



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.

25 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 Matthew Bailey, is also a member of the Council.
- 1.3 Both Councillor Harrison and Councillor Bailey represent the St Wulfram’s ward.
- 1.4 Councillor Bailey submitted a complaint that Councillor Harrison had breached paragraphs 1.1, Respect and 4.1, Confidentiality of the Council’s Code of Conduct (the Code of Conduct):
- 1.5 He also alleged that Councillor Harrison had breached the following three of the seven Principles in Public Life (the Nolan Principles):
- Selflessness;
  - Honesty;
  - Leadership.
- 1.6 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.
- 1.7 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.”*
- 1.8 We have therefore only considered breaches of paragraphs 1.1 (Respect), 4.1 (Confidentiality) and 5 (Disrepute) of the Code of Conduct. Following investigation, we have concluded that, Councillor Harrison:
- (a) failed to treat Councillor Bailey with respect;
  - (b) disclosed confidential information;
  - (c) brought the Council and his own office as Councillor into disrepute.

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

2.1 Councillor Harrison was first elected to the Council in May 2023. He is a Grantham Independent member representing St Wulfram's ward. He is part of an alliance of members and groups who have formed the Administration.

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 Sproxtton;
- Finance and Economic Overview and Scrutiny;
- Governance and Audit (Chairman);
- Joint Meeting of the Finance & Economic & Environment Overview and Scrutiny;
- Planning; and
- UK Shared Prosperity Fund and Rural England Prosperity Fund Board.

2.3 Councillor Harrison attended Code of Conduct training as part of the Induction Programme on 11 May 2023. 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; and
- 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 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 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.*

#### **4. Confidentiality and access to information**

As a Councillor:

##### **4.1 I do not disclose information:**

- a) given to me in confidence by anyone**
- b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:**
  - i. I have received the consent of a person authorised to give it.**
  - ii. I am required by law to do so.**
  - iii. The disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

#### **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:

*Freedom of Expression and Article 10 of the European Convention on Human Rights 1998*

3.7 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...

- 3.8 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.

#### *Data Protection*

- 3.9 Section 1 of the Data Protection Act 2018 (DPA 2018) states that most processing of personal data is subject to the General Data Protection Regulations 2016 (UK GDPR):

*“1 Overview*

- (1) This Act makes provision about the processing of personal data.  
(2) Most processing of personal data is subject to the UK GDPR.”*

- 3.10 Article 5 of the UK GDPR states:

*“1. Personal data shall be:  
(a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);”*

- 3.11 Article 6 of the UK GDPR states:

*“1. Processing shall be lawful only if and to the extent that at least one of the following applies:  
(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;  
(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;  
(c) processing is necessary for compliance with a legal obligation to which the controller is subject;  
(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;  
(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;  
(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.  
Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.  
The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by domestic law.”*

## 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 IP, shall decide whether or not to investigate a complaint.
- 4.2 On 25 March 2024, having consulted with the two IPs, the MO issued his Decision Notice in respect of the complaint. The Decision Notice confirmed the MO's decision to refer the complaint for investigation. The complaint is attached at WC 2 and the Decision Notice is attached at WC 3.
- 4.3 On 28 May 2024, the MO instructed Wilkin Chapman LLP to conduct an investigation into the complaint.
- 4.4 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*

- 4.5 During the investigation we undertook formal interviews with:
  - Councillor Bailey (the Complainant); and
  - Councillor Harrison (the Subject Member)
- 4.6 We obtained a signed statement from Councillor Bailey (attached at WC 4).
- 4.7 A transcript of our interview with Councillor Harrison was prepared (attached at WC 5).
- 4.8 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."*
- 4.9 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."*
- 4.10 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."*

- 4.11 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.”*

- 4.12 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 4.8 – 4.12 are attached at WC 5a.
- 4.13 Copies of the above, together with other relevant documents are annexed to this report.
- 4.14 We wish to record our thanks for the co-operation and courtesy shown to us by all those whom we contacted during the investigation.

#### *Factual background*

- 4.15 Councillor Matthew Bailey is a Conservative member of the Council, forming part of the South Kesteven Coalition Group, which is in opposition. He represents the Grantham St Wulfram’s ward. He was first elected on 9 November 2023.
- 4.16 Councillor Tim Harrison is a Grantham Independent member of the Council also representing Grantham St Wulfram’s ward. He is part of an alliance of members and groups who have formed the Administration.
- 4.17 Councillor Bailey alleged that Councillor Harrison posted a screenshot of a private text message conversation between Councillor Bailey and Councillor Harrison, accompanied by the words ‘oh dear 🙄’ in a comment made on a Facebook post.
- 4.18 Councillor Harrison posted a text exchange between himself and Councillor Bailey on 10 March 2024 in the comments section of a post by Councillor Ben Green on Councillor Green’s page. The original post is a video of Councillor Ben Green on the verge of the A1 <https://fb.watch/sPO7yo8jUE/>. Councillor Green was highlighting the financial reserve of £60,000 which had been voted through into the budget for 2024/25 at the Council meeting on 29 February 2024. The amendment to the budget had been proposed by a member of the opposition groups and seconded by Councillor Green.
- 4.19 A summary of the text exchange is as follows:

Councillor Harrison... *“The nonsense with litter veterans etc shows there is a core that don’t want to get anything done, just time waste and cause buggermnt. Yesterday you voted to amend the budget and promptly voted against the budget.”*

Councillor Bailey... *“Well I don’t think we ever thought we would win that amendment 😏 I voted against the budget purely based on the £447K for Leisure SK as I brought up in the Scrutiny session, we should have a 200K reserve allocated.”*

Councillor Harrison... *“So I am right it was just for buggermnt”*

Councillor Bailey... *“I think an opposition should always table sensible amendments. In this case it was more as a signal of intent from the Council.”*

Councillor Harrison... *"It wasn't sensible as my recent email shows It was again ill researched and lied about. And as you just stated you didn't expect to win, as evidenced by the fact you then went on to vote against your own amendment 🤔..."*

- 4.20 Councillor Harrison confirmed in interview that he also shared Councillor Green's post to his own facebook page. In his post sharing the exchange on 10 March 2024, Councillor Harrison stated:

*"Well at least you get comedic value. What he neglects to tell you is that they voted for this amendment then voted against the budget they were amending. The chuckle brothers still live."*

- 4.21 Councillor Harrison's post is attached at WC 6.

- 4.22 Councillor Bailey submitted a complaint against Councillor Harrison on 11 March 2024:

*"Sorry to add to the growing list, but I would like to submit a Code of Conduct complaint about my Ward colleague Councillor Harrison.*

*I believe he has breached both 1.1 (Respect) and 4.1 (Confidentiality).*

*Councillor Harrison posted a screenshot of a private and confidential text message conversation between he and I onto Facebook at 20:42 on the 10<sup>th</sup> March with a disrespectful comment of "Oh dear". This post was in response to a post by Cllr Green around the A1. By doing so Cllr Harrison has shown a lack of respect to his fellow ward Councillor and breached the trust established between ward colleagues. The text messages were a confidential conversation between 2 Ward Councillors from the 1<sup>st</sup> March. Cllr Harrison has sought to intimidate me through the use of character assassination, sharing a confidential message on a public platform.*

*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 3 of the 7 Nolan principles. Namely:*

- **Selflessness:** Holders of public office should act solely in terms of the public interest.  
*Cllr Harrison has used a private conversation in a post against Cllr Green which is not in the public interest. The snapshot of the conversation misleads the full context of the messages, misleading the public. The comments were my own view of the full council vote which has no relevancy to the post by Cllr Green.*
- **Honesty:** Holders of public office should be truthful.  
*The snapshot of the conversation misleads the full context of the messages, so not being truthful.*
- **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.
- *Cllr Harrison holds a leadership position within the council as chair of a committee. He brings himself and the council into*

*disrepute with this post as it demonstrates a lack of control and displays a breakdown of trust between Councillors.”*

4.23 This incident was referred for investigation by the MO.

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

### *Councillor Bailey*

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

*"Thank you for the comprehensive investigation and report.*

*Some comments on the report:*

*6.28 Should read as "Councillor Bailey's privacy"*

*6.77 It was a text message that I sent not an email (WC7)*

*4.6 Can I query that if Cllr Harrison is not co-operating and not prepared to sign off his statement, that this is reflected in the report and is potentially bringing himself as a Councillor into disrepute further?*

*6.61-6.73 Given that the opinion is that Cllr Harrison breached GDPR, will the MO be reporting this to the ICO? Given that Cllr Harrison still has not removed the post.*

*6.32 There is no evidence to what Cllr Harrison has alleged in the report and in his transcript. The facts of which the MO can confirm:*

*Councillor Bailey has only made 1 Code of Conduct complaint.*

*Councillor Bailey has made 0 formal complaints against any Officers of the Council.*

*Councillor Bailey has received 0 allegations of Code of Conduct complaints against himself.*

*Councillor Bailey has received 0 formal complaints from any Officer of the Council.*

[REDACTED]

[REDACTED]

*Thanks,*

*Matt"*

- 5.2 Councillor Bailey made an additional comment about information in the transcript of Councillor Harrison's interview which he felt should be redacted. Both the comment and the information in the transcript relate to confidential information about a third party. We have redacted the relevant section in the transcript and Councillor Bailey's comments above.

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

- 5.3 Amendments have been made at paragraphs 6.28 and 6.79 (previously 6.77) in line with Councillor Bailey's comments.

- 5.4 Councillor Bailey wished to amend his statement slightly. A revised statement has now been signed by Councillor Bailey and which is attached at WC 4 within the Schedule of Evidence.
- 5.5 The report has been amended at paragraphs 4.6 – 4.12 in relation to Councillor Harrison’s interview transcript and his approval thereof. Councillor Harrison did agree to an interview and gave us his views on this complaint. Although we are disappointed that he did not approve the transcript, we would not say that he has failed to cooperate with the investigation.
- 5.6 Councillor Bailey’s comments in relation to paragraphs 6.61 – 6.73 is something he should raise directly with the ICO if he wishes.
- 5.7 We note Councillor Bailey’s comments in relation to paragraph 6.32 and have amended that paragraph below.

#### *Councillor Harrison*

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

*“Good afternoon, as regards this email. I find your investigation comes up short, is biased and consequently holds no water. You make assumptions and contradict yourselves. The message I went public with were messages to me on my personal phone. Absolutely nothing to do with the council. The public wastage of funds has gone on long enough. I do not accept your findings and will no longer be engaging on this particular issue I am far too busy doing what I was elected to do.*

*Kind regards*

*Tim Harrison”*

#### *Response to Councillor Harrison’s comments and further comments received*

- 5.9 We note Councillor Harrison’s comments. The fact that he received the text message on his personal phone does not affect the finding that he was acting in his capacity as a councillor in replying to the text and sharing them on social media, with the comment “Oh dear” and the emoji. We have found that he was using a personal message from Councillor Bailey to make a political point. This is in line with the LGA Guidance which about capacity which we have discussed in detail below.
- 5.10 We issued the final report on 10 October 2024. Shortly after, on the same day we received a request from Councillor Harrison to provide further comments. The MO agreed and we received the further comments below on 20 October 2024 on the draft version of this report. For ease of reference, we have set out his comments in separate paragraphs and our response under each paragraph:

*“Can you please clarify that with the findings you make on this issue that you are in fact instructing Councillors to go against the Nolan Principles. Specifically, integrity, accountability, openness, and honesty. Cllr Bailey informed me, on my personal phone that the Conservatives were just wasting time and had no intention of winning the vote and then voted against the vote they won. The public have a right to know about this. Are you saying that Cllr Bailey an admit something then expect me to stand quiet?”*

## Response

We have explained fully in this report why we find that Councillor Harrison's actions in respect of a personal and private text exchange with Councillor Bailey, were a breach of the Code of Conduct. We have explained the balance between Councillor Harrison's right to freedom of expression against Councillor Bailey's right to privacy under his data protection rights. There is no conflict in our findings with the Nolan Principles.

*"In 6.24 there are contradictions to what have been levied against me already, that liking a post is irrelevant. Can you also please explain where it says I should apologise to a Councillor for following the Nolan principles and highlighting exactly what he said?"*

## Response

We are unclear on Councillor Harrison's point here. We have not said that liking a post is irrelevant. Neither have we said that he should apologise. Paragraph 6.24 is a quote of Councillor Bailey's comments to us, about how he "liked" a post which then seemed to prompt Councillor Harrison to post the private text exchange. Councillor Bailey states that he asked Councillor Harrison to apologise and remove the post. We go on to explain that, in our interview with Councillor Harrison, we asked him why, when asked by Councillor Bailey, he refused to take the post down.

*"6.29 Please explain exactly how the term 'oh dear' is in anyway offensive, beyond the limits of acceptability or disrespectful."*

## Response

We have been quite clear in this paragraph and elsewhere in this report about why we view Councillor Harrison's comment "Oh dear" appears as sarcastic. We have nothing further to add.

*"6.60 I have never denied it as Cllr Bailey has never asked. How can I deny it without being asked?"*

## Response

This is Councillor Harrison's view, we have nothing to add.

*"6.62 You cannot use the Council's data protection position on this case as the message was sent to me on my personal phone, I assume it was from Cllr Bailey's personal phone too."*

## Response

We have explained how both the Council is a data controller and Councillor Harrison is also a data controller, when acting in his role as Councillor. The ICO is clear that work data, when collected and accessed on personal phones, can constitute personal data for the purposes of the data protection legislation. In addition, we established that Councillor Harrison was acting in his capacity as Councillor in posting the text exchange.

*"6.66 I did not need Cllr Bailey's permission to publish the personal text he sent to me as he had never asked for privacy. We are all aware of the need to put*

*on confidential emails texts or messages that it is confidential when required. Is Cllr Bailey claiming he doesn't?"*

## **Response**

We have explained in this report in detail the reasons why Councillor Harrison was acting in his capacity as a councillor and the issues of consent and legitimate interest under the data protection legislation. For the reasons stated in this report, we disagree that Councillor Harrison did not require Councillor Bailey's consent to publish the text exchange.

*"6.70 Your findings are wrong, my intents, as sated numerous times were to highlight the disingenuous actions of his party an ideal that is covered by the Nolan Principles as previously stated. My disclosure was most definitely in the public interest, it was made in good faith, there were no requirements. The information disclosed was true, I made no personal gain, there was no unnecessary detail included, there is a distinct ossification of the opposition continuing to do this sort of thing. Can you clarify that information given to me on my personal phone comes under the jurisdiction of the Council?"*

## **Response**

We have explained this in detail in this report about Councillor Harrison acting in his capacity as a councillor, even using his personal phone, and the issues relating to data protection. We have nothing further to add.

*"6.78 You state that LGA guidance 'suggests' (as a courtesy) so it is not a demand? Your suggestion that it is clear, that my intention was to humiliate Cllr Bailey is merely your opinion, and is totally false."*

## **Response**

We have quoted the whole section of the guidance provided by the LGA about Confidentiality, which should be read in its entirety to understand our findings. The use of the phrase "as a courtesy" is our phrase, which, on reflection is wrong. We meant that Councillor Harrison should have confirmed with Councillor Bailey before posting the text exchange that he was going to do that and sought Councillor Bailey's permission. This is in line with the LGA Guidance, which states:

***"Does confidentiality under the Code apply only to information which is classified as confidential or exempt by law?"***

*No. The Code goes wider than matters simply considered in a formal council setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:*

- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);*
- it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);*

- *disclosure of it would be detrimental to the party wishing to keep it confidential.*

*For example, you may be told confidential information by a resident in the course of your duties. That is why the Code is written broadly to cover information classed as confidential which you may come across in your duties.*

*You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.”*

We have therefore amended paragraph 6.78 below to amend the phrase “as a courtesy” and we have also amended it to show that it is our belief that Councillor Harrison’s intention was to humiliate Councillor Bailey.

*“6.79 You state yourselves that at least AFTER the point after Cllr Bailey had sent a message to me (thereby hinting that until that point it was not private), Once Cllr Bailey did this, I have shared nothing he has sent to me. There was no point removing that post as it had been posted for around 48 hours by then. However, I still question the ability for legal to, in effect, try gag me about something the public have every right to know. Can you please clarify to me that you are directing me to go against those Nolan principles?”*

## **Response**

We wished to explain that, even if Councillor Harrison did not think the text exchange was confidential at first, then at least at the point when Councillor Bailey contacted him, he could have removed the post. We have explained our rationale for this in detail in this report. We find that Councillor Harrison’s comment that “there was no point removing the post as it had been posted for around 48 hours by then” to be disingenuous. He could have removed the post when requested to do so by Councillor Bailey. Not only that, but he replied to Councillor Bailey as quoted in our report, saying:

*“...For clarification you brought yourself into this by liking Cllr Green’s post when you knew it to be false. I have asked you and numerous other Conservatives to put a halt to this inane nonsense, you all choose not to and rather to perpetuate it. I stated when I first stood that unless restricted by law that I reserved the right to repeat what ever anyone said to me and in turn they can do the same with me. I have repeatedly made it clear that if anyone doesn’t want this then they should not engage with me.”*

*6.84 Did any of the public make such a complaint? Did anyone from the Councils Operations complain about not being able to carry out its functions? Please show the objective view and how you arrived at it.”*

## **Response**

We were asked to investigate this complaint by Councillor Bailey on the evidence available. There does not have to be a complaint by a member of the public or council staff to make it a valid complaint under the Code of Conduct.

*“6.85 Another assumption, please show me where Cllr Bailey had deemed this or any message before this as private or confidential? That is merely your*

*opinion again, not fact. You are also misrepresenting my opinions, its not open season at all, but Councillors should be responsible for their comments, you are holding me responsible for mine by saying he should not be responsible for his."*

## **Response**

This report is of course, our considered opinion, after considering carefully all the evidence available and applying the applicable law and guidance. We will inevitably use phrases to express our views. The phrase "open season" is a known idiom and encapsulates what Councillor Harrison himself said in his email to Councillor Bailey:

*".....I stated when I first stood that unless restricted by law that I reserved the right to repeat what ever anyone said to me and in turn they can do the same with me. I have repeatedly made it clear that if anyone doesn't want this then they should not engage with me."*

*"6.87 You counter what you say in 6.84. You claim no ordinary reader would assume a private message exchange. You also counter here what Cllr Bailey said in 6.39 that he had received a strong backlash from his colleagues as he shouldn't be speaking with me as they were in "strong opposition" with me...it specifically says...me."*

## **Response**

There is no conflict between paragraphs 6.84 and 6.87. The issue in paragraph 6.84 is that what would an ordinary member of the public think, **knowing all the facts**. Of course, an ordinary member of the public would not know all the facts simply from reading the text exchange; this is made clear in paragraph 6.87. However, in considering the issue of Disrepute, we must consider what the public would think if they did know the full facts. We have amended paragraph 6.87 to make this clearer. We are not clear on the reference to paragraph 6.39 and have nothing further to add.

*"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 [information not relevant to this investigation has been removed] 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**

We have carefully and thoroughly investigated this complaint against the applicable law and guidance. We have nothing further to add and, except for some small amendments to various paragraphs as explained above, there is no change to our findings.

## *Conclusion*

5.11 We have fully considered the comments received but 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 3 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 Green was acting in an official capacity at the time of the alleged incidents.

6.5 There is no guidance in either the Localism Act 2011 or the Code of Conduct about the meaning of capacity, but it is obvious that the Code of Conduct is not meant to cover councillors’ private lives. 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 Green's Facebook page is under the name "Cllr Ben Green". The introduction reads "South Kesteven District Councillor for Isaac Newton Ward, Colsterworth, South Witham, Great Ponton, Skillington and Surrounding Villages. Here to Serve You."
- 6.7 Councillor Harrison's post of his text exchange with Councillor Bailey is clearly marked as "Cllr Harrison" from his Facebook account and is a screenshot with "MB" at the top of it. Councillor Harrison posts the exchange as a comment under Councillor Green's video about littering on the A1 and an amendment to the Council's 2024/25 budget, voted through at the Council meeting on 29 February 2024. The amendment was to provide a £60,000 reserve in the budget specifically to deal with cleaning of litter on the A1.
- 6.8 It is clear from the LGA Guidance that Councillor Harrison's comment 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."*
- 6.9 However, as the incident involves Councillor Harrison commenting on Councillor Green's official councillor page on a post about a Council matter, it would be clear to any reasonable member of the public that Councillor Harrison was acting in his capacity as councillor when posting.
- 6.10 The matter is compounded by Councillor Harrison sharing the post and his comment to his own page – although that is not part of Councillor Bailey's specific complaint.
- 6.11 Our view is therefore that Councillor Harrison was acting in an official capacity and was subject to the Code of Conduct.

### *Respect*

- 6.12 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.
- 6.13 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."*

6.14 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.

6.15 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."*

6.16 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.

6.17 In his interview, Councillor Harrison told us that he regularly posts and comments on Facebook in respect of Council business. He explained that he has a 'large Facebook following'.

6.18 In terms of the background leading to Councillor Bailey's complaint, Councillor Harrison told us that he has made clear to councillors that he will share anything that he thinks necessary. In explaining the intention behind his post, he stated:

*"...the post explains exactly what the Conservatives were doing, they were wasting time... they had voted on a policy that they didn't think they were going to win, got it, they actually won the policy and got the result they wanted and then voted against the actual budget that they'd just voted to get the adjustment on, so all I'm doing is showing the public exactly what the Conservative party were doing."*

6.19 Councillor Bailey clearly thought the text exchange was a private exchange. In his statement, he states:

*"We spoke personally and openly over text message, so I thought we had a relationship where we spoke in confidence. It is very different to discussing things in the Chamber... I have a lot of messages between myself and Councillor Harrison, but I am not prepared to post them online to score a cheap political point."*

*Councillor Harrison has never said to me that anything I say to him is 'open season'. He had never denied that he was aware our conversations via text messages were private and confidential. When you look at the screenshot he shared, there are emojis in it and I think anybody looking at it realised it was my private view on things that were happening. This was a general, private*

*conversation I was having with Councillor Harrison, sharing my personal view outside of politics.*

- 6.20 However, Councillor Harrison has a different view on what is and is not a private conversation. In interview, he stated:

*“... there was nothing wrong with that, he didn’t ask for any privacy on that ... I’ve made clear to every Councillor here if you want something that you don’t want to go any further then don’t involve me in the conversation please. I reserve the right to take everything forward and he’s admitted that to you that I’ve said that to him so I can’t see that there is any complaint, a break of privacy or anything else, before he sent me that message he didn’t say I’m going to send you something in confidence or anything to those sort of words so I honestly cannot see any issue with this at all.”*

- 6.21 Councillor Bailey has provided us with a screenshot of his message asking Councillor Harrison not to post their private correspondence on Facebook. This is timed at 21:33 on Sunday 10 March 2024 (attached at WC 7). In his statement, he states:

*“I am not on Facebook all the time, and when I am, it is a private individual rather than a councillor. I never expected to get a message from somebody saying that Councillor Harrison had posted a screenshot of my messages on Facebook. My first reaction was to send a text message to Councillor Harrison, which said:*

*“Hi Tim, please don’t post our private correspondence on Facebook.”*

- 6.22 However, Councillor Harrison’s comment was posted at 20:42 on Sunday 10 March 2024, clearly prior to Councillor Bailey asking him not to post their private correspondence on Facebook. This appears to confirm Councillor Bailey’s comment that he wasn’t aware of the post until someone pointed it out to him and it had already appeared.

- 6.23 Councillor Bailey has provided us with a screenshot of Councillor Harrison’s reply to his request to Councillor Harrison not to post their conversation on Facebook (attached at WC 7). Councillor Harrison replied to Councillor Bailey:

*“Good morning Matt. ██████████ told me this morning that you had asked him to approach me. For reference, please do not assume that because ██████████ and I are lifelong friends that he holds any sway over what I say or do. I am my own man and anything I do or say, I stand by. For clarification you brought yourself into this by liking Cllr Green’s post when you knew it to be false. I have asked you and numerous other Conservatives to put a halt to this inane nonsense, you all choose not to and rather to perpetuate it. I stated when I first stood that unless restricted by law that I reserved the right to repeat what ever anyone said to me and in turn they can do the same with me. I have repeatedly made it clear that if anyone doesn’t want this then they should not engage with me. I was elected on transparency and transparency is what they will get.”*

- 6.24 On the issue of privacy, in his statement, Councillor Bailey states:

*“I don’t believe that liking a Facebook post as a private individual justifies posting a private text conversation for the world to see and then refusing to take it down and apologise.....The outcome I wanted was for Councillor Harrison to*

*remove the post and apologise. The Monitoring Officer approached Councillor Harrison and asked him to do that, but he wasn't prepared to...*

- 6.25 We asked Councillor Harrison in interview about his reply to Councillor Bailey's request to him to remove the comment. Councillor Harrison replied:

*"Because ... the post explains exactly what the Conservatives were doing, they were wasting time, they were, they had voted on a policy that they didn't think they were going to win, got it, they actually won the policy and got the result they wanted and then voted against the actual budget that they'd just voted to get the adjustment on, so all I'm doing is showing the public exactly what the Conservative party were doing"*

- 6.26 It is clear that Councillor Harrison refused to remove the offending text exchange.

- 6.27 Councillor Bailey felt very let down by the incident, anxious about where the text might end up and concerned about the impact on his working relationship with Councillor Harrison as a ward councillor for the same ward. In his statement, he states:

*"Ultimately, we had been building a relationship and now I feel Councillor Harrison has basically stabbed me in the back by posting the screenshot. I thought I was sharing my personal views with him privately. I now feel that whatever I say to him, might then be posted on social media or in the Grantham Journal.*

...

*We have to have respect and confidence in confidentiality, particularly between ward councillors. This has caused a massive problem for my relationship with Councillor Harrison in representing the ward. I have to work with him but now feel like I can't talk to him about anything because, in his words, if he's not breaking the law he can do whatever he wants. Councillor Harrison has not broken the law so in his mind he can continue to breach the Code. It seems as if he doesn't care about the consequences. I don't know how our relationship moves forward if he has the attitude that the Code of Conduct does not apply to him."*

- 6.28 Councillor Harrison seemed unconcerned by any potential breach of Councillor Bailey's privacy. He explained in his interview:

*"...he didn't ask for any privacy on that, as I said in my email I've made it clear to every Councillor here if you want something that you don't want to go any further then don't involve me in the conversation please..."*

*...I can't see that there is any complaint ... a break of privacy or anything else, he didn't before he sent me that message he didn't say I'm going to send you something in confidence or anything to those sort of words so I honestly cannot see any issue with this at all*

...

*There were a few complaints in that one that came to me from Graham Watts one was that I had published a private conversation which wasn't private, and the other one was that I had been disrespectful with the comment oh dear so I said I don't understand how oh dear can be disrespectful"*

- 6.29 In interview we suggested to Councillor Harrison that the comment “Oh dear” appears, at the very least, to be sarcastic. Councillor Harrison replied:

*“It may be sarcastic ... I’m not saying it wasn’t even meant as sarcasm, it may well have been meant as sarcasm because you’re publishing an argument there that you are telling a falsehood or at least a untruth ...and I’ve highlighted the problem and just gone oh dear*

*... the whole party .....didn’t even think they were going to with the amendment so it’s a case of oh dear, you know, I’ve not got a Conservative party member telling me that they didn’t expect to win the amendments, then they won it, and they were shouting about it even though they then had voted against the very budget that they’d got the amendments to, its crazy.”*

- 6.30 When asked if he understood that Councillor Bailey may be upset by his posting the screenshot and comment, Councillor Harrison told us:

*“That’s his problem, I’m sorry you stand as a Councillor and you make these decisions, if somebody highlights what you’ve done ...I’ve not stated a falsehood there, I’ve shown exactly what they’ve done. If it upsets him at being shown to do exactly what he’s done, I haven’t lied about him, I haven’t made out he’s done something he hasn’t done, I’ve shown something exactly what he’s done, if that upsets him that’s on him I’m afraid.”*

- 6.31 When asked how he would feel if the boot were on the other foot and somebody posted what he felt was a private conversation, Councillor Harrison told us:

*“I would think well I shouldn’t have said that in the first place.”*

- 6.32 In terms of the ongoing relationship between the two councillors, Councillor Harrison told us:

*“I don’t work with Councillor Bailey, I work on my own.*

*If Councillor Bailey picks something up, today for instance, we’ve had something that’s been sent to both of us, I was in chairing the G&A so he’s responded first so I’ve just contacted the person and said I see Councillor Bailey’s picked this up, I’ll leave it in his hands. If you should have any issues and it doesn’t go any further bring it back to me.*

*So that’s how it works at the moment, I do my thing, he does his thing and*

*...the issue with Councillor Bailey is he is now upsetting lots and lots of people fully across the Council. ... he’s blotting his copy book, so I’m just gonna let him carry on and do his sweet thing, I don’t have to engage with him, I can do my thing and if he picks an issue up in the Ward before me I’ll let him run with it, that’s fine. It doesn’t need the two of us to chase up an issue...”*

- 6.33 We note that, in his comments on the draft report, Councillor Bailey states, in response to paragraph 6.32:

*“There is no evidence to what Cllr Harrison has alleged in the report and in his transcript. The facts of which the MO can confirm:*

- *Councillor Bailey has only made 1 Code of Conduct complaint.*
- *Councillor Bailey has made 0 formal complaints against any Officers of the Council.*
- *Councillor Bailey has received 0 allegations of Code of Conduct complaints against himself.*
- *Councillor Bailey has received 0 formal complaints from any Officer of the Council”*

6.34 It is clear that Councillor Harrison’s conduct has influenced Councillor Bailey’s willingness to speak to or interact with Councillor Harrison because he now expects any interaction could be made public. He is anxious about what he says to Councillor Harrison. The two of them are ward councillors for St Wulfram’s ward. Their constituents will expect them to be able to work together for the benefit of the ward, despite their being members of different political groups. The incident has had an impact on that working relationship and that is bound to have an impact on their constituents.

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

6.36 The Oxford dictionary definition of ‘unreasonable’ is:

*“beyond the limits of acceptability or fairness”*

6.37 The Oxford dictionary meaning of ‘demeaning’ is:

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

6.38 Councillor Harrison stated to the MO that he couldn’t understand why the comment “Oh dear” was disrespectful. We find that this is disingenuous of him, because it is clearly a sarcastic comment at the very least, and he has stated that the purpose of publishing the exchange was to, in effect, “show Councillor Bailey up” in front of his colleagues, for ostensibly criticising his own colleagues’ actions on the amendment and admitting that he did not think the amendment would be voted through.

6.39 Councillor Bailey experienced a backlash from his colleagues as a direct result of the post. He states:

*“...It caused friction within my own group as they asked why I was speaking to Councillor Harrison since we’re ‘in strong opposition’ with him. I had to try and be professional and that is what I thought I was doing.”*

6.40 From what Councillor Harrison has told us, his post and comment were clearly intended to cause Councillor Bailey to lose the respect of others. We therefore consider that, prima facie, his conduct was disrespectful.

6.41 We have considered the arguments about freedom of speech which are relevant to issues of respect.

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

6.42 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.

6.43 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.”*

6.44 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.

6.45 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.

6.46 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.”*

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

6.48 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.

6.49 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.

6.50 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.

6.51 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) ?*

6.52 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.

6.53 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).

6.54 In Councillor Harrison's case, we have considered the three part test set out in *Sanders v Kingston*, above, as follows:

*1 – Is there a breach of the Code of Conduct?*

6.55 Councillor Harrison's Facebook comment was posted, in Councillor Harrison's words, for the purpose of "*showing the public exactly what the Conservative party were doing*".

6.56 In interview, Councillor Harrison agreed that his comment "*may well have been meant as sarcasm... I've highlighted the problem and just gone oh dear*". He refused to remove the post, and we have found that his intention was to humiliate Councillor Bailey.

6.57 Applying the guidance set out in *Sanders v Kingston*, it is evident that Councillor Harrison's comments could be a breach of the Code of Conduct. His comment is sarcastic and is directed at Councillor Bailey. We have therefore found that prima facie, Councillor Harrison's posting of the exchange and his use of the facepalm emoji and the comment "Oh dear" amount to disrespect.

*2 - If it were a breach of the Code, could the finding in itself or the imposition of a sanction prima facie be a breach of Article 10?*

6.58 Article 10 is engaged and therefore we have considered whether the finding is a breach of Councillor Harrison's Article 10 rights. It is clear that political commentary is protected under freedom of expression. The case of *Heesom v Public Service Ombudsman of Wales [2014] EWHC 1504 (Admin)* states:

*"The [European Convention on Human Rights 1950 art.10](#) protected not only the substance of what was said, but also the form in which it was conveyed. Provocative, shocking, emotive, irrational expression from politicians or those commenting on politics, which would be unacceptable in other contexts, would be tolerated in a political setting."*

6.59 The posting of the text exchange is clearly intended to be political. However, the use of the facepalm emoji and the comment “Oh dear” is meant to humiliate Councillor Bailey and show him up. If this were originally a public exchange, we would have found that it all fell well within the bounds of political commentary and therefore protected by freedom of political expression. However, we have also considered the issue of privacy, and that Councillor Bailey expected that this was a private text exchange.

6.60 In his statement, Councillor Bailey told us:

*“Councillor Harrison has never said to me that anything I say to him is ‘open season’. He has never denied that he was aware our conversations via text messages were private and confidential...This was a general, private conversation I was having with Councillor Harrison, sharing my personal view outside of politics.*

6.61 Councillor Harrison told us:

*“...he didn’t ask for any privacy ... I’ve made clear to every Councillor here if you want something that you don’t want to go any further then don’t involve me in the conversation please. I reserve the right to take everything forward ... I can’t see that there is any complaint...”*

6.62 South Kesteven Council is a data controller, to which the DPA 2018 and the UK GDPR apply. In his own right, when interacting with his constituents and with other councillors, Councillor Harrison is also a data controller. The Local Government Association has provided guidance on this point in its document, *The General Data Protection Regulation (GDPR) Guidance for members*:

*“Under the Data Protection Act 1998 it has been a requirement for you as a councillor to be registered as a Data Controller with the Information Commissioners Office (ICO) and pay a fee. (Some Councils have paid the fees for their Councillors).*

*This is because as a councillor 1. You make use of personal data provided by your council in the same way as an officer of the council might make use of data. Council officers and its suppliers will be subject to the controls of GDPR in the same way they are under DPA 1998. You will be covered by your Councils notification and fee. 2. You use personal case work material in your own right when you collect or are given personal data through communications with your residents. 3. You access, collect and deploy personal data through your political campaigning and activation – with or without the use of political agents or political parties if you represent one.*

*As a Data Controller you will need to comply with the new GDPR and Data Protection Act 2018 unless as a Councillor you do not make any use whatsoever of a computer/tablet/smart phone etc in connection with your Councillor activities of any sort.”*

6.63 The Information Commissioner’s Office (ICO) comments on the balance between freedom of speech and data privacy in its Draft Data Protection and Journalism Code of Practice, in which it states:

*“You must balance freedom of expression with other fundamental rights in a democratic society, such as data protection, which is part of the broader right to privacy.”*

- 6.64 As set out above, under the DPA 2018, the first data principle is that *“Personal information shall be processed lawfully, fairly and in a transparent manner”*.
- 6.65 Councillor Harrison must have a lawful basis for processing Councillor Bailey's personal information – i.e. his private text which identifies him and his views. Under Article 6 of the UK GDPR, there are 6 lawful bases for processing information, including consent and legitimate interest. The ICO has confirmed that the two lawful bases which councils will mostly rely on for processing personal data is consent or legitimate interests.
- 6.66 Councillor Harrison did not have Councillor Bailey's consent to publish what he knew was a private text exchange. He may rely on the argument of legitimate interest, i.e., that it was in the public interest for him to publicise Councillor Bailey's private views. He states that he has made clear to all councillors that he will not keep anything private if he does not wish to – *“I reserve the right to take everything forward”*.
- 6.67 However, we ask how this sits with the obligation that Councillor Harrison has towards his constituents which includes both working with Councillor Bailey for the benefit of his Ward and dealing with local residents' concerns and casework. We ask, if he cannot be trusted to keep a private exchange private, how can his residents trust him to deal with their private concerns?
- 6.68 There are also times when councillors from across the Council and of different political views, must be able to have private conversations with each other for the benefit of the Council and the district. We ask, how can councillors feel comfortable doing that if this is Councillor Harrison's approach? Even giving Councillor Harrison the benefit of the doubt that he might not have known that it was a private exchange originally, once Councillor Bailey made that clear to him and asked him to take the post down, he should have done that. We understand from reading the Monitoring Officer's Decision Notice about the complaint, that the post remains on Facebook.
- 6.69 In addition, the impact of the matter is that Councillor Bailey has lost all trust in Councillor Harrison and the two of them cannot work together properly for the benefit of their constituents.
- 6.70 We find therefore, that Councillor Harrison intended to belittle and abuse Councillor Bailey by posting his private text exchange with a sarcastic emoji and comment. Even if the post and comment could be said to be political commentary , it is impacted by Article 10(2) ECHR – in that there is a conflict with, and restriction under, the data protection legislation which protects Councillor Bailey's data privacy rights.

3 - *If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?*

6.71 Article 10(2) states that:

*“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...”*

6.72 Councillor Harrison's right to freedom of expression is limited in this case because we find that he has breached Councillor Bailey's right to data privacy.

- 6.73 We believe that Councillor Harrison’s comments were intended to abuse and belittle Councillor Bailey, by taking comments that he made in a private text exchange and making them public with a sarcastic comment. The issue was compounded by Councillor Harrison’s refusal to remove the post when asked to do so, the fact that Councillor Harrison re-shared the post to his own Facebook page and that the post remains live.
- 6.74 For these reasons, we therefore find that, although the comment could be said to be political commentary, a finding of a breach of the Code of Conduct is justified under data protection law for the protection of Councillor Bailey’s rights to privacy.
- 6.75 We have therefore concluded that Councillor Harrison’s conduct is in breach of paragraph 1 (Respect) of the Code of Conduct.

#### *Confidentiality*

- 6.76 The definition of Confidentiality in the Code is set out above in paragraph 3.5.
- 6.77 The LGA Guidance states:

#### ***“Confidential information***

*While local authority business is by law generally open and local authorities should always operate as transparently as possible, there will be times – for example, when discussing a named individual, confidential HR matters or commercially sensitive information – when it is appropriate for local authority business to be kept confidential or treated as exempt information.*

*In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:*

- *you have the consent of the person authorised to give it*
- *you are required by law to do so*
- *the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person*
- *the disclosure is in the public interest*

#### ***Disclosure in the public interest***

*Disclosure “in the public interest” is only [sic] justified in limited circumstances, when all the following four requirements are met:*

- *the disclosure must be reasonable*
  - *the disclosure must be in the public interest*
  - *the disclosure must be made in good faith*
  - *the disclosure must be made in compliance with any reasonable requirements of your authority*
1. *The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:*

*Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.*

*Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.*

*The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.*

*The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.*

*The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.*

*The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.*

*Whether the disclosure involves your local authority failing in a duty of confidence owed to another person.*

2. *The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:*

- *a criminal offence is committed.*
- *your local authority or some other person fails to comply with any legal obligation to which they are subject.*
- *a miscarriage of justice occurs.*
- *the health or safety of any individual is in danger.*
- *the environment is likely to be damaged.*
- *that information tending to show any matter falling within the above is deliberately concealed.*

3. *The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party-political advantage or to settle a score with a political opponent.*

4. *The fourth requirement, that you comply with the reasonable requirements of your local authority, means that before making the disclosure you must comply with your local authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.*

*In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing*

*up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors, which may justify its disclosure despite these potential consequences. If in doubt you should always seek advice from the monitoring officer. Always keep a note of the reason for your decision.*

*In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.*

...

***Does confidentiality under the Code apply only to information which is classified as confidential or exempt by law?***

*No. The Code goes wider than matters simply considered in a formal council setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:*

- *it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);*
- *it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);*
- *disclosure of it would be detrimental to the party wishing to keep it confidential.*

*For example, you may be told confidential information by a resident in the course of your duties. That is why the Code is written broadly to cover information classed as confidential which you may come across in your duties.*

*You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential."*

6.78 As the LGA Guidance suggests, Councillor Harrison should have clarified with Councillor Bailey whether the information was confidential, informed him of his intention to post the text exchange on social media and sought Councillor Bailey's consent. It is clear that Councillor Harrison did not do this because, we believe, his intention was to humiliate Councillor Bailey through sharing the text exchange.

6.79 As set out above, we have considered the impact of Councillor Harrison's actions on Councillor Bailey's data privacy rights and we find that, at least at the point when Councillor Bailey sent a text message to him to request that he should not share the

text exchange, Councillor Harrison knew that the exchange was private. In terms of that privacy, we find that the information was confidential to Councillor Bailey.

- 6.80 We have therefore concluded that Councillor Harrison has breached paragraph 4 (Confidentiality) of the Code of Conduct.

### *Disrepute*

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

- 6.82 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.*

- 6.83 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.
- 6.84 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.
- 6.85 We have found that Councillor Harrison posted a private text exchange with Councillor Bailey onto a public facebook page, intending to embarrass and humiliate Councillor Bailey. In effect, Councillor Harrison confirms that he believes it is “open season” when it comes to any conversations/exchanges between him and any councillor and that no-one should expect him to keep any exchange private.
- 6.86 We have commented already on Councillor Harrison’s approach to private information and that it impacts, not only his relationship with Councillor Bailey as his fellow ward

member, but also potentially local residents who, if they knew, might not trust him to keep their information private; and also other councillors in their ability to have private conversations with him. When asked to remove the post, Councillor Harrison refused to do so, and went on to re-share the post onto his own page, therefore compounding his disregard for the rules on data privacy.

6.87 It is true that, to the ordinary reader, there is nothing immediately in this post to show that it is a private exchange. However, we must consider the objective view as set out in 6.84 above, i.e. what would the ordinary member of the public think if they did know all the facts. We have concerns about what the post shows about Councillor Harrison's ability to deal with matters confidentially. In addition, the post and Councillor Harrison's actions have directly impacted on Councillor Bailey's willingness to work with him as they should be able to as two members in the same ward. We consider that such conflict between councillors who represent the same ward could reduce the public's confidence in Councillor Harrison being able to fulfil his role as a councillor. This could have a serious impact on the service provided to their residents.

6.88 We also find that Councillor Harrison's admitted willingness to share publicly anything that any councillor says to him impacts both on his reputation as a councillor and potentially also on the ability of the council to deal lawfully with data privacy. In making this decision, we were particularly struck by Councillor Harrison's absolute refusal to take on board the issues of data protection, which is summed up in his comment:

*"I've made clear to every Councillor here if you want something that you don't want to go any further then don't involve me in the conversation please. I reserve the right to take everything forward,"*

6.89 For these reasons, we find that Councillor Harrison brought his own office as Councillor into disrepute and also the Council into disrepute.

6.90 We have concluded that Councillor Harrison did breach paragraph 5 (Disrepute) of the Council's Code of Conduct.

## **7. Conclusion**

- 7.1 Our conclusion is that Councillor Harrison has failed to comply with paragraphs 1 (Respect), 4 (Confidentiality) and 5 (Disrepute) of the Council's Code of Conduct.

25 October 2024

Wilkin Chapman LLP  
**Investigating Solicitors**