

Melvin Kenyon and Associates

Maldon District Council

**Complaints by Cllrs C Morris, RH Siddall and W Stamp against Cllrs
JE Anderson, RG Boyce, BE Harker and S White**

**Report prepared for Andrew Roby Smith, Acting Monitoring Officer
Maldon District Council – 9th July 2020**

Investigation Report – Maldon District Council

Complaints by Cllrs C Morris, RH Siddall and W Stamp (Complainants) against Cllrs JE Anderson, RG Boyce, BE Harker and S White (Subject Members)

1. EXECUTIVE SUMMARY

1.1 BACKGROUND

On 11th February 2020, Simon Quelch, Monitoring Officer at Maldon District Council (“MDC” and “the Council”), appointed Melvin Kenyon to investigate complaints about the conduct of MDC Councillors, Bob Boyce, Bryan Harker and Sue White and Southminster Parish Councillor, John Anderson.

1.2 FOCUS OF THE INVESTIGATION

After the meeting of the Council’s Joint Standards Committee (“JSC”) on Thursday 30th January 2020, Mr Quelch received three formal complaints about the conduct of councillors who had taken part in the JSC hearing (“the Hearing”) on that day. The complaints were:

- (i) A complaint made by telephone to Mr Quelch on 30th January which was turned into a written complaint and confirmed as correct on 6th February by District Councillor Chrisy Morris about the conduct of Cllrs John Anderson, Bob Boyce, Bryan Harker, and Sue White,
- (ii) a complaint sent by email on 31st January by District Councillor Richard Siddall about the conduct of Cllr Sue White, and
- (iii) a complaint sent by email on 1st February by District Councillor Wendy Stamp about the conduct of Cllr Sue White.

All the complaints alleged predetermination on the part of the councillors named which, as a result, brought the Council into disrepute.

1.3 CONCLUSIONS AND RECOMMENDATIONS

Based on the balance of probabilities and the evidence that I have available to me:

- I conclude that Councillors Sue White and Bryan Harker demonstrated predetermination in the Joint Standards Committee on 30th January 2020. Having already satisfied myself that they were acting in an official capacity when they sat on the JSC I must, therefore, conclude that they breached clause 3.5 (e) of the Maldon District Council Code of Conduct in that they conducted themselves in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute.
- I further conclude that Councillor Bob Boyce did not demonstrate predetermination in the Joint Standards Committee on 30th January 2020. However, having already satisfied myself that he was acting in an official capacity when he sat on the JSC I conclude that, by using his vote as he did, he breached clause 3.5 (e) of the Maldon District Council Code of Conduct in that he conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute.
- I further conclude that John Anderson was not covered by a Code of Conduct when attending the Joint Standards Committee meeting so the complaint against him is not upheld.

On the basis of the conclusions above I make the following recommendations:

1. That the breaches of the Code of Conduct by Cllrs White, Boyce and Harker be referred to the Monitoring Officer for further action.

I make the following further recommendations:

2. That all future decisions of the Joint Standards Committee be set out, with a thorough explanation for the decision taken, in a Decision Notice published within ten days of the hearing itself.
3. That careful consideration be given to the membership of the Joint Standards Committee and to the skills and attributes of members when membership is “shuffled” after the AGM, which was scheduled for May 2020. In particular, consideration should be given to ensuring that, in future, all decisions of the JSC are beyond reproach and above party politics and that the JSC concentrates its efforts on “promoting and maintaining high standards of conduct by Members”.
4. That suitable training is arranged for members of the JSC as soon as possible after the membership is “shuffled” to ensure that they thoroughly understand their duties and responsibilities.
5. That, in all future deliberations of the JSC, the views of the Independent Person are sought, and properly taken into account, before the JSC makes its decision on an allegation that it has decided to investigate as set out in Localism Act Section 28, subsection 7 (a). Where the JSC disagrees with the views expressed by the Independent Person, this must be noted explicitly, with reasons, in the Decision Notice.
6. I note in passing that under the Localism Act 2011 the Joint Standards Committee is to be treated as an ‘ordinary committee’ of the local authority as defined in the Local Government Act 1972. This means that only members of the District Council can vote on matters at the meeting as there are no voting rights granted to co-opted members by statute. Although parish representatives can be co-opted onto a committee they do not have voting rights. The JSC therefore acted unlawfully by allowing parish council representatives to vote on the matter.
7. I also note in passing that, while an ‘ordinary committee’ is required to reflect the overall political control of the authority, the law also allows that to be waived by a vote of the council. MDC may wish to consider that as a way of restoring trust in the JSC’s decision-making processes.

2 OFFICIAL DETAILS OF SUBJECT MEMBERS

Robert (Bob) G Boyce MBE said that he had been a Conservative councillor for more than 36 years. He represents the Althorne Ward. He has been (and is) Chairman of the Council, has twice been Council Leader, and is currently Vice-Chairman of the JSC. He has been a member of the JSC since May 2019 but has served as a member in the past. He was for 20 years a member of the Valuation Tribunal of England and has sat on the Licensing Sub-Committee of the Council for some years. The MDC website indicates that, amongst many other committee appointments and appointments to outside bodies, he is a member of the South Eastern Area Planning Committee.

Bryan Harker said that he had been a Conservative councillor for 26 years. He represents the Heybridge East Ward. He was Chair of the Central Area Planning Committee on three occasions for a total of six or seven years and therefore “knows all about planning and predetermination”. He is not a standing member of the JSC and was a substitute on the day. This was the first time he had served on the JSC. He had also served on the Licensing Committee. The MDC website indicates that, amongst many other committee appointments and appointments to outside bodies, he is a member of the District Planning Committee.

Sue White said that she had been a Conservative councillor for 10 or 11 years. She represents the Purleigh Ward. She has never been a standing member of the JSC and was a substitute member on the day. The 30th January meeting was her first meeting as a member of the JSC. The MDC website indicates that, amongst many other committee appointments and appointments to outside bodies, she is a member of the North Western Area Planning Committee and the District Planning Committee.

John Anderson told me that he is Chair of Southminster Parish Council having been a Parish Councillor for around ten years. Until recently he was a member of EALC (Essex Association of Local Councils). He is also Chair of the Dengie Hundred Group of Parish Councils. He has never been a District Councillor. He has been a member of the JSC for around three years, as a parish representative.

By law, after their election in May 2019, all Maldon District Councillors were required to sign a Declaration of Acceptance of Office. In May 2019 they were given training on the Maldon District Council Code of Conduct (“the Code”), which is available to them on the Council website.

Cllr Anderson is not a member of MDC and is not covered by the Code as he is not a co-opted member in terms of the Localism Act (see below). As a parish councillor he is, however, bound by the Southminster Parish Council Code of Conduct. In practice, while the Southminster Code of Conduct and the (Maldon District Council) Code are identical the investigation into Cllr Anderson therefore looked at whether he breached the Southminster Code.

However, under the Localism Act the Southminster Code only applies to Cllr Anderson when he is acting as a member of Southminster Parish Council or as a representative of Southminster Parish Council. Very late in the Investigation I concluded after careful consideration and discussion with the Monitoring Officer and a third-party expert in the Localism Act that neither of those circumstances applied. He had been appointed through EALC to represent the Maldon parishes *as a whole* and not simply Southminster Parish Council. Therefore, under the narrow definitions within the Localism Act, he was not covered by either the Maldon or the Southminster Code at the time. Nevertheless, as a necessary component of the Investigation, I had looked into Cllr

Anderson's actions on the day as part of the wider picture and that aspect of the Investigation is reflected in the Report. I have not, however, commented on whether Cllr Anderson was predetermined because I am not required to do so.

[In commenting on the Report whilst it was in draft Cllr Harker observed that I had not included in the Report background information, such as that above, about interviewees. It is not my normal practice to do that. However, I confirm that all those interviewed were invited to tell me about their own "political" background and that I was aware of that background whilst writing the report and preparing my conclusions and recommendations].

3 RELEVANT LEGISLATION AND PROTOCOLS

3.1 LOCALISM ACT 2011

Under section 27(1) of the Localism Act 2011 (the Act) a "relevant authority" (which includes a local council) is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".

Under section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity" (see 3.3 below). S27(4) defines a "co-opted member" for these purposes as a person who is not a member of the authority but who

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

This definition is relevant when discussing Cllr Anderson's participation at the JSC below.

Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so-called "Nolan principles".

The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which endangers public confidence in democracy.

Under section 28(6) of the Act, principal authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision for the appointment by the principal authority of at least one "independent person" 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. In the case of Maldon District Council, the Independent Person is Norman Hodson.

Section 28(11) of the Act provides that if a member or 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.

3.2 MALDON DISTRICT COUNCIL'S CODE OF CONDUCT

Under Section 27(2) of the Localism Act, the Council adopted the Maldon District Council Local Code of Conduct ("the Code") which deals with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity as required by Section 27 of the Localism Act. As I have said above however, the Act defines a co-opted member for the purposes of the Code as a member who is co-opted and has voting rights on a committee under statute – this is relevant to the case of Cllr Anderson.

The Code was originally adopted on 5th July 2012 and a revised version was adopted on 7th April 2016.

The Code is intended to be consistent with the seven principles of public life – the Nolan principles – and these are included in the Code at clause 3.1. The Code applies whenever a person is acting in their capacity as a member or co-opted member of the Council.

In particular, the Code adopted by the Council includes the general obligation that "you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority [Maldon District Council] into disrepute" (clause 3.5 (e)).

3.3 WHEN DOES THE CODE OF CONDUCT APPLY?

Under section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*". This section of the Act narrowed the remit of the previous national Code of Conduct with the result that the Council (as with other councils) can only investigate matters where a member was acting as a councillor or as a representative of the Council at the time of the alleged incident.

Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person's membership of their authority and specifically their role as a councillor is needed.

Some activities clearly have no link with the Council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the Council. Councillors must actually be engaged on Council business or commenting on Council business or acting as a representative of the Authority to be deemed "within capacity".

4 CONTEXT

Maldon is a local government district in Essex. Its council is based in the town of Maldon which lies on the tidal River Chelmer by the Blackwater estuary in Essex, around 50 miles north east of London. The district has a population of around 65,000. The Council has 31 councillors of whom 17 are members of the Conservative Group. The remainder are Independents who, with a single exception, are aligned with the Independent Group. The Conservatives have a small majority in the Council.

5 THE COMPLAINTS

On Thursday 30th January, a few hours after the JSC meeting had ended, Cllr Chrisy Morris, the Non-Aligned District Councillor representing Heybridge West, telephoned Simon Quelch, the

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Council's Monitoring Officer. He made a formal complaint against Cllrs Bob Boyce, Bryan Harker and Sue White and Parish Councillor John Anderson alleging that they had made a predetermined decision in the JSC and thus brought the Council into disrepute.

The following afternoon, Friday 31st January, Cllr Richard Siddall, a Conservative councillor representing Great Totham, sent an email to Simon Quelch and said:

"I would like to complain about the behaviour during the joint standards committee meeting on Thursday 30th January 2020.

In particular I would like to raise a formal complaint and would like the matter investigat[ed] into the behaviour of Councillor Sue White. I understand that she read from a prewritten document and this was used as the foundation of the decision made by the committee. It seems clear to me, that based on this, she was predetermined and again from my understanding there was very little discussion of the evidence presented by the Monitoring Officer during the committee meeting.

I look forward to hearing from you and whether this matter warrants further investigation".

As part of a longer email to Simon Quelch on the morning of Saturday 1st February, Cllr Wendy Stamp, an Independent councillor for Burnham-on-Crouch North, wrote:

"It is my deep concern that Cllr White's behaviour demonstrated bias and predetermination. We all saw that the motion was read from a prepared printed piece of paper – which could not have been typed and printed whilst the meeting was taking place. A councillor may have a predisposed view on matters of policy which is accepted but this appeared to be predetermined to many councillors attending this meeting. I don't need to go through the whole guidance notes widely available stating the risks of predestination [sic] not only at JR and other legal challenge but the councils reputation it is obvious that breaches of the code of conduct have taken place and I urge you deal with this as a matter of urgency as the decision of this committee and its decision makers are questionable"

Norman Hodson, the Independent Person, told me that, whenever the Council's Monitoring Officer receives a complaint it is his understanding that he always shares it with him. The Monitoring Officer takes his view into account and decides whether it will be investigated or not. This is done in accordance with the Council's Code of Conduct Complaints Process – Written Summary, clause 5. In the case of these three complaints he did speak to Mr Hodson about the complaints. He had recommended that they be investigated.

As a result, on 11th February (and again in accordance with the Council's Code of Conduct Complaints Process – Written Summary, clause 5), I was commissioned by the Monitoring Officer formally to investigate the Complaints in accordance with the Code ("the Investigation"). I began the Investigation in early March.

[When commenting on the draft report, Cllr Sue White said that "two of the councillors who complained are very good friends with Cllr Siddall, yet this is also not mentioned in the report". I am content to incorporate that comment in this final report].

6 APPROACH

6.1 DOCUMENTS AND OTHER SOURCES

The source materials I reviewed during the Investigation are listed in Annex 1 below.

I relied heavily on a Council audio recording of the JSC meeting of 30th January and a Council video recording of the meeting (without sound). I also reviewed an audio/video clip of the final minutes of the meeting which is available on YouTube and which appears to have been uploaded by Cllr Chrisy Morris. I arranged for a transcript to be made (using the Council's audio recording) of that part of the meeting that considered the Standards Complaints against Cllr Adrian Fluker. This is included as Annex 2.

6.2 EVIDENCE GATHERING

I gathered evidence at interview from the following people (listed in the order in which I interviewed them):

- (i) Norman Hodson (Independent Person);
- (ii) District Cllr Wendy Stamp (Complainant);
- (iii) District Cllr Stephen Nunn;
- (iv) District Cllr Karl Jarvis;
- (v) Emma Holmes (Deputy Monitoring Officer);
- (vi) District Cllr Richard Siddall (Complainant);
- (vii) Parish Councillor Peter Stilts;
- (viii) District Cllr Chrisy Morris (Complainant);
- (ix) Parish Cllr John Anderson (Subject Member);
- (x) District Cllr Bryan Harker (Subject Member);
- (xi) District Cllr and Chairman of Council Bob Boyce (Subject Member);
- (xii) District Cllr Sue White (Subject Member);
- (xiii) Simon Quelch (Monitoring Officer)

Additionally, I interviewed a District Councillor who subsequently withdrew their evidence; I received a formal written statement provided confidentially by another District Councillor; and I invited another District Councillor to talk to me but received no reply.

[In commenting on the Report whilst it was in draft Cllr Harker questioned the appropriateness of accepting confidential evidence from an anonymous District Councillor. To be clear, that District Councillor is not anonymous. Their identity is known to me. Their evidence is therefore confidential but not anonymous.]

My formal interviews took place between 25th March and 5th May 2020. Because of the COVID-19 pandemic I interviewed all but Simon Quelch by phone. I spoke with Simon using the Zoom video communications platform and he agreed to the discussion being recorded so that it could be summarised more easily afterwards. That recording has now been destroyed in line with data protection principles.

A note was produced as a summary of each of the interviews and all those interviewed were given the opportunity to comment on the note whilst it was still in draft. Several interviewees made comments and those comments were reflected in the final versions of the notes, which (with one

exception) were then formally agreed by interviewees. **Section 8 of the Report contains details drawn mainly from the interviews.**

In spite of several reminders by myself and Mr Quelch, at time of writing, Cllr Chrisy Morris, had not responded to my requests to sign his summary note off. Cllr Morris is one of the Complainants. I informed him by email on 6th May that the draft summary note would be used as evidence, that I considered it to be agreed, and that I would note that in the Report. He did not reply to that email.

At interview, and as part of a formal preamble, all interviewees (with the exception of Norman Hodson, Simon Quelch and Emma Holmes, who already understood the process) signed off their statements in the knowledge that, "If the case is considered at a hearing, the summary of what you say may be submitted as evidence and you may be called as a witness".

Once transcripts and summaries had been signed-off by interviewees they became the formal record of each interview and any written notes taken at interview were destroyed in accordance with best practice.

6.3 THE REPORT

After I had completed the preliminary draft of my report it was peer-reviewed – for quality and to ensure consistency of approach with similar cases across the country. Following those reviews, I shared the draft report with the Monitoring Officer, who commissioned the report, so that he could ensure that, on its face, it was indicative of a satisfactory investigation and was of the required standard.

I then shared the draft report, in confidence, with the Complainants and the Subject Members and asked for comments within five working days. I received responses to the draft from the three Complainants, who made no comment on the factual aspects of the draft. I received a detailed response from Cllr Harker and some comments, followed by a detailed response, from Cllr White (who was given extra time to comment). Cllr Anderson made a single comment on the report. Cllr Boyce did not acknowledge receipt of the draft and made no comment to me. I made some changes to the text in response to points made by those who responded.

I now submit this report containing my final conclusions and recommendations to the Acting Monitoring Officer who also reviewed the report whilst it was in draft and confirmed that he was satisfied with its quality and had no issues with it.

7 FINDINGS - CONTEXT OF JSC MEETING

7.1 INTRODUCTION

Before I examine the breaches of the Code that were alleged to have taken place at the JSC on 30th January I first provide information on the three complaints made against the Council Leader, Cllr Adrian Fluker, that the JSC was considering at that meeting. **It is important to note that my report does not strive to rerun the investigation of those complaints** which have been determined. However, it necessarily presents opinions about those complaints drawn from my interviews during the Investigation.

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The investigation of the three complaints, which was carried out by the Deputy Monitoring Officer, Emma Holmes, was reported upon in the “Report of Monitoring Officer to Standards Committee 30 January 2020: Standards Complaint – Councillor Adrian Fluker” (“the Report”).

Ms Holmes presented the Report at the JSC meeting on 30th January. Its content provides context which I regard as critical to an examination of the alleged breaches arising out of that meeting. The key points from the Report are set out below alongside information drawn from my own interviews.

7.2 STANDARDS COMPLAINTS AGAINST CLLR FLUKER

The Report describes how, after a Full Council Meeting on Thursday 12th September 2019, the Monitoring Officer received three complaints about the conduct of Cllr Adrian Fluker at the Council meeting. Complaints were submitted by Cllrs Mayes, Morris, and Stamp. The allegations were considered as two complaints.

Complaint 1 alleged that Cllr Fluker carried out a “throat-cut” gesture aimed at Cllrs Siddall and Fleming who had just abstained in a vote. Cllr Stamp alleged that in doing this Cllr Fluker had breached the Code by bullying persons and conducting himself in a manner which could be regarded as bringing his office or the Authority into disrepute. Cllr Mayes, who had initially thought the gesture was directed at her, said that Cllr Fluker had breached the Code in the same way as was alleged by Cllr Stamp. Cllr Morris, who had not directly witnessed the gesture, alleged that any gesture of that kind was threatening, especially when directed at a female. Cllr Fluker had breached the Code, he said, by using bullying and disrespectful behaviour.

Complaint 2, raised by Cllr Morris, alleged that Cllr Fluker had breached the Code by directing a homophobic comment towards Cllr Siddall when he said “Hello Sailor” to him.

7.3 FINDING AND CONCLUSIONS OF THE DEPUTY MONITORING OFFICER

In the “Analysis of Evidence” (p3 of the Report) Ms Holmes wrote that:

“It is not disputed that both incidents occurred at the meeting of 12 September. The first instance took place in a public meeting the second in a private confidential sitting of the Council. Both incidents took place in the view of Officers and Members of the Council.

1. The complainants have all stated their view that the hand gesture was of a threatening nature and was not appropriate for the leader of the Council to be making. Councillor Fluker has stated that this was not the intention of the gesture, but that it was an indication to the Councillors to cease talking.
2. Councillor Siddall has confirmed that he found the comment offensive and was disgusted by it.

In relation to the 1st complaint all complainants found the gesture offensive.

In relation to the 2nd complaint Cllr Siddall has stated quite clearly that he found the incident offensive”.

In “Treating Others with Respect” (p4 of the Report) Ms Holmes stated that:

“All members must treat others with respect.

My view is that the incident on 12th September was disrespectful on 2 counts. One count was made in public and the second was of a homophobic nature both of which should be taken seriously [my use of bold type throughout].

1. The gesture has been interpreted as offensive and as such is not respectful of the members within the chamber. A member of the public could have come to the same view as that of the complainants. A member of the public observing this action would not be aware of any previous history or the previous practice of the party. They would judge the action only in its visible action. **I am of the view that the gesture could be viewed as disrespectful.**
2. In relation to the Hello Sailor comment **this comment has been viewed by Cllr Siddall as homophobic and therefore is clearly disrespectful**

In “Bringing Office into disrepute” (p5 of the Report) Ms Holmes wrote:

“This element of the Code is often associated with a breach of another element of the Code and its impact on the public confidence in the Council and the Councillor. **In the opinion of the Investigating Officer, making gestures or speaking in a manner which could reasonably be considered disrespectful could be considered to pose a reasonable risk of bringing the Council into disrepute by reducing public confidence in the Office of the Leader of the Council**”

In her Conclusion (p5) Ms Holmes wrote: **“In relation to the allegation of bullying I do not believe there is evidence to support an allegation of bullying”.**

7.4 COUNCILLOR FLUKER’S ACTIONS – APOLOGIES AND TRAINING

On the morning of the 13th September, the day after the Full Council Meeting, Cllr Fluker sent an email to Cllr Siddall. The Report states (p2) that “Cllr Siddall confirmed that Cllr Fluker had apologised to him privately in an email the next day for an unintended offence he may have caused. Cllr Siddall confirmed that following his acceptance of this apology he received additional information in relation to the comments made and formally withdrew his [acceptance of the] apology as he felt it was insincere”.

The Report contains, at Annex 3, the 13th September email that Cllr Fluker sent to Richard Siddall. However, it does not contain Cllr Siddall’s response dated the same day, nor does it contain his later email (dated 4th November) retracting his acceptance of that apology.

Mr Quelch told me that “Cllr Fluker had initially wanted these two emails included as an appendix to [Ms] Holmes’s report which was to be considered by the Committee. However, [he] had resisted that because [Cllr] Siddall had later withdrawn his acceptance of Cllr Fluker’s apology and would not permit that to be included. [He] had suggested that Cllr Fluker could submit those documents himself. Nevertheless, Cllr Fluker’s email was included in the bundle considered by the Committee as Annex 3 at his behest though Richard Siddall’s replies were not”.

When I spoke to Cllr Siddall, he confirmed that he “had originally accepted that apology. However, a fellow member was speaking to [Cllr Fluker] by phone soon afterwards and during that conversation [Cllr Fluker] had told that fellow member that he had “done it deliberately to wind him [Cllr Siddall] up”. It was no slip of the tongue. He would not have made the remark in the tone that he made it, to a straight man. Soon after he became aware of that phone conversation (which was some weeks after [Cllr Fluker’s] original email) he wrote to [Cllr Fluker]

by email and said, “I find I can no longer accept your apology, as I do not think it was sincere and I therefore withdraw my acceptance”.

Under “Full Council Apology” (Report, p5) Ms Holmes wrote:

“At the meeting of full Council on 21 November 2019 Cllr Fluker made reference to the 2 incidents contained within this report.

In relation to the cutthroat gesture he gave an apology to anyone who had been offended by his gesture at a previous meeting. Cllr Fluker stated that the gesture was not intended to be offensive but that he apologised if it had caused offence. This apology was made generally to the whole Council, no specific individual Councillors were named.

In relation to the “Hello Sailor” comment again Cllr Fluker apologised for any offense that this comment had caused and that this had not been his intention. The apology was again directed to the whole Council.

Cllr Fluker also confirmed that he was prepared to undertake diversity training and had asked the HoPS to arrange this”.

When I spoke to him, Mr Quelch told me that, “Before the meeting Cllr Fluker had circulated a training certificate showing he had completed a diversity course which the Council had organised for him. Following the “Hello Sailor” complaint he agreed when he apologised to the Council that he would go on a diversity course to improve his understanding of such matters and he did so. He recalled that he did two courses – one online and the other face to face. He did this voluntarily. It was his idea”.

Mr Quelch also said that before the meeting, “Cllr Fluker had [separately] circulated the email of apology that he had sent to [Cllr] Siddall and his response for consideration by [the JSC]. This response had been redacted to take out certain pieces of text relating to matters that were not relevant to the Hearing”. Norman Hodson confirmed that, prior to the meeting, Cllr Fluker, or someone acting on his behalf, had circulated the apology he had made to Cllr Siddall along with a training certificate.

8 FINDINGS – 30th JANUARY JSC MEETING

8.1 PRE-MEETING

Before the JSC meeting proper began Simon Quelch, the Monitoring Officer, held a pre-meeting.

Simon Quelch told me that he knew that there would be four members present who had never previously adjudicated on the JSC. There were three substitutes and Peter Stilts (a permanent parish representative attending his first committee) also came to the pre-meeting. He knew that he needed to help them understand what it was all about.

He therefore produced a Procedure Note, which was attached to the Agenda, setting out how the JSC normally considered a complaint. He walked them through that. He did not consider the merits of the Report or give any view. None of the pre-meeting attendees tried to enter into the merits of the case. The area of contention was whether the Committee should retire to debate the complaints informally (item 8 of the Procedure Note) having heard the evidence, discussed the report, and asked questions.

The Chairman, Cllr Boyce, was not in favour of doing that because, he said, those who had made the complaints would think that the JSC had hidden something from them. So, in the interests of transparency, he did not want the JSC to do that. Instead he wanted the proceedings to take place in open session. Cllr Jarvis disagreed. He wanted the JSC to withdraw and consider the evidence as a jury would. [Mr Quelch] believed that this was a genuine decision on the part of the Chairman who was concerned, perhaps, that he might be criticised by other members and he wanted to avoid accusations that the decision was a “conspiracy”.

As far as he was concerned every member of the JSC was clear what was expected of them when they left the pre-meeting. Mr Quelch was “pretty confident” that he had made it clear that there was a need for them to make an objective decision based on the evidence. In any event the procedure itself demanded an objective approach.

Karl Jarvis told me that, “before the JSC began there had been a briefing by the Monitoring Officer, to go through the procedure that was to be followed as set out in the agenda. Item 8 of that procedure provided for the adjournment and withdrawal of the Committee (like a jury) to discuss the complaint with the support of the Independent Person before the decision was announced. [Karl] had said that it seemed to him to be a good idea. However, the Chairman had said “we will have to see if we need that” because it was not necessary to do that legally. When he said that, [Karl] suspected that he had no intention of breaking off and “it was a bit of a worry”. Such a meeting would have been a very useful way of reviewing the evidence with the Monitoring Officer and Independent Person present”.

Peter Stilts made little mention of the pre-meeting and confirmed only that, “he had attended the Monitoring Officer’s pre-briefing but, because of problems with the Town Council website and confusion over timing, he was not ready for the hearing so asked for a little time to review the papers”. **Stephen Nunn** made no mention of the pre-meeting.

Sue White recalled that there, “was a pre-meeting briefing called by Simon Quelch to explain how the meeting worked. They had all had the report for pre-reading and there may or may not be updates in the meeting. Members should take everything into account, which they do at every meeting, especially Planning. They could make their own decisions based upon that. Simon Quelch had advised them to go in with an open mind and listen to what they were told. “You go into a meeting with an open mind and make a decision actually during the meeting””.

Bob Boyce said only that, “Simon Quelch gathered the JSC members together for a pre-meeting to discuss the procedure he was suggesting the JSC to follow. [He] did not follow his suggestions to the letter (which he was entitled to do)”.

Bryan Harker told me that the Monitoring Officer had called the JSC together away from the Council Chamber before the meeting as was custom and practice in Licensing. They did not go through the complaints themselves. He had expected the “Procedure for complaints determination” which was attached to the meeting agenda to be followed in the Hearing – the Monitoring Officer had gone through it beforehand in the Leader’s office. He noted that at point 8 of the procedure “The Committee adjourns and withdraws to discuss the complaint along with the help of the Independent Person”. This normally happened in Licensing too and you would raise any legal questions you had during that adjournment. The Chairman would then go back

and report the decision. He had never served on the JSC before and he had expected that to happen, but it did not.

John Anderson confirmed that there had been a briefing beforehand the purpose of which was “to explain how members of the JSC should conduct themselves. There were new members (substitutes) on the panel and [Simon] felt it would be beneficial for members to know what they were doing as members of the panel. There was no discussion about the outcome of the hearing. [Simon] explained what the procedure would be. Statements would be read (including a statement by [Simon] himself) and the Independent Person would speak. He checked that they had already seen and understood the documents. [John] had seen the documents and, as far as he was concerned what [Simon] said in the briefing was “reasonably straightforward”

8.2 ELECTION OF CHAIRMAN, VICE CHAIRMAN and SUBSTITUTIONS

8.2.1 Chairman and Vice-Chairman

The first business of the meeting (an audio record of it can be found on the Council website) was to elect a Chairman and Vice-Chairman. **Simon Quelch** told me “there had been a “contretemps” – members’ disorder - in the Chamber at the October Council meeting when the Chairman and Vice Chairman should have been appointed and the Chair had had to end the meeting early. This had been the first JSC meeting since then and [he] had had to chair the Hearing [initially] so as to get the Chairman and Vice Chairman appointed”. Cllr Maddie Thompson was appointed Chairman and Cllr Bob Boyce Vice-Chairman. Bob Boyce confirmed this.

8.2.2 Substitutions

Because Cllr Thompson, as Deputy Leader worked closely with Cllr Fluker she had, **Simon Quelch** said, “realised, that if she were to be part of a JSC that adjudicated Cllr Fluker’s case there could be a criticism about a lack of objectivity”. Accordingly, she had arranged a substitute, Cllr Sue White, and had also stepped down as Chairman for the Hearing (although she remained in the Chamber). Cllr Boyce took the role of Chairman. Cllr Fluker did not attend the Hearing in person.

There were two other substitutions. Cllr Bryan Harker was substitute for Cllr Michael Helm, who was apparently out of the country, and Cllr Karl Jarvis substituted for Cllr Richard Siddall who, because of his involvement in the complaints, had a clear conflict of interest and did not attend the Hearing. Under “Disclosure of Interest” it was declared that, as everyone knew the Subject Member, Cllr Fluker, in fact everyone had an interest as he was the Leader of the Council.

8.2.3 Observations on the Chair, Vice- Chair and Substitutions

Commenting on the substitutions **Simon Quelch** said that Cllr White and Cllr Thompson do not get on. He did not know why Cllr Thompson had chosen Cllr White as a substitute though “there were limited options available to her and it had been a day meeting and that might have further reduced her options”. He added that under the Constitution and to maintain political balance substitutions have to be from the same party. Substitutions had to be arranged either by the member who could not be at the meeting or by the leader of the party. It was plainly inappropriate for the Leader to arrange the substitution, so Cllr Thompson chose Sue White.

When I asked him about the relationship between Cllr White and Cllr Fluker, Simon “replied that they were in the same political group and political allies. He recalled Cllr Fluker saying that, “he had been invited to Sue White’s wedding which implies a degree of friendship”.

[When commenting on the report whilst it was still in draft Sue White said that she “actually invited several councillors including complainants [to her wedding]. It is a courtesy to invite some colleagues. The leader and Chairman were definite invitees as a matter of respect to the Council. The Chairman could not attend so I invited the vice chair, who certainly would not be considered a friend”].

The start of the meeting, said **Norman Hodson**, had been “a bit of a muddle”. After Cllr Boyce took the chair he had adjourned the meeting so that Cllr Stilts could read the papers having not seen them before the meeting. During the adjournment Mr Hodson bumped into Cllr Thompson and asked her why she was not chairing the meeting. She replied that the Group had suggested that, as she was Deputy Leader and therefore close to the Leader, she should be substituted. He felt that the decision to substitute her with Cllr White took on significance in terms of what happened later.

Chrisy Morris said, when asked why Cllr Thompson had not served as Chair, that he did “not know but imagined she saw it as a conflict of interest because, as Deputy Leader she was close to the Leader. But she had been in the Chamber and had “subbed to let Sue White take her spot. That may be procedurally correct, but it looks corrupt when the lady who has just been voted in as Chair then subs, when she has just been voted in as Chair, to let someone else take her place when she is *in the Chamber*”.

A councillor who was in the audience for the meeting (“**the Member**”), made a statement to me in confidence and wrote, “I had voiced my concerns to others prior to the meeting that the designated chair of the standard[s] committee, Cllr Maddie Thompson, should [not] be chairing this meeting because as deputy leader working closely with Cllr Fluker her position as chair could be questioned. As it happened Cllr Boyce took the chair of this particular meeting although as chairman of the council the same [bias] could be considered”. The Member added, “it was unusual for Cllr Thompson to substitute Cllr White as they are well known to not be the best of friends, so it was quite a surprise to fellow councillors that this substitution happened”.

The Member added, “as councillors at Maldon you become aware of who sides with whom at most meetings and I knew it is usual for Cllr Boyce, Cllr Harker, and Cllr White to take the side of Cllr Fluker. Having these three councillors on this committee was questionable. Cllr White has known Cllr Fluker since she was a child.” [When commenting on the Report whilst it was still in draft Sue White denied that she had known Cllr Fluker since childhood saying “This is absolutely and completely untrue I only met Cllr Fluker when I became an elected member”].

Sue White told me she could not recall why Cllr Thompson needed a substitute. When commenting on the Report whilst it was in draft Cllr White added that she had “suspected that it was because it was because it was such a contentious meeting and we were all aware that if we found wrongdoing it would be fine, but if it was a contrary decision it would cause uproar. In hindsight I can see exactly why she didn’t want to chair it! I have never before had anyone say why they wanted me to substitute so there was nothing odd in this.” **Bob Boyce** said that Cllr Thompson felt that, as Deputy Leader, she was too close to the Leader, so she stood down as

Chairman and invited a substitute in her place. As Vice-Chairman he chaired the meeting. There was a substitute for Cllr Siddall because he featured heavily in one of the complaints against Cllr Fluker. **Bryan Harker** told me that he was a substitute for Cllr Thompson but did not know why she needed a substitute. In commenting on the draft report Cllr Harker said “I did not know and still don’t know the real reason why I was substituting Cllr Thompson. I am not that interested.”

8.3 DEPUTY MONITORING OFFICER and INDEPENDENT PERSON

8.3.1 Deputy Monitoring Officer

The meeting then moved on to consider the complaints against Cllr Fluker. The Chairman invited the **Deputy Monitoring Officer**, Emma Holmes, who had prepared the Report, to speak in accordance with item 2 of the Procedure Note that had been prepared by Mr Quelch.

Ms Holmes spoke for approximately three minutes (Annex 2: 9 minutes, 43 seconds). She summarised the complaints and the alleged breaches of the Code and tabled her report saying she did not intend to go through the Report verbatim and assumed that members had read it.

She drew members’ attention to Cllr Fluker’s email of apology to Cllr Siddall and his general apology to the room at the Council meeting in December “in relation to any offence that he may have caused”. She added that Cllr Fluker had stated that he intended to cause no offence and had explained his thinking. She then said that it was for the JSC to decide whether they agreed with the Report and elaborated “for completeness” on the options available to the JSC should they find Cllr Fluker to be in breach of the Code. She finished by saying that it was not her “role to make any recommendations as to the appropriate sanctions, if any are to be made”.

8.3.2 Independent Person

The Chairman then moved on to item 4 of the Procedure Note and invited the **Independent Person**, Norman Hodson, and Members to ask questions of Ms Holmes starting with Mr Hodson.

Mr Hodson spoke for around a minute and a half (Annex 2: 13 minutes, 3 seconds). However, rather than asking questions of Ms Holmes, he stated his own opinion. He had not been at what had been a busy meeting and he had not observed the actions. “It seems to me from what the Report says that the events did take place and therefore the Committee has to decide, I think, whether they caused offence and in fact caused those actions of bullying or disrespect. And the fact that a couple of these complaints have come from Councillors then at this stage I think we have to accept or I have to accept, rather, that Cllr Fluker did in fact bully those persons, even though perhaps they weren’t directed at those Councillors that they may otherwise have been directed at, because it seems to me that the Councillors have complained. Therefore, I think that the Report seems to reflect what went on, as far as I can see”.

8.3.3 Observations on the Independent Contributions

Norman Hodson said that he had been surprised when the Chairman invited him first to ask any questions of the Deputy Monitoring Officer. Whilst not specifically asking any questions, he set out the case that Cllr Fluker had stepped out of line in his role as Independent Person.

Asked why Mr Hodson had been asked to speak “out of turn” by the Chair, **Simon Quelch** replied that, whilst he could not recall the precise question, Mr Hodson’s answer had gone beyond the question and he had given his opinion on the Report rather than giving it later on as shown in the

Procedure Note. He recalled thinking at the time that it would have been better for his full assessment of the Report to have been given later. He did not think it was the Chair's intention that he should speak at that point. **Emma Holmes** said that "the Independent Person spoke quite vocally at the JSC meeting to say that, as far as he was concerned, there had been a breach".

Karl Jarvis felt that the Independent Person had summed things up well and drawn the attention of the JSC to what they should be considering and how he saw things. The Independent Person made it clear that he thought that Cllr Fluker had committed the offence of bullying. The Deputy Monitoring Officer had also presented her report though she had not gone so far as to suggest bullying. Both "were simply ignored, I was quite shocked by it".

Early in the proceedings, before Ms Holmes spoke, **Stephen Nunn** asked why the "matter ha[d] not been subject to an independent investigation and independent adjudication". He told me "he had been uncomfortable judging this matter right from the start. It was like someone passing judgement on their boss. Whatever your political persuasion – and politics and the whip should not come into the JSC – "judging your superior was an alien concept"." This was why he had asked the question. He had been somewhat dissatisfied with the answer at the time.

Peter Stilts said that, "when the Standards Hearing began the Deputy Monitoring Officer went through her report and virtually confirmed that Cllr Fluker had done what he was alleged to have done. He was therefore in breach of the Code of Conduct". The **Member** observed that the "Independent [Person] made the point that perhaps Cllr Fluker had not followed the code of conduct.

I asked **Sue White** to take me through what happened at the meeting. She replied that she recalled that Emma Holmes's report had stated that "she had no issues at all with the hand gesture from a legal perspective, but she did have an issue with the "Sailor" reference.

Bob Boyce said that when he convened the meeting formally he asked the Independent Person, Mr Hodson, to give his views though he could not recall what he had said. He said that Mr Hodson spoke in support of his report. I pointed out that the Report was that of the Monitoring Officer. Cllr Boyce corrected himself and said that the Independent Person spoke in support of his report to the Monitoring Officer though he could not recall whether Mr Hodson's report was one of the papers they had been asked to review before the meeting. I pointed out that the Deputy Monitoring Officer spoke first. Cllr Boyce then said that all he could remember was that Mr Hodson had summarised a report which he was assuming now that the JSC had had sight of.

Bryan Harker could not recall whether there were any questions about the report or not. He said that he "had read a hard copy of the report during the meeting and "thought to [himself] that the complaints were a bit flimsy, there were an awful lot of assumptions in the first complaint - only the person sending the thing can know who it was aimed at – and the second complaint was based on hearsay the "Hello Sailor" remark was at a private meeting, so it was all a bit doubtful". **John Anderson** told me that he recalled Norman Hodson speaking but could not remember what he had said.

8.4 CONSIDERING THE EVIDENCE

8.4.1 Questions from Committee Members

Questions then followed. In answer to **Stephen Nunn** (Annex 2: 14 minutes, 44 seconds), Ms Holmes confirmed (in relation to the “Hello Sailor” remark) that Cllr Siddall’s acceptance of Cllr Fluker’s apology was “subsequently, I believe, withdrawn by Cllr Siddall, he felt it wasn’t sincere”. She then provided a little more detail on the sanctions available to the JSC.

Peter Stilts then asked when Cllr Fluker became a councillor. The Chairman questioned the relevance of the question but replied “Perhaps about eight years ago?”. Cllr Stilts followed that by saying, “.... So, he’s been a councillor for eight years and therefore should be fully aware of it”.

Karl Jarvis then asked Ms Holmes (Annex 2: 16 minutes, 44 seconds) what she meant in the Report by “the circumstances in the Chamber”. She replied that “it was rather noisy” (at the point of the cutthroat gesture). Cllr Fluker had explained that “he was attempting to quieten down that noise” though she was “not in his mind”. In response to Cllr Jarvis, Ms Holmes confirmed that she had been at the meeting and that the throat cutting gesture took place after Cllrs Siddall and Fleming had abstained in a vote. Cllr Jarvis then deduced that “they could have taken offence and they could have made the not unreasonable assumption that this was a sort of hostile gesture in view of the fact that they had just abstained on a vote which then required the Chairman to vote on causing a bit of embarrassment, perhaps to the Conservative Party”. Ms Holmes agreed that that was possible.

Cllr Jarvis then asked whether, if the gesture had been meant as an expression of displeasure, Ms Holmes’s conclusion would have been different. She confirmed that it would certainly have shown disrespect and that, potentially, she might have changed her view about whether there had been bullying which could be seen as bringing an Office into disrepute.

Cllr Jarvis’s final question (Annex 2: 19 minutes, 43 seconds) was to ask what weight the Committee should give “from a technical point of view” to the apologies made by Cllr Fluker and the training course certificates he had provided. He elaborated on his question by saying, “.... if somebody causes an offence that’s it, there should be no excuse for it. I just wondered what sort of weight should be given because at the end of the day, if somebody does commit an offence, if somebody hits somebody and then apologises straight away afterwards, you could go on a “non-hitting people course” but that wouldn’t necessarily mean that that was OK. You still, essentially, committed the offence. So, are we supposed to give a lot of weight to it?”

Mr Quelch (Annex 2: 20 minutes, 55 seconds) replied by saying that this was a two-stage process. First, the JSC had to decide whether there had been a breach of the Code. The Report had made it clear that the two incidents had happened, so it was for the Committee to decide which, if any parts of the Code had been breached. He then said, “Having decided that, then you need to say, when you come on to decide whether you take any action and, if so, what action, that’s when the certificates are probably more likely to become more important then.”

Bryan Harker then asked whether this was the first time Cllr Fluker had been before the Standards Committee. The Chairman questioned the relevance of the question before Mr Quelch replied that he could not recall one.

Finally, (Annex 2: 22 minutes, 22 seconds) **Peter Stilts** observed (with reference to Cllr Fluker's email to Ms Holmes at Annex 4 of the bundle) that newly elected members would not be aware of the significance of the throat-cutting gesture and that, perhaps, was where the complaint might have come from. At this point the Chairman commented that "it is a universal type signal" – a comment that was followed by murmurings of "no, no, it's been challenged" to which the Chairman said, "I'm afraid it is" before inviting Cllr White to speak.

Sue White and **John Anderson** did not ask any questions.

8.4.2 Observations on the Questioning

Norman Hodson said that Simon Quelch had structured the agenda to allow Cllr Fluker to ask questions of the investigator. Mr Hodson had expected Cllr Fluker to attend the Hearing, but he thought he had decided it would be better to stay away.

He said that there were some questions clarifying the report but generally "they were not searching questions". Some members, including Cllr White and possibly Cllr Harker, did not ask any questions (which said it all as far as Cllr White was concerned). During the meeting Cllr Boyce as Chairman simply responded to the comments of others but did not ask any questions himself. Cllr Jarvis, a Conservative whom Mr Hodson believed to have been substituting for Cllr Siddall, asked more searching questions.

Just before the proposal, he said, someone had raised the point about the cutthroat gesture and the Chairman had "aggressively dismissed that as something everybody does". Nevertheless, he could not say for certain that Cllr Boyce was predetermined.

However, he "certainly believe[d] that on the part of Cllr White there was predetermination. He [did] not have too much doubt about that. Cllr White [had] been in similar positions herself and been found "not guilty"". She had had various complaints levelled against her over the years to do with property she owned and cutting trees down. She had "been in a right mess with Maldon Council" and had even taken Maldon Council to Court and won on a Tree Preservation Order.

Simon Quelch said that the questioning had been brief, there had been few clarifying questions and no real examination of what was there. He agreed that some of the questions were not relevant at this point though such questions had come from substitute members who had no experience of the process. Mr Quelch thought that he had made it clear to the JSC that they were going through a two-stage process.

Asked about the Chairman's intervention explaining the throat-slitting gesture, which some considered inappropriate, Mr Quelch said that when Cllr Boyce became Chairman of the Council in May 2019, he had made a public announcement that, because the Conservative majority had become very slim having previously been "massive", he would be more of a political Chairman. He would be voting and would not be as neutral as a Chairman normally is. He felt that he had applied the same principle in his role as Chairman of the JSC.

Emma Holmes said that she had attended a few hearings of previous Standards Committees. She "considered the debate on 30th January to be very short (to say the least). She said that "there were some questions on [her] report and some of them were good questions".

When I asked Ms Holmes whether she thought there had been predetermination, after a pause, she replied that it was “a difficult area”. She was fairly sure that “Cllr White would say she had come along, listened to Simon Quelch and the debate and then decided. But because no explanation was given as to why she had made the proposal and there was no reference to what she disagreed with in her (Ms Holmes’s) report or in the views of the Independent Person and because there was no explanation as to why those were being ignored, it certainly gave the impression of predetermination. Certainly, if her proposal was written down then that puts more weight on it”. She did not know whether Cllr White had other options for what she might say.

As far as predetermination was concerned Ms Holmes said, “It doesn’t look great, whether it was completely predetermined I wouldn’t want to say but I think if she [Cllr White] had wanted to make that suggestion then if there had been more reasoning I think it would have looked better but because there was no reasoning it looked as if she had come in already decided that he was “not guilty””.

Richard Siddall, one of the complainants, had not been present but had listened to the audio recording of the meeting. He said that when the JSC made its decision it “did not go through proper process”. There had been no debate. The quality of the discussion was “dreadful, there was no discussion at all as far as I was concerned. Cllr Jarvis tried but there was no engagement. It was as if some of those experienced councillors had no idea about how a JSC conducts itself”.

Cllr Siddall said, “they didn’t go through the Monitoring Officer’s evidence, they didn’t discuss that evidence, there was no discussion around the different possible sanctions”. Cllr Fluker had admitted that he had done those things – “Why else would he try to apologise to me? Why else would he go on distance-learning training courses if he hadn’t committed those offences? It makes no sense”. It was “so bad, not a good decision at all” that that Committee had decided that there had not been a breach of the Code of Conduct. “I despair at their behaviour”, he said.

I suggested to Cllr Siddall that inexperience might be a defence. He pointed out that Simon Quelch had met with the Committee members beforehand to explain what the JSC does and how it operates. So, inexperience was not a defence

Wendy Stamp, one of the complainants, told me that she thought that “The meeting was very well-run, and everyone had the chance to speak and councillors said what they had to say. It did not appear though that the debate had totally finished when Cllr Sue White made the proposal to dismiss the complaints”. Asked about the quality of the debate she said, “I think it was quite short, I don’t think it was given a full hearing because the proposal cut short that debate. They hadn’t discussed everything fully. I don’t recall whether they discussed the homophobic remark”. She added that “It wasn’t fully debated given the seriousness of the allegations which was putting a District Council’s reputation in the forefront of the news”.

Karl Jarvis told me that he had asked his final question about the process to be followed by the Committee “for clarification” – the JSC first had to work out if someone was guilty or not and then they had to decide what sanction to apply if that person was guilty.

Cllr Fluker had apologised and carried out some appropriate training. A layman, or indeed a councillor, might therefore conclude that he might have done something wrong, but he could be “let off” the charge because he had apologised and done some training. Cllr Jarvis had been keen to articulate that that was not how the process worked - there were two parts to the process and

the sanction the JSC chose to apply could of course have taken the apology and the training into account. He had asked that question because he “had already detected that some people were keen to find him innocent before they heard anything”. He said that the Monitoring Officer had made clear to the meeting that the JSC was following a two-step process; “by that point, if he did not already know, the Chairman should have been clear about the process.”

Stephen Nunn observed that “no-one was stifled during the debate and, to that extent, the meeting was chaired well; “[they] had every opportunity to ask what [they] wanted to ask]”. However, he told me that he thought that Bryan Harker’s question (had Cllr Fluker appeared before the Committee previously?) was irrelevant.

It was clear to **Peter Stilts** that “Cllr Fluker had done something wrong and had breached the Nolan Principles but they “were going to let him off; it had been rubber-stamped”. He thought at the time that it had all been predetermined. It was almost like it was a waste of time being there – “We will have them in, we can do the show of them being the councillors hearing the case, there have been a few questions, now we’ll have the vote to stop the whole thing”.

Asked what he thought about the quality of the debate Cllr Stilts replied that he “had given evidence in Coroner’s, Crown and Civil Courts several times on Fire Brigade and medical business. He had never seen anything like this before – “it was predetermined, already worked out”. He considered the proceedings to have been a “charade”. They had gone through the motions and decided Cllr Fluker was “not guilty”. He thought that, at the least, he would receive a warning letter”.

The **Member** observed “I had thought the meeting would consider the evidence and debate this matter, but this did not happen. Cllr Jarvis was the only councillor to voice concernsthere was no debate nor consideration of the facts or evidence it was just a case of voting for or against a motion made by Cllr White”.

Sue White said they went into the JSC meeting and nothing had changed from what she had already seen written. Various members raised various issues about the report but there was “absolutely nothing new”.

I suggested to Cllr White that Cllr Fluker’s apology for the cutthroat gesture, the apology (later rejected) to Cllr Siddall and his offer to undertake diversity training implied that he had admitted he had done something wrong. She replied that everyone reads things differently and she was not a legal expert. She had been present at the meeting when the “hand gesture” took place and everyone she had spoken to since had taken the gesture to mean, “Can it, cut it and move on”. Everyone she had spoken to agreed that. This was a common gesture in business (and she worked in business) so that might be the issue. She thought his apology was an apology “if he had caused offence” but she read it that Cllr Fluker did not think it had caused offence. She herself did not see that it had caused offence. It was an apology “in case it caused offence” but maybe she had misunderstood.

I asked again about the withdrawn acceptance and the diversity training. Cllr White replied that one of the members of the Council had had a full sexual transformation. She had never seen Cllr Fluker, or any other member direct anything derogatory towards that member. Her own nephew had had a full sex change. She was therefore “pretty sensitive towards homosexual or sexual

slurs". She did a lot of horse riding and most of the people she rode with were gay, homosexual, lesbian or LGBTQ+ and she was very sensitive to this.

She had read the dialogue (she was not there herself) and took it as "two members talking about sailing and one said, "Hello Sailor" to the other one". She took the subsequent apology to mean "I did not mean to cause offence, if I did then I apologise". Cllr Fluker did not do anything wrong and she did not think he had done anything wrong and she had not seen anything from anybody else that said so. She was particularly sensitive to such matters and had a full nephew-niece sex change in her family.

Asked again about the diversity training Cllr White replied that she thought Cllr Fluker was saying, "If I did anything wrong, which I didn't, it is worth getting some training on it". No-one is ever too old to learn. She herself certainly went on a lot of planning courses, because that was the main thing she ended up doing. She thought that Cllr Fluker's offer was "a generous thing to do".

In respect of predetermination she told me that "with Planning you can be predisposed one way or another before a meeting but what you hear during the meeting from an officer or neighbour can completely change your view. It was the same with the JSC".

I asked Cllr White whether she thought that Emma Holmes and Norman Hodson, the Independent Person, were wrong in their assessment. She replied that she "went with [her] own experience and "absolutely went with an open mind"" as she would during a Planning Meeting. She had been at the meeting with the gesture and saw it as a "standard business gesture, no more, no less". That "was exactly how she saw it" though the meeting was rowdy at the time. Nor, with her experience of LGBTQ+ people, had she seen anything derogatory in the "Hello Sailor" comment. She thought that the Leader was being very proactive in saying, "I am really sorry if I caused offence, I certainly didn't mean to". That was "how [she] read everything, based upon her personal experience". As she did in Planning she had done her best and come to the decision that she thought was the right one based upon the advice and information she had been given.

Bob Boyce said Cllr Jarvis or Cllr Stilts spoke first. Then came Cllr White and perhaps Cllr Harker. He could not remember the sequence exactly, but he certainly called on Cllrs Jarvis, Stilts and White to speak.

I suggested that, having read the Report, Cllr Fluker appeared to be admitting he was "guilty as charged" – he had apologised in an email to Cllr Siddall (an apology that Cllr Siddall initially accepted before rescinding that acceptance) and the Report suggested he was willing to do some diversity training. How could the JSC arrive at a decision that cleared him of the allegations? Cllr Boyce replied that the Monitoring Officer's report had included an option to take no further action, which from memory was what the proposition was.

As far as the apology was concerned he thought it had been caveated with something like "if my comments have caused any sort of offence". This was different to agreeing that he had breached the Code of Conduct – "it was an apology if it was needed". Cllr Boyce did not think that there was an intent to offend. He felt that Cllr Fluker did not think he had breached the Code of Conduct at all. "Sometimes in Council it is easier to apologise for something that you haven't actually done, then it just helps things to get on and over and done with". He told me that he regularly apologised to people if he bumped into them, even when they had bumped into him and it was actually their fault.

The email from Cllr Siddall accepting the apology, which was considered by the Committee, had been heavily redacted and he did not know what was in the redacted pieces of the email. Had he been “minded to cast against the proposition before then [he] would have required that redacted information” because it may have been critical to the decision. Mr Quelch, who had seen the email, had said that it was not critical, but Cllr Boyce would not have been happy with it and he was sure that other members would not. There may have been a “smoking gun” in the redacted part of the email. I asked whether he could have asked for the unredacted email. He replied that he could, though whether he would have got it was a different matter.

I noted that, just prior to Cllr White making her proposal, Cllr Boyce had talked of the cutthroat gesture being a universal signal. He confirmed that he had done that. I asked why he had said that at that point. He replied that he recalled that there was barracking from the audience. In his opinion it was a “universal gesture to cut the proceedings” or to “stop the machinery”.

In response to my observation that the debate had lasted just ten minutes he replied that all were experienced councillors who had read and understood the papers beforehand. He himself was clear what had been put in front of him. When I asked whether his own decision had been predetermined Cllr Boyce replied, “Oh good God no, no”.

I suggested to **Bryan Harker** that, in respect of the “Hello Sailor” comment, Cllr Fluker had apologised but that this apology, having initially been accepted, was then rejected because Cllr Siddall had heard it was insincere. Was that discussed at the Hearing? He replied that the Report only mentioned the apology. It did not mention that the acceptance of the apology had been withdrawn – “normally you deal with what’s in front of you”, he said. I suggested that the withdrawal of the apology had been discussed at the Hearing. Cllr Harker replied that the report said that the apology had been accepted but it did not say that it was subsequently withdrawn. Neither did it say that “it was confirmed that Cllr Fluker would take diversity training which [he] understood afterwards had actually taken place” and added “you have to deal with the evidence in front of you and neither of those statements were in front of us to make the decision. It was very similar to Planning – you can only deal with what’s in front of you”.

I suggested to Cllr Harker that “the apologies and the fact that Cllr Fluker had done or was about to do the training were, in effect, an admission that he had breached the Code of Conduct.” He agreed that that was a “moot point” and replied, after a pause, that I would need to ask Cllr Fluker the reasons why. He did not know “because you offer to do some training, whether that was an admission of guilt or not”. I drew his attention to the final sentence of the Report Section 5, “Cllr Fluker also confirmed that he was prepared to undertake diversity training and had asked the HoPS to arrange this”. Cllr Harker acknowledged that and the previous sentence that referred to Cllr Fluker’s apology for the “Hello Sailor” remark to the Full Council.

I then suggested that that might indicate that Cllr Fluker may have accepted that he was in breach of the Code of Conduct and that that might have given rise to the three complaints. Why with that evidence in front of them had four Committee members decided that he had not breached the Code? Cllr Harker replied that he “didn’t take it that, because he [Cllr Fluker] had volunteered to do some training, that was acceptance of guilt”, he instead “thought that was a reasonable thing to do”.

When asked about Cllr Fluker's apology to Full Council Cllr Harker said that it "cleared up any misunderstanding ... Don't forget that these two [Cllrs Fluker and Siddall] *are* sailors And have boats. It's just a private conversation between two people who have an interest in sailing. It's all got completely out of hand". As far as the offer to do training was concerned he did not take it as "an admission of guilt" – "diversity training was something we should all do" and was a good idea for all councillors.

Asked by me why he had asked whether this was the first complaint of its type that had been heard against Cllr Harker at the JSC and why it was important he replied that it was "for information".

I asked Cllr Harker his view on predetermination. He replied that it was "all laid out in Section 25 [of the Localism Act 2011] and [they] have had *numerous* emails from Simon over the years, there have been training courses about predetermination" and there had been complaints from planning applicants that the committee had already made up its mind. It had "been an ongoing thing for years so you are obviously conscious of not saying anything about whether you are in favour of or against; you do not talk about planning applications one way or the other before the meeting". He would read the report, visit the site, and gather information but he would "not ever talk about how he felt about a planning application". There were certain words you could use like "mindful" but he himself would say nothing.

He said that councillors who had been on the Council for four or more years had had "loads of emails" from Simon Quelch about predetermination and planning. He was fully aware of predetermination, "not half" he said.

There had been no conversation with other members of the JSC beforehand. He had not even known who else was a member of the JSC before the day itself so there was no-one to predetermine with! He had arrived at his conclusion by reading the report, making a few notes in the margins, and listening to the conversation in the Council Chamber. He told me that he "went into the meeting with a completely open mind, listened to what was being said".

I observed that several witnesses had told me that Cllr White had read from a printed piece of paper, perhaps with highlighted text on it. How would Cllr Harker look at that in the context of predetermination if she had had a printed piece of paper before her with the motion on it? He replied that if it was the agenda [that she read from] it was there in black and white and everyone had it. I suggested that Cllr White had said rather more than what was set out in section 4.1 (a) and Cllr Harker replied that he thought she was reading from the screen. Maybe she had added more of her own in?

John Anderson told me that he had read all the documentation for the meeting, the letters of apology and retraction of letters of apology. He had read that Cllr Fluker had attended a training course. He said he had not asked any questions - he was listening to what others were saying, he had listened to the Independent Person and Simon Quelch and at that point "he was pretty convinced which way [he] would vote". There had been no predetermination as some people had suggested, "they would say that anyway".

8.5 THE PROPOSAL

8.5.1 Councillor White's Proposal

After Committee Members had asked questions **Cllr White** made a proposal as follows (Annex 2: 24 minutes, 39 seconds). "In light of further chatting, I've read the report of the Deputy Monitoring Officer and the document annexed to the report. I also noted with regards to both complaints, Cllr Fluker has apologised to both [a voice shouts "no"] Cllr Siddall personally and the Council as a whole. I also note that he has *voluntarily* undertaken diversity training. It's not the order, he's voluntarily taken it. In regards to the evidence and the context of events, *I do not believe* that he has failed to comply with the Code of Conduct and I will therefore like to propose with regards to Section 4.1a of the report that in relation to complaints one and two, Cllr Fluker has *not* failed to comply with the Members Code of Conduct and no further action needs to be taken in respect of the matters considered at the meeting".

The video and audio evidence indicate that the proposal was swiftly seconded by Cllr Harker and it can be seen from video evidence that Cllr Anderson was marginally less swift in indicating his willingness to second the proposal.

At that point the Chairman asked if anyone else wished to speak against it and **Cllr Jarvis** said (Annex 2: 25 minutes, 52 seconds) that he "would suggest that he [Cllr Fluker] *has* failed to comply with the Members Code of Conduct so [he] would be putting that motion to the Committee". The Chairman replied that if the motion were passed that would put an end to the matter.

There then followed a whispered exchange between Mr Quelch and the Chairman which is almost inaudible on the audio record.

8.5.2 Observations on the Proposal

Norman Hodson said that within a few minutes Cllr White asked to speak and went straight into her proposal. He was sitting over her shoulder to her right. In front of her on the desk was an iPad and she produced a printed piece of paper. He was *convinced* that Cllr White had then read a prepared, pre-printed statement. If one listened to the audio recording of the meeting that was clear – "she wasn't stumbling over words, it was very much said with emphasis". He was "100% certain that it was a piece of paper with typewritten script that she had previously written. There was no handwriting on it. It was a folded piece of paper. Cllr Nunn, who is an Independent Councillor, was sitting directly in front of me to her right, and I would almost be certain that he would say the same thing. I can be 100% certain that she was reading from a prepared statement". He said that he was "prepared to state that she was reading from a prepared statement".

The Chairman then asked for a seconder and Cllr Harker, who was directly in his line of sight, "shot his hand up". He had not said a word until then, he "just shot his hand up" as a seconder.

After the proposal had been made the Chairman asked if there were any other comments. Cllr Jarvis, a Conservative Councillor, said that he would be opposing Cllr White's proposal and believed that Cllr Fluker had breached the Code of Conduct. He would propose the opposite. The Chair said that, if Cllr White's proposal was not carried, then he would move on to Cllr Jarvis's proposal.

The Monitoring Officer had then, he told Mr Hodson later, suggested to the Chair that he might invite further discussion or invite the Independent Person to comment again. However, the Chairman moved straight to the vote “without any discussion or debate on the item at all. There had been a few questions and absolutely no debate”.

Simon Quelch told me that he was surprised that Cllr White had put the motion forward when the evidence of the Report and Norman Hodson’s assessment had so strongly indicated that there had been a breach of the Code of Conduct, even if the JSC then decided that they were going to do nothing more about it. What surprised him was that members had not initiated a debate at that point, especially after Cllr Jarvis had already indicated that he was minded to propose an alternative motion. The Chairman had waited nine seconds (he had counted it on the audio) for contributions before putting it to the vote.

He felt that Cllr White’s proposal had been presented on the basis that because there had been an apology and training by Cllr Fluker then there had been no breach of the Code. He thought that that had conflated the two stages of the process which he had explained to the Committee.

He had not noticed that Cllr White was reading from a piece of paper. He had only found that out when he was told by Norman Hodson after the meeting. He was concerned.

Thinking it through and viewing it in the best light possible from her perspective, she had already read a report and had material circulated by the Leader himself. She had gone into the meeting having read the conclusion of the Investigating Officer, though she had not heard from the Independent Person, nor had she heard the debate. A councillor inexperienced in the JSC might have thought, “I am minded to do this. I already have a view on it. If I hear nothing different then this is the direction I will go in”. He would consider that explanation to be a “realistic” one because individuals do go into meetings with a view. It is unrealistic to believe that members would not already have had a view.

On the other hand, some would argue that, whilst a pre-prepared statement was not a *conclusive* indicator of pre-determination, “it certainly starts the ball rolling”. It was difficult, in the face of a report produced by a neutral person that had found Cllr Fluker had breached the Code, to enter a meeting with a “totally neutral mind” so some element of predisposition was perhaps inevitable and complete neutrality was unrealistic.

With reference to the whispered exchange he said he had asked the Chairman “whether he wanted the Independent Person to say something else because he felt this could foster more debate. The Chairman declined.” Mr Quelch added that in an ideal world the Chairman would have *encouraged* debate. He *could* have encouraged Cllr Jarvis to expand on his suggestion that he might put forward an alternative proposal before the first proposal was voted upon.

Emma Holmes said that Cllr White’s proposal it “sort of came out of left field. She didn’t really give any explanation other than a sentence that she did not think it had occurred and this is what she proposed”. The proposal was then relatively quickly voted on – “there was not really any debate on it at all, and certainly no explanation of why Cllr White had made the proposal, no comment about the report or on what the Independent Person said, the Chairman just took a vote on it and that was that”.

Cllr White “definitely had a piece of paper in front of her but [she] could not see from where [she] was sitting whether she was reading from a script or not”. If pressed she would say that she was reading from a script because her delivery was “so formal”, the way it was read and the language was like a report, “it sounded as if it was read but [she] didn’t see anything from where [she] was”.

When asked why he thought there had been predetermination **Richard Siddall** said that, “he had been told by Cllrs Jarvis, Fleming, Channer and Bamford (who were all present) that Cllr White had read from a “predetermined statement” which can easily be discerned from the audio recording of the meeting. That statement was the foundation for the decision that the JSC made – “if that is not predetermination, I don’t know what is”.

When asked why he had complained only about Cllr White, Cllr Siddall replied that it was Cllr White who was directing the decision. He thought that “the others were predetermined but that was harder for [him] to prove because she was the only one that read from something”. When I asked him whether there might, perhaps, be a distinction between bad process, bad chairing and a breakdown of procedure and predetermination, he replied that all of those had occurred and that, in addition, there had been predetermination.

Wendy Stamp said that Cllr White “read her proposal from a piece of paper that she had in front of her having never said a word at all during the session. She didn’t question anybody or say anything to anybody”. Cllr Stamp herself saw the piece of paper and added “everybody saw it who was in that room and it was read from a scripted piece of paper, word for word, verbatim”. She did not, though, know whether it was handwritten or typewritten. Asked whether it was possible that Cllr White had prepared that proposal as she sat in the Hearing, Cllr Stamp replied, “No, I swear this, I didn’t see her writing anything at the meeting”. She had her computer open but there is no printer facility in the Chamber. She felt the paper was pre-prepared and pre-written. “All of a sudden she produced this piece of paper, she moved it on the top, and read out whatever was written on that piece of paper”. She felt that the key was whether the document was pre-printed or written during the proceedings and what those around her had seen.

Karl Jarvis said there were two “irritating” things about Cllr White’s proposal. The first was that she had read from a “typed-up script” (he was sitting next to her in the Hearing) which she had obviously brought to the meeting. There was no doubt, therefore, that this was predetermined unless she said she had three or four typed-up scripts and had picked the one to suit. He saw only one script, containing highlights. The second irritating thing was that she “was keen to read the statement out and quickly draw matters to a vote”. She “mentioned in the statement that he had been on the training and he had apologised and therefore we should find him innocent of all offences”. He added “she was ignoring the first stage of the process which was to reach a decision on his guilt and going straight to the second stage, the sanctions. Her pre-prepared script did not seem to take account of the two-stage nature of the process”. He said that “she had not understood the process and had therefore not listened because in her proposal she had jumbled up a two-part process” and “had wanted Cllr Fluker’s training and his apology taken into account in determining whether he had breached the Code of Conduct whereas clearly those factors, whilst of some merit, should only have been considered when determining the appropriate sanction. The wording of her proposal did not reflect a two-part process which could be considered further evidence that it was a predetermined, prewritten statement”.

Stephen Nunn told me that “Cllr White, who was sitting to [my] left, got hold of a typed statement and read it out. It basically said that she did not think there was a case to answer. This confused [me] because the recommendation in the report said that there was a case to answer and the Leader had himself admitted to some things because he had tried to apologise for them. It was therefore a “no brainer” and the next step should have been a discussion on sanctions”.

Cllr Nunn was “clear that she had a typed statement” which she read – he saw her do that. To that extent she could have predetermined things because she must have had it when she came into the room because it was printed in a large typeface, maybe even with highlights on it. His caveat was whether she had another statement in her bag that said something else though “that’s probably me being very generous”.

Peter Stilts told me “Suddenly Cllr White looked up, said that she wanted to say something. She said that she could not see anything wrong with what Cllr Fluker had done and therefore proposed that the whole thing should be dropped. [He] could see she was reading from a piece of paper because he was sitting directly opposite her”. He told me that “at the time [he] did not think that Cllr White’s behaviour was “spontaneous”. She had perhaps scribbled some notes at the pre-briefing and was reading something, but it was “almost as if what was going to happen had already been worked out, almost rehearsed like a play”. He felt at the time that it “was not being done properly, it had already been worked out what’s going to happen”.

The **Member** observed that Cllr White’s motion “was blatantly obviously read out from a pre-arranged statement or memorised prior to the meeting. It was not a motion made after considering the facts after a debate in the committee which would normally be expected of proceedings during a standard[s] committee”.

Sue White told me that to bring proceedings to a conclusion she made a proposal because she had seen nothing new. Nothing had changed. She made a proposal with what she thought and the meeting in public had confirmed her thoughts.

I suggested that a number of witnesses had said that Cllr White had read from a pre-printed piece of paper when making her proposal. She replied that she actually had 13 or 14 sheets of paper in the bundle, held together by a yellow clip. This could be seen from the CCTV footage. You could see her at the start of the meeting going through all of it and “reading bits and pieces” because she had marked “all sorts of bits on the paperwork. [She] had on the front page, [she] would estimate 20 -30 sentences of things that she either wanted to ask if things came up or she needed clarity on. In actual fact it was all clarified and after taking the information during the meeting and nothing new transpired, she came to [her] decision”. She put her proposal forward, “[She] didn’t know if it would get seconded or supported but it did”. She had a big bunch of papers, “it wasn’t one sheet of paper, there was a lot of them”.

I suggested to Cllr White that ten minutes did not seem to be a lot of discussion time and noted that she had not asked any questions. She replied “No, they were all confirmed after the Officers’ presentations and after the other members spoke”. She knew that meetings at Maldon could be very lengthy, so she made her proposal. Members had had everything beforehand. She had dissected the papers and taken the whole bundle with her because she wanted to be sure she had everything available to her in the meeting. Nothing new had cropped up. She had simply

wanted to know if anything new came from officers or anyone else who was there. Sometimes, despite your preparation “real surprises” came up.

Cllr White reiterated that she was not predetermined, she had made her mind up during the meeting, she took all the relevant paperwork with her and read through all the paperwork as she did with every Planning meeting. This was no different. She did not know if her proposal would be carried or not when she made it.

Bob Boyce said that after Sue White made her proposal (seconded by Cllr Harker), which he deemed valid, he then had to consider adjourning to discuss the matter before the Committee reached its decision. He said that because he has a particular problem with a member who believes that the Council is not open and transparent he reflected on the situation momentarily. The Constitution does not allow councillors to adjourn from a meeting that is legally held in public to make a decision, so he was not comfortable with the procedure that had been suggested by Mr Quelch. He decided instead that the decision should be made in open session rather than going into an adjournment. Cllr Boyce wanted openness and transparency. No-one else spoke so he put the proposal to the vote.

Asked about the suggestion that Cllr White had read from a pre-prepared statement when making her proposal he replied that he sat on a raised platform and had not himself seen such a document. He added Cllr White always attends meetings with an iPad which she uses to type constantly in the course of a meeting. He had always assumed she was typing the proceedings of the meeting. So, he did not know how anyone could claim that she had read from a sheet of paper. He had not seen her pick up a piece of paper other than to hold the bundle in her hand, which may be what others had assumed she was reading from. He was not aware that she had read from anything.

Bryan Harker was expecting there to be an adjournment so that the Committee could make a decision, then “all of a sudden Cllr White read out a recommendation based on the conclusions in the report 4.1 (a) “that Cllr Fluker has not failed to comply with the Member Code of Conduct and no further action needs to be taken”. Based on what he had heard at the meeting he “thought that was really reasonable and seconded it”. He thought that Cllr White had simply read from the screen because section 4.1 (a) appeared to be exactly what she had read out. She may have had a printed copy, though he had not seen her with printed material at previous meetings.

John Anderson said that, since the meeting, he had read that Cllr White had read from a written statement, but he was not aware of that at the time. He was sitting right opposite her, and she looked as if she was looking at her computer, so he did not know whether it was true. When asked why the debate at the August JSC had apparently lasted rather longer than the debate in January he replied that the August hearing was “considerably more complex than this one” relating as it did to a planning issue and a declaration of interest.

8.6 THE VOTE AND OUTCOME

8.6.1 The Vote

The Chairman then put Cllr White’s proposal to the vote. It was carried by four votes to three. Cllrs White and Harker and Parish Cllr Anderson voted in favour of the proposal as did the Chairman, whilst Cllrs Jarvis and Nunn and Parish Cllr Stilts voted against.

At this point Cllr Morris can be seen and heard saying, “What an absolute whitewash, the guy has admitted to a homophobic comment and a threatening gesture. He’s admitted to it and you guys have just supported him”. After the meeting is closed by the Chairman amidst some verbal disorder a female voice can be heard saying “disgrace” and Cllr Morris loudly says, “Disgrace. Absolute Disgrace”.

8.6.2 Observations on the Vote and the Outcome

Norman Hodson told me there “was no debate and within a short period of time it moved to a vote, the result being pretty much along party lines and no fault found. That was the end of the meeting. It was all over in a very short period of time”. He was “dumbstruck”. He was a businessman and had never seen a meeting “so cut and dried”. It had been brought to a head very quickly. Looking back the lack of discussion “got me”. Cllr White made her proposal but Cllr Fluker “had admitted that he had done some of those things because he had issued apologies and put himself on a training course”. So, “it didn’t seem too much of a step to say “there was a fault to be found here” but Cllr Fluker had done various things in mitigation therefore “we record it as a fault and accept that he is going to do better in the future””. He could not understand why no fault had been found.

Mr Hodson commented that Cllr Boyce jumped in and used his vote “pretty quickly”. He felt unable to comment on why Cllrs Anderson and Boyce voted as they did. He said that it was worth noting that Cllrs Boyce, Fluker and White come from “pretty much the same part of the District and maybe come from adjoining or even the same parishes”.

Simon Quelch said that Cllr Boyce’s vote was in line with his earlier policy of voting as a Chairman – he may have preferred not to allow the vote to be tied and to use his casting vote. Mr Quelch was happy to go on record and say that “he was surprised by the decision that was made”. The Report had been clear. The Independent Person had gone even further than Emma Holmes and said that, in his opinion, there had been a “bullying” aspect to the Leader’s behaviour. He was saying that the Report should be “hardened up”.

Emma Holmes told me that she had not been in any doubt that the Leader had breached the Code of Conduct; “there was no doubt at all from day one that the actions had taken place”. The issue was “had what happened breached the Code of Conduct?”. She herself had concluded that the cutthroat gesture was not showing respect and had therefore breached the Code.

Therefore, the decision at the meeting was “certainly not the decision that [she] was expecting. [She] was expecting that there would be an acceptance of the fact that there had been a breach but that there would be no further action on the basis that the Leader had made the apology and done some training and that there was little else the Committee could do in terms of sanctions. An apology and training are the things she would have expected the Committee to ask for, but Cllr Fluker had already done them”.

I then asked Ms Holmes whether those others who had supported the proposal may have followed Cllr White’s lead. She replied that the vote appeared to be split along party lines, but it was hard to judge because there were so few questions and some of those who voted had not spoken or expressed a view one way or another. It was therefore hard to know what their view was. However, she did not think there was evidence to suggest that they knew the proposal was coming. Her own concern was there was no reasoning prior to Cllr White’s proposal, there was

no flow from the debate into the proposal. She agreed with my observation that Cllr White had been a substitute and may have been unfamiliar with the nature of the debate and the fact that consideration should not be along party-political lines.

Chrisy Morris said that he had attended the JSC (which he referred to as the “Double Standards Committee”) as an observer. He had done that because he was “worried that there would be a miscarriage of justice and [he] was right to worry – there was”.

Cllr Morris, one of the complainants, told me that since Cllr Fluker had admitted that both offences happened there was no real question that he had not breached the Code of Conduct. Therefore “the way that the JSC deemed after less than 20 minutes, I believe, that he had not done anything wrong was predetermination and, basically, corruption”. Cllr Fluker had admitted it and had “used his minions, his mates, to cover up his wrong-doing and get him off at the JSC”. He had expected them to find Cllr Fluker guilty of a breach and then give him the lightest possible sanction, but “they had the tenacity to do what even [he] had not expected them to do. It was unbelievable”.

He told me that the Monitoring Officer’s report said that Cllr Fluker had breached the Code of Conduct, he had admitted the breach and had now brought the Council into disrepute. It had gone from being a “simple case of bullying, threats and homophobia to being serious - a corruption problem”.

Asked why he thought there was predetermination Cllr Morris answered, “because Cllr White walked in with a sheet that was already prepared for her and read from it without hearing anything else”. At the first opportunity she had made the proposal and “read from a pre-prepared sheet to do that.” This was “instantly predetermination” and bringing the Council into disrepute. He had noted too the speed with which the seconder’s hand [Cllr Harker] went up after Cllr White’s proposal. “They wanted that [the Hearing] over as quickly as possible and hoped that no-one is bothered”.

As far as Cllrs Harker, Boyce and Anderson were concerned he had “been there long enough to know what a block vote looks like and it was done. None of them heard or listened to anything really, no-one else was allowed to speak, Bob Boyce was in the chair and basically shut down everyone who tried to speak. It was a farce. I thought things were bad, but they are fucking terrible.” He said that some of those who had made the decision at the JSC were amongst a group known as the “Famous Five” – excluding Cllrs Fluker and Thompson there were Cllrs White, Boyce, Harker, Helm and Dewick”.

Cllr Morris suggested that Cllr John Anderson was a Parish Councillor who was a Conservative but stood as an Independent. At the May 2019 election he had stood in Southminster as an Independent against Cllr Brian Beale (a member of the Independent Group) to try to ensure that Cllr Fluker, who was in danger of losing his seat, was elected by splitting the “independent” vote. [Responding to this suggestion whilst the report was still in draft Cllr Anderson said, “This a complete untruth. In 2019 Cllr Beale told me he was not standing and when I told him I would stand I found out he had declared as well as myself. I was not a Conservative at this time and did not join until the 16th of November before the general Election”]

Had there been a long hearing and had they decided after listening to the evidence then “they would have had more of a shout” but they had decided that they were “just going to do it, because we can. They are completely out of control”.

When asked why she had mentioned only Cllr White in her proposal **Wendy Stamp** said that she “knew that the make-up of the JSC was such that three members would have voted that way because of the Conservative Group whip. She was shocked at the way the independent member who represents EALC, John Anderson, had voted. She had not included Cllrs Harker, Boyce, and Anderson in her complaint because they had not read out the proposal. Had they read it out she “would have said the same to them”. Cllr White had read it out and thus taken responsibility for saying it.”

Because of the evidence that had been produced, Cllr Stamp had been “shocked that anybody could have voted to drop everything that was put forward because these things actually happened, and [she is] very strongly about truth How could anybody, regardless of who they were think that he didn’t carry out those actions because he did? How then could the JSC say he didn’t? I couldn’t believe it.”

Karl Jarvis told me that when it came to the decision “there seemed to be a desperate desire to get on and have a vote as quickly as possible”. He said that it was important that politics did not get in the way of governance and the effective operation of the Council. Independent committees had to be independent. The answer the JSC came up with on 30th January was “so obviously wrong” and “smacked of failure of having any independent process”. The outcome of the meeting had been “awful” and showed that bad governance was in place.

He had understood the proceedings to be quasi-judicial and had some experience of such proceedings. He had been horrified that the JSC had not shown the necessary impartiality or objectivity in their considerations on that day.

He told me he was “shocked; it was a travesty. Cllr Fluker was clearly guilty. The DMO’s report clearly said that he was guilty of some offences and perhaps others too, like bullying. The issue was what sanctions to apply. Two of the available sanctions were to require an apology and insist on a training course but he had already done that”.

Cllr Jarvis said, “when you sit on a Committee like the JSC you *have* to set your personal friendships and loyalties to one side and be impartial. You have to assess things as they are laid out before you. It was quite clear from the reading of the statement and from how quickly it was supported that this was just being done for effect”.

He continued, it was clear that Cllr White and Cllr Harker were keen to find Cllr Fluker innocent, “she should have been impartial, she wasn’t”. Cllr Harker, who seconded the motion, should have been impartial but did not appear to be. As Chair, Cllr Boyce should have been impartial. As a parish representative Cllr Anderson should have at least abstained, if he was not sure but he too was very quick to say, “completely innocent”. There was no evidence to suggest that Cllr Fluker was innocent and yet Cllr Anderson was very quick to support the proposal”. He could not understand his behaviour. When the vote was made “the room exploded”. It was a travesty.

Cllr Jarvis went on to say that the predetermination of Cllr White was clear. That of the others was “more difficult to prove and was less concrete”. It was simply his opinion that they were

predetermined. Cllr Boyce's reaction about item 8 of the procedure before the meeting was suggestive to him of predetermination – "we might not need that". He had wondered, "How do you know that now?". Cllr Boyce should have taken the Committee out to consider its verdict as per the procedure and allowed the Independent Person to sum up, but he did not. Lack of competence in chairing a meeting is not, of course, an offence.

He seemed to recall that Cllr White had tried to put the motion forward earlier in the meeting. Cllr Harker was certainly keen to second it. They were both "keen to do it quickly, without any gloss". He had no evidence to suggest that Cllr Anderson did not make his own mind up quickly during the meeting though he was going against the DMO's report and the views of the Independent Person. He said that he sensed that "people had spoken about it and wanted quickly to declare him innocent of all charges". It was "an appalling show of governance".

Stephen Nunn said that he, "voted against because there was no argument that Cllr Fluker had done what he was alleged to have done – the report said he was "guilty", and he had admitted he was". Whilst he felt there had been predetermination, he had "no evidence beyond reasonable doubt that there was predetermination". However, he said that "based on the facts in front of him and on the balance of probability he felt that there was predetermination the fact that the statement was read out; and the fact that the report presented evidence that there had been breaches of the Code of Conduct and the Leader had apologised. That certainly did not appear right". Asked on whose part was there predetermination he replied that he did not "know" but "the man in the street might say "everyone who voted in favour of the proposal".

Peter Stilts said he "was amazed the evidence was there in front of [them] that Cllr Fluker had gone and got this additional training to make him aware". What he had done was not right and breached the Nolan Principles. He had produced evidence to say that he had gone on to do these training courses "which, to a degree, is an admission of guilt, he realised what was wrong and therefore he would make amends on it, and yet it came up with "oh no, we think he's ok and all the rest of it"". Cllr Stilts was just amazed – "I've never seen anything like that before" including during many years of investigations in the Fire Brigade. "There are more of us than there are of you and we reckon he's ok".

Cllr Stilts added that the Chairman "had voted when he thought he should have been non-political and independent of the proceedings. He was controlling the meeting and saying who could speak and yet, when the proposal was made, it was almost as if, "We've had this proposal, let's vote, that's it, done"". Cllr Stilts told me that he thought the four councillors who had voted in favour of the motion were "in on it", though he was not sure about John Anderson (though he had previously been a Conservative). He thought that it had "almost been pre-arranged" along political lines.

The **Member** commented that, "As councillors we were able to read the statement made by Cllr Fluker as evidence in this case which was untrue as anyone who was at the full council meeting will know although some chose to agree with Cllr Fluker for reasons unknown but questionable".

Sue White said that her proposal got a majority vote, though "you don't know what is going to happen you make a proposal".

I commented to **Bob Boyce** that he had voted in favour of Cllr White's motion. He said that he was not previously aware that the detail of the vote was publicly available because it was not a

recorded vote, rather it was a committee decision. He said that he had originally intended to abstain but he “suspected that [he] would end up with a tied vote in which [he] would have to cast and then thought it would be better to vote for the proposition”

I suggested to **John Anderson** that Cllr Fluker had apparently admitted both gesture and comment and apologised to Cllr Siddall (who first of all accepted his apology and then declined to accept it). He had, it seemed, been on an online training course. Some might interpret that as meaning that Cllr Fluker had accepted that he had breached the Code of Conduct. Why had Cllr Anderson not seen it that way? He replied that he “had missed that”. He did not see the comment as homophobic – both councillors were yachtmen and he saw it as a simple greeting. He did not believe that Cllr Siddall had taken it as a homophobic remark until others suggested it. He was aware that Cllr Fluker had done training, but he was not aware that he had necessarily admitted a breach of the Code.

I suggested that rather than “admitting” he had breached the Code Cllr Fluker had apologised and attended a training course. Some might therefore say that in doing that he had implicitly said that he had breached the Code. How then could the JSC arrive at a conclusion that he had not breached the Code? Cllr Anderson replied that he was not aware that he had “admitted” breaching the Code or allegedly admitted that he had breached the Code. He was not present so could not be questioned. He simply “took his statements and listened to what [Simon Quelch] said etc. and thought it was a storm in a teacup and that was the end of it as far as [he] was concerned”. He did *not* discuss beforehand with any of the other councillors how he was going to vote. He is not a District Councillor so does not get to see the other councillors or talk to them. As the Parish Council representative, he “just took all the paperwork on board”.

8.7 AFTERMATH OF THE MEETING

8.7.1 The Independent Person

Norman Hodson, the Independent Person, told me that, before he left the Chamber, he spoke to Simon Quelch “because it made him question his position but he “left it there””. On the way out he bumped into Cllr Thompson, who was in the public gallery throughout the proceedings (unusually, perhaps ten councillors were observing the JSC that day). He expressed his disappointment and said that it had made him question his part in it and whether he was wasting his time. She said very little but appeared shocked by the way it turned out”.

He told me that he, “felt the whole thing had been “totally mishandled” and later that day he called Simon Quelch and said he really did not like what had gone on. It was not good for the Council, politics or democracy. He said that he intended to write to Cllr Thompson, as Chairman of the Committee, and set out his views and within a couple of days he did that. He shared with her his reflections on the meeting and how it had been mishandled”.

He said that, “she replied very early the following morning (a Sunday) and then replied more fully on Monday afternoon saying she had listened to the audio recording of the meeting and there were things to discuss. She invited him for an informal discussion, and he met her the next day (Tuesday). She “admitted that the Hearing had been mishandled and they needed to do things better”. It was agreed that Mr Hodson would present a training session on how he felt the Standards Committee was operating. That had yet to happen and, if it does, it is likely to take place after the AGM in May 2020 when membership of the Committee has been “shuffled””.

Mr Hodson “felt that, if [I] were to speak to Cllr Thompson, she would be sympathetic to the view that the Committee had been mishandled but he did not think she would agree that the decision was predetermined. He thought perhaps she would agree that she should have chaired the meeting and that, as a minimum, there should have been a proper debate on Emma Holmes’s report. That report was comprehensive and deserved debate”.

When he shared his email exchange with me a few days after I spoke to him, Mr Hodson said that during the meeting he had with Cllr Thompson, she “did agree that the meeting was not conducted in a satisfactory manner [and he] seem[ed] to recall she said on reflection she regretted asking Cllr White to substitute [and] for her not chairing the meeting”.

Mr Hodson told me that since he had been involved with Maldon it had been Conservative-controlled. He had approached all the complaints he had dealt with during that time from an unbiased, non-political point of view. By contrast, the Councillors on the Standards Committee had not always approached the complaints before them in as fair and open a way as he would have liked. He had said that several times at Council. He had been critical of the way that some complaints had been dealt with in the past and there had been “offline meetings” about his concerns.

There had previously been decisions made by the JSC that he had disagreed with. When that happened, he would normally say that he disagreed and why but, by the time he was able to say that, the decision had usually been made so his opinion was superfluous.

He said that the Council really had to do things better as far as its handling of complaints was concerned even though there were few sanctions that were available to them when a councillor was “found guilty” and the law was “toothless”.

Simon Quelch confirmed to me that he had spoken to Mr Hodson after the meeting who had expressed his concerns. He confirmed too that Mr Hodson had spoken to him again by phone later and said how upset he was at the decision. Mr Quelch had encouraged him to meet Maddie Thompson to discuss it. “As the Independent Person he was free to express his feelings about the way that the decision had been made by the JSC”. Mr Quelch had arranged the meeting and the two of them met without him being present. They called him in afterwards to discuss training for members. It had been agreed that Mr Hodson would provide the training as the Independent Person.

8.7.2 The Press

After the Hearing, Cllr Fluker made a statement to the **Maldon Standard** saying, “As soon as I became aware that I had unintentionally offended someone, I apologised unreservedly and accounted for my actions. In making their decision the joint standards committee would have taken everything into consideration and noted that of my own volition I had attended equality and diversity training.”

In the 7th – 20th February edition, **Private Eye** published a brief piece headed “Hello Sailor”. It ended, “After deliberation, the Tory dominated [standards] committee decided that there had been no breach of the councillors’ code of conduct and no further action was needed. Just fancy that. Next!”

8.7.3 Other Observations

The Terms of Reference of the JSC (clause 10) require the that “[a]fter making a finding at a hearing the Committee shall, through the Monitoring Officer, provide written notice of its findings immediately. Detailed reasons for its decision shall be given to the [S]ubject Member and the complainant in the form of a decision notice within 10 days of the hearing”. **Simon Quelch** confirmed that this was not custom and practice but told me by email that minutes were provided which became the legal record of what was decided and were uploaded onto the Council website.

Emma Holmes said that Cllr White “had remained in the Council Chamber and spoke to her and Cllr Thompson after the meeting. She was aware that what she had suggested and therefore the decision was going to cause controversy. She left through a back door of the Council building because she did not want to go anywhere near any of the members. She did not give any impression that it had been predetermined but Ms Holmes knew that there was a lot of heat attached to the subject matter so she could not believe that there had not been some general discussion about it or awareness before the meeting took place. This could be said for all the District Councillors who sit on the committee as they had all been at the original meeting where the incidents took place.

Wendy Stamp said that the outcome of the Hearing had subsequently appeared on twitter and in Private Eye and “went viral”. She had gone home and said to her husband that she felt like resigning because it reflected on her as a District Councillor.

Karl Jarvis told me that on his way out of the Hearing he had made it clear to Cllrs White, Boyce, and Harker that he was disappointed, and he could see that they were “very sheepish” about the outcome and “knew they had done the wrong thing”. He had not, however, spoken to Cllr Anderson. He told me that had considered formally complaining about Cllr White’s predetermined conduct during the JSC meeting there was clear evidence to prove the case beyond reasonable doubt. Cllr White had clearly not listened to the DMO or the Independent Person or had ignored what they said”.

Stephen Nunn said that, “In the Members’ Lounge afterwards you could hear people talking about how wrong the decision was”. He said he felt that the JSC had been in an invidious position and should never have been adjudicating that case. It “should have been completely independent”. He had walked home thinking it had been a “waste of time”. He now felt uncomfortable that others were calling the JSC “the Double Standards Committee” because he was part of it and felt responsible for its decisions.

9 EVALUATION OF EVIDENCE - 30th JANUARY JSC MEETING

9.1 EVALUATION – PRE-MEETING

The decision by the Monitoring Officer to hold a pre-meeting because, out of the seven members adjudicating, three were substitutes and a fourth was attending his first meeting, was a sensible one. According to Cllr Anderson, he “checked that they had already seen and understood the documents”. By walking them through the Procedure Note he had prepared, which he had also attached to the agenda in advance of the meeting, Mr Quelch was setting a clear expectation of how the meeting was to progress and making plain the nature of the meeting. His assertion that every member was clear what was expected of them when they left the pre-meeting and his

relative confidence that he had also made it plain that their decision was to be an objective one based on the evidence seems reasonable and to be borne out at interview by those who attended the meeting.

The four Subject Members all recalled the pre-meeting. The references to Planning and Licensing that were made at interview by some Subject Members seem too to confirm that they knew that they were to go into the meeting without predetermination and, as Cllr White said, “with an open mind and make a decision actually during the meeting”. It seems reasonable, therefore, to conclude that members of the JSC were well-prepared procedurally for the meeting, knew what was expected of them and knew they were to weigh the evidence and make an objective, open-minded decision. As Cllr Siddall observed, “inexperience was not a defence”.

9.2 EVALUATION - ELECTION OF CHAIRMAN, VICE CHAIRMAN and SUBSTITUTIONS

Following her election as Chairman of the JSC, Cllr Thompson’s decision to step down on the day but remain in the Chamber for the Hearing appears surprising. It was generally accepted by interviewees that because, as Deputy Leader, she worked closely with Cllr Fluker, there might be criticism about a lack of objectivity. That is certainly a plausible explanation though I noted Cllr Morris’s observations about her continuing presence in the Chamber.

That said, and as noted under “Disclosure of Interest” at the Hearing itself, everyone present (including the Vice-Chairman, who stepped up to chair the Hearing) knew the Subject Member, Cllr Fluker, and therefore had an interest because he is Leader of the Council. Cllr Nunn’s comment that “he had been uncomfortable judging this matter right from the start” because “judging your superior was an alien concept” appears pertinent.

However, the role of the Chairman of the Joint Standards Committee seems to me to demand objectivity and some ability to rise above political considerations. I share Cllr Nunn’s view that “politics and the whip should not come into the JSC”. Against that backdrop, Cllr Thompson’s apparent willingness to give in to pressure to step down, whether from the Conservative Group or others, seems questionable.

Mr Quelch told me that it was for Cllr Thompson herself to arrange a substitute. His point that, because the JSC took place in the middle of a normal working day, there were limited options available to her is a fair one. However, it seems to me that Cllr White’s apparent closeness to Cllr Fluker and the suggestion by some that she and Cllr Thompson are “well known not to be the best of friends”, together make her decision to ask Cllr White to be her substitute even more surprising. I also found it surprising that Cllr White and Cllr Harker “could not recall” or “did not know” why Cllr Thompson needed a substitute though Cllr White did later tell me after she had reviewed the report whilst it was in draft that there was nothing odd in a councillor not knowing why they were being asked to substitute. Cllr Harker made a similar remark when commenting on the draft report.

9.3 EVALUATION - DEPUTY MONITORING OFFICER and INDEPENDENT PERSON

An objective reader of the Report, which was prepared by the Deputy Monitoring Officer, would have been left in no doubt that she considered Cllr Fluker to have breached the Code, though she did not say that *explicitly* in her brief submission to the JSC. Her assumption that Members had read the Report beforehand - so she would not read it verbatim - seems fair and quite usual. Cllr

White's confirmation at interview that members had had everything beforehand and that she had "dissected" the papers and made notes and a list of 20 or 30 questions before the meeting also appear to confirm the fairness of Ms Holmes's assumption.

Whilst the Independent Person's briefer contribution was, perhaps, made earlier in the meeting than the Procedure Note suggested it should have been, it nevertheless offered new information. *It confirmed to the JSC (for the first time) that he agreed with the Report and thought that it reflected what had happened at the meeting.* But he went further than Ms Holmes in suggesting that Cllr Fluker's actions were also *bullying* in nature. Cllr Jarvis commented on that to me at interview and observed that Mr Hodson (and Ms Holmes) "were simply ignored". That appears to be confirmed by Cllr Anderson who recalled Mr Hodson speaking but could not remember what he said whilst Cllrs White and Harker made no mention of his contribution at all. I do not, therefore, agree with Cllr White's assertion that there was "absolutely nothing new" presented at the Hearing. It seems clear to me that there was.

9.4 EVALUATION - CONSIDERING THE EVIDENCE

Once the Deputy Monitoring Officer and the Independent Person had spoken, the period of questioning that followed lasted almost exactly ten minutes.

That appears to me, as it did to Simon Quelch, Emma Holmes, and others to have been brief – briefer, perhaps, than might have been expected for a high-profile hearing which had attracted the attention of the local press. It was certainly considerably shorter than the questioning at the JSC meeting which considered the complaint against Cllr Mark Bassenger on 22nd August 2019 (a meeting which ran to about 75 minutes). Cllr Anderson noted, perhaps fairly, that the complaint on that occasion was considerably more complex. Explaining the short duration, Cllr Boyce told me that all were experienced councillors who had read and understood the papers beforehand - he himself was clear what had been put in front of him.

Commenting on the questioning Norman Hodson said that, apart from Cllr Jarvis, the questions were not searching questions. Simon Quelch said that there had been "few clarifying questions and no real examination of what was there". He agreed too that some of the questions were not relevant, albeit some were from substitute members. Emma Holmes thought that some of the questions on her report were "good questions".

Cllr Siddall observed that the Emma Holmes's evidence was not scrutinised, and that the quality of the discussion was "dreadful" with no discussion at all and no engagement. It was, he said, "as if some of those experienced councillors had no idea about how a JSC conducts itself". Cllr Stamp could not "recall whether they discussed the homophobic remark". Cllr Stilts said that he had given evidence in Coroner's, Crown and Civil Courts several times but "had never seen anything like this before". He described it as a "charade". The Member said that there was no consideration of the facts or evidence. The audio recording confirmed that Cllr White and Cllr Anderson did not ask any questions.

It therefore appears to me that on the whole, as well as being brief, the quality of the questioning by the JSC was insufficiently searching, of a low standard and occasionally irrelevant. The "Hello Sailor" remark was barely mentioned at all. Some members of the JSC were passive (when they should have been active) and did not ask any, or any useful, questions.

It appears to me too that only Cllr Jarvis (a substitute) with some support from Cllr Nunn, took a forensic approach to questioning and treated the Report, the contributions made by Mr Hodson and Ms Holmes and the opportunity for serious questioning with respect. Because of his questioning JSC members should have been left in no doubt that they were dealing with a two-stage process. Simon Quelch helpfully described the process they should be following and drew out the very important point that stage one of the process was to establish whether there had been a breach or breaches of the code, whilst stage two was to decide what sanctions to apply if there had been a breach.

9.5 EVALUATION – THE PROPOSAL

Turning now to Cllr White's proposal, several witnesses told me that Cllr White read from a pre-printed, pre-prepared statement. Cllr Stamp, for example, said that she herself saw the piece of paper and added that "everybody saw it who was in that room and it was read from a scripted piece of paper, word for word, verbatim". Mr Hodson, the Independent Person, said that he was "prepared to state that [Cllr White] was reading from a prepared statement", he could be "100% certain", he said. Cllr Nunn, who was sitting immediately to Cllr White's right, was clear that she had a typed statement before her, in large typeface, maybe with highlights. His caveat was whether she had another statement in her bag that said something else though "that's probably me being very generous". Some of those I interviewed had not seen a pre-printed piece of paper.

I told Cllr White that several witnesses had suggested that she had read from a pre-printed piece of paper when making her proposal. She did not respond to that point and replied instead with what felt like an elaborate explanation that confirmed only that she had a "big bunch of papers" in front of her – "it wasn't one sheet of paper, there was a lot of them". She made no mention of having alternative proposals available to her.

I obtained the CCTV footage from the Council (it is not available on the Council website), though it is soundless and needed to be combined with the audio recording for full effect. It had initially appeared likely from listening to the audio recording (which *is* available on the website at time of writing) that Cllr White was either reading her proposal or reciting it verbatim from memory. However, the video recording of the Hearing confirms that she read the proposal - she can be seen pulling her glasses from the top of her head onto the bridge of her nose whilst making her proposal before putting them back again once she had finished.

I am therefore left in no doubt, based on the facts available to me, that Cllr White read her proposal from a pre-printed piece of paper which she had, therefore, brought into the Chamber before the Hearing.

Several witnesses commented on the abruptness of Cllr White's proposal – Norman Hodson said Cllr White went straight into her proposal, Emma Hodson said "it sort of came out of left field", Cllr Stamp remarked "all of a sudden she produced this piece of paper", Cllr Stamp said that she was "keen to read the statement out", Cllr Stilts commented that she had "suddenly looked up [and] said that she wanted to say something", Cllr Harker also used the phrase "all of a sudden".

As far as seconders were concerned, Norman Hodson commented that Cllr Harker "just shot his hand up", Cllr Morris, who was there as an observer, noted the speed with which the seconder's hand had gone up after the proposal whilst Cllr Jarvis said Cllr Harker was "certainly keen to second it". Cllr Harker made the point, whilst commenting on the draft report, that he considered

the “shot my hand up” comment to be “stupid”. He had “put [his] hand up quickly, like [he] usually do[es]. What’s wrong with that?”.

Having interviewed witnesses and listened several times to the audio record and read the transcript at Annex 2, I conclude that, in my opinion, Cllr White’s proposal was abrupt and rushed, did not follow the flow of discussion in the Hearing up to that point and thus came almost as a *non sequitur*.

It seemed clear too, from both audio and video records, that Cllr Harker was very quick to second the proposal. The video record confirms that, had the Chairman been looking towards Cllr Anderson when he asked if the proposal was seconded, he would have seen him offering to second it a split-second behind Cllr Harker.

9.6 EVALUATION – VOTE, OUTCOME AND AFTERMATH

Asked about their reaction to the outcome of the vote interviewees used words like “dumbstruck” (Norman Hodson – Independent Person); “shocked” (Cllr Stamp – Independent); “a travesty” and “so obviously wrong” (Cllr Jarvis- Conservative); and “amazed” (Cllr Stilts – Parish Councillor). Amongst other descriptors Cllr Morris (Non-Aligned) called it “a farce” and a “whitewash”. Simon Quelch (Monitoring Officer) said that he was “surprised by the decision made” whilst Emma Holmes (Deputy Monitoring Officer) said it was “certainly not the decision that [she] was expecting”. By contrast, Cllr White (Conservative) said, “you don’t know what is going to happen when you make a proposal”.

Based on my own reading of the Report and my own interviews whilst carrying out the Investigation (and noting once again that I am not re-hearing the complaints against Cllr Fluker, which have already been determined) it is difficult not to sympathise with the words that many interviewees used to describe the vote and the outcome. It is hard not to deduce that the vote and the outcome were politically motivated, and it is tempting too to sympathise with Cllr Morris’s opinion that the JSC had presided over a “miscarriage of justice”. It may be that, as Cllr Jarvis suggested, he could tell from the “sheepish” demeanour of some of the councillors after the Hearing ended that even they “knew they had done the wrong thing”. This though is something that Cllr White denied when asked to comment on the report whilst it was in draft saying that she left by the back door because she was frightened by the hostile atmosphere after the decision. The snippet in Private Eye left no doubt about its opinion.

After the Hearing Norman Hodson told me that he had considered resigning as Independent Person and he described to me the meeting he had with Cllr Thompson soon afterwards. Whilst I did not attempt to confirm what he told me of Cllr Thompson’s response to what had happened with Cllr Thompson herself, her apparent agreement that there was a need for training of the JSC and the statement in her email to Norman Hodson that “there were definitely lessons to be learnt” and her gratitude “for the opportunity to meet and, hopefully, find a way forward” suggest to me that she realised that the JSC had not, perhaps, been true to paragraph 1 of its Terms of Reference by “promoting and maintaining high standards of conduct by Members” on 30th January 2020.

10 WAS THERE PRE-DETERMINATION?

10.1 THE EVALUATION SO FAR

From an evaluation of the available evidence and on the balance of probability I have so far concluded that:

- The pre-meeting called by Simon Quelch left JSC members suitably prepared and properly equipped for the meeting. They knew their duties, and they knew too that they were expected to make an objective, open-minded decision in assessing the complaints against Cllr Fluker.
- Cllr Thompson's decision to stand down as Chairman before the Hearing and to appoint Cllr White, a friend and political ally of Cllr Fluker, as her substitute were questionable. This was particularly so when she and Cllr White were known not to be the best of friends. Indeed, there were concerns before the Hearing began about whether the JSC should be adjudicating at all on complaints that had been made about the Leader's behaviour (although the law does not allow alternatives to any great extent).
- The questioning of the Deputy Monitoring Officer and the Independent Person by most members of the JSC was brief and fell well short of the appropriate standard. Cllrs White, Anderson and Boyce asked no questions at all, whilst Cllr Harker's sole contribution was deemed irrelevant by the Chairman. Only Cllr Jarvis, with some support from Cllr Nunn, took a forensic approach to questioning. His contribution drew out the important point that adjudication of the complaints was a two-stage process. The "Hello Sailor" remark was all but absent from the discussion.
- Cllr White's proposal was made somewhat out-of-the-blue and was read from a pre-printed, pre-prepared piece of paper. It was rapidly seconded by Cllr Harker, a split second before Cllr Anderson offered to do the same.
- The vote took place along broadly party lines. Most interviewees and some observers regarded the outcome with what might charitably be described as a jaundiced view. The reactions of many might be summarised as a feeling that there had been a miscarriage of justice which might even have been shared by some of those who supported the proposal. The decision came close to prompting the resignation of the Independent Person and appears to have given Cllr Thompson, the JSC Chair, some pause for thought. Private Eye mocked the outcome.

10.2 WERE THE SUBJECT MEMBERS ACTING IN AN OFFICIAL CAPACITY?

Before reaching a conclusion on whether a breach or breaches of the Code took place, I must first establish whether the Subject Members were acting in an official capacity. The legal position has been discussed in some detail at 3.3 above.

Given that the Subject Members were serving as members of the Council's Joint Standards Committee at the meeting **I conclude from the evidence available to me that there can be no doubt that Cllrs Boyce, Harker, and White were acting in capacity. The position of Cllr Anderson is different as previously discussed as he falls outside the definitions within the Localism Act.**

10.3 WAS THERE PREDETERMINATION?

The final step, therefore, is to consider whether there was predetermination and/or possible breaches of the Code in the actions of Subject Members at the meeting on 30th January 2020. I remind the reader that two of the Complainants, Cllrs Stamp and Siddall, believed that Cllr White

alone was predetermined, whilst Cllr Morris believed that Cllrs White, Boyce, Harker and Anderson were all predetermined. It is important too to note that predetermination is not of itself a breach of the Code; what matters are the *consequences* of any predetermination.

10.3.1 Were Councillor White's actions predetermined?

In considering whether Cllr White's actions were predetermined I begin by noting that she was left in no doubt about her duties and responsibilities and about the need for objective adjudication as a member, albeit a substitute member, of the JSC, when she attended the pre-meeting.

Many of those whom I interviewed felt that, in reading out a pre-prepared, pre-printed proposal, Cllr White was *immediately* predetermined. Whilst I do not share that view – that alone is not a *conclusive* indicator - I do share Simon Quelch's opinion that "it certainly starts the ball rolling".

Cllr White's proposal came after only ten minutes of questions. It was somewhat out-of-the-blue, failed to recognise the two-stage nature of the JSC's considerations and actually conflated those two stages. Her implied argument was that, because he had apologised to Cllr Siddall and the Council and had voluntarily completed some diversity training, then Cllr Fluker had not failed to comply with the Code. The proposal did not recognise the fact that acceptance of that apology had been formally withdrawn by Cllr Siddall (even though that is stated in the Report and was repeated by Ms Holmes in response to a question from Cllr Nunn). It took no account either of the offence that Cllr Fluker's actions caused (also stated in the Report). It was as if the written and spoken contributions of the Deputy Monitoring Officer and the Independent Person had been ignored and the discussion at the JSC had not taken place when Cllr White made her proposal.

I tested Cllr White's reasons for deciding that Cllr Fluker was "not guilty" and found her responses unconvincing. When I mentioned in particular Cllr Siddall formally rescinding his acceptance of Cllr Fluker's apology and Cllr Fluker's diversity training, her response, which mentioned a nephew who had had a full sexual transformation and her LGBTQ+ horse riding colleagues, appeared almost completely irrelevant and seemed not to address the point. Her efforts to present Cllr Fluker's apology to me as not actually an apology at all seemed to be somewhat at odds with her proposal which had actually *recognised* that apology. Without being able to provide me with what I felt was a persuasive explanation, she was nevertheless clear that, in her opinion, Cllr Fluker had not done anything wrong.

At interview Cllr White made much of her experience in Planning and, early in that interview, was keen to share with me how she made the best decisions she could based upon the information available to her at the time. She ended the interview in a similar vein by reiterating that she was not predetermined and had made up her mind during the meeting as she did with every Planning meeting.

Cllr White was, *of course*, free to disagree with the Report and the views of the Deputy Monitoring Officer and the Independent Person even in the face of what some might call conclusive evidence. When I observed that Cllr White had not asked any questions – questions that might have allowed her to test her own conclusions - she replied, "No, they were all confirmed after the Officers' presentations and after the other members spoke. Cllr White told me that the bundle she took with her to the Hearing had been marked up and that "she had on the front page ... 20-30 sentences of things she either wanted to ask if things came up or [there were things] she needed

clarity on. In actual fact it was all clarified and after taking the information during the meeting and nothing new transpired, [she] came to [her] decision". I was not at all persuaded by that, not least, because the JSC's questioning was brief and generally inadequate and yet, despite the 20 – 30 sentences she had prepared, she asked no questions herself.

In reflecting upon Cllr White's stated experience in Planning matters and the parallel she implicitly drew between Planning and the work of the JSC I consulted the LGA's 2019 document "Probity in planning Advice for councillors and officers making planning decisions" and, specifically, the section entitled "Decisions which differ from a recommendation" (p.19). I noted, in particular, that "the committee's reasons should be clear and convincing", that "Councillors should be prepared to explain in full their reasons for not agreeing with the officer's recommendation" and that "the officer should be given the opportunity to explain the implications of the contrary decision". These points appear pertinent.

Cllr White did not interrogate the Deputy Monitoring Officer or the Independent Person. This was in spite of the fact that Mr Hodson was presenting his opinion for the first time and had gone further than Ms Holmes in suggesting that there had been bullying behaviour by Cllr Fluker. It was in spite of the fact that, as the Council website confirms, under the Localism Act Section 28, subsection 7 (a), the "views [of the Independent Person] 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".

The Independent Person had given her "new information" which was completely contrary to the proposal that she was about to make. Yet Cllr White did not explore what Mr Hodson and Ms Holmes had said or test their conclusions as she might, perhaps, have done in a Planning Committee to avoid any allegation of predetermination, and there is no evidence that she or the other councillors who voted with her took any account of his views as they are obliged to by law. It is not the case, as Cllr White suggested when commenting on the report whilst it was in draft, that if members "disagree with the Independent Person [they] will be guilty of wrongdoing" nor that "Democracy is being removed". The law does not mean you have to accept those views but, where you disagree, you must give clear reasons why you are not agreeing with officer recommendations.

I note too (i) Cllr White's alleged closeness to Cllr Fluker, (ii) her appointment as a substitute for Cllr Thompson notwithstanding the fact that they appear not to be the best of friends, (iii) Emma Holmes's assertion that Cllr White left through a back door of the Council building (perhaps with a "sheepish" demeanour as claimed by Cllr Jarvis – something that Cllr White denies) because she did not want to go anywhere near any of the members, some of whom felt that there had been a miscarriage of justice and (iv) the adverse publicity that followed the decision and in particular the piece in Private Eye.

In light of the above I conclude, based on the balance of probabilities and the evidence that I have available to me, that Cllr Sue White demonstrated predetermination in the Joint Standards Committee on 30th January 2020.

Having already satisfied myself that she was acting in an official capacity when she sat on the JSC I must, therefore, conclude that she breached clause 3.5 (e) of the Maldon District Council Code of Conduct in that she conducted herself in a manner which could reasonably be regarded as bringing her office or the Authority into disrepute.

10.3.2 Were Councillor Harker's actions predetermined?

In considering whether Cllr Harker's actions were predetermined I begin by noting that he too was left in no doubt about his duties and responsibilities and about the need for objective adjudication as a member, albeit a substitute member, of the JSC when he attended the pre-meeting.

I noted Cllr Harker's apparent keenness to second Cllr White's proposal which came after only ten minutes of questions. As already noted, the proposal was somewhat out-of-the-blue (indeed Cllr Harker noted that it was "sudden"), failed to recognise the two-stage nature of the JSC's considerations and actually conflated the two stages which had been explained to the JSC earlier. In seconding the proposal, Cllr Harker supported the implied argument that, because he had apologised to Cllr Siddall and the Council and had voluntarily completed some training, then Cllr Fluker had not failed to comply with the Code.

The proposal did not recognise the fact that acceptance of that apology had been formally withdrawn by Cllr Siddall even though that is set out in the Report and was repeated by Ms Holmes in response to a question from Cllr Nunn nor did it recognise that Cllr Fluker's actions had caused offence. It was as if the written and spoken contributions of the Deputy Monitoring Officer and the Independent Person had been ignored and the discussion at the JSC had not taken place when Cllr Harker seconded Cllr White's proposal.

Cllr Harker was, *of course*, free to disagree with the Report and the views of the Deputy Monitoring Officer and the Independent Person even in the face of what some might call conclusive evidence. I tested Cllr Harker's reasons for deciding that Cllr Fluker was "not guilty". When I mentioned in particular Cllr Siddall formally rescinding his acceptance of Cllr Fluker's apology, Cllr Harker replied "the Report only mentioned the apology. It did not mention that the acceptance of the apology had been withdrawn – "normally you deal with what's in front of you", he said. I suggested too that the withdrawal of the apology had been discussed at the Hearing. Cllr Harker replied once more that the Report had said that the apology had been accepted but it did not say that it was subsequently withdrawn. In fact, this was not the case – the Report clearly mentioned the rescinding of the apology and so too did Emma Holmes in response to a question from Cllr Nunn during the Hearing. I thus found Cllr Harker's reasoning somewhat unconvincing in this respect.

Cllr Harker also said that the Report did not say that "it was confirmed that Cllr Fluker would take diversity training which [he] understood afterwards had actually taken place" and added "you have to deal with the evidence in front of you and neither of those statements were in front of us to make the decision. It was very similar to Planning – you can only deal with what's in front of you".

Once again this was not the case. The Report clearly stated that Cllr Fluker was prepared to undertake diversity training and had asked the Council to arrange it. I was told too that a certificate confirming that he had attended diversity training had been circulated to members of the JSC prior to the Hearing. Cllr Harker therefore appears to have been incorrect in his understanding of the diversity training. It is, of course, perfectly possible that he had simply misunderstood what he had read or had not been paying attention as the Hearing proceeded. In

commenting on my draft report, Cllr Harker said, “I am not a lawyer and could easily have not read some parts of the [Deputy Monitoring Officer’s] report”.

Cllr Harker had been, he said, Chair of the Central Area Planning Committee on three occasions for a total of six or seven years and therefore “knows all about planning and predetermination”. He told me at some length about the training courses he had attended and the emails he had received about predetermination over the years.

In reflecting upon Cllr Harker’s stated experience in Planning matters and the implied parallel he drew between Planning and the work of the JSC I consulted the LGA’s 2019 document “Probity in planning Advice for councillors and officers making planning decisions” and, specifically, the section entitled “Decisions which differ from a recommendation” (p.19). I noted, in particular, that “the committee’s reasons should be clear and convincing”, that “Councillors should be prepared to explain in full their reasons for not agreeing with the officer’s recommendation” and that “the officer should be given the opportunity to explain the implications of the contrary decision”. These points appear pertinent.

Cllr Harker asked just one question, which the Chairman thought irrelevant. He did not interrogate the Deputy Monitoring Officer or the Independent Person. This was in spite of the fact that Mr Hodson was presenting his opinion for the first time and had gone further than Ms Holmes in suggesting that there had been bullying behaviour by Cllr Fluker. It was in spite of the fact that, as the Council website confirms and under the Localism Act Section 28, subsection 7 (a), the “views [of the Independent Person] 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”. The Independent Person had thus provided the JSC with information that they had not had before which was completely contrary to the proposal that Cllr Harker went on to second.

Yet, even though this flew in the face of “the evidence that he had in front of him”, Cllr Harker did not explore what Mr Hodson and Ms Holmes had said or test their conclusions as he might, perhaps, have done as the former Chair of the Central Area Planning Committee. If he had done that having read the Report and having made marginal notes as he said he had, he might, as an experienced councillor, have ensured that he had explored the alternative view and avoided any allegation of predetermination. There is no evidence that he or the other councillors who voted with him took any account of the views of the Independent Person as they are obliged to by law. The law does not mean you have to accept those views but, where you disagree, you must give clear reasons why you are not agreeing with officer recommendations.

In light of the above I conclude, based on the balance of probabilities and the evidence that I have available to me, that Cllr Bryan Harker demonstrated predetermination in the Joint Standards Committee on 30th January 2020.

Having already satisfied myself that he was acting in an official capacity when he sat on the JSC I must, therefore, conclude that he breached clause 3.5 (e) of the Maldon District Council Code of Conduct in that he conducted herself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute.

10.3.3 Were Councillor Anderson's actions predetermined?

As part of the Investigation I gathered evidence and considered whether Cllr Anderson's actions were predetermined. Much of that work has been reflected in this report.

However, very late in the Investigation, I concluded (see Section 2 above) that Cllr Anderson was not acting in an official capacity when he sat on the Joint Standards Committee, so his presence did not meet the Localism Act definitions. I must therefore conclude that he was not covered by a Code of Conduct at the time and hence cannot be found in breach. I offer no comment on whether he was predetermined because I am not upon called to do so.

10.3.4 Were Councillor Boyce's actions predetermined?

I turn last of all to Cllr Boyce. It would be relatively straightforward, I think, to make the case that Cllr Boyce was himself predetermined:

- Like other members of the JSC he had attended the Monitoring Officer's pre-meeting and knew what was expected of him.
- His reasons for supporting the motion when he cast what was, in effect, the deciding vote appeared to me unconvincing (and in particular his comment about the redacted email) and his statement that the Report had contained an option to take no further action seemed to me to imply that, as Chairman, he had misunderstood the two-stage process that was being followed.
- He is a long-serving and highly experienced councillor who has served on the JSC since 2019 (and previously) for whom hearings such as this are commonplace.
- He is the serving Chairman of the District Planning Committee and a member of the South Eastern Area Planning Committee which, presumably, have to take particular care to avoid allegations of predetermination.
- He works closely with Cllr Fluker and is, doubtless, a political ally with a strong affinity to the Conservative Party and a "nose" for what is best for it.
- His intervention in the Hearing giving his view of the "throat-slitting" gesture was, in the opinion of some of those present, a controversial one.
- His failure to take up the Monitoring Officer's whispered suggestion that the Independent Person be asked to speak again after the proposal had been made (perhaps in lieu of the adjournment) could be deemed to be suspicious.
- His comment to me that he voted as he did because he "suspected that [he] would end up with a tied vote in which [he] would have to cast and then thought it would be better to vote for the proposition" gave me cause for concern.

Having said that, when Cllr Thompson stepped down as Chairman, Cllr Boyce knew that he would find himself, as Vice-Chairman (and Chairman of the Council), in the invidious position of chairing a high-profile meeting which was to hear complaints against the Leader of the Council. He would have had to ensure that his management of the Hearing was of a decent standard. Whilst Cllr Siddall (a Complainant) felt that there had been "bad process [and] bad chairing", Cllr Stamp (another Complainant) observed, "the meeting was very well run". In my opinion, to a large measure, Cllr Boyce's management of the meeting *was* of a decent standard:

- With the exception of item 8, he followed the Procedure Note.
- He gave the Independent Person the opportunity to ask questions though, rather than ask questions, the Independent Person stated his own opinion when it might perhaps have been

better if he had waited to make his own representations and give advice at item 7, as set out in the Procedure Note.

- His explanation as to why he decided not to adjourn the proceedings and withdraw to consider the “verdict” – he wanted an open and transparent process to avoid possibly strong challenge – seems plausible. I do not concur with Cllr Jarvis’s conclusion that that decision was “a bit of a worry”. Rather I believe that, whichever way Cllr Boyce had chosen to approach a possible adjournment, he could have been open to criticism.
- He gave all members a proper opportunity to ask questions and follow up without favour - he could not be responsible for the inadequacy of the questions that members asked.
- He did not attempt to steer the discussion or influence it (throat-slitting explanation aside) by asking questions of his own and he allowed the discussion to flow.
- He was robust in his control of the meeting and made it clear when he felt that questions were irrelevant, whoever asked them.
- He gave members the opportunity to speak against Cllr White’s proposal.
- His procedural interpretation in respect of Cllr Jarvis’s suggestion that he might make a proposal was, I was told by the Monitoring Officer, correct.
- He told me that he had originally intended to abstain.

I believe that Cllr Boyce *had* intended to abstain and therefore conclude that his vote demonstrated predisposition and party loyalty but not predetermination. Simon Quelch told me that, after the 2019 election, Cllr Boyce had made a public announcement that, because the Conservative majority had become very slim having previously been “massive”, he would be more of a political Chairman. He would be voting and would not be as neutral as a Chairman normally is. He felt that he had applied the same principle in his role as Chairman of the JSC. I concur with Mr Quelch’s assessment.

However, as Chairman of the JSC, he was presiding over a quasi-judicial process so there should be no question of a “political vote”. I noted Cllr Boyce’s surprise that I was aware how he had voted on the day and I was no more persuaded by his reasons for concluding that Cllr Fluker was not “guilty as charged” than I was by the reasons given by the other members of the JSC who had supported Cllr White’s proposal. Hence I can only conclude that the Chairman’s vote was political in its intent when it ought to have taken full account of the Report, the opinions of the Deputy Monitoring Officer and the Independent Person and should have been based on sound judgement and the facts of the matter.

In light of the above I conclude, based on the balance of probabilities and the evidence that I have available to me, that Cllr Bob Boyce did not demonstrate predetermination in the Joint Standards Committee on 30th January 2020.

However, having already satisfied myself that he was acting in an official capacity when he sat on the JSC I must, therefore, conclude that by using his vote as he did, he breached clause 3.5 (e) of the Maldon District Council Code of Conduct in that he conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute.

11. RECOMMENDATIONS

On the basis of the conclusions above I make the following recommendations:

1. **That the breaches of the Code of Conduct by Cllrs White, Boyce, and Harker be referred to the Monitoring Officer for further action.**

I make the following further recommendations:

2. **That all future decisions of the Joint Standards Committee be set out, with a thorough explanation for the decision taken, in a Decision Notice published within ten days of the hearing itself.**
3. **That careful consideration be given to the membership of the Joint Standards Committee and to the skills and attributes of members when membership is “shuffled” after the AGM which was scheduled for May 2020. In particular, consideration should be given to ensuring that, in future, all decisions of the JSC are beyond reproach and above party politics and that the JSC concentrates its efforts on “promoting and maintaining high standards of conduct by Members”.**
4. **That suitable training is arranged for members of the JSC as soon as possible after the membership is “shuffled” to ensure that they thoroughly understand their duties and responsibilities.**
5. **That, in all future deliberations of the JSC, the views of the Independent Person are sought, and properly taken into account, before the JSC makes its decision on an allegation that it has decided to investigate as set out in Localism Act Section 28, subsection 7 (a). Where the JSC disagrees with the views expressed by the Independent Person, this must be noted explicitly, with reasons, in the Decision Notice.**
6. **I note in passing that under the Localism Act 2011 the Joint Standards Committee is to be treated as an ‘ordinary committee’ of the local authority as defined in the Local Government Act 1972. This means that only members of the District Council can vote on matters at the meeting as there are no voting rights granted to co-opted members by statute. Although parish representatives can be co-opted onto a committee they do not have voting rights. The JSC therefore acted unlawfully by allowing parish council representatives to vote on the matter.**
7. **I also note in passing that, while an ‘ordinary committee’ is required to reflect the overall political control of the authority, the law also allows that to be waived by a vote of the council. MDC may wish to consider that as a way of restoring trust in the JSC’s decision-making processes.**

ANNEX 1 – DOCUMENTS AND SOURCES

In the course of my investigation I reviewed a variety of source materials. These are listed below.

- (1) Maldon District Council Local Code of Conduct (adopted 7th April 2016)
- (2) Maldon District Council Code of Conduct Complaints Process – Written Summary
- (3) Maldon District Council Code of Conduct Joint Standards Committee
- (4) Maldon District Council website <https://www.maldon.gov.uk/site/>
- (5) Maldon District Wikipedia entry https://en.wikipedia.org/wiki/Maldon_District
- (6) Report of Monitoring Officer to Standards Committee 30 January 2020: Standards Complaint – Councillor Adrian Fluker – includes emails of complaint from Cllrs Mayes and Stamp, an email from Cllr Fluker apologising to Cllr Siddall (dated 13th September), and an email from Cllr Fluker to Emma Holmes (dated 24th September) clarifying the significance of his “throat-cut” gesture.
- (7) Email exchange between Cllr Richard Siddall and Cllr Adrian Fluker (dated 13th September and 4th November 2019)
- (8) Agenda Joint Standards Committee, Thursday 30 January (dated 22 January 2020)
- (9) Email sent by Simon Quelch to Cllr Chrisy Morris summarising complaints he had made in a telephone conversation with him (30th January 2020)
- (10) Email of complaint sent by Cllr Richard Siddall to Simon Quelch (31st January 2020)
- (11) Email of complaint sent by Cllr Wendy Stamp to Simon Quelch (1st February 2020)
- (12) JSC audio recording 22nd August 2019
https://www.maldon.gov.uk/downloads/file/18101/22_august_2019
- (13) JSC audio recording 30th January 2020
https://www.maldon.gov.uk/downloads/file/17993/30_january_2020
- (14) JSC video recording (without sound) provided by the Council
- (15) JSC video recording (with sound) of final minutes of meeting
<https://www.youtube.com/watch?v=sD0lg8WvJtk>
- (16) Maldon Standard 30th January “Maldon District Council leader faces action after conduct probe into “throat-slit” gesture and “Hello Sailor” comment” available at
<https://www.maldonandburnhamstandard.co.uk/news/18196042.maldon-district-council-leader-faces-action-conduct-probe-throat-slit-gesture-hello-sailor-comment/>
- (17) Email exchange between Norman Hodson and Cllr Maddie Thompson 2nd & 3rd February 2020
- (18) Chelmsford & Mid Essex Times 7th February “Maldon District Council’s leader found not guilty in breach of conduct probe” available at
<https://www.chelmsfordweeklynews.co.uk/news/maldon/18216803.maldon-district-councils-leader-found-not-guilty-breach-conduct-probe/>
- (19) Private Eye 7th – 20th February “Hello Sailor”
- (20) Standards Board for England – “Predisposition, Predetermination or Bias, and the Code”
- (21) Probity in planning Advice for councillors and officers making planning decisions – Local Government Association, December 2019
https://www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf
- (22) Dengie Hundred Group of Parish Councils Minutes 17th January 2018
<https://thamaylandsmayl.com/wp-content/uploads/2018/council-minutes/DHGPC-Minutes-20180117.pdf>

ANNEX 2 – TRANSCRIPT OF PART OF JOINT STANDARDS COMMITTEE MEETING THURSDAY 30th JANUARY 11.00am

Venue: Council Chamber, Maldon District Council Offices, Princes Road, Maldon

Councillors present – Cllr RG Boyce (RB); Cllr MW Helm (MWH) apologies, substituted by Cllr BE Harker (BH); Cllr SP Nunn (SN); Cllr RH Siddall (RS) apologies, substituted by Cllr KW Jarvis (KJ); Cllr ME Thompson (MT) apologies, substituted by Cllr S White (SW); Parish Cllr JE Anderson (JA); Parish Cllr P Stilts (PS); Norman Hodson, Independent Person (NH); Simon Quelch, Monitoring Officer (SQ); Emma Holmes, Deputy Monitoring Officer (EH).

Councillors in attendance - Cllr EL Bamford (EB); Cllr MG Bassenger (MB); Cllr PA Channer (PC); Cllr MR Edwards (ME); Cllr JL Fleming (JF); Cllr AL Hull (AH); Cllr C Mayes (CM); Cllr C Morris (CHM); Cllr W Stamp (WS); Cllr C Swain (CS)

Simon Quelch began the meeting with standard items of the agenda and some clarification regarding the absence of a Chair and Vice Chair. Cllr Boyce nominated Cllr Thompson as Chair and Cllr White seconded. Mr Quelch reminded Cllr Morris that only Committee Members were allowed to speak at this stage. Cllr Morris pointed out that Cllr Thompson is the direct deputy to the person being discussed and it was a conflict of interest. It was clarified that Cllr Thompson was not part of today's Committee, although she was in attendance, and had appointed a substitute. Cllr Thompson and Cllr Boyce were elected as Chair and Vice Chair. A question was raised as to why there had not been an independent investigation regarding the matter being discussed and Mr Quelch explained that it is at the Monitoring Officer's discretion whether an independent investigation be held and in this case, the Deputy Monitoring Officer decided it should be heard at a Standards Hearing. It was also declared that, as everyone knew the Subject Member, Cllr Fluker, in fact everyone had an interest as he was the Leader of the Council.

[9 minutes, 5 seconds] Cllr Boyce took the Chair and introduced agenda item 7 regarding the complaint against Cllr Adrian Fluker to consider the report of the Monitoring Officer, Emma Holmes.

[What follows is a verbatim transcript of the proceedings]

[9 minutes, 43 seconds] EH - Good Morning everybody. I received two complaints in relation two incidents that happened at Full Council meeting on Thursday 12th September 2019. The first complaint related to an allegation that Cllr Fluker at that meeting had carried out a "cutthroat" gesture aimed at two Councillors, Cllr Siddall and Cllr Fleming following a vote. Complaints were received from Cllr Stamp, Cllr Mayes and Cllr Morris, in relation to a breach of the Code of Conduct in particular Sections B, that a Cllr must not bully any person, E, that Members conduct themselves in a manner which can reasonably be regarded as bringing the Office or Authority into dispute. I also took that to include not showing respect as well. The second complaint came from Cllr Morris which related to a comment made during a private and confidential section of that meeting of "Hello Sailor" to another Councillor. I don't intend to go through the report verbatim, hopefully Members have read and seen the information there. I can confirm that Cllr Fluker sent an email apology in relation to point two to Cllr Siddall and also that at the Full Council meeting in December, he made a general apology to the room in relation to any offence that he may have caused. For completeness, Cllr Fluker has quite clearly stated that he intended to cause no offence and has given a full explanation as to his thinking and the actions that he took. In terms

of the Committee today, they have a number of options open to them, in terms of the recommendations. **[11 minutes, 45 seconds]** It is for the Joint Standards Committee to determine whether they agree with the contents of my report, to consider the breaches of the Code and they will have a number of options open to them. One that I'd like to amend - there is an option on here which seems to have been omitted and that is to take no further action. To issue a formal censure in the form of a letter to be published on the Council's website; require Cllr Fluker to attend some form of training course; require Cllr Fluker to write a letter of apology to the Councillors or to the Council as a whole; you can recommend to full Council that Cllr Fluker is removed from one or more Committees for a set time, or recommend that Cllr Fluker is removed as Leader of the Council. It's not my role to make any recommendations as to the appropriate sanctions, if any are to be made, and all those options are there purely for completeness.

[12 minutes, 41 seconds] RB - Thank you Ms Holmes. My procedure note actually goes onto 4 now. Committee Members and the Independent Person are invited to ask the Investigating Monitoring Officer any questions. Mr Hodson, I'll come to you first, have you got any questions for Miss Holmes?

[13 minutes, 3 seconds] NH – Thank you Mr Chairman. Obviously, I wasn't at the meeting where this occurred so it's a little difficult for me to get a feeling for what goes on but I think I get the general gist that it was a busy sort of meeting and therefore there was a lot going on. It seems to me that from what the report says that the events did take place and therefore the Committee has to decide, I think, whether they caused offence and in fact caused those actions of bullying or disrespect. And the fact that a couple of these complaints have come from Councillors then at this stage I think we have to accept or I have to accept, rather, that Cllr Fluker did in fact bully those persons, even though perhaps they weren't directed at those Councillors that they may otherwise have been directed at, because it seems to me that the Councillors have complained. Therefore, I think that the report seems to reflect what went on, as far as I can see. I wasn't at the meeting, as I said, and therefore I didn't see any of the actions. But I can see that it was a busy sort of meeting but no, thank you, I can't really add to that. I don't really have any more questions.

RB - Thank you very much. Members? Cllr Nunn.

[14 minutes, 44 seconds] SN – Thank you Chair. Two points of clarification, please, for the Monitoring Officer. Is it true then that, in relation to allegation two, the apology that was initially issued by Cllr Fluker has not been accepted by the Complainant? That's the first question. Shall I carry on Chair?

RB – Yes, all right, give us your two questions and then Ms Holmes will respond.

SN – The second question is in relation to the options that are open to this Committee. Is it true to say that this Committee could impose options one to three but can only recommend options four and five?

RB – Ms Holmes?

[15 minutes, 26 seconds] EH – Thank you. In relation to the apology, that is correct. It was sent and then subsequently, I believe, was withdrawn by Cllr Siddall, he felt it wasn't sincere. He hasn't elaborated on any reasons why but, for fullness, the apology was made and subsequently the

acceptance of that was withdrawn. In relation to the options, any options in relation to suspension or removal from Committees would be a recommendation to Full Council and they would take a view on that.

SN – Thank you Chair.

RB – Other Members? Cllr Stilts?

PS – Mr Chairman, can I ask when Cllr Fluker actually became a councillor, please?

RB – I don't know that that is relevant and I don't know the answer. Perhaps about eight years ago?

PS – That's about correct, yes. Right, so therefore, the Nolan Principles, which your Code of Conduct is, they came in 1995, so it was already in, so he's been a councillor for eight years and therefore should be fully aware of it. Thank you.

RB – That's a comment. Cllr Jarvis?

[16 minutes, 44 seconds] KJ – Thank you Chair. I'd just like to ask the Monitoring Officer, or his colleague, I noticed in your report at the foot of page 15 you say you are unable to provide an [?] answer as to what was going through his mind at the time of the gesture. His explanation was a plausible one, it was backed up by the circumstances in the Chamber at the time of the incident. Could you just elaborate on what you mean by "the circumstances in the Chamber"?

EH – At the time of the meeting it was rather noisy at that point. There was a lot of general murmur of noise in the Chamber. Cllr Fluker's explanation was that he was attempting to quieten down that noise. So, I'm not in his mind, I can't take a view as to what was in his mind but in terms of that as an explanation, it wasn't a silent meeting room. In which case that would tend to suggest that the gesture wasn't meant for that purpose.

KJ – I can't recall, were you actually at that meeting?

EH – I was at that meeting

KJ – At that point in the meeting, a vote had just taken place and the discussion was quite robust before that but the vote had just taken place and two Councillors, who have been identified as Cllr Siddall and Cllr Fleming had abstained on that vote.

EH – Yes that's correct.

KJ – And that was at the point that Cllr Fluker did his throat cutting gesture.

EH – That is also correct.

KJ – And so, they could have taken offence and they could have made not an unreasonable assumption that this was a sort of hostile gesture in view of the fact that they had just abstained on a vote which then required the Chairman to vote on causing a bit of embarrassment, perhaps, to the Conservative Party so it's not unreasonable so there could have been a different reason for.....

EH – Yes, there could, I've only got obviously, been speaking to Cllr Fluker, I've only got his explanation as to what his meaning of that gesture was.

KJ – Can I just ask one further elaboration on that point, if I may?

RB – Yes.

KJ – If, instead, if the gesture had been meant in an expression of displeasure, let's say, would your conclusion have been different?

EH – I certainly think that would have shown disrespect, that would have still been the case and I think there is potential, certainly, for a change of view in terms of bullying and in similar [?] conduct which could potentially be seen as bringing an Office into disrepute. Then, yes, I think the motives behind it would have an impact on that decision.

KJ – Thank you. Thank you Chairman.

RB – Before I come back to you, Cllr Stilts, I want to see if there is any other Member who wishes to speak at this stage. No? OK?

KJ - I have one other question, Chair, a different question.

RB - Right, well proceed with it.

[19 minutes, 43 seconds] KJ – My question is just really on the matter of we have been given pieces of evidence such as apologies, training course certificates etc. etc., I just wondered, from a technical point of view, how much weight are we supposed to give to those sorts of aspects. Are we supposed to interpret that as being a sort of zero tolerance back drop? In other words, if somebody causes an offence that's it, there should be..... no excuse for it. I just wondered what sort of weight should be given because at the end of the day, if somebody does commit an offence, if somebody hits somebody and then apologises straight away afterwards, you could go on a "non-hitting people course" but that wouldn't necessarily mean that that was OK. You still, essentially, committed the offence. So, are we supposed to give a lot of weight to it?

[20 minutes, 55 seconds] SQ - Let me answer that one Cllr Jarvis. I see exactly where you're coming from. There are two issues here. The issue first for you is as a Committee, has there been a breach of the Code? Do you agree with the reasoning of my colleague? Or don't you agree with it? That doesn't necessarily mean that you don't find a breach of the Code. So that's the first issue. The certificate for training, you could include that if you were seeing it as a continuum, the whole process, then you might say there was a situation where you saw it as an ongoing issue then you could take the certificates into account but I think here, the report makes it clear this is a one off issue, it happened. There were two incidents, they happened once, this is a reaction afterwards so it would appear to me you would need to in your minds, as a Committee say, first of all, has there been a breach of the did that particular action in itself cause a breach of the Code and if so, which part or which parts? Having decided that, then you need to say, when you come on to decide whether you take any action and, if so, what action, that's when the certificates are probably more likely to become more important then.

KJ – Thank you very much. I found that most useful, thank you. Thank you Chairman.

RB – Cllr Stilts, oh sorry, Cllr Harker.

[22 minutes, 33 seconds] BH – Just one quick question. As far as we know, is this the first time Cllr Fluker has been before the Standards Committee?

RB – That’s not relevant. Are you able to answer that?

[Murmuring in the room]

SQ – I think so not to be prejudicial here because Cllr Fluker is not here, there has been no I don’t recall any finding of breach of the Code and that’s the important point. Has there been a previous breach of the Code that might be relevant to this particular issue? The answer is I cannot recall one.

RB – Cllr Stilts?

[22 minutes, 22 seconds] PS – Thank you Mr Chairman. In May 2019 there was the election of Councillors. What we’re talking about happened in September, it’s only three to four months, so before that time it was mainly a Conservative Council and therefore they were possibly aware of this signal but since that time, we’ve got Members in Chamber who aren’t aware of the signal and it wasn’t a Conservative Group meeting only because Cllr Fluker actually says that it is used to indicate to the Group to move on and stop talking and also it’s used in the House of Commons. So, what I’m saying is, the newly elected Members would not be aware of this gesture being used and therefore I think that could be where the complaint has come from.

RB – Yes, I take your point, Cllr Stilts, but it is a universal type signal.

[Murmuring of no, no]

RB – I’m afraid it is.

[Murmuring no, no, it’s been challenged]

RB- I’m afraid it is. However, we will move on from that. Any other Member? Cllr White.

[24 minutes, 39 seconds] SW – In light of further chatting, I’ve read the report of the Deputy Monitoring Officer and the document annexed to the report. I also noted with regards to both complaints, Cllr Fluker *has* apologised to both [a voice shouts “no”] Cllr Siddall personally and the Council as a whole. I also note that he has *voluntarily* undertaken diversity training. It’s not the order, he’s voluntarily taken it. In regards to the evidence and the context of events, *I do not believe* that he has failed to comply with the Code of Conduct and I will therefore like to propose with regards to Section 4.1a of the report that in relation to complaints one and two, Cllr Fluker has *not* failed to comply with the Members Code of Conduct and no further action needs to be taken in respect of the matters considered at the meeting.

RB – Is that seconded?

BH – Yes.

RB – That’s seconded. Anybody wish to speak against it? Cllr Jarvis

[25 minutes, 52 seconds] KJ – Yes, I think that what we’ve been saying so far, I would suggest that he *has* failed to comply with the Members Code of Conduct so I would be putting that motion to the Committee.

RB – Well Cllr Jarvis, if the motion on the table is passed, that will end the matter and the proceedings will close.

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[Pause – murmuring between SQ and RB]

RB – Right, I therefore intend to put the proposal in the name of Cllr White and seconded by Cllr Harker. Those in favour please show. One, two, three, four. Those against one, two, three. That motion's carried.

ChM - What an absolute whitewash, the guy has admitted to a homophobic comment and a threatening gesture. He's admitted to it and you guys have just supported him. [Some verbal disorder as Chair attempts to move to agenda item 8]

RB – Agenda item eight, I have no further business, I therefore close the meeting.

Female voice – Disgrace

ChM – [Loudly] Disgrace. Absolute disgrace.

[27 minutes, 14 seconds]

END.