmed in evidence that the emails were sent from an account which he used for all matters relating to the holding of public office and we noted that they had been signed by him in his official capacity, as ‘Councillor Jonathan Bishop’.
- 4.7 As part of the Respondent’s submissions and evidence on those issues, he raised two matters;

4.7.1 Automatism;

The Respondent alleged that he lacked capacity to act as a councillor when he sent the emails which were the subject of the allegations.

The Tribunal noted that the legal defence of automatism, a defence to certain criminal charges, had not been raised by him before. He had previously referred to the emails to Councillor Fowler having been written whilst in a state of ‘meltdown’.

The Tribunal understood automatism to have been a state in which a defendant would not have known of his actions and had therefore acted involuntarily. We understood the Respondent’s description of his ‘meltdowns’ to have been an emotional reaction to an event which was magnified by the effects of his disability.

The Tribunal did not consider that the defence of automatism applied here, either as a matter of law or on the facts. Although the Respondent's emails had possibly reflected a magnified or exaggerated emotional response, which we will consider below, there was no evidence that it was written and/or sent involuntarily, unwittingly, unknowingly or without intent.

- 4.7.2 Justification of use and/or lack of offence, relying upon the decisions of *DPP-v-Collins* [2006] UKHL 40, *Chambers-v-DPP* [2012] EWHC 2157 (Admin), *Calver-v-APW and PSOW* [2012] EWHC 1172 (Admin) and *Connolly-v-DPP* [2007] EWHC 237 (Admin);

The arguments put forward by the Respondent at the First Stage were really of relevance to the Second Stage of the hearing. Nevertheless, since they were raised here, the Tribunal addressed them here.

These authorities did not assist the Respondent. The case of *Chambers* concerned a defendant who had Tweeted a threat to an airport which was asserted to have been of a menacing character within the meaning of s. 127 of the Communications Act 2003. 'Menace' was not the issue in this case. Similarly, the Respondent argued that the emails were not grossly offensive, as had been argued in *Collins*. That statutory test (also within s. 127 (1)) was not in play here. We were only really concerned with whether the emails had been sent and had been offensive so as to have breached the Code and, although that latter question was really part of the Second Stage, we had no hesitation in concluding that the words used had been offensive as they were normally to have been understood.

Calver and many of the other cases had to be considered in the context of the Respondent's Article 10 rights (see the Second Stage below).

For the avoidance of doubt at this stage, we were satisfied that Councillor Fowler had found the emails offensive; he had said so in his first email of complaint of 13 September 2019 [70], in his witness statement to the Ombudsman [372], specifically at paragraph 7, and in his oral evidence to the Tribunal. The case of *Connolly* did not assist the Respondent.

Expenses claims; Mr Edwards (paragraph 2.1.2.2)

- 4.8 The Respondent is disabled and receives the highest level of Personal Independence Payment, suggesting significant daily living and mobility needs. He was signed off work by his GP because of his disabilities.
- 4.9 The Respondent receives support and assistance in respect of some of the activities that he undertakes. Although he did not provide details of

his disabilities to Councillor Fowler, Mrs Williams or any other member of the Council, he asked the Authority that he be permitted to bring a carer to support him in meetings of the Council, which was permitted as a reasonable adjustment.

- 4.10 The Respondent is involved in a number of companies registered at Companies House. He confirmed in evidence that he was a Director of four such companies, one of which is Crocels Community Media Group CIC ('CCMG CIC'). The other two Directors are corporate bodies of which he is also the sole Director, Jonathan Bishop Ltd and Crocels Press Ltd. The Respondent further stated that CCMG CIC employed Jason Barrett and Melissa Hulbert. The relevance of the Company and/or those employees has been discussed below.
- 4.11 In 2019, the Respondent submitted expenses claims for Mr Edwards who had supported him at two Council meetings on 30 October [144-5] and 27 November [146-7]. The claims were in the sums of £166.65 (2½ hours support) and £116.66 (1¾ hours support) respectively, charged at the rate of £55.55/hr. The Respondent signed each claim himself although he stated that the paperwork had been prepared by Melissa Hulbert, a CCMG CIC employee.
- 4.12 On 25 September 2018 [138] and 27 March 2019 [136], the Authority adopted the Independent Remuneration Panel for Wales' ('the IRPW') Report which set out the principles for the reimbursement for such support through councillors' expenses claims; Determination 46 enabled such expenses to have been recovered if they were the "*reimbursement of additional actual costs*"..*"on production of receipts for the carer"*.
- 4.13 During the Respondent's interview, he stated that Mr Edwards was employed by Crocels on a zero hours contract [458] and had been since 2014 [464] and was paid for his attendance at the meetings "*when he asked to be*" ([460] and [462]). A record of such payments was said to have been "*on the accounts*" [460]. In his response to the Ombudsman's report, he further stated that Mr Edwards had been "*served P60 and P11D documentation*" [1750].
- 4.14 In further evidence produced in the final weeks before the hearing by the Respondent, there were several documents entitled 'Payroll Earnings' bearing Crocels' name and purporting to evidence several payments that had been made to Mr Edwards between 30 October 2019 and 3 April 2020 [2507-2509]. A payslip from 30 October showed a payment in respect of 2½ hours work paid at £14.55/hr, a total of £36.38 (not £55.55/hr charged to the Authority [144]) [2507]. The payslip for 27 November was in the same amount, reflecting another 2½ hours of work [2507], not 1¾ hours claimed of the Authority [147]. Again, the rate was different. Both payslips purported to show that the payments had been made on the dates that the support had actually been provided at both meetings. The Respondent confirmed that they

were highly likely to have been the actual dates of payment during his evidence to the Tribunal.

- 4.15 When interviewed by the Ombudsman's investigators, Mrs Cook and Ms Jones, on 28 February 2020, Mr Edwards stated that he had known the Respondent since he was 7, they had been at school together and were friends. He stated that he had worked for the Respondent voluntarily and was not self-employed [406]. He stated that he did not receive payments in respect of specific items of work which may have been undertaken, but had merely received some money when he had needed it for help or support and no receipts were provided [407].
- 4.16 Having heard evidence from Mrs Cook and in view of the fact that the Respondent himself did not challenge the accuracy of his own notes of interview, we considered that the transcript of Mr Edwards' interview at [402-420] was likely to have been a reasonably accurate account of what he had said in response to Mrs Cook's questions. It was important to note that the Respondent had not been present.
- 4.17 In a subsequent letter purporting to have been from Mr Edwards dated 2 March 2020, he stated that he had not been paid for the support that he had provided [824]. That was a letter which the Respondent told us in evidence, *he* had drafted for Mr Edwards to read, approve and sign (see, further, below).
- 4.18 In his response to this allegation, the Respondent stated that Mr Edwards had been paid at the rate of £14/hour [1740]. In evidence, he explained the difference in rates (£14 and £55.55) on the basis that, although CCMG CIC had paid Mr Edwards at the lower rate, there were additional costs and expenses involved which had entitled it claiming the higher rate. Those costs, which were identified as direct costs, indirect costs and surplus, were not elaborated upon, save that Mr Edwards' alleged membership of the Association of Christian Counsellors was said to have been one.
- 4.19 The Tribunal referred to the list of disputed facts within paragraph 2 of the Annex to the Listing Direction of 6 October 2021. The Tribunal was satisfied that;
- 4.19.1 Mr Edwards was not employed by CCMG CIC in any formal capacity, as he stated in interview. No contract, P60, P11D or other documentation which might have evidenced his employment was produced;
- 4.19.2 The invoices and claims submitted by the Respondent for Mr Edwards' support at the two meetings did not reflect any contractual indebtedness or formal liability to Mr Edwards, as was also stated in interview. The Respondent's evidence, that payments had been made to him on 30 October and 27 November as suggested by the payslips [2507], was starkly in contrast both with Mr Edwards' evidence to the investigation and, more importantly, the Respondent's *own* evidence, since he had

drafted Mr Edwards' letter of 2 March 2020 in which he denied having received any payment [824];

4.19.3 The invoices and claims, on their face, had the appearance of establishing proof of such indebtedness and, to that extent, they were misleading.

4.20 After the Tribunal had delivered its factual findings at the First Stage of the hearing, the Respondent stated that he wanted to appeal because Mr Edwards had been an employee of Crocels. A few minutes later, he sent the following email;

"I would like to appeal the decision that Graham Edwards was not properly employed on the grounds that there is no P60, P11D nor contract of employment, all of which are untrue.

These records are currently at Crocels's Berkeley office in Gloucestershire and with the accountant in Belfast (with the exception of the CoE in the case of the latter which Graham Edwards has likely lost his copy of).

There is a case currently before the Tax Tribunal on whether my disability is a reasonable excuse for not filing the P11D(b) on time, but the fact this case is live proves P11D information exists."

4.21 After the Tribunal had moved on to hear submissions at the Second Stage of the hearing and before its judgment in that respect, the Respondent sent a further email which enclosed two further documents;

4.21.1A handwritten receipt for payments purportedly made to Mr Edwards, two of which related to the 30 October and 27 November 2019. The documents stated that the payments of £36.38 had been made on 3 April and 27 April 2020;

4.21.2 Co-Operative bank statements for an account under the name 'Crocels DCMS Limited' (a former name of CCMG CIC) which evidenced salary payments to Mr Edwards on the same dates and in the same sums.

4.22 The email itself read as follows;

"I thought it would help the Tribunal in its deliberations to have copies of redacted bank statements showing Graham Edwards being paid and for there to be signed by Graham Edwards matching "receipts" that also correspond with the payroll entries already submitted.

A special general meeting was held of Crocels Community Media Group C.I.C. today and the members agreed unanimously to release this information.

Crocels was never asked to provide this information and it would have been a breach of the Companies and Fraud Acts for me to misuse my position as director of Crocels CMG CIC (GBL) to disclose company information for personal gain.

Unfortunately, Graham Edwards's PAYE records are in Gloucestershire, along with his contract of employment, so I am not able to provide this at this time."

- 4.23 In light of that information, the Tribunal considered whether it ought to re-visit and/or re-consider any of its factual findings.
- 4.24 The Tribunal considered that the Respondent had had ample opportunity to produce all and any relevant documentation to both the Ombudsman during his investigation and to the Tribunal in advance of the hearing in accordance with the Listing Direction (paragraph 5.21 (c) [8]). The findings within paragraph 4.19.1 above stood; no such documentation had ever been produced. Yet further, even if contractual documentation could have been produced evidencing some form of employment relationship between Mr Edwards and CCMG CIC, we considered it unlikely to have subverted our findings that there had been no liability or indebtedness to him in respect of his attendance at the meetings on 30 October and 27 November 2019. Even on the Respondent's case, there was no liability to him in the *actual* sum claimed (see, further, paragraph 4.27 below).
- 4.25 The Tribunal noted that the receipts purported to show payment dates long after those on the other documentation [2507], which the Respondent had confirmed had been accurate in evidence. They were also inconsistent with the account given in interview in October 2020 in which he had stated that Mr Edwards had not even been paid *then* [468-9]. In evidence, he asserted that he had been confused when questioned by Mrs Cook and had meant that Mr Edwards had never been paid *as an employee*, which was itself inconsistent with what was said in the emails written during the course of the hearing (paragraphs 4.20 and 4.22 above).
- 4.26 This drip-fed disclosure created a web of greater confusion and cast yet more doubt upon the veracity of the Respondent's overall account.
- 4.27 In the Respondent's final submissions at the Third Stage of the hearing, he stated that the claims submitted to the Authority had included an element of 'surplus' which Crocels would have applied to charitable purposes within the community. Whatever the purpose of the surplus, the submission was an implicit acceptance that the claims had exceeded any actual indebtedness to Mr Edwards.
- Expenses claims; Mr Bishop (paragraph 2.1.2.2)
- 4.28 Mr Frederick Bishop is the Respondent's father and also provides him with care and support. He supported and accompanied the Claimant at a Council meeting in the first half of 2019.
- 4.29 In a series of emails in September 2019, the Respondent enquired as to how to progress an expenses claim in respect of his father's support at that meeting. Mrs Williams gave guidance [150-1] and raised a query in

respect of his role; she specifically asked whether he was employed by Crocels [173].

- 4.30 In reply, on 4 September 2019, the Respondent stated that his father “*is engaged by and paid by Crocels to support me*” [172]. It was stated that his hourly rate was £53.20 plus VAT and that an internal timesheet was to have been completed to support an expenses claim in respect of his attendance. Mrs Williams then asked for details of the arrangement between the Company and the Respondent’s father and how the hourly rate was calculated [171-2]. The Respondent replied with Crocels’ pay rates, but he sensed that Mrs Williams had been suggesting that a conflict of interest had existed and then stated that his father would forgo his claim and that “*the most experienced mentor at Crocels*” would support him instead going forward [170].
- 4.31 The Respondent’s father subsequently provided a statement to the Ombudsman in which he said that he did not get paid to attend any Council meeting whilst supporting his son and that he was not employed by Crocels and knew nothing about the Company or its employees (paragraph 3 of the statement of 19 August 2020 [423], which he confirmed in evidence). He subsequently stated in evidence that he had been a ‘member’ and had made decisions for/within the Company.
- 4.32 During his interview with the Ombudsman, the Respondent stated that his father had not wanted to have been paid [446], was not employed by Crocels [462] and had received no payment [470]. He stated that his email of 4 September 2019 had not been correct [469].
- 4.33 Emails which were produced subsequently threw more light on the issue; on 3 September, the Respondent had asked his father for the dates of his support “*so Jason [Mr Barrett, another CCMG CIC employee] can prepare the claim for me as he has done when you’ve worked for Access to Work. It would be Specialist Mentor (ASC) and Jason would invoice Taff’s Well Community Council for using Crocel’s invoice and time sheet...Jason can get the exact hours from the minutes of the meeting on the council’s website – you just need to indicate the dates you attended*” [2803]. His father responded “*Not happy about this there is a tax issue for me we are pushing our luck*” [2802]. In evidence, the Respondent candidly stated that he believed that his father’s use of the expression ‘pushing our luck’ referred to the possibility that a retrospective claim for unpaid carer’s help at a council meeting may have been in breach of the Code of Conduct.
- 4.34 Taking all of this evidence together, the Tribunal concluded that the Respondent had intimated a claim in respect of his father which would not have been by way of reimbursement, for which there had been no genuine indebtedness and which was always going to have been something of a ‘try on’. Even his father saw it as such. In fact, it appears

to have been his email of 4 September [2802] which caused the Respondent not to progress the matter.

Mr Edwards' letter of 2 March 2020 (paragraph 2.1.2.3)

- 4.35 Following Mr Edwards' interview on 28 February 2020 [401-420], the Ombudsman's investigators drafted a witness statement based upon the evidence which he had given and sent it to him for approval [399-400].
- 4.36 On 2 March 2020, a letter was written in reply which purported to have been written and signed by Mr Edwards [824]. The letter stated that the witness statement was "*not a fair reflection of what I said*" and was described as a "*misrepresentation*". It was asserted that the matter had been referred to the Deputy Chairman of Crocels who was to have conducted an investigation. The right to have the matter referred to the Information Commissioner was also reserved.
- 4.37 The Ombudsman believed that the letter had been written by the Respondent himself and not Mr Edwards because of the similarity between its tone and content and other documentation (for example, the Respondent's email of 4 March [829]). Similarities in format and typeface were also highlighted (for example, the letter of 31 December 2019 [763]).
- 4.38 The Respondent was asked about the matter in interview in October 2020, but he declined to answer the question as to whether he had drafted the letter, despite it having been put on a number of occasions [465-6]. He merely stated that Mr Edwards "*was supported under the whistleblowing procedure*".
- 4.39 In reply to the Ombudsman's report in May 2021, the Respondent subsequently stated that the letter had been composed *with* Mr Edwards as a reasonable adjustment [1743] and during his evidence at the hearing, he then stated that he had drafted the letter as Mr Edwards' line manager, with him physically present. He had then read and signed it.
- 4.40 For the sake of completeness, the Respondent's closing submissions included challenges to some of the items in the list of undisputed facts within the Listing Direction [13], matters which were raised for the first time. He challenged the following paragraphs;
- 1.3 He stated that he had disclosed details of his disability within the expenses claims by reference to 'ASC Support' [145-6] which, he said, referred to Autism Spectrum Condition. The Tribunal did not consider that to have been a disclosure of details of his condition so as to have subverted the accuracy of paragraph 1.3 but it was irrelevant to our findings in any event;

1.5 The Respondent made the point that one of the Crocels companies had been co-founded by others. Again, this was irrelevant to our findings but did not render paragraph 1.5 wrong as it was worded;

1.6 He denied that Mr Edwards had been a longstanding friend. Mr Edwards had given that evidence to the Ombudsman in interview [403] which we had accepted (see paragraph 4.16 above);

He also made submissions in relation to paragraphs 1.7 and 1.9, but did not challenge their factual accuracy.

5. 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 Respondent had agreed to observe the Authority's Code of Conduct, most recently on 29 May 2019 [91-2], and stated that he knew of its provisions [446].

5.1.2 The Authority had adopted the Model Code of Conduct approved by the National Assembly in 2001 on 15 May 2008 [88]. The Ombudsman conducted his investigation under the 2016 Model Code which was only adopted in 2021. This matter was addressed and determined within paragraph 5.5.2 of the Listing Direction [5]. The relevant parts of the 2016 Code were as follows;

Paragraph 4 (b) and (c);

"You must-

(b) show respect and consideration for others;

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

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

Paragraph 9 (a);

"You must –

(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;"

5.1.3 Although paragraph 7 of the Code had not been addressed by the Ombudsman in his report, it was considered relevant by the Tribunal and had been addressed at the Preliminary Hearing and in other correspondence.

5.1.4 The Tribunal considered further submissions from the Ombudsman and the Respondent and also took account of the Guidance from the Ombudsman on the Code of Conduct (August 2016).

5.2 The Respondent's position

5.2.1 The Respondent made certain concessions in relation to the emails he had been sent to Councillor Fowler on 11 September 2019 and in relation to the allegations under paragraph 4 of the Code; he stated that he had had a '*melt-down*' and used language that he would not normally have used ([95-9] and [1737]). He described the words used as British slang ([448-9], [454] and [502]). He did not expressly concede that it had amounted to a breach of the Code.

5.2.2 The Respondent also repeated his submissions on the law (see paragraph 4.7.2. above) and referred to a self-written article '*Internet Trolling and Cyberstalking*' [2835-2849] and asserted, relying upon paragraph 6 and the cases of *Morris* and *King* cited within it, that Councillor Fowler's feelings were not wounded [2836]. He further stated that, since Councillor Fowler had acted *ultra vires* in sending him the email which provoked the response because he had had no power to intervene between him and the Clerk, his emails in response ought to have been ignored.

5.2.3 In relation to his communications with Mrs Williams, he considered them to have been justified and was unrepentant ([449] and [471]). Relying upon the decision in *Scottow-v-CPS* [2020] EWHC 3421 (Admin), he considered that the words had not been grossly offensive.

5.2.4 In relation to the expenses issues, the Respondent had, at the First Stage of the hearing, submitted that he considered that the word 'receipt' in the IRPW Report was equivalent to a 'bill'. That submission was probably best considered in the context of the Second and/or Third Stage.

5.3 The Ombudsman's position

5.3.1 It was succinctly contended by Mr Hughes that;

5.3.1.1 The emails to Councillor Fowler caused the Respondent to have breached paragraph 4 (b) of the Code of Conduct;

- 5.3.1.2 The emails to Mrs Williams caused a breach of paragraphs 4 (b) and (c);
 - 5.3.2.3 The expenses claims made on behalf of Mr Edwards and his father brought about breaches of paragraphs 6 (1)(a), 7 (a) and 9 (a);
 - 5.3.3.4 The letter purporting to have been from Mr Edwards, but written by the Respondent, caused a breach of paragraph 6 (1)(a). Mr Hughes submitted that the facts could have also supported an allegation under paragraph 6 (2) but did not pursue one since it had not been raised before.
- 5.3.2 Mr Hughes urged the Tribunal to consider the cases of *Heesom-v-PSOW* [2014] EWHC 1504 (Admin), paragraphs 39-42, and *Calver* (above), paragraphs 33 and 39-61 ,in respect of the matters in paragraphs 5.3.1.1 and 5.3.1.2; he submitted that, although the Respondent's Article 10 rights to freedom of expression were engaged, insofar as it was necessary to interfere with them in order to make findings of breaches of the Code, it was proportionate and justified to do so in order to protect the rights of others, Councillor Fowler and Mrs Williams.

5.4 Case Tribunal's Decision

- 5.4.1 On the basis of the findings of fact, the Case Tribunal unanimously found that there were failures to comply with the Code of Conduct as follows:

Language used in correspondence (paragraph 2.1.2.1 and paragraphs 4 (b) and (c) of the Code)

- 5.4.2 The emails of 11 September 2019 to Councillor Fowler were a **breach of paragraph 4 (b)** of the Code in that they demonstrated a clear lack of respect. The words used may well have derived from British slang as the Respondent asserted, but that did not mean that they were not offensive and disrespectful.
- 5.4.3 The Tribunal's views in respect of the Respondent's submissions on the caselaw had already been covered within paragraph 4.7.2 to some extent, but not in relation to his Article 10 rights. In that respect, the Tribunal was satisfied that the communications to Councillor Fowler tipped the balance firmly in favour of an interference with those rights. We recognised that Article 10 enabled the Respondent to say or write things which "*right thinking people consider dangerous and irresponsible or which shock or disturb*" (*Calver*, paragraph 55) and that councillors and other politicians in Councillor Fowler's position ought to have thicker skins than ordinary members of the public (paragraph 58 of *Calver* and 39 of *Heesom*), but we did not consider that the Respondent's views had been part of any political debate and/or that the enhanced level of protection considered in *Calver* ought to have applied. The emails were "*little more than an expression of personal anger*" (paragraph 52 of *Calver*).

- 5.4.4 The Tribunal did not accept the proposition that Councillor Fowler had acted *ultra vires* when he had written to the Respondent. We did not consider that he had acted outside of his powers by writing to a fellow councillor about an expenses claim and/or about his communications with the Clerk. It was part of his duties under the *Good Councillors Guide* to ‘*share responsibility for financial management*’ (Part 7 [2906]) and to ensure ‘*good working relationships*’ were maintained with ‘*mutual respect and understanding*’ (part 8 [2910]). Even if he had, it did not enable the Respondent’s emails in reply to have been ignored for the purposes of the Code of Conduct.
- 5.4.5 In the series of emails which the Respondent had sent to Mrs Williams including, but not limited to, those set out in paragraphs 4.2, he had been gratuitously critical, undermining, disparaging and rude. The emails demonstrated a clear lack of respect and consideration and the Respondent was in **breach of paragraph 4 (b)** in that respect too.
- 5.4.6 The Tribunal took time to consider the emails against the words used in *Calver* (paragraph 33). We recognised that there were no “*bright lines*” to the balancing exercise that we undertook (paragraph 46). We were also aware of the need for people in Mrs Williams’ position to have had relatively thick skins too (*Heesom*, paragraph 42), but that point played less well in respect of a civil servant than it did for a politician; it was a “*legitimate public aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect on good administration*” (*ibid*). Here, it was not so much the contents of a single email to Mrs Williams which had concerned us, but it was the consistent rudeness and repeated criticism over a period of time which she had had to face which placed the Respondent in breach of the Code.
- 5.4.7 In respect of paragraph 4 (c), bullying and harassment was described in the Ombudsman’s Guide to the Code of Conduct as “*repeated behaviour which upsets or annoys people*” and/or “*offensive, intimidating, malicious, insulting or humiliating behaviour*”. That accorded with our understanding of the words as they were commonly applied through other legislation (for example, s. 26 of the Equality Act 2010). Having considered the communications against that test, we were satisfied that the Respondent was also in **breach of paragraph 4 (c)**. We repeat our findings in respect of the Respondent’s Article 10 rights.

Expenses claims (paragraph 2.1.2.2)

- 5.4.8 The IRP’s Report’s requirement for expenses claims to have been by way of “*reimbursement of additional actual costs*” to be met upon “*production of receipts from the carer*” clearly presupposed the existence of a contractual liability to that effect. The Respondent argued that no pre-existing liability had to exist before a claim could have been made, but the Tribunal considered that the approved IRPW guidance [136] was very clear; it was designed to cover “*the reimbursement of actual costs [parenthesis added]*”. Mrs Williams’ evidence also supported that interpretation. No receipts from the carer, Mr Edwards, had ever been

produced until the final day of the hearing. Even then, they were inconsistent with other evidence (see paragraphs 4.21-4.26 above). The Respondent's alternative submission, that 'receipts' equated to 'bills' in his mind, was inconsistent with his primary case and lacked credibility.

5.4.9 The Respondent had sought to create the impression of a formal, settled employment relationship having existed between Crocels and Mr Edwards or, at the very least, that some kind of contractual liability to pay for the support rendered at the meetings had been created. The Tribunal found there to have been no such relationship or liability. Further and more importantly, Mr Edwards was not in fact paid, as both he and the Respondent (in the form of Mr Edwards' letter of 2 March 2020 which was drafted by him) stated. Yet further, even if a liability had existed, it had not existed for the sum claimed from the Authority, as the Respondent's submissions at the Third Stage of the hearing confirmed.

5.4.10 The expenses claim was misleading and the Claimant had brought his office into disrepute by making it in **breach of paragraph 6 (1)(a)** of the Code. The claim was also an attempt to gain a financial advantage which rendered him also in **breach of paragraph 7 (a)** in the absence of a liability to forward the claim to Mr Edwards in whole or in part. Further, it demonstrated a failure to follow the Authority's rules concerning the claiming of expenses and he was in **breach of paragraph 9 (a)**.

5.4.11 The Respondent also intimated an expenses claim in respect of his father which, when questioned, was not proceeded with. His account in respect of his father's role and relationship with Crocels (4 September 2019 [172]) was inaccurate, as he subsequently conceded [469]. His actions, in the preparatory steps *towards* an expenses claim, did not, however bring his office into disrepute. He was testing the water. We considered that he had **not been in breach of paragraph 6 (1)(a)** of the Code of Conduct. His father's email of 4 September [2802] appeared to have been an implicit acceptance of the fact that such a claim might have been improper but, since he did not actually submit one, the Tribunal was not satisfied that he had attempted to confer an advantage upon himself or anyone else. He was also therefore **not in breach of paragraph 7 (a)**. He had also not failed to observe the Authority's rules regarding the claiming of expenses and was **not in breach of paragraph 9 (a)**.

Mr Edwards' letter of 2 March 2020 (paragraph 2.1.2.3)

5.4.12 The Respondent had not been present at Mr Edwards' interview on 28 February 2020. He could not have known what had been said. He nevertheless drafted the letter of 2 March 2020 in which Mr Edwards purported to deny the accuracy of the account which he had given. It was reasonable to conclude that the Respondent had become involved because Mr Edwards' draft statement had contained evidence which was damaging and inconsistent with his own.

5.4.13 That was a serious matter; Mr Edwards had given an account to an investigation into the Respondent's conduct and here was the Respondent himself attempting to influence and/or change that evidence. At the very start of the Ombudsman's investigations, he was written to in the following terms [104-5];

"The Ombudsman's investigations are conducted in private. You are therefore asked not to contact or discuss the details of the complaint with any potential witnesses or persons who may be involved in the matter, whether directly or indirectly, to avoid any prejudice to the investigation. Conduct of this kind may amount to a breach of the Code."

5.4.14 His conduct in relation to the drafting of the letter brought his office into disrepute and he was in **breach of paragraph 6 (1)(a)** of the Code of Conduct. The Ombudsman's Guidance to this paragraph specifically prohibited councillors from engaging "*in any behaviour that may prejudice an investigation undertaken by me* [the Ombudsman]". His assertion that he had been writing the letter as Mr Edwards' line manager under Crocels' Whistleblowing Policy (which had never been produced) was no defence.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 The Respondent's Submissions

6.1.1 Evidence and submissions at this point were heard and received in closed session in accordance with paragraphs 5.11 and 5.12 of the Listing Direction [6]. In order to enable the parties to understand some of the personal evidence which was accounted for, the Tribunal has done little more than refer to the sources of that evidence below and the mitigation that it provided.

6.1.2 The Tribunal received character evidence from Reverend Gethin Rhys who spoke of the Respondent's philanthropic work in Treforest and elsewhere through and on behalf of Crocels. It was pleasing to hear that he had not experienced the type of loss of control which had been exhibited in the emails to Councillor Fowler.

6.1.3 In terms of his autism and mental health generally, the Respondent stated that recent modifications to his medication by Dr Macaulay had significantly improved the control of his irritability and reactivity. His father echoed that point.

6.1.4 In relation to other matters, the Respondent stated that he now had a good working relationship with the Authority, with a new Chairman and Clerk now in place, and continued to have a fruitful relationship with his colleagues on Cam Parish Council in England. His ability to attend meetings remotely reduced the stress that he experienced.

6.1.5 In relation to the allegation under paragraph 4 (c) of the Code, the Respondent had previously argued that bullying and harassment were new concepts for which he had not received training (see paragraph 5.5.2 of the Listing Direction), although he has received training on the 2016 Code now.

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 First, the Case Tribunal had to assess the seriousness of the breaches and their consequences.

6.2.3 It considered that the Respondent's conduct on 11 September 2019 towards Councillor Fowler and, over a longer period, to Mrs Williams had shown a lack of respect and been unacceptable. It was clear that Mrs Williams had been particularly upset by this (paragraph 11 of her first statement [111] and paragraph 2 of her second [112] and her letter of resignation [838-9]), following over forty years' work in local government.

6.2.4 In relation to the expenses issues as stated above, the Respondent's closing submissions at Stage Three indicated an awareness that what had been claimed on behalf of Mr Edwards had been more than his indebtedness. Irrespective of the intended use of the 'surplus' which CCMG CIC would have acquired if the claims had been paid, the submission was the clearest admission yet that the claims had *not* been limited to a liability owed to Mr Edwards.

6.2.5 Finally, in relation to the letter purportedly written by Mr Edwards, as we said in paragraph 5.4.13 above, we considered that to have been a serious matter for the reasons set out therein.

6.2.6 In terms of the broad sanction that was appropriate in the circumstances, the Tribunal considered that the option of disqualification was most applicable.

6.2.7 The Tribunal had 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. As to a suspension

generally, the lack of contrition and/or apparent insight into his wrongdoing left the Tribunal with a sense of concern in relation to the Respondent's future conduct. Further, as a result of s. 76 (5) of the Local Government Act, any suspension would have been limited to 4 May 2022, the date upon which the Respondent's term of office ended, which we considered would not have adequately reflected the nature of the wrongdoing.

6.2.8 The Tribunal then considered both mitigating and aggravating features and, in particular, those matters set out within paragraph 42 of the President's Sanctions Guidance.

6.2.9 The Tribunal was informed that the Respondent had no prior record of misconduct with the Ombudsman or the relevant Monitoring Officer.

6.2.10 In the Respondent's mitigation in relation to the complaint concerning the emails to Councillor Fowler, the Tribunal noted two matters in particular; first, that there had been a certain level of acceptance of wrongdoing at first (see his email of 13 September [95]). Unfortunately, however, that contrition appeared to have evaporated by the time of the hearing, with him continually asserting that the Councillor would not have been upset by the words used. He had nevertheless attended further training on the Code.

6.2.11 Secondly, there was the medical evidence in relation to his disability which had to be considered and, in particular, the matters which were said to have contributed to what he described as a 'meltdown'; see Dr Rajput's report, following assessments in April and June 2020 [650-1] and the specific reference to 'meltdowns' when overwhelmed in Dr Matthews' report of 10 March 2021 [525]. Those were important mitigating factors and we recognised that the style and content of those emails to Councillor Fowler had been markedly different from hundreds of others that had been before us.

6.2.12 We were encouraged by the effects of the Respondent's altered medication and pleased to hear about his current relationships with the Authority and his colleagues at Cam Parish Council. Nevertheless, the Respondent had been a councillor, on and off, since 2003 and the emails had been unacceptable. We were concerned about a repeat of similar conduct in the absence of any clear insight or acceptance of his wrongdoing.

6.2.13 It could not have been said, however, that the series of emails which had been written to Mrs Williams had been the product of the same impulsive 'meltdown'. The Respondent had embarked upon a campaign to denigrate and demean and, although his condition may have prevented him from appreciating the effect of his conduct upon someone in Mrs Williams' position, the Tribunal was concerned that his lack of contrition or awareness may lead to a repeat of the same or similar conduct.

6.2.14 The Tribunal considered that the Respondent's lack of training in respect of paragraph 4 (c) of the Code was a poor point. We did not consider that a councillor, who was otherwise bound by and aware of the Code, ought to have needed formal training in order to prevent him from engaging in a course of conduct which amounted to bullying or harassment.

6.2.15 Nor did the medical evidence explain or justify the Respondent's wrongdoing in relation to the expenses issues and/or his involvement in the composition of Mr Edwards' letter. These matters were serious and had required care, pre-meditation and an intention to mislead. There was nothing in the medical evidence to suggest that such traits were a feature of his disability.

6.2.16 It was, the Tribunal considered, also rather a shame that the Respondent's father had approached the matter in such a combative and non-conciliatory manner. Rather than, for example, accepting that his son had been ill advised or hot headed in some respects (for example, to have written some of his emails to Councillor Fowler and/or Mrs Williams), he accused the former of having made "*false malicious lies*" and suggested that the Respondent had never "*questioned the clerks qualifications or tried to undermine*" her [2948]. Despite the representative support which he had provided, we could not and did not blame the Respondent himself for his father's stance.

6.2.17 The Case Tribunal considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards expected in public life. It concluded by unanimous decision that Councillor Bishop should be **disqualified for 12 months** from being or becoming a member of the Authority or any other relevant authority within the meaning of the Local Government Act 2000.

6.2.18 The Authority and its Standards Committee are notified accordingly.

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

7. CASE TRIBUNAL RECOMMENDATIONS

7.1 The Case Tribunal did not consider it appropriate to make recommendations to the Authority in the case given the nature of the sanction imposed and the surrounding circumstances.



Signed.....

Date...14 February 2022.....

Mr J Livesey

Chairperson of the Case Tribunal

Dr G Jones

Panel Member

Mr R Payne

Panel Member