

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW-002-2021-022-AT

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Richard Mainon

RELEVANT AUTHORITY(IES): Denbighshire County Council

INTRODUCTION

1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Richard Mainon against the decision of Denbighshire County Council's Standards Committee made on 11th June 2021 that he had breached Denbighshire County Council's Code of Conduct and should be suspended from being a member of Denbighshire County Council for a period of two months.

2. On 9th May 2017, upon his election to the office of Councillor, Richard Mainon, undertook in writing to observe the Code for the time being as to the conduct which is expected of members of Denbighshire County Council.

3. In so far as it relates to this case, Denbighshire County Council Members' Code of Conduct reads as follows.

a. Paragraph 2(d) of the Code provides that members must observe the Code of Conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

b. Paragraph 4(c) of the Code provides that members must not use bullying behaviour or harass any person.

c. Paragraph 6(1)(a) of the Code provides that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

d. Paragraph 7(a) of the Code provides that members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or create or avoid for themselves, or for any other person, a disadvantage.

4. The Public Services Ombudsman for Wales (“PSOW”) received a complaint that Councillor Mainon had failed to observe the Code of Conduct. It was alleged that he had abused his position by visiting a member of the public’s place of work and complaining to her employer about a private altercation between her and constituent in a local store car park.

5. The Ombudsman determined that there was evidence to suggest that Councillor Mainon had conducted himself in a bullying and harassing manner, and that his actions sought to create a disadvantage for the member of the public in the eyes of her employer. The evidence also suggested that such conduct was capable of damaging the reputation of the Council and bringing it into disrepute. The Ombudsman determined that the member had failed to abide by paragraphs 4(c), 6(1)(a) and 7(a) of the Council’s Code of Conduct. The Ombudsman referred his investigation report to the Monitoring Officer of the Council for consideration by its Standards Committee.

6. On 11th June 2021, a Standards Committee Hearing took place at County Hall, Ruthin, Denbighshire and via the “Zoom” video platform.

7. The Standards Committee found the following facts.

a. On 8th December 2018, Mrs Sandie Grieve had a heated altercation with Ms Jayne Davies outside a local mini supermarket. Ms Davies is a constituent of the Appellant.

b. Ms Davies phoned the local mini supermarket that evening to ask about CCTV footage of the car park and was advised the CCTV covered the car park, but it had no sound.

c. On 10th December 2018, Ms Davies established that Mrs Grieve worked for Social Care Wales (SCW) and asked Councillor Mainon for assistance with pursuing a complaint about Mrs Grieve to her employer. Councillor Mainon agreed to handle the matter for Ms Davies.

d. On 11th December 2018, Councillor Mainon conducted an online search for Mrs Grieve’s place of work and determined an address for SCW’s local office.

e. On 11th December 2018, Councillor Mainon attended SCW’s local office to determine if it was Mrs Grieve’s place of work and to speak to her.

f. On 11th December 2018, Councillor Mainon gained access to Mrs Grieve’s workplace via a secure door entry. Mrs Grieve was not in the office at the time and Councillor Mainon spoke separately to three colleagues (an office colleague, her line manager and the organisation’s Complaint Officer) about the altercation and shared details with them about the incident and Mrs Grieve’s conduct. Councillor Mainon spoke to the office colleague in person but spoke to the line manager and Complaints Officer by telephone.

g. On 15th December 2018 Councillor Mainon visited the local mini supermarket to ask whether the incident between Mrs Grieve and Ms Davies was recorded on CCTV.

h. On 21st December 2018 (*corrected from "2021" within the Standards Committee's Notice of Determination because it is obviously a typographical error*) Councillor Mainon visited the local mini supermarket and obtained information on what the CCTV footage of the incident had shown.

i. On 21st December 2018 Councillor Mainon sent a complaint on Ms Davies' behalf to SCW about Mrs Grieve and her involvement in the altercation.

j. SCW notified Mrs Grieve of the matter on 10th January 2019, which was subsequently dealt with according to the organisation's policy. SCW determined it was a private matter and no further action was taken.

k. Aside from submitting that it was Ms Davies that had identified Mrs Grieve's employer, Councillor Mainon did not dispute this summary of the relevant facts.

8. Based upon these findings of fact, the Standards Committee found that Councillor Mainon had failed to comply with the Code of Conduct in the following ways.

a. The Committee was satisfied that Councillor Mainon gave the impression of acting in his capacity as a Councillor, thereby engaging paragraph 2(d) of the Code of Conduct.

b. The Committee found that Councillor Mainon had breached paragraph 4(c) of the Code in that his conduct in visiting Mrs Grieve's place of work and speaking to her colleagues in her absence could be considered to be bullying and harassing behaviour. The Committee had, in reaching this decision, considered the written evidence of Mrs Grieve and submissions to the effect that she had genuinely felt stressed, vulnerable, upset and embarrassed. The Committee also considered the information provided by Councillor Mainon to the investigating officer and his submissions. The Committee accepted that Councillor Mainon had not intended to cause upset to Mrs Grieve and that he had no malicious intent when he attended her place of work. The Committee accepted that his intention was to assist Ms Davies and to avoid a damaging social media dispute in his community. The Committee did however conclude that Mrs Grieve was entitled to perceive Councillor Mainon's actions as bullying and harassing and that this conduct could reasonably be regarded as such.

c. The Committee concluded that Councillor Mainon had breached paragraph 6(1) (a) of the Code of Conduct. Councillor Mainon had given the impression to Mrs Grieve's colleagues that he was acting as a councillor in pursuit of Ms Davies' complaint. In doing so, and by visiting Mrs Grieve's place of work and speaking to her colleagues about the incident there was potential damage to the Council's reputation particularly as Councillor Mainon appeared

to have accepted Ms Davies' version of events and had not sought Mrs Grieve's version of events.

d. The Committee concluded that Councillor Mainon's conduct amounted to a breach of paragraph 7(a) of the Code of Conduct. The Committee took into account Mrs Grieve's view that Councillor Mainon's actions were an effort to get her investigated and discredit her professionally. The Committee accepted that Councillor Mainon had not considered his approach to the Complainant's employer to be menacing and that his intent had been to seek to assist Ms Davies to pursue a complaint. However, the Committee concluded that in giving the impression that he was acting as a councillor in bringing to the attention of Mrs Grieve's employer a private incident, without demonstrating balance or fairness towards both parties, Councillor Mainon had attempted to use his position to cause Mrs Grieve a disadvantage.

9. Thereafter, the Standards Committee heard representations on the appropriate sanction applicable to these findings. Having considered those representations, the available material and the Sanctions Guidance published by the Adjudication Panel for Wales, the Standards Committee determined that Councillor Mainon would be suspended as a Member of the Council for a period of two months.

THIS APPEAL

10. In an email dated 12th July 2021, the Adjudication Panel for Wales received an appeal from Councillor Richard Mainon against the determination of Denbighshire County Council Standards Committee on 11th June 2021 that he had breached the Denbighshire County Council Code of Conduct; and that he should be suspended from being a member of the Council for two months.

11. Councillor Mainon sought to appeal the Standards Committee's findings that he had bullied Mrs Grieve; that he had harassed Mrs Grieve; that he had brought the Council into disrepute; and that he had taken advantage of his position to cause disadvantage to Mrs Grieve. He also sought to appeal the sanction imposed on the grounds that it was inappropriate, unnecessary, and excessive in all the circumstances.

12. Councillor Mainon accepted that he had identified himself as a councillor and as acting in support of a constituent, who was seriously ill at the material time and who complained that her child had been upset by the initial incident. Councillor Mainon said he had good reason to believe that the dispute would be aired via social media and that this would have been divisive to the local community.

13. Councillor Mainon noted that the only contact he made with Mrs Grieve was via her place of work. When he was admitted after ringing a doorbell, he did not act aggressively and quoted from the unchallenged evidence of the person who attended upon him: *“I would say that Councillor Mainon’s manner was reasonable when I spoke to him and he wasn’t intimidating or anything like that.”* Councillor Mainon worked with the information he was given.

14. Councillor Mainon noted that the Standards Committee found that he did not intend to cause upset to Mrs Grieve; that he had no malicious intent when he attended her place of work; that he intended to assist a constituent and to avoid a damaging social media dispute in the community; and that he did not consider that his approach to Mrs Grieve’s employer was menacing.

15. Councillor Mainon submitted that the Standards Committee had failed to take account that he made his complaint in a *“reasonable and unintimidating manner”* and through the correct channel for complaint about a public servant. He therefore submitted that legitimate presentation of a complaint cannot itself constitute either harassment or bullying.

16. He further submitted that the Standards Committee’s expression of its findings using the conditional term *“could”*, (*“...could be considered to be bullying and harassing behaviour...”*; *“...the Complainant was entitled to perceive Councillor Mainon’s actions as bullying and harassing and that this conduct could reasonably be regarded as such”*) was insufficient to constitute a public finding of misconduct. Overall, the Standards Committee gave too much weight to untested statements as to Mrs Grieve’s feelings; too little to Councillor Mainon’s intent; and too little to all the circumstances of the case.

17. Councillor Mainon submitted that a course of conduct was required for a finding of harassment and that the Standards Committee had not identified such a course of conduct. He further submitted that his actions after attending Mrs Grieve’s place of work did not amount to a course of conduct.

18. Councillor Mainon submitted that the Standards Committee’s finding that he had brought the Council into disrepute, *“...particularly as (he) appeared to have accepted (Ms Davies’) version of events and had not sought (Mrs Grieve’s)...”* misunderstood that he was only trying to file a complaint and hand it on to the proper authority for investigation. It was, therefore, an error to hold his failure to investigate as an aggravating feature, not least because Mrs Grieve was not available for comment when he attended.

19. Councillor Mainon also submitted that the Standards Committee was wrong to find that he had taken advantage of his position to cause Mrs Grieve disadvantage, because all he had done was make a formal complaint about the

conduct of a public servant to the relevant department of her employer. The finding that Councillor Mainon intended to assist a constituent to pursue a complaint meant this further finding was not open to the Standards Committee. The fact that Mrs Grieve believed that Councillor Mainon acted “..to get her investigated and discredit her professionally”, did not assist that decision.

20. On sanction, Councillor Mainon submitted that the finding of a lack of malice, coupled with a finding of “*lack of understanding*” and “*relative inexperience*” meant that suspension was inappropriate and unnecessary. The public findings of reprehensible conduct are themselves massively important and the Standards Committee failed to take this into account. The potential impact upon Mrs Grieve had to be set against the fact that there was no actual impact upon her arising from the complaint made.

21. On the findings made, Councillor Mainon submitted that training (also bearing in mind the experience of this entire process) could be the appropriate remedy, rather than suspension; that depriving the Councillor’s constituents of representation for a period was unnecessary and wrong; and that two months’ suspension, that is one-third of the maximum available, was excessive in any event.

22. The President of the Adjudication Panel for Wales gave limited permission to appeal on the following grounds. At paragraphs 9(c) and 9(d) of her decision dated 28th July 2021: -

9c. The Appellant submits that the Standards Committee did not define “bullying” or “harassment” and failed to identify a course of conduct in relation to harassment.

The decision of the Standards Committee...shows that the Committee was taken to the definition of bullying and harassment within the Ombudsman’s guidance; it accurately summarises that relevant factors when dealing with allegations of bullying include the perception of the victim and the intention of the Appellant. I note that the report pack before the Standards Committee included excerpts of the Ombudsman’s guidance explaining both bullying and harassment.

The decision of the Standards Committee did not separate bullying from harassment; the two are not the same thing. The decision does not set how the Committee concluded that there was a course of conduct/repeated behaviour which constituted harassment. While the Notice sets out the activities of the Appellant towards the Complainant, which could be seen as more than one act and repeated behaviour, the Committee does not set out its conclusions in that regard to its decision; while it is likely that the Appellant’s case here is not strong, I cannot say it has no reasonable prospect of success. However, the decision does set out how the Committee concluded that the Appellant’s conduct could

*be reasonably perceived subjectively and objectively as bullying. **I do not consider this ground of appeal to have a reasonable prospect of success in respect of bullying and direct it not to be considered by the Appeal Tribunal. I do consider this ground of appeal to have a reasonable prospect of success in respect of harassment and it therefore will be considered by an Appeal Tribunal in due course.***

*9d. The Appellant goes on to dispute the Standards Committee's finding that he undertook a course of conduct which equated to harassment. For the relevant reasons given in sub paragraph c above, **I do consider this ground of appeal to have a reasonable prospect of success and it therefore will be considered by an Appeal Tribunal in due course.***

23. The President gave permission to appeal the sanction imposed in the following terms and with the following caveat.

*9k. I cannot say in all the circumstances that there is no reasonable prospect of success...as it is generally always arguable that a sanction imposed was too harsh or too lenient. This is despite the Appellant at the hearing, according to the Notice of Decision, saying that he would accept its judgment, and the evidence within the Notice of Decision that the Standards Committee considered the Sanctions Guidance. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. **It therefore will be considered by an Appeal Tribunal in due course.***

24. The Public Service Ombudsman for Wales responded in writing to those grounds upon which permission to appeal was granted.

25. The Standards Committee was taken to the definition of bullying and harassment within the Ombudsman's guidance, and the report pack before the Standards Committee included excerpts of the Ombudsman's guidance, explaining both bullying and harassment.

[That material reads as follows: -

"Consider your conduct from the other person's perspective.

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an

individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health...

When considering allegations of bullying and harassment I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.”]

26. The Ombudsman submitted that the evidence supported the finding of harassment and that this was an appropriate finding for the Standards Committee to make in the circumstances. When Councillor Mainon established that Mrs Grieve was not a Council employee and was employed by a different organisation, he searched that organisation’s website and determined its address and complaints procedure. He did not try to call that organisation or use its complaints procedure although relevant information and contact numbers were available on the website. Instead, he made an unannounced visit to Mrs Grieve’s place of work, with the expressed aim of getting her to refer herself to her professional/ regulatory body. On determining that she was not available at her workplace, Councillor Mainon then discussed the incident with three of Mrs Grieve’s colleagues, including her Line Manager. Councillor Mainon subsequently sought to validate Ms Davies’ account by obtaining information about the incident from staff at the local supermarket and then made a written complaint to Mrs Grieve’s employer on Ms Davies’ behalf.

27. The Ombudsman further submitted that Councillor Mainon’s actions had a huge impact on Mrs Grieve and made her feel upset, embarrassed, vulnerable, afraid to be alone in her office and stressed. She felt that Councillor Mainon’s actions were an effort to discredit her professionally. He acknowledged that his visit caused distress to Mrs Grieve and made her feel unsafe.

28. As to sanction, the Ombudsman submitted that the two-month suspension imposed was fair and reasonable in all the circumstances and that a more severe sanction could have been justified. The Standards Committee considered the relevant applicable Sanctions Guidance, and that at the time of the initial decision, Councillor Mainon said that he would accept the Standards Committee’s judgment.

29. The mitigating features were that the Appellant was a relatively new councillor at the time of the events. He had not previously been found to have breached the Code of Conduct. He had been motivated to try to defuse a

potential conflict on social media and assist a sick constituent. He had co-operated fully with the processes of the Ombudsman's office and the Standards Committee.

30. The aggravating features were the impact of the Appellant's conduct on the Complainant. He had shown a reckless disregard for the Complainant in contacting her employer without seeking to check her version of events in respect of the original incident. The incident had been a private matter on the view of the Complainant's employer. Some of his comments at the hearing suggested a lack of understanding of the seriousness of the matter.

31. The Ombudsman's representative noted that the nature of the breaches of the Code suggested that suspension would be appropriate to maintain public confidence, and that a censure would be inappropriate, given the Appellant's apparent lack of understanding of the significance of the issues.

32. The Ombudsman noted that the Sanctions Guidance is an appropriate framework for a fair decision, balancing the need for both a disciplinary response, the public interest in any case; and that a local Standards Committee with local knowledge is best placed to take the action necessary to maintain public confidence in elected members in their area.

PRE-HEARING LISTING DIRECTIONS

33. Councillor Mainon was permitted to serve any further evidence relevant to sanction by 15th October 2021.

34. Both Councillor Mainon and the PSOW were permitted to make further submissions in writing as to those issues upon which permission to appeal was given by 22nd October 2021.

35. The Monitoring Officer was permitted to attend the hearing, send a representative or make written representations by 22nd October 2021. The Monitoring Officer chose to contribute by an email which was sent the Registrar of the Adjudication Panel for Wales, and which was read in full to those attending the hearing.

THE HEARING

36. A hearing was held by the Appeal Tribunal at 10am on 29th October 2021 via Cloud Video Platform. The hearing was open to the public. Councillor Mainon was represented by Mr Owain James. The Public Service Ombudsman for Wales was represented by Ms Katrin Shaw. There were no preliminary applications.

37. The first stage of proceedings was to find as a fact whether Councillor Mainon had harassed Mrs Grieve. In the light of any finding, the second stage was to determine the extent to which Councillor Mainon had breached the Code of Conduct. Mr James indicated that he was content to deal with the first stage by way of submissions; and further content for the panel to decide the first and second stages together, without further submissions between those stages. For the PSOW, Ms Shaw agreed with this approach.

38. Mr James relied upon the written grounds of appeal and submitted that throughout both the investigation and hearing before the Standards Committee, bullying and harassment had been treated as effectively the same thing, when as a matter of law, they are quite separate. Harassment requires repeated behaviour; a course of conduct and the Standards Committee made no finding of any such course of conduct.

39. Mr James accepted that on appeal, the panel were able to consider the matter afresh and to consider whether the evidence amounted to harassment as well as bullying. He accepted that this task involved both a subjective consideration of both Councillor Mainon's understanding and actions; and Mrs Grieve's understanding and reactions. It also included an objective assessment of Councillor Mainon's actions in the circumstances.

40. Mr James invited the Tribunal to consider Councillor Mainon's actions in the round as a single matter rather than a course of conduct. He submitted that Councillor Mainon's actions after his attendance at Mrs Grieve's place of work did not contribute beyond his attendance at Mrs Grieve's work and so bullying by attending in person was the height of it, rather than harassment. Whilst harassment requires repeated behaviour against the same person, this was also not "repeated" behaviour, when considered subjectively from Councillor Mainon's perspective.

41. During submissions and responding to a matter raised by the Chair, Mr James also asked the Tribunal to consider whether these matters taken as a whole, can truly amount to harassment where, as here, Mrs Grieve found out about those matters after the event and thus suffered upset. Accepting that she was upset by what she had discovered, Mr James suggested that the single, ongoing incidence of upset militated in favour of characterising Councillor

Mainon's actions at most as a single instance of bullying rather than a course of conduct amounting to harassment.

42. For the PSOW, Ms Shaw invited the Tribunal to consider the allegation of harassment afresh, in the light of facts which were not disputed. She submitted that Councillor Mainon's actions could and should properly be considered as more than one act and so therefore amount to a course of conduct and harassment. He had involved himself in a matter unrelated to his role, sharing details of a private incident with three other people. He made enquiries in relation to the available evidence. He made a further effort to determine what the CCTV footage showed. His final submission gave an inaccurate impression about his state of knowledge and at best, an inaccurate impression as to the facts. His actions could properly be considered as a course of conduct involving separate actions. Mrs Grieve was entitled to the upset she reported when the complaint was relayed to her, given that Councillor Mainon had submitted it in his official capacity, relaying inaccurate information and thereby appearing to already have taken sides.

DECISION ON FIRST AND SECOND STAGES

43. The Appeal Tribunal found by unanimous decision that between 11th December 2018 and 21st December 2018, Councillor Mainon harassed Mrs Grieve.

44. The Tribunal reminded itself that the civil standard of proof applies, and all findings are made on the balance of probabilities. The burden of proof lies on those responding and not on the appellant, Councillor Mainon.

45. The Tribunal referred to the Ombudsman's guidance both prohibiting harassment and defining it as "*repeated behaviour which upsets or annoys people.*" The Tribunal considered Mrs Grieve's perspective and whether Councillor Mainon intended his actions to be harassing. The Tribunal also considered whether Mrs Grieve was reasonably entitled to believe that she had been harassed.

46. The Tribunal found that Councillor Mainon engaged in repeated behaviour. His actions on 11th December 2018 can properly be considered together as parts of one incident. His actions that day are however distinct and therefore separate from his actions on both 15th December 2018; and 21st December 2018. Those actions obviously took place on different days. They engaged separate decisions and processes by Councillor Mainon.

47. These distinct incidents were individually considered and acted upon. They were however joined by the nexus of Councillor Mainon's ongoing pursuit

of Ms Davies' complaint against Mrs Grieve. To this extent therefore Councillor Mainon engaged in a course of conduct which is properly characterised as repeated behaviour.

48. There is no challenge to the fact that Mrs Grieve was upset and, no doubt, annoyed when she was told on 10th January 2019 that the issue with Ms Davies had come to her employer's attention via a complaint. She describes herself as "*very upset and embarrassed*", and ultimately "*shocked to learn...that Councillor Mainon also came to my place of work...*" The Tribunal accepted that Mrs Grieve's upset and annoyance can be properly taken as a single, ongoing revelation to her. That was inevitable given that the matters causing her upset were only brought to her attention after the event. The Tribunal found that this was no bar to characterising Cllr Mainon's actions as harassment. The working definition of harassment set out above does not require repeated upset or annoyance. Only repeated behaviour which causes such upset or annoyance.

49. The Tribunal therefore considered whether the repeated behaviour amounted to harassment, looking at that behaviour objectively but also considering the perspectives of both Councillor Mainon, Mrs Grieve and the other available evidence.

50. The Tribunal accepted that Councillor Mainon did not intend to harass Mrs Grieve. It however noted from Ms Davies' evidence (paragraph 6) that before he went to Mrs Grieve's place of work, Councillor Mainon already knew that Mrs Grieve was not a Council employee. Ms Davies does not recall whether she asked Cllr Mainon to make a complaint or if he offered to do it but (paragraph 7) she recalls that she asked Cllr Mainon to type up her complaint. He said that he would progress it as he would also be going near her workplace. As Councillor Mainon accepted, he did not attend the office to establish Mrs Grieve's version of events, but to ask her to refer herself to her professional body or regulator.

51. The Tribunal noted the evidence provided by Mrs Grieve's manager, Meilir Thomas, who said that Councillor Mainon's manner was reasonable when he attended and spoke to him "*...and he wasn't intimidating or anything like that*". Mr Thomas followed by saying in his statement that "*...it was an odd, really strange episode and not something I have experienced before. I should say I was completely shocked that Councillor Mainon had come to the door and discussed the events with me and been so open about it, and the nature of his visit*".

52. Events culminated in a written complaint that, at best, contained factually inaccurate information. The Tribunal had the full text of the complaint, in which Councillor Mainon purported to describe events recorded on the store's CCTV

in a manner which suggests he viewed that material. “A black Audi TT can be seen on the convenience stores CCTV...” Councillor Mainon accepts that he did not view that material. The complaint he drafted neither says nor suggests that he did not see it.

53. In the complaint, Councillor Mainon also described the words allegedly exchanged between Mrs Grieve and Ms Davies. He described an alleged response from Mrs Grieve as “...offensive. Given the angry way in which it was delivered...I find this unacceptable and worthy of challenge...Your organisation has been identified and associated with this behaviour and I deemed it a courtesy to bring it to your attention. Kindest Regards. Cllr Richard Mainon, Lead Member for Developing Community Infrastructure.” The CCTV does not record sound. Therefore, Councillor Mainon’s inclusion of the alleged conversation in the complaint coupled with his comments and opinions noted above lead the Tribunal to conclude that he had taken sides from the outset.

54. It follows therefore that Councillor Mainon took it upon himself to go to Mrs Grieve’s workplace; to take further investigative steps; and to initiate the complaint, citing his official status. Once he knew that Mrs Grieve was not a Council employee, the Tribunal found that he could and should have left it at that. The Tribunal accepted Mr James’ submission that to continue as he did was “overzealous”, but that is no answer. He pursued her regardless, repeatedly, when both he ought not have done so; and should have known not to do so, starting with the objectively unreasonable action of attending her workplace.

55. The Tribunal therefore found that Councillor Mainon acted in an extreme way and continued to do so when he had no right to do so. Mrs Grieve was entitled to perceive herself as having been harassed, even though the Tribunal accepted that Councillor Mainon did not intend to harass her. On balance, his actions amounted not only to bullying but also to harassment. He engaged in unjustified, extreme, repeated behaviour which he ought to have known he should not have done; ought to have known would upset or annoy Mrs Grieve; and which a reasonable person in possession of the same information as Councillor Mainon would think amounted to harassment.

FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

56. The Appeal Tribunal therefore further found by unanimous decision that Councillor Mainon's behaviour amounted to harassment of Mrs Grieve and therefore amounted to a further breach of paragraph 4(c) of the Council's Code of Conduct.

57. The Appeal Tribunal accordingly decided by unanimous decision to endorse the determination of Denbighshire County Council's Standards Committee that Councillor Richard Mainon had breached Denbighshire County Council's Code of conduct by harassing Mrs Grieve.

SUBMISSIONS ON SANCTION

58. The Tribunal announced its decision on the first and second stages. The Tribunal then moved to the third stage, to consider the appeal against the sanction imposed. Councillor Mainon gave evidence on oath as to the effect that these proceedings have had on his family, together with his personal, political, and professional life. He gave evidence of the effect the reporting of this matter had had upon him and the fact that he had effectively been unable to function as a member of the Council's cabinet for months, notwithstanding the great deal of work there is still to do and the good work he has already done for the Council. He said that he had tried to be discreet, that he had done as he did for a person with difficulties, that this "*landed on his desk*" and that he would not have done it for anyone else. He said he could see how Mrs Grieve was entitled to feel violated.

59. In her submissions on sanction, Ms Shaw took the panel to the Sanctions Guidance and the five-stage process at paragraph 33 therein. Taken as a whole, she submitted the breaches to be dealt with were serious, if not at the very serious end of the spectrum bearing in mind the actual harm caused to Mrs Grieve; the potential for harm to her; and the harm to the Council caused by the finding in relation to disrepute. This was to be considered even though the actual and potential harm was not intended. Albeit that one might have great sympathy for Councillor Mainon now, suspension was reasonable, and censure was not appropriate. The lack of malicious intent, assisting a constituent with real health difficulties, seeking to avoid a social media spat and co-operation with the investigating authorities were mitigating features. The impact on the complainant, the nature of the breaches and Councillor Mainon's role as a lead member of the Council were aggravating features, even though to some extent, at the time he was relatively inexperienced. A suspension of less than a month would not fulfil the purposes of the sanctions regime. She finished by submitting that the sanction imposed by the Standards Committee was appropriate.

60. For Councillor Mainon, Mr James submitted that this was not a case where Councillor Mainon's position was worse for bringing his appeal. As the

Chair observed, he had not sought to contest the facts of the case. Mr James observed that the argument at the first and second stages had been somewhat technical. To that extent, he submitted that Councillor Mainon's sanction should not be increased. Whilst he had acted "overzealously", he was trying to assist a constituent and gained nothing for himself from his actions. Given the findings as to motive, the harassment proved was objective in nature and to that extent, less serious than subjective harassment, had that been intended. He had been seeking to engage a complaint's process. The actual harm caused was significant but limited. The potential harm to Mrs Grieve remained potential and was mitigated again by reason of the fact that it was not intended. The panel was to avoid double counting as aggravating features those facts considered in the general assessment of seriousness. Mitigating features included inexperience; a previous record of good service; the fact that the misconduct was a one-off; that Councillor Mainon acted in good faith, albeit in breach; and it arose from an honestly held, albeit mistaken view that the conduct involved did not constitute a failure to follow the Code. Mr James submitted that to an extent, the act of reporting alleged poor behaviour had some beneficial effect for the public interest. He relied upon Councillor Mainon's recognition and regret as to the misconduct and consequences and his co-operation with the investigating authorities. He recognised that Councillor Mainon's position of responsibility could potentially be an aggravating feature but that it was irrelevant to the breach. Otherwise, he submitted that none of the listed aggravating features applied to this case if one is not double counting. The sanction to be imposed could fairly be mitigated by reason of the broad knowledge of the findings and the size of the effect those findings have and will continue to have on Councillor Mainon's personal, professional, and political life. Given that he had effectively suspended himself from his office for some months, Mr James invited the Tribunal to censure Councillor Mainon and if that was not possible, a period of suspension measured in weeks rather than months would not be inappropriate, bearing in mind the totality of the effect of this case upon Councillor Mainon.

DECISION ON SANCTION

61. The Appeal Tribunal considered all the facts of the case, the documents presented, the submissions made and its findings in the context of the earlier findings of Denbighshire County Council's standards committee, namely that Cllr Mainon bullied Mrs Grieve contrary to paragraph 4(c) of the Code of Conduct; that he brought his office or the Authority into disrepute contrary to paragraph 6(1)(a) of the Code; and that he attempted to use his position to cause a disadvantage to Mrs Grieve, contrary to paragraph 7(a) of the Code.

62. The Tribunal considered the relevant Sanctions Guidance and applied the five-stage process identified at paragraph 33. The breaches took place over

several days and involved both bullying and harassment. Councillor Mainon's culpability was reckless rather than intentional, but it was nonetheless quite high. Councillor Mainon did not intend to bully or harass Mrs Grieve, but his actions had that effect, causing her the upset already referred to, embarrassment and worry lest such a thing would happen again. This was no way to pursue a complaint. Councillor Mainon ought to have known that what he was doing was wrong and ought to have known the likely effect his actions would have. By his actions, Councillor Mainon has also brought his position and, to an extent, the Council into disrepute. As he mentioned in his evidence, there has been a significant degree of local press coverage of these matters, albeit that, for balance, Councillor Mainon has borne the brunt of much of it.

63. Whilst there was potential for further harm to have been caused, the Tribunal considered that against the lack of intended harm. In this case, the actual harm caused to Mrs Grieve and the Council is the main feature of harm. Nonetheless, the Tribunal found that the actual harm was still significant and was caused by an elected Member, purporting to act in his official capacity, to the real detriment of a member of the public in her private and working life. Councillor Mainon lent his official weight to a cause in which he ought to have known he had no official business. Taken together, these were serious breaches of the Code of Conduct.

64. To that extent, the Tribunal found that suspension was the broad type of sanction most likely to be appropriate, having regard to those breaches, and that censure was not appropriate.

65. The Tribunal considered the mitigating and aggravating circumstances. Councillor Mainon was relatively inexperienced in his post, but his common sense should have told him not to involve himself in this matter. He cited his position as the Lead Member for Developing Community Infrastructure to emphasise the weight of his authority. Taken overall, the Tribunal considered this aspect to be a fact of the case already counted and therefore not aggravating; but also, that it could not amount to mitigation.

66. The Tribunal accepted that Councillor Mainon has a previous record of good service to his community; and that this matter was a one-off.

67. Given the observations made above, Councillor Mainon's overzealousness and failure to know better could not properly be characterised as acting "*in good faith*", albeit that again, the Tribunal referred to the fact that he did not intend the harm he caused. He held a view arising from a mistaken belief he should not have held. For that reason, his actions cannot be described as having had any beneficial effect for the public interest.

68. In his evidence to the Tribunal, Councillor Mainon recognised and regretted his misconduct. He had not sought to challenge any facts and the Tribunal recognised that this had been so during the Appeal hearing. Whilst the Tribunal did not find that an apology was specifically clear, it recognised that Councillor Mainon had co-operated with the investigation of this matter, had taken a degree of training in the meantime, and had complied with the Code of Conduct since the events giving rise to the adjudication.

69. When considering possible aggravating factors, the Tribunal was careful not to double-count as aggravating those factors already accounted for in the assessment of seriousness. Councillor Mainon's conduct in his appeal had not aggravated his position and so the Tribunal did not find that any of the aggravating features listed at paragraph 42 of the Sanctions Guidance applied.

70. The Tribunal considered any further adjustment necessary to ensure the sanction imposed achieves an appropriate effect in terms of fulfilling the purposes of the sanctions.

71. On the one hand, the Tribunal acknowledged the need to maintain both public confidence; the public interest in upholding the standards of conduct in public life; and the need to maintain confidence in local democracy.

72. On the other hand, the Tribunal also acknowledged the scale of the past, present and likely future personal, professional and political consequences of matter for Councillor Mainon; and the effect that any period of suspension would have on the electorate, temporarily depriving them of local representation.

73. Whilst the Tribunal considered that such breaches of the Code of Conduct involving bullying and harassment could ordinarily attract a three-month period of suspension, looking at matters afresh at this stage, the sanction imposed by the Standards Committee of two months' suspension from membership of the Council was the least sanction appropriate in the circumstances and one with which the Tribunal would not seek to interfere, balancing the overriding objectives of the sanctions regime with the effect of these findings on Councillor Mainon.

74. The Appeal Tribunal therefore further determined to endorse the decision of the Standards Committee that Councillor Mainon should be suspended from being a member of Denbighshire County Council for a period of two months.

75. Denbighshire County Council and its Standards Committee are notified accordingly.

Signed: Tom Mitchell

Date: 2nd November 2021

Tom Mitchell
Chairperson of the Appeal Tribunal

Siân McRobie
Panel Member

Hywel Eifion Jones
Panel Member