



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for South Kesteven District Council, into allegations concerning Councillor Steven Cunningham.

5 November 2024

VOLUME 1 REPORT

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Appendix A Schedule of evidence taken into account and list of unused material

1. Executive Summary

- 1.1 The Subject Member, Councillor Steven Cunnington, is a member of South Kesteven District Council ("the Council"). He is a member of the Grantham Independent group representing Earlesfield ward. He is a member of the alliance of independent members and groups which is the Administration of the Council.
- 1.2 The Complainant, Councillor Graham Jeal, is also a member of the Council. He is a member of the Conservative group which forms part of the South Kesteven Coalition which is in opposition.
- 1.3 Councillor Jeal submitted three different complaints against Councillor Cunnington alleging that he had not adhered to the Nolan principles of public life, had been disrespectful towards Councillor Ben Green, had added to the bullying and intimidatory atmosphere and had brought the Council and his office into disrepute.
- 1.4 In August 2023, the Committee for Standards in Public Life (CSPL) responded to a Freedom of Information (FOI) request. The request asked for the process by which someone could raise a complaint that a government department or other public body had breached the Nolan Principles.
- 1.5 In response to the FOI, the CSPL stated that they held no information in the scope of the request because:

"the Seven Principles of Public Life are intended to be high level statements and there is no formal mechanism for holding people to account under those principles. The Principles are not a rulebook. They are a guide to institutional administration and personal conduct. It is organisations' codes of conduct against which complaints may be made so if you wish to hold an individual to account or make a complaint about an individual's behaviour, this would be done against the relevant organisation's code of conduct."
- 1.6 This statement from the CSPL means that, although the Nolan Principles underpin the Code of Conduct, a claim cannot be made that a councillor is in breach of the Nolan Principles. A claim of breach must be related to the behaviours listed in the Code of Conduct. Therefore, we have considered the issues of disrespect, bullying and disrepute.
- 1.7 Following investigation, we have concluded that Councillor Cunnington:
 - (a) did fail to treat others with respect;
 - (b) did not bully another person;
 - (c) did not bring his office and/or the Council into disrepute;
 - (d) did fail to cooperate with a Code of Conduct investigation.

2. Councillor Cunningham's Official Details

2.1 Councillor Cunningham was first elected to the Council on 9 May 2023. He is a member of the Grantham Independent group representing Earlesfield ward. He is a member of the alliance of independent members and groups which is the Administration of the Council.

2.2 At the time of alleged conduct, Councillor Cunningham sat on the following committees:

- Alcohol, Entertainment & Late Night Refreshment Licensing;
- Budget – Joint Overview and Scrutiny;
- Community Governance Review Working Group;
- Environment Overview and Scrutiny;
- Licensing; and
- Rural and Communities Overview and Scrutiny (Vice-Chairman).

2.3 At the time of preparing this report, Councillor Cunningham has not attended Code of Conduct training in either 2023 or 2024. In 2024, he has completed the following training:

- 17/06/2024 – Equalities, Diversity & Inclusion;
- 10/06/2024 – Safeguarding;
- 20/05/2024 – Licensing Committee Annual Refresh Training.

3. Relevant Legislation and Protocols

- 3.1 Section 27 of the Localism Act 2011 (“the Act”) provides that a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.
- 3.2 Under section 28(6) of the Act, principal authorities (which includes district councils) must have in place (a) arrangements under which allegations can be investigated; and (b) arrangements under which decisions on allegations can be made.
- 3.3 Under section 28(7), arrangements put in place under section 28(6)(b) must include provision for the appointment by the authority of at least one Independent Person (“IP”) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 3.4 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.
- 3.5 The Council has adopted a Code of Conduct (attached at WC 1) which includes the following:

“General Conduct

1. Respect

As a Councillor:

- 1.1 I treat other Councillors and members of the public with respect.**
- 1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas and opinions and policies in a robust but civil manner.

You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public’s expectations and confidence in Councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider, or the Police. This also applies to fellow Councillors, where action could then be taken under the Members’ Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority’s councillor officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

.....

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

5. Disrepute

As a Councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

8. Complying with the Code of Conduct

As a Councillor:

...

8.2 I cooperate with any Code of Conduct investigation and/or determination

...

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer."

- 3.6 We have also considered other relevant legislation as follows:
- 3.7 Freedom of Expression and Article 10 of the European Convention on Human Rights 1998
- 3.8 Article 10 of the European Convention on Human Rights (Article 10 ECHR) states:
- Art 10(1) *“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority...”*
 - Art 10(2) *“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society...”*
- 3.9 Article 10 ECHR has been enshrined in UK domestic law by Section 1 of the Human Rights Act 1998 (HRA 1998) and Section 3 of the HRA 1998 states that the Act must be interpreted as far as possible so that it is in line with Article 10 ECHR.

4. Background and Evidence

Our appointment

- 4.1 The Council's arrangements for dealing with code of conduct complaints provide that Monitoring Officer ("MO"), in consultation with the appointed Independent Person (IP), shall decide whether or not to investigate a complaint.
- 4.2 Councillor Jeal submitted three complaints against Councillor Cunningham.
- 4.3 In respect of the first complaint (attached at WC 2), on 2 April 2024, having consulted with two IPs, the MO issued his Decision Notice (attached at WC 3). The Decision Notice confirmed the MO's decision to refer the complaint for investigation.
- 4.4 In respect of the second complaint (attached at WC 4), on 20 May 2024, having consulted with two IPs, the MO issued his Decision Notices (attached at WC 5). The Decision Notice confirmed the MO's decision to refer the complaints for investigation.
- 4.5 In respect of the third complaint (attached at WC 6), on 20 May 2024, having consulted with two IPs, the MO issued his Decision Notice (attached at WC 7). The Decision Notice confirmed the MO's decision to refer the complaints for investigation.
- 4.6 On 28 May 2024, the MO instructed Wilkin Chapman LLP to conduct an investigation into the complaint.
- 4.7 Wilkin Chapman LLP is a solicitors' firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Estelle Culligan, Gill Thompson, and Emily Briggs.

The investigation

- 4.8 During the investigation we undertook formal interviews with:
 - Councillor Jeal (the Complainant); and
 - Councillor Green; and
- 4.9 We obtained signed statements from Councillor Jeal (attached at WC 8) and Councillor Green (attached at WC 9).
- 4.10 We emailed Councillor Cunningham on 18 June, 3 July and 17 July to request an interview with us. However, he has not responded to our correspondence. Copies of our correspondence are attached at WC 10.
- 4.11 The MO wrote to Councillor Cunningham on 1 August 2024 asking that he contact the investigators and reminding him that a lack of co-operation with the investigation could also be a breach of the Code of Conduct. This email is attached at WC 11. The MO has confirmed that Councillor Cunningham did not reply.
- 4.12 Copies of the above, together with other relevant documents are annexed to this report.

- 4.13 We wish to record our thanks for the co-operation and courtesy shown to us by Councillor Jeal and Councillor Green. We regret that Councillor Cunningham did not assist us in the investigation.

Complaint 1 – Liking the comment referring to ‘self-promoting Pratt’

- 4.14 On 2 March 2024 Councillor Green put a post on Facebook containing a video clip of a bird surrounded by litter with the words:

*“Sad to see South Kesteven Greens refusing to support wildlife near the A1.
🐦💩*

Despite this setback, I’m proud to have seconded a successful amendment to the Budget, securing £60,000 to clean up the A1 and protect our environment. The new reserve will be called the ‘Clean the A1’ reserve. 🌍💚

Local Greens, along with Labour, Liberals, and most Independents, either abstained or voted against this. Shameful. 😞👉

- 4.15 The clip is a video prepared by National Highways with the title, “Let’s Talk About Litter”. It is about the harm caused to wildlife by dropped and discarded litter. It includes shots of animals harmed by or trapped in litter and refers to statistics about the numbers of animals harmed, including by wandering onto roads to eat litter and being run over and killed. The link to the post and video is at <https://fb.watch/sPP8MBG0qs/>.

- 4.16 Councillor Baxter commented on the post, saying:

“Ben, Could you please explain why you voted AGAINST the overall budget which included the employment of a Tree Officer post, £700,000 for void repairs, financial support for our play parks and leisure centres and the creation of a reserve for litter-picking on the A1?”

- 4.17 A member of public replied to Councillor Baxter’s post by saying:

“Ashley Baxter the answer is simple, he is a self-promoting Pratt and very selective with the truth. Had he ever achieved anything as a councillor.”

- 4.18 Councillor Cunningham liked the comment, resulting in Councillor Jeal submitting a complaint against Councillor Cunningham on 6 March 2024.

- 4.19 In his complaint, Councillor Jeal stated:

“I would like to place a code of conduct complaint against [REDACTED] and cllr Cunningham for liking the comment describing cllr Green as a “self-promoting pratt and very selective with the truth” in the attached social media post.

In accepting the role of councillor we all agree to follow the South Kesteven District Council Code of Conduct which incorporates the Nolan Principles. I believe that this post is in breach of 5 of the 7 Nolan Principles. Namely:

- **Selflessness:** Holders of public office should act solely in terms of the public interest.

It is not in the public interest to stoke hate speech in the general public. Describing a legitimately elected councillor as a “Self promoting pratt” is a slur

against the character of a fellow councillor. By liking this comment, [REDACTED] and cllr Cunnington have promoted and given authority to this level of discourse in the public.

- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

There is no evidence for the comment “selective truth” comment and the aim of liking such a social media post shows a lack of integrity and decency.

- **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

By liking this post which includes clear hate speech “self-promoting pratt” directed toward an individual councillor, [REDACTED] and cllr Cunnington have deliberately promoted bias and discrimination against a fellow councillor.

- **Honesty:** Holders of public office should be truthful.

By liking this comment without supplying any evidence for the substance of what is being claimed, [REDACTED] and cllr Cunnington have been deliberately dishonest in an attempt to slur the reputation of a fellow councillor.

- **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

[REDACTED]

I know you will attend this this [sic] urgently, I reserve the right to present a copy of this complaint to the press – but I am sure that you will understand that I consider this behaviour unbecoming of a councillor and should be attended to immediately.”

4.20 Councillor Cunnington sent an initial response to the MO. He stated:

“Given recent events regarding this post and the second complaint I’ve yet to send you.....I think it speaks for itself. Is the Resident right? Has Cllr Green behaved like a “Pratt” ? Was the post “Self Serving” ? I would suggest he and it was! I did ask for the post to be removed before it could cause any Reputational damage to other councillors which it now unfortunately has!. I would consider myself a “ Self serving Pratt” if I had posted something which would and could cause Reputational damage to other councillors ? Yes! I would. Also the complaint holds no ground and I do not recognise it, as it is based on the “Code of conduct” Something we have had confirmed as not being worth the paper it is written on given Cllr Jeal can Publicly insult a Female Councillor in the chamber and not be held to account. The code and insults are clearly subjective. I reserve the right to “like” anything and everything on facebook.”

4.21 Councillor Green’s post of 2 March 2024 is attached at page 19 of the Schedule of Evidence. Councillor Baxter’s and the member of public’s comments are attached at page 18 of the Schedule of Evidence.

4.22 This incident was referred for investigation by the MO.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

4.23 On 1 May 2024 Councillor Green posted, on Facebook, a link to a Lincsonline article which contained a picture of Councillor Patsy Ellis. Councillor Green wrote:

"Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Green Party. Did she jump before she was binned? 😊"

4.24 Councillor Cunningham commented on Councillor Green's post. He stated:

"What a vile disrespectful piece of garbage you really are Ben !! What do you know about Cllr Ellis and her person[al] life or me[n]tal health ?? Have you given any consideration to this ? ...I think not !! Given your obvious low intellect !! and FYI if you don't report my commentI'll be very disappointed !!! You vile disrespectful fool !!!"

4.25 Councillor Jeal submitted his complaint on 8 May 2024. In his complaint, Councillor Jeal stated:

"I would like to make a code of conduct complaint against cllr Steve Cunningham because of the attached social media post where her [sic] refers to cllr Green as a "vile disrespectful piece of garbage" and "you vile disrespectful fool". In my view this is a breach of the code of conduct and the Nolan principles in general which advises members to act with respect in their communications with other members.

The attached social media post was made in response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The communication came through at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Greens question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public."

4.26 Councillor Green's post of 1 May 2024 is attached at page 26 of the Schedule of Evidence. Councillor Cunningham's comment is attached at page 25 of the Schedule of Evidence.

4.27 This incident was referred for investigation by the MO.

Complaint 3 - Responding to member of public comment 'You disgusting little turd'

4.28 Complaint 3 also relates to Councillor Green's Facebook post of 1 May 2024 about a Lincsonline article which contained a picture of Councillor Patsy Ellis. (attached at page 26 of the Schedule of Evidence).

4.29 A member of public commented on the post to say:

"You disgusting little turd.

No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!!

Vile man."

4.30 Councillor Cunnington responded to the above comment to say:

"Well said [REDACTED] 👍"

4.31 Councillor Jeal submitted his complaint on 8 May 2024. He stated:

"I would like ot[sic] make a complaint as I believe that the council code of conduct complaint was breached by the attached social media post by cllr Cunnington. In the attached social media post a member of the public describes cllr Green as a "Disgusting little turd" to which cllr Cunnington response "Well said". This in my view is a breach of treating fellow councillors with respect and a breach of several of the Nolan principles. [REDACTED]

The attached social media post was a response to a post by cllr Green questioning why cllr Ellis was removed from the cabinet after months of failure on the waste services portfolio and after she had left the Green Party. The new of Cllr Ellis removal from this post was emailed at 1904 in the evening and it certainly looked to everyone like she had been dismissed from her position. Cllr Greens question was in relation to a newspaper article that was forwarded. His question was entirely legitimate and the response from the councillor in association with his colleagues and supporters is in my view a breach of the code of conduct and unbecoming of the way councillors should engage with each other in public."

4.32 Councillor Cunnington submitted an initial response to the MO. He stated:

"I totally understand Your only doing your job, but I don't recognise the complaints as I don't recognise Ben Green as a Councillor until he takes action to correct his vile behaviour on social media. Ben Green must remove all posts from his social media which have without doubt caused reputational damage and distress. For Graham Jeal to suggest Ben Greens post was a harmless question is outrageous!, he was quite obviously mocking a Person and Cllr whilst they were at a low point. The post is disrespectful and shows a complete lack of compassion for Cllr Ellis and until removed I remain resolute in my stance that I don't recognise Ben Green, therefore I can't recognise any complaints."

4.33 This incident was referred for investigation by the MO.

Councillor Cunnington

4.34 We initially wrote to Councillor Cunnington on 18 June 2024 seeking his availability to speak with us. Councillor Cunnington did not respond.

4.35 We then wrote to him again on 3 July and 17 July 2024. Again, Councillor Cunnington did not respond to us.

- 4.36 The MO wrote to Councillor Cunningham on 1 August 2024 asking him to contact investigators. However, at the time of preparing this report, we have not been contacted by Councillor Cunningham.

5. Councillor Jeal and Councillor Cunningham's Additional Submissions

5.1 No comments were received from Councillor Jeal on the draft version of this report.

5.2 No comments were received from Councillor Cunningham on the draft version of this report.

6. Reasoning as to whether there have been failures to comply with the Code of Conduct

- 6.1 The relevant sections of the Code and of the relevant protocols which fall to be considered are set out in Section 4 above.

Capacity

- 6.2 Section 27(2) of the Localism Act 2011 requires the Authority to adopt a Code of Conduct dealing with the conduct that is expected of members of the Council “when they are acting in that capacity”.
- 6.3 The Council’s Code of Conduct reflects the requirement of Section 27(2) of the Localism Act.
- 6.4 The Council’s Code is expressed to apply whenever a member is acting in their capacity as a Councillor. We therefore first have to consider whether Councillor Cunningham was acting in an official capacity at the time of the alleged incidents.
- 6.5 The Local Government Association Guidance on the Model Code of Conduct (“the LGA Guidance”) states that:

“The Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *You misuse your position as a councillor*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.*

This means it applies when you are carrying out your official duties, for example when you are considering or discussing local authority business, either as a councillor or representing the local authority on an outside body.

...

The code does not, therefore, apply solely when you are in local authority meetings or on local authority premises.

The code applies to all forms of communication and interaction, including:

- *At face-to-face meetings*
- *At online or telephone meetings*
- *In written communication*
- *In verbal communication*
- *In non-verbal communications*
- *In electronic and social media communication, posts, statements, and comments.*

The includes interactions with the public as well as with fellow councillors and local authority officers.”

- 6.6 Councillor Cunningham’s Facebook page is under the name “Cllr Steven Cunningham Earlesfield”. The introduction reads “SKDC Councillor.”

- 6.7 It is clear from the LGA Guidance that this alone does not mean that Councillor Cunningham was acting in his capacity when posting on Facebook:

“Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to local authority business.”

- 6.8 However, Councillor Cunningham is responding to posts/comments which relate to Council business. Councillor Cunningham’s comments also relate to a fellow councillor.
- 6.9 We have therefore concluded that Councillor Cunningham was acting in his official capacity and is therefore subject to the Code of Conduct.

Respect

- 6.10 The definition of Respect in the Code is set out above in paragraph 3.5. We have considered the Local Government Association Guidance (LGA Guidance) and relevant case law below.
- 6.11 When describing ‘Disrespectful Behaviour’ the LGA Guidance states:

“Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.

Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

Disrespectful behaviour can be harmful to both you and to others. It can lower the public’s expectations and confidence in you and your local authority and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a local authority, and ultimately create a toxic culture and has been associated with instances of governance failure.”

- 6.12 The requirement to treat others with respect must be viewed objectively. Account should be taken of the member’s intent and how their behaviour would reasonably be perceived.
- 6.13 In *Boughton, Dartmouth Town Council* (2009) APE 0419 at paragraph 3.3.6, the Tribunal described a failure to treat with respect as follows:

“A failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour including the place, who observed it, the character and relationship of the people involved will all be relevant in assessing whether the behaviour was disrespectful.”

- 6.14 In *Buchanan, Somerset County Council* (2009) APE 0409, in relation to a complaint made by a chief executive, the Tribunal said at paragraph 51:

“In the Tribunal’s view it was desirable that the threshold for a failure to treat another with respect be set at a level that allowed for the minor annoyances and on occasions bad manners which are part of life. During the course of their work people often show a lack of consideration or bad manners but it is not desirable that every such slight should be considered a breach of the Code. To set too low a level might lead to complaints that were about little other than a difference of opinion over the wording of a letter or what amounts to rudeness and for this reason the Tribunal thinks that not every instance of bad manners or insensitive comment should amount to a failure to treat another with respect.”

- 6.15 The key elements of finding a failure to treat others with respect are that the conduct is unreasonable or demeaning and directed by one person against another.

- 6.16 The LGA Guidance states that disrespectful behaviour is *“when unreasonable or demeaning behaviour is directed by one person against or about another.”*

- 6.17 The Oxford dictionary definition of ‘unreasonable’ is:

“beyond the limits of acceptability or fairness”

- 6.18 The Oxford dictionary meaning of ‘demeaning’ is:

“causing someone to lose their dignity and the respect of others.”

Freedom of Speech and the right to enhanced protection in freedom of speech within political comment - Article 10 European Convention on Human Rights

- 6.19 It is important to have regard to the right to freedom of speech as set out in Article 10 of the European Convention on Human Rights (Article 10 ECHR) above.

- 6.20 A number of European court cases have established not only the right to free speech but also an enhanced level afforded to freedom of speech in a political context, and that any interference with that freedom should be carefully scrutinised.

- 6.21 The case of *Jerusalem v Austria* (2003) 37 EHHR 25 held that:

“In this respect the court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to its pre-occupations and defends its interests. Accordingly, interference with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the court.”

- 6.22 The case of *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504, held that:

- *“Article 10 of ECHR protects not only the substance of political comment but the form in which it is conveyed;*
- *a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non-rational and aggressive is to be tolerated;*
- *political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;”*

6.23 In *Sanders v Kingston (No.1) [2005] EWHC 1145 (Admin)* the original tribunal held that, in the Leader of Peterborough Council’s responses to a letter circulated by Carrickfergus Council to other councils in the UK asking for support on a particular issue relating to the personal tragedy of soldiers’ suicides, his comments and other comments made publicly, amounted to personal abuse.

6.24 In summary, the facts were that the leader wrote a response on a letter passed to him by the Chief Executive, in response to a request made by Carrickfergus Council.

6.25 Councillor Sanders wrote a handwritten note on a copy of the letter and returned it to the Carrickfergus Chief Executive as follows:

“Members of the Armed Forces DO get killed be it accident or design — THAT is what they are paid for.”

6.26 He then signed the comment and identified himself as Leader.

6.27 There were further exchanges between the Leader of Carrickfergus Council and Councillor Sanders, the matter was leaked to the press and Councillor Sanders continued to make highly offensive comments. Councillor Sanders also used aggressive and rude language in various conversations with journalists covering the story.

6.28 During the investigation into the subsequent Standards complaint against Councillor Sanders, he claimed that Article 10 was engaged and that he was exercising his right to free speech.

6.29 The Standards Board for England found that Councillor Sanders had breached the Code of Conduct both in his written comments and in his conversations with journalists.

6.30 In Councillor Sanders’ appeal, the judge stated that, on the issue of freedom of speech, there were three questions to answer:

- “1. *Was the Case Tribunal entitled as a matter of fact to conclude that Councillor Sanders’ conduct was in breach of the Code of Conduct ?*
2. *If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10 ?*
3. *If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2) ?”*

- 6.31 The appeal held that, on the first point, the Standards Board were entitled to conclude that Councillor Sanders was in breach. The tone and disrespectful nature of his comments on the letter and subsequently and in interviews with journalists was not what would be expected of a council leader. The court held also that, on the second point, Article 10 was engaged because of the issues of free speech, but Councillor Sanders' comments were not expressions of political opinions that attracted the higher protection afforded by article 10. They were simply expressions of personal anger and abuse.
- 6.32 On the final point, the court considered whether the restrictions imposed on Councillor Sanders were justified under Article 10 (2) – i.e. *necessary in a democratic society for the protection of the rights of others*. The court held that the adoption of a Code of Conduct was required by law and ensured a minimum set of standards in councillors' conduct. Councillor Sanders had signed up to the council's Code of Conduct and, as his actions and words were not held to be expressions of political opinion, the interference in his right to freedom of speech, by the finding of the Standards Board that he was in breach, was justified under Article 10(2).
- 6.33 The three part test was applied in the case of (*Calver*) v *Adjudication Panel for Wales* (2013). This was a judicial review case in which a councillor sought judicial review of the decision of a county council's standards committee which found that comments he made about the community council and its members on the internet failed to comply with paragraphs 2(b) and 4 of the Code of Conduct by, respectively, not treating others with respect, and bringing the community council into disrepute.
- 6.34 The court adopted the three questions identified in *Sanders v Kingston* and found that the committee and the panel were entitled to conclude that the councillor's comments breached the Code of Conduct.
- 6.35 In answering the second and third questions, the court concluded that the panel's decision that the councillor's comments were in breach of the Code of Conduct was a disproportionate interference with his rights under Article 10.
- 6.36 The approach was also adopted in the recent case of *R (on the application of Clive Robinson) v Buckinghamshire Council* (2021), when the court held that a finding by a local authority monitoring officer that a parish councillor had breached a code of conduct by making statements about the motivations, intentions and integrity of the other councillors at a public meeting to discuss green belt development had been an interference with his right to freedom of expression under ECHR Art.10. His statements attracted the enhanced protection afforded to political speech and debate, and the interference was not proportionate to the aim of protecting the reputation of the other councillors.
- 6.37 As each matter is relatively small – i.e. three comments/actions on three individual social media posts, we have set out the respective comments from Councillor Jeal and Councillor Green on the three complaints below and have then set out our reasoning as to whether we find any or all of them to have breached the Code of Conduct. As stated above, except for his initial comments on the complaint, Councillor Cunningham has not spoken to us nor commented further.

Complaint 1 – Liking the comment referring to 'Self-promoting Pratt'

- 6.38 In his statement, Councillor Jeal states:

“To ‘like’ a comment is an endorsement of that comment. It is agreeing with it. When Jeremy Corbyn was Leader of the Labour Party a post went out saying he was a supporter of terrorism. He commissioned a legal firm to go after as many people as possible that liked that post. The case law as I understand it is that liking is endorsement.”

6.39 In his statement, Councillor Green states:

“Since late May, I have been Deputy Leader of the Conservative Group. There is an aspect to which we think about being in opposition and getting our distinctive message out. Being in opposition is inherently tough, you’re not the administration so don’t have responsibility and your quotes aren’t going in official Council press releases. To try and compensate for that disadvantage I have used Facebook to communicate quickly and directly to residents to get our message across.

First and foremost, it is about putting across a counter narrative. There is an expectation from the public that we hold the administration to account. It is important for democracy for rival opinions to be put across. It is something I feel my residents would expect me to do, I don’t believe they would feel I was doing a good job if I did not hold the administration to account.

...

I believe a lot of the people who have commented on my social media posts are supports of many of the Alliance councillors.... By liking comments made by members of the public, I consider Councillor Cunningham endorsed that point of view. Liking a comment is almost equivalent to Councillor Cunningham saying it himself.”

6.40 We have seen two versions of what it means to ‘like’ something on Facebook. One version states:

“What’s the difference between like and love on Facebook?

“Liking” content on Facebook means that you acknowledged what someone said without feeling strongly about the subject...”

6.41 In his Decision Notice, the MO states:

“According to www.facebook.com/help in asking the question “what does it mean to ‘like’ something on Facebook?”, it states: Clicking Like below a post on Facebook is a way to let people know that you enjoy it without leaving a comment... I am aware that there are other interpretations of definitions associated with ‘liking’ comments on social media. My interpretation, from the perspective of a reasonable member of the public, is that ‘liking’ something on Facebook is endorsing or supporting it.”

Complaint 2 – Councillor Cunningham’s comments “What a vile disrespectful piece of garbage you really are Ben !!” and “You vile disrespectful fool !!!”

6.42 In his statement, Councillor Jeal states:

“Councillor Cunningham’s comment has been edited. The original posting was ‘vile disrespectful, odious turd’ which was then toned down. In what world is

that acceptable language? I have just not entered the world where that is acceptable discourse. If it had been said in a corridor it would have been bad enough, but to broadcast it on the internet? I have never yet worked in a world where that is acceptable kind of language. It is as clear a breach of several of the Nolan principles about standards in public office as you will find. There does seem to be a pattern here, Councillor Cunningham generally follows [REDACTED] lead."

6.43 In his statement, Councillor Green states:

"Councillor Cunningham's comment is a personal attack on me, it is not an example of robust political debate. Nor are the comments made by members of the public."

Complaint 3 – Responding to the member of the public's comment 'You disgusting little turd'

6.44 In his statement, Councillor Jeal states:

"That comment [by the member of public] is describing Councillor Green as 'disgusting little turd' and 'vile man'. In responding to the member of public's comment, Councillor Cunningham clearly endorses the comment and agrees with the member of public's view of Councillor Green."

6.45 In his statement, Councillor Green states:

"I believe a lot of the people who have commented on my social media posts are supporters of many of the Alliance councillors. There has been a pile on effect when the councillors have incited their followers to view my Facebook page. The comments being made were very persistent and repetitively negative and, I believe, crossed a line in terms of basic decorum."

6.46 We have considered the three social media posts/comments under the three part test in *Sanders v Kingston*, as follows:

1 Is the conduct a breach of the Code of Conduct?

Complaint 1 – Liking the comment referring to 'self-promoting Pratt'

6.47 We have considered two issues in relation to this complaint: firstly, that Councillor Cunningham did not make the comment himself; secondly that he only 'liked' the comment. The comment accusing Councillor Green of being a "self-promoting pratt" is clearly disrespectful towards Councillor Green by a member of the public, although it is quite a mild insult, and most people use the word 'pratt' in a humorously insulting way.

6.48 In considering the two interpretations of 'liking' a post, we find that it is not relevant whether the meaning is simply to acknowledge, or to show support for, the comment. Most ordinary members of the public would associate a thumbs up 'like' as a positive symbol and so most people would assume that Councillor Cunningham was at least, in favour of the comment. Although a mild insult, it is an insult nevertheless and, in that respect, is disrespectful towards Councillor Green and therefore we find that Councillor Cunningham's 'like' is also disrespectful.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

6.49 As can be seen in *Heesom*, a degree of the *"immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non-rational and aggressive is to be tolerated"*.

6.50 However, *Heesom* goes on to state:

"political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;"

6.51 Applying the guidance set out in *Sanders v Kingston*, it is evident that Councillor Cunningham's comments could be a breach of the Code of Conduct. His comments are directed at Councillor Green. Councillor Cunningham's language is offensive, demeaning and unreasonable.

Complaint 3 – Responding to member of public comment 'You disgusting little turd'

6.52 We note that Councillor Cunningham only 'likes' this comment and comments briefly *"Well said [REDACTED]"*. We also note that the comment was wider than simply this phrase. The rest of the comment states:

"No doubt you will get away with this abuse yet again just like you have gotten away with every report made against you!!! Odd that. Time to look a little closer into who is reviewing these complaints I think!!! Vile man."

6.53 Similarly to complaint 1, we have considered two issues in relation to this complaint: firstly, that Councillor Cunningham did not make the comment himself; secondly that he only 'liked' the comment and made a very brief – albeit supportive - response. The member of the public's comment is clearly disrespectful towards Councillor Green, although most of the comment is directly commenting on Councillor Green's opinion of Councillor Ellis, therefore it is a comment about a political issue. The comment is also from a member of the public, not from Councillor Cunningham himself. Clearly, however, the phrases "disgusting little turd" and "vile man" are disrespectful towards Councillor Green. Whatever the meaning of a 'like', it is also clear that Councillor Cunningham's comment *"Well said [REDACTED]"* is a clear endorsement of the whole comment.

2 Are the findings in themselves or the imposition of a sanction prima facie a breach of Article 10 ?

6.54 Article 10 is clearly engaged, as these matters involve issues of freedom of expression. We have considered whether the posts are political and conclude, for the following reasons, that they are.

Complaint 1 – Liking the comment referring to 'self-promoting Pratt'

6.55 We have stated that the comment, "self-promoting pratt" is mild. We have taken into account the judgement in the case of *"Calver"*, in which Judge Beatson stated:

"it is important to keep in mind their particular facts. Notwithstanding the high importance of freedom of expression and its relative incommensurability with the interests that are invoked in justifying a 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 justifiably to conclude that what was said or done falls within one of the exceptions to 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 interests – freedom of expression and, in the present context, proper standards of conduct by members of local authorities, are not easily commensurable.”

- 6.56 We take this to mean that, the milder the conduct, the less likely it is that there should be a restriction on freedom of speech. In this case, the comment is mildly offensive, and Councillor Cunningham has ‘liked’ it. It is evident that Councillor Cunningham and Councillor Green, in the Administration and Opposition respectively, will have opposing views and may – as in this case – not like each other.

- 6.57 Councillor Green states, in his statement on this issue:

“I believe a lot of the people who have commented on my social media posts are supporters of many of the Alliance councillors. There has been a pile on effect when the councillors have incited their followers to view my Facebook page. The comments being made were very persistent and repetitively negative and, I believe, crossed a line in terms of basic decorum.

By ‘liking’ that comment I consider Councillor Cunningham endorsed that point of view. Liking a comment is almost equivalent to Councillor Cunningham saying it himself.”

- 6.58 However, Councillor Green also states that he uses Facebook as an effective form of publicity as an opposition member, to challenge the Administration:

“Since late May, I have been Deputy Leader of the Conservative Group. There is an aspect to which we think about being in opposition and getting our distinctive message out. Being in opposition is inherently tough, you’re not the administration so don’t have responsibility and your quotes aren’t going in official Council press releases. To try and compensate for that disadvantage I have used Facebook to communicate quickly and directly to residents to get our message across.

First and foremost, it is about putting across a counter narrative. There is an expectation from the public that we hold the administration to account. It is important for democracy for rival opinions to be put across. It is something I feel my residents would expect me to do, I don’t believe they would feel I was doing a good job if I did not hold the administration to account.”

- 6.59 It is clear that Councillor Green understands well the power of social media to challenge the Administration, and we have seen ourselves that he uses sarcastic, amusing and ironic posts to do so. We cannot see that Councillor Green would actually be offended by this post.

- 6.60 Although one might consider this post to be disrespectful, it is so mild as to be hardly offensive and the fact that Councillor Cunningham liked it might be considered a little childish, but we find that it is either not of sufficient weight to breach the Code of Conduct or, even if it is, is well within the realm of protected freedom of expression.

- 6.61 For this reason, we think that Councillor Cunningham’s conduct in ‘liking’ the post is protected by freedom of political expression and a finding of a breach of the relevant

paragraphs of the Code of Conduct (Respect, Bullying and Disrepute), would interfere with that right.

Complaint 2 - Councillor Cunningham's comments "What a vile disrespectful piece of garbage you really are Ben !!" and "You vile disrespectful fool !!!"

- 6.62 We have considered that these comments from Councillor Cunningham are personally abusive. We have considered whether they attract the enhanced protection of political commentary. Although it is a fine balance – because the comment is in the context of Councillor Ellis' departure - we consider that Councillor Cunningham could have expressed his dislike at Councillor Green's Facebook post without using such offensive and belittling language, which reads as simply personally abusive. It is clear that Councillor Cunningham is commenting on a post relating to Council business – Councillor Ellis' departure from her Cabinet role. Councillor Cunningham, like others in his group, is upset by Councillor Green's clear mocking and sarcastic comment about the reasons for Councillor Ellis leaving her role. This is evident from the rest of Councillor Cunningham's comment:

"What do you know about Cllr Ellis and her person[al] or me[n]tal health ?? Have you given any consideration to this? ...I think not !!"

- 6.63 We consider that the remainder of Councillor Cunningham's comment is acceptable political commentary, however we find that the phrase "vile disrespectful piece of garbage" and "vile disrespectful fool" are simply gratuitous abuse. We have again considered further the judgement in *Calver*, in which the judge states:

"freedom of expression includes the right to say things which "right thinking people" consider dangerous or irresponsible or which shock or disturb..... in the context of political speech..... the exclusion of all emotive, non-rational expression from the coverage of the principle would be a mistake. It would often be hard to disentangle such expression from rational discourse because the most opprobrious insult may form part of an otherwise serious criticism of government or of a political figure.....even if it were possible to separate the emotive content from the other parts of a particular publication, it would be wrong to allow its proscription because if speakers could be punished each time they included a colourful, non-rational epithet in their publication or address, much valuable speech would be inhibited....some margin should be allowed for invective and exaggeration, even if that means some apparently worthless comments are as fully protected as a carefully balanced argument."

- 6.64 We have balanced this against the case of *Heesom*, in which, the judge, commenting on various cases about freedom of political expression, states:

"The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others. The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it."

- 6.65 It is a difficult balance in this case, and we understand the strong emotions on both sides caused by the issue of Councillor Ellis leaving her Cabinet role, the link between her role as Cabinet member for Waste and Environment and the issues over recycling in the district. We have also taken into account the fact that the comments are made not in a post itself but in commentary underneath Councillor Green's post. However,

we see no connection between valid criticism of Councillor Green by Councillor Cunningham in the rest of the comment and the use of these two gratuitously personally offensive phrases.

- 6.66 We have therefore concluded that – following the reasoning in *Heesom* and *Calver* – the two specific phrases, “vile disrespectful piece of garbage” and “vile disrespectful fool” are a breach of paragraph 1 (Respect) of the Code of Conduct.

Complaint 3 – Responding to member of public comment ‘You disgusting little turd’

- 6.67 We have considered here that Councillor Cunningham did not make the comment himself but was responding to a comment from a member of the public in saying, “Well said [REDACTED]” and in liking the post. We have also taken into account the fact again that the issue of Councillor Ellis’ departure was clearly emotive for both sides and that Councillor Green’s mocking and sarcastic comment on the press report (which he was entitled to make), prompted quite an emotional backlash from members of her group and her supporters from the public. Councillor Cunningham was clearly very upset about Councillor Green’s post – as stated above.
- 6.68 We have also considered the guidance in the judgement in *Calver*, above, and the fact that the offensive comment was part of a larger comment by the member of the public, on which Councillor Cunningham only commented “Well said..” and liked.
- 6.69 For these reasons – and again following the reasoning in *Heesom* and *Calver* - we find that Councillor Cunningham’s actions in relation to Complaint 3 did not cause him to breach the relevant paragraphs (Respect, bullying and disrepute) of the Council’s Code of Conduct.

3 Is the restriction involved one which was justified by reason of the requirements of Article 10(2)?

Complaint 2 - Councillor Cunningham’s comments “What a vile disrespectful piece of garbage you really are Ben !!” and “You vile disrespectful fool !!!”

- 6.70 As we have found the phrases “vile disrespectful piece of garbage” and “vile disrespectful fool” are simply gratuitous abuse we have considered the third test.
- 6.71 The restriction in this case would be a finding of breach under the Code of Conduct. As we have found that Councillor Cunningham’s comments are simply gratuitous abuse, it does not benefit from the enhanced protection of political freedom of expression. This follows the finding in *Sanders v Kingston* in which the judge held that Councillor Sanders’ comments were not expressions of political opinions that attracted the higher protection afforded by article 10. They were simply expressions of personal anger and abuse. We find similarly in the case of Councillor Cunningham’s comments. His comments are disrespectful under the Code of Conduct. The Code of Conduct is a lawful restriction under the Localism Act 2011 and Councillor Cunningham signed up to abide by that Code of Conduct when he was elected as Councillor. Therefore, our finding of a breach of paragraph 1 (Respect) of the Code of Conduct is justified in the circumstances.

Bullying

6.72 In respect of the finding of breach in relation to Complaint 2, we have also considered whether Councillor Cunningham's comments amount to bullying under the Code of Conduct. We find that this is not the case.

6.73 The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as:

"... offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others."

6.74 The LGA Guidance about bullying states:

"Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complaint and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated."

Examples of bullying include but are not limited to:

- *Verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language*
- *physical or psychological threats or actions towards an individual or their personal property*
- *practical jokes*
- *overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures*
- *inappropriate comments about someone's performance*
- *abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations*
- *ostracising or excluding someone from meetings, communications, work events or socials*
- *sending, distributing, or posting detrimental material about other people, including images, in any medium*
- *smear campaigns*

6.75 We have found that, in respect of the two phrases quoted in Complaint 2, Councillor Cunningham treated Councillor Green with disrespect. However, it is also the case, that, as a councillor, Councillor Green is expected to be more robust in terms of political "rough and tumble" than ordinary members of the public. The case of Heesom is again relevant. Although it is a case discussing freedom of speech in the political context, the commentary on the expectation of politicians is relevant:

"politicians are subject to "wider limits of acceptable criticism" They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens."

- 6.76 As politicians on opposing groups, Councillor Cunnington and Councillor Green are also “equals”. Neither is in a position of control or authority over the other, which is often a situation where bullying arises. It is also the case that, as a member of the Administration, Councillor Cunnington is in a more powerful position than Councillor Green in respect of the running of the Council, setting of policy, relationship with officers etc. As an opposition member, it is Councillor Green’s role to challenge Councillor Cunnington and the Administration. On this occasion, we found that Councillor Cunnington’s two comments were gratuitously offensive and therefore a breach of respect under the Code of Conduct, but that is not the same as bullying.
- 6.77 We find, therefore, that Councillor Cunnington’s use of the phrases, “vile disrespectful piece of garbage” and “vile disrespectful fool” although disrespectful for the reasons stated, do not amount to incidents of bullying under the Code of Conduct.

Disrepute

- 6.78 We have also considered whether, in respect of Complaint 2, Councillor Cunnington’s comments amount to bringing his office or the Council into disrepute.
- 6.79 The definition of Disrepute in the Code is set out above in paragraph 3.5. The LGA Guidance states:

“As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public’s confidence in your ability to discharge your functions as a councillor or your local authority’s ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor’s behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

1. *reducing the public’s confidence in them being able to fulfil their role; or*
2. *adversely affecting the reputation of your authority’s councillors, in being able to fulfil their role.*

Conduct by a councillor which could reasonably be regarded as reducing the public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

- 6.80 In applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member’s actions to have actually diminished the public confidence or harmed the reputation of the authority. The test is whether or not the conduct could ‘reasonably be regarded’ as having these effects. However, the conduct must be sufficient to damage the reputation of the member’s office of the Council, not just the reputation of Councillor Cunnington as an individual.
- 6.81 We must consider an objective view, i.e. whether these two comments by Councillor Cunnington are such that a member of the public, knowing all the relevant facts, would

reasonably think that his actions were so significant that it would impact on the Council's ability to properly carry out its functions.

- 6.82 Since we have only found a breach in relation to Complaint 2 and in relation to the phrases, "vile disrespectful piece of garbage" and "vile disrespectful fool" we have considered whether Councillor Cunningham's use of these phrases bring either his office or that of the Council into disrepute.
- 6.83 As discussed above, the issue relates to one post by Councillor Green commenting on a press report about Councillor Ellis' departure. It is an emotive subject, both for Councillor Green, who is critical of her role as Cabinet member, and for Councillor Cunningham and his colleagues, who are aware of other, more personal reasons for Councillor Ellis' departure. We have not found that the remainder of Councillor Cunningham's comment is in breach of the Code and, although we have found these parts of his comments to be personally abusive, the rest of his comment is justifiable political comment. He is critical of Councillor Green.
- 6.84 In addition, although the phrases are personally abusive and not how the public would expect members to address each other, they are not the most egregious of terms to use. Many readers may be supportive of Councillor Cunningham's strong support for Councillor Ellis.
- 6.85 We therefore do not consider Councillor Cunningham's conduct would adversely affect the reputation of the Council in being able to fulfil its functions and duties. Neither do we consider that Councillor Cunningham's conduct was sufficient to damage his role as a councillor.
- 6.86 We have therefore concluded that Councillor Cunningham's conduct did not cause him to breach paragraph 5 (Disrepute) of the Council's Code of Conduct.

Failure to comply with a Code of Conduct investigation

- 6.87 As Councillor Cunningham has not responded to our correspondence or that of the MO, we have considered whether Councillor Cunningham's conduct is a breach of paragraph 8.2 of the Council's Code of Conduct.
- 6.88 The importance of complying with a Code of Conduct investigation is set out above in paragraph 3.5.
- 6.89 The LGA Guidance states:
- "While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code."*
- 6.90 As can be seen at 4.34 and 4.35, we wrote to Councillor Cunningham on 18 June, 3 July and 17 July 2024 but received no response.
- 6.91 The MO then wrote to Councillor Cunningham on 1 August 2024 asking that he contact us and explaining that failure to co-operate with a Code of Conduct investigation could also be considered a breach of the Code of Conduct.

- 6.92 At the time of writing this report we have had no contact from Councillor Cunningham. We do note that Councillor Cunningham made some initial comments to the MO about these complaints. However, the fact that we have not been able to discuss these issues further with Councillor Cunningham has made it difficult for us to understand his real motivations in making and liking these comments. We have only heard Councillor Jeal's and Councillor Green's detailed comments on the issue and have had to make findings on the complaint based on their comments only.
- 6.93 We have concluded that Councillor Cunningham's lack of co-operation in the investigation is a breach of paragraph 8.2 of the Council's Code of Conduct.

7. Conclusion

- 7.1 Our conclusion is that there has been a failure by Councillor Cunningham to comply with paragraph 1 (Respect) of the Council's Code of Conduct in respect of Complaint 2.
- 7.2 Our conclusion is that there has not been a failure by Councillor Cunningham to comply with paragraphs, 2.1 (Bullying) and 5 (Disrepute) of the Council's Code of Conduct.
- 7.3 We have also concluded that there has been a failure by Councillor Cunningham to comply with paragraph 8.2 of the Council's Code of Conduct in that he has failed to co-operate with the investigation.

5 November 2024

Wilkin Chapman LLP
Investigating Solicitors