

Tribunal Reference Number: APW/005/2010-011/CT – Cllr P Heesom**Decision as to Breach**

1. We have previously in earlier decisions and in our Findings of Fact set out the relevant regulatory provisions under which we operate. In Listing Directions given at the outset of this case we outlined the three stage procedure as to our proceedings. We delivered our Findings of Fact in writing on 17 June 2013. We now turn to consider whether or not, on the basis of our Findings of Fact, breaches of the relevant Codes of Conduct by the Respondent have been made out.

2. This case requires consideration of two Codes of Conduct which the Respondent gave undertakings to comply with. The 2001 Code of Conduct came into force in 2001. The 2008 Code of Conduct came into force on 2 May 2008. In terms of both Codes of Conduct the Respondent undertook to comply with that Code of Conduct. He gave the undertaking on 15 June 2004 in terms of the 2001 Code of Conduct and the 12 May 2008 in terms of the 2008 Code of Conduct. We have considered the representations made on behalf of the Ombudsman and on behalf of the Respondent. We enquired of Counsel for the Respondent if he differed in any material manner from the approach of the Ombudsman which repeated the three stage process relevant to our consideration of breach as noted in the cases of Sanders v Kingston 2005 and more particularly as outlined in the case of Calver by Mr Justice Beatson - 'Calver v Adjudication Panel for Wales [2012] EWHC 1172 (Admin)'.

3. Reference was made to the case of Calver in the submissions received on behalf of the Respondent but it did not address expressly the three stage test. In particular, submissions on behalf of the Respondent did not address whether a finding of a breach and thereby denying the Respondent his Article 10 rights was necessary under the provisions of Article 10 subparagraph 2. In oral submissions Counsel for the Respondent stated he did not differ from the approach outlined by Counsel for the Ombudsman.

4. In our consideration of whether or not there have been breaches of the Code of Conduct, we as a Case Tribunal must have regard to the Respondent's rights under Article 10 of the European Convention on Human Rights ("the Convention"). Article 10 provides as follows:

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

2. 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions,

restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests ofthe protection of the reputation or rights of others.....'

5. In considering what amounts to political expression we take on board the comments of Mr Justice Beatson in the case of Calver. Those do not have to be high manifestations of political expression but may fall within a broader sense of the term 'political expression' as applied in the Strasbourg jurisprudence.

6. The three stage test as cited in case law sets out the approach we have to follow:

1. Can we as a panel as a matter of fact conclude that the Respondent's conduct amounted to a relevant breach of the Code of Conduct.

2. If so, was the finding of a breach and the imposition of a sanction prima facie a breach of Article 10?

3. If so is the restriction involved one which is justified by reason of the requirements of Article 10 subparagraph 2?

7. Mr Justice Beatson in the case of Calver made observations which comment upon the process. It is clear that if doubt exists in the construction or application of Codes of Conduct that the Respondent is entitled to such doubt. Each case is fact sensitive.

8. Counsel for the Ombudsman referred to the comments of Mr Justice Beatson in the case of Calver at Paragraph 49 and it is worth repeating:

'Notwithstanding the high importance of freedom of expression and its relative incommensurability with the interests that are involved in justifying restriction, the more egregious the conduct, the easier it is likely to be for the panel and for the Court to undertake the balancing that is required and justifiable to conclude that what was said or done falls within one of the exceptions of freedom of expression under common law, statute or the Convention. If the conduct is less egregious it is likely to be more difficult to do this. This is because the interest of freedom of expression and in the present context proper standards of conduct by members of local authorities are not easily commensurable.'

9. In the case of Calver guidance was also given as to political speech and it should be noted that not all statements of politicians amount to political expression. In paragraph 61 of the judgment of Calver Mr Justice Beatson states, 'This does not mean that everything said by a politician or a member of a local council will attract enhanced protection'. In his judgement Mr Justice Beatson refers to the comments of Baroness Hale in Campbell v Mirror Group Newspapers in terms of political speech 'Information on matters relevant to

the organisation of the economic, social and political life of the country'. Strasbourg jurisprudence provides a wider definition and in particular the case of Thoriksson v Iceland) 1992 'There is no warrant in this case at all for distinguishing between political discussion and discussion of other matters of public concern.'

10. Comments were made in Calver that politicians are expected to have broader shoulders than other members of the public and they are subject to another's expression of his freedom of speech. In certain circumstances we could see that this could be applied to the most senior officers of a local authority if said in the right context and circumstances. We would note, however, it would be necessary also to have regard to the fact that an elected councillor is in effect a quasi-employer of that senior official. No express representations were made to us on this point by the Respondent.

11. We turn to the specific breaches alleged.

1. The Respondent's conduct towards Mrs Susan Lewis, Director of Community Services and People and Performance Overview and Scrutiny Committee, on 14th February 2007.

12. It is alleged there was a breach of paragraph 4(a) of the 2001 Code, failure to show respect and consideration for others, and in the particular it is alleged in terms of his conduct towards Susan Lewis and Maureen Mullaney at the People and Performance Overview and Scrutiny Committee on 14 February 2007. Cllr Heesom described the Council's Adult Social Care Director as a "shambles" and "shambolic" and said that "a number of the managers of the Council had been dispensed with and there were more to go".

13. In our summary of Findings of Fact we found that the Respondent described the management of the Adult Social Care Director as a "shambles" and "shambolic". At the conclusion of the meeting the Respondent was looking in a menacing fashion at Susan Lewis and Maureen Mullaney and stated that a number of managers on the Council had been dispensed with and there were more to go. The intention and effect of this statement was one of a threat to either or both of the officers.

14. There are two separate parts to the failure to show respect and consideration for others at the scrutiny meeting. Firstly, describing the management of the Adult Social Care, Susan Lewis and Maureen Mullaney being senior officers present, as a shambles and shambolic. We are satisfied that those comments in the context that they were said amount to a failure to show respect and consideration to others. They were said in a public forum and, whilst there were concerns as to sickness levels, they were unjustified in terms of describing the directorate. However, a finding of breach in our view would be a breach of the Respondent's Article 10 rights. We have considered the context of the comments, a discussion as to the performance and statistical information involving the directorate. The comments are ones of

political expression and therefore attract enhanced protection to such comments. The finding of a breach and indeed imposition of any sanction in terms of the comments 'shambles' and 'shambolic' would be an unjustifiable and disproportionate interference with the Respondent's Article 10 rights.

15. The second part of the allegation as to the meeting is the comment directed at either or both of the officers, Susan Lewis and Maureen Mullaney, namely that a number of managers had been dispensed with and there were more to go. The words in our findings were said in a menacing fashion while the Respondent was looking at both officers. The comments in our findings amount to a breach of the Code in that the Respondent failed to show respect and consideration to both officers. The comments were in a nature of a threat. The comments were not an innocent comment of a pure factual nature. Whilst we sought clarification from the Respondent as to whether they could be interpreted as purely factual he was not able to confirm same in his oral evidence. The comments were made by an elected councillor at the end of a Council meeting and were directed at officers of the Council. The comments, whilst being of a borderline nature, were comments of a political expression and therefore attract enhanced protection the finding of a breach and the imposition of a sanction could amount to a breach of the Respondent's Article 10 rights.

16. The issue we have to consider is whether a finding of a breach of the 2001 Code as to these further comments is a justifiable and proportionate interference with the Respondent's common law and Article 10 right to freedom of speech. The comments have to be viewed in the context of criticism of the directorate as a whole earlier in the meeting. We have regard to the fact that both officers were of a senior level and therefore would have a greater degree of robustness. However, the comments were a threat. The Respondent was an elected councillor and therefore had a quasi-employer status towards employees of the Authority and as such the comment could break the obligation of mutual trust between employer and employee. These lead us to a conclusion that restricting the Respondent's Article 10 and common law rights is justified and proportionate. We therefore find in terms of the comment, "A number of managers have been dispensed with and more are to go," is a failure to show respect and consideration to others and it is a serious breach of the 2001 Code.

2. The mutual exchange and to the letters written to Mr and Mrs Dodd and Ms Mills on 9 August 2007.

17. There are five allegations of breach. Firstly, paragraph 4(a) for the 2001 Code, failure to show respect and consideration for others. In the particulars it refers to Cllr Heesom's conduct regarding the Dodd mutual exchange between 27 April 2007 and 21 November 2007 and the Wrexham Council review of that decision.

18. Secondly, paragraph 4(b) of the 2001 Code is also alleged to have been breached, which is not to do anything which compromises or which is

likely to compromise the impartiality of the Authority's employees. That again relates to similar particulars.

19. Thirdly, paragraph 4(a) of the 2001 Code, failure to show respect and consideration for others. This refers to Cllr Heesom's letter of 9 August 2007 inter alia stating, 'I cannot see any reason why you do not live in each other's houses at the very least to see if the different properties suit you both'.

20. Fourthly, an allegation of breach of paragraph 6(1)(b) of the 2001 Code where a councillor behaves in a manner which could be reasonably regarded as bringing the office of member or the Authority into disrepute. This again refers to the letter of 9 August 2007.

21. Fifthly, it is alleged there is a breach of paragraph 7(a) of the 2001 Code that the Respondent used his position improperly to confer on or secure for any person an advantage or disadvantage. This again refers to the letter of 9 August 2007.

22. The relevant Code engaged in terms of these breaches is the 2001 Code. We are satisfied that whilst the writing of the letter was intended to provide reassurance for the parties proposing to exchange properties, they did not proceed and therefore no advantage was gained. Even if the exchange had proceeded it is unclear whether the individuals would have gained an advantage, save they would be seeking to argue that they were now in situ and the Authority should not seek a Possession Order. They would have suffered a disadvantage in that they would have breached their tenancy agreements and could have lost security of tenure. The exchange did not take place as a result of the letter.

23. The 2001 Code, in contrast to the 2008 Code, does not include the express word 'attempt' by a councillor to use his position improperly.... The issue is not addressed in the submission on breach by the Respondent. We as a Case Tribunal considered whether by implication interpretation of the 2001 Code includes an attempt. We have resolved, however, in the context of this case, and in particular of the letter, not to include by implication interpretation of the 2001 Code as including an attempt. We therefore find no breach in terms of paragraph 7(a) of the 2001 Code. There remains however four separate alleged breaches and we address each as to whether there is a breach by the Respondent.

24. The conduct of the Respondent in terms of the mutual exchange, which we have found reprehensible, includes a finding the Respondent involved himself in the decision-making process. Under the Homelessness Act 1997 he was disqualified from involving himself in that decision-making process. He had also been advised in general terms by way of a letter of 14 December 2006 of the restrictions as to his role as a councillor in housing matters. His conduct went well beyond making mere representations on behalf of his constituents and was an attempt to coerce officers. This failed to show respect and consideration for others and compromised the impartiality of the Authority's employees. On two occasions he advised Council employees that

he was going to tell the families concerned to exchange anyway. This was at a time he knew that the Authority had refused consent to the exchange. He had also been advised of the serious implications to the tenants. In communications he seriously misrepresented the position. For example, on 24 May 2007 he falsely indicated that the Cabinet member for Housing, Cllr Attridge, intended to override officers and allow the exchange to proceed. Further, in a telephone message on or around 11 June 2007 he suggested Barry Davies had agreed to the mutual exchange proceeding when he knew, firstly, Barry Davies had no such authority and, secondly, Mr Davies had not provided such authority nor indeed indicated to the Respondent he had given such authority. He wrongly advised Mrs Dodd on or around 25 September 2007 that the exchange had been authorised when it had not.

25. Based on our findings and as outlined, the Respondent's actions represented a failure by him to show respect and consideration for others and he acted in a manner which compromised or was likely to compromise the impartiality of officers. The Respondent made serious unsustainable allegations against several officers involved in the decision-making process. These included Richard Birchett and Elaine Williams. In the case of Elaine Williams he sought a suspension of an officer when there was no basis to do so. Neither of these officers were senior officers.

26. In terms of the letter the Respondent wrote and forwarded, it was a letter to two sets of tenants of the Authority authorising them to proceed with an exchange of their property when he knew such action was in contravention of the Authority's refusal to grant their application for exchange. The letter was intended to encourage and permit the tenants to proceed with an exchange. It was providing in terms to the tenants, one of whom was described by the Respondent as vulnerable and lacking in formal education, reassurance by an elected councillor that they could proceed with an unlawful exchange. The consequences of the letter were that it caused the tenants distress and cost. It also placed Council officials in a difficult position, firstly, on the day when the exchange was proposed to proceed and, secondly, in undermining the role of officers in the decision-making process and in their professional relationship with the tenants.

27. We did not find the decision to reject the mutual exchange by the officers was wrong as a matter of fact or as a matter of law. If the tenants disputed the decision to refuse the exchange the appropriate advice the Respondent should have provided to the tenants was to seek to appeal such a decision through the correct process. The letter failed to show respect and consideration to others, being the tenants, as well as officers of Flintshire County Council. The writing of the letter and its purpose contravened the lawful role of a ward councillor. The letter was deceitful and had serious consequences. On this basis we find it was behaviour which could reasonably be regarded as bringing the office of member and the Authority into disrepute.

28. On the above basis we find breaches of paragraphs 4(a) twice, 4(b) and 6(1)(b) of the 2001 Code. The actions of the Respondent occurred whilst

he was acting as an elected councillor and involved issues within his own ward. It was in a broad sense of a political nature. Article 10 enhanced protection is therefore engaged. However, on the basis of our findings and the serious misconduct we have outlined in terms of the four breaches relating to the exchange and to the letter, we conclude restrictions on the Respondent's Article 10 rights by our finding of breach and imposition of a sanction as justified and proportionate.

3. The Respondent's conduct towards Dawn Evans, a senior Sheltered Housing Officer, at a meeting on 4th July 2008.

29. There are three alleged breaches of the 2008 Code: 4(b), failing to show respect and consideration, 4(c), not to use bullying behaviour or harass any person, and, finally, 4(d) not to do anything which compromises or is likely to compromise the impartiality of those who work for the Council. The particulars relate to a meeting and conduct towards Dawn Evans on 4 July 2008.

30. Our findings in terms of the incident at the Sheltered Housing meeting on 4 July 2008 were that the Respondent was confrontational and aggressive. He was rude and aggressive to Dawn Evans, a relatively junior officer. He questioned Dawn Evans in an aggressive manner and accused her of trying to downgrade residential wardens. He was critical of how she managed accommodation issues in his constituency. Dawn Evans, who found his conduct confrontational and intimidating, was upset by his conduct. In reaching our findings of fact we took account of the fact that we did not hear live sworn evidence from Dawn Evans. In terms of failing to show respect and consideration for others and based on our findings, we find there is a breach of paragraph 4(b) of the 2008 Code. In our findings the Respondent's conduct at the meeting was confrontational and aggressive. He was rude and aggressive to a relatively junior officer, he made an accusation she was seeking to downgrade services and was critical of her management. She found his conduct intimidating and was upset. The Ombudsman in his guidelines, which we accept post date all incidents we are considering, notes that councillors need to ensure their behaviour does not cross the line between being forceful and bullying. In our findings the Respondent's conduct on 4 July 2008 did cross the line. From the perspective of Dawn Evans, as noted in her written statement, she found his conduct to be bullying. We take into account that the Respondent did not have the opportunity to challenge that evidence. However, we heard from witnesses who were present and who confirmed the Respondent's conduct was confrontational and intimidating and that it upset Dawn Evans, a relatively junior officer. The Respondent at this time was now Executive Member of Housing Strategy. On this basis we find a breach of paragraph 4(c) of the 2008 Code which is not to use bullying behaviour or harass any person. We do not find there was conduct which caused the officer to actually compromise her impartiality. Whilst bullying behaviour could be said per se to be likely to affect the impartiality of the officer, we have no direct evidence of that from Dawn Evans. We are not satisfied based upon our findings that there was a breach of paragraph 4(d).

31. In terms of breaches of paragraphs 4(b) and 4(c), this was a meeting held on Council premises with officers. The Respondent was present at his request as Executive Member for Housing Strategy. We therefore do find he was acting in a political context and the comments made were of a political nature. However, failing to treat a relatively junior officer with respect and, more significantly, engaging in conduct whereby he as Executive Member for Housing was bullying that officer, is conduct which on all factors lead us to the conclusion that restricting the Respondent's Article 10 enhanced rights are justified and proportionate. This was again the position of a quasi-employer, that is the Respondent as Executive Member and elected councillor and an employee, with a potential breach of the relationship of mutual trust and confidence. We therefore find breaches of 4(b) and 4(c) in terms of the 2008 Code in relation to the meeting on 4 July 2008 and a sanction is appropriate.

4. Visioning Day.

32. Five breaches are alleged. Two are related to the letter with the attached note circulated prior to the meeting of 7 November 2008 and the three remaining breaches relate to conduct at the meeting itself. The breaches which relate to the letter and note are 4(b), failure to show respect and consideration, and 4(c), not to use bullying behaviour. Those relating to conduct towards Susan Lewis at Visioning Day are 4(b), failure to show respect, 4(c), not to use bullying behaviour, and 6(1)(a), not to conduct himself in a manner which could reasonably be regarded as bringing the office or Authority into disrepute.

33. In terms of Visioning Day, we found the preparations had been fully scoped and discussed with the Respondent and his actions in circulating the letter to councillors before the meeting was intended to undermine Susan Lewis as a Director. Comments in his note that Visioning Day was arranged without authority of elected members were unwarranted, without foundation and intended to undermine officers. Whilst we believe comments were made during the meeting by the Respondent and there is some evidence that those comments caused upset to Susan Lewis, we do not find on the balance of probability that this was a sustained verbal attack. However, the Respondent referred to the Director as 'That officer' and interrupted her stating "That officer has no business to be bringing these things to you here today". His tone was dismissive and confrontational. The allegation in terms of a breach of paragraph 6(1)(a), that is not to bring the office of member or the Authority into disrepute relates solely to the Respondent's conduct towards Susan Lewis at Visioning Day itself on 7 November 2008.

34. Our findings as to the meeting are that there was no sustained verbal attack by the Respondent other than comments of 'That officer has no business to be bringing those things here to you today' said in a dismissive and confrontational manner. Whilst there were invitees, limited in number, who were not councillors or officers of the Council at the meeting, this was not a meeting held as such in public. Whilst the comment made was inaccurate, the Respondent's conduct in our view does not cross the threshold to being

action which brings the Authority or office of member into disrepute. The comments had an effect on Susan Lewis and some of the officers noted this also. In general terms, however, it did not cause the type of consternation amongst councillors we would have expected of comments and actions which brought the office of councillor or the Authority into disrepute.

35. We would point out a course of conduct towards an individual by a councillor, in particular harassment towards an officer, could amount to bringing the office or Authority into disrepute. The particulars as to potential breach of 6(1)(a) relate to conduct towards Susan Lewis at Visioning Day on 7 November 2008 itself. At this date there had been no regular pattern of harassment. There had been an isolated incident at the scrutiny meeting in March 2007, there were comments made to Maureen Mullaney and there were also comments to the Chief Executive in March 2008. The direct incident with Susan Lewis was limited to that of March 2007 and, subsequently, immediately prior to the meeting to the note circulated. These are not enough to make findings of conduct, as at Visioning Day itself, of such harassment as to make a finding that the officer of member of the Authority or the Authority was brought into disrepute, therefore we do not find a breach in terms of paragraph 6(1)(a).

36. On the basis of our findings we are satisfied the Respondent's conduct, both in circulation of the letter and attached note and in terms of his conduct at the Visioning Day, did amount to breaches of 4(b), namely failure to show respect and consideration to Susan Lewis. We further find in terms of both parts it amounted to bullying behaviour towards Susan Lewis. In terms of the letter and note it should be recorded that bullying behaviour can be carried out in written form only and it can comprise of a single incident. In terms of the letter and the note we take into account not only its contents but the manner and timing of its distribution. In terms of the Respondent's conduct at the meeting we refer to our findings as to the Respondent's tone being dismissive and confrontational and the effect that the comment had upon Susan Lewis. She was upset. In terms of both the letter and attached note and in terms of the Respondent's comments at Visioning Day we find that they were political in nature and therefore enhanced protection of Article 10 is engaged. We need to consider separately whether finding of breach and indeed if appropriate imposition of a sanction is justified and proportionate in terms of denying his enhanced Article 10 rights.

37. We have found in terms of the letter and note that some of the contents were unwarranted, without foundation and intended to undermine officers, in particular Susan Lewis. Circulation of the letter and note to fellow councillors has to be seen in the context of our findings that preparation for Visioning Day had been fully scoped and discussed with the Respondent. On 3 November 2008 Susan Lewis replied to a query from the Respondent. Reassurances had been given as to the scope and purpose of Visioning Day and agreement had been reached as to the presentation of slides. The Respondent sought unilaterally to undermine all the preparation for Visioning Day and undermine Susan Lewis's position by circulating the letter and note to councillors directly without either referring back to Susan Lewis as to any ongoing concern or to

advise her of his actions. It is noted in submissions on behalf of the Respondent that Cllr Attridge's view was that if he had been Executive Member he would not have allowed the day to proceed. Proper procedures existed for postponing meetings. The aim of the Respondent by the manner of his actions was to seek to torpedo the day and thereby undermine Susan Lewis's position. This he sought to achieve by circulation of the letter and note direct to councillors. The Visioning Day in its scope had been approved by the Executive. Had the note been reasonable and accurate no issue could have been taken as to the manner of its circulation. However, the note, in our finding, was unwarranted and without foundation and its contents made allegations without foundation. For example, firstly by suggesting aspects of the event had not been agreed or scoped with elected members. That was false. Secondly, by stating that the Critical Housing Report had not been brought to committee through the normal channels as a result of the failure of officers. This was highly misleading. The Respondent knew it to be misleading. Thirdly, by claiming that he and Cllr Yale had not been given an insight by the Director in particular to Visioning Day until 5 November 2008. This was wrong in fact and was a misleading comment. Fourthly, suggestions that officers were endeavouring to force their views upon members. This again was not accurate. False and misleading statements have to be viewed in the context that they were made by the Executive Member who had been involved in the scoping and authorisation for the day. He was fully aware of their misleading nature and the effect his letter and note would have on Susan Lewis. This, coupled with the manner and nature of its circulation, lead us to conclude, though enhanced protection of Article 10 is engaged, a finding of breach and a potential imposition of a sanction is justified and proportionate.

38. In terms of Visioning Day itself the particulars are limited to the conduct of the Respondent on the day and not linked to the circulation of the letter and note beforehand, though it has to be said that the full context of events cannot be ignored. The breaches alleged are failure to show respect and bullying of Susan Lewis at the meeting but are limited to our findings of comments "That officer" and "That officer has no right to be bringing these things to you". Whereas his tone was dismissive and confrontational, the limited nature of his action and comments at Visioning Day itself, according to our findings, do not justify in all the circumstances a denial of the Respondent's Article 10 enhanced rights in terms of what was said by him at Visioning Day meeting. Therefore based on his enhanced protection Article 10 rights we find no breach capable of the imposition of sanction as to paragraphs 4(b) and 4(c) relating to conduct towards Susan Lewis at Visioning Day itself. The breaches therefore actionable are, paragraphs 4(b) 2008, failure to show respect and consideration to Susan Lewis in the preparation of the letter and note, and 4(c), not to use bullying behaviour or harass any person and, again towards Susan Lewis, by preparation and circulation of the letter and note.

5. Alleged breach of paragraph 4(b), failing to show respect and consideration for others.

39. This relates to comments made by the Respondent about Susan Lewis which Peter Evans, the Deputy Monitoring Officer, overheard, "Sue Lewis is

shit at her job,” and comments he also made to Maureen Harkin. The comments to Maureen Harkin included, “Sue Lewis knows nothing about housing and her days are numbered.” It is an allegation of 4(b) which is contended in this matter. We found in our Findings of Fact that on 14 November 2008 the Respondent stated to another member in the members’ executive room, “Sue Lewis is shit at her job.” This was a comment made by the Respondent on the same day that he forwarded a letter purporting to be an apology in respect of his conduct at Visioning Day.

40. The Respondent had also been critical of Susan Lewis in comments made to Maureen Harkin, a senior officer who worked under Susan Lewis. He had indicated to Maureen Harkin that Susan Lewis knew nothing about housing and “Her days are numbered.” The words uttered by the Respondent were inappropriate and we find that the comment “Her days are numbered” was intended to be a threat that the Respondent was going to seek to oust Susan Lewis from her post. The comments were made with the intention of undermining the position of Susan Lewis.

41. As to the comment heard by Peter Evans, we do not know to whom the comment was made or the context in which it was said. It was not said in a public forum. It was not intended to be heard by anybody else. Whereas it is indicative of the view held by the Respondent of Susan Lewis, it was not in the circumstances a breach of the Code.

42. In terms of our Findings of Fact as to comments made to Maureen Harkin, their intention and effect, we find they were a breach. Those representing the Respondent contend that the comments made to Maureen Harkin were political expressions by him. He was the Executive Member of Housing and was expressing a view as to the performance of the Director. In our view to state that the comments were political in nature is marginal. We are prepared, however, to give the Respondent the benefit of doubt in terms of the nature of the comments and whether his enhanced Article 10 rights are engaged. In our findings, however, we find that the infringing of the Respondent’s enhanced Article 10 rights are justified and proportionate in terms of the finding of breach and potential imposition of a sanction relating to the comments made to Maureen Harkin about Susan Lewis. We do so having regard to the following. The comments are made in the context of a course of conduct detrimental to Susan Lewis. Comments were said to an officer directly accountable and answerable to Susan Lewis. They were made early after Maureen Harkin had commenced work with the Authority. They were said with the intention of undermining Susan Lewis. The Respondent had been advised previously in writing by the Chief Executive of the appropriate route and procedure, in particular appraisal, to follow if he had issues as to Susan Lewis’s performance. We find in terms of comments made to Maureen Harkin there is a breach of paragraph 4(b) of the 2008 Code.

6. Alleged breach of paragraph 4(b) of the 2008 Code, failure to show respect and consideration to others.

43. This relates to two incidents. Firstly, conduct towards Maureen Harkin on 18 December 2008 and, secondly, conduct to Carolyn Littlewood on 25 February 2009 at a homelessness interview. Both incidents are noted in heading 4.2.3 of the Listing Directions (amended) and relate to alleged behaviour by the Respondent concerning housing allocations. We found in terms of the meeting of 18 December 2008 the Respondent had sought to interfere in the housing allocations process by seeking that officers operate outside the allocations policy and that he sought to bring undue pressure as Executive Member of Housing upon Officers to operate outside the allocations policy. His conduct in seeking to persuade officers to allocate properties in his ward to specific individuals outside the Council's agreed policy breached the clear guidance given to the Respondent in a letter 14 December 2006 by the then Interim Head of Housing. That is referenced at page B699 of the case papers. The letter indicated such action could breach the law and current good practice.

44. The Respondent stated in particular to Maureen Harkin, Head of Housing, "I don't want to hear that, I want you to listen to me as the Executive Member." This was on the basis of the policy he viewed as not working. The policy, however, was the policy that had to be operated by the officers. At the meeting he stated words of the nature of the following "I'm not threatening you as I don't need to, as I know you will follow what I am saying as you won't like the repercussions if you don't and you won't believe the man I can become if you put me in this position." We found that this was a direct threat to Maureen Harkin and that she perceived it as a threat. She felt intimidated and that the Respondent was inappropriately involving himself in operational activity which was outside the remit both of his role as Executive Member and as a ward councillor. At the conclusion of the meeting he stated, "I'm not going to fall out with you about this as you are a bright girl and I know you are listening to me." This again was put in the nature of a threat. We find that the words were also patronising.

45. At the Homelessness Prevention interview the Respondent made inappropriate comments and sought to wrongly interfere in the role of the Homelessness Prevention Officer. He acted in a manner which intimidated and undermined the role of Carolyn Littlewood and amounted to an attempt to bully the officer. In terms of both incidents we find that there were breaches of paragraph 4(b), namely failure to show respect and consideration to each of the respective officers. Indeed, it could be said there were potentially breaches of other aspects of the 2008 Code, however we are limited in our consideration to paragraph 4(b) only.

46. The Respondent through submissions by his representative maintains there was a political background to the issue and that what he was trying to do was represent his constituents, though there is no direct or express reference to Article 10 rights in terms of the incidents in the submission. If we were considering, for example, in terms of the December 2008 meeting, a

breach of improper use of his position by way of his interference in housing allocations, this may fall outside political expression. The breaches, however, relate to his comments to officers in the context of advancing, as he saw it, his constituent's case. Though in particular in relation to the December 2008 meeting, it is marginal whether his enhanced Article 10 rights are engaged we are willing to proceed on that basis. However, in terms of both incidents we find on the basis of our Findings of Fact that restricting the Respondent's Article 10 rights is justified and proportionate. We do so balancing his right to represent and advocate a case on behalf of his constituents with a need to have regard to the officers' roles and duties. The Respondent in terms of both meetings seriously failed to appreciate and have regard to the role of the officers, to the policy which had to be applied and sought to undermine their position. He wrongly interfered in their role. In terms of the 2008 meeting he made comments which were threats to Maureen Harkin. In terms of both officers he sought to intimidate them. Protection of officers in such positions require to be ensured and is a basis for finding a breach and a justifiable and proportionate imposition of a sanction, notwithstanding the Respondent's enhanced Article 10 rights.

7. The Respondent's conduct at the meeting of the Community and Housing Overview Scrutiny Committee, 7 January 2009.

47. Two breaches are alleged: 4b), failure to show respect and consideration and 4(c) not to use bullying behaviour. This is conduct alleged towards officers at the 7 January 2009 meeting. Our Findings of Fact based on assessment of the evidence in terms of the Scrutiny meeting on 7 January 2009 was that, whilst the Respondent was critical of the report presented, the way it was prepared and that he may have expressed his opinion in a loud and confrontational manner, we do not find there is evidence of him showing lack of respect to others at that meeting or of him undermining officers. The Respondent was loud and confrontational but that confrontation was with other elected members. In light of our Findings of Fact we find both allegations of breach not proven.

8. Head of Planning appointment process.

48. There are two allegations of breaches of 4(b), failing to show respect and consideration, and 4(c) not to use bullying behaviour. The breaches relate to conduct towards officers at the Head of Planning selection meetings 29 January and 6 February 2009. We found that in terms of the Head of Planning appointment process the Respondent did not act with the objectivity required. At the meeting on 29 January he questioned Sharon Carney as to her planning qualification and such comments were made with the intention of undermining the officer and her role in the process. At the meeting on 6 February 2009 he adopted an aggressive and hostile attitude to Sharon Carney and her presentation of BEI feedback. His comment on 6 February aimed at the Director of Environmental Services, "If he dares," was intended to ensure the officer did not speak and was a threat. The complaint as to officers' conduct as outlined in the letter to Carl Longland was unwarranted and misleading.

49. It should be noted that Sharon Carney was not a senior officer within the HR Department. As noted in our findings, her role in the process had been fully scoped and the Respondent as an appointment panel member was fully aware of her role in the long-listing procedure. Both on 29 January and 6 February the Respondent's conduct towards Sharon Carney failed to show her respect and consideration. Bullying, as we have noted previously, can be viewed as a single incident. In the case of Sharon Carney we found the Respondent at the first meeting sought to undermine her position as an officer and her role in the process. He did this by questioning her planning qualifications when he knew full well she had none and knew as a HR officer her specific role in the process. He did so at the second meeting by adopting a hostile and aggressive attitude towards her.

50. Bullying has to be viewed from the perspective of the alleged victim. Legitimate challenges by a councillor are allowed, however, his hostile conduct at the meetings towards Sharon Carney was done in an attempt to undermine her. His conduct would have affected her confidence. This we find was bullying. It should be remembered that Sharon Carney had also witnessed the Respondent's conduct towards Dawn Evans.

51. The comment at the second meeting, "If he dares," referring to Carl Longland failed to show the Director respect. Mr Longland, however, in our view, was not bullied. Carl Longland's recollection was of a phrase along the lines of "Keep out of it." We find a breach of 4(b) in terms of both individuals and 4(c) in terms of his conduct towards Sharon Carney. The role of the Respondent in the appointment process was not of a political nature. He was there effectively to assess the merits of the candidates and to appoint the best person for the post.

52. In terms of the Head of Housing appointment process the Respondent made great emphasis of the fact the candidate's views on stock transfer issues, what could be termed as political views, were not relevant. Comments at the appointments meeting are not therefore political expressions and we find the Respondent's enhanced protection Article 10 rights are not engaged. Submissions on behalf of the Respondent do not expressly refer to Article 10 rights. There is general reference to political background. We fail to see how there can be a political context to an objective and impartial appointment procedure. The breaches as found do not contravene for the reasons given Article 10.

9. Head of Housing appointment process

53. The relevant allegations of breaches are 4(b), failure to show respect and consideration, and 4(c), not to use bullying behaviour. It is conduct towards officers at Head of Housing selection meetings 12, 18 and 19 February 2009 which are specifically under consideration. In terms of the Head of Housing process, we found that the Respondent's conduct on 12 February 2009 included a verbal attack both on Natalie Pridding and Susan Lewis and that the Respondent was seeking to undermine the role of the

officers at that meeting. We did not find that there was any such verbal attack at the meeting on the 19 February 2009. We do not on the basis of our findings believe that at the meetings of 18 and 19 February 2009 the Respondent's comment amounted to breach of either provisions of the Code. The position is different in terms of the meeting on 12 of February 2009.

54. In terms of our findings and balancing matters under consideration as to bullying, we do not find his conduct at the meeting of 12 February 2009 amounted to bullying. The meeting on all accounts was a heated and, we have to say, chaotic one. In contrast to the Respondent's verbal attack on Sharon Carney during the Head of Planning process the verbal attack on Natalie Pridding and Susan Lewis during the Head of Housing process was limited to the first meeting that is the 12 February meeting. Though we are satisfied that the Respondent was seeking to undermine officers at the first meeting, this did not continue to a further meeting and was not of a sufficient nature to amount to bullying. It did in our view amount to failing to show the officers due consideration and respect on the 12 February and therefore breached 4(b). Similar in terms to the Head of Planning appointment process, the nature of the comments and conduct do not attract enhanced Article 10 protection. The conduct justifies a sanction notwithstanding the Respondent's normal Article 10 right.

55. We find fourteen breaches of the 2001 and 2008 Codes in total where we believe sanction should be considered and taken.

