



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 Tim Harrison.

29 October 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 Tim Harrison, is a member of South Kesteven District Council ("the Council").
- 1.2 The Complainant, Councillor Graham Jeal, is also a member of the Council.
- 1.3 Councillor Jeal submitted three different complaints against Councillor Harrison alleging that he had not adhered to various of the seven principles of public life (the Nolan principles), in respect of himself (first complaint), [REDACTED]
- 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 Councillor Jeal did not identify which paragraphs of the Code of Conduct he alleged that Councillor Harrison had breached. However, in his three decision notices, the Monitoring Officer identified paragraph 1 (Respect).
- 1.7 We have also considered paragraph 5 (Disrepute).
- 1.8 Following investigation, we have concluded that Councillor Harrison:
  - (a) did fail to treat Councillor Jeal with respect with regard to his comments "What a clown world" and "This comment is beyond that of a clown";
  - (b) [REDACTED]
  - (c) [REDACTED]
  - (d) did not bring his office or the Council into disrepute.

## **2. Councillor Harrison's Official Details**

2.1 Councillor Harrison was first elected to the Council on 9 May 2023. He is a Grantham Independent representing St Wulfram's ward.

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

- Budget – Joint Overview and Scrutiny;
- Community Governance Review Working Group;
- Community Governance Review Working Group – Little Ponton and Sproxton;
- Finance and Economic Overview and Scrutiny;
- Governance and Audit (Chairman);
- Joint Meeting of the Finance & Economic & Environment Overview and Scrutiny Committee;
- Joint Meeting of the Finance and Economic and Culture and Leisure Overview and Scrutiny;
- Planning; and
- UK Shared Prosperity Fund and Rural England Prosperity Fund Board.

2.3 Councillor Harrison attended Code of Conduct training on 11 May 2023 as part of the Induction Programme. He attended Code of Conduct training on 24 July 2024, and, in 2024, he has also completed the following training:

- 17/06/2024 – Equalities, Diversity & Inclusion
- 17/06/2024 – Local Government Finance Explained
- 13/06/2024 – Governance & Audit Committee Annual Refresh
- 10/06/2024 – Planning Committee Annual Refresh Training
- 10/06/2024 – Safeguarding

### **3. Relevant Legislation and Protocols**

- 3.1 Section 27 of the Localism Act 2011 (“the Act”) provides that a relevant authority (which includes town and parish councils) 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 (“the Code”) (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.*

## **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."*

- 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 1988 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 Harrison.
- 4.3 In respect of the first complaint (dated 3 March 2024 and attached at WC 2), having consulted with the two IPs, the MO issued his Decision Notice (dated 21 March 2024 and attached at WC 3). The Decision Notice confirmed the MO's decision to refer the complaint for investigation.
- 4.4 [REDACTED]
- 4.5 [REDACTED]
- 4.6 Councillor Harrison provided the MO with responses to the three complaints, and these are attached at WC 8.
- 4.7 On 28 May 2024, the MO instructed Wilkin Chapman LLP to conduct an investigation into the complaints.
- 4.8 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*

- 4.9 During the investigation we undertook formal interviews with:
  - Councillor Jeal (the Complainant);
  - [REDACTED]
  - Councillor Harrison (the Subject Member)
- 4.10 We obtained signed statements from Councillor Jeal (attached at WC 9) and [REDACTED] (attached at WC 10).
- 4.11 A transcript was prepared from our interview with Councillor Harrison (attached at WC 10).
- 4.12 The transcript was sent to Councillor Harrison for approval on 22 July 2024. As we had not received a response from Councillor Harrison, we re-sent our email on 6 August

2024 asking if he could confirm approval of the transcript as soon as possible. In an email of 6 August 2024 Councillor Harrison told us:

*"I have only had time for a cursory glance over all this, I am too busy. It all seems in order I am confident that you will have transcribed accurately. If there is any issue in the future we can always return to the video."*

4.13 On the same day, we replied to Councillor Harrison to say:

*"Thank you for your email. I appreciate you are very busy but we would like you to sign the transcript. I will send it to you via Docusign (which enables electronic signature and return) so if you could give it a read through that would be very much appreciated."*

4.14 On 19 August 2024 Councillor Harrison told us:

*"I cannot sign this, I haven't had a copy of the video to compare it, plus I really do not have the time to spend going through it. As you are aware I do not get paid for this time and consider it a waste of my valuable time, where I can actually be achieving something for the constituents."*

4.15 The recording was sent to Councillor Harrison on 20 September 2024 via Docusign. Councillor Harrison replied to say:

*"Your conditions are not acceptable to me. I am sorry."*

It should therefore be noted that whilst we have relied on the interview transcript, this has not been approved by Councillor Harrison. Copies of the email correspondence referred to in paragraphs 4.12 – 4.15 are attached at WC 10.

4.16 Copies of the above, together with other relevant documents are annexed to this report.

4.17 We wish to record our thanks for the co-operation and courtesy shown to us by all those whom we have contacted during the investigation.

#### *Factual background*

4.18 Councillor Graham Jeal is a Conservative member of the Council, forming part of the South Kesteven Coalition Group, which is an opposition group of members. He represents the Grantham St Vincents ward. He was first elected on 11 May 2015 and is Leader of the Conservative group.

4.19 Councillor Tim Harrison is a Grantham Independent member of the Council representing Grantham St Wulframs ward. He is a member of the alliance of groups and independent members who have formed an Administration.

#### *Complaint 1*

4.20 On 3 March 2024 Councillor Harrison posted onto his councillor Facebook page, a picture of Councillor Jeal together with a link to an online article and the words "*What a Clown World* ". The post is a share of Councillor Jeal's own post, in which there is a picture of him and a link to an article in LincsOnline, which is headed "*Bins generate as much unhappiness as I have seen*"

4.21 Councillor Harrison commented on his post and stated:

*"It speaks volumes for Mr Jeal's quality of life if having a bin collected late one week is the most unhappiness he has ever seen. Maybe he should get out in the town more, happy to take you around New Street, Greyfriars, Riverside (no it's still not in your ward 🙄 😊 Cllr Steven Cunningham Earlesfield and Red Steps would happily take you around kinoulton court etc. This comment is beyond that of a clown it is downright insulting to those in town that are really struggling. Taxi for Jeal..."*

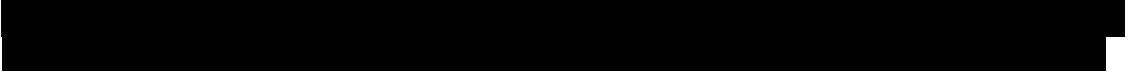
4.22 Councillor Jeal submitted his complaint on 3 March 2024 alleging that Councillor Harrison had called him a 'clown' on social media.

4.23 This incident was referred for investigation by the MO.

4.24



4.25 A member of public commented on Councillor Harrison's post to say, "Hope they [the



4.26



4.27



4.28



4.29		
4.30		
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4.34		

## 5. Councillor Jeal and Councillor Harrison's Additional Submissions

### *Councillor Jeal*

5.1 The following comments were received from Councillor Jeal on the draft version of this report:

*"I have no comments on this report other than a factual correction. You have inferred in writing this up that I write the headlines of the column. Oddly, the newspaper editor always write the headline and doesn't allow the contributor to add the headline. I don't understand why this is and this does sometimes lead to anger when the headline differs from the message in the column. But this needs correcting in this report as there are several instances when you refer to my headline – that is not correct. I never write the headline"*

### *Response to Councillor Jeal's comments*

5.2 We have made clear at paragraph 6.60 that the headline of the article which is the subject of this complaint was not written by Councillor Jeal, but by the Editor. However, it is a quote that Councillor Jeal makes in his article. Although the title of the facebook link from Lincsonline is "Bins generate as much unhappiness as I have seen", the actual title of the Lincs Online article states:

*"Bins controversy has 'generated as much unhappiness in the district as I have ever seen', says leader of the opposition at South Kesteven District Council"*

### *Councillor Harrison*

5.3 The following comments were received from Councillor Harrison on the draft version of this report:

*"Cllr Jeal's complaint was that I called him a clown. That did not happen. Therefore, defacto the complaint ends. Any implied reference is subjective and just an opinion, not fact. To compound this issue Cllr Jeal has stated that he writes colourful columns, a form of entertainment if you will, in 6.42 you state that the Collins definition of clown, states any performer who elicits an amused response. In 6.43 you give the definition that calling someone a clown is "a person who amuses others by ridiculous behaviour" is not saying "bins generate as much unhappiness as I have seen" a ridiculous comment? Or was Cllr Jeal not writing one of his "colourful" columns then? Was this one a deadly serious one?"*

*But even without those definitions the claims of what I am supposed to have said, and what was actually said, are completely different.*

*Two tier policing of Councillors should not be entertained. I made no reference to Cllr Jeal, I referred to his comment.*

*In 3.5 page 6 you state "You should not subject individuals, groups of people or organisations to personal attack, I did not I attacked a comment."*

*Clear double standards."*

and

*"In all, this has been a concerted attack of vexatious complaints. None hold water, No weight was given to the nature of the vexation addressed towards me, no weight was given to the fact that any or all Councillors concerned can block me on social media but choose not to. No weight was given to the fact that the actual complaints are false, I did not at any point call Cllr Jeal a clown. Any claims of fear, bullying or threatening behaviour would, by any reasonable person's opinion, have resulted in such an action. I also highlight yet again the double standards that appear to be applied against myself and the complainants. I would therefore suggest that all these cases are dismissed."*

*Response to Councillor Harrison's comments*

- 5.4 We have reconsidered our findings in light of Councillor Jeal's confirmation that he did not write the headline to the article, "Bins generate as much unhappiness as I have seen". We have also taken into account Councillor Harrison's comments.
- 5.5 In respect of the headline, which prompted Councillor Harrison's "clown" comments, although Councillor Jeal did not write it, the headline is made up of a quote from his article, which is about the level of unhappiness felt by residents about the issue of bin collections.
- 5.6 We have considered Councillor Harrison's comments, in which he states that he did not call Councillor Jeal a clown directly. This is a repeat of his original comment. However, anyone reading his post would consider that his comments were directly aimed at Councillor Jeal. We have nothing further to add to our comments in the report on this point.
- 5.7 We cannot comment on Councillor Harrison's point about Councillor Jeal's comments about [REDACTED]. That matter is not part of our investigation.
- 5.8 Following consideration of all the comments, our findings remain unchanged.

**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 Cunnington 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 Harrison’s Facebook page is under the name “Cllr Tim Harrison”.

6.7 It is clear from the LGA Guidance that this alone does not mean that Councillor Harrison 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 [REDACTED]

6.9 In respect of Complaints 1 [REDACTED] Councillor Harrison is referring to Council business and we have concluded that he 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 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 When considering the issue of respect, 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), set out 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 *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;

6.22 The case of *Jerusalem v Austria* (2003) 37 EHRR 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."*

6.23 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 of a finding of breach of the Code of Conduct 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, Councillor Green and Councillor Harrison on the three complaints below and then have set out our reasoning as to whether we find any or all of them to have breached the Code of Conduct.

#### *Complaint 1 – What a Clown World*

6.38 Councillor Harrison's Facebook post of 2 March 2024 contained the words "What a Clown World ". The post contained a link to an online article and a picture of Councillor Jeal.

6.39 Councillor Harrison commented on his post, describing what Councillor Jeal had said in the online article as “*beyond that of a clown it is downright insulting to those in town that are really struggling...*” Councillor Harrison denies calling Councillor Jeal a clown. In his interview, he stated:

“*...I didn’t call him a clown.*

*How he reads it is on him again isn’t it? It’s not my problem how people interpret what I put, I’m very careful about what I type and how I type it... particularly because of what I learned about social media posts in the ... code of conduct training, so I put specifically, that comment is worse than that of a clown, that is not saying he’s a clown, it’s saying his comment was worse than that of a clown in the fact that he is saying he has never seen people in this town as unhappy as when they didn’t get their bin collected one week. So, I didn’t call him a clown, as his complaint is, and in my eyes his complaint was I called him a clown. I didn’t call him a clown, that should therefore be the end of the complaint..... I cannot be responsible for how people interpret what I put. I put specific comments, how people interpret that, there could be someone who interprets that completely different to how Councillor Jeal interpreted it... I get what you’re saying and I get that maybe he did interpret it that way. The fact that he’s offended by that, then maybe he should take stock of what he actually says. My comment was clearly there to show him that that comment was offensive to people that are living in damp houses, that can’t afford to buy their shopping, can’t afford to turn the heating on and stuff like that, so, Mr Jeal has done numerous of these columns in the paper and I’m the one sitting here in the middle of the town, getting people come up to me and give me grief saying you Councillor’s don’t understand what’s going on ...*

6.40 The online article linked to Councillor Harrison’s post relates to what we know to be a longstanding contentious issue the Council had in respect of refuse collection.

6.41 In his statement, Councillor Jeal states:

*“I write colourful columns and I write them to be interesting, but I understand where the line is. To me, that post crosses the line. I can’t think of any environment where that would be acceptable, outside of a circus venue.*

*I have worked for many companies, and I have owned companies. I would never tolerate somebody referring to another person as a clown either as an employer, employee or business owner.*

*We all say silly things or have a bad day, but this was not a one off, it is a pattern of behaviour that has been normalised. At the minute, there is no line, in that there is swearing in the Chamber and comments being made online. I see a direct line between that kind of behaviour and members of staff being attacked, which has happened twice now in the last month. I think there is a major problem. This is bringing the members, the Council and officers into disrepute and making it difficult to recruit members and officers for the Council.*

6.42 The Collins dictionary definition of ‘clown’ states:

*“1. a comic entertainer, usually grotesquely costumed and made up, appearing in the circus. 2. any performer who elicits an amused response.”*

6.43 In the same google search, there is a question 'what does it mean calling someone a clown?'. The response to this is:

*"a person who amuses others by ridiculous behaviour. synonyms: buffoon, goof, goofball....."*

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6.54 [REDACTED]

6.55 [REDACTED]

6.56 [REDACTED]

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6.58 [REDACTED]

6.59 [REDACTED]

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

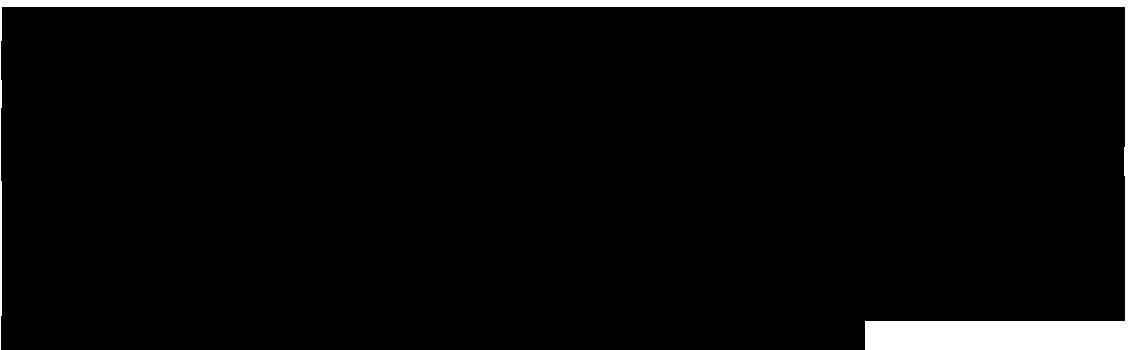
*Complaint 1 – What a Clown World*

6.60 In his post, Councillor Jeal is highlighting the issue of missed bin collections which a lot of residents are concerned about. We are aware that the issue of the waste collection service at the Council had been a major issue for some months. A quick search on the subject brings up numerous local news articles etc., about difficulties in the service. It is clearly an issue that residents are interested in and Councillor Jeal is highlighting that. He states that he writes “*colourful columns and I write them to be interesting*” Councillor Jeal has confirmed in his comments on the draft report that he does not write the headlines for his articles. The full headline on the particular article which is the subject of the complaint was, “*Bins controversy has ‘generated as much*

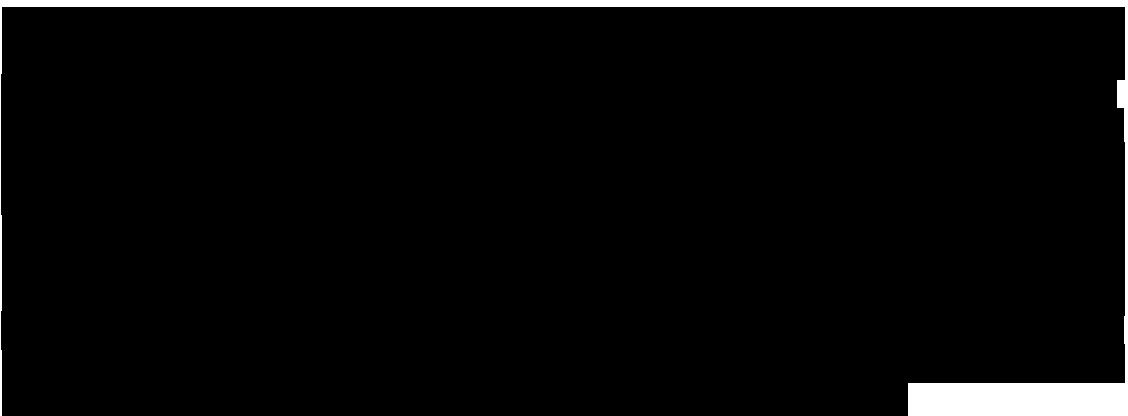
*unhappiness in the district as I have ever seen', says leader of the opposition at South Kesteven District Council. The title of the Lincs Online Facebook link is shorter: "Bins generate as much unhappiness as I have seen".* We have taken into account that the Editor chose this headline, clearly from the content of the article. We consider that, although it might be an exaggeration, the Editor is referencing Councillor Jeal's point in the article about how unhappy residents are about the bin collection service.

6.61 Councillor Harrison is entitled to criticise the post, and we find that most of his comment is acceptable commentary, but it is clearly meant to be sarcastic, to belittle Councillor Jeal and to minimise the importance of his post. The reference to a "clown world" is obviously disrespectful and is not the language one would expect from one councillor towards another. It is evident that Councillor Harrison's post/comment could be a breach of the Code of Conduct.

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

6.64 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 most part, that they are.

*Complaint 1 – What a Clown World*

6.65 We consider that most of Councillor Harrison's comment is acceptable criticism of Councillor Jeal's statement that the bin collection issue is "the most unhappiness" he has ever seen. Councillor Harrison's comment is sarcastic but highlights the difficulties

of people living in certain areas of the district. It is valid criticism which is covered by the enhanced protection afforded to political commentary.

6.66 However, we find that the use of the phrases “what a clown world” and “This comment is beyond that of a clown” is unnecessary personal abuse. Whatever Councillor Harrison’s views on the value that Councillor Jeal puts on the issue of missed bin collections, these are evidently important issues for local residents that Councillor Jeal is highlighting. By comparing Councillor Jeal’s post to that of a clown, he is not only belittling Councillor Jeal but, by extension, the concerns of the public. There is no connection between Councillor Jeal’s comments and the issues he is raising and a clown.

6.67 We have taken into account the guidance in *Heesom* about irrational, offensive etc., comments. We have also considered that councillors are expected to have “thick skin” in dealing with comments and criticism. The case of *Heesom* states:

*“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.”*

6.68 However, we find that these two phrases amount to gratuitous personal abuse, which does not attract the enhanced protection of freedom of political expression. This is because the word “clown” is merely pejorative, has no connection with either Councillor Jeal’s post or, in fact, with the rest of Councillor Harrison’s comments, and could be said also to be aimed at the public who have expressed their views on bin collections to Councillor Jeal.

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

6.81 We have considered the third part of the test in *Sanders v Kingston* in relation only to the two phrases "What a clown world" and "This comment is that of a clown" in Complaint 1.

6.82 We have explained above that we do not think these comments are protected political commentary but are merely abusive towards Councillor Jeal. The restriction in this respect would be a finding of a breach under the Code of Conduct. Considering that Councillor Jeal was highlighting very real problems for members of the public, that the rest of Councillor Harrison's comments fall under valid political commentary and that these phrases serve no purpose other than gratuitous personal abuse, we consider that a finding of a breach of the relevant paragraph of the Code of Conduct (Respect) is appropriate.

*Disrepute*

6.83 The definition of Disrepute in the Code is set out above in paragraph 3.5.

6.84 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." [our emphasis]*

6.85 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 Harrison as an individual.

6.86 What must be considered here is to gauge an objective view. That is, whether the actions of Councillor Harrison were 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.

6.87 Since we have only found a breach in relation to Complaint 1 and in relation to the phrases "What a clown world" and "This comment is beyond that of a clown", we have considered whether Councillor Harrison's conduct in relation to this one issue brings either his office or that of the Council into disrepute.

6.88 The matter relates to one post by Councillor Jeal. The comments are clearly Councillor Harrison's own and, while we have found these parts of his comments to be personally abusive, the rest of his comment is justifiable political comment. He is highlighting other very real difficulties of people in parts of the district, for whom a missed bin collection will not be the most important issue.

6.89 In addition, although the clown analogy is personally abusive and not how the public would expect members to address each other, it is not the most egregious of terms to use. We suspect that most readers would pick up more on his overall message rather than the clown comments.

6.90 We therefore do not consider Councillor Harrison'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 Harrison's conduct was sufficient to damage his role as a councillor.

6.91 We have therefore concluded that Councillor Harrison's conduct did not cause him to breach paragraph 5 (Disrepute) of the Council's Code of Conduct.

## 7. Conclusion

7.1 Our conclusion is that:

*Complaint 1*

7.2 Councillor Harrison has breached paragraph 1 (Respect) of the Code of Conduct only in the use of the words, "What a clown world" and "This comment is beyond that of a clown".

7.3 [REDACTED]

29 October 2024

Wilkin Chapman LLP  
**Investigating Solicitors**