



**Independent investigation into
allegations concerning**

**Councillor Chrisy Morris
of
Maldon District Council**

Report into complaints by

**Councillor Christopher Swain
Councillor Maddie Thompson
Councillor Bob Boyce
Councillor Penny Channer**

8 June 2021

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1: Executive Summary

- 1.1 On 13 August 2020, Councillor Christopher Swain submitted a complaint to the Monitoring Officer at Maldon District Council ('the Council') in which he alleged that Councillor Chrisy Morris had failed to comply with the Council's Code of Conduct ('the Code'). Councillor Swain alleged that during a meeting of the Council's District Planning Committee held on 13 August 2020, Councillor Morris made abusive, haranguing and potentially slanderous comments towards Mr Paul Dodson (the Council's Director of Strategy, Performance and Governance and Returning Officer) and Mr Richard Holmes (the Council's Director of service Delivery and Head of Paid Service).
- 1.2 On 27 August 2020, Councillor Maddie Thompson also submitted a complaint to the Council's Monitoring Officer about Councillor Morris' conduct. Councillor Thompson, who had chaired part of the meeting held on 13 August 2020, alleged that on 14 August 2020 day Councillor Morris made comments in an email to Councillor Mark Heard (which was copied to all members) which were rude about her and other members of the Council. Councillor Thompson alleged that Councillor Morris's comments, both during the meeting on 13 August 2020 and in the subsequent email were, disrespectful, bullying and intimidating in nature.
- 1.3 On 3 September 2020, the Monitoring Officer received a third complaint about Councillor Morris's conduct. In this complaint, Councillor Bob Boyce alleged that on 3 September 2020, during the meeting of the Council's Joint Standards Committee, Councillor Morris referred to him as having diminished mental capacity.
- 1.4 During the course of our investigation into the above, the Council's Monitoring Officer asked us to also investigate a fourth complaint that he had received about Councillor Morris' conduct. In this complaint, submitted by Councillor Penny Channer on 11 February 2021, it was alleged that:
 - on 29 October 2020, Councillor Morris disclosed confidential information on social media relating to an investigation into the conduct of former councillor Elaine Bamford.
 - on 5 February 2021, Councillor Morris used an aggressive and bullying tone during a private telephone conversation with Councillor Channer and that he subsequently posted a recording of his conversation with Councillor Channer on Facebook without her permission.
- 1.5 In relation to Councillor Swain's complaint, our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.
- 1.6 In relation to Councillor Thompson's complaint, our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.

- 1.7 In relation to Councillor Thompson's complaint our recommendation is that the Council find that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.
- 1.8 In relation to Councillor Boyce's complaint, our recommendation is that Councillor Morris be found not to have failed to treat others with respect.
- 1.9 In relation to Councillor Channer's two complaints, our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Code, and that he disclosed confidential information, contrary to paragraph 3.6 of the Code.
- 1.10 Finally, based on way in in which Councillor Morris conducted himself with regards all the matters referred to in this report, behaved in relation to that as a result of the evidence set out in this report, we recommend that he is found to have bullied others, contrary to paragraph 3.5(b) of the Code, and conducted himself in a manner which could reasonably be regarded as bringing his or office or the Authority into disrepute, contrary to paragraph 3.5(e) of the Code.

2: Councillor Morris' official details

- 2.1 Councillor Morris has been a member of the Council since 6 May 2019. He is an Independent member and currently represents the Heybridge West ward.
- 2.2 Councillor Morris is currently appointed to the following Council Committees:
 - Central Area Planning Committee.
 - District Planning Committee.
 - Overview and Scrutiny Committee.
 - Overview and Scrutiny Committee (meeting as the Crime and Disorder Committee).
 - Statutory Annual Council.

3: Relevant legislation and protocols

The Localism Act 2011

- 3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant Authority must promote and maintain high standards of conduct by members and co-opted members of the Authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity. For the purposes of this investigation, the relevant Authority is Maldon District Council.
- 3.2 Section 28 of the Act provides that the Authority must secure that its Code of Conduct is, when viewed as a whole, consistent with the following principles: - Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; Leadership.

- 3.3 Under 28(6) of the Act, Local 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 by the appointment of the 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. For the purposes of this investigation, the relevant Authority is Maldon District Council.
- 3.4 Section 28(11) of the Act provides that if a relevant Authority finds that a member or a co-opted member of the Authority has failed to comply with its Code of Conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

Maldon District Council’s Code of Conduct

- 3.5 Under Section 27(2) of the Localism Act the Council established a Code of Conduct for members (the Code).
- 3.6 The Code adopted by the Council includes the following paragraphs:

General Obligations

3.2 You must treat others with respect

3.5 You must not

(b) bully any person

(e) conduct yourself in a manner which could reasonably be regarded as bringing your or office or the Authority into disrepute.

Confidential Information

3.6 You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

(aa) reasonable and in the public interest; and

- (bb) made in good faith and in compliance with the reasonable requirements of the Authority.

European Convention on Human Rights (ECHR)

- 3.7 Section 3 of the Human Rights Act 1998 (HRA) requires that primary and subordinate legislation must, as far as possible, be read and given effect in a way which is compatible with the Convention rights. By virtue of section 6, it is unlawful for a public authority to act in a way that is incompatible with Human Rights.
- 3.8 Article 10 of the ECHR provides:

Freedom of expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

- 3.9 In considering these matters it is important to note the words of Collins J in the standards case of *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin) [at para.39]:

“The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant’s outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions.”

We have provided relevant Case Law on Article 10 in Annex A.

4: The Investigation

Our appointment

- 4.1 This investigation was conducted by Alex Oram and Mark Hedges. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as its principal investigator who was responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark has worked for ch&i associates since 2017; prior to this he was a Detective in the Police Service for 21 years.

The complaints

- 4.2 Councillor Swain's complaint concerned Councillor Morris' conduct towards certain officers at the start of Council's District Planning Committee meeting of 13 August 2020. Councillor Swain alleged that Councillor Morris shouted the word 'corrupt' as these officers were being introduced.
- 4.3 Councillor Thompson's complaint primarily concerned an email that had been sent by Councillor Morris to Councillor Mark Heard following the aforementioned Planning Committee meeting, in which he had referred to her as 'Cruella. Councillor Thompson also alleged that Councillor Morris had consistently talked over her when she was chairing the meeting of the District Planning Committee on 13 August 2020 and that his conduct towards other members and officers was disrespectful and constituted bullying. Councillor Thompson provided details of a previous occasion when Councillor Morris had referred to as '*Cruella*'; on the text CHAT function of a Council meeting held on 23 June 2020. Councillor Thompson stated that Councillor Morris had written '*Shut up*', followed by a vague threat concerning a plan to kill puppies in order to make a fur coat.
- 4.4 Councillor Boyce's complaint referred to a comment allegedly made by Councillor Morris during a meeting of the Joint Standards Committee held on 3 September 2020. Councillor Morris was accused of saying that Councillor Boyce was of diminished mental capacity.
- 4.5 Councillor Channer's complaint concerned Councillor Morris' conduct during a telephone call with her on 5 February 2021. Councillor Channer alleged Councillor Morris made various unfair accusations against her during the call, including that she was a bully and had no integrity. Councillor Morris subsequently posted a recording of the phone call on Facebook and YouTube. Councillor Channer stated that at no point did Councillor Morris make her aware that he was recording the call or that he intended to post it onto social media. Councillor Channer alleged that Councillor Morris' actions had been premeditated, with the intent on reducing her standing in the community. Councillor Channer stated that Councillor Morris' conduct was disrespectful, bullying and brought the Authority into disrepute.
- 4.6 Councillor Channer also alleged that on 29 October 2020, Councillor Morris breached the Code by posting confidential information on Facebook. The information, which related to the fact that the then Leader of the Council, Elaine Bamford, was under investigation, had been referred to at a Council meeting on 27 October 2020 during private session.

- 4.7 During our investigation into the above, Councillor Channer drew our attention to other social media posts published by Councillor Morris that caused her concern. We explained that we were unable to specifically consider whether these posts represented a breach of the Council's Code because they had not been referenced in the complaint that had been referred to us. We agreed though to review them as part of our wider considerations.

Our approach

- 4.8 During this investigation we have viewed recordings of the District Planning Committee meeting on 13 August 2020 and the meetings of the Joint Standards Committee on 3 September 2020 and 27 October 2020. We have reviewed documents and posts obtained from the Council and on websites such as Facebook. We have conducted interviews with Councillor Morris, Councillor Swain, Councillor Thompson, Councillor Boyce and Councillor Channer. All of the councillors we spoke with were sent a copy of our draft report for their comments; these are either reflected in the main body of the report or at annex b. It should be noted that we received no comments from Councillor Morris.

Background

- 4.9 In mid-2019, the Council's then Section 151 Officer left the employment of the Council having reached a settlement that included the signing of a confidentiality agreement. Councillor Chrisy Morris believed that her departure was in some way related to improper conduct on the part of Councillor Fluker (at the time, the Leader of the Council), including bullying behaviour. Councillor Morris asked officers if he could see the terms of the confidentiality agreement, but was refused access.
- 4.10 Councillor Morris subsequently approached Councillor Fluker about his concerns and was later to allege that Councillor Fluker, when denying having any animosity towards the former Section 151 Officer, told Councillor Morris that he had lent her a significant sum of money while she was in post to assist her with an accountancy business that was struggling. Councillor Morris expressed the concern that Councillor Fluker had used this personal loan to improperly influence the actions of a statutory officer within the Council.
- 4.11 On 5 November 2019, the Council's Legal Officer invited ch&i associates to investigate Councillor Morris' complaint about Councillor Fluker. She told us that she believed that Councillor Fluker had told two senior officers within the Council of the existence of the loan: Mr Paul Dodson (Director of Strategy, Performance and Governance) and Mr Richard Holmes (Director of Service Delivery and Head of Paid Service). The Council's Legal Officer told us though that in his initial response to Councillor Morris' allegation, Councillor Fluker denied the allegation had claimed that he had lied to Councillor Morris and the two senior officers about the existence of the loan.

- 4.12 Councillor Morris told us at the time that his preference was for his complaint to be dealt with by the Police rather than as a complaint under the Localism Act. With the permission of the Council's Legal Officer, we spoke with Detective Inspector Booth of Maldon Police on 3 and 10 December 2019. DI Booth advised that the matter was not currently under investigation because Councillor Morris had not followed up on his initial report. It was agreed though that we would produce a briefing note on the matter for them. On 30 December 2019, based on the information we provided to this, the Police informed us that we should not look into the matter further because they had opened an investigation into the complaint under the umbrella offence of misconduct in a public office; and more specifically, on an offence of blackmail in relation to the alleged loan between Councillor Fluker and the former Section 151 officer and an offence of fraud in relation to a £100,000 grant that had been allocated to the Stow Maries project.
- 4.13 On 14 April 2020, the Police investigation concluded that there was *'no evidence that any criminal offence had occurred. As such they were closing the case and taking no further action.'*
- 4.14 In late July 2020, considering the decision made by the Police and the lack of any other compelling evidence which supported the allegation, the Council's Monitoring officer took the decision to take no further action with regards Councillor Morris' complaint.

Matters related to Councillor Swain's complaint

- 4.15 On 13 August 2020, Councillor Morris attended a meeting of the Council's District Planning Committee via Zoom. The meeting was streamed live on YouTube. The meeting was initially chaired by Councillor Penny Channer.
- 4.16 At the beginning of the meeting, Councillor Channer invited the officers present to introduce themselves. Paul Dodson was the first officer to do so. Immediately after he had done so, a male voice on the recording of the meeting can be heard to shout the word *'corrupt'*. After another officer had introduced themselves, the Chair invited Richard Holmes to do the same. Before Mr Holmes has had a chance to do so, what appears to be the same male voice is again heard to shout *'corrupt'*; this occurs again immediately after Mr Holmes had made his introduction. When the Monitoring Officer, Mr Simon Quelch, then introduces himself, the same male voice again shouted out *'corrupt'*.
- 4.17 Councillor Swain stated in his subsequent complaint *"I feel that I must register a formal complaint about Cllr Morris's behaviour towards officers. His abuse and haranguing of Mr Holmes and Mr Dodson in public, as well as making accusations which appeared to be slanderous, clearly breached the code of conduct governing relations between members and officers, who not only could not but also had no need to respond in public. The episode was also likely to affect and cause embarrassment to other officers in attendance and tend to undermine staff relations more widely in the council."*

- 4.18 When we spoke to Councillor Morris about the allegation, he told us that he could not remember specifically making comments attributed to him by Councillor Swain at that particular meeting: *‘Councillor Swain’s complaint relates to comments I made about Holmes and Dodson. He didn’t like the way that I used the word ‘corruption’. I don’t recall precisely whether I made the comments that Councillor Swain objected to because to be honest I have made the comments quite a few times. I would have kept on saying it, but the matter had now been resolved with the officers. Neither officer has made a complaint about my comments and I believe the reason for this is that they knew I was right.’*
- 4.19 Having spoken to Councillor Morris about the matter and carefully reviewed the relevant recordings, we are satisfied based on the balance of probabilities that it was Councillor Morris who shouted *‘corrupt’* on the three occasions described above. This was supported by Councillor Thompson, who told us in her comments on the draft report; “I can confirm the male voice in question was that of Cllr Morris; I was present and not only heard it but had a clear view of him as he said it each time.”
- 4.20 Councillor Swain told us at interview: *‘Councillor Morris had been berating various councillors and to some extent officers for some time, with accusations of corruption. This had been mainly directed at councillors. In this meeting however his attacks were against the Council directors, accusing them of being corrupt. I felt that this was not just going too far, but that it was wrong... I don’t feel members should criticise officers in public. This was not an attack on them on professional grounds but an attack on their integrity. They were not in a position to respond, which is different to members who can do so. I also felt that his comments would have an impact on other officers present and have an effect on the morale of the council.’*
- 4.21 Councillor Morris told us that his comments about the three officers stemmed from that involvement in his complaint against Councillor Fluker. Councillor Morris told us that he had spoken to both Mr Dodson and Mr Holmes about his concerns: *‘I asked both officers if they knew about the loan. Both of them told me they didn’t. This was a lie. I would have understood if they had told me they couldn’t tell me, but they did not. They have now admitted they knew about the loan. I told Emma Holmes about this, and she got told to drop it by Simon Quelch (the MO). Simon Quelch got told to drop it by Councillor Fluker. This is my honestly held belief.’*
- 4.22 During our interview, Councillor Morris told us that his comments about the relevant officers was a matter that had already been resolved informally and therefore questioned whether it was an investigation that was in the public interest: *“these matters have been dealt with and it doesn’t need to be all dragged up again. I understand the reputation of the Council is important and it currently has a bad reputation. I’d like to improve this and having to defend myself against these allegations would not help this in my opinion. I have since had a meeting with the two officers along with Wendy Stamp, the new leader of the Council. The situation was resolved at this meeting.’*

Matters related to Councillor Thompson's complaint

- 4.23 During the Council's District Planning Committee meeting of 13 August 2020, Councillor Maddie Thompson took over as Chair while a matter in which Councillor Channer had declared an interest was being considered. While Chair, Councillor Thompson attempted to propose that the relevant item be discussed in private session. She was though interrupted by Councillor Morris. Councillor Thompson warned Councillor Morris that if he continued to interrupt, she would be left with no choice but to close the meeting. Councillor Morris continued to interrupt, insisting that a vote be taken before the item was moved into private session because the public had a right to know what was happening.
- 4.24 The Monitoring Officer, Mr Quelch, then addressed members and advised them of the potential consequences should they vote to consider the matter publicly. Councillor Morris, who was by now pictured speaking on the screen, interrupted Mr Quelch with the words: '*we have heard your dodgy advice*'. Councillor Morris continued to repeat this statement despite attempts to intervene from Councillor Thompson and Mr Quelch, with Councillor Thompson again warning that she would close the meeting unless Councillor Morris stopped interrupting.
- 4.25 Councillor Heard then interjected to point out to Councillor Morris that Councillor Thompson was attempting to call a vote on whether the agenda item should be discussed in private or public, which is what he had called on her to do, Councillor Heard called for some calm so that the vote could take place. As soon as Councillor Thompson started to speak again however, Councillor Morris again interjected. Councillor Thompson told Councillor Morris that she was giving him a '*two and a half warning*'. Mr Quelch again attempted to offer advice on the matter prior to the vote; while doing so however, Councillor Morris continued to talk over him. Eventually Councillor Thompson informed members that she was closing the meeting due to Councillor Morris's continued interruption.
- 4.26 Later that day Councillor Mark Heard, Leader of the Independent Group (at this time, Councillor Morris was a member of the Independent Group) emailed all members of the Council as follows:

'It is very rare for me to send out a message to all members but following this afternoon's disgraceful meeting I feel I should. I deeply regret not supporting Richard Holmes and Paul Dodson when the constant allegations made by Cllr Morris cannot be addressed by the officers themselves who are obliged to remain neutral to any administration with no right of reply, (particularly at a planning meeting!) Please do not take my silence on the matter to imply any perceived guilt on their part. Even if a comment was made to or overheard by them, they cannot possibly know if it was true or not; if it IS true then only two people know it as a fact - the rest is rumour and hearsay. I am confident that this matter has been properly reported, investigated and found not to be illegal. IF it happened - it is at the very best foolish and unwise, although as a private loan NOT illegal UNLESS something else was asked for because of the loan. I have

heard nothing to suggest this. This afternoon the correct procedure was followed to vote to (rightly) have the legal advice given in private, then an open and public debate afterwards in open session. The vote wasn't even allowed to take place, my vote and your vote was cancelled because of unacceptable behaviour in the meeting which I do not condone. I will look into this allegation if allowed to ensure all proper procedures were followed. If not, I will expect an explanation, but I will act professionally. Members I hope you too show the support Richard and Paul deserve.'

- 4.27 On 14 August 2020, Councillor Morris responded to Councillor Heard's email, copying in all members of the Council.

*"Without prejudice. Dear Mark. Thank you for your email dated 13th August 2020, I must say it is probably the closest I will ever feel to being mugged by an old, damp, grey flannel in my lifetime. Seeing as we are exchanging opinions, I feel it necessary to share mine. You're a melt. As an opposition leader you have been as useful as an ashtray on a motorbike. That mumbling corpse Brian Harker has been a better opposition leader than you. I now know why Fluker would always grin when you were about to speak and if you had your head out of his arse for long enough, you'd have noticed it too. Where was your distain when Carly was thinking Fluker was threatening her? Why so quiet when Richard was mocked in front of you? **Did you predetermine with the flukerites getting Cruella in the chair?** Seemed so! Do you really believe that if an independent was foolish or unwise that Fluker and his mates wouldn't jump up and down on them like a kid on a new trampoline? For an expoliceman you sure are a snowflake! I have asked the CLT jokers if they were told by Fluker about the loan and they have run to the hills after lying to us BOTH in that meeting. It's a shame you are supporting financial impropriety and cover ups. You have known Fluker longer than me, but I can assure you, I know that man wouldn't lend or give away a thing unless it benefited him. Then [former section 151 officer] gets paid off and gagged! And the books are late. 'Nothing to see here!' I wish I had the patience, and the crayons, to explain this to you. "You will look into the allegation"... n what are you? MDC's version of Clint Eastwood? That's the job of JSC you hero, are you saying that to try and act tough in front of everyone? Fluker and the flukerites will pat you on the head and give you a bonio you wally. "There's a goood booooooy!" Your silence about Fluker's JSC was deafening. Did Holmesy and Doders come running to you because I caught them out? If that ever happens, with anyone, please look them in the eyes and say "You do know Chrisy don't give a fuck, right?" That's what I said to you at Costa that time when you got given the errand of asking me to wear a tie for Holmesy, remember? Simply (sic) fact is that you did nothing - ever - when serious bullying, threats and financial impropriety was happening. I can forgive people doing nothing (even though we are supposed to be more than bystanders) but I can't stick a person that watches a fight and then at the end tries to jump in as the winner. You really should have called me for a chat. You are no longer on my Christmas card list and I fart in your general direction. Please remember that you will never dislike me as much as I don't care. Fluker*

will be laughing his head off right now but rest assured, he won't be laughing long. Yours youllgetnorespectfrommeanymore, Chrisy Morris. Ps, You're a melt.

- 4.28 Councillor Thompson, who was copied into the email, subsequently complained about its content to the Council's Monitoring Officer, stating that the email: *"shows disrespect both to members and officers generally and in the particular reference to me; and, in fact, bullying. In the meeting referred to that I chaired I was shouted over to the point that business could not be conducted. I told Cllr Morris that I would give three warnings before closing the meeting and he continued with his disruption. I discounted a certain amount of muttering and grumbling from him, counting only his loud and obnoxious attempts to take over the meeting. To his evident surprise I did close the meeting after my third warning to him, so no member was able to exercise their democratic rights as elected representatives to determine the business in front of the District Planning Committee. I left the meeting at that point but returned a little later, when there was still some discussion of what had occurred. Cllr Morris shouted at me, accused me (and possibly others, it was not made clear) of 'bullying a grieving mother to the point of suicide' and shouted that he had no respect for me. I believe several officers remained in the meeting at this time and could probably confirm at least some of this. The "Cruella" jibe had come up previously in the CHAT function of a meeting (Council, 23/6/2020). My messages are shown with a blue background. There is a clear demand from Cllr Morris to "shut up" followed by a threat that was vague as to its content but obviously intended to associate me with the 101 Dalmatians character Cruella de Vil, who planned to kill the puppies in order to make a fur coat."*
- 4.29 In response to Councillor Thompson's concerns, Councillor Morris told us: *'I understand she is complaining that I referred to her in an email as a Disney cartoon villain. This is the same woman that called two of her own colleagues 'bastards'¹ in the chamber in a Full Council meeting. [She] is complaining that she has been referred to as a Disney Cartoon villain in a private email. She was given this nickname by her own colleagues long before I was a member of the Council. I had made a complaint about her calling her colleagues 'bastards' and this was her response. Other councillors witnessed her calling her colleagues bastards, I did not witness it myself but was told about it. No one confirmed it at the time of the meeting which was why I didn't make a complaint at the time. I consider that her comments in the Chamber were too far. I am quite near the*

¹ This assertion is not a matter that we have been asked to consider. We understand though that Councillor Thompson told us though: *"I have admitted to using the word "bastards"; however, Cllr Morris implies this was called out, which it was not. I was astonished and incensed that two new members who had just signed a copy of the Group rules and agreed to abide by them had just failed to support a Conservative motion that, as a result, we nearly lost. None of that excuses what I said, and I did apologise afterwards to the member I felt had been misled by the other, though she was, in fact, unaware that I had said it. I did not apologise to the other member as the conversation I had with him straight after the meeting was about his failure to support the group being out of order, and I did not think at the time about what I had muttered during the meeting. When Cllr Morris eventually made a complaint about this incident it was resolved informally, however the matter will remain on my record and be referred to should there be any further complaints about me, therefore I wasn't "let off scot-free by Mr Quelch" as Cllr Morris has said since."*

mark, but this was too much particularly in light of the fact that Councillor Fluker also made throat cutting gestures towards the same members². Councillor Thompson has admitted that she did call her colleagues ‘bastards’. I have a thick skin but I considered that both the throat slitting gesture and the use of the word ‘bastards’ was too much. I am also aware that the Conservative group’s nickname for me is ‘fucking’, which is a lot more disrespectful. I don’t regard the comments in my email as disrespectful because Councillor Thompson was named this by her own group members. Other members have got away with a lot more disrespectful comments such as Councillor Sue White who called an officer a ‘fucking tosser’ but only had to send an apology.’

- 4.30 At interview, Councillor Thompson told us: *‘The nickname ‘Cruella’ is not a nickname instigated by members of the Conservative Group. I have asked around and no one had ever heard of it before. It is possible that people were not going to tell me this, but I have never known it to be used before. The first I knew about this term was when Councillor Morris alluded to it in the Chat function of a Council meeting. I have included this chat in my complaint. Basically, Councillor Morris wrote ‘shut up Maddie or we will have to start talking about puppies and your coat’, which I regarded as a threat. This was in June 2020. It’s politics and I have a thick skin, but Councillor Morris is always making comments of this nature. He has called other members ‘coffin dodgers’ and I am aware of the comments he made against Councillor Boyce. Councillor Morris goes on and on about bullying and homophobia but is quite happy to make comments about other members’ advanced age. He can’t have it both ways.’*

Matters related to Councillor Boyce’s complaint

- 4.31 On 3 September 2020, the Council’s Joint Standards Committee held two meetings. At the first, the Committee heard a complaint from Councillor Siddall against Councillor Adrian Fluker; they concluded that Councillor Fluker had failed to comply with the Code. Councillor Morris attended as a spectator, though he was removed during the meeting for disruptive behaviour.
- 4.32 By way of background, the conduct alleged by Councillor Siddall had in part already been considered by the Committee on 30 January 2020 following allegations against Councillor Fluker which had been made by, among others, Councillor Morris. On 30 January 2020, the Committee had concluded that Councillor Fluker had not breached the Code of Conduct; this went against the recommendations of the investigator. Councillor Morris told us that he had been left very frustrated by the standards process because he had been attempting to highlight concerns about the conduct of Councillor Fluker for a long time and made more than one complaint about his conduct.
- 4.33 At their second meeting of 3 September 2020, the Committee considered an investigation report addressing complaints that had been made against Councillor Morris. The Committee concluded that Councillor Morris had not

² This is a matter that was considered at the Standards Committee meeting of 3 September 2020, which is referred to in more detail later in this report.

breached the Code of Conduct, which went against the recommendation of the investigator. The full meeting is available on You-tube [here](#). It was at this meeting that Councillor Morris made the comments attributed to him in Councillor Boyce's complaint.

- 4.34 One of the complaints under consideration had been submitted by a member of the public, who had alleged Councillor Morris had failed to treat Councillor Boyce with respect during a Council meeting on 13 February 2020. The investigation had concluded that during the meeting Councillor Morris had said that Councillor Boyce, who was Chair of the meeting, was too old and should quit.³
- 4.35 Speaking in his own defence at the Committee meeting of 3 September 2020, Councillor Morris stated [at 2hrs26mins]: *'Everyone is making a big thing about Bob. About me saying that Bob was too old to do the job. Now let me just take you back. Before, when I tried to sort out this bullying culture, I sat down with Bob. We sat in the members room and Bob was watching the Sweeney. So, I sat with Bob and we both watched the Sweeney, and we had a nice old chat. I said, informally to Bob: "Bob, you know what's going on. It ain't right. Fluker's bullying Councillor Siddall. Things are not right here." I asked Bob if he could resolve it informally. To not bring the Council into disrepute. To not put out our dirty washing in public. I asked him if he was happy. And he turned to me and he said quite simply "Chrisy, I am too old". He told me that. Now there are other councillors. And there are other councillors in this meeting right now that have confirmed that. One of the councillors, who I won't mention, even though I feel like I should have because I feel they're not being that fair, actually told me that Bob would not have let this happen ten years ago. And he is being manipulated by Fluker. And he is diminished because of his age. I'm not having a go at him for being old. I like old people. I'm an old person myself. What I am saying is that he is not the man he was. Ten years ago this would not have happened and that has been confirmed by senior Conservatives. So, I'm not having a go at him for being old. I'm simply pointing out that he is past his best. When you get given an MBE, OBE whatever it is, that is a polite way of saying 'you are past it'. Now I'm sorry if my truth offends.'*
- 4.36 The Chair of the Committee meeting, Councillor Helm, interjected at this point to state that he felt that Councillor Morris's comments were very offensive about a man who had dedicated his life to the Council. Councillor Morris responded: *'It's not offensive. It's the truth. He got booted out of the County Council because he's past his best. He's a nice old boy. I actually quite liked him. I'd like to think it wasn't his age.'*
- 4.37 After further interjection from the Chair, asking Councillor Morris to confine himself to the report, Councillor Morris stated: *'Fluker would not have got away with what he got away with if Bob was ten years younger. That is something that a Tory councillor has told me.'* The Chair asked Councillor Morris why he was bringing up Councillor Fluker when the report had nothing to with him. Councillor Morris responded: *'This situation is because of Councillor Fluker. I*

³ Councillor Boyce had not made a complaint about these comments.

would not have had to bring this up if Councillor Fluker wasn't a homophobic, woman threatening bully. You've allowed it, Michael, you've allowed it. You supported it.

- 4.38 The meeting then continued, culminating in the Committee deciding that Councillor Morris had not failed to comply the Code of Conduct.
- 4.39 Councillor Boyce told us at interview: *'Councillor Morris was elected two years ago. He has attacked me, abused me, bullied me whilst I was Chairman, with the aid of Councillor Siddall and Councillor Fleming, who sided with him. This was reported to standards, but the Committee said that as I had not made a complaint, he was not guilty. I did not make a complaint because I was Chairman and considered I was fair game. Usually there is respect for the Chair, if not the person in the Chair. In my view Councillor Morris has treated the Council with disrespect at all times. He will make noises during meetings, bring food in, make phone calls during meetings and put his feet up on the desk. He has been rude to officers making presentations. When I heard Councillor Morris make the comment that I had diminished mental capacity, I did not think it was an off the cuff remark. I took it as a deliberate attack on myself because of my age. I do recall saying to Councillor Morris 'I'm too old for this'. It was a sarcastic comment made by me. He has put a meaning into this comment that was not intended. This is not the same as me saying I have diminished mental capacity which implies that he has some degree of medical knowledge. I can't remember what context I made these comments, but I certainly did not say that I had diminished mental capacity.'*
- 4.40 In response to this allegation, Councillor Morris told us: *'In relation to the complaint made against me by Councillor Boyce I would say that at the Joint Standards Committee hearing no one else seemed to have a problem with what I said. The Chair didn't tell me that it was out of order. I believe I said that Councillor Boyce is diminished mentally. All members know that Councillor Boyce has some issues. I spoke to Councillor Boyce, who was the Chair, at length one day about the way that Councillor Fluker was behaving. Councillor Boyce said to me 'Chrisy, I'm too old'. I was trying to sort things out informally. A lot of people think that Councillor Boyce is a good old boy, but he is not actually doing what he should be doing in my opinion. If you are past it, then you should make way for someone that will be useful to the Council. I've been told by a top political adviser that many people advised Councillor Boyce to retire from his duties when he was awarded an MBE and that this is supposed to be a going away present. As well as telling me he was too old, he also told Councillor Jarvis something similar. Councillor Jarvis stated this at the Joint Standards Committee meeting. Other Conservative members have also told me that Councillor Boyce isn't the man he was, that he is diminished. I don't want to name these members unless I have to. I don't regard the comment I made as disrespectful because it was the truth. I liked Councillor Boyce, until I found out that he was corrupt or had allowed himself to be corrupted by Councillor Fluker in relation to a Joint Standards Committee hearing against Councillor*

Fluker⁴. At this point I lost respect for Councillor Boyce. I don't deem it disrespectful to tell the truth, it is disrespectful to lie which is what Councillor Boyce did.'

- 4.41 In her comments on the draft report, Councillor Channer made the point that she had been at the Standards Committee meeting and had been offended by it at the time: *"I consider that comments made in the meeting by Councillor Morris were derogatory towards Councillor Boyce and hence even added weight to the way I voted. Age is a Protected Characteristic under the Equality Act. I am afraid I do not necessarily concur that what he said about Councillor Boyce was by way of explanation of his previous comments issued in the Chamber, when Councillor Boyce was Chairman. I took the comment which Councillor Boyce has made a complaint about as additional to those previously made by Councillor Morris. I found it derogatory, offensive and disrespectful and flying in the face of the Equalities Act."*

Matters related to Councillor Channer's complaints

- 4.42 On 25 October 2020, Councillor Morris submitted two complaints to the Monitoring Officer; one about his own conduct and one about Councillor Bamford's. In relation to Councillor Bamford, he stated *"cllr Bamford has lied to cllr Morris by denying she agreed to provide the participants of a meeting with the recording of it, also that she was aware of a loan that was subject to an investigation by admittance from the accused party and was accomplice to it by silence, thus bringing the council into disrepute."* [sic]
- 4.43 In his email, Councillor Morris requested that his complaint be assessed by the Council's Joint Standards Committee rather than by the Monitoring Officer or his deputy on the grounds that they had a conflict of interest.
- 4.44 On 27 October 2020, Councillor Channer attended a meeting of the Council's Joint Standards Committee. Councillor Morris was also in attendance; unlike Councillor Channer however, Councillor Morris was not a member of the Committee.
- 4.45 After an hour and two minutes of the meeting, the Chair of the Committee (Councillor Helm) proposed that the meeting go into private session so that the Committee could consider complaints that had been made by an unnamed councillor against himself and another member. Councillor Helm told members that the two complaints were connected to each other and that members would likely already be aware of them because the complainant had already told all members about the matter.
- 4.46 The minutes of the meeting state: *"EXCLUSION OF THE PUBLIC AND PRESS. RESOLVED that under Section 100A (4) of the Local Government Act*

⁴ Councillor Boyce was one of the councillors who had heard the complaint made by Councillor Morris against Councillor Fluker at the Standards Committee meeting of 30 January 2020.

1972 the public be excluded from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 6b of Part 1 of Schedule 12A to the Act, and that this satisfies the public interest test.”

- 4.47 On 29 October 2020, Councillor Morris posted a picture of the then Leader of the Council’s Conservative Group, Councillor Bamford⁵ on Facebook. The post attached to this picture read:

‘The new conservative leader of Maldon district council is under investigation after she admitted knowledge of a loan between former disgraced leader, Adrian Fluker and a former financial officer, who swiftly left the council and was given a large financial settlement which assured her silence, after accusations that the loan was made to encourage the chief finance officer to ‘cook the books’ and put undue influence on her. The council’s books were late for the first time in decades and auditors reported they had concerns. She admitted that Fluker had told her about the loan in a meeting with several other councillors present, who can confirm that. She has now refused to supply the recording of that meeting after promising she would, because it is incriminating. She sat in the chamber whilst Fluker lied to us and watched me be vilified when she knew I was telling the truth. I would like to know if she remained silent because she was bullied or was she complicit? Either way, she is not fit to be leader as this shows a lack of integrity and honesty, she doesn’t have the strength to be leader if she cannot stand up when she is aware of bullying and lies” said outspoken Councillor Chrisy Morris. “We now have what may prove to be the ‘smoking gun’ - 17 council credit cards that may prove impropriety and be the reason some councillors and officers are so eager to get this brushed under the carpet. I know the residents may see this as petty but in order to best serve them, those who allowed the criminal behaviour to happen in the past should not be involved in its future. Hopefully the culture will change on the 5th of November when a switch from loyalty to political party, to residents and community will happen”. Added Councillor Morris. More to follow.’

- 4.48 Councillor Channer told us: *“On 29 October 2020, Councillor Morris posted on Facebook the name of the councillor, their position in the Council at that time, and that they were under investigation and detail. He could have only known about this if someone on the Committee told him or he was the complainant. He has then breached the confidentiality of this information, placing on social media in the public domain. I believe this is a breach of the Code of Conduct.”*

- 4.49 Councillor Morris told us: *‘My belief is that Council business is public business. I did post that Elaine Bamford was under investigation. I believe that I was the complainant in what the Joint Standards Committee was discussing, and I think I was present at the meeting. But the meeting was put into a private session, so I was not party to any discussions after that. I was therefore unaware that the*

⁵ Councillor Bamford has since resigned her position on the Council. For the purposes of this report however we will continue to refer to her as Councillor Bamford.

*complaint was being treated as private and confidential. I had no reason to believe it was private and confidential. I wouldn't know what was discussed in the private session. I had put a complaint in and so I was aware that a complaint had been made against Councillor Bamford. I think the public have a right to know. I was never told that it was private and confidential.*⁶

- 4.50 On 4 February 2021, Councillor Channer and Councillor Morris attended a meeting of the full Council. One of the agenda items at this meeting concerned a climate change emergency statement. After Councillor Fluker had contributed to the debate on the item, Councillor Morris said that he did not think Councillor Fluker was the best person to make comments on the environment given that he drove a massively polluting car. Councillor Fluker said that he drove one of the cleanest petrol cars available. Councillor Channer then raised a point of order, stating that it was not an appropriate remark for Councillor Morris to make and that he was making things very personal. Councillor Channer then discouraged debate on the point of order, saying that she would deal with the matter outside the chamber.
- 4.51 The following day [at 12:44] Councillor Morris telephoned Councillor Channer. Councillor Morris told us that he decided to make the call because Councillor Channer had stated that she would '*deal with the matter outside the chamber*'; he had presumed that she would subsequently contact him but when she did not, he decided to contact her.
- 4.52 The following is a transcript of the call, which was recorded⁷ by Councillor Morris without Councillor Channer's knowledge:

Cllr Channer: Hello
 Cllr Morris: Hello is that Penny?
 Cllr Channer: Yes, it is
 Cllr Morris: How are you doing Penny? It's Chrisy
 Cllr Channer: I'm alright thank you
 Cllr Morris: Good good. Good good. Just a nice little friendly personal one. You said last night at the meeting mate that 'I will deal with this outside', so I thought I'd give you a tinkle and see....
 Cllr Channer: That wasn't to do with you. That wasn't directed at you. It was to do with Mark Heard, the Chairman.
 Cllr Morris: Got it. Wasn't it concerning me though Penny?
 Cllr Channer: Oh well. Yeah, it was actually. The comments you made I didn't like at all. The cars and everything and then what was it? Dogs and lamp posts.
 Cllr Morris: Yeah. Yep. Sorry mate. Is any of that untrue as you see it?

⁶ It should be noted that ch&i associates were initially appointed to also investigate this matter. We subsequently wrote to Councillor Morris on 10 November 2020 to stress the importance for keeping the matter confidential. This of course though occurred after Councillor Morris' disclosure on Facebook.

⁷ The recording was made by Councillor Morris using a video camera. He can be seen and heard speaking throughout. Councillor Channer's side of the conversation is also clearly audible.

APPENDIX 1

- Cllr Channer: Well I drive a car. Yeah, I do see it a bit untrue actually.
- Cllr Morris: What you see is untrue - that a guy that's got a gas guzzling Mercedes - that's his own words - is trying to lecture everyone about the environment. Me and you both know Penny that Fluker don't care about nothing but himself. He ain't bothered about the environment. We both know that. And the pretence that you are trying to put forward, is that you do.
- Cllr Channer: Hang on here. I wasn't putting forward any pretence at all. What I was referring to was in a statement given to the Council actually and debated on. And the then Leader of the opposition gave comments on it. There was no pretence there.
- Cllr Morris: Mate, so what's that got about me bringing up that the guy's...
- Cllr Channer: I think it was getting personal.
- Cllr Morris: What has that got to do with me? It's always been personal Penny. You sat in that chamber when it's been very personal. You sat through the homophobic slurs. You sat through the bullying. Your own councillors were getting throat slit gestures done at them and you said nothing. So, it's a little bit rich now that you're complaining about a lamp post comment and someone that's driving a gas guzzling Mercedes, his own words. You know, trying to preach about the environment.
- Cllr Channer: Just a minute, I did not see, and I've always maintained, and it's the truth. I did not see the throat slitting. Neither did I hear the 'Hello sailor' bit.
- Cllr Morris: You knew it happened though didn't you. You didn't hear it. My God, were you not in the room? Everyone else heard it. You've got a very, very selective memory then Penny haven't you? I suppose you weren't around when Miriam was getting bullied almost to death? I suppose you weren't around when Fiona Marshall was getting bullied? I suppose you weren't around when Emma Foy was getting bribed and bullied? You've sat through and watched all of that Penny. And you suffered that. And now that the shoe is on the other foot, you can't take it.
- Cllr Channer: Have you finished?
- Cllr Morris: No, I've got plenty more. I'm giving you a chance to respond.
- Cllr Channer: I'm not going to respond to that because you know nothing... know nothing about what I may have been through. So there we go.
- Cllr Morris: Right. So if you have been through stuff like that, then maybe you should have a little bit more empathy for the other people. And if you do go through stuff like that Penny, I will help you. Yeah. If you're getting bullied.
- Cllr Channer: You may not even know what I may have done at those times and I really don't have to explain....

- Cllr Morris: You didn't do enough, I know that. You didn't do enough. You sat there. You sat there and watched it happen. You knew it was happening. We spoke about it at the time. You knew it was happening. You just didn't want to put your head above the trench, did you? You didn't want to bother. You was waiting for your time. You was waiting for everyone else to pick themselves off and then it was going to be you that was going to come forward and claim victory and be the saviour. That's what you was doing mate.
- Cllr Channer: You know nothing about me.
- Cllr Morris: Mate, I know enough. I know you sat there and watched people almost get bullied to death. People were thinking of suicide because of what was going on at that Council and you watched it. And you allowed it to happen.
- Cllr Channer: So, I'm solely responsible am I?
- Cllr Morris: Didn't say that did I? I said you watched it and allowed it to happen. So did a lot of the others. And that's why I've got not a lot of time. Because you guys have got no integrity.
- Cllr Channer: I don't have to be insulted by you.
- Cllr Morris: I'm not insulting you. If you want, I can start insulting you. I'm not insulting you. I'm telling you the truth as I see it. Now everytime that we have a little tit a tat in a Council meeting you're like 'Oh well, I'm going to deal with this outside' and "I'll be bringing this up". You suffered one of your own councillors saying 'Shut her up.' Tried to blame it on me in the last Council and what have you done about that? Is it... so it's ok for your own councillors when you're all Tories together. It's ok for them to be doing stuff like that. But you jump up and down like a kid on a new trampoline when someone else does it. You've got no integrity.
- Cllr Channer: Right, thank you very much, thank you for your phone call.
- Cllr Morris: Thank you
- Cllr Morris: [to camera] There you go. Mate they sat there, they watched that all go on and they ignored it. I can't stand em.

4.53 The video recording of the conversation was almost immediately posted to Youtube [at 14:10] and Facebook by Councillor Morris using his profile 'Chrisy Morris. The Facebook post, dated 5 February 2020, stated: *'Now that the Tories at my local council are out of power, they seem to have become all moral! They had nothing to say when they were threatening and bullying people but get all wobbly when I point out that a guy that I know isn't being sincere about his environmental credentials and admits to having a 'gas guzzling' car. When the independents were in opposition, we still had our residents' interests at heart. These Tories, they just look to sabotage. There's no room in local*

government for these pathetic political games - all time and effort should be spent on improving the lives of the residents.'

- 4.54 We have reviewed the Facebook profile 'Chrisy Morris'. There is no mention of his role as a member of Maldon District Council in the details of his profile. Councillor Morris does though regularly post about Maldon District Council and individual members of the Council.
- 4.55 Councillor Channer told us that in her view the phone call and subsequent publication of the recording was a premeditated act designed to intimidate and bully her: *'I am very concerned about the phone call that Councillor Morris made to me, which he has recorded without my knowledge and posted to YouTube and Facebook. He has used it as a vehicle to try and discredit me. He has, to my mind, an obsessive hatred of Conservatives. Councillor Morris does not, from what I have observed, discuss issues of scheduled Council business, which is in the Chamber. He does not, from my observations, really engage in proper challenge and proper debate. What he does is that he attacks individuals and is accusatory. I feel that he picks on individuals in a personal way in an attempt to damage integrity. He does this in what I would describe as being in a bullying, intimidatory, harassing and somewhat threatening manner.'*
- 4.56 Councillor Channer also highlighted to us that Councillor Morris had published further posts about her since this post. She told us: *'The video he posted to Facebook and YouTube is not a one off. He subsequently posted a picture to Facebook of me sitting next to Councillor Fluker and made comments about me not seeing or hearing what Councillor Fluker had said at a particular Council meeting. Also, since this complaint was made, he has now posted again to Facebook showing a picture of me during a Zoom meeting and comparing it to my official Council photograph, which the press obtained through the Council's website, with comments about my appearance. Councillor Morris has accused me of being dishonest with my photo and with my politics. He is now circulating posts about me on Instagram, the Heybridge Independents site. Plus, there is a post on his own 'Councillor Chrisy Morris' Facebook site under Community.'*
- 4.57 Councillor Channer told us that Councillor Morris' continued harassment of her had detrimentally impacted on her ability to sleep and was affecting her work. She told us that as a result, members of her family had urged her to resign as a member of the Council. Councillor Channer told us: *"If I go then, I consider, he will start on the next person. He is now targeting myself, along with three other colleagues. Councillor Morris has a lot of followers and I believe he is trying to incite hatred amongst his social media followers."*
- 4.58 Councillor Morris rejected the allegation that his telephone call was intimidating or even approached harassment: *"I was not abusive to her during the call, everything I said during that call was a fact. She insinuated in the Chamber that she wanted to talk to me by saying she would take it up outside the meeting, so I assumed she wanted to speak to me, and I thought I'd give her the opportunity to do so. I believe I was polite during the conversation."*

- 4.59 Councillor Morris also denied calling Councillor Channer with the intention of publishing the recording, telling us: *“I told her in the phone call that the conversation was just between me and her. I recorded the call just in case she made claims that I had abused her, which she has in her complaint.”* Councillor Morris told us that he only took the decision to publish it after he had received a phone call informing him that Councillor Channer had complained about his conduct. Councillor Morris said that by doing this, it was Councillor Channer who had effectively put the matter into the public domain.
- 4.60 In relation to the subsequent publication of the recording, Councillor Morris told us: *‘I did not tell Councillor Channer that I was recording the conversation or circulating the recording on Facebook. My understanding is that I do not need to do either of these things. I was not acting as a councillor during this conversation. The conversation was not about Council business. It was about her trying to call me out in the Chamber. I referred to her as Penny during the call. I believe I am allowed to talk about things outside the Chamber. I don’t care if this goes to the Joint Standards Committee or not as if it does it will give me a soapbox to highlight to a new audience about what has happened and what I’m trying to achieve, which is transparency, leadership and honesty.’*
- 4.61 In response to the allegation that he was using social media to bully and harass Councillor Channer, Councillor Morris told us: *“We are public representatives and need to have a thick skin. If Councillor Channer thinks that I am bullying and harassing her, then did she not think that what has happened to other people was bullying. I think that what I am doing is being straight talking and pulling people up on the inconsistencies of what they were saying. Councillor Channer has sat through some of the worst bullying I have experienced and done nothing. She has also had two members of her own group, Councillor’s Boyce and Morley, both tell her to shut up in a meeting and she has not complained about it. This is a politically motivated complaint.”*

5: Has Councillor Morris failed to comply with the Code of Conduct?

Capacity

- 5.1 Before we make a recommendation as to whether Councillor Morris’s conduct amounts to a failure to comply with the Code of Conduct, we need to decide if he was acting as a councillor (i.e. acting in his official capacity) at the relevant time.
- 5.2 Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct “dealing with the conduct that is expected of members ... when they are acting in that capacity” (my emphasis). The Council has reiterated this in its own Code.
- 5.3 Councillor Morris was clearly conducting Council business when attending the Planning Committee meeting of 13 August 2020 and when addressing concerns that had been raised about his conduct at that meeting via email. Councillor Morris was similarly in attendance at the meeting of the Joint

Standards Committee on 3 September because he was a councillor. We are therefore satisfied that the matters raised by Councillors Swain, Thomson and Boyce fall within the scope of the Code.

- 5.4 Looking then at Councillor Channer's complaint; Councillor Morris told us that he was not acting as a councillor during his conversation with Councillor Channer or posting it on Facebook. As part of our consideration on this point, it is relevant that Councillor Morris' Facebook account is clearly on that is private to him (in that it was set up personally by him and not by the Council) and does not immediately identify him as a member of the Council.
- 5.5 In offering our own views on this, we recognise that the Localism Act is vague on the key point of what acting in 'official capacity' involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have, however, is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance as to how Councils must interpret what 'official capacity' means.
- 5.6 Under the previous legislation, a fairly restrictive view on capacity was generally taken by the Adjudication Panel for England, the First Tier Tribunal (Local Government Standards) and the High Court. In the standards case of "Livingstone v The Adjudication Panel for England [2006]" Mr Justice Collins considered the question of official capacity. On the facts of that case, Collins J found that Mayor Livingstone's offensive comments to a journalist were not sufficiently connected to his position as Mayor as to engage the Code of Conduct, despite them being made as he was leaving an official function. Mr Justice Collins rejected the finding of an earlier Tribunal (that Mayor Livingstone's conduct had brought his office into disrepute) on the basis that he was not acting in his official capacity at the relevant time: "*it is important to maintain the distinction between the man and his office, even in the case of high-profile individuals.*"
- 5.7 Maintaining this distinction can be particularly difficult when it comes to the use of social media. On platforms such as Facebook and Twitter, councillors can often have 'blurred identities', where they use the same account to comment both as a councillor and as an individual; for example, using the same Facebook account a councillor posts about a great night out (personal) and then explains their authority's position on pothole repairs (councillor). Such blurred identities can have implications where a councillor's individual views are taken as those of their organisation or political party, rather than their personal opinion.
- 5.8 Judge Laverick specifically considered the use of social media by a councillor in First Tier Tribunal Case No. LGS/2011/0537. When considering the capacity in which a councillor was writing in an online blog, Judge Laverick took the view it was perfectly reasonable for a councillor to write posts in their private capacity even if they clearly identified themselves as a councillor. The key determining factor is whether the content of the post / message is sufficiently connected to Council business to engage the Code; to consider otherwise was found to be a

disproportionate restriction of an individual's freedom of speech and right to a private life. Judge Laverick accepted that under those circumstances a councillor could make offensive and possibly defamatory comments that may affect the reputation of their Council without necessarily engaging that Council's Code of Conduct.

- 5.9 This issue was further considered by Judge Lister in First Tier Tribunal Case No. LGS/2012/0597, when he heard an appeal against a decision made by Surrey Heath Borough Council's standards committee. Surrey Heath's Standards Committee had found one of their councillors in breach of the Code when making general political and satirical comments in an online blog. In her considerations on the appeal, Judge Lister gave regard to the guidance that had been produced by Standards for England, which stated:

"Q. Does the Code apply to blogs, social networking sites, twitter etc?"

It is unlikely that private blogging will fall within the scope of the Code... It is important to draw a distinction between comments on a blog about council business and comment about general political issues. The context is important and the decision as to whether the Code is engaged is fact sensitive and case specific."

Judge Lister overturned the Standards Committee's decision, stating that although the member had been clearly identifiable as a councillor on the relevant blog, the reference to that position in his profile description was not an indicator that he was actually conducting the business of his authority when blogging. Again, the important determining factor is whether the content of the particular blog related to the Council or Council business.

- 5.10 A report on Ethical Standards in Local Government, published in January 2019 by the Committee on Standards in Public Life, stated that *"The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour."* The report suggests that high standards are expected of public office holders in their use of social media, even when they are commenting on matters wholly unrelated to the business of their authority. What is relevant to the public is not just whether an individual is acting in an official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life. While the report makes it clear that the current legislation does not reflect this fully when it comes to considering the conduct of councillors in England⁸, it does state: *"it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one."*

⁸ hence the need for their recommendation that *"Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches"*.

- 5.11 As demonstrated above, the current legislation allows councillors to engage in a public debate about national and local issues without that conduct falling within the jurisdiction of the Local Government standards framework, even if their position as a councillor is evident. On the flip side though, councillors can find that the Code can be applied to their conduct even where they are not immediately identifiable as a councillor. An important case in this area is *McTigue v Middlesbrough Council* (2009). Councillor McTigue made a series of postings on the forum of the Middlesbrough Evening Gazette using the pseudonym “Indie” which related to wheelie bin collections and were alleged to be insulting of a local resident. Councillor McTigue argued that she was not acting in her official capacity as all her comments on the forum were made in her own time and all using the pseudonym “Indie”. The Adjudication Panel held she was not acting as a councillor when commenting about things in general, but that she was acting within the ambit of the Code when the contents of her posts concerned Council business, even though she was using a pseudonym that did not identify her as a councillor.
- 5.12 The determining factor then is whether the content of any individual post / tweet / blog is sufficiently connected to Council business to justify potential regulatory intervention. In our view the matters referred to in Councillor Channer’s complaint directly relate to Council business in that there is a clear nexus between the alleged conduct and Council business; accordingly, we are of the view that her allegations fall within the jurisdiction of the Localism Act. Councillor Morris’s telephone call arose as a direct result of an incident in the Council chamber and concerned Council business. Further, his posting of both this and the information pertaining to former Councillor Bamford, which reads like an interview with Councillor Morris, is clearly evidence of him using Facebook to communicate with his constituents about Council matters. The role of a councillor is to provide a bridge between the community and the Council. As well as being an advocate for their local residents, representing their views at Council meetings and signposting them to the right people within the authority, councillors are responsible for communicating back to their constituents about the decisions and actions they, their colleagues and their Council are responsible for.

Councillor Morris’ conduct

- 5.13 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. To objectively assess Councillor Morris’ conduct against the Council’s Code of conduct, it is important to set out clearly what we understand each requirement to mean. We will therefore set out what we consider to be the relevant considerations at the start of each section.

Did Councillor Morris fail to treat others with respect?

- 5.14 Paragraph 3.2: Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant

in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and any provoking factors.

Matters related to Councillor Swain's complaint

- 5.15 To briefly recap, as Mr Holmes, Mr Dodson and Mr Quelch were being introduced at the Council's Planning Committee meeting of 13 August 2020, Councillor Morris shouted the word '*corrupt*'.
- 5.16 Councillor Morris was clearly frustrated by the outcome of his complaint about Councillor Fluker's conduct. And it is evident from our conversation with him that he in part holds senior officers within the Council responsible for the fact that Councillor Fluker was not found guilty of any wrongdoing with regards the alleged loan. It is not within the remit of this investigation to ascertain the veracity of Councillor Morris' concerns about officer conduct, though we feel it important to make the point that we have not seen any compelling evidence to support this view. Our role is to consider whether his interjection at the Planning Committee meeting represented a failure to treat those officers with respect.
- 5.17 In considering whether Councillor Morris has failed to comply with the Code, a line must be drawn between the requirement for members to treat others with respect and the freedom members have to disagree with the views, opinions and actions of others. It is our view that members should be able to express in forceful terms concerns that they have about any aspect of the running of the Council or the conduct of the most senior officers within the Authority. As Lord Laming stated in the Victoria Climbié Inquiry; councillors "*must not accept at face value what they are told*".
- 5.18 Having said that, while ideas, policies, recommendations, and advice may be challenged and criticised, individuals should not be subject to unreasonable or excessive personal attack. The allegation made by Councillor Morris – that these officers were corrupt – was incredibly serious and in my view deliberately provocative, particularly bearing in mind that these are the officers specifically tasked with ensuring that the Council acts lawfully. Such accusations are properly made through the Council's Investigating and Disciplinary Committee (and Panel). While Councillor Morris is entitled to express any concern he might have in good faith within the correct forum, he is not allowed to publicly challenge the personal integrity of the three officers referred to above while in a public forum and at a time when the matter relevant to his concerns was not under discussion, and none of the relevant officers had any right of response. Accordingly, we are of the view that Councillor Morris failed to treat them with respect.

Matters related to Councillor Thompson's complaint

- 5.19 To briefly recap, after the 13 August 2020 Planning Committee meeting was closed prematurely due to Councillor Morris' interjections, Councillor Heard sent an email to all members of the Council expressing his concerns about what had occurred. In response, Councillor Morris sent an email to all parties in

which he was highly critical of Councillor Heard and others, referring to many in a derogatory manner.

- 5.20 Councillor Thompson described the content of the email as being disrespectful to both members and officers, referring specifically to his comparison of her to Cruella de Vil. In his own defence, Councillor Morris drew attention to the alleged behaviours of Councillor Thompson and others within the Conservative group; including referencing the derogatory nickname they use for him.
- 5.21 While Councillor Morris' conduct must be viewed objectively against the Code (rather than against the alleged misconduct of others), we certainly must give regard to the enhanced protection he is offered in Article 10 of the Human Rights Act. This would include considering whether any interference or restriction to his freedom of expression is prescribed in law and, if so, whether it is necessary in a democratic society.
- 5.22 The Localism Act, under which the Council has adopted a Code of Conduct, provides that a councillor's freedom of speech can be legally restricted. When considering whether it is necessary; we believe that one of the objectives of the Code and the provisions within it (along with the imposition of any sanction if a breach is found), is to maintain standards and ensure the conduct of public life at the local government level, including public debate, does not fall below a minimum level. A further aim is to protect the reputation and rights of others, for example, from offensive, abusive and defamatory remarks. Other aims, which are perhaps more relevant to later considerations in this report, are to prevent the disclosure of information received in confidence; to ensure the council or office of a councillor is not brought into disrepute; to prevent good administration; and to ensure that public confidence in the council or democracy itself is not undermined.
- 5.23 Councillors operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. That said, the right to freedom of expression is not absolute. It is important that Councillors understand that restrictions can be imposed to protect the rights and reputations of others and to ensure officers can undertake their tasks without undue disturbance. Councillors should consider, therefore, both what they are expressing and the way they are expressing it. They should also consider how their conduct could be perceived. There is no reason why councillors should not be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and / or unduly disruptive. In fact, it is encouraged.
- 5.24 Summaries of some of the principles established by the Courts can be found at Annex A. Particularly relevant to this matter are the principles that any restrictions must reflect a '*pressing social need*' and that '*political expression*' has to be interpreted widely and it include open discussion on political issues including public administration and public concern, including comments about the adequacy or inadequacy of the performance of public duties by others.

5.25 The Standards Board for England Case Review 2010 (2011 Edition), which focused on the way in which local councillors should treat each other provides guidance on treating others with respect by indicating a ‘rule of thumb’ comparison:

“You’re talking drivell” is likely to be an acceptable expression of disagreement.

Calling someone an “incompetent moron”, on the other hand, is more likely to be a failure to comply with the Code.

We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics”.

Whilst some care must be taken in adopting wholesale a test applicable to a provision of the former national model code, it is the personalisation of comments that cause the user to breach the Code.

5.28. Councillor Morris is clearly somebody who likes to be provocative and use profanity on occasion in his correspondence. We have also seen examples, in this email and on other occasions, where he has made comments that could be interpreted as humorous. The use of humour in a professional environment can be viewed as very positive; work can get stressful and when things get serious it can be beneficial to try to lighten the mood. This though is not how Councillor Morris appears to utilise it, Instead, Councillor Morris uses sarcasm or parody to mock and undermine others.

5.29. There are aspects of Councillor Morris’ email, such as *“As an opposition leader you have been as useful as an ashtray on a motorbike”*, which though disparaging, we would not consider a breach of the Code. Councillor Morris is entitled to let Councillor Heard know that he does not think he has been a good opposition leader. That said, we are of the view that the email does include several offensive remarks that were clearly aimed at the personal characteristics of others or were intended to patronise, as opposed to their being a legitimate criticism of their respective ideas or actions. These include:

- Calling Councillor Heard a ‘melt’ on two occasions.
- Referring to Brian Harker as a ‘mumbling corpse’.
- Referring to Councillor Thompson as ‘Cruella’.
- Calling Councillor Heard a ‘snowflake’.
- Referring to the Corporate Leadership Team as ‘jokers’ who had lied to members.
- Accusing Councillor Heard (and by extension the Corporate Leadership Team) of supporting financial impropriety and cover ups.
- Using the phrase *‘I wish I had the patience and the crayons to explain this to you’*.
- Calling Councillor Heard a wally.

While Councillor Morris' article 10 rights offer him enhanced protection when making political comment, it does not offer the same protection to personal abuse. In our view by sending his email of 14 August 2020, Councillor Morris did fail to treat others (including the complainant, Councillor Thompson) with respect.

Matters related to Councillor Boyce's complaint

- 5.30. To briefly recap, at the meeting of the Joint Standards Committee on 3 September 2020, Councillor Morris expressed the view that Councillor Boyce was 'past his best'. While we did not find that Councillor Morris said that Councillor Boyce had 'diminished mental capacity' (which was both alleged and which Councillor Morris himself thought he had probably said), we did find that Councillor Morris did say that Councillor Boyce was not the man he was.
- 5.31. In our view comments such as the one made by Councillor Morris not only risk a member breaching the Code by failing to treat others with respect; they put the Council at risk of failing to fulfil their public sector equality duty. This requires organisations to consider how they could positively contribute to the advancement of equality and eliminate discrimination, covering the nine protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Ageism⁹ remains a significant problem within British society; public authorities, and by extension its members, have a responsibility to counter it, not deploy it to belittle each other.
- 5.32. That said, when considering this complaint, the forum within which Councillor Morris was speaking is crucial. The comment about Councillor Boyce was made as part of Councillor Morris' response to an investigation report that included a finding that he had said that Councillor Boyce was too old and should quit. In those limited circumstances, we are of the view that Councillor Morris is entitled to attempt to justify his earlier conduct without necessarily leaving himself open to another complaint being made. It would have been for the members of that Committee to listen to that defence before deciding whether Councillor Morris had failed to comply with the Code. It is not for this investigation to reconsider a decision that was made in relation to that matter even were we disagree with it. While we do have serious concerns about Councillor Morris' characterisation of Councillor Boyce as 'past his best' due to his age, the circumstances within which the comment was made (defending a similar allegation at a standards hearing) leads us to recommend that Councillor Morris be found not to have failed to treat Councillor Boyce with respect.

Matters related to Councillor Channer's complaints

- 5.33. To briefly recap, on 5 February 2021 Councillor Morris telephoned Councillor Channer following a comment she had made at a Council meeting the previous evening. During the telephone conversation, which Councillor Morris recorded

⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/359/359.pdf>

and subsequently published (without Councillor Channer's knowledge or permission; indeed, he told her it was '*a nice friendly personal one*'), Councillor Morris accused Councillor Channer of ignoring bullying within the Council (*I know you sat there and watched people almost get bullied to death. People were thinking of suicide because of what was going on at that Council and you watched it. And you allowed it to happen*) and of having no integrity.

- 5.34. We will consider Councillor Morris' actions with regards to the recording and publication of the telephone conversation in more detail below. We are of the view though that Councillor Morris' did fail to treat Councillor Channer with respect when he published a personal telephone conversation in which he made derogatory comments about her character. We would add that while some of the later messages posted on Facebook by Councillor Morris about Councillor Channer do not directly fall within the scope of this investigation, they and the other matters under consideration in this report do evidence a concerning pattern of behaviour when it comes to treating others with respect. While Councillor Morris may wish to decide who is and is not worthy of his respect, the Code to which he has agreed to adhere allows for no such qualification.

Has Councillor Morris bullied others?

- 5.35. Paragraph 3.5(b): There are many definitions of bullying, many of which cross over with actions that alternatively described as harassment. The definition for bullying that we apply is based on classification provided by ACAS. The definition for harassment that we apply reflects the definition set out in Section 26 of the Equality Act 2010. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Examples of bullying may include verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others with the use of inappropriate nicknames or humiliating language.
- 5.36. Bullying and harassment can affect anyone, in any career, at any time, at any level and within any workplace. Such behaviour can take the form of easily noticed, physically threatening or intimidatory conduct with immediate impact, or it can take place behind closed doors, or be much more subtle or camouflaged and difficult to identify, at least at first. It can start, for example, with what appear to be minor instances, such as routine 'nit-picking' or fault-finding, but which become cumulative or develop into more serious behaviour over time, enabling the perpetrator to isolate and control the person. Some bullies lack insight into their behaviour and are unaware of how others perceive it. Others know exactly what they are doing and will continue to bully if they feel they are unlikely to be challenged. Bullying and harassment can sometimes be overlooked, because of common euphemisms being used by way of explanation or justification, referring to someone as having a "*poor*

communication style” or a “*bad attitude*,” for example, or to the problem being due to a “*personality clash*”.

5.37. It is evident from our various conversations with Councillor Morris that he is a hugely passionate councillor who has on numerous occasions expressed significant concerns both about bullying by other members of the Council and the failure of others such as Councillors Bamford, Thompson, Channer and Boyce to do anything about it. We offer no view on the veracity of these concerns. We are aware though that Councillor Morris has at times felt marginalised in his efforts to get these concerns addressed and as such has felt the need to be particularly robust in challenging what he saw to be unacceptable behaviour.

5.38. Perhaps the frustration Councillor Morris has felt in dealing with these matters, which must have also come with a feeling of powerlessness, led him to believe that his own behaviour, no matter how forceful, could never amount to bullying behaviour. In our view though the investigation has evidenced several occasions where we believe his conduct meets the definition for bullying. These would include:

- Publicly calling officers of the Council corrupt in an inappropriate forum where they had no right of reply. This can have only be done with a view to causing them embarrassment / humiliation.
- Repeatedly talking over Councillor Thompson while she was acting as Chair at the same meeting, to the extent that she and the Committee were prevented from conducting Council business.
- Being both insulting and sarcastic towards / about Councillor Heard and others in his email of 14 August 2020.
- Giving others, such as Councillor Thompson, inappropriate nicknames.
- Recording and publishing a conversation with Councillor Channer without her knowledge or consent in a manner designed to ridicule / demean her.

5.39. Accordingly, while it may not have been his intent, it is our view that Councillor Morris has failed to comply with paragraph 3.5(b) of the Code.

Has Councillor Morris conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute?

5.26 Paragraph 3.5(e): In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as either reducing the public’s confidence in that member being able to fulfil their role; or adversely affecting the reputation of members generally, in being able to fulfil their role.

5.27 A significant part of the good reputation of local government depends on a member’s ability to use their public platform, social media and the press to scrutinise the actions of their authority. Councillors must be allowed to draw attention to and attack the actions of others within the Council where they hold

genuine concerns. And we have already referred to the fact that in a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated; indeed, in *Lombardo v Malta* (2009) 48 EHRR 23, it was established that comments in the political context which amount to value judgements or even statements of fact are tolerated despite being untrue as long as they are expressed in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

5.28 That said, for the reasons stated above we consider that Councillor Morris' conduct does warrant regulatory intervention because he had both bullied and failed to treat others with respect. While his right to free speech is crucially important, so are the rights of others not to be unfairly maligned. In considering whether his conduct was so serious as to also bring his office or authority into disrepute, we are of the view that members of the public would expect their elected representatives to engage in important conversations about Council business in a constructive and positive manner. In our view by publicly maligning others when they have no opportunity to respond; interrupting meetings to the extent that Council business cannot be conducted, making personal verbal attacks towards those who challenge his behaviour and publishing recordings of conversations he had led another councillor to believe was private, Councillor Morris' conduct would reduce the public's confidence in Councillor Morris specifically and the Council more widely being able to fulfil their roles. Our view is that Councillor Morris did fail to comply with paragraph 3.5(e) of the Code.

Has Councillor Morris disclosed confidential information?

5.40. Paragraph 3.6: this paragraph is drafted in the same way as found in Model Code of Conduct that preceded the Localism Act. Standards Board's guidance on this aspect of the Code advised that information can only be considered confidential if the following apply:

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

Also relevant is the judgement on confidentiality by Lord Goff in *AG v Guardian Newspapers* in which he stated:

"a duty of confidence arises when confidential information comes to the knowledge of a person...in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others."

If the information disclosed does have the necessary quality of confidence, any investigation must consider whether the member disclosing it:

- had the consent of a person authorised to give it; or
- was required by law to do so; or
- only made the disclosure to a third party for the purpose of obtaining professional advice (provided that the third party agrees not to disclose the information to any other person); or
- the disclosure was—
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the authority

5.41. To briefly recap, Councillor Morris submitted a complaint against himself and Councillor Bamford on 25 October 2020. He then, on 27 October 2020, attended the meeting of the Joint Standards Committee where he was excluded from the meeting (along with the press and public) so that his complaints could be assessed. On 29 October 2020 Councillor Morris publicly announced on Facebook that Councillor Bamford was under investigation, presenting his allegations against her as fact.

5.42. Councillor Morris has denied breaching this aspect of the Code on the basis that he did not know that the information he was disclosing was considered confidential. In our view this is somewhat disingenuous, given that he had been forced to leave the meeting when the decision was taken to refer the matter for investigation due to the exclusion of the press and public. While Councillor Morris might not have been present when the decision was taken, he has been a councillor long enough to understand that decisions taken while the press and public are excluded are considered confidential by the Council.

5.43. When considering whether Councillor Morris' disclosure represents a breach of the Code, we are mindful that the complaint had been made by him. As such, he was allowed to disclose the fact that a complaint had been submitted and include the nature of the allegations made (though other aspects of the Code could well be engaged if disrespectful / offensive comments about another individual). The information though he did not automatically have the authority to disclose was the fact that the matter was under investigation.

5.44. When assessing the quality of confidence this information held, we are assisted by decisions that have been made by the Information Commissioner's Office (ICO). Under the Freedom of Information Act (FOIA), individuals have a general '*right to know*', which entitles them to be provided with information held by Government departments and public bodies. However, those bodies can legitimately withhold information requested in some circumstance.

- 5.45. The ICO has consistently maintained that it is in the public interest for Council's to disclose the detail of any complaints where the councillor (or indeed former councillor) has been found in breach of the Code. This is not though true of councillors who have not been found to be in breach / had a complaint made against them where no further action was taken. In FOIA decision ref FS50782482, the ICO considered whether Herefordshire County Council had been correct in withholding information from a complainant who had requested the identity of all councillors who had been complained about. When considering the matter, the Commissioner recognised the legitimate interests of the complainant in his desire to uphold standards in public life through transparency, and those of the wider public in holding officials to account. As such, the disclosure of the identity of any councillors complained about would be considered legitimate. In deciding whether such a disclosure was necessary however, the Commissioner concluded that the information that was already being published by the Council (which did not name the individuals complained about but that did describe the nature and number of the allegations made along with a description of any action taken) was sufficient to meet meeting the general interest in transparency regarding the code of conduct complaints procedure.
- 5.46. Having carefully considered Councillor Morris' disclosure, we are of the view that it does amount to a failure to comply with paragraph 3.6 of the Code. In our view the fact that Councillor Bamford was under investigation had the necessary quality of confidence; confidentiality is essential in particular during the investigation to both preserve the integrity of the investigation process and to minimise any negative impact of this investigation on all the people affected by it. We are not persuaded by Councillor Morris' argument that he was unaware of his duty of confidence; he did not have the consent of the person authorised to give it (in this instance, the Monitoring Officer) and it was not a necessary disclosure. Finally, it is evident that the disclosure was not made for the purposes of seeking advice and while there is an argument that its eventual disclosure would have been in the public interest, I have seen no compelling evidence that it was the case at the time or that it was made in good faith and in compliance with the reasonable requirements of the authority.
- 5.47. Accordingly, it is our view that Councillor Morris did fail to comply with paragraph 3.6 with regards this matter.

6. Recommendations

- 6.1 In relation to Councillor Swain's complaint, our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.

- 6.2 In relation to Councillor Thompson's complaint, our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.
- 6.3 In relation to Councillor Thompson's complaint our recommendation is that Councillor Morris be found to have failed to treat others with respect, contrary to paragraph 3.2 of the Council's Code.
- 6.4 In relation to Councillor Boyce's complaint, our recommendation is that Councillor Morris be found not to have failed to treat others with respect.
- 6.5 In relation to Councillor Channer's two complaints, our recommendation is that Councillor Morris be found to have disclosed confidential information, contrary to paragraph 3.6 of the Code; and failed to treat others with respect, contrary to paragraph 3.2 of the Code.
- 6.6 Finally, we recommend on the basis of the evidence set out in this report with regards the various matters complained, that Councillor Morris be found to have bullied others, contrary to paragraph 3.5(b) of the Code, and conducted himself in a manner which could reasonably be regarded as bringing his or office or the Authority into disrepute, contrary to paragraph 3.5(e) of the Code.

ANNEX A:

CASE LAW ON ARTICLE 10¹⁰

¹⁰ As provided by the Standards Commission for Scotland in the advice not on the application of Article 10 of the ECR and the Councillor's Code of Conduct

1. Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin): The High Court recognised that politicians have an enhanced protection in respect of political expression, which applies to all levels of politics, including local, and that political expression in itself is a broad concept. The Court further held that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians. The need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician's right to enhanced protection. The Court noted that the right to freedom of expression was not absolute but that any restriction was required to respond to a 'pressing social need', to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. However, that margin must be construed narrowly in this context as there was little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. The Court had further recognised that it was in the public interest that officers were not subjected to unwarranted comments that prevented them from performing their duties in conditions free from perturbation¹¹ as this could undermine public confidence in the administration. The Court recognised that local government could not 'sensibly function' without such a mutual bond of trust and confidence.

2. R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172: This case outlined the order a Tribunal would require to adopt when considering Article 10, which was firstly whether there had been a breach of the Code; secondly, if so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression afforded by Article 10; and thirdly, if so, whether the restriction involved was one that was justified by Article 10(2). The High Court noted that if the conduct in question is less egregious¹², it is more difficult to justify any restriction. The Court further noted that 'political expression' had to be interpreted widely and it included open discussion on political issues including public administration and public concern, including comments about the adequacy or inadequacy of the performance of public duties by others. It had been held that there was no distinction between political discussion and discussion of matters of public concern. In making observations about the general purpose of a Code that proscribed conduct, the High Court noted that a Code could seek to maintain standards and to ensure that the conduct of public life at the local government level, including political debate, does not fall below a minimum level so as to maintain public confidence in local democracy.

3. Guja v Moldova (2011) 53 EHRR 16: The European Court of Human Rights (EHRR) found that the signalling or disclosure of wrongdoing by an officer should be made in the first place to the individual's superior or other competent authority or body and that the question of whether there was any other effective means of remedying the wrongdoing should be considered before information was disclosed in public. The EHRR further found that the public interest in particular information could sometimes be as strong as to override even a legally imposed duty of confidence.

¹¹ Disturbance or upset caused by some event.

¹² Extremely bad in a way that it noticeable or shocking

4. **Lombardo v Malta (2009) 48 EHRR 23**: The EHRR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it. The Court noted it did not matter whether the restriction was imposed by civil or criminal proceedings when determining whether interference with the freedom of expression was proportionate to the aim pursued and was necessary in a democratic society.

5. **Mamere v France (2009) 49 EHRR 39**: The EHRR noted that individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. The Court noted that Article 10 protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued.

6. **Busuioc v Moldova (2006) 42 EHRR 14**: Even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.

7. **Livingstone v Adjudication Panel for England (2006) EWHC 2533**: The High Court notes that restraints imposed by a code of conduct designed to uphold proper standards in public life are in principle likely to fall within Article 10(2) ECHR but such restraints should not extend beyond what is necessary to maintain those standards. The Court noted that interference with the right of free speech which impedes political debate must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.

8. **Pederson v Denmark (2004) 42 EHRR 24**: The EHRR recognised that there can be a conflict between the right to impart information and the protection of the rights and reputation of others. In determining whether a restriction on freedom of expression was legitimate, consideration should be given to whether or not there were sufficient other opportunities for person imparting the information to achieve his or her objective.

9. **Janowski v Poland (1999) 29 EHRR 705**: The EHRR considered rights of public servants and their entitlement to protection but noted they are subject to the wider limits of acceptable criticism, meaning such criticism could be harsh or expressed in strong form. Public servants can expect criticism at higher level than the public but not quite the same level as politicians. They did not knowingly lay themselves open

to close scrutiny of their every word and deed to the extent to which politicians do and should not, therefore, be treated on an equal footing with the latter when it comes to criticism of their actions. The Court noted that civil servants can expect protection if there is a pressing social need. Any such protection must also be proportionate to the legitimate aim being pursued and be relevant and sufficient. Civil Servants must enjoy public confidence in conditions free from undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks.

10. **Thorgeirson v Iceland (1992) 14 EHRR 843**: The EHRR noted that freedom of expression was not just applicable to information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those which shock, offend or disturb. The Court observed that there was no distinction between political discussion and discussion on matters of public concern.

Annex B

Comments received on the draft report.

All relevant parties were sent a copy of our draft investigation report with provisional recommendations. While some of the comments received have been addressed in the body of the final report, Councillors Thompson and Channer wished to a section of of reasoning, which stated.

“It is evident from our various conversations with Councillor Morris that he is a hugely passionate councillor who cares deeply for his community. Councillor Morris has on numerous occasions expressed significant concerns both about bullying by other members of the Council and the failure of others such as Councillors Bamford, Thompson, Channer and Boyce to do anything about it. We are aware that Councillor Morris has at times felt marginalised in his efforts to get these concerns addressed and as such has felt the need to be particularly robust in challenging what

he saw to be unacceptable behaviour...Perhaps the frustration Councillor Morris has felt in dealing with these matters, which must have also come with a feeling of powerlessness, led him to believe that his own behaviour, no matter how forceful, could never amount to bullying behaviour"

Comments from Councillor Thompson

I emphatically dispute the above. I believe that Cllr Morris is hugely passionate about his own rights on being free to speak out at any time, in any meeting, on any subject of his choosing but without regard to the rights of anyone else. As far as the particular instance of bullying of one member by Cllr Fluker is concerned, support was given to that member as well as offers to take action, however those were refused on the basis that the member preferred to handle the problem himself. Cllrs Bamford and Channer, in particular, were extremely supportive of him and it is grossly unfair to suggest anything else. I realise Cllr Morris may not have been made aware of the support offered, however he has never queried his belief and presents it as a matter of fact that reflects poorly, and wrongly, on the members he accuses.

The four members named, Cllrs Bamford, Channer, Boyce and myself, did not stand by and watch bullying happen since the only person I had ever been aware of who felt they were suffering in this way refused all offers of help, preferring to keep a dossier to send to his Conservative Association and to Conservative HQ. In point of fact, some statements made about me in that file were misleading or inaccurate, however I was not given the opportunity to comment before the complaint report was put to the JSC, something I continue to find extremely upsetting because I was misrepresented without a chance to explain where it was incorrect.

If Cllr Morris has been marginalised or feels frustrated it would be because he was disruptive from the moment he joined the Council and seemed to go out of his way to alienate himself from those who were, and are, prepared to follow the constitution and conventions of the Council in order to represent the people of the district. The discovery that Cllr Morris recorded conversations with and between other members without informing them resulted in most of us limiting our interactions with him as far as possible, since any recording can be edited and manipulated. He did not (and doesn't) engage in constructive debate but from the very first would shout out over others and demand to speak at will, based on his interpretation of his "Human Rights". He did not seem to have a cause beyond his own rights for some months at least and appeared to be concerned not with the rights of our residents but only with his own.

I do agree that he evidently feels that his behaviour cannot possibly be bullying, but I believe that is because he is certain he is right, and that any behaviour of his must therefore be justified.

Councillor Channer comments

Your report states within it that Cllr Morris is hugely passionate, who cares deeply about his community. With all due respect many of us are, in fact probably all, but I think it fair to say that I do not see others exhibit the type of behaviour that Cllr Morris does.

APPENDIX 1

On reading [the relevant section of the report shown above] I feel is accusatory towards myself and others named and appears to be indicating that what Cllr Morris has said about us is absolutely true - essentially, we watched it and did nothing. I have already above stated that I did not see bullying of the 151 officer and I did not stand by watching bullying of her. Regarding accusing me of watching others being bullied. I did not see the throat slitting gesture in the chamber made by Cllr Fluker (I seem to recall Cllr Morris at some point saying he had not seen it) and neither did I hear Cllr Fluker say, 'hello sailor '. Yes, I was in the chamber, but I did not hear it (probably my mind concentrated on something else). I had told Cllr Morris that before and at that time he accepted it ,yet now months later he accuses me in a telephone call ,which he places on social media ,of essentially lying. I may be lots of things, but I am not a liar.

Complaints were made and investigation commenced about what Cllr Fluker had done and said and that being so one should not do anything that may prejudice the outcome (s). I do not have to explain or tell Cllr Morris what I may have done, or not, about any matter, or what I may know or not know about any matter now he is on the Council or before he was even on the Council and expressly with regard to what may be hearsay. Plus, I may have been told things in confidence and therefore not to be shared. Cllr Morris referred to me as watching and doing nothing about bullying and two individuals he named, if I recall correctly, were not even still at the Council when he was elected. Therefore, it would appear he is picking stuff up from someone / somewhere and running with it as fact when he was not even on the Council to know for himself what may / may not have gone on about anything let alone accusations of bullying. Hence in my opinion he would be best advised to apply caution when acting/stating things as fact when they probably are the content of ' here say'.

In your report at some point, you state that Cllr Morris said I was a bully. I do not think I said in my statement he accused me of being a bully. He certainly accused me of watching bullying happen and doing nothing. So, I guess in a way he is saying that I am a bully, as if his statements were true, he in effect is stating I condone bullying which essentially only a bully surely could. [the draft] refers to the frustration of Cllr Morris that he has felt in dealing with these matters which must have also come with a feeling of powerlessness. I think that rather sums up now how I am feeling regarding my situation with Cllr Morris.