

Tribunal Ref. No. APW/005/2010-011/CT

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

**FINDINGS OF FACT IN THE MATTER OF COUNCILLOR
PATRICK HEESOM, FLINTSHIRE COUNTY COUNCIL**

25 June 2013

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FLINTSHIRE COUNTY COUNCIL**

1. PREAMBLE

- 1.1. We, as a Case Tribunal, have heard evidence and representations relating to alleged breaches by the Respondent, Councillor Patrick Heesom, of the 2001 Code of Conduct and the 2008 Code of Conduct for Members of Flintshire County Council. Listing Directions issued during the course of the proceedings set out the relevant paragraphs of the Codes alleged to have been breached. Particulars of events linked to each alleged breach were prepared by Counsel for the Public Services Ombudsman for Wales (PSOW / the Ombudsman) and incorporated into Listing Directions. Those were amended by agreement in terms of clarification of the Head of Housing appointment process (paragraph 4.2.4 of the Listing Direction dated 5 January 2011) to include meetings on 12, 18 and 19 February 2009 and in respect of the Head of Planning appointment process (paragraph 4.2.5) meetings of 29 January and 6 February 2009. A ruling was also made in respect of paragraph 4.2.3 (xvi) amending the particulars relating to housing allocation matters, to include a meeting with Officers on 18 December 2008. In accordance with the Regulations, the Report of the Ombudsman was presented to us as a Case Tribunal, and the Ombudsman exercised his right to be represented at the Case Tribunal. We would re-emphasise as a Case Tribunal that our role is to adjudicate upon matters afresh and the Case Tribunal is in no way bound by the Ombudsman's report.
- 1.2. The Tribunal has now completed the initial stage of resolving disputed facts. In our initial Listing Direction, and having held a Case Management Hearing with representatives from the Ombudsman and the Respondent, the Case

Tribunal indicated that we wished to hear from 15 witnesses. The Respondent proposed to call 12 additional witnesses. However as the case has proceeded 48 witnesses have presented oral evidence before us as a Case Tribunal. The majority of the additional witnesses having been called at the request of the Respondent.

- 1.3. The incidents complained of are limited. They can be summarised in date order as follows and relate to the Respondent's conduct in relation to:-
 - a. A People and Performance Overview and Scrutiny Committee Meeting on 14 February 2007.
 - b. An application for mutual exchange of two council houses (the Dodds exchange) between 27 April 2007 and 21 November 2007.
 - c. A meeting on 4 July 2008 arranged by Senior Sheltered Housing Officers.
 - d. Susan Lewis, a Director of Flintshire County Council, prior, during and subsequent to a Visioning Day held on 7 November 2008.
 - e. Comments concerning Susan Lewis heard on 14 November 2008 and comments to Maureen Harkin after August 2008 also concerning Susan Lewis.
 - f. A meeting with Officers of the Authority on 18 December 2008 relating to housing allocation matters.
 - g. A meeting of the Community Housing Overview and Scrutiny Committee held on 7 January 2009.
 - h. The Head of Planning appointment process and selection meetings between 29 January and 6 February 2009.

- i. The Head of Housing appointment process and selection meetings between 12 February and 19 February 2009.
 - j. A Homelessness Prevention Interview on 25 February 2009.
- 1.4. It is our first task to make findings of fact relevant to these individual incidents and specifically the Respondent's conduct towards officers of Flintshire County Council.
- 1.5. We have sat as a Case Tribunal and heard from witnesses including the Respondent over 52 days. Reference has also been made to a number of written witness statements. Attached to this Decision and marked Appendix I is a list of witnesses, the dates when they gave evidence and dates of all sittings including Case Management Hearings.
- 1.6. The Respondent has made 6 separate written responses or statements relating to the issues as follows:-
 - a. By way of solicitor's letter to PSOW dated 13 October 2009 (ref B886) - untitled and undated - in response to Councillor Armstrong Braun's complaint (ref B909 - 960)
 - b. By way of solicitor's letter to PSOW dated 12 November 2009 (ref B888) - "Rebuttal of: Complaint to the Ombudsman alleging breaches of the Code of Conduct (Rebuttal Document v 3a - March 09)" (ref B891 - 907)
 - c. To the Adjudication Panel for Wales by way of solicitor's letter dated 16.09.10 wrongly sent to the Ombudsman (ref C2): "Introductory Note - Re PSOW statement of case against Patrick Heesom" (ref C26 - 52)
 - d. "Rebuttal of: Complaint to the Ombudsman alleging breaches of the Code of Conduct (Rebuttal Document v 3a - March 09)" (ref C53 - 69). (It should be noted although they share the same title and version number, statements (b) and (d) are not identical though the differences appear

primarily to be minor drafting changes and contain slight changes of emphasis)

e. "Statement of Patrick Heesom" dated 7 February 2011 (ref C70 - 77)

f. "Witness statement of Cllr Patrick Heesom" dated 12 September 2012 (ref C78 - 168).

1.7. The Respondent's responses/statements (a) to (d) were all submitted prior to the first Case Management Hearing. Statements (a) and (b) were specifically submitted to the Ombudsman prior to conclusion of his investigation. A direction was made prior to the first day of hearing of evidence by the Case Tribunal that the Respondent serve a witness statement. This is Statement (e). A further direction was made in July 2012 that a more detailed witness statement be filed by the Respondent and this is Statement (f). In addition, the Respondent gave sworn evidence on 14 days over a 4 week period.

1.8. The documents before the Case Tribunal contain approximately seven thousand pages comprised in 12 lever arch files. We directed during the proceedings that transcripts be prepared of evidence heard, the proceedings being recorded. Copies of the transcripts have been given to the Respondent and Ombudsman. We have not verified the transcripts and they do contain some typing errors and identify at times the wrong person asking the questions. We as a Case Tribunal would emphasise that the transcripts and any recordings given to the Respondent and Ombudsman are for use in connection with these proceedings only and should not be distributed to any other person or published in any form.

1.9. Written applications on behalf of the Respondent have included the following:

a. On 8 December 2010, an application for adjournment on the basis that there were issues as to funding of the Respondent's legal costs by the Local Authority.

- b. A skeleton argument from Howe & Co, Solicitors who represented the Respondent throughout the Hearing, dated January 2011. This contended that *“the complaints are without foundation, mischievous, amount to an abuse of process and should never have been referred to the Adjudication Panel of Wales. Therefore, the allegations should be struck out.”* Further, it was submitted that any finding by the Tribunal that the Respondent had breached the Members’ Code of Conduct would be incompatible with Article 10 of the European Convention on Human Rights.
- c. A further skeleton argument on abuse of process submitted on 17 January 2011 by Counsel for the Respondent. This argued that the proceedings should be stayed and/or struck out for abuse of process on the grounds of:
 - (i) Collateral advantage/ulterior purpose.
 - (ii) Further unfairness including delay.
 - (iii) Article 10 and procedure.
- d. On 11 February 2011, a submission on further disclosure of documents and on 14 February 2011 an application that proceedings should be stayed and struck out as an abuse of process relating to disclosure of documents.
- e. A submission on witnesses on 24 February 2011. It was indicated on behalf of the Respondent that he wished the Case Tribunal to call 29 witnesses who had been interviewed by the Ombudsman. The Respondent indicated he intended to call 11 witnesses.
- f. On 27 May 2011, a Skeleton argument on stay of proceedings relating to the allegation of an alleged breach of paragraph 4b of the 2008 Code, related to an event witnessed by a Mr Peter Evans.
- g. A skeleton argument dated 7 June 2011 in respect of the Tribunal’s powers to add allegations, charges, or particulars of breaches.

- h. A further submission as to witness list on 13 June 2011.
- i. A written submission on 13 June 2011 as to further disclosure.
- j. A further submission dated 17 June 2011 as to the conduct of proceedings.
- k. A written representation dated 18 June 2011 regarding the record of proceedings and duration of sittings.
- l. A further application dated 5 July 2011 in respect of the evidence of Councillor Arnold Woolley.
- m. A further written submission dated 5 July 2011 as to recall of witnesses.
- n. An application dated 11 July 2011 for Panel Members to recuse themselves from sitting.
- o. An application dated 11 July 2011 requesting an adjournment so that representatives for the Respondent could draft application for Judicial Review.
- p. A further application dated 12 July 2011 for further adjournment so that matters could be considered by the Administrative Court.
- q. On 14 July 2011, observations made as to a letter from a Mr John Yorke.
- r. Submissions for the recall of Councillor Arnold Woolley dated 4 August 2011.
- s. A written application dated 12 August 2011 by solicitors for the Respondent for the recall of Mr Peter Evans.
- t. On 16 August 2011, written submissions requesting the attendance of Katrin Shaw as a witness and/or to compel her attendance.

- u. An application for the recall of witnesses Councillors Bernie Attridge and Helen Brown (formerly Yale) and Mr Colin Everett, dated 19 August 2011.
- v. On 5 September 2011, written application to call additional witness, Mr Ronald Evans.
- w. An application dated 13 September 2011 to call Mr John Yorke as a witness.
- x. On 13 September 2011, application as to witnesses and disclosure.
- y. On 13 September 2011, a further application as to recall of Mr Everett.
- z. On 19 September 2011, application to adjourn hearing listed for 20 September 2011.
- aa. On 21 October 2011, written submissions for stay of proceedings on the basis of abuse of process, sub-divided into 12 headings.
- bb. February 2012, issues as to disclosure of medical notes of the Respondent.
- cc. On 17 September 2012, application as to the giving of evidence by the Respondent.
- dd. On 1 October 2012, application to call further witnesses.
- ee. A written submission dated 11 October 2012 relating to a Mr Yorke and a Mrs Nicholas.
- ff. On 12 October 2012 further oral application for calling of Mr Yorke to give evidence.

- 1.10. There have also been numerous oral applications, not recorded in the above list, dealt with also orally and usually immediately. The Ombudsman has been requested to make written submissions where appropriate.
- 1.11. There have been formal rulings in response to written applications including rulings on 9 December 2010, 16 February 2011, 1 June 2011, 17 June 2011, 30 June 2011, 7 July 2011, 11 July 2011, 12 July 2011, 12 August 2011, 12 September 2011, 13 September 2011, 14 September 2011, 19 September 2011, 24 February 2012, 13 August 2012, 17 September 2012, 9 October 2012 and 12 October 2012. The only outstanding application not dealt with from the above list is that relating to the application dated 21 October 2012 advancing 12 distinct issues in support of a stay and/or strike out on the basis of abuse of process. The 21 October 2012 application refers also to the earlier application of 17 January 2011 which initially those representing the Respondent requested be held in abeyance. Our response to this outstanding application will be dealt with as part of this Decision. It is not the intention of the Case Tribunal to repeat in this Decision the substance of earlier rulings.
- 1.12. The Respondent has been legally represented throughout these proceedings. A significant number of procedural and other issues have been subject to application on behalf of the Respondent. For the sake of completeness, we also are aware that the Respondent has challenged one of our earlier rulings through an application for Judicial Review which was dismissed.
- 1.13. We are at the stage of making findings of fact. Issues such as the Respondent's Article 10 ECHR rights will be considered by the Case Tribunal when considering whether, based on the findings of fact, there have been any breaches of the Code of Conduct. The Tribunal will proceed after making findings of fact to consider whether there have been specific breaches of Flintshire County Council's Code of Conduct by the Respondent. This is subject to any ruling we make as to the application for stay/strike out.
- 1.14. Our initial role is to adjudicate upon findings of fact which are in dispute. It may assist if we were to set out the statutory basis upon which we as a Case

Tribunal adjudicate the case. This has been outlined in earlier rulings but for the sake of completeness we adopt it into our findings.

- 1.15. Part 3 of the Local Government Act 2000 (“the 2000 Act”) established a system to promote observance of consistent standards of conduct by local government members in England and Wales. In its application to Wales, Section 69(1) states as follows:

“The Public Services Ombudsman for Wales may investigate:

- a. Cases in which a written allegation is made to him by any person that a member or co-opted member (or former member or co-opted member) of a relevant Authority in Wales has failed, or may have failed, to comply with the Authority’s Code of Conduct, ...*

- 1.16. Sub-sections 69(3) and (4), state:

“The purpose of an investigation under this Section is to determine which of the findings mentioned in sub-section (4) is appropriate.”

(4) Those findings are:

- a. That there is no evidence of any failure to comply with the Code of Conduct of the relevant Authority concerned,*
- b. That no action needs to be taken in respect of the matters which are the subject of the investigation,*
- c. That the matters which are the subject of the investigation should be referred to the Monitoring Officer of the relevant Authority concerned, or*
- d. That the matters which are the subject of the investigation should be referred to the President of Adjudication Panel for Wales for adjudication by a Tribunal falling within Section 76(1).”*

1.17. Section 71(3) states:

“Where the Public Services Ombudsman for Wales determines in relation to any case that the finding under Section 69(4)(d) is appropriate, he must:

- a. Produce a report on the outcome of his investigation,*
- b. Refer the matters which are the subject of the investigation to the President of the Adjudication Panel for Wales for adjudication by a Tribunal falling within Section 76(1) and,*
- c. Send a copy of the report to the Monitoring Officer of the relevant Authority concerned and to the President of the Adjudication Panel for Wales.”*

1.18. The Ombudsman referred his report to the President of the Adjudication Panel for Wales under cover of a letter dated 22 July 2010.

1.19. Section 76(1) of the 2000 Act states:

“Adjudications in respect of matters referred to the President of the Adjudication Panel for Wales under Section 71(3) are to be conducted by Tribunals (referred to in this part as Case Tribunals) consisting of not less than three Members of the Panel.”

1.20. Section 77 of the 2000 Act sets out provision in respect of the procedure and notes that:

“The National Assembly for Wales may, by regulations, make such provision as appears to it to be necessary or expedient with respect to adjudications by Case Tribunals...”

1.21. Section 77(6) states:

12.

“Regulations under this section may, in particular, include provision:

- a. For requiring persons to attend Adjudications to give evidence and produce documents and for authorising the administration of oaths to witnesses,*
- b. For requiring persons to furnish further particulars,*
- c. For prescribing the procedure to be followed in Adjudications including provision as to the persons entitled to appear and to be heard on behalf of persons giving evidence.....”*

1.22. The National Assembly has issued regulations by way of:

- (i) The Adjudications by Case Tribunal and Interim Case Tribunals (Wales) Regulations 2001, as amended by:
- (ii) The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 (“The Regulations”).

1.23. The Regulations include, in particular, under Paragraph 5(1) of the schedule:

“The Tribunal may at any time, on the application of an accused person or of its own motion, give directions to enable that person to prepare for the Hearing and to assist the Tribunal to determine the issues.”

1.24. Under Paragraph 6 - Particulars:

“The Tribunal may give directions requiring any person to provide such particulars as may be reasonably required for the determination of the Adjudication.

1.25. Paragraph 7 – Disclosure of documents and other materials:

“The Tribunal may give directions requiring any person to deliver to the Tribunal any document other relevant material which the Tribunal may require and which is in the power of that person to deliver.”

1.26. The procedure for Hearings is covered by Paragraph 18 and in particular 18(2), which states:

“.....the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the Adjudication; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.”

1.27. Paragraph 18(4) states:

“Any accused person shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal both on the evidence and generally on the subject matter of the Adjudication.”

1.28. Paragraph 18(6) states:

“The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a Court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.”

1.29. Paragraph 9 refers to the attendance of the Ombudsman.

1.30. Paragraph 9(1) states:

“The Public Services Ombudsman for Wales is entitled to attend and the Tribunal may request the Public Services Ombudsman for Wales to attend the Hearing of the Adjudication for the purposes of:

- a. *Presenting the report and/or explaining any of the matters in it and,*
- b. *Otherwise playing such part or assisting the Tribunal at the Hearing as the Tribunal considers appropriate.”*

1.31. The Case Tribunal also has full regard to the Respondent's ECHR rights, in particular Articles 6 and 8. In addition, we quote from sections of the evidence. These are for illustrative purposes and carry no greater weight from being quoted save where we draw inferences or base findings. We have considered all the evidence including quotes in the respective submissions received.

1.32. In earlier rulings the Case Tribunal has considered issues relating to admissibility of evidence, and the burden and standard of proof. We do not intend to repeat the contents of earlier rulings where such matters have been considered.

1.33. The Regulations govern the procedure when the Ombudsman refers to the President of the Adjudication Panel for Wales his report as to the conduct of a Councillor. The Case Tribunal is not bound by that report. We carry out a fresh adjudication of the facts and our decision is based upon evidence received. The Regulations allow the Respondent to be legally represented and to present his case as he sees fit. The Respondent may question witnesses called to give evidence. Evidence may be given on oath or by way of affirmation. The Regulations allow the Ombudsman to participate in the proceedings. The role undertaken by the Ombudsman is governed by the Case Tribunal. In this case Directions were given permitting the Ombudsman's representative to ask questions of witnesses, the order and nature of the questioning, permitting representations where appropriate. We directed that procedurally the Ombudsman's representative should ask questions first of witnesses interviewed by the Ombudsman in the course of his investigation. This remained the position notwithstanding the fact that a number of those witnesses were called at the request of the Respondent and some were spoken to separately by legal representatives on behalf of the

Respondent.

- 1.34. The Monitoring Officer, under the Regulations, has a role to assist the Case Tribunal in its adjudication. In this case, the Monitoring Officer was a witness and a signatory to the complaint. We highlighted this issue at the outset of the proceedings. It was confirmed and accepted by those representing the Respondent that the Monitoring Officer would not be present at the Tribunal Hearing room and take up his role in assisting the Case Tribunal until he had concluded presenting his evidence as a witness. On 17 February 2011, when he concluded his evidence, he was released from being on oath and commenced his role as a Monitoring Officer to assist the Case Tribunal. The assistance given by the Monitoring Officer to the Panel was in terms of locating and providing further documentation and assisting the Case Tribunal as requested. During the proceedings the initial Monitoring Officer retired and we have been assisted by his deputy and successors.
- 1.35. Our role is a quasi inquisitorial role. On 13 March 2009, the Ombudsman received a letter signed by all individual Members of the Corporate Management Team (CMT) of Flintshire County Council, alleging various breaches by the Respondent in terms of the Council's Code of Conduct for Members. A further allegation was received by the Ombudsman on 3 April 2009 from Councillor Armstrong Braun. The Ombudsman investigated the complaints by considering documentation and interviewing witnesses. The Respondent was put on notice by way of a letter dated 31 March 2009 of the Ombudsman's intention to investigate. The Respondent was later invited to provide convenient dates for interview. No immediate response appears to have been received by the Ombudsman and three further requests were made seeking a suggested date for interview. The Ombudsman and Solicitors acting for the Respondent agreed that the Respondent would initially provide a written response to the complaint. This was provided by two separate documents, the second and more substantive being on 12 November 2009. The Ombudsman indicated after receiving the written responses that he would proceed on that basis only and would not propose in the circumstances to interview the Respondent. Those representing the

Respondent did not dissent from this approach. A draft report was submitted to the Respondent for his comments on 2 June 2010. No comments were received from the Respondent. On 22 July 2010, the Ombudsman issued his final report. It concluded that there were a series of potential breaches of both the 2001 and 2008 Codes of Conduct and there was evidence to support a prima facie case. The report was referred to the President of the Adjudication Panel for Wales who convened a Case Tribunal. The role of the Case Tribunal is to adjudicate on the facts of the case, to determine whether there are breaches, and if so, to determine what, if any, sanction should be imposed.

- 1.36. The Ombudsman was invited to be represented at the Case Tribunal and has assisted in examining and questioning witnesses. Members of the Case Tribunal have also asked questions of the witnesses. The Respondent has been given every opportunity to cross-examine witnesses and present evidence. The Monitoring Officer has not taken any part in the calling of or questioning of witnesses before the Case Tribunal.
- 1.37. We would emphasise that we as a Case Tribunal must be satisfied on the basis of the evidence presented, that particular facts are made out and where those are supportive of a breach, that the necessary burden has been satisfied. The standard of proof applicable to the case is that of a balance of probability. The Tribunal must be satisfied that the event in question is more likely than not to have occurred. When assessing probability, the Case Tribunal can assume that something is inherently more likely than not to have occurred. Counsel for the Respondent did indicate in their final submission on facts that they wished to further address, in writing, the question of standard of proof. No further representations have been received. Standard of proof was addressed by Counsel for the Ombudsman in his final submission. The Respondent served a lengthy submission in response but did not comment further on the appropriate standard of proof.
- 1.38. The statutory provisions which govern the Case Tribunal, in particular Part 3 of the 2000 Act, do not specify that the criminal standard of proof should apply to adjudications by the Case Tribunal. We have regard that there may be

occasions outside criminal proceedings where the criminal standard of proof may be applicable. There may be occasions when the standard of proof to be applied may be of a different, more stringent nature, than the balance of probability standard. The consequences to the Respondent include, if the breaches are proved, reprimand, suspension or disqualification as a Councillor. The basis for such a sanction is based on the Case Tribunal being satisfied that there has been a breach of the relevant Code of Conduct. The Respondent upon taking up his role as a Councillor gave an undertaking to comply with the relevant Code. The conduct complained of in this case is what he said, wrote, or did in his role as a Councillor. We are dealing with non-criminal proceedings and we do not find that there are allegations which are of "criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made". The events complained of are not so unusual that there is a need for more cogent evidence to satisfy itself other than on a standard of probability.

- 1.39. As a Case Tribunal however, we need to be satisfied that there is sufficient evidence for a particular fact to be proved. It is not for the Respondent to disprove a particular incident. In making our findings of fact, we have considered all the relevant evidence. This decision does not deal with every point raised on behalf of the Ombudsman or Respondent. We set out reasons why we have come to a particular finding. In the course of hearing evidence, there are occasions when discrepancies arise as to versions of events. A discrepancy in itself does not mean that evidence cannot be relied upon or that a particular witness is not being truthful. This is true also of evidence presented by the Respondent. We are conscious in assessing the weight to be given to a particular piece of evidence that a period of time has elapsed between some of the events complained of and the witness giving his or her account. We are conscious also in terms of the Respondent of his age and of the contents of medical reports obtained in the course of these proceedings. We do not intend to comment upon each individual witness whose evidence was presented to the Case Tribunal. We, however, make certain general points and in the course of our decision outline, where relevant, particular sections of evidence or identify a witness whose evidence we rely upon in

coming to our decision.

- 1.40. A number of witnesses interviewed by the Ombudsman, provided witness statements and gave evidence to the Case Tribunal were employees of Flintshire County Council. They included the most senior officers such as the Chief Executive, the previous Acting Chief Executive and Departmental Directors. Evidence was also received from more junior employees. In terms of the Housing Department witnesses ranged from Senior Officers, such as Susan Lewis, the Director of Community Services, and Maureen Harkin, Interim Head of Housing, to more junior officers such as Caroline Littlewood, a Homelessness Prevention Officer. One witness, who had provided a witness statement but was not able to attend to give sworn testimony, was Dawn Evans a Senior Sheltered Housing Officer. In coming to our decision we have considered her written witness statement. She could not attend to give evidence on medical grounds. We are conscious in the case of Dawn Evans that her evidence was not subject to questioning by those representing the Respondent. The veracity of her evidence was not therefore directly challenged. There were other witnesses who were present at the relevant incident who were called to give evidence and cross-examined. The Monitoring Officer and Deputy Monitoring Officer of Flintshire County Council gave evidence. The Respondent called two witnesses in particular who had been previous employees of Flintshire County Council; Isobel Smith and Beverley Symonds.
- 1.41. A number of Councillors gave evidence. Many were supportive of the Respondent whilst others were critical. Many of these witnesses sought to present evidence which went beyond the distinct issues of fact upon which we have to decide. A considerable amount of effort and time was expended, for example, in considering the validity or otherwise of a notebook/diary kept by the Leader of Flintshire County Council at the time, Councillor Arnold Woolley. Character witness evidence was called on behalf of the Respondent, including the evidence of his partner. The Respondent also gave evidence.
- 1.42. On the basis of the evidence, we accept the Respondent is an experienced

County Councillor and that he works hard on behalf of his constituents. There is no suggestion that any of his actions were motivated by financial gain. The Respondent described himself as a 24/7 Councillor who devoted almost his entire working day to Council business. The Respondent has been described as one of the most intelligent and experienced Council Members on Flintshire County Council. We saw no evidence to detract from such a view. He signed undertakings in 2004 and 2008 following being elected to Flintshire County Council to abide by the Code of Conduct relevant at the time.

- 1.43. It is unfortunate in these proceedings that the Respondent has not addressed directly and succinctly some of the factual issues in dispute. There are a number of examples where the Respondent failed to provide a direct response as to whether an event occurred or did not occur. He cites the reason for this being, in part, the period of time which has elapsed since the events occurred. The majority of events subject to our adjudication occurred after October 2008. The Respondent accepted that on 16 March 2009 he was handed via the Chief Executive and the Monitoring Officer a copy of the letter of complaint made to the Ombudsman. He did not indicate whether or not he received with the letter of complaint the annexes referred to in that letter. He accepted, however, that he began to prepare his response to the complaint in March 2009. The document he sent to the Ombudsman in November 2009 has a word reference at its foot of 'March 2009'. This is consistent with his evidence that he immediately set about preparing a form of rebuttal to the allegations. It is also consistent with a letter written by his then solicitors which stated that they had such a document but at that time "will defer submission" (B856). Furthermore, the Ombudsman sent a letter, dated 17 March 2009 to the Respondent, formally providing the Respondent with a copy of the letter of complaint and enclosing the annexes to the letter of complaint. Therefore, by the beginning of March 2009 the Respondent had many of the attendance notes, emails and correspondence, setting out the specific complaints in substantial detail. We are satisfied that the letter forwarded by the Ombudsman included the annexes. There are references in the Respondent's response to the page numbers of the annexes attached to the 12 March 2009 complaint letter. The bundle which accompanied the complaint letter had

handwritten numbered pages in the bottom right hand corner of each page. We illustrate two examples which confirm the Respondent had received the annexes to the letter of complaint when commencing his first draft response to the Ombudsman in March 2009:-

- a. The Respondent refers (see Case Tribunal Bundle page C57) to a letter he wrote as being “(p.24 in the council’s bundle)”. That page is in the Case Tribunal Bundle at B658 and was an annexe to the letter of complaint with handwritten page number 24.
- b. The Respondent refers (see Case Tribunal page C59) to two letters “in the council bundle (pages 38 and 39)”. Those pages can be seen at Case Tribunal Bundle B672 and B673 and in terms of the latter handwritten page number 39 can be clearly seen. They were again annexes to the letter of complaint.

In a letter forwarded by the Ombudsman to the Respondent’s Solicitors on the 29 April 2009 (B873) it confirms “Your client was informed of the complaint and given all of the evidence submitted in its support on 17th March 2009”. The evidence in support included detailed attendance notes prepared by employees of the Council detailing what it was alleged the Respondent had done, or said, with many of his alleged comments being put in quotation marks.

- 1.44. There can be no doubt, therefore, that as at March 2009, the Respondent had a significant amount of documents detailing specific events and grounds of complaint as to his conduct. On his own admission he began to prepare a detailed response to the letter of complaint immediately.
- 1.45. As an example of the amount of detail the Respondent had received we refer to the allegations surrounding the meeting in July 2008 concerning wardens. The letter of complaint refers specifically to this meeting. Attached to the letter of complaint were attendance notes from Helen Stappleton, Paul Neave, Gill Conway and Dawn Evans. Those attendance notes included such

comments as follows:-

- a. Helen Stappleton (B686 and handwritten page number '50') *“at which point he became quite rude and confrontational.....I regarded the tone of his voice and his manner as confrontational and intimidating.”*

“...this might be an example of Cllr Heesom influencing officers on how services should be managed.”

“I was concerned...Cllr Heesom’s confrontational behaviour, which was aimed at myself (to a lesser extent) and to Officer J in particular, at one point, which was not acceptable.”

- b. Paul Neave in his note comments (B688 – B689 and handwritten page numbers '52' and '53') *“Cllr Heesom retorted that they...were the Leaders in this room.”*

“Cllr Heesom was very dismissive of any answer that Officer J provided.”

“Cllr Heesom continued with his aggressive attitude...”

“It is my opinion that in his conversations, primarily with Officer J, Cllr Heesom acted in a dismissive and aggressive manner. I do not think that it is appropriate for an Executive Member to conduct themselves with staff in such a manner, even when they do strongly disagree with the staff member’s opinion.”

“...negative feelings generated by Councillor Heesom’s uncalled for and unprofessional outburst...”

- c. Notes prepared by Gill Conway include the following (B690 – B691 and handwritten page numbers '54' and '55') *“...he stated “let me make it clear there is only one Leader here and its us””*

“He demanded to know why she made this decision and continued to aggressively question her. Everyone in the room felt extremely uncomfortable with Cllr Heesom’s demeanor and attitude, and I feel it was totally inappropriate to have raised this operational issue in this particular forum.”

“...abruptly left the room.”

“Although she didn’t say much I felt that Cllr Yale was also uncomfortable with how this meeting was conducted and the way Cllr Heesom spoke to officers.”

- d. Dawn Evans’s note includes the following (B692 – B693 and handwritten page numbers ‘56’ and ‘57’) *“Cllr Heesom said that the Members are either thick or have been misled. I will not be a party to it.”*

“Cllr Heesom continued to ask me why I had not done this that etc. why did I stop recruiting for resident warden, why, why, why in an accusing inappropriate manner which I found offensive and of a bullying nature.”

“I felt that it was completely wrong to speak to me in that aggressive manner”

- 1.46. These were comments which were contained within documents which the Respondent received within 10 months of the events complained of. In his response, the Respondent does not comment on whether the events occurred as described. The Respondent’s response can be seen at C60 as follows:

“Essentially, the issues in the allegations are about confrontation between the political remit of members and the operational remit of officers. The issues covered at the meeting had a political overview and as the events transpired they were from our members’ point of

view a total misapplication of political advice and guidance.

Both Cllr Yale and I withdrew from the meeting when it became apparent that both the housing officers and the HR officers had an agenda that we were wholly uncomfortable with.

It is also now clear that that agenda was worked out in the housing services operational section, notwithstanding the clear guidance that we provided as councillors. Such operational issues can we are aware face us with a 'fait accompli' on occasions and as politically accountable councillors, we are not comfortable where there is evidence of manipulation. Correspondence to wardens subsequently showed that the fears we had about the application of policy were justified."

Nowhere in his response does he dispute the allegation that he acted in a bullying manner. One would have a reasonable expectation of that being the first response upon his seeing the annexes to the letter of complaint.

- 1.47. We repeat in considering the evidence of the Respondent, we take into account issues outlined in the medical evidence. This, however, does not detract from the need for a witness, or indeed the ability of a witness, to be truthful when giving evidence. The Respondent throughout the giving of his evidence had a general evasiveness to answering directly questions put as to some of the facts of the case. The Respondent had a tendency to directly criticise the conduct and/or ability of witnesses who had given evidence against him and to allege witnesses were engaged in some form of conspiracy. Much of the evidence of the Respondent, in terms of specific events, was that he would not have said or done something, as opposed to him stating that something did not occur. In submissions received, Counsel for the Respondent submits that due to his medical condition, the Respondent was unable to concentrate. The medical evidence was as at the date he began to give his evidence he was fit and able to do so. We saw little or no sign of lack of concentration. As a Case Tribunal, we appreciate that with

length of time memory will fade but it is apparent in respect of a number of aspects of the allegations made, the Respondent was alerted to those within a matter of months of them occurring. The Respondent had an evasiveness to address specific events directly, both in the written presentation of his evidence by way of his witness statements and in his sworn oral evidence. The Respondent had been afforded the opportunity to present a further written witness statement in 2012 after all the evidence had been presented. This statement again did not directly present the Respondent's direct recollection of some of the events but was in part his comments and interpretation of the evidence we as a Case Tribunal had heard. This statement prepared with the assistance of legal advisors sought to argue the Respondent's case as opposed to providing direct evidence of memory.

- 1.48. There was a reticence on the part of the Respondent to accept straightforward points or obvious interpretation of the contents of documents. This, in our view, was on the basis that he was conscious that the Case Tribunal may draw an adverse inference from such a concession.

- 1.49. There were a number of examples as to documentation, prepared closer in time to the events, where the Respondent was inviting the Case Tribunal to give to those documents a meaning which was not obvious on any ordinary or meaningful reading of the document and/or that something contrary to the indication in the documents had occurred. The following are a few examples relating to the Dodds Exchange:

- a. 25 May 2007 – the Respondent wrote to Barry Davies as follows:

“I have now referred this matter to the Cabinet member for housing, Cllr Attridge, and he has asked that I refer the matter to yourself and that you meet us today Friday to confirm his intention to override the officers objections and enable the exchange.” (D203).

In questioning, the Respondent (PH in the following extracts) sought to give the sentence a meaning other than the obvious meaning that he, the

Respondent, had referred the matter to Councillor Attridge. He submitted it was Councillor Attridge who had referred the matter to the Respondent (pg 5, 21.09.12 (2 of 3)).

GH: *So this is on page 203, in the second paragraph, it starts, 'I have now referred this matter to the cabinet member for housing, Councillor Attridge, and he has asked that I refer the matter to yourself and that you meet us today, Friday, to confirm his intention to override the officer's objections and enable the exchange'. Isn't that a fundamental challenge to the entitlement of officers to make this decision? I say the entitlement, to the obligation on officers to make this decision?*

PH: *I was reporting what, I think if I can read it right, what Bernie Attridge had said to me. That's Bernie Attridge, did we go there yesterday about executive members being able to instruct officers on this matter?*

GH: *But your policy, or the policy of the authority is that it is officers who make decisions about allocation. On any basis, you, as a matter of law, are not entitled to be involved in the decision making, because this is a decision that relates to a property within your ward and indeed, a resident within your ward. But, what you are doing here is calling in Bernie Attridge to overrule an officer isn't it?*

PH: *No, no, no. I spoke to Bernie Attridge and Bernie Attridge had volunteered that information to me. I mean, I think I have referred previously to, there are issues and they appear to have been more frequent than I appreciated, where a points balance can be applied by, at some point in the system. And it's more frequent than I was aware of actually.*

HJ: *Who contacted Bernie Attridge about this issue first of all?*

PH: *I think he raised the matter with me and then I subsequently spoke to him about it.*

GH: *Well, that would appear to fly in the face of this letter wouldn't it, 'I have now –*

PH: *Sorry.*

GH: *- referred this matter to the cabinet member'. So it's not the cabinet member has raised this matter with me, it is, 'I have now referred this matter to the cabinet member'.*

PH: *No, I think the only indication that I have unilaterally gone to Bernie over this is not well explained. There had been a contact with Bernie where I think he had come to me, because as the cabinet member he had picked up that there was an issue here, in his discussions probably with Richard Burchett.*

GH: *So you say that when you write to Barry Davies saying I have now referred this matter to the cabinet member for housing, that's wrong is it?*

PH: *It's interpretable. I mean it would be the formal way of saying, I have put the matter to Bernie Attridge, but it didn't mean to say that I initiated that correspondence with Bernie Attridge.*

- b. In an email by the Respondent to the Chief Executive of 18 June 2007 (D209) where there are five references to Mr Birchett and his actions, the Respondent states as follows:

"I appreciate your position, but this is a cruel and misplaced action by this senior officer.

Regarding the advice that an officers views are being sought from another authority – this is also unacceptable.

We pay Mr Birchett an enormous wage to make decisions. He has indicated that he has consulted his senior officer Ms Conway in the matter.”

In questioning, notwithstanding the references to Mr Birchett throughout the bulk of the letter, the Respondent sought to argue that the reference to “*cruel and misplaced action*” may have referred to Gill Conway (pg 23, 21.09.12 (2 of 3)).

GH: *Do you now have the sentence ‘I appreciate your position but this is a cruel and misplaced action by a senior officer’?*

PH: *Yes, it’s the opinion I had at the time.*

GH: *So you considered that Richard Burchett was cruel?*

MM: *No, no the senior officer he is referring to is Jill Conway isn’t it?*

HJ: *Well, ask him. Who is the senior officer?*

PH: *I understand the senior officer there was Jill Conway.*

MM: *Well that’s clearly from the letter isn’t it sir.*

HJ: *That’s something you can ask in re-examination.*

GH: *No, forgive me, that’s just plain wrong. If you have a look at page 208 again.*

MM: *Well –*

HJ: *Hold on, this is Mr Hughes and you can come back in re-examination if you wish to clarify it. Mr Hughes, do you want to question him as to who the senior officer referred to there is?*

MM: *208.*

GH: *Quiet.*

MM: *No sir, I just want to know which document you are referring to that's all.*

GH: *Have a look, well who do you say the cruel senior officer is?*

PH: *The letter's addressed referring to Mr Burchett for having made the decision, but I think in this case I might well have been referring to Miss Conway because it seemed to me that she was the senior allocations officer in this matter.*

GH: *The reference to Miss Conway is in the last six, seven lines of that letter isn't it? The reason why there is a reference to Miss Conway in the last six, seven lines of that letter is because there is a reference to Miss Conway on page 208.*

PH: *No, I mean there is a reference in 208 to a particular aspect of the matter having referred to Mrs Conway but Mrs Conway, as I understand it was the senior allocations officer.*

GH: *This wasn't an allocations issue though was it?*

PH: *I think you will find correspondence somewhere to the effect that she regarded that as her domain.*

GH: *Mutual exchange wasn't a matter for Jill Conway.*

PH: *I am not sure as she didn't, she didn't actually deal with that.*

GH: *In the attendance note of Jill Conway's conversation with the anonymous caller of the 15th of August, she expressly says, you shouldn't be speaking to me because I don't have anything to do with mutual exchange.*

PH: *Well that's not a view I –*

GH: *And up to that point in this letter you have been talking about Richard Burchett haven't you?*

PH: *Yes indeed.*

GH: *But after prompting from your counsel, you now take the view that the –*

PH: *No I can't -*

GH: *- reference to the officer there is a reference to Jill Conway do you?*

PH: *I can't really at this instance of time recollect whether I was not referring to Jill Conway.*

HJ: *You could have been referring to Mr Burchett?*

PH: *Yes –*

HJ: *Is that what you are saying?*

PH: *I could have been referring to either of them. But I mean the point in my mind was that whomsoever, that the decision I felt was a cruel one. They were arbitrating on the side of complex*

issues and I thought the arbitration was cruel and inconsistent.

GH: *So whoever the officer was, and for the moment you can't remember, despite prompting, was a cruel officer, that's what you are saying?*

PH: *I thought the decision –*

MM: *Sir, I wasn't trying to prompt the witness.*

- c. In a letter (D212) written by the Respondent to the then Acting Chief Executive (precise date unknown), the contents of the letter are headed:

“ReHousing Transfer / Mutual Exchange,
Mr and Mrs Dodds – 17 Ffordd y Ffynnon, Mostyn
[Ms M] – [] Ffordd Pennant, Mostyn”

The letter includes the following:

“I seek your feedback that your authorising this Transfer/Mutual Exchange has been dealt with as discussed with you this week.

Please find attached an information note about the issues. The attached note was written after the referral to the Monitoring Officer, and several weeks after the initial application. It has now been in abeyance for almost two months.

I have a dreadful situation with two families packed and in limbo. They are in real distress, and as related to you, the advice from several aspects including that from the Monitoring Officer is that there has been no good reason given for not enabling this transfer.

Please could you ensure that the letters are sent.”

It was put to the Respondent that the only logical interpretation of the phrase “*the letters are sent*” was that authorisation letters were sent authorising the transfer. The Respondent disputed such an interpretation (pg 28, 21.09.12 (2 of 3)).

PH: *No, the advice from several aspects to me and I am saying is that there has been no good reason given for enabling the transfer.*

GH: *Who were the other aspects?*

PH: *Sorry?*

GH: *Who were the other aspects? I mean I am not sure you can receive advice from an aspect, but anyway, who are they, given your use of language?*

PH: *Well probably some fellow councillors or... Can't, you know, can't put my finger on it but I mean –*

GH: *Which fellow councillors?*

PH: *Councillors in my group, you know, who I had discussed the matter with.*

GH: *And you finish that letter, ‘Please could you ensure that the letters are sent’. So done deal, go on, authorise the exchange.*

PH: *No... I think the letter sent there is the letter to the independent, my points to the independent reviewer.*

GH: *Well we know that you don't want an independent review.*

PH: *Oh, oh, oh, no, no. No, I would have, I took the view that we*

shouldn't, we didn't really need to do that, because I thought there was enough evidence to make a positive decision as it was. But that I don't think I, at any point didn't accept that an independent review could be sought. And I recollect there was an issue where Chris Kay had promised to give me a copy of the draft that went to the independent reviewer. That's right, this letter is to Chris Kay. Chris Kay –

HJ: *You say, 'Please could you ensure that the letters' in the plural 'are sent'.*

PH: *Well I think that's in the sense that, I am sure there was some copy documents with the –*

GH: *So the letter –*

PH: *- covering letter.*

GH: *The letters that are referred to in the last line there are obviously the letters authorising the exchange in accordance with the first line.*

PH: *No, that's, you know that's just your deduction. I am telling you that what is actually meant there is to ensure that, I should have used the correspondence, rather than the letters.*

GH: *'I seek your feedback that your authorising this transfer has been dealt with –*

PH: *No, your –*

GH: *- as discussed with you this week –*

PH: *That –*

GH: *- please could you ensure that the letters are sent'.*

PH: *No, that your role, that the issue of authorising the transfer, the letters should be sent to, in this case it was Wrexham.*

GH: *There's only one –*

- d. In an email (D223) written on 4 August 2007 by the Respondent to Neil Cockerton, the following sentences are included:

"7. Can I make it clear that I cannot justify a refusal in this case.

8. My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly."

The Respondent would not accept the ordinary meaning which should be given to the contents of this email, however did acknowledge that the interpretation he was seeking to give to the words would not be that of a reasonable person (pg 2, 25.09.12 (1 of 4)).

GH: *And about halfway down that page there starts an email from you to Neil Cockerton, this is an email dated the 4th of August 2007. And you explain there that you 'appreciate his early call, I appreciate also the work involved. Two things however', you say 'regarding the two attachments from you, one is the Wrexham response which I have seen, the other is a summary of the Mostyn issues' and then at the end of, sorry you then set out, you can have a read of it if you like, but what you do is to set out your stance in relation to firstly, the question of the approach to parlour rooms in Mostyn and secondly the approach to non-resident children. And then you say at paragraph 7, 'Can I make it clear that I cannot justify a refusal in this case'. And then you say, 'my advice was that this exchange should go ahead and if it gets to court, then I am sure the judge would rule accordingly'.*

Now who had you tendered that advice to?

PH: *In the context of this letter, I would surmise it was discussions with Barry Davies.*

GH: *And we discussed last time your function in the allocation of housing context and you will recall that you accepted, I think, that it was your role to receive information about voids and the like in your ward, that you could gather information from your constituents about their wishes and that you could make representations on their behalf. Is it your function to offer advice about what should happen?*

PH: *I would have thought, given good will, that's slightly semantic because there would be advice about my position and my views and I would have thought it was my duty to ensure that that advice was before the decision makers.*

GH: *Doesn't use of the word advice there indicate that you felt your wishes should be followed or should be exceeded to?*

PH: *Well only in the terms I have just said, that, you know, it's my duty to ensure that what advice I have and feel is put in there to the decision makers.*

GH: *Aren't you really saying there, this is what I think should happen and therefore it should happen?*

PH: *Well in the sense that you appear to be arguing that it's an instruction, I disagree with that because it's not, it's just my, I felt I was fairly, in reasonably good contact with Barry Davies and to that extent I was sharing with him what the advice in my head was.*

GH: *And when you say, 'If it gets to court then I am sure the judge would rule accordingly', what do you mean by that?*

PH: *That if there was any eviction notices served on anybody, you know, I would have supported any representations that tenants wanted to make to a judge in the court on such a position they might be in.*

GH: *This was an email of the 4th of August, what eviction notices were going to be served on anybody?*

PH: *Sorry?*

GH: *This is an email of the 4th of August –*

PH: *Yes.*

GH: *- 2007. What eviction notices do you think were going to be served on anybody?*

PH: *No, but it is something that is somewhere down the road, you know, I am not sure that there wasn't some apprehension on the residents in this case about their position.*

GH: *There's no question of an eviction notice here is there? What has happened –*

PH: *No, no I was being cautious.*

GH: *Well, you will forgive me, but even the most cautious approach could not have contemplated an eviction notice in these circumstances could it?*

PH: *Well I mean we could argue about that, in my view there was a*

fairly frequency that I received representations about from some of the tenants that, you know, they were served with a court notice, you know, on occasions when they felt aggrieved.

HJ: *But on the 4th of August –*

PH: *Yes.*

HJ: *- was there any indication that either of these tenants, Mrs Dodds or [Ms M] was facing an eviction notice?*

PH: *No I was being cautionary sir.*

GH: *What I am suggesting to you is even the most cautious of approaches could not have contemplated the use of an eviction notice in this circumstance. All that has happened up to now is that two people who want, or three people in fact, who want to effect a mutual exchange have been told that they can't. So their housing status is unchanged. Explain to me how an eviction notice could ever have become relevant in those circumstances?*

PH: *I think what I am trying to say there is that from the, certainly one of the tenants, she was very apprehensive and insecure about her position. Nothing more.*

GH: *Which tenant?*

PH: *I think [Ms M] was a very unhappy and distressed tenant.*

GH: *How was she going to be subject to an eviction notice as a result of what had happened to do with the mutual exchange?*

PH: *It doesn't necessarily say that this was a direct part of the*

mutual exchange, it's just that I know that that particular tenant had some distress about her tenancy.

GH: *Well you say that it doesn't say that this is part of the mutual exchange, in fact it says exactly that doesn't it?*

PH: *Sorry?*

GH: *In fact it says exactly that. So paragraph 8 of your email says, 'My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly'. Then it has to be the mutual exchange doesn't it?*

PH: *Yes it is the position of one of the participants in the mutual exchange.*

GH: *Well no, the it is not the position of one of the participants to the mutual exchange, the it is the mutual exchange itself isn't it?*

PH: *No, I mean I could have been more explicit there, I can see that, but that's really what I am –*

HJ: *Do you want to have a look at the sentence?*

PH: *I have just re-read it and I mean I could have been more to the point.*

GH: *Well you have been very to the point haven't you? The sentence is very easy to understand, it is very clear in its interpretation, 'My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly', it is the mutual exchange, it can't be anything else can it?*

PH: *In regard to one of the particular people involved yes.*

GH: *Were you threatening Neil Cockerton with taking this mutual exchange to a court?*

PH: *Oh I don't think that for one minute, I don't really see how you can conclude that frankly.*

GH: *Were you suggesting to Neil Cockerton that one of the parties to the refused mutual exchange might take it to court?*

PH: *No, I was simply recording there that I suppose there was a distress, one of the two was anxious about her tenancy.*

GH: *Where do you record that there?*

PH: *Well not because, you know, I could have been more explicit, I can see that.*

GH: *Well, there is no reference at all to a distressed party to this exchange there is there? You don't say there do you that [Ms M] is sort of, you know, very distressed or whatever.*

PH: *No, but I mean we are talking about two parties in this position. And in one sense it wouldn't have been proper for me to have opened a dialogue about the state of mind of one of the parties other than to say that one of them, you know, was anxious about her position.*

GH: *Well you could have said that couldn't you? But you didn't?*

PH: *Well I concede that you know, I could have been more particular in that sentence.*

GH: *Well, would you accept that if that sentence is intended to refer*

to the fact that [Ms M] is a particularly anxious person, then it is the most (00:12:36 s.l. delphic) reference to [Ms M's] mental status.

PH: *The most sorry?*

GH: *The most delphic reference to [Ms M's] mental state that one could imagine?*

PH: *Ah, I don't think so. I mean, I think it's as brief as I think, as to make the point rather than going into personal circumstances of one of the –*

HJ: *But does it make any reference?*

PH: *No, but to be fair, there's only two people involved in this one and –*

HJ: *Well do you accept it makes no reference to [Ms M]?*

PH: *No direct reference, no, but under explanation that's what I am conceding could have perhaps been more specific.*

GH: *So your evidence is that when Neil Cockerton read paragraph 8 he ought to have interpreted paragraph 8 as a reference to [Ms M's] anxiety levels, is that right?*

PH: *I can't speak for that no.*

GH: *Is it your evidence then that that's what you intended him to understand from paragraph 8?*

PH: *That one of the two parties was anxious.*

GH: *So despite the fact paragraph 8 doesn't make any reference to anxiety at all and rather refers to a mutual exchange and the possibility of the mutual exchange going to a court process, you think that paragraph 8 ought to be read as a reference to anxiety on the part of one of the people involved do you?*

PH: *I don't think there's any reference to the mutual exchange going to court is there?*

GH: *Yes, well there is, 'My advice was that this exchange should go ahead and if it', the only it in that sentence is the mutual exchange isn't it?*

PH: *No, no –*

GH: *'If it gets to court'.*

HJ: *What do you mean by it in that sentence?*

PH: *The circumstances of one of the parties, one of the sharers in the exchange.*

HJ: *So how do you read that into that sentence? Do you want to read the sentence again?*

PH: *Well I concede that it could have been more to the point.*

HJ: *Well can you help me how the it there can refer to either of the two parties?*

PH: *Well the two parties are involved in the matter.*

HJ: *In the exchange?*

PH: *Yes. And if one of them you know, one of them was of the view that while she was apprehensive about you know, getting a notice, I am surmising, I just know that that's the way she was feeling.*

HJ: *Okay. Do you accept that a normal reading of that sentence would refer it to the mutual exchange?*

PH: *To the man on the Clapham omnibus I agree, but in this particular case I would assume that, you know there was an intimacy or knowledge about the circumstances that would have taken it to mean the position with either of the two parties.*

HJ: *So you think Neil Cockerton would have read that sentence as not referring to the exchange?*

PH: *Well he didn't come back to me with any different view.*

GH: *Isn't it very likely that Neil Cockerton read that sentence as any normal person would, that is as an indication that possibly the mutual exchange might end up in a court somewhere?*

PH: *Well I was concerned there about the state of mind of one of the two partners, parties in this.*

GH: *Well why didn't you say so instead of saying something completely different?*

PH: *Well you are asserting that and I acknowledge that that is a view that the man on the Clapham omnibus who has no connection to the case might well have deducted, but I mean in that this, you know, this is a matter that had been going on for several months, you know, I would have thought that you know, the comments were particularly in the context of one of the parties.*

GH: *You are an eloquent man with a good grasp of English, certainly for the last 20 years you have used the English language, for all I know long before that, but certainly for the last 20 years you have used the English language in a public context on a very, very regular basis, you cannot possibly have thought honestly that paragraph 8 would be read as a reference to [Ms M's] mental state.*

PH: *Well it wouldn't have been appropriate for me to put the it down in those terms. You know I was being as private as I felt I could be.*

HJ: *I understand why you haven't mentioned anxiety, but I don't think that was the question from Mr Hughes, the question was more why put that sentence in in that form?*

PH: *Well I assure you that was the reason and if it had been a question of the case going to court, I probably might have been more explicit, but that was not the point I am making. And whilst I agree that the man on the Clapham omnibus might well have taken the generality, turned the generality into a particular, in this particular case the particular was something I felt prudent not to actually specify.*

GH: *Do you think that there would have been something improper in your encouraging the Dodds or [Ms M] to take the mutual exchange to court?*

PH: *I don't think I have said any of those things so –*

GH: *Forgive me, yes -*

PH: *- could you go through that again and help me through.*

GH: *- do you think that there would have been anything improper in your encouraging the Dodds or [Ms M] to take the mutual exchange to court?*

PH: *I just don't think that, you know, that was the case. I don't, I can't follow what you are saying.*

GH: *Well let me be blunt with you, the reason I ask the question is because I don't understand why you are resiling from the obvious interpretation of paragraph 8 of this email. In paragraph 8 of this email, you seem to suggest that one of the parties might take this to court, and if they did, you think the council would lose. Now why are you withdrawing from that? Do you think that it's wrong –*

PH: *I didn't –*

GH: *- for you to say that.*

PH: *With respect, I didn't say that. What I actually said, I didn't say one of the parties might take the council to court. What I am saying is that one of the parties was anxious about her tenancy and her position and that might have resulted in her being taken to court on something, so on rent or grounds for eviction and she was anxious and apprehensive about her position.*

GH: *But why don't you say then, my advice was that this exchange should go ahead, I think you should put a full stop at that point. And then say something like, if any process is taken against either of the potential participants to this mutual exchange by the authority then that might end up in court?*

PH: *Well I think that would have been threatening*

GH: *How would that have been threatening?*

PH: *Well because you have just said that if I had recomposed the sentence along the terms that if one of the candidates wants to take the matter to court and I think I have explained that it's not that one of the candidates of the exchange would have sought a court decision, it was because they had an apprehension about the security of their own tenancy.*

The responses of the Respondent in the above exchange are also in direct conflict with a later email sent by the Respondent on 6 August 2007 to Neal Cockerton (page P1431). The Respondent states:

"We have to have this exchange agreed"

and

"There is lots I could say, but I want to see this agreed and not escalate into a highly legal challenge"

- e. In an email (P1447) sent by the Respondent to Neal Cockerton on 17 October 2007, the Respondent states as follow:

"I am going now to Barry Davies to seek a suspension of the officer and I shall be calling a special full county council meeting immediately."

In questioning, the Respondent suggested that all he was saying is that he was considering asking Barry Davies to call a meeting (pg 4, 25.09.12 (2 of 4)):

GH: *Now earlier you told us that at no stage had you threatened to call a full county council meeting in relation to these exchanges, do you withdraw that now -*

PH: *No not up to that time I hadn't.*

GH: *- or rethink it?*

PH: *Not up to that time I hadn't. And you know, I think that in this particular case I was reflecting the representations I had had from the parties involved. They asked me to, you know, say how annoyed they were.*

GH: *Would you accept that here you are threatening to call a full county council meeting?*

PH: *I wouldn't use the word threatening, I was suggesting that I might go down those lines, yes.*

and later (pg 5, 25.09.12 (2 of 4)):

GH: *Do you consider that, well you don't like the word threat, but do you consider that your expressed intention in that letter of calling a full county council meeting was an appropriate thing to do?*

PH: *I wouldn't have done it probably, wouldn't have done it. I think that's an expression of my frustration, the way that this particular one, I mean I can't stress to you strongly the distress which, you know, these particular constituents were suffering.*

HJ: *It says 'I shall be calling a special fully county council' it doesn't say I shall consider calling, does it?*

PH: *Well it's the next best thing to shall consider, it certain doesn't mean to say I have done it. You see, can I make the point, I am not taking issue with you Gwydion at all, there's complex issues but when we have constituents or residents in distress, at the*

end of the day you know, they end up doing things sometimes, or making some wrong decisions in their lives or ... and that stops with us, it doesn't stop with officers. You know, with the best will in the world I am not saying officers are, in any way disregarding, but they are not in that arena where the people who are on the ground and in the street, their lives are not perhaps best ordered. And that's where you know, I did take it very seriously, I do take it very seriously and I took things to heart and I felt there were issues here with, as one of them who I had referred to earlier, who I knew that there was considerable distress with three children, so that is really what I am saying there Gwydion.

With further reference to the email to Neal Cockerton from the Respondent stating *"I am going now to Barry Davies to seek a suspension of the Officer"* (P1447). In questioning, the Respondent stated, though asking for the suspension of the Officer, he would have talked it through with Barry Davies. The Respondent was subsequently taken to D275, a letter he wrote on 17 October 2007 (the same date as the email) to Barry Davies, which concludes at D276:

"I seek immediate suspension of this officer and steps to enable the exchange to proceed".

In subsequent questioning he sought to state that in some way, what he was asking for was an opportunity of discussing matters with Barry Davies (pg 7, 25.09.12 (2 of 4)):

GH: *You said there in answer to a question from the chair that you, although in that letter you do appear to say that you are going to call for the suspension of Elaine Williams you would have had a discussion with Barry Davies.*

PH: *Oh yes, yes.*

GH: *Have a look at D275.*

PH: *D?*

GH: *Yes D, sorry, D for Delta.*

PH: *Yes.*

GH: *That is a letter of the same date, the 17th of October 2007 to Barry Davies in which you call for the suspension of Elaine Williams don't you?*

MM: *Could Councillor Heesom have a look at that?*

PH: *Yes, there's some very fair points in that letter.*

GH: *Well you would accept that you do call for her immediate suspension in that letter don't you?*

PH: *Well I put the matter to Barry, yes.*

GH: *Well did you have a talk to Barry Davies as you indicated that you would moments ago?*

PH: *No I was here setting out the facts and I think the talk would have taken place after that, I am not sure whether you have got any further correspondence from Barry?*

GH: *Well here, there is to be an immediate suspension not some sort of chit chat about in due course.*

PH: *Sorry?*

GH: *Here, according to you, there's to be an immediate suspension not –*

PH: *Yes it was stating my case to Barry.*

GH: *- some sort of chit chat about in due course.*

PH: *But I would have had a talk to him before I did anything.*

HJ: *Well you say, 'I seek immediate suspension of this officer'.*

PH: *Yes, that's right. And I suppose, you know, the consequent phrase on that, I look forward to your comments on the matter.*

HJ: *Well it doesn't say that.*

PH: *No it doesn't, but my relationship with Barry was this was my statement of case to him.*

HJ: *So you say, you should have put in the words, I look forward to discussing it or something along those lines?*

PH: *Yes, but I mean I consider at that point I had a fairly good relationship to Barry and that was my side of the story.*

GH: *You would appreciate that the suspension of an officer was an exceptionally serious matter isn't it?*

PH: *Well I consider what happened on the 15th to be a very serious matter, that after weighing the matters up I subsequently felt in the light of the issues about what I thought was going to be a genuine attempt by all parties to resolve a three ways merger, exchange, you know, for me as the sort of point at which I had to*

draw the line. “

1.50. The above are a few examples of the reluctance on the part of the Respondent to accept what is written on the face of documents. We find as a Case Tribunal that the Respondent in the presentation of his evidence was not being full, frank and honest. He was aware that if he conceded obvious points of fact those could form the basis of a potential breach of the Code of Conduct. He sought to deflect attention away from such issues of fact either by raising ancillary, and it could be said irrelevant factors, or being directly critical as to the ability, honesty or motivation of other witnesses.

1.51. The Respondent has submitted that Members of the Housing Department and other Flintshire County Council Officers who gave evidence were untruthful. He described various witnesses as lying, as having concocted their evidence to include creating false attendance notes and that a number were fantasists. Their alleged motivation for such action was unclear but included resentment towards the Respondent due to his level of interference, a need to support fellow senior Officers, an antipathy towards the Respondent on the basis he was opposed to stock housing transfer and a desire to keep the Respondent out of office. We would emphasise it is not for the Respondent to prove that the witnesses were lying or are unreliable. It is for us to assess the evidence and to take the view as to whether we believe that Officers who gave evidence were witnesses of truth. The Respondent alleged several officers were lying and / or deluded. For example:

i) At paragraph 28 of his statement 12 September 2012 (C85) he states:

“I do make the point that both complainants in this matter, Susan Lewis and Maureen Mullaney, have been shown to be liars, or seriously deluded individuals.”

ii) Paragraph 40 (C87):

“...Susan Lewis has also been shown to be clearly lying or seriously deluded in relation to the overview and scrutiny meetings....

iii) In questioning the following are some examples (pg 13, 20.09.12 (1 of 3)) :

GH: *The question being put to you is that you expressed to Maureen Harkin soon after August 2008, derogatory comments about Susan Lewis. Do you accept that?*

PH: *That's fabrication and fiction.*

MM: *Sir, can I just ask one thing, and please don't think I'm being pedantic here, you quite rightly say you're trying to concentrate Councillor Heesom's mind in terms of answering questions, which is absolutely-*

GH: *Part of my role, Mr Murphy.*

MM: *-commendable sir, and part as your role as you say. I just wonder if you could ask when you do say do you accept that, could you just ask: "What do you have to say about that?"? It's just a more open way of doing it sir. The power of suggestion might, if you say (inaudible; coughing in background 00:37:06) the power of suggestion might be that Councillor Heesom says yes. If you just phrase it...*

GH: *I'm trying to assess the witness to answer the questions as succinctly as possible. I will take on board what you say, but I will seek clarification from witnesses in a manner to which I consider appropriate.*

MM: *Well you say you've got my request, I'll leave it there.*

GH: *That's August 2008 and as I understand it your stance about Maureen Harkin's evidence is that she too is a liar or seriously deluded; she joins the list of liars and seriously deluded people doesn't she?*

PH: *Gywdion, that's really naughty, it's not true and I'll just expand a bit if I may. You said August 2008, she was actually appointed in August 2008. So I assume that you are referring to some matters subsequent after that. But what I would just say in terms of this suggestion you're making is that not long after Maureen Harkin was appointed, with goodwill, I put two letters to her I think in the first fortnight in which she was there, hoping to establish a comfortable database with her. I think one of them at least is in the file and I can provide the other one; they were two introductory letters about trying to establish a database about decision making. I didn't get a reply to either of them, and I asked her later on would she mind giving me a reply to those letters and none was forthcoming.*

So, I tended to find that dealing with Maureen Harkin was best simply on an operational level about whatever housing incident that came up where she was the responsible officer. You know any attempt to have a dialogue with Maureen Harkin I think dropped off the agenda about that point.

GH: *My response to your answer, you said that the comments she made about you being critical of Susan Lewis, if I've recalled it correctly you say, "Fabrication and fiction."*

PH: *Yes.*

GH: *Well doesn't that mean that Maureen Harkin joins the list, with Susan Lewis and Maureen Malaney, of people who are either liars or seriously deluded?*

PH: *We're getting into the territory of calling A) a liar and B) deluded, that's your-*

GH: *No, that's yours.*

PH: *Yes, I have said that in the case of Susan Lewis, I learned that she was capable of areas of delusion or lies and that that's the case. But I think the question of saying/responding to the Chair that what she's saying there, if that's Maureen Harkin's assertion, yes she is lying.*

GH: *So that we get it clear, you say in paragraph 28 of your statement that both Susan Lewis and Maureen Malaney have been shown to be liars, or seriously deluded individuals.*

PH: *Yes, I stand (inaudible; over-talking 00:40:24).*

GH: *So, Maureen Harkin is joining that list isn't she?*

PH: *I think they're slightly different context, in the sense that what she's alleging there is not true.*

GH: *So this is something that Maureen Harkin says was said to her shortly after her appointment in August of 2008.*

PH: *First of all, if I may, I indicated that it couldn't have been anything you know, because the initial period of Maureen Harkin was an attempt to try and establish a working relationship with her and that if she has got that comment where is the supporting evidence that she's offered in that?.....*

.....

GH: *Within 7 days you're overheard saying, "Susan Lewis is shit at her job."*

PH: *I totally dispute that. And my recollection is it's a scrappy handwritten note.*

GH: *Sorry, go on.*

PH: *No, it's a scrappy handwritten note that ... I don't know where it really, what its locus is to be honest with you.*

GH: *So, Peter Evans joins the list does he of people who are liars or seriously deluded about your behaviour?*

PH: *Most of the dealings I have with Peter Evans are amicable, good-tempered and I am at a loss to understand on what basis Peter felt that there would be any mileage or benefit in him producing that note.*

GH: *Just so we are clear, you deny absolutely using those words and you say therefore that the evidence of Peter Evans is a fabrication?*

MM: *Well, sir that's not true-*

(Inaudible; multiple speakers 00:46:01)

HJ: *Do you deny ever using those words?*

PH: *I deny using those words.*

HJ: *You deny using the words?*

PH: *Yes.*

HJ: *Ever?*

PH: *Yes, I don't know where they've come from.*

GH: *So, is it your case that Peter Evan's has fabricated that evidence; he's made it up?*

PH: *Well, yes, I think that for some reason he has felt that he might have heard something and he might be mistaken.*

GH: *It's a big mistake isn't it?*

PH: *I think so, yes. Because you know I always thought my relationship with Peter was pretty open and...*

GH: *So is it fair to say that he joins the list with 3 others of people who are either liars or seriously deluded about things that they say you've done?*

PH: *No. The issue that you're dealing with goes into the same box, but it doesn't mean to say that I think that those people per se are liars and prejudiced.*

GH: *Why do you think Peter Evans wrote the note?*

PH: *Well I understand there was a (inaudible 00:47:10) if he got anything on Patrick. And I think really to be honest with you one of the things that was upsetting about that was that in this fabrication ... in this construction of this complaint against me, I felt I was in some disadvantage in that the monitoring officers and the deputy monitoring officers was compromised and as a result of course I didn't have that right of independent access to a monitoring officer, and I'm not suggesting that there was pressure brought to bear on Peter or that he felt uncomfortable, I'm not going there."*

1.52. Some of these serious allegations are based on what the Respondent perceives as discrepancies in evidence heard by the Case Tribunal. We find no basis for the allegation that any, let alone the significant number of accused Officers, were untruthful in the testimony presented. Consistent and detailed accounts were given. We are satisfied, both on a balance of probability and indeed beyond all reasonable doubt, that the attendance notes prepared and presented by the Officers were accurate in terms of what was said at various meetings. This is not a case where witnesses had sat down and copied verbatim each other's attendance notes. The notes had been prepared independently and, as indicated above in terms of the meeting involving Dawn Evans, contain some varying descriptions as to the Respondent's conduct. The one common theme, however, is that the conduct of the Respondent at the meeting was inappropriate and was perceived as bullying. The notes were prepared prior to the complaint being made to the Ombudsman and were made as there was mounting concern as to the conduct of the Respondent and his failure to adhere to earlier advice. It is natural for employees, in particular junior employees, where they are concerned as to events with senior management, or in this case, an elected Member, to note down events as and when they occur. There is nothing sinister in such action. The notes and memoranda prepared after the decision was made by the SMT to forward a complaint to the Ombudsman were prepared in order that there was a record of events as employees remembered such events. Again, we find no embellishment of the events nor that the description of events had in any way been exaggerated or indeed as alleged fabricated. As we have noted earlier, the Respondent, in a number of instances, did not respond or chose not to respond when first presented with those memoranda. It was significant to us as a Case Tribunal to note the manner in which a number of officers gave their evidence and notwithstanding the period of time which had passed, clearly remained adversely affected by the actions of the Respondent. The evidence we heard from two employees or former employees of Flintshire County Council called by the Respondent did not affect our assessment that the officers and employees of Flintshire who had witnessed the Respondent's conduct at meetings and in respect of housing allocation were anything other than witnesses of truth. We assessed

each witness on the contents and manner of their evidence. We assessed individually the strength and detail of their evidence. Most of our findings do not rely on a single witness' account but on a combination of witnesses and/or documents. Even in terms of comments allegedly made to Officers such as Peter Evans and Maureen Harkin, there are documents to support their evidence, though we are aware such documents were prepared by those Officers. They are, however, contemporaneous records prepared well in advance of any potential complaint as to breach of conduct. The Respondent's case is that a significant number of documents prepared close to the time of the events contain serious inaccuracies or in a majority of cases deliberate untruths. These documents refer to events we are considering and most contain details as to what the Respondent did or said. They include the following:-

- i. Letter 19 March 2007 written by Susan Lewis complaining as to the conduct of the Respondent at the 14 February 2007 Scrutiny meeting.
- ii. CMT Minutes for meeting 15 February 2007 where reference is made to Members' conduct towards officers at the previous day's Scrutiny meeting.
- iii. Minutes of Group Leader's meeting 14 March 2007 noting concern as to personal attack on officers.
- iv. Email by Barry Davies 18 May 2007 noting that the Respondent is extremely annoyed as to the decision relating to the Dodds Exchange.
- v. Email by Richard Birchett 24 May 2007 noting the Respondent had written to Councillor Attridge and the Respondent was not particularly polite in his description of Mr Birchett.
- vi. Email by Sylvia Connah 1 June 2007 stating the Respondent was going to tell the two families to exchange".

- vii. Email by Richard Birchett 11 June 2007 indicating that the Respondent had left a message on Councillor Attridge's answer phone stating Barry Davies had agreed to the mutual exchange going ahead.
- viii. Email by Barry Davies 11 June 2007 noting the Respondent had stated to him he was going to tell the tenants to exchange.
- ix. Telephone attendance note prepared by Gill Conway on 15 August 2007.
- x. Attendance notes prepared by Elaine Williams and Lee Roberts as to events on 15 August 2007.
- xi. Letter by Mr Birch 19 August 2007 referring to the exchange and that the contents of the Dodd's house were to be emptied.
- xii. Letter by [Ms M] 21 August 2007 referring to her attempt on 15 August 2007 to carry out an exchange with the permission of the Respondent.
- xiii. Email by Peter Wynne 25 September 2007 noting in a telephone call Mrs Dodd had informed him the Respondent had confirmed the exchange could proceed and Mrs Dodd was awaiting the paperwork.
- xiv. Letter by Colin Everett to Respondent 31 March 2008 where he ascribes to the Respondent critical comments of Susan Lewis.
- xv. Individual Attendance Notes 7 July 2008 prepared separately by Helen Stapleton, Paul Neave, Gill Conway and Dawn Evans in respect of a meeting with officers 4 July 2008 .
- xvi. Briefing Note 12 November 2008 prepared by Susan Lewis outlining lead up to and Visioning Day itself, and noting also comments made to Maureen Harkin by Respondent.

- xvii. Handwritten note 14 November 2008 prepared by Peter Evans ascribing to the Respondent the words “Susan Lewis is shit at her job”.
- xviii. An email and note prepared by Maureen Harkin 19 December 2008 detailing the Respondent’s conduct at a meeting with her on 18 December 2008.
- xix. Letter by Councillor Armstrong-Braun 7 January 2009 noting the Respondent verbally attacking “the officer for his report”.
- xx. Letter Maureen Harkin to Susan Lewis at some date after 10 February 2009 (B291).
- xxi. Attendance Note prepared by Caroline Littlewood immediately following Homelessness Prevention Meeting 25 February 2009.

This is not a definitive list. We have not included for example documents in the P Bundle which conflict with the Respondent’s case, the emails sent by Councillor Halford nor entries in Councillor Woolley’s diary. The list is to indicate the level of conflict between the Respondent’s case and documents which were all prepared close to the events and prior to any decision to make a formal referral to the Ombudsman. We reject the Respondent’s contention that all of these documents are inaccurate or fictitious. With the exception of the letter prepared by Councillor Armstrong-Braun we find in addition sufficient other evidence to support the facts contained in the documents listed. We do not find as submitted that all of the officers who prepared such documents were involved in a conspiracy to harm the Respondent. The Respondent’s case is also in direct conflict with the bulk of the contents of numerous attendance notes prepared by officers after the decision to make a referral to the Ombudsman. Those were notes attached to the letter of complaint. We find those attendance notes in the main provide an accurate account of events. We have considered the relevant notes when considering specific events.

- 1.53. It was suggested on behalf of the Respondent that in some way Councillor Arnold Woolley the then Leader of the Council was part of a conspiracy to oust or in the alternative to stop the Respondent from becoming Leader. We are satisfied that Councillor Woolley had no part in the decision to submit a letter of complaint to the Ombudsman. It was further submitted that Councillor Woolley's evidence may have been tainted by a continuing wish to remain as Leader. Again we find no basis for such a submission. We granted a request on behalf of the Respondent for Councillor Woolley to be re-called to give evidence. On two separate occasions he was questioned by those representing the Respondent. Whilst his evidence in part lacked clarity on ancillary issues his evidence in terms of specific events was firm and consistent. Councillor Woolley had given sworn evidence to another Case Tribunal and alleged inconsistency with part of that evidence was put to him.
- 1.54. A significant amount of the Case Tribunal's time was taken up in consideration of the notes/diary kept by Councillor Arnold Woolley. We are satisfied that this is a document which Councillor Arnold Woolley prepared as soon as practicable after an event. There are occasions when Councillor Woolley did not write up the diary until days after a particular event. It is not a verbatim record prepared as and when conversations took place. It is, however, a record of events and, in our view, in certain respects, provides some corroboration to other evidence we have heard. The alleged discrepancy which in part is a matter of emphasis does not affect our overall assessment that the diary is accurate as a general record of events. We are not satisfied it is fictitious as has been implied in submissions. The diary is marginal to the findings of fact we have to make in this case.
- 1.55. In his evidence the Respondent appeared to allege that the primary person conspiring against him was the Chief Executive, Mr Colin Everett. Again, there is no evidential basis for such an allegation.
- 1.56. A number of Councillors gave evidence supportive of the Respondent. We are concerned that in a number of respects, loyalty to the Respondent and/or political affiliations appear to have, in part, coloured certain Councillors'

attitude towards Officers. Some viewed the allegations made against the Respondent as the thin end of the wedge in terms of their status. If the case were proved against the Respondent the officers in future could seek to undermine elected Members by making complaint to the Ombudsman. That is not the issue we are to determine. The issue we have to decide upon is the conduct of the Respondent. Councillors were present at a number of meetings where complaints as to the Respondent's conduct arose. We do not differentiate in assessing the evidence as to whether such evidence is given by an officer or by a member. We do have regard however that it was the officers in the main who it is alleged were on the receiving end of the Respondent's comments and actions. As such it is probable that their recollection would be clearer in terms of the effect of a particular meeting upon them. The complaints were raised as a result of genuine concern as to conduct which in the view of the officers was overstepping the mark. It is a matter for us to independently assess whether that conduct occurred and, if it did, whether it breached the Code of Conduct. There is no difference in principle to the weight to be given to the evidence of Officers and of Councillors, however we assess each witness individually, the detail they are able to provide as to a particular event and our overall assessment of their testimony.

- 1.57. One Councillor who gave evidence was Councillor Alison Halford. She wrote a number of emails soon after a Head of Housing short listing meeting. The evidence of Officers was that Councillor Halford shared their view that the conduct of the Respondent in that meeting was inappropriate and had crossed the line. This would appear to be supported by emails she sent soon after the meeting. They are it could be said fairly contemporaneous with the events. In her evidence, both in a written statement to the Ombudsman and to us, she sought to detract from a perceived view of the emails that she was being critical of the Respondent. She maintained that the emails should not be viewed as criticism of the Respondent. Her evidence contradicted also comments contained in the Arnold Woolley diary. She was particularly critical of one record kept by Councillor Woolley, namely of a conversation late in the evening. On behalf of the Respondent it was submitted she appeared to be

under the influence of alcohol at the time of the conversation. Councillor Halford submitted at the time of that conversation she was extremely distressed. She does not, however, challenge in the main the accuracy of what was written by Councillor Woolley. We did not find Councillor Halford's evidence that she was not being critical of the Respondent in the emails as being credible. The following are some examples of exchanges during her questioning:

(Pg 13, 14.07.11 (2 of 3)):

GH: *Now this is an email sent on the evening before the interviews. "Interviews start on the 18th. Dear Patrick and Bernie I wonder if you have a view on the costs incurred please, and you will see that at the base of the base you consent the costs of the HR process up to that point. You get my drift I am sure. I am on a very short fuse regarding rude behaviour of Counsellors, I hope progress will be made and a selection of the right person for the job, Alison."*

AH: *If it hadn't been before me Sir I would not of recalled writing it.*

GH: *Do you recall it now?*

AH: *Not particularly Sir no.*

GH: *What rude behaviour are you referring to when you say that you are on a very short fuse?*

AH: *The Bernie Attridge explosive behaviour and the possibility of closing down the interview if we had interviewed nobody.*

GH: *You referred to don't you the rude behaviour of Counsellors so which Counsellors are you identifying?*

AH: *As we discussed yesterday Sir I am bundled both Bernie and Patrick together. Again the word rude would apply to Bernie and not particularly to Patrick as I had a bit of stretch of the imagination to use the word rude with Patrick wanting to close down the interview but it is a very wide word and needn't be impossible. But rude is not the same as bullying or anything*

GH: *Why is the email directed to Patrick and Bernie?*

AH: *Well they were the ones that caused me some frustration.....*

And (pg 28, 05.07.11 (2 of 2)):

AH: *Well I was in the members services room and I was frankly finishing off reading my papers, I think Ron Hampson was there but apart from just generally chatting vaguely about the candidates who seemed to be okay, that's the only thing I can recollect.*

GH: *And who was party to that discussion did you say?*

AH: *I can remember Ron Hampson being there.*

GH: *Anybody else?*

AH: *Helen Yale now Brown but I really can't remember, as I say I recall that I received my papers late so I was still scanning them very hard indeed and obviously every minute was precious. Certainly I recall Ron Hampson there.*

GH: *Sorry where was that?*

AH: *This is the members lounge I think you'd call it sir.*

GH: *So you recall you think Ron Hampson being there and possibly Helen Yale Brown?*

AH: *Yes yes.*

GH: *Anybody you remember being there? Have a look please at B274 I think that's going to be in the bundle that's in front of you.*

HJ: *That's the witness statements yes?*

GH: *Sir yes.*

AH: *I've made an absolute mess of this the last time you'll have to be patient with me, 274. Yes.*

GH: *That is a letter, sorry it's an email or a collection of emails perhaps exhibited by Councillor Arnold Woolley to his statement to the ombudsman. And you'll see that the top of page 274 there is an email from you to Councillor Woolley which is also sent to the chief executive.*

AH: *Yes.*

GH: *And this email is dated the 16th February 2009 sent at about 2:40pm.*

AH: *It was a Sunday wasn't it, yes.*

GH: *It's a Sunday. And there it says 'Dear Colin, I don't feel very optimistic as PH BA and RonH all agreed a position at the shambolic meeting'. What do you mean by that?*

AH: *The word shambolic had obviously been read by me in the previous email.*

GH: *Right it's the 'PH BA and Ron H all agreed a position at the shambolic meeting' that's that I want you to explain.*

AH: *I don't know. I really can't remember. You'll gather that my emails have let me down badly.*

HJ: *What do you mean have let you down badly?*

AH: *Well of all the emails I've sent in my life each one of them has been absolute garbage for one reason or another, but obviously we'll come to that in evidence sir. And it has done nothing to help my particular case all those months ago.*

And (pg 8, 13.07.11 (2 of 2)):

GH: *You then go on, "had a bad day. Number four dog had leg amputated yesterday. I am with Selection Panel all day when she needs nursing. I do not know you, perhaps you should know that PH sees me as an ally, sees me as powerful. Suggested I should be the sec of the coalition group meetings. I accepted because I can take notes. I must tell you I'm no longer his friend after the Thursday meeting. He is clever but a bully and destructive. Hope this makes sense." What did you mean by that?*

AH: *Well, it didn't make sense, did it? The time it was written was 22.04. With all the stress I would have had more than one mind too many and it was completely garbage email, sir. The bits were true in as much as that he did see me as an ally. He did suggest that I was secretary of the coalition. I accept that I can take notes. But, as I have said, sir, I hope this makes sense and quite frankly it didn't at the time and it doesn't now. But the horrible day was absolutely right.*

GH: *In what way does, "he is clever but a bully and destructive" not make sense?*

AH: *Because I have never seen any bullying behaviour in him. I have never seen anything destructive in his behaviour, sir. He is a forceful man. He is a passionate man but those words, I do not associate with him.*

GH: *Do you recall speaking to Susan Lewis on the day after the sign off of the short lists, sorry on 13th February?*

AH: *I don't remember the date but clearly it was before the 17th, yes. I didn't know that the figures could be made available. As they were made available, and as, quite clearly, from the thread of emails, Human Resources were quite happy to allow me to have the figures. As I have explained, I didn't want to do anything with them without consultation with the highest person. I rang Mrs Lewis' PA, Mrs Lewis rang me back, and as I have explained, sir, she said yes it would be perfectly appropriate to publish the figures but she couldn't be involved in anything political. As I say, I wasn't making, or she could have thought making politics as we were different parties, but I didn't see it in that way. I don't make any comment about being political and trying to sort of have one over on Patrick because of our political differences. I don't remember that in any shape or form, sir.*

And (pg 11, 13.07.11 (2 of 3)):

GH: *There you say, "Dear Colin, I apologise it is Sunday afternoon but I was very unhappy with how Housing Officer Selection meeting deteriorated." In what way do you say it has deteriorated?*

AH: *Well, Bernie Attridge and Pam Webb throwing rocks at each other. It was a just suggestion that the meeting had deteriorated.*

GH: *"I had not responded to BA's apology and knew at the time his behaviour was totally unacceptable. I am also appalled that Patrick Heesom wanted to close down any interviewing."*

AH: *Yes. You see, that's absolutely true. I was also appalled and I make the suggestion again, knowing the seriousness of it, the word 'appalled' was picked up by the Director and woven into her statement of 3rd of June. I was 'appalled' that he wanted to close down the whole of the Selection Panel. I was not appalled about any inappropriate behaviour. The only inappropriate behaviour I saw was from Bernie and Mrs Webb.*

HJ: *Can I understand this. So you are saying that Susan Lewis saw the use of the word 'appalled' in that email and intentionally put it into her statement?*

AH: *Yes sir, I am. I can't prove it but you have asked me the question sir, and that is what I believe.*

GH: *You then go on, "I've asked for the costs to the process thus far as I know that extensive advertising was undertaken plus expenses of persons attending interview thus far and of course, the on costs of officers' time etc. Personally, I believe that both Councillors are very close to breaking codes of conduct and had we lost the vote not to go for interview FCC would have spent, and would have continued to spend, money until the post was filled." Which both Councillors are you referring to?*

AH: *Yes I was because I didn't know. Certainly Bernie Attridge. His behaviour must have, because as I've explained before, I didn't*

know very much about codes of conduct then if anything. But it seemed to me that Bernie's conduct was pretty unacceptable, that's why I was really concerned whether or not I wanted to accept his apology. I just didn't know what to do. He had really behaved in quite a very difficult and challenging manner. And therefore it doesn't help that I was again cross with the...I had only recently read the "Hello Alison, can I please," I know it arrived earlier but I had only picked it up that afternoon, I am sure, because that what spurned me or made me write to the Chief Exec. I was asking what did I really, what did I do about Bernie's behaviour. And of course, in my usual way, the thing became jumbled up which can be read as that Patrick was bullying, but I say again, I was appalled only because he wanted to close down the interview. And all I'm saying, I'm sorry to cut across you, if we had of spent seventeen and a half thousand pounds and got nowhere, I would have thought that somewhere amazing codes of conduct he would have done something inappropriate.

GH: So the other Councillor who you think may have broken the code was Councillor Heesom?

AH: Only, only if we had spent the money unnecessarily.

HJ: The question you were asked is who were the both Councillors, can I take that as being Bernie Attridge and Councillor Heesom?

AH: Heesom, that's absolutely right, sir.

GH: You go on, "the delay could have been for months, this cannot be right, surely. My final concern is who is going to be Chair at this Committee? If Patrick is to do it then I think it will, I will ask to be replaced as I do not trust his judgment."

AH: *Again, still angry that he could, the Chair is powerful, we accept that. If Patrick had won. I mean he is a man who is a forceful man. He is passionate about many things. I did not know if he was going to have another attempt, I didn't think so but, again, in an afternoon, ever thing going on in my life, I just ran that off to the Chief Executive asking for his view. I really couldn't see anything damaging in that, to be honest.*

GH: *You copied in Councillor Woolley as well?*

AH: *Yes, I did.*

GH: *Now, there is then the Chief Executive's response, which is halfway down 274.*

AH: *Yes.*

GH: *And it is as well to read that if only the context, so he says to you, copying in Arnold Woolley, "Many thanks Alison for the supportive and instructive comments. The meeting this week was shambolic and was inexplicably adversary at times. I have communicated my views to a number of the Councillors present and will be speaking with Councillor Heesom tomorrow. I intend to speak with all Panel members before the interviews to seek their assurance over their commitment to the recruitment process and to fair and proper conduct. I had to spend considerable time on Thursday, and since, restoring morale among officers who felt demotivated and insulted. The position of the Chair is the choice of the Panel. This is down to the Members themselves. However, if the process is not properly conducted, I would be prepared to take the retrograde step of suspending the process. I suggest that at the beginning of the interviews, the Panel spends some time to develop some team spirit. Your continued support is greatly appreciated as we work*

to move the Authority on.” And then your response to that email is at the top on 274 and you say, “Dear Colin, I don’t feel very optimistic as PH, BA and Ron H all agreed a position at the shambolic meeting.” Now, I asked you last time round about that, so I won’t ask you any more. “It will be the same as before. You have not advised me how I should respond to the BA apology letter, perhaps Barry D is better placed. I do understand how careful you must be if a Councillor is behaving badly and continues so to do, there must be some redress. I know that PH has offended more than one person and you yourself have admitted you have to restore morale etc.” Who did you know PH had offended?

AH: *Having looked at this for some considerable time, having been taken over it on many occasions now, it would have made much more sense if I had written BA rather than PH, but I cannot say that that is what I should have done, but if you transcribe Barry Attridge, Bernie Attridge with Patrick Heesom, that then makes much more sense to that email, sir.*

HJ: *Can you explain why you put PH?*

AH: *I don’t know. I do keep a diary and it is quite easy, sir, to transcribe Nigel Steel Mortimer with S P Mortimer, it is easily done, sir. It is easily done. Just to give you an example, I was trying to think. I was asked the question the other day, who had voted to support Patrick Heesom as the Chair and I just, roving around on my computer, which I can’t give as evidence, because it is not contemporaneous and again it is backwards and forwards, it was Ron Hampson, but again I had put Bernie. Again I got Ron Hamsom transposed with Patrick Heesom, so it happens sir. I am very sorry, two initials, it is quite easy to write a wrong one by sheer mistake and of course with emails I don’t*

check. Whenever I do a blog I employ a friend I know very well to check my work because I don't always see my own mistakes.

GH: You then go on, "Councillors cannot continue to behave like this." Who were the Councillors who had behaved like that?

AH: It would make more sense if I was talking about Bernie Attridge, sir.

HJ: You put plural there, you accept?

AH: Yes, I do. Because, I'll explain again, sir. If we hadn't of gone to interview, as I have already explained, I would assume that Patrick Heesom might have infringed some code of conduct. You will understand, sir, that it was a badly worded memo, but does nothing to prove, in my humble view, that this is any evidence to show that I have found any inappropriate behaviour of Councillor Heesom. I gave my statement on oath. This was a badly worded email which unfortunately there are several before us.

GH: That's an email that is written, isn't it, in response to the Colin Everett emails, and in that email in the second paragraph, Colin Everett says, "the meeting this week was shambolic and was inexplicably adversarial at times. I have communicated my views to a number of the Councillors present and will be speaking with Councillor Heesom tomorrow. I intend to speak with all Panel Members before the interviews to seek their assurance over the commitment to the recruitment process and a fair and proper conduct." Do you challenge that account?

AH: No. Forgive me, when would you have expected me. You have asked me that before, sir. You do recollect that you have asked me about this before, and I do recall that I don't receive Chief

Executive speaking to me, so what he did after that, I am not in a position to take it any further.

And (pg 26, 15.07.11 (3 of 3)):

GH: *And at the very end of that email you say, 'My final concern is who is going to be chair of this committee. If Patrick is to do it then I think I will be asked to be replaced as I do not trust his judgement'. Do you have any comment about that?*

AH: *As I have previously told the panel Sir, I was concerned that he might try to close down things again.*

GH: *Then you were asked about Pam Webb's conduct at that meeting and I think the way you put it was that Pam Webb had disgraced herself at that meeting. Perhaps I can take you to B750.*

PD: 590?

GH: 750 Sir.

AH: Yes.

GH: *And that is an email that you sent to Pam Webb on the 16th.*

AH: Yes Sir.

GH: *Do you say anything about her conduct in that email?*

AH: No.

GH: *There is another opportunity on 749 so that is an email at the top of the page that you sent to Pam Webb, do you say anything about her disgraceful conduct in that email?*

AH: *No Sir.*

1.58. In terms of the meeting on 12 February 2009, we also consider other evidence put before us as a Case Tribunal.

1.59. We now turn to findings of fact relating to each specific incident.

2. THE PEOPLE AND PERFORMANCE OVERVIEW AND SCRUTINY COMMITTEE, ON 14 FEBRUARY 2007

ALLEGATION

4.2.1. The Respondent's conduct towards Mrs Susan Lewis, Director of Community Services

- (i) Paragraph 4(a) 2001 code – failure to show respect and consideration for others

Conduct towards Susan Lewis and Maureen Mullaney at the People and Performance Overview and Scrutiny Committee, on 14 February 2007. Cllr Heesom described the Council's Adult Social Care Directorate as "a shambles" and "shambolic" and said that a number of the managers of the council had been dispensed with and there were "more to go".

- 2.1. We have considered all the evidence presented to the Case Tribunal in terms of the meeting on 14 February 2007. We have preferred the evidence of Susan Lewis and Maureen Mullaney over that of the Respondent.
- 2.2. We have also had regard to the official minutes and to handwritten notes adduced by the witness Beverley Symonds, and also to the notes of the CMT of 15 February 2007 and a letter written by Susan Lewis on 19 March 2007.
- 2.3. In his written statement of 7 February 2011 the Respondent accepted that he described the directorate as being a "shambles". In his oral evidence he indicated this, in part, was a recollection emanating from viewing the official minutes. He explained what he was referring to was a reference to a poor level of performance within the department and not a comment aimed at any individual. We are satisfied however having regard to the evidence heard, and in particular to the official minutes, that in referring to the directorate as a shambles he was referring to the management of that department. We are

satisfied that this conclusion also applies to the Respondent's use of the word "shambolic". Maureen Mullaney gives evidence in this regard *"I felt that the questions from what Councillor Heesom had said about the directorate being shambolic, it had moved away from actually talking about the performance of our absence management to a personal issue about the running of the director of adult social care as we were then so that's how it felt"* (pg7, 21.06.11 (1 of 2)).

- 2.4. We are satisfied that the word "shambolic" was used. The evidence of Maureen Mullaney is compelling in this regard. Throughout her oral testimony she makes many references to the use of the word. When first describing the meeting she says *"And what I recall from that was Councillor Heesom criticising adult social services as we was, saying that it was shambolic"* (pg 5, 21.06.11 (1 of 2)) and later she says *"And so...but the issue that was raised at that committee by Councillor Heesom was that the directorate was shambolic and that felt a very powerful and unfair criticism"* (pg 6, 21.06.11 (1 of 2)). She goes on to mention the word "shambolic" many times.
- 2.5. We are also persuaded by the account of the meeting given by Susan Lewis to Christopher Kay, the then Acting Chief Executive and Barry Davies, Monitoring Officer, in her letter to them of 19 March 2007 in which she states "Councillor Heesom described the management of the ASC Directorate as "a shambles" and "shambolic" (B648).
- 2.6. In the course of his oral evidence the Respondent was evasive in seeking to explain the comment; initially indicating that his comment was a reference to resource issues and criticism of the system. The minutes, and the handwritten notes of Beverley Symonds, can only lead to a conclusion that he was referring to the management. His reluctance to accept this obvious interpretation was indicative of his refusal to accept a fact which could sustain the allegation of personal animosity towards Susan Lewis.
- 2.7. The handwritten notes of Beverley Symonds, taken during the meeting, record the immediate reaction of Susan Lewis. She viewed the comments as a

personal attack and in her view was “disgraceful”. We found no merit in the suggestion by the Respondent, in the course of his oral evidence, that in some way the word disgraceful was not linked to the comment he had made.

- 2.8. We do not accept as alleged by the Respondent that in some way Susan Lewis and Maureen Mullaney were over sensitive to issues being raised. Both were experienced officers and were familiar with the robust challenges made at Scrutiny Committees. Maureen Mullaney said in oral evidence *“I have to say for senior officers having done the job as long as we'd done the job to be pretty shaken is it has to be exceptional because we would be used to the challenge.”* (pg 7, 21.06.11 (1 of 2)). Susan Lewis says in oral evidence *“And I'm quite used to robust debates with members but I do feel that the comments made by Councillor Heesom in describing our management as a shambles and shambolic went far beyond what was a fair and reasonable comment and therefore that's why I complained about it.”* (pg 31, 03.03.11 (1 of 3)). Susan Lewis described how she *“always actually quite relished public meetings”* saying that she was no stranger to public meetings and had sought out work that involved attending and leading public meetings. She said in oral evidence *“And I think I've already said that I've, you know, enjoyed robust discussions with members over a long period of time. But I don't expect members who, my employer to be in a public meeting and make unwarranted criticisms about management being shambolic when there is no evidence for that”* (pg 35, 03.03.11 (1 of 3)).
- 2.9. The letter of 19 March 2007, written within 5 weeks of the event, confirms again that the phrase “a shambles” and “shambolic” was interpreted by Susan Lewis as being an attack on the management. We found Susan Lewis' evidence credible on the point. This letter was written to Chris Kay and Barry Davies. At the time Chris Kay was the Acting Chief Executive; he attended the meeting of 14 February 2007, during which the remarks were made. It is most unlikely that Susan Lewis would say anything untrue about the meeting when Chris Kay had himself been present and witnessed the discussion. Chris Kay, in oral evidence, stated that he remembered the words “shambles” and “shambolic” being used.

- 2.10. The word “shambolic” is not minuted. We have considered this matter and find that its absence is not conclusive. As was acknowledged, both the official minutes and handwritten notes of Beverley Symonds are not verbatim record. The minutes are intended as a summary of the meeting.
- 2.11. We are satisfied that during the course of that meeting the Respondent stated to either or both Susan Lewis or Maureen Mullaney that Officers from the authority had already been dispensed with and “ there were more to go”. We found the evidence of Susan Lewis and Maureen Mullaney on the point to be entirely credible. Both were consistent in terms of the nature of the words used. Whilst both acknowledged they could not be 100% certain they were directed to them (that is the words were not predicated by for example Susan or Maureen), the evidence was clear that they were said by the Respondent whilst looking at them and was said in a menacing manner. Maureen Mullaney said in oral evidence *“...and also that it was something in the context of other people have left the authority and it was said in such a way it felt a threat”* (pg 5, 21.06.11 (1 of 2)). She also said *“...there’d been a whole raft of very senior officers leaving. So we did feel that we’re next, we’re being targeted, we’re for the chopped necks and we don’t actually know why...I felt the whole context in what we’d been subjected to was actually I felt it was over and beyond what was acceptable. It had crossed the line and my issue was that it felt bordering on an abusive situation...”* (pg 7, 21.06.11 (1 of 2)). Maureen Mullaney went on to describe how the Respondent's remarks had made her feel *“And I felt that I didn't know whether there was a movement to oust Sue Lewis and myself because that’s how you felt in those situations because it had been pointed out by Councillor Heesom that he had got rid of others, he said that at that committee and you know that members are very powerful. And we saw what had happened, people had come and gone, and it was a public attack on the running of the directorate. But I can only say that’s how it felt personally and professionally”* (pg 26, 21.06.11 (1 of 2)). Maureen Mullaney said that it felt like a threat, she went on to describe how Councillor Heesom had approached her at the end of the meeting telling her not to take it personally, she said that at that time she was too upset to speak. Maureen Mullaney's

evidence is compelling and consistent in this regard. Later in cross examination she described how *“for me it is about a code of conduct and crossing that professional line and it felt...I felt abused that day and I can only comment on how I felt and I still know the impact some of that has had”* (pg 27, 21.06.11 (1 of 2)).

- 2.12. The 19 March 2007 letter from Susan Lewis to the Chief Executive refers to the later remark of “there were more to go”. The Chief Executive had been present at the meeting and clearly if those words had not been said he would have indicated the same at the time. Christopher Kay had a recollection of the meeting that varied in detail due to the passage of time. He had not been asked about the meeting when interviewed during the investigation by the Ombudsman. In oral evidence he was asked if he recalled a remark concerning managers being dispensed with and more to go, Christopher Kay replied *“I don’t recall those words. I remember the shambles and shambolic, but I don’t recall the comments about more officers to go and it’s not something I’m particularly recalled”* (pg 34, 15.06.11 (2 of 2)). Mr Kay said that he had no recollection at all of the words being said. However, his evidence appeared to change later when he indicated that he recalled *“the generality of the words being used”* (pg 47, 15.06.11 (2 of 2)). Mr Murphy sought to clarify the issue (pg 48, 15.06.11 (2 of 2)).:

MM: *The other issue that is this issue of those, it’s been suggested there was by Susan Lewis, there was an issue of there was more managers gone and there was more to go. Do you have any recollection of something like that being said?*

CK: *Something of that ilk, but I say I can’t remember the details in terms of the actual words used. I don’t remember the context in which it was said. I recall something along those lines being said and I wouldn’t argue with the witness who said that, I couldn’t confirm what was said”.*

We take into account the indication by Mr Kay that if the remarks had been made in a threatening way he probably would have remembered. We have had regard also to the evidence of Beverley Symonds who stated if she had heard the comment it would have been minuted by her. However, this evidence has to be considered in the context of the evidence heard from Maureen Mullaney and Susan Lewis. We found their recollection believable. The comments were directed at them. Lack of minuting in either the official minutes or Beverley Symonds' notes does not affect our finding.

2.13. We have regard to the CMT Minutes (D391) for the meeting held on 15 February 2007; the day following the meeting in question. This is the most contemporaneous document which makes reference to the matters of 14 February 2007. At the CMT meeting, minutes recorded Sue Lewis referred to *"the People and Performance Overview & Scrutiny Committee held the previous day and to the behaviour of Members towards Officers which needed to be addressed. In this regard, she intended to take this matter further and it was agreed that she should write to Barry Davies to outline her concerns...."*. It was further recorded (D392) that *"Chris Kay agreed to speak to the Leader on this issue and this should be an item for consideration at a Group Leader's Meeting"*. The minutes of the Group Leaders Meeting of 14 March 2007 (D403) indicate that Chris Kay did refer in general to the matter as indicated. The Leader is recorded in the minutes as referring to *"the conduct of Members in various Committees when personal attacks had been made on Officers..."*. We are satisfied from these minutes that Mr Kay at the time was concerned by the behaviour. He did not contradict the concerns raised by Susan Lewis on 15 February when the issues would have been fresh in his mind. Indeed he agreed to take matters up with the Leader.

2.14. The lack of reference to the phrase *"more to go"* in the minutes is not sufficient to cause doubt as to the credibility of the evidence of Susan Lewis and Maureen Mullaney. Both gave clear evidence of their recollection of the words and the effect of the words upon them. We were not convinced by the Respondent's evidence on the issues relating to comments at the meeting.

The following is an example of responses from the Respondent to questioning (pg 18, 20.09.12 (2 of 3)):

GH: *Your stance today is a deal more affirmative than it has been in the past about what you say you didn't say at this meeting. So you tell us today that you are certain that you did not say anything about officers having gone and more to go.*

PH: *Yeah.*

GH: *Now, in the past it has at least appeared to me that what you were saying was, "I can't really remember what was said, the word 'shambles' appears in the minutes therefore I did say it, but the word 'shambolic' and any reference to officers having gone and more to go doesn't appear in minutes and therefore I did not say those things."*

PH: *No, I think that's tautological. The fact that it's not in the minutes is evidence that it wasn't said, with respect.*

GH: *Would you accept that if it was in the minutes it would be good evidence it was said, if it doesn't -*

PH: *No, I'm not going there, sorry.*

GH: *- appear in the minutes it is far from clear that it is an indication that it wasn't said?*

PH: *I'm not going there, I mean it wasn't said so -*

GH: *Well I'm going to take you there, so you are going to have to I'm afraid. Okay? Would you accept that merely because the words don't appear in the minutes indicates one way or another whether or not the words were used?*

PH: *No, I take it that's what's in the minutes is the approved record of what was said.*

GH: *You know, don't you, that minutes are not a verbatim account of what was said?*

PH: *We've been here that if an incident of the kind that you describe was raised all the professional and preferred opinion on it is that it would have been recorded and it wasn't recorded. No such thing was recorded.*

2.15. The Respondent in his written statement 12 September 2012 states: *"This therefore is not an allegation of a full on verbal assault, but something I allegedly said that might have meant one thing, or might have meant another. If which I do not admit, I made these comments, and an objection was put to me earlier, I would have remembered the nuances of any such comment. However of course they were not. How am I therefore expected to remember?"* (C83, Para 23)

2.16. The Respondent proceeds thereafter in his statement to quote from his statement 7 February 2011 where he gave a detailed account of the meeting. He denies using the words "more to go" and relies upon the official records. In his oral evidence he indicated he had a clear recollection of the meeting. However, this was not his position in his original written statement. He alleges that Susan Lewis and Maureen Mullaney are lying on the point or seriously deluded. We find no basis to reach such a conclusion. The fact the words "more to go" are absent from the minutes is not conclusive. They were comments directed at the two individual officers and not to the meeting generally. The Respondent in questioning stated (pg 17, 20.09.12 (2 of 3)):

GH: *Your comments were directed at Susan Lewis and Maureen Maloney, it's an obvious proposition, they are the two who are sat in front of you, they are the two that are answering the questions.*

PH: *Only in as much as they were the representatives before the meeting. It's no point in me asking ... I don't know whether there was an executive member there.*

GH: *And there are ...*

PH: *I don't think there was actually. Have you got the membership list there?*

GH: *I'm not interested, to be blunt, Councillor Heesom. If Susan Lewis and Maureen Maloney who were on the sharp end of these comments tell us that they were made, why should we not believe them?*

PH: *Well because nobody else agrees with them.*

GH: *You're saying "nobody else," you don't.*

PH: *Produce somebody who does.*

GH: *But why would they lie about that?*

PH: *Well, I think we've been through that already they're defensive, they've got a serious attitude about defending ... it's one of the features, I'm afraid, of most of the contact the members have had with this department, that it's territory, you keep off my territory or you are not on board.*

GH: *Merely because they are defensive doesn't mean that they are going to make up an allegation that you said, many officers of Flintshire have already gone and there are more to go.*

PH: *I don't know where she's got that from.*

GH: *Well, she's got it from your mouth, hasn't she.*

PH: *Oh, no, no....."*

2.17. Both, Susan Lewis and Maureen Mullaney, on our assessment, were credible witnesses who had clearly been affected by the meeting and in particular the comments made by the Respondent to them. There are records contemporaneous to the incident confirming their taking issue with the comments as alleged. Both the official minutes and the handwritten notes corroborate the fact that Officers took exception to what had been said. Both oral and written complaints were made close to the date of the meeting. The Respondent also acknowledged that the issue of an apology being made to Susan Lewis had been raised with him at the time. This again is indicative that issues of concern had arisen at the Scrutiny Meeting. We find the words "more to go" were uttered as described by Susan Lewis as being "menacing". It is a general description as to the Respondent's conduct which was described by Helen Munden another officer. She was not at the meeting but provided that as a description of how the Respondent came across in some of her dealings with him. In terms of the uttering of the words we prefer the evidence of Susan Lewis in how the words were conveyed.

2.18. The Respondent challenges the credibility of Susan Lewis on the basis of her statement as to a later meeting in March 2007. She complains the Respondent had in response to an award being presented to her department stated "*I can't stomach this*". This incident is not the subject of an alleged breach. Any uncertainty as to the facts at this March 2007 meeting are ancillary to our considerations. We are satisfied any discrepancy, indeed if there is such a discrepancy, does not affect the credibility of Susan Lewis' evidence as regards the Scrutiny Meeting. This includes any discrepancy as to whether or not Press were present.

2.19. The reticence of the Respondent to accept in questioning that the words "*more to go*" could be interpreted as a threat, lead us to the conclusion that he is

seeking to diminish his actions. We do not see those words as being a political value judgment regarding the performance of a department within the Local Authority (pg 18, 20.09.12 (3 of 3)):

GH: *Let's move on, and I am going to ask you a hypothetical question now so what I am asking you is if, if the words 'many officers have gone and there are more to go' were used, would you accept that that was inappropriate?*

PH: *No I am not going there with that one, because you could come up with any form of words you know, and any common sense response would be that you know, the reaction would be different with different people.*

GH: *Right, well I am going to ask that question again –*

PH: *I mean I'm... no –*

GH: *If –*

PH: *(00:40:30 s.l. I'm not to know that). You are in charge.*

GH: *If the words 'many officers have gone and there are more to go' were used, would you accept that those would have been inappropriate words?*

PH: *They might well have been. But you know –*

GH: *At best -*

MM: *Well sir –*

GH: *Sorry. Go on.*

MM: *- please can he finish?*

PH: *They might well have been, but you know, I am not going there because it's fabricated.*

HJ: *You deny that they were used?*

PH: *I do sir.*

HJ: *It's been put to you in a hypothetical situation –*

PH: *I do and I don't like –*

HJ: *Do you accept in a hypothetical situation that they were inappropriate?*

PH: *Yes, but I don't like the hypothetical aspect to it because it's leading.*

GH: *How is it leading?*

HJ: *Well not leading, I have on record that you deny that the words were said.*

PH: *Indeed yes.*

HJ: *We have to make findings of fact in this case and we need to know what your evidence is. If we were to find for example, that the words were said.*

MM: *Well sir it's context driven isn't it, because if somebody says there's more managers gone, more to go, it could be completely –*

HJ: *Well you know the context which Sue Lewis and Maureen Mullaney have put the words.*

MM: *Sir, I think that's right, if it is put in the context, the threatening way –*

HJ: *Yes.*

MM: *- but equally sir –*

HJ: *Is there any other interpretation other than the threat that could be put on the words?*

MM: *Sorry sir could you repeat the question?*

PH: *Yes, I suppose it's not a threat, it's a commentary thing that somebody might say and it's a well-known view among councillors.*

HJ: *I think you have put that in one of your defence statements.*

PH: *Yes.*

GH: *There are only two interpretations to the comments aren't there? One is that it is a warning, the other is that it is a threat.*

PH: *No, it, you know, it could be referred to in the sense that it's a historical, it's a piece of history.*

GH: *Well how is, and there are more to go, a piece of history?*

PH: *Well I mean that's a precise extension of the problem I am balking at of what you are saying, because it's a commonly accepted fact that a lot of officers were moved away out of the*

housing section, you know, and we are not talking about the housing section here actually.

MM: *Sir, just one point, Councillor Heesom looks tired to me, I don't want –*

HJ: *At the moment no, I think we are able to proceed and questions are being answered fairly straight forwardly.*

MM: *Sorry, sir if Councillor Heesom isn't tired, let's carry on, I just, I don't know whether we could check with him, he looks tired to me, but sir that's –*

PH: *Well I am a bit cross at this, no secret, you know, I have now come to learn that there is a very artful way of doing things in that area.*

HJ: *What do you mean artful? By who?*

PH: *Contrivance. Mrs Lewis. Mrs Lewis frankly. Mrs Lewis, I have come to realise now she is an artful contriver. She is defensive, she fabricates the case and there are ample examples of it in the case of this complaint.*

MM: *Sir, can I say in terms of this hypothetical question, I have got two objections effectively to it. One is that it's context driven, because of course it could be a completely noxious statement, it could just be –*

HJ: *Well that's what I am trying to understand from the witness.*

MM: *But sir, secondly of course, even Mrs Lewis says it is open to interpretation. So those are my objections, he can't sensibly be*

put that this must be automatically a threat, because it is all context driven, somebody could say –

HJ: *That's why I want the witness to tell us what his view is. If somebody says to you 'a number of officers have gone and there are more to go' what interpretation would you have on such a phrase?*

PH: *Well I wouldn't go so far as to say it was that kind of insidious threat. It's a comment that could be made about what has actually gone on, but the question is begging that if there is, for instance, a vulnerability in a situation, it could be used maliciously.*

HJ: *Is it a reasonable response that somebody interprets it as a warning?*

PH: *Well that would depend on the person –*

HJ: *Okay.*

PH: *- we have got a couple here, you are very kind, you are right.*

HJ: *Is it reasonable that it could be interpreted as a threat?*

PH: *No, from those people, from these people, yes, I am not saying that that wasn't what they were saying.*

2.20. We find that the words uttered by the Respondent were seen by Officers and were intended to be seen by Officers as a threat.

2.21. Susan Lewis and Maureen Mullaney were present for part of the Scrutiny Committee meeting held on 14 February 2007. The Respondent was present as a member of the Committee. At the time of the meeting Susan Lewis was

Director of Adult Social Care / Social Services and Maureen Mullaney was Head of Adult Social Services. The reason for their attendance at the Scrutiny Committee was that the Committee was carrying out the scrutiny of the sickness level and implementation of “return to work” procedures in terms of two Council Departments, one of which was Adult Social Services.

- 2.22. During the meeting the Respondent, in reference to management of the Adult Social Care Directorate described it as “a shambles” and “shambolic”. We are satisfied in using the words “shambles” and “shambolic” he was referring to the management of the Directorate.
- 2.23. During the meeting the Respondent, whilst looking in a menacing fashion at Susan Lewis and Maureen Mullaney stated that a number of Managers on the Council had been dispensed with “and there were more to go”. The intention and effect of this statement was one of a threat to either or both of the officers.

3. HOUSING ALLOCATIONS – THE DODDS EXCHANGE

ALLEGATIONS

4.2.3. The Respondent’s alleged behaviour concerning housing allocations

- xi. Paragraph 4(a), 2001 code – failure to show respect and consideration for others

Cllr Heesom’s conduct regarding the Dodd mutual exchanges between 27 April 2007 and 21 November 2007 and the Wrexham Council review of that decision.

- xii. Paragraph 4(b), 2001 code – not do anything which compromises, or which is likely to compromise, the impartiality of the authority’s employees.

Cllr Heesom's conduct regarding the Dodd mutual exchanges between 27 April 2007 and 21 November 2007 and the Wrexham Council review of that decision.

- xiii. Paragraph 4(a), 2001 code – failure to show respect and consideration for others

Cllr Heesom's letter to Mrs M of 9 August 2007, inter alia, stating "I cannot see any reason why you do not live in each others houses at the very least to see if the different properties suit you both.

- xiv. Paragraph 6(1)(b), 2001 code - behave in a manner which could be reasonably regarded as bringing the office of member or the authority into disrepute

Cllr Heesom's letter to Ms M of 9 August 2007, inter alia, stating "I cannot see any reason why you do not live in each others houses at the very least to see if the different properties suit you both."

- xv. Paragraph 7(a), 2001 code - used his position improperly to confer on or secure for any person an advantage or disadvantage

Cllr Heesom's letter to Ms M of 9 August 2007, inter alia, stating "I cannot see any reason why you do not live in each others houses at the very least to see if the different properties suit you both."

- 3.1. We make the following findings of fact as to the mutual exchange of Dodd.
- 3.2. The Homelessness Act 1997 disqualified a Councillor from involving himself in the decision making process as to housing allocations in his own ward – reiterated by legislation in 2002/2003.

- 3.3. On 24 November 2004, a suspended Possession Order was made in favour of Flintshire County Council against [Ms M]. The Respondent was present at the County Court hearing and had assisted [Ms M].
- 3.4. In late 2006 Mr and Mrs Dodd sought a transfer of their Council tenancy.
- 3.5. On 8 November 2006, Mrs Smallwood on behalf of Flintshire County Council wrote to Mrs Dodd confirming that her property required damp work to be undertaken. The Council agreed to undertake the work and offered to decant Mr and Mrs Dodd to a temporary property whilst the work was undertaken. Medical conditions are noted which would attract five medical points as to any application for transfer.
- 3.6. On 14 December 2006 (B699) Mr Richard Birchett, Interim Head of Housing, wrote a letter to the Respondent setting out his understanding of the law and current practices as it affected Councillors and housing allocation. He refers to current practice.

“The Law and current good practice are clear that members should not be involved in the selection of potential tenants for properties in their wards.”

“As you are aware we have an endless balancing act to perform in juggling the needs of individuals with their aspirations for living in a specific community and our statutory obligations to allocate property in accordance with current statute.”

- 3.7. On 27 April 2007, a formal application was made by Mr and Mrs Dodd and [Ms M] for Flintshire County Council to consider a mutual exchange of their properties (P1969).
- 3.8. On 2 May 2007, the application for a mutual exchange by Dodd and [Ms M] was refused by the Housing Officer, Elaine Williams. She wrote to Mr and Mrs Dodd (P1967) advising the *“consent to Mutual Exchange has*

been withheld by the Council” referring to Ground 4 of the Housing Act 1985 Section 92 Schedule 3 – The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

- 3.9. On 10 May 2007 (P3209), a review of the decision of Elaine Williams was carried out by Peter Wynne, Senior Housing Officer. He upheld the original decision of the Housing Officer. He notes under points of consideration *“if the [the M] family were already living in a two bed parlour house they would be awarded 10 points for overcrowding (the 2nd living room would not be taken into consideration as a bedroom). Therefore we cannot condone a family moving to an overcrowded situation. He also states “Family houses are in short supply, therefore we are obliged to make best use of the limited vacancies that occur, for this reason it would not be our normal practice to award a 3 bed house to a couple. We would not take into consideration children with access rights as they have a permanent residence with the other parent.”*
- 3.10. On or before 16 May 2007, the Respondent discussed the issue of the exchange with Barry Davies (the Monitoring Officer). This discussion is referred to in Barry Davies’ email of 16 May 2007 to Richard Birchett (D191).
- 3.11. On 17 May 2007, a review was carried out by Mr Birchett who concluded that the Dodds would be under occupying a three bedroom house if the exchange were permitted.
- 3.12. On 18 May 2007 (D192), the decision of the reviews is relayed to the Respondent and it is noted that his reaction is that he *“is clearly extremely annoyed”*. The Case Tribunal find that the Respondent was indeed annoyed by the outcome of the review. We do not find, as he maintained in evidence, that he was not aggravated by the stance of the local authority. In evidence, he played down the level of annoyance but there is evidence, for example, emails at D191 by Council officers noting the

Respondent's anxiousness, email of Barry Davies of 18 May 2007 (timed at 16.31) noting the Respondent "*is extremely annoyed*" (D194), the Respondent's email to Neal Cockerton (Acting Director of Community and Housing Services) of 17 October 2007 (P1095) where he states "*I cannot begin to express my anger and frustration*". The attempt by the Respondent to argue that he was not annoyed but merely concerned for his constituents, did not ring true in the course of his evidence.

- 3.13. On 21 May 2007, an email (D199) was sent by the Respondent to Barry Davies attaching a statement (D196) expressing the Respondent's concerns and noting his understanding of factual matters. It is further noted "*I am deeply concerned that in this case the exchange is being unreasonably prevented.*"
- 3.14. On or around 21 May 2007, Richard Birchett wrote to the Respondent (D197) advising that a review has been undertaken of the Housing Officer's decision. It noted that the Senior Officer, following completion of the review of the facts in the matter, had supported the original decision. It noted that the original decision was based on the fact that if it were to be allowed, Mr and Mrs Dodd would be moving into a house larger than their needs entitled them to. It noted further the fact that [Ms M] wanted to move to a two bedroom parlour house "*is in essence irrelevant*".
- 3.15. On 24 May 2007, an email (D200) sent by Richard Birchett to Barry Davies noted that "*Cllr Heesom has written to Cllr Attridge following his receipt of my letter regarding the review of the decision to refuse the mutual exchange between Mr and Mrs Dodds and [Ms M]. Bernie has shared with me the contents of Cllr Heesom's letter. Cllr Heesom is not content with the outcome of the review, nor is he particularly polite in his description of me.*" We do find that the Respondent had written to Councillor Attridge (Executive Member for Housing) though we have not had sight of that letter. We see no reason why Richard Birchett would create, in effect, a totally false set of circumstances in concocting the existence of such a letter. It was suggested by the Respondent that Mr

Birchett was full of “vitriol and bitterness” towards him. We saw no evidence of such views nor any substantive basis for finding any such motivation. The note is consistent with the tone and tenor of a number of letters written by the Respondent to Council officials. The existence of such a letter is consistent also with the letter written by the Respondent on 25 May 2007 (D202 – D203) where he states that he has now referred the matter to the Cabinet Member. The Respondent in his evidence suggested that it was Councillor Attridge who had first approached him about the transfer. Such explanation does not find favour with the Case Tribunal. We are satisfied that it was the Respondent who approached Councillor Attridge first about the exchange. The suggestion in some way that Councillor Attridge had approached the Respondent about a matter in which the Respondent, even by the middle of May 2007 was highly involved and, according to our findings, annoyed, about the manner in which the Council had dealt with it, is not sustainable. There is no evidence of the Executive Member approaching the Respondent in the first place about the issue.

- 3.16. On 25 May 2007, Barry Davies wrote to Richard Birchett (D200) outlining further issues raised by the Respondent and suggesting a further independent review would be helpful.
- 3.17. On 25 May 2007, the Respondent wrote to Barry Davies (D202). The email sets out examples of other cases in which the Respondent believes the Council had exercised a greater discretion than that shown in the [Ms M]/Dodds exchange to date. The email further notes *“I have now referred this matter to the Cabinet member for housing Cllr Attridge, and he has asked that I refer the matter to yourself and that you meet us today Friday to confirm his intention to override the officers objections and enable the exchange.”*
- 3.18. We find that the Respondent was involving himself in the decision making process by submitting to the Legal Officer that the Executive Member for Housing was going to override the Officer’s decision. The Respondent,

who was the Ward Member for Mr and Mrs Dodd, was indicating a wish to involve himself in a meeting to override an Officer's decision. The email refers to arranging a suitable time for "us to review the matters". This is clear indication that the Respondent was to involve himself in the decision itself. We do find, however, that no such meeting took place and, indeed, there was no indication that Councillor Attridge at any time had stated that his intention was to seek to override the Officer's decision. The letter also reiterates our finding that there was a significant degree of annoyance by the Respondent as to the time and attention he had to commit himself to matters involving the Dodds/[Ms M] exchange. He ascribes this to Officers actions with some annoyance on his behalf.

- 3.19. On 1 June 2007, an email to Barry Davies was sent by Sylvia Connah who was the P.A. to the Chief Executive (D204). It notes as follows: "*Patrick told me that he had a very difficult situation concerning Housing and two families exchanging houses. He complained that neither Gerald nor Richard were available to speak to and said that you had agreed before you went on leave that the matter was unreasonable. He wanted Chris to know that as Local Member he was going to tell the 2 families to exchange.*" The contents of this email are disputed by the Respondent. We, as a Case Tribunal, did not hear from Sylvia Connah. The email, however, was put before us as evidence. We are satisfied on a balance of probability that the relevant section of the email accurately reflects what was said by the Respondent to Sylvia Connah. In his evidence, the Respondent stated he had no recollection of the conversation. We do not accept that in some way the contents have been fabricated by Sylvia Connah, an individual whom the Respondent acknowledges would have no personal issues with him. He complains that the personal assistant had no knowledge of policy issues and as a result would be more prone to misinterpreting comments made. We find to the contrary, that a personal assistant whose role involves accurately recording what was said, is more likely to record accurately those comments when she has no direct knowledge of the policy issues. It is more likely than not that she would accurately relate verbatim what was said to her by the Respondent. Sylvia

Connah was a P.A.; taking accurate messages is an everyday task for a P.A.; it is not necessary to have any knowledge of policy issues to be able to take an accurate message. We therefore find that as at 1 June 2007, the Respondent had indicated he, as Local Member, was going to tell the two families to exchange if the matter could not be resolved favourably for the tenants. He also had indicated a view that Barry Davies had stated that the matter was unreasonable. This again, in our findings, was not an accurate reflection of the views of Barry Davies. Mr Davies had acknowledged there were issues to be considered but at no time had indicated that the decision and subsequent reviews were anything other than correct.

3.20. On 11 June 2007, an email (D205) was sent by Richard Birchett to Barry Davies relaying a message he had received from Councillor Bernie Attridge. The email states: *“Bernie Attridge has rung me this morning to tell me that Patrick Heesom has left a message on his answerphone advising him that you’ve agreed the mutual exchange can take place and that I should arrange to have the paperwork done as soon as possible. I assume that this is Patrick Heesom being his usual self and that you’ve done nothing of the sort!”* We again find that this email accurately reflects a conversation between Richard Birchett and Bernie Attridge. We see no basis for suggesting that in any way Richard Birchett has fabricated this email. It is a record of a conversation with Bernie Attridge made soon after that conversation. The email notes a false suggestion made by the Respondent that Barry Davies had agreed the mutual exchange. No such agreement, in our findings, had been given. We again reject the view that Richard Birchett has acted out of vitriol and bitterness.

3.21. On 11 June 2007, an email (D205) was sent by Barry Davies to Richard Birchett which notes the context of authorising the mutual exchange *“Correct. I would not presume to suggest I have the authority to do so.”* The email does note that there had been a conversation between Barry Davies, Bernie Attridge and the Respondent. We make no findings as to whether these were separate conversations or a single joint conversation,

involving all three. The email further notes *“By the way Patrick tells me that if it is not agreed then he is going to advise the tenants to exchange anyway!!! I have naturally informed him of the possible implications on the tenants in those circumstances.”* We find that the Respondent had indicated for a second time that he intended to advise the tenants to exchange if the matter was not resolved favourably. The conversation between him and Barry Davies reiterated the message which was given to Sylvia Connah on or around 1 June 2007. We find that the Respondent was advised by Barry Davies that there were serious implications to the tenants if the Respondent were to advise them to move properties without appropriate authority.

- 3.22. On or around 16 June 2007, papers were referred to Denbighshire County Council for there to be a further review of the decision to refuse the mutual exchange.
- 3.23. On 18 June 2007, the Respondent writes to the Acting Chief Executive of Flintshire County Council, Chris Kay, as to the refusal to authorise the exchange. The letter refers to an unfair handling of the application and gives reasons. It refers to this being *“a cruel and misplaced action by this senior officer”*. We find the referral to the senior officer in this letter as referring to Richard Birchett. It was suggested in evidence that the senior officer may have been Gill Conway. In the context of the letter all prior reference in the letter was to Richard Birchett. The plain and obvious reading of the meaning of the letter is that it refers to Richard Birchett. The letter does appear to acknowledge that the Chief Executive is unable to act.
- 3.24. On or around 21 June 2007, a further letter was sent by the Respondent to Chris Kay (D212). It refers to a discussion with the Chief Executive which we find, on a balance of probability, would have occurred between 18 and 21 June 2007. It seeks action from the Chief Executive and requests that letters are sent out authorising the exchange. We find on a balance of probability that the reference to ensuring that *“letters are sent”* in the final

sentence, is to letters to each of the tenants, authorising the exchange. In his evidence, the Respondent sought to state that in some way the reference to letters was to reviews being carried out. We are fully satisfied that the letter, and the suggestion that the Chief Executive had authorised the transfer of mutual exchange, was a request to send out authorisation letters to the tenants. The Chief Executive would have had no authority to interfere in the decision making process. The Respondent, as Ward Councillor, would have had no power to instruct the letters authorising the exchange to be sent.

- 3.25. On 29 June 2007 (P1411), Richard Birchett spoke to Paul Quirk, Head of Housing at Denbighshire County Council. Mr Quirk indicated that the matter had been reviewed by Denbighshire County Council but that due to a potential conflict of interest i.e. an issue involving the Respondent's ward and the fact that the Respondent's partner was Leader of Denbighshire County Council, it would not be appropriate for them to advise. We find no evidence of any wrongful action or undue interference in respect of the refusal of Denbighshire County Council to advise further.
- 3.26. Between 2 July and 27 July, Wrexham County Borough Council were requested to carry out a review. The instructions comprised of two emails (16 July 2007 (D362) and 17 July 2007 (D364)) with two attachments, which we find on the balance of probability are the documents which can be seen at P2665 (mutual exchange first review) and P2661 (mutual exchange second review). The response of Wrexham County Borough Council was by way of an email dated 27 July 2007 by Andy Lewis, Chief Housing Officer. The emails and attachments were not at the time copied to the Respondent. The attachments raised the fact that the Dodd's house was a two bedroom parlour house, that Mr Dodd's children (one of whom was 15) stayed with him on contact visits, [Ms M's] circumstances in particular the ages and sex of her dependant children, and that her property was a three bedroom house. The extent of which this Case Tribunal has to make findings in terms of the decision to refuse the mutual exchange is, in our view, marginal. The Respondent has maintained that

throughout he acted as a local Councillor on the ground. He takes issue that examples where a parlour room had been treated by Council officers as a bedroom were not fully considered. The point made by Peter Wynne, Senior Housing Officer, who was the initial officer to review the decision of Elaine Williams, was that if [the M] family were already living in a two bedroom parlour house, they would have been immediately awarded 10 points for overcrowding and that the second living room at the Dodds would not be taken into consideration as a bedroom. He stated that the Authority could not condone a family moving into an overcrowded situation. This was not a situation of an initial allocation of property – it was an approval of an exchange. The written policy in 2007 did not count a parlour room as being a bedroom in terms of considering overcrowding. A parlour room was an issue which had been raised and considered by the various people who reviewed the decision. We accept that the Respondent's specific comments had not been relayed to any reviewers outside Flintshire County Council. This, in our finding however, had no material effect to the lawfulness of the decision. There remained the issue of under occupancy by the Dodds of a three bedroom house. Whilst the Respondent had sought to raise various examples where the children having contact with a non-resident parent had been considered in other cases, those examples were investigated by Flintshire County Council and were not on all fours with the position of Mr and Mrs Dodd.

3.27. To the extent that we have to make findings in terms of the lawfulness of the decision to refuse the mutual exchange between Mr and Mrs Dodd and [Ms M], we find as follows:

- a. That the decision was lawful. It followed the statutory provision for the approval of such mutual exchanges. The decision was not challenged by either party to the application in terms of an application to the County Court. No complaint was made by the individuals concerned as to the lawfulness of the decision, save following the aborted attempt to switch houses. A complaint was made by Mrs Dodd of maladministration to the Ombudsman.

This complaint was not followed through by her and was closed by the Ombudsman.

- b. The decision of the Housing Officer, Elaine Williams, was reviewed on the following occasions
 - (i) Peter Wynne on 10 May 2007
 - (ii) Richard Birchett on 17 May 2007
 - (iii) Unofficially by a Housing Office at Denbighshire County Borough Council
 - (iv) 27 July 2007 by Wrexham County Borough Council – it would appear by 8 separate officers

We reject the contention made by the Respondent that the brief in some way was “skewed”. We come to these conclusions based on evidence that we have heard and the primary documents that we have read.

- 3.28. On 27 July 2007, an email (D215) from Wrexham County Borough Council indicated they had carried out a review and all eight officers, within the housing department, who were requested to review the details, unanimously concluded that the refusal to grant the exchange was the correct decision. This was on both the grounds of under occupation by the Dodds and over occupation by [the M family].
- 3.29. On 31 July 2007, an email (D218) was sent by the Respondent to Neal Cockerton who was then Acting Director of Community and Housing Services. The email took issue with the reasoning of Wrexham County Borough Council and raised issues as to whether they had been properly briefed.
- 3.30. On 1 August 2007, an email (D221) from the Respondent to Barry Davies raised issues whether Richard Birchett had properly briefed Wrexham County Borough Council as to the issues in the case. It raises also *“Is this*

Council a collection of paid officers who decide on issues regardless of the elected members advice and responsibilities”.

- 3.31. On 1 August 2007 Barry Davies responded to the Respondent stating Neal Cockerton was to make further enquiries relating to custom and practice in order to satisfy himself that it had been reviewed properly (D353).
- 3.32. An email (D223) was sent on 4 August 2007 to Neal Cockerton by the Respondent raising issues as to why the Respondent believed the decision to refuse was wrong. The Respondent further states *“Can I make it clear that I cannot justify a refusal in this case”*, and further *“My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly”*.
- 3.33. The Respondent in his oral evidence sought to try and explain the reference to “court” as being in some way linked to a tenant’s personal position. We reject such a contention. We have noted in this decision the Respondent’s initial response to questioning (pg 3, 25.09.12 (1 of 4)):

GH: *And when you say, ‘If it gets to court then I am sure the judge would rule accordingly’, what do you mean by that?*

PH: *That if there was any eviction notices served on anybody, you know, I would have supported any representations that tenants wanted to make to a judge in the court on such a position they might be in.*

GH: *This was an email of the 4th of August, what eviction notices were going to be served on anybody?*

PH: *Sorry?*

GH: *This is an email of the 4th of August –*

PH: Yes.

GH: - 2007. What eviction notices do you think were going to be served on anybody?

PH: No, but it is something that is somewhere down the road, you know, I am not sure that there wasn't some apprehension on the residents in this case about their position.

GH: There's no question of an eviction notice here is there? What has happened –

PH: No, no I was being cautious.

GH: Well, you will forgive me, but even the most cautious approach could not have contemplated an eviction notice in these circumstances could it?

PH: Well I mean we could argue about that, in my view there was a fairly frequency that I received representations about from some of the tenants that, you know, they were served with a court notice, you know, on occasions when they felt aggrieved.

HJ: But on the 4th of August –

PH: Yes.

HJ: - was there any indication that either of these tenants, Mrs Dodds or [Ms M] was facing an eviction notice?

PH: No I was being cautious sir.

GH: What I am suggesting to you is even the most cautious of approaches could not have contemplated the use of an eviction

notice in this circumstance. All that has happened up to now is that two people who want, or three people in fact, who want to effect a mutual exchange have been told that they can't. So their housing status is unchanged. Explain to me how an eviction notice could ever have become relevant in those circumstances?

PH: *I think what I am trying to say there is that from the, certainly one of the tenants, she was very apprehensive and insecure about her position. Nothing more.*

GH: *Which tenant?*

PH: *I think [Ms M] was a very unhappy and distressed tenant.*

GH: *How was she going to be subject to an eviction notice as a result of what had happened to do with the mutual exchange?*

PH: *It doesn't necessarily say that this was a direct part of the mutual exchange, it's just that I know that that particular tenant had some distress about her tenancy.*

GH: *Well you say that it doesn't say that this is part of the mutual exchange, in fact it says exactly that doesn't it?*

PH: *Sorry?*

GH: *In fact it says exactly that. So paragraph 8 of your email says, 'My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly'. Then it has to be the mutual exchange doesn't it?*

PH: *Yes it is the position of one of the participants in the mutual exchange.*

GH: *Well no, the it is not the position of one of the participants to the mutual exchange, the it is the mutual exchange itself isn't it?*

PH: *No, I mean I could have been more explicit there, I can see that, but that's really what I am –*

HJ: *Do you want to have a look at the sentence?*

PH: *I have just re-read it and I mean I could have been more to the point.*

GH: *Well you have been very to the point haven't you? The sentence is very easy to understand, it is very clear in its interpretation, 'My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly', it is the mutual exchange, it can't be anything else can it?*

PH: *In regard to one of the particular people involved yes.*

GH: *Were you threatening Neil Cockerton with taking this mutual exchange to a court?*

PH: *Oh I don't think that for one minute, I don't really see how you can conclude that frankly.*

GH: *Were you suggesting to Neil Cockerton that one of the parties to the refused mutual exchange might take it to court?*

PH: *No, I was simply recording there that I suppose there was a distress, one of the two was anxious about her tenancy.*

GH: *Where do you record that there?*

PH: *Well not because, you know, I could have been more explicit, I can see that.*

GH: *Well, there is no reference at all to a distressed party to this exchange there is there? You don't say there do you that [Ms M] is sort of, you know, very distressed or whatever.*

PH: *No, but I mean we are talking about two parties in this position. And in one sense it wouldn't have been proper for me to have opened a dialogue about the state of mind of one of the parties other than to say that one of them, you know, was anxious about her position.*

GH: *Well you could have said that couldn't you? But you didn't?*

PH: *Well I concede that you know, I could have been more particular in that sentence.*

3.34. The Respondent was aware that tenants giving up occupation of a property let to them under a tenancy agreement were at risk of eviction. We reject the contention that reference to legal proceedings was not related to the exchange of properties. In a later email of 6 August 2007 to Neal Cockerton, the Respondent makes it abundantly clear (P1431) he is referring to the exchange.

"Thanks again for responding over the weekend.....

..... We have to have this exchange agreed.....

In terms of policy and what has been generally allowed then there have been no grounds for refusing the exchange. There have also been no questions of outstanding rents or bad tenancy records.

These are good tenants and good people.

We need to be helping and serving good tenants.

There is lots I could say, but I want to see this agreed and not escalate into a highly legal challenge.

I sincerely hope that we can see this agreed Mondayish”

3.35. We find, as at 4 August 2007, it was contemplated in the mind of the Respondent that there would be some future form of legal action involving the mutual exchange. The legal action contemplated by the Respondent, in our finding, was possession action by Flintshire County Council against the tenants (Mr and Mrs Dodd and [Ms M]) following an exchange of properties by them where such an exchange had not been authorised by the officers of Flintshire County Council. The Respondent in his evidence acknowledged that he would only have met Mr and Mrs Dodd and [Ms M] to discuss the matter at his surgery. His surgery was held on a Saturday morning.

3.36. We find the timeline in matters to be significant:

- a. Saturday 4 August 2007 - on the basis of the evidence of Mrs Dodd and the Respondent, on this date a discussion took place between them as to a letter being written in connection to a change in arrangements for their respective households. The Respondent's evidence was at best vague in terms of his dealings with Mr and Mrs Dodd and [Ms M] as at 4 August 2007. His evidence was inconsistent and contradictory and, we find, deliberately so. At the commencement of the Tribunal, the Respondent submitted a further witness statement. He states he acted throughout only *“in respect of the housing needs of two families”*. He raises the issue of inconsistency in failing to deal with a parlour room to counter overcrowding issues. However, he gives no explanation until his later statement as to the contents and interpretation of the letter he wrote and dated 9 August 2007. At paragraph 122 of his further statement, he states as follows: *“The Dodds and [Ms M] explained to me the wholly limited basis for what they were doing”*. He further states

that it was explained to him that [Ms M] was not even moving any furniture. He confirms that [Ms M] was under no illusions that the move “*was not anything other than a temporary arrangement*”. The Respondent states at paragraph 124 “*they both said that it was for a short period of time*”. The Respondent did not in his statement outline his detailed recollection of a meeting on 4 August 2007 at his surgery. In oral evidence to the Case Tribunal, the Respondent indicated that he had little involvement with [Ms M]. The main involvement being that her children attended the school where he was a Governor. He later acknowledged that he had accompanied [Ms M] in 2004 to the County Court when a Possession Order was made. On 21 September 2012 in his evidence to the Case Tribunal, he indicated that he did not think that [Ms M] had ever been to his surgery and he did not believe that he had ever seen [Ms M] and Mrs Dodd together. In evidence on 26 September 2012, his memory having been jogged, the Respondent was of the view that Cora Dodd and [Ms M] were together at his surgery on 4 August 2007. He maintained that the letter written on 9 August 2007 reflected what Cora Dodd and [Ms M] had told him in the surgery. The Respondent’s evidence was that he did not give the letter dated 9 August 2007 direct to [Ms M] but handed a copy addressed to her to Cora Dodd for delivery to [Ms M]. We know that [Ms M] had the letter as she handed it to Elaine Williams on 15 August 2007.

- b. On 4 August 2007 at 10.13am, an email (D223) was sent by the Respondent to Neal Cockerton. The Respondent in evidence did not dispute that the email was sent but did dispute that it was sent at 10.13am on Saturday 4 August 2007. We find that it was sent at that time. There is no indication of any other emails being sent or received by the Respondent where the timing or date are incorrect. The email itself acknowledges that it was sent “out of office hours”. It was answered on the following date,

namely the Sunday. In our findings, the email is significant for the following reasons:

- (i) it raises issues again as to the validity of the refusal to grant the mutual exchange. It argues both the overcrowding issue and the under occupation. It analyses and questions the conclusions of the Wrexham review. This email was on the same date as the Respondent meeting Cora Dodd and [Ms M] at his surgery. There is nothing in the email to refer to a temporary exchange of properties. The matter which is at the forefront of the Respondent's mind as at 10.13am on 4 August 2007 is the refusal, in his eyes unjustly, of the mutual exchange.

- (ii) The Respondent makes it clear that he cannot justify a refusal to grant the exchange. We note, as an aside, it was not for him to justify the refusal. It was not his decision. The decision had been made and at no time did the Respondent advise either Mr and Mrs Dodd or [Ms M] that the decision was final until either it had been successfully appealed or overturned in review. The email is significant for the following sentence: *"My advice was that this exchange should go ahead and if it gets to court then I am sure the judge would rule accordingly"*. This is reference to advice, either having been given or to be given, to Mr and Mrs Dodd and [Ms M] to allow the exchange to proceed. It is not indicating that his advice is "the exchange should be allowed". The reference to court are references to a potential possession action to seek to evict the tenants if they did proceed with the exchange in contravention of their tenancy agreements and in contravention of the refusal of the application for a mutual exchange.

- (iii) The suggestion by the Respondent that the discussion at his surgery was solely in terms of a short term temporary swap raised by the tenants flies in the face of the email written at 10.13am on Saturday 4 August 2007 by the Respondent. The sole issue he has in his contemplation is a mutual exchange of properties in contravention of the refusal by Flintshire County Council.

- (iv) On Sunday 5 August 2007 at 21.19, Neal Cockerton responds to the Respondent (D223), acknowledging the email and requesting whether notwithstanding the fact that it is marked "confidential" he could share it with the interim Head of Housing.

- (v) At 2.03am on Monday 6 August 2007, the Respondent replied to Neal Cockerton by email agreeing to the correspondence being shared but stating "*We have to have this exchange agreed*". The email further states "*...I want to see this agreed and not escalate into a highly legal challenge. I sincerely hope that we can see this agreed Mondayish*". The reference to "Mondayish" being a reference that it must be dealt with urgently. What is being sought by the Respondent is an agreement to the exchange and the implication that if it is not agreed, that this could escalate "into a highly legal challenge". In terms of legal challenge, the Respondent agreed that there were no proceedings contemplated. What was at risk would be possession proceedings if the tenants exchanged properties. This would only occur if there was a breach of their tenancy conditions. There is again no reference in the email of 6 August 2007 to any temporary swap. On the basis of the Respondent's own evidence, he would have been aware on 6 August 2007 of an intention by the tenants to proceed with a temporary

swap. He chose not to bring that to the attention of the officers of Flintshire County Council. We do not find that the intention was for a temporary swap of properties.

- (vi) On 9 August 2007, the Respondent wrote separate letters to Mr and Mrs Dodds and to [Ms M]. The letter was headed "Patrick Heesom, County Cllr, Mostyn Ward, Flintshire County Council, Members Services, County Hall, Mold, Flintshire, CH7 6NB". It was addressed to the tenants individually at their home address. It was headed in the case of Mr and Mrs Dodd (D225):

*"Re a proposed exchange with [Ms M] of []
Ffordd Pennant, Mostyn".*

The contents of the letter were as follows:

"I have now read the letters to you about the above matter from the housing officers.

I note that the proposal was refused on the grounds of overcrowding in the Ffordd Fynnon house for [Ms M], but it is a matter of fact that those grounds for refusal are not in accordance with the written policy of the council. I note also that Mr Birchett has separately advised Mrs Dodd to seek a mutual exchange as a way of meeting some of her concerns about living in Ffordd Y Ffynnon.

I understand that both yourselves and [Ms M] have very compelling reasons for wanting to live in each others houses, and accordingly I cannot see any reason why you do not live in each others houses at the very least to see whether the different properties suit you both.

The Terms of the Tenancies do not allow tenants to either assign their property permanently to another or sublet, but in trying out the houses you are clearly not breaching those conditions. I also understand that there are no outstanding rent liabilities or housing condition issues that would otherwise prevent an exchange.

I cannot therefore see any reason for you both not to see whether you are both respectively comfortable with living in each others houses, and then if that proves to be the case then you can seek more permanent arrangements in due course.

I trust this is helpful.

Yours sincerely

Patrick Heesom”

We do not find that the main purpose of the letter was to suggest or support a temporary arrangement. This is the Respondent’s explanation of the letter. The letters were written at the request of the tenants to provide them with reassurance that in exchanging their properties they were not placing themselves at risk with the local authority. The letter is also misleading in our findings in suggesting that the refusal was not in “accordance with the written policy of the Council”. The position is summarised in our findings by the letter (D237) written on 21 August 2007 and signed by [Ms M], [DM] and Lisa Gibbons, which states “On the 15th August I attempted to do a mutual exchange with Cora Dodd in 17 Ffordd Ffynnon, with the permission from Cllr Patrick Hesson”. Cora Dodd in her oral evidence maintained that the purpose of the letter was to provide her with reassurance prior to any move. Whilst she was

satisfied that she was not undertaking anything unlawful, it is our finding that neither she nor [Ms M] would have attempted any form of move were it not for the letter dated 9 August 2007 written by the Respondent in his official capacity. It was not for the Respondent, either in seeking to authorise a mutual exchange or a temporary move, to do so. He should have referred the tenants to the Council officials. He did not do so, because what he was seeking to authorise flew in the face of the decision to refuse the mutual exchange. The actions of the Respondent placed the tenants in an extremely vulnerable position in that they would have been in breach of their tenancy agreements, susceptible to possession proceedings, liable for court costs, eviction, and loss of their secure tenancy. The reassurance which Cora Dodd sought, we emphasise, had it been appropriate, should have been forthcoming from officials at the local authority and not from a Councillor. The Respondent should not have involved himself in decision making processes linked to the mutual exchange. His role was limited to making representations.

- 3.37. We do not find on a balance of probability that the purpose of any exchange was a temporary move whilst damp work was being undertaken. This would have necessitated [Ms M] moving into the Dodd's house, knowing that she could not use downstairs. She had three young children. They would have had to live at the property whilst chemicals were injected into the walls and damp proof work carried out. No firm indication had been given as to the duration of the works, nor had the works been formally agreed or a start date been arranged. Indeed, Cora Dodd had previously rejected a temporary move. No mention is made at any time by [Ms M] in her correspondence, or indeed in response to the letter from the local authority dated 3 September 2007, that in any way it was only a temporary move. We did not find the evidence of Cora Dodd reliable in terms of the proposal being a temporary move. We note the following:

- a. In a supplementary statement, dated 16 January 2011, and which was prepared with the assistance of those advising the Respondent, there are serious errors in terms of dates. It is suggested that [Ms M] had approached her in May/June 2006 and that the application for a mutual exchange was done in June 2006. We know that the exchange was applied for on 27 April 2007 (P1969).

- b. Cora Dodd's further statement makes reference to not moving any furniture. This is inconsistent with the letter subsequently written by Cora Dodd's father, Mr Birch, which refers to the intention on Wednesday 15 August 2007 (D233), "*to empty the contents of my daughters and son-in-laws rented council house in Mostyn*". A reputable removal firm had been engaged. It refers to some of the furniture being taken to another house in Mostyn, which we find is reference to [Ms M's] property. The remainder was to be stored at Mr Birch's house. The amount of furniture to be removed would have been considerable, as in addition to the removal van, three men had been hired. There is no reference in the letter to a temporary move. Reference is solely to an exchange of homes. We find also this letter was copied to the Respondent. In evidence, the Respondent stated he had no record of receiving it, though it is apparent from its heading, in handwritten notes, that it is copied to him. The letter refers to several attempts being made by Cora Dodd to contact the Respondent by telephone, which were unsuccessful. Reference is made in the letter to the Council official, namely Elaine Williams, being shown the letter stating the "*move could go ahead*". We note there is no indication in the letter from Mr Birch that the move was intended in any way to be a temporary move. Indeed, it asks for families "*should be allowed to exchange homes without further delay*". It does not refer to being allowed a temporary move to try out each others houses.

- c. We find no mention on 15 August 2007 being made to Elaine Williams by the tenants that what was proposed was solely a temporary move. Elaine Williams had seen [Ms M] removing plants from her garden to transfer to the property of Mr and Mrs Dodd. This would indicate more than the suggestion of “merely sleeping at each other’s houses”. A removal van was to transfer some of the furniture and contents from Mr and Mrs Dodd’s house to [Ms M’s] house (as per letter of Mr Birch). This again suggests a degree of permanency.
- d. The letter written by [Ms M], [DM] and Lisa Gibbons dated 21 August 2007 (D239 - 240) confirms again what was attempted on 15 August 2007 was a permanent mutual exchange with Cora Dodd. This is referred to in the first sentence *“On the 15th August I attempted to do a mutual exchange with Cora Dodd in 17 Ffordd y Ffynnon, with the permission of Cllr Patrick Hesson”*. There is no mention in the letter to a temporary move, to trying out each other’s houses nor to a move limited to allowing damp proof work to be completed. The letter solely concentrates on the issue of exchange and why it should be allowed. The Respondent, in his evidence, sought to argue that in some way this letter was written by somebody on behalf of the tenant or the other two co-signatories. This is a letter which factually sets out, within one week of the move, the position as it was viewed by [Ms M]. Her view was that what she had attempted to do on 15 August was a mutual exchange, contrary to the refusal of Flintshire County Council. The letter further states that the reason why she was proceeding with the mutual exchange was that she had, in effect, been granted official permission from the Respondent. Her letter again in the first sentence, states in terms of the mutual exchange, it was taking place *“with the permission from Cllr Patrick Hesson”*. We take into account that [Ms M] was not called as a witness but her letter, which is indeed consistent with the letter of Mr Birch, is a contemporaneous record of the views of the parties at the time.

The Respondent, and in part Cora Dodd, in their evidence sought to argue that it was a temporary move to enable works to be carried out to Mrs Dodd's property. None of the correspondence, nor any statement to Elaine Williams on 15 August 2007, nor indeed the letter written by the Respondent, makes reference to a temporary move for works to be completed. We note indeed that there would have been no timescale at that time, as there was no specific authorisation for the commencement of damp proof works to be undertaken at Ffordd y Ffynon. The Council had indicated a willingness to do the work but no official contractor had been appointed. Initially, the Respondent stated that he believed that the move was for three months, but later conceded that no timescale had been given.

- 3.38. We are satisfied, on the balance of probability, that the intention of the letter of the Respondent was to encourage and to permit Mr and Mrs Dodd and [Ms M] to exchange properties. The letter written on 9 August 2007, we find, makes no reference to a timescale for any temporary move, nor to any building works. It refers to the proposed exchange which we find refers to the mutual exchange of properties with a degree of permanency. The Respondent, in his evidence, sought to imply that the word "exchange" was not the appropriate word but that the words "temporary swap" or "house sit" would be more appropriate. In our finding, this is an attempt to re-write the letter so as to distance himself from its consequences. The impression the letter would give to the recipient is that it was referring to the mutual exchange. In his own evidence, the Respondent suggested that [Ms M] could be viewed as a vulnerable individual who lacked formal education. He indicated, for example, that in terms of the letter she signed on 21 August 2007, she could not have possibly formulated that letter herself. Clearly the impression [Ms M] would have obtained from receiving the letter of 9 August 2007 from the Respondent was that this was an official letter, granting her consent to exchange properties with Mr and Mrs Dodd.

3.39. There are a number of factors in the letter which support the view that the intention was a permanent move. We note the following:

- a. Heading includes the word "Exchange".
- b. Second paragraph refers to the refusal. This refusal can only be the refusal to the mutual exchange.
- c. The third paragraph refers to compelling reasons each had for living in each other's houses. Living in each other's houses is not synonymous with house-sitting or a temporary move. The paragraph states that he sees no reason "*why you do not live in each others house, at the very least to see whether the different properties suit you both*". This flies in the face of any suggestion of a temporary move for works to be carried out.
- d. The fourth paragraph of the letter refers to the terms of the tenancy and states that tenants are not allowed to assign their property permanently to another or sub-let. This is an incorrect reading of the definition of occupation of the property. Part with possession means ceasing to occupy a dwelling and giving the right to occupy the dwelling to another person or persons. To part with possession, the Council's written permission is required. The word "permanent" is not included in the definition in the introduction to tenancy conditions. We are satisfied that the intention was to part with possession by Mr and Mrs Dodd of their property and by [Ms M] of her property. This is evidenced by the removal of furniture, the moving of furniture into [Ms M's] house by the Dodd's and removal of plants by [Ms M] from her property. A person can part with possession of a property, not on a permanent basis but for a fixed term period. This would amount to a breach of tenancy agreement if it were done without the Landlord's permission.

- 3.40. We find that in using the words *“trying out the houses”* was an intentional inclusion by the Respondent in the letter to seek to address the legal issue which he knew could arise if the tenants breached the terms of their tenancy in parting with possession to the other of their property and ceasing to occupy it as their main or principal dwelling house.
- 3.41. The reference to *“no outstanding rent liabilities or housing condition issues that would otherwise prevent an exchange”* again, is reference to a mutual exchange and is an attempt to give reassurance to the tenants that they can carry out a mutual exchange notwithstanding the refusal of their respective applications.
- 3.42. If the intervention of Elaine Williams had not occurred, both sets of tenants could have faced grave consequences including the loss of their secure tenancy and cost consequences. Such an exchange would have been a breach of their tenancy agreements because they would have relinquished use of such homes as their main or primary dwelling. If the move had taken place, Mr and Mrs Dodd would have lost security of their tenancy and would have been liable to possession action. [Ms M] would also have been liable to possession action.
- 3.43. The letter from the Respondent makes reference to his having read the letters from the Housing Officers. The letters which had been sent, had indicated that the application for the exchange had been refused.
- 3.44. The Respondent’s letter also indicates that after a period of time, they could *“seek more permanent arrangements in due course”*. This is intended by the Respondent to give reassurance to the tenants that the Council could be persuaded de facto to accept an exchange after it had occurred on the ground.
- 3.45. We are satisfied that the Respondent was fully aware of the serious consequences of the letter written by him as a County Councillor. The letter has to be viewed in the context that on at least two previous

occasions, he had advised Council Officers that he was going to tell the tenants to move. It is in the context also that he had made false representations that Councillor Attridge and/or Barry Davies had authorised an exchange. This was not indicated to the tenants but to other Council Officials.

3.46. The letter also has to be viewed in the context of attempts by the Respondent to influence the decision making process by approaching Richard Birchett, Barry Davies, Chris Kay and Neal Cockerton.

3.47. We turn to the events on 15 August 2007. Much has been made of the events on that day. Those events are not central to our consideration of the issues in this case, save to the following extent:

a. Whether they are supportive or not to the Respondent's case that his letter authorised a temporary move which he maintains was lawful within the terms of the tenancies

b. Credibility of witnesses.

3.48. As an aside, we would indicate that the Respondent in his evidence has made serious criticism of a number of officials associated with the mutual exchange. In his initial response to the Ombudsman, he states that he believes that Housing Officers have unreasonable attitudes to some local residents. He believes that housing staff treated elected members' advice and concerns with disdain. In his latest witness statement, he views the position of Barry Davies in terms of mutual exchange as a personal betrayal. He sees Richard Birchett as acting in vitriol against him. He criticises Richard Birchett for not being aware of the strong humanitarian grounds for granting the request from Mr and Mrs Dodd for an exchange. This is notwithstanding the fact that at no time did the Respondent raise medical grounds in support of the use of any discretion in terms of the mutual exchange. Serious allegations were made against Gill Conway, that she was heavily involved in the refusal and that she was motivated by

her daughter living next door to Mr and Mrs Dodd. The implication is that she has deliberately lied to the Case Tribunal in terms of who she spoke to on 15 August 2007. The Respondent submits that Elaine Williams is not a credible witness and that she displayed appalling behaviour towards Mr and Mrs Dodd and [Ms M]. There is an allegation also that Elaine Williams has acted inconsistently in terms of decision making. There are allegations that the officers who referred the matter to Wrexham County Borough Council did so in a loaded fashion. In terms of all of these allegations, we find no basis. It is unfortunately a sad reflection of this case that at all times when the Respondent's conduct has been criticised, he has sought to counter it in our findings with serious unsustainable allegations against Council officials.

- 3.49. To the extent that we are required to make any findings as to 15 August 2007, we find there were at least two telephone calls made to the offices of Flintshire County Council in relation to the proposed move by the Dodds and [Ms M]. One of those telephone calls was to Gill Conway (P1373). It is submitted on behalf of the Respondent that this was a call by Gill Conway's daughter, Trish Conway. It is submitted by the Respondent that the last person any individual living in Mostyn would wish to speak to at the offices, and remain anonymous, was Gill Conway. We see no grounds or evidence to support a contention that this is evidence that the caller was Trish Conway. The Respondent submits the use of the words "*squatters rights*" implies some knowledge of housing protocol. The Respondent argues also that the receptionist's note (P1977), should be taken in a literal sense when it notes "*The lady didn't want to live next door to squatters*". It is submitted that next door, in that context, should be interpreted narrowly as being immediately next door as opposed to a more general sense of the phrase. One of the immediate neighbours was Trish Conway, the daughter of Gill Conway. The Respondent in evidence has stated that he was aware of the two direct neighbours to Mr and Mrs Dodd, namely Trish Conway and a 72 year old lady. He was adamant that the 72 year old lady would not have telephoned. To the extent that we are required to make any findings, we do not find that the caller who Gill Conway spoke to was

Trish Conway. We reject also the submission by the Respondent that the general community would not have received any information from either Mr and Mrs Dodd or [Ms M] of the intended move on 15 August 2007. No evidence was called by him to sustain such matter. It is known, however, that:

- a. At Mr and Mrs Dodd's house, there was also present her father and three removal men.
- b. At [Ms M's] house, her sister and a friend were also present. No doubt [Ms M] would also have advised her children and her mother as to the intention. It is highly probable that the neighbours would have been aware of the proposed move.

3.50. We do find that the note of Gill Conway was prepared close to the taking of the telephone call. The individual who had called had considerable knowledge of events but these were events which would have been more likely than not gathered from the community at large and not from the Housing Department. The fourth paragraph of the note of Gill Conway is significant in that the caller makes reference to the parties being advised to exchange by the local member. The caller also refers to further information contained in the letter. The Respondent could not explain how at the time of the call anybody in the Housing Department could have been aware of his letter or the advice he had given within it. The paragraph is also indicative of the intentions of the parties and the purpose of the letter written by the Respondent:

“The caller checked that she had been put through to myself and stated that she wished to remain anonymous as she was afraid of repercussions. She went on to say that the tenants in Ffordd Ffynnon, whom she referred to as the Dodds were going ahead with an exchange with the people from further down the village. She also claimed that the Dodds had been advised to do this (and eluded that this was by the local member). Also the caller said that the parties had

been told to “just do it” and that the Authority would find it very difficult to make them go back retrospectively and that they could claim squatters rights and the Authority would probably give in”.

- 3.51. Elaine Williams and Lee Roberts visited the property of [Ms M] during the morning of 15 August 2007. We find as per Elaine Williams' evidence that [Ms M] was in the process of removing plants from her garden. At no time did the tenant raise the fact that this was a temporary move, for works to be carried out at Mrs Dodd's property or otherwise. It is apparent that [Ms M] placed considerable reliance on the “permission” which had been granted by the Respondent in authorising the move. She stated to Elaine Williams that such permission had been granted by the Respondent. This is corroborated also by the letter written six days later by her to the Council. It should be noted that the tenant also had two copies of the letter written by the Respondent. The Respondent's oral evidence was that he believed she only had one copy.
- 3.52. Elaine Williams subsequently attended the property of Mr and Mrs Dodd. She saw a removal van being loaded with items. The occupants of Mrs Dodd's property sought initially not to engage with Elaine Williams, knowing that she was from the Authority. Eventually, Mrs Dodd came to the front door. No mention was made of a temporary move or for works to be carried out. Indeed, to the contrary, Mrs Dodd sought to argue that [Ms M] would not be over occupying in that the parlour room counted as a bedroom.
- 3.53. The attendance note prepared by Elaine Williams and Lee Roberts is an accurate record of events. A substantial amount of allegations have been made as to the conduct of Elaine Williams. This was subject to a complaint, which was investigated by Flintshire County Council. Elaine Williams stopped the tenants from vacating their properties, thereby preventing them parting with occupation in contravention of their tenancy agreements. No mention was made of a temporary move. In the case of [Ms M], she relied on the “permission” given to her to move by the

Respondent. The evidence was that a substantial amount of contents were being removed from Mrs Dodd's property.

- 3.54. On 16 August 2007, the Respondent raised at a meeting with the Group Leaders the issue of the refusal of the exchange. We find that the note of Peter Evans is an accurate record of what was said. There is no mention of intention for the move to be only whilst damp proof works were completed nor that only a limited number of items were being moved.
- 3.55. On 19 August 2007, a complaint letter was forwarded by Mr Birch to Flintshire County Council (D233). It should be noted that the letter refers to an exchange and not to any temporary form of swap. The letter, we find on a balance of probability, was copied to the Respondent. No immediate indication is made by the Respondent that the letter, nor indeed the Council's official response, was misleading in terms of whether it was a temporary or permanent swap.
- 3.56. On 21 August 2007, a complaint letter is sent from [Ms M], [DM] and Lisa Gibbon. Again, the indication given is that they were seeking to carry out a mutual exchange and had done so with the permission of the Respondent.
- 3.57. By email of 21 August 2007, Richard Birchett to Neal Cockerton, raised the issue that in his view the action of the Respondent may be a breach of the Code of Conduct.
- 3.58. On 21 August 2007, a complaint was made by Mrs Dodd to the Ombudsman alleging maladministration. This was acknowledged by the Ombudsman's office on 30 August 2007, advising Mrs Dodd that she had a right to appeal against the refusal for mutual exchange at the County Court. The Ombudsman requests further information. No further information was received. By letter of 27 September 2007, to Mrs Dodd, the Ombudsman indicated that he had not received any further response and was therefore closing his file of papers (pages P1169, P1161 and P1173).

- 3.59. In late August 2007 and upon Barry Davies' return from annual leave the Respondent met with Barry Davies to *"talk about a number of other council issues and"* the Dodds letter came up in conversation. Barry Davies expressed the view *"it was a clever letter and he didn't think there was anything wrong"*
- 3.60. On 3 September 2007, a response to her complaint was sent to [Ms M] by Flintshire County Council. (D264).
- 3.61. On 13 September 2007, Barry Davies met with Mr and Mrs Dodd and Mr Birch. The Respondent was not present at the meeting. The indication given by Barry Davies to Mr and Mrs Dodd and Mr Birch was that he personally thought the letter of 9 August 2007 was cleverly drafted. No referral was made at that time by the Monitoring Officer to the Ombudsman.
- 3.62. On 25 September 2007, an email (P2919) was sent by Peter Wynne to Richard Birchett noting a telephone conversation with Mrs Dodd. Mrs Dodd advised Peter Wynne that an *"agreement has now reached by the Council with the Cllr Heesom that the illegal exchange can now proceed. Apparently this agreement took place last Tuesday and Mrs Dodd is awaiting the paperwork."* There was no such agreement. On the same date the Respondent wrote to Neal Cockerton (P1445) stating *"but this exchange has been agreed and I was under the impression that it was proceeding"*. The Respondent further notes *"One of the exchangees has called me saying she tried to seek advice and got Peter Wynne who disclaimed any knowledge."* We are satisfied that the Respondent on or around 25 September 2007 had wrongly advised Mrs Dodd that the exchange had been authorised. The information which Mrs Dodd had could only have emanated from the Respondent.
- 3.63. On 6 October 2007 (P1065), a proposal for a three way exchange is raised in an email from the Respondent to Neal Cockerton. He states that he

hopes that the issue will be resolved in favour of the tenants and it is not something he would *“allow to remain unresolved”*.

- 3.64. On 17 October 2007 a refusal of the three way exchange is indicated. The Respondent emails Neal Cockerton advising him of his *“anger and frustration at what is difficult not to see as unreasonable interference by a line manager”*. The Respondent further advises that *“I am going now to Barry Davies to seek a suspension of the officer”* and states that *“I shall be calling a special full county council meeting immediately”*. (P1095). A formal letter of complaint is also sent by the Respondent to Barry Davies on the same date (P1105).
- 3.65. On 29 October 2007 and 1 November 2007, emails are sent directly by the Respondent to Elaine Williams, seeking further information of the refusal for the three way exchange.
- 3.66. On 11 December 2007, a completion of a review of the process and the conduct of Elaine Williams, concluded that the correct decisions had been made, legislation followed and procedures correctly applied. The review also recommended that in future when a refusal to grant an exchange is made all reasons should be recorded and stated to tenants in the refusal letter. (P1209).
- 3.67. In February 2008 an exchange between the Dodd's and another is authorised as a result of the failure of the Local Authority to respond within the statutory 42 day period.
- 3.68. On 12 March 2009 (B627) a complaint was made to the Ombudsman by the individual members of the Corporate Management Team. It is noted that as it is over 12 months old, matters relating to housing allocation are given as background information. There is, however, an allegation of interference in housing allocation matters. Documents referred to as Appendix H are the letters Birchett to Heesom 14 December 2006 and 21 May 2007, attendance note of 15 August 2007 (x 2) and a note of 2

November 2007 re. the three way exchange. The letter written by the Respondent on 9 August 2007 is not attached. Further documents are forwarded by Barry Davies on 22 April 2009 including the mutual exchange file following a request by the Ombudsman (P1649).

3.69. The Respondent on 9 August 2007 wrote letters to Mr and Mrs Dodd and to [Ms M], authorising them to proceed with an exchange of their properties when he knew such action was in contravention of the refusal by Flintshire County Council to grant their application for a mutual exchange. He attempted to involve himself both before and after the writing of the letter in the decision making process and made misleading statements.

4. MEETING 4 JULY 2008

ALLEGATION

4.2.2. The Respondent's conduct regarding the Sheltered Accommodation Warden Service

viii. Paragraph 4(b), 2008 code – failure to show respect and consideration for others

Conduct towards Ms Dawn Evans, Senior Sheltered Housing Officer at a meeting on 4 July 2008.

ix. Paragraph 4(c), 2008 code – not to use bullying behaviour or harass any person

Conduct towards Ms Dawn Evans, Senior Sheltered Housing Officer at a meeting on 4 July 2008.

x. Paragraph 4(d), 2008 code – not do anything which compromises or is likely

to compromise the impartiality of those who work for the Council.

Conduct towards Ms Dawn Evans, Senior Sheltered Housing Officer at a meeting on 4 July 2008.

- 4.1. A meeting had been arranged by Officers to meet with the Sheltered Housing Wardens to address temporary measures as to their hours of work and pay. Flintshire County Council had identified the hours worked by Wardens and their level of pay which indicated a number were not being paid the minimum wage.
- 4.2. Meetings were held at which the Respondent was present on 17 June and 24 June 2008. The 17 June 2008 meeting consisted of a briefing being given to the Leader and other Executive Members. At the minutes of the Sheltered Housing Project Meeting on 19 June 2008 (R153), it is recorded the briefing had been "well received". The Respondent was aware from the second meeting, on 24 June 2008, that issues affecting the national minimum wage would have to be addressed individually with the Wardens. This was to be an operational matter and the Officers had resolved that as an interim measure, there would be no reduction in the Wardens' salary but their hours would be reduced to ensure no breach of the legislation on minimum wage.
- 4.3. In coming to these findings, we have regard to the minutes of the meeting on 19 June 2008 and of a memorandum prepared by Helen Stappleton dated 7 July 2008. We also have regard to the Respondent's initial response to the Ombudsman (page C56) which acknowledges that there was a degree of urgency in addressing any illegality relating to the Wardens' pay arrangements. The Respondent acknowledges it was necessary to address the issue to level out wage structures. This may have necessitated reconstituting the employment framework for the Wardens. The intention was that the meeting between representatives of Flintshire County Council and

their employees, the Wardens, was to be a meeting involving Officers and the Wardens.

- 4.4. We find that the Respondent did contact Paul Neave on 3 July 2008 and requested whether he and Councillor Yale (now Brown) could attend the meeting. It had been arranged for Officers to meet at approximately 10.00am on 4 July 2008. Following the Respondent's request, both he and Councillor Yale were in attendance at that meeting. The meeting with both Councillors present was approximately 15 to 30 minutes in length.

- 4.5. We find that as a result of notes which were the basis of discussions with the Wardens, the Respondent took issue with what he viewed as policy recommendations, such as reduction in hours. The Respondent has not at any time suggested alternative propositions of how the issue of minimum wage would have been dealt with in the interim. The Respondent in his evidence has suggested that he did not become annoyed or confrontational in terms of the discussion. In evidence, he sought to indicate that the hostility was that faced by him and Councillor Yale from the Officers. We reject that contention. We have had regard to evidence that we have heard from Helen Stappleton, Sharon Carney, Gill Conway, Paul Neave, Neal Cockerton and Councillor Helen Yale. We have also considered the written statement and attendance note of Dawn Evans. In coming to our findings, however, we have made full allowance of the fact that Dawn Evans did not attend to give live evidence before the Case Tribunal. Her evidence was not accepted by the Respondent. She did not attend on medical grounds. The weight we give to her written evidence and statement is minimal but is consistent with evidence of other witnesses as to the general manner and conduct of the Respondent. The Respondent suggested that in particular Helen Stappleton, Gill Conway and Paul Neave were lying in terms of their evidence and, more significantly, in terms of attendance notes prepared. We reject this contention. The Respondent suggested that the motive was some form of hidden agenda. The notes were requested to be prepared on the basis that there was genuine concern as to the conduct of the Respondent and its effect upon the junior members of staff. Dawn Evans was a front line officer in terms of being a

senior Sheltered Housing Officer. Helen Stapleton was of a significantly higher grade, being Head of Human Resources and Organisation Development. The Respondent's evidence was extremely vague as to precisely what he did say at the meeting. His evidence comprised mainly of denials that he was confrontational and he denied making a number of statements. We take into account the significant period of time that has elapsed since the meeting. We note the Respondent's initial response prepared in April 2009 stating the issues discussed were policy issues with political references. The initial response did not comment on detailed accounts given by Officers in their attendance notes. We find, however, that the intention of this meeting was to address operational issues. It was an operational meeting which had been sanctioned by Executive Members by way of meetings on 17 June and 24 June 2008. The authority given to Officers was to deal on a temporary basis with the illegality of the hourly minimum wage.

4.6. We find that the Respondent at that meeting was confrontational and acted in an overly aggressive manner. He was rude and aggressive to Dawn Evans, a relatively junior officer, and was intimidating towards her in his manner and tone. In terms of what he actually said, we are satisfied of the following:

- a. When told that the ambit of the meeting had been sanctioned by the Leader, the Respondent said *"Leaders comments are not relevant as the Leaders in relation to this matter are myself and Councillor Yale"*. This was said in an aggressive tone. He accused Dawn Evans of undermining the Wardens' Service and having another agenda. He stated words to the effect *"I have known for years that you have been trying to downgrade Residential Wardens and provide Relief Wardens. I won't allow it"*. He was critical of the Relief Warden model. Words were said in an aggressive manner that were, in the view of others present at the meeting, inappropriate.

- b. The Respondent concluded comments at the meeting by stating he was not willing to support Officers. Then abruptly stated to Helen Yale *“come on, we are leaving”*. He left.
- 4.7. His conduct caused direct upset to Dawn Evans and was of serious concern to other Officers present. His conduct did not cause the meeting with the Wardens not to proceed.
- 4.8. It was suggested on behalf of the Respondent that he expressed his views passionately but had not overstepped the mark. We do find that he had conducted himself in a manner which was confrontational, intimidating, aggressive and rude, both in general terms and specifically towards Dawn Evans.
- 4.9. We preferred the evidence of Helen Stappleton, Gill Conway and Neal Cockerton. Helen Stappleton was the Head of Human Resources Operations at the time of the meeting of 4 July 2008. She held a very senior post within the Council. Ms Stappleton was so concerned regarding the Respondent's conduct at the meeting that she wrote a three page account of the meeting on 7 July 2008 (B684 – B687). This is, we consider, a true and contemporaneous account of the meeting. In her account, Helen Stappleton describes the Respondent becoming quite rude and confrontational and directing his comments at Dawn Evans. Ms Stappleton said that she *“regarded the tone of his voice and his manner as confrontational and intimidating”*. She goes on to describe how she was concerned about *“Cllr Heesom's confrontational behaviour which was aimed at myself (to a lesser extent) and to Dawn Evans in particular at one point, which was not acceptable”*. We find this account to be a truthful account made only three days after the event when the details would have been fresh in Ms Stappleton's mind. This evidence is corroborated by the evidence of Gill Conway who was also present at the meeting and says in her statement at B320 *“He [Cllr Heesom] used the opportunity to have a go at certain individuals. He had a downer on Dawn Evans. When he has a bee in his bonnet he gets very personal and acts in a very unprofessional way. You don't launch attacks such as he did in public. Dawn was very upset.”*

- 4.10. Neal Cockerton said in oral evidence *“I think his tone and approach was overly aggressive in terms of – bearing in mind we were about to meet staff and explain some issues around personnel, HR and potential changes to the service. He was to my mind overly aggressive around the information that we had communicated to him”* (pg 5, 02.06.11 (5 of 5)). When asked if that was in general or directed to anybody in particular he replied: *“It was particularly directed I felt towards Dawn who was the Manager of the Warden Service”*.
- 4.11. Paul Neave was present for some of the meeting. He wrote his account (B688 – B689) of the meeting on 7 July 2008, some three days later. He describes how, at just before 11.00am, the atmosphere changed, very abruptly, from positive and supportive to negative with the Respondent questioning the proposal that some resident wardens would, as an interim measure, have their hours reduced. Paul Neave explains how he tried to explain the position and give an actual example to the Respondent. Paul Neave then explains how the Respondent then began to question Dawn Evans in an aggressive manner. He described this in some detail. In his statement Paul Neave described this as aggressive and inappropriate.
- 4.12. We note in his fourth witness statement, paragraph 173, the Respondent states that he does not remember the exact words. He goes on to indicate *“there is no way that I would ever personalise remarks to anyone”*. The evidence of the other witnesses, outlined above, are contradictory to that of the Respondent, and were consistent in terms of conveying the impression of how they felt at that meeting. They felt uncomfortable. They felt that the Respondent had overstepped the mark in his conduct, in particular towards Dawn Evans. The Respondent downplayed, in our finding, how he felt in terms of what was being proposed at the meeting. He refused to agree that in any way he was aggrieved by the proposals. The events at the meeting were witnessed by Councillor Yale. In her witness statement she states that the Respondent spoke aggressively and was very confrontational with officers. Although she was unable to recall the exact words used, she described the Respondent as being *“confrontational and intimidating on this occasion”*. We

do not find that Councillor Yale's evidence, as was alleged by the Respondent, was fabricated as a result of a change of political allegiance. Throughout, the Respondent made serious allegations that witnesses were, in effect, lying. We found no basis in that respect in terms of the meeting of 4 July 2008. The Respondent's evidence was vague. He sought to avoid giving direct answers in terms of what was said or not said at the meeting and sought instead to give responses highlighting background issues.

4.13. The comments of the Respondent directed to Dawn Evans included criticism of how she had managed issues within accommodation based in his constituency. The Respondent accused Dawn Evans of undermining the Warden Service in his Ward. There is a reference in Helen Stappleton's record of the meeting (B303) which says: "*I was concerned at the impact of these events on Dawn Evans as she would be responsible for allocating working hours to the wardens and I heard from Paul Neave that he was seeking to intervene on the working arrangements of wardens, who worked in his ward*".

4.14. We find in terms of the Sheltered Housing Meeting on 4 July 2008, that the Respondent was confrontational and aggressive. He was rude and aggressive to Dawn Evans, a relatively junior Officer. He questioned Dawn Evans in an aggressive manner and accused her of trying to downgrade residential wardens. He was critical of how she managed accommodation issues in his constituency. Dawn Evans, who found his conduct confrontational and intimidating, was upset by his conduct.

5. CONDUCT TOWARDS SUSAN LEWIS AND VISIONING DAY

ALLEGATION

4.2.1. The Respondent's conduct towards Mrs Susan Lewis, Director of Community Services

- ii. Paragraph 4(b), 2008 code - failure to show respect and consideration for others

Cllr Heesom's conduct towards Susan Lewis by his preparation and circulation of the letter prior to the Visioning Day on 7 November 2008.

- iii. Paragraph 4(c), 2008 code - not use bullying behaviour or harass any person

Cllr Heesom's conduct towards Susan Lewis by his preparation and circulation of the letter prior to the Visioning Day on 7 November 2008.

- iv. Paragraph 4(b), 2008 code - Failure to show respect and consideration for others

Conduct towards Susan Lewis at the Visioning Day on 7 November 2008.

- v. Paragraph 4(c), 2008 code - not to use bullying behaviour or harass any person

Conduct towards Susan Lewis at the Visioning Day on 7 November 2008.

- vi. Paragraph 6(1)(a), 2008 code - not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Conduct towards Susan Lewis at the Visioning Day on 7 November 2008.

- 5.1. The allegations in respect of Visioning Day can be sub-divided into two sections:

- a. Conduct leading up Visioning Day and in particular the circulation of the letter and note to fellow Councillors.
- b. Conduct by the Respondent at the Visioning Day itself on 7 November 2008.

- 5.2. The issues associated with Visioning Day are closely linked to the Respondent's general conduct towards Susan Lewis. We make findings in this Decision of comments made by the Respondent to the Chief Executive soon after the appointment of Susan Lewis to the post of Director. This resulted in a letter of 31 March 2008 from the Chief Executive warning the Respondent as to future conduct and the correct procedure to follow if he had any issues as to Susan Lewis' performance. The events also have to be viewed in the context of our later findings that approximately a week after Visioning Day, Peter Evans heard the Respondent describe Susan Lewis as "*shit at her job*". Further, the Respondent had expressed the view to Maureen Harkin that Susan Lewis' days "*were numbered*".
- 5.3. The Respondent refutes the allegations, suggesting that Susan Lewis is either a liar or a fantasist.
- 5.4. It is noted by Counsel for the Ombudsman:
- a. The purpose of the Visioning Day was to present Members and other interested parties with the difficulties facing the Sheltered Housing and Warden Service and to have a brainstorming session. It should be noted that no binding decisions could be made at Visioning Day.
 - b. There was no grand conspiracy by Officers of the Council to impose policy on Members.
 - c. The Respondent had been fully consulted and involved in the lead up to the day, as indeed had Councillor Helen Yale.
 - d. The letter and note that the Respondent distributed was offensive to Susan Lewis and was clearly intended to torpedo the day.
 - e. His conduct at the meeting was such as to amount to bullying or harassment.

- 5.5. The Respondent vehemently denies the allegations. Counsel for the Respondent submits in terms of events prior to Visioning Day as follows:
- a. Officers of the Council had failed to prepare a neutral presentation of the case to be put before Councillors and others attending the Visioning Day.
 - b. The Respondent had been frozen out of the discussions that had taken place in the lead up to Visioning Day.
 - c. The Respondent had not been made aware that his fellow Councillor and Executive Member, Councillor Helen Yale, was being consulted by Officers, even though she had less knowledge on the subject than the Respondent.
 - d. Officers held secret meetings behind his back and did not consult him, either at all or sufficiently regarding the slides to be presented at the meeting.
 - e. The letter that he circulated on the eve of Visioning Day was a document that had been approved, at least in part, by his coalition colleagues but it had not been possible for him in the time available to consult either Susan Lewis or Maureen Harkin about the document as he had only prepared and completed it on the night before.
 - f. Helen Yale, Maureen Harkin and Susan Lewis had been hostile to the Respondent during such discussions as took place prior to the Visioning Day. Their accounts of the events that took place in the lead up to and on the day are far from straightforward. Further, Helen Yale was happy to support the Respondent in expressing concerns about what was to be presented on the Visioning Day.

- 5.6. It is submitted by Counsel for the Respondent in terms of Visioning Day itself, as follows:
- a. A substantial body of the evidence that is being relied upon by the Ombudsman is inadmissible on the grounds that witnesses were not called to give evidence and/or the Case Tribunal has ruled that their evidence will not be considered.
 - b. The evidence of Susan Lewis and Maureen Harkin concerning the events on the day cannot be relied upon as they are liars.
 - c. The general tenor of the other evidence, whether from Officers and/or Councillors who were present, is that the Respondent did not abuse, bully, harass or show disrespect to Susan Lewis or anyone else.
 - d. The Respondent was perfectly entitled to speak on the day as he was the Executive Member.
 - e. If, which is denied, the Respondent did speak out of turn on the day, then Article 10 of the ECHR provides that he was entitled to express his opinion on the matters which were being considered.
- 5.7. We have considered all the evidence presented to us, including oral evidence of witnesses and the Respondent.

FINDINGS

- 5.8. During the latter part of September 2008 and early part of October 2008, Executive Members had agreed that a Visioning Day would be held where all elected Members would be invited, including selected representative groups. The matter had been discussed explicitly with the Respondent in September 2008 and had been considered by the Community and Housing Scrutiny Committee on 13 October 2008. A draft programme and invitation list had

been prepared by at latest 14 October 2008 and was circulated at a meeting of the LSG on 14 October 2008.

In oral evidence Susan Lewis gave a detailed account, directly from memory, as to how the Visioning Day had come about. The Case Tribunal found this to be a credible account (pg 21, 03.03.11 (2 of 3)):

HJ: Can you give us some of the background on how visioning day you say came about in these issues?

SL: Yeah, OK, if you just bear with me, because it's obviously important that I explain this. When I was shown the report by Neil Cockerton, we looked at them and we realised that there were some very heavy criticism of the warden service. And there were some very critical elements to the report and some very important issues in there such as not...you know, the minimum wage issue and not complying with, you know, various management practices that we...that were being recommended.

And what we knew was that the reports had been commissioned by the Labour group previously and received by that...by those leading members in that administration. But the new administration that came in, in May clearly haven't had access to these reports. So as officers we found that, you know, the administration should have knowledge of these reports. You know, it simply wasn't right really, was it, that the previous administration had the information about seriously failing service. That the new administration, you know, hadn't got access to...

MM: And if...Sorry, sir, I'm sorry.

HJ: Before the visioning day, were they given any access to the reports before the visioning date?

SL: *Yes. So what happened was I referred in that briefing that to the two meetings...yeah, the very first sentence, my recollection is that the sheltered housing visioning day was first suggested at second of two meetings. So what it was decided, Neil Cockerton and I decided with the chief executive was that for the new administration, the new executive members who had not access to these reports because they were now obviously leading the council, they needed to know about these reports. So we organised a briefing meeting for the new executive members to share the reports with them and to explain some of the issues and to explain the ways in which we'd started to address some of the issues that were mentioned in it. So the first meeting, we went through the reports' key issues and the executive members had copies of the reports to read.*

HJ: *To read or to take away as well?*

SL: *I think that...yeah, they took them away. Yeah, the leader, Councillor Woolley was obviously part, you know, part of that. It was such a big issue that we were asked to provide a second meeting. And at that second meeting, the conversation, you know, the discussion turned towards well, what are we going to do about these reports. And it was really that in order to respond to the reports and decide whether to follow the recommendations of the review, the council had to have a vision for the service, had to know what direction they want to take the service in. I think my understanding was that councillors, and in fact officers, didn't necessarily agree with all the recommendations in the report that within that report there was an important thing that we have to respond to. So it was felt that we needed a vision for the service. So out of that group, the suggestion that we hold today for councillors and a few other key people to get together...*

We note that this account is consistent with, if more detailed than, a briefing note Susan Lewis wrote for the Leader and Chief Executive (B668). In respect of how the day came about it is impossible to believe that Susan Lewis would have been anything other than factually correct in this note as the Leader had been in attendance at the meetings to which she refers. "New Executive Members" who were briefed as to the Report included the Respondent.

- 5.9. On 22 October 2008, an invitation letter was sent out by Susan Lewis, Director of Community Services, to all Councillors and all other persons who were invited to attend the meeting. The letter is headed "Invitation to a sheltered housing visioning day" (B651). The letter states as follows:

"Flintshire County Council is working to develop its sheltered housing service into a more modern and responsive service that meets the 21st century needs of older or vulnerable people. As an integral part of this process, a visioning day is being held on the 7th November 2008.

The vision-planning Day will be an opportunity for Members, senior managers and key stakeholders to come together. We hope it will provide a positive and valuable contribution to the development of a sheltered and supported housing service that enables older or vulnerable people to live in their own homes for as long as practical, improves their quality of life and reduces their sense of isolation."

- 5.10. Attached was a reply form and a timetable for the day. The timetable includes a presentation on the review of Flintshire's sheltered housing and carelink services. Susan Lewis was proposed to speak on "What are the issues facing us as we respond to the outcomes from the review?". It was intended that Members would participate by way of three workshops.
- 5.11. We are satisfied that this letter and timetable were provided soon after 22 October 2008 to the Respondent. On 24 October 2008, an email was sent by Susan Lewis to the Respondent requesting a meeting to discuss Visioning

Day. We are satisfied attempts were made by Officers to set up that meeting during the week of 27 October 2008 but that those did not result in a meeting being established until 5 November 2008. The date for the meeting of 5 November 2008 was confirmed in an email by Susan Lewis to the Respondent on 30 October 2008.

5.12. On 31 October 2008 at 17.02, the Respondent sent an email to Susan Lewis, on behalf of himself and Councillor Helen Yale. It refers to the meeting of 5 November 2008 (B512). The email indicates contentment that renewal area items are discussed, but requires clarification to the item regarding Sheltered Accommodation.

5.13. The email includes the following:

“As I trust you will recall, these are of course that the sheltered housing provision remains substantially a housing function and that it is in the main a retained service, and that the wardens provision is fundamental to that service. We are particularly concerned that there is built into this policy a commitment to not reducing the wardens hours notwithstanding any restructuring of the hours of work arrangements. There are also issues as you will recall from previous representations to you, about the way that the call service is to be shaped so as to fit into this framework.

Could we make it clear that we trust that accordingly you will be able to confirm that these issues are basic to the presentation that you are expecting to deliver on the 7th.

Perhaps we should also clarify the issues of the Options strategy in regard to the sheltered accommodation provision, in as much as it is being considered as a retrainable provision in the event of a satisfactory hybrid solution.

Please confirm that these matters will be part of the framework to be received on the 7th.

- 5.14 The email was replied to by Susan Lewis on 3 November 2008. The email makes reference to a discussion between the parties earlier in the day. The email indicates as follows:

“...I can confirm that there is no mention at all in the Sheltered Housing Visioning Day presentations of reducing wardens’ hours of work, and no suggestion that sheltered housing is anything other than a housing service. The session is all about how we can improve the service and make it more effective and relevant to people’s needs. We are not proposing a new policy, merely asking people to debate what the sheltered housing service should look like in the future. You will recall that this is a necessary part of responding to the problems the service has experienced, many of which were identified in the two independent reviews. However, you will see from my earlier response to Bernie Attridge, which you were copied in to, that we are not seeking to dwell on the reviews, but to move on from them in a way that is right for Flintshire.

I hope that answers your concerns, but we can discuss in more detail at the scheduled meeting on Wednesday.”

- 5.15. Our findings are that the Visioning Day meeting was a forum for discussion and that there would be no binding decisions made on that day. Any decision would be subject to approval by the Executive and, if appropriate, a full Council meeting. The concern of the Respondent was that in some way there was a clandestine agenda, which would circumvent the input of Members.
- 5.16. In examination in chief, the Respondent gave an indication as follows (pg 4, 17.09.12 (2 of 3)):

PH: *The visioning and 4th July and those ... there was a high level policy issue involved there which was rooted in the council's housing stock. And the council's housing stock represented a billion pounds worth of value. And there were arrangements about managing that housing stock with the result of trying to manage some of the finance issues and less so much the actual allocations and tenancies. And in my view at the time I thought the Authority was getting into areas of risk through having a made up mind about where they were going with some of those issues about sheltered accommodation.*

And you will know from the statement I've made and the evidence I've offered that ... the evidence is that there were covert meetings under way and there were policy decisions being made. And my position was one in which I was not actually trying to advocate one particular way, what I was concerned about was that we needed to be more cautious and we needed to be more clear about where we were going. But it was being driven fairly intently by a number of interests which were not on the front line, they were actually behind public debate, they were not in the public domain.....

PH: *Mr Davies asked me about is it a challenge, as I saw it, between councillors running the council or officers, and, forgive me, that's an unfortunate question because it should not be that. There should be a union as well as a separation.*

PD: *But in your example about the visioning day, my understanding, and correct me if I'm wrong, of your view is that that visioning day was an opportunity for policy to be debated as opposed to ratify what officers had in mind?*

PH: *It's been argued that way, Mr Davies, but the problem was that the evidence to me was that in fact there was an agenda that was being taken through there under the guise of actually having an open forum. Those open forums are a valuable part of democracy as long as the cards are on the table and there is a level playing field. And since we are going here, when we were in the run up to the visioning day, my concern was, for instance, on the fifth and the sixth ... my concern was that the issues about whether we were going to end up with a sheltered housing which was no longer part of the housing function, it was part of the social care function, which I didn't want to eliminate. But because that evidence was not before the visioning day it wasn't. And that was my concern. I wasn't so much taking sides, what I wanted to see was that the facts were on the table. But we've gone along way.*

5.17. The Respondent further indicated his concern as to the lack of any Council resolution (pg 24, 03.10.12 (1 of 3)):

HJ: *Well why was the Visioning Day not at the time and place to take the view of the stakeholders?*

PH: *Because there was no Council resolution about the role of sheltered accommodation and the role of the wardens, I mean the wardens, God bless the situation, was not actually the essence of the matter but it was the shape that the decision-making was shoe-horned into.*

GH: *My understanding is that you want to consult stakeholders after making the policy is that right?*

PH: *Well, in that sense that you put there, certainly it is part of the decision-making process.*

GH: *Who wouldn't you ask the stakeholders what they want before you-*

PH: *Oh you wouldn't-*

GH: *-make the policy.*

PH: *-you wouldn't under normal circumstances have them into a meeting when the position that we were dealing with was so ill-formed, and I would say ill-conceived.*

GH: *In any event your stance is stakeholders shouldn't have been there?*

PH: *Yes, I think that was my view.*

GH: *Why didn't you say that at some point in the lead-up to it?*

PH: *I think I've been at pains to explain as we've ... as this Visioning Day has formed part of this action taken against me, that I was at pains to try and get, if you like 51% out of whatever was on the table. It was my job to try and ... it was a finely balanced decision as to-*

HJ: *The question was why didn't you make your opinion known that stakeholders shouldn't be there before the meeting?*

PH: *Well that would have been imprudent.*

GH: *It might have been better than standing up and shouting at the meeting.*

PH: *Well hang on, I did not get up and shout at the meeting-
(Inaudible; multiple speakers 01:03:02)*

PH: *-Mr Hughes, you should not introduce that, forgive me, we've disputed that evidence totally.*

5.18. The Respondent was questioned in terms of the lead up and indicated in some way that he did not think that the comments of Susan Lewis on 3 November 2008 were a fair and frank declaration (pg 18, 03.10.12 (2 of 3):

GH: *Anyway, let's come to what looks to be the fresh stuff, if I can put it in that way, so that is paragraphs 4.1 and onwards. 'Concern has to be expressed about this calling of this Visioning Day. As Executive Members Helen Yale and I have repeatedly sought assurances from the Director for confirmation of the instructions as stressed last July, but we were not given insight into this meeting until a day ago, the 5th November.' That's not fair is it? You'd been involved in the preparation for this Visioning Day for at least 2 months.*

PH: *No, I think it is ... it's not a fair or unfair statement it's a matter of fact that you know you can find emails from Helen and myself of the 31st of October clearly expressing a search for what was going on.*

GH: *Then you say at that 5th November meeting: 'It was transparently evident from the papers prepared for the meeting on the 7th that the intention of that meeting was to effectively torpedo the wardens' service as it is valued by elected Members.' That's in direct contradiction isn't it to the letter that you'd received from-*

PH: *No, I mean-*

GH: *-wait for me to finish the question. That is in direct contradiction isn't it to the letter that you had received from Susan Lewis on the 3rd November saying in terms, "We're not going to touch it."*

PH: *I think I've already made it clear that I do not regard and did not regard the letter from Sue Lewis on the 3rd November as a fair and frank declaration of the position and I've said she either didn't know the full agenda or she was not coming clean and I'm not prepared to go further than that at this stage, other than the fact that what she was saying then was not a full and frank statement of what was the policy position.*

Now, in terms of the word torpedo – I mean I am graphic in my language; I am fairly and I do it to make sure that the point is understood and I don't think one thing about that sentence I don't think anybody would misunderstand what I was saying.

GH: *But it simply wasn't possible for that meeting to 'torpedo the warden service as it is valued by elected Members' because anything that happened to the warden service had to be run past Councillors first didn't it?*

PH: *Oh no Mr Hughes. Certainly anything conclusive would have to go through the Committee structure but what was insidious about the Visioning Day was that it was one of those days where half an idea is expressed in a form of words that gets you past a debate or an informed discussion. I mean anybody-.....*

.....

(pg 28, 03.10.12 (2 of 3)):

No, I didn't say that either. I meant that there were areas where there hadn't been a proper Member-led discussion in this matter, that's a matter of fact and record, and that you know I think we were going dangerously to the area where that was being avoided and I felt that that should not have been avoided, I felt it

was wrong to construct a scenario where Members' rights to have an informed debate about something, you know, was not being enabled.

HJ: *Mr Hughes.*

PH: *I mean I do recognise, we are talking now really at the frontiers of what goes on in Councils and Members, I mean, I'm trying to be as helpful as I think is appropriate in this case but it isn't easy you know.*

GH: *Surely the whole point of the Visioning Day was to permit Members a forum in which they could have an informed discussion.*

PH: *Yes, well that was the point I almost expected the Chair to say me to me there in that you know, wasn't this therefore a point at which-*

HJ: *Do you agree with that?*

PH: *No, I don't. In the sense that I am not disagreeing ... I'm not, not saying that this wasn't a mechanism to enable some of that rapport to take place, but it wasn't in the case here a substitute for what needed to be a full Council discussion and debate on the issues and I am suggesting that there was concern that this was a mechanism to avoid Mr Hughes that kind of necessary debate and I am more than convinced of that view of course when we eventually discovered the contents of the covert Officers' group etc.*

PD: *How is it a means of avoiding a full Council discussion when all the Councillors are invited?*

PH: *Well because you need to ensure that they are all there.*

PD: *Yes but ... so an invitation to a Visioning Day is not 3-line whipped whereas a command to attend a full Council debate as a Council meeting-*

PH: *No, forgive me I mean I am not disagreeing with you in the sense that I am saying that this to have approached the function and purpose that we discussed a moment ago about enabling an informed discussion to take place, this was actually not the appropriate mechanism. It didn't in fact attract; it attracted 29 and I think you know by the time the middle of the meeting came along there was no more than 15 or 20 there, a third of the Council.*

5.19. The Respondent was challenging the effectiveness of the meeting because of what he perceived as a poor turnout of the number of Councillors. This, we are satisfied, was never raised as any concerns in the lead up to Visioning Day. We are satisfied that the Respondent had knowledge of the Visioning Day for at least two months and was part of meetings where the full extent of that meeting was scoped and agreed. He raised concerns on 31 October 2008 which were answered in an email on 3 November 2008 and was aware of a meeting scheduled for 5 November 2008.

5.20. We are satisfied on the basis of the evidence heard and in particular evidence of Susan Lewis and Maureen Harkin that at the meeting of 5 November 2008, the following occurred. The slides to be presented as part of the Visioning Day were shown to the Respondent and Councillor Yale. This, again, is indicative that they were being fully included in the preparation for Visioning Day by Officers. Those slides did not, in our view, contain anything which would be interpreted as Officers imposing policy upon Members. Issue was taken with at least one slide by the Respondent and it was agreed that this would be modified.

5.21. We are satisfied on the basis of evidence of Maureen Harkin and Susan Lewis that the Respondent had mentioned a wish to cancel the event. The meeting on 5 November 2008 reached agreement that the event would proceed, a slide from Maureen Harkin's presentation would be deleted and a review of all other slides would take place to ensure that a clearer distinction was made between Sheltered Housing Service and Social Care. Comments from the independent reviews would be noted as quotes.

5.22. We are satisfied on the basis of the evidence of Councillor Helen Yale, that she was content with the proposals and with Visioning Day proceeding. We have taken into account witness statements of the Respondent and his expansion upon those comments in his examination in chief (pg 11, 18.09.12 (2 of 3)):

MM: *And you say I refer to B469 last paragraph. "I refer to note that Susan Lewis suggests that the slides did not suggest policy." Now I'm just going to refer you to B469, please. And she says at the last paragraph there, have you got that, Cllr Heesom?*

PH: *Yes.*

MM: *"The meeting on the 5th of November was difficult." This is Susan Lewis obviously.*

HJ: *This is a note, according to the date on B470, she wrote on the 12th of November 2008?*

MM: *That's right, sir, yes.*

HJ: *And it's headed Briefing Note to the Leader and Chief Executive, do you see that on the first page? Which bit are you taking?*

MM: *Just the last paragraph, sir.*

HJ: *The meeting on 5th of November. Do you see that, Cllr Heesom? I don't know if you want to read that –*

PH: *The last paragraph on 469?*

PD: *Yes, 469.*

PH: *Yes.*

MM: *Just read it, Cllr Heesom.*

PH: *Yes. Yes, I've read that, what do you want me to say?*

MM: *Had you already previously told Maureen Harkin that the day would be cancelled?*

PH: *No, that's fiction.*

HJ: *Did you at any time say to Maureen Harkin that it would be cancelled?*

PH: *No. If I'd had that view, we wouldn't have been at the meeting.*

MM: *What was your purpose in going to the meeting then, Cllr Heesom?*

PH: *To maintain an open dialogue, not to be negative and restrictive about it. There were aspects about the proposal that would have benefitted from a discussion and a debate, but as I subsequently realised it was not a debate, it was one-way traffic.*

MM: *We'll move onto that. Bernie Attridge has given evidence, he was the previous Executive Member for Housing, he's given evidence that if he was still the Executive Member, he would*

have cancelled the event. Now obviously you said that you didn't ask for the event to be cancelled, why did you take a different approach to what Bernie Attridge would have done if he was the Executive Member?

PH: *Well, I'm not confrontational enough, I always look for the best deal that's available. I had a view and I had visions and I had ideas, and my ideas were always open, I would always wait to see whatever was offered and whatever came up.*

MM: *So when you went to the meeting on the 5th of November, what were you going to say?*

PH: *Well, I've looked at this and I think I was happy to draw a reference to an email traffic with Susan Lewis on the 31st of October.*

MM: *I'll move on to that. Can I just ask you in terms of that particular paragraph, Susan Lewis says, do you see there, "However, the meeting was concluded with an agreement that I would delete one of the slides from Maureen Harkin's presentation and review all of the other slides to ensure they did not give any impression that the sheltered housing service was becoming confused with social care and that any comments from the review, reports would be identified as quotations."*

PH: *See that's the kind of expression that I find, many find difficult, because if you read that ever so carefully, it misrepresents what actually happened inasmuch as the Chief Executive acknowledged that there were issues here that were in the slides that were policy issues which should not be proceeded with, and the slides at the time, I think the first or the second slide summed up the terms of reference for the debate – older people's over 51, older people's strategy, etc. And these were*

areas of policy which were not suited to this kind of seminar. They were area policy which members should have discussed and debated before we got to this stage. And what is represented in that final paragraph, first of all the bit about... 'would be cancelled', I mean that is an irrelevance, and what she raised that for, because not only is it not true, and she premises it with wanting to cancel the event and was difficult. I mean totally negative and hostile comments from the outset of that paragraph. And we got to this yesterday, with respect, about the 19th of March letter. Extremely difficult when you're actually going through this exchange, this is the way she has of talking about things. Then however, the meeting was concluded, it was the Chief Executive who stepped in and he actually said that if we're going to go with this, can you take those issues out – and it wasn't a question of taking one slide out.

MM: *Well, in fairness to Susan Lewis, she says, "one slide" and, "review of all the other slides to ensure they did not give any impression that the sheltered housing service was becoming confused with social care and that any comments from the review, reports would be identified as quotations." I was going to ask you is that a fair representation?*

PH: *No, it's not, because it wasn't a question of taking out one slide. I think a few minutes I explained that when you take the slides that were put to us on that day, the opening slides, the front slide, was about high level policy debate and issues.*

PD: *Firstly, was there an agreement how you were moving forward after the meeting of the 5th of November?*

PH: *Yes, I thought we would move –*

PD: *Okay. What was the agreement?*

MM: *The agreement I understood it was that those policy issues would be deleted from the – whereas when we got to the meeting, all they'd done was move those slides further down into the series of slides.* [This is believed to be PH not MM]

- 5.23. We do not accept this evidence from the Respondent. He seeks to indicate that these are “*high level policy issues*”. We are satisfied on reading the slides, which were presented, that there were no high level policy issues. The Respondent sought to allege that there was some form of conspiracy amongst Housing Officers and in particular Susan Lewis. We reject such a contention. The email of 3 November 2008 from Susan Lewis is a straightforward attempt to identify the issues to be considered at a discussion day. We reject the contention that Officers had failed to present a neutral presentation nor that the Respondent had been frozen out of discussions. On 12 November 2008, Susan Lewis prepared a briefing note (B668) to the Leader and Chief Executive, which set out factually, without any embellishment, events which led up to Visioning Day. Her oral evidence was consistent in terms of preparation of that note and the salient points noted therein. It is significant that on 5 November 2008 there was no attempt after the meeting by the Respondent to put anything in writing in terms of him disagreeing with the day proceeding or with any significant outstanding issues.
- 5.24. We are satisfied that on 6 November 2008 the Respondent did indicate to Maureen Harkin that he did not believe the event would go ahead and, in effect, told her “*to stay away*”. This resulted in enquiries being made by her to the Chief Executive for confirmation that the event would proceed. Maureen Harkin had shown the amended slides to the Respondent. This was a brief meeting where she was of the view that there was nothing untoward in terms of the slides.
- 5.25. We do not find that Officers took part in clandestine meetings or some grand conspiracy, which would entitle the Respondent to seek to scupper the arrangements made for Visioning Day. The appropriate consultation had taken

place between Officers and the Respondent. The Respondent in piece meal disclosure sought to draw attention to certain meetings of Officers being held without him being invited. These meetings were routine meetings. The issues raised by the Respondent are an attempt by him after the event to justify his actions. We reject the contention of any conspiracy by Officers. The Respondent was fully and appropriately consulted.

- 5.26. No indication was given by telephone or by email on 6 November 2008 by the Respondent that he intended to circulate any document in advance of Visioning Day. It is of significance that he was aware of who was to speak at the meeting and had not sought at any time, for example by way of his email of 31 October 2008 to request that he as Executive Member should speak at the meeting. It is likely had he made such a request that it would have been allowed.
- 5.27. We were concerned in terms of the evidence from the Respondent as to the timeline for the preparation of correspondence and the circulation of the two-page note. On 6/7 November 2008, there are three documents prepared by the Respondent. The first document is a letter to Councillors (B465). This has the date of Visioning Day, 7 November 2008, but also would appear to have a word processing date, also indicating that it was prepared on 7 November 2008. It is of significance that it is signed in the name of the Respondent only. His email of 31 October 2008 had been by way of an email by him and Councillor Yale.
- 5.28. The second document was a note of two pages (B466 and B467). The letter to the Councillors (B465) refers to *"this note"*. We consider its contents later at 5.31. The third document was a letter (B468) sent to the Chief Executive referring to Visioning Day, Friday 7 November 2008. It is undated. The letter is written after Wednesday 5 November 2008 as it thanks the Chief Executive for his *"intervention at the meeting"* and further refers to a meeting with Maureen Harkin Thursday lunchtime. The evidence of the Respondent was that this letter was sent prior to Visioning Day or during the morning. It refers to Councillors raising *"...concerns with the officers about the format and the*

intentions for Friday, continuously over the last couple of months.” The only issues which it appears were raised were:

- a. The email of 31 October 2008,
- b. the contents of slides of 5 and 6 November 2008.

These were raised by the Respondent, and in the case of email, Councillor Yale also.

- 5.29. The letter does not, in our view, raise policy issues in terms of the slides which the Respondent states were still contentious. It does not, for example, state that the Respondent had requested and had been promised changes to the slides, and that these had not taken place. The concern would appear to be limited to further notes and a view on the Consultant’s report. It does not allege failure by Officers to consult with him, merely that he and Councillor Yale were not being listened to. We cannot be certain as to when the letter was delivered to the Chief Executive. There is no evidence the Chief Executive had received the letter by late morning of Visioning Day when he spoke to the Respondent.
- 5.30. The letter to Councillors and the note was written, we find, late on 6 November 2008 and possibly on the morning of 7 November 2008. The Respondent acknowledges that he arrived late at the Visioning Day. We also find that the bulk of the two-page note had been prepared at some stage after July 2008, but in advance of 6 November 2008. We saw no evidence that the note had been agreed by other Councillors, in particular, comments specific to Visioning Day and the arrangements.
- 5.31. We do find that parts of contents of both the letter and the note were unwarranted, unjustified, misleading and were a criticism of Officers, in particular of Susan Lewis. The comments include *“there are aspects to this event which have not been agreed or scoped with elected members”*, and *“The report was heavily critical of the service but officers have failed to bring it to committee through the normal channels and with background advice.”*

- 5.32. The Consultant's report, as was acknowledged by Councillor Attridge, had not been distributed as members of the previous administration had resolved not to do so. The report was critical of the Warden Service. Criticism related to a period prior to the appointment of Susan Lewis as Director. The impression being given by the letter written to Councillors was that the Executive Member was critical of the failure of Officers, in particular the Director, to bring the report to the attention of Councillors, even though this had been a decision of the previous administration. We are satisfied from the evidence we have heard and read that distributing the information provided by the report was an issue which Officers were addressing and of which the Respondent was fully aware. The Respondent had been present for at least part of a first meeting and the whole of a second meeting when Susan Lewis and Neal Cockerton shared the report with Executive Members of the new administration. It was from these two meetings with Executive members that the proposal for a visioning day emerged. It had been agreed that at Visioning Day quotes only from the report would be included. In addition to Members, there were outside organisations attending. The Respondent was already aware of the contents of the report.
- 5.33. The note alleges that the Respondent and Helen Yale were not given "*an insight into the meeting [Visioning Day] until a day ago the 5th November*".
- 5.34. The meeting had been in the planning stage for two months. On 22 October 2008 a timetable and the contents were distributed. First, there had been attempts by the Officers to set up a meeting during the week of 27 October 2008 but due to availability issues of Executive Members, could not take place until 5 November 2008. There had been a single email on 31 October 2008 which was responded to on 3 November 2008. The suggestion of the note at B467 is that Officers had not involved the Executive Members earlier. This was misleading in the extreme.
- 5.35. The note alleges that the intention of Visioning Day was "*to effectively torpedo the wardens service as it is valued by elected members*". There is no basis in

fact to this submission being made. The scope of the meeting was fully outlined in the invitation letter and had been clarified in an email to the Respondent by Susan Lewis. The words “*torpedo the wardens service*” was intended to be an emotive reference, which would in turn result in an emotive response from Members.

- 5.36. The note continues: *“It is clear that this meeting on the 7th November was designed to raise a host of issues concerning the supporting of vulnerable people across the county with equal emphasis on the needs of those in the private sector. The officers sought to force onto members the view that this was a requirement on the housing service...It is clear that officers have done nothing to abide by members view in the matter.”* Again, we find no basis in fact for such allegations or submissions. Attempts by the Respondent to indicate that these are political issues are without foundation. In our findings, this was a case of an Executive Member who may have held genuine concerns as to the Warden Service but had not sought to engage in any appropriate manner with the Director and unilaterally made comments to undermine her position and to evoke an emotional response from fellow Councillors when such response was unwarranted. There was a failure, deliberate in our view, to fully understand the nature of Visioning Day, which was to commence a discussion as to future development. If there was an attempt by any party to impose their views on others, it was the Respondent seeking to impose his view on all persons, including Elected Members.
- 5.37. No advance notice of the note or letter was given to Susan Lewis, nor in fact to the Chief Executive. The unilateral action of the Respondent was criticised by fellow Executive Member, Councillor Helen Yale. It is clear that she also was shocked at the statements made by the Respondent in the note and its unwarranted nature.
- 5.38. We have considered all evidence, including written witness statements and oral testimony. The effect of the note was clear immediately when attendees gathered at Visioning Day. No attempt was made by the Respondent, which he acknowledged in part with hindsight was an error to discuss or give

advance notice of the note to Susan Lewis. The Respondent would have realised that by distributing it at the time and the manner that he did, it had the effect of seriously undermining Susan Lewis' position and of undermining Visioning Day itself. He stated *"The Panel have made the point that I should have emailed Susan Lewis this document, and perhaps on balance that is what I could have done."* (C130). The effect of the note was outlined by Susan Lewis in her evidence. The following is an example (pg 57, 03.03.11 (2 of 3)):

MM: *Now, B481 the...this is...sorry, sir, this is the letter from Colin Everett to you, Mrs. Lewis. And what he says is on the second...he says on the...and this is B481, "On the second part of your complaint, it should be recognized that Councillor Heesom was given both a written and verbal apology and that's on the basis if he's offended you, of course, he's sorry. He has agreed to my recollection to this circulation of this apology therefore only the first part of the complaint stands unresolved. As a last attempt for reconciliation option would be to circulate the written apology from Councillor Heesom with a letter which gives your counterming views on the document. This option may not appeal to you, but is worthy of consideration.*

Now, what was wrong with that option? You could say I'm not happy about this particular point and you could have set out to leave is what you disagreed with and they could have...people could have formed their own judgment. Why were you so opposed of that?

SL: *I fundamentally didn't feel it was right for a chief officer and an executive member to engage in that sort of correspondence and debate and have that circulated around. This..that seemed to me to be a complete antithesis of what should be happening. I don't think I would have wanted members to have had to have Councillor Heesom and myself putting two opposing views for*

them to somehow make up their mind about who, you know, whether I was competent or not and he...or he was being fair or not. That didn't feel to me to be the right way forward.

MM: *You see the position is this, on the one hand, Councillor Heesom stands behind...he's sorry if he offended you, of course, and he apologizes for any offence that occurs and we've seen the letter. But he stands behind this document. He says everything in it is either a fact, a value judgment or opinion.*

But you obviously fundamentally think that, you know, what he did was wrong and alleges it implies incompetence against you, for example. What is wrong if you just sending out your response and saying to the members, look, I'm not happy about this, I'm not happy about paragraph 4 or whatever, and for the members to decide what they wanted, they could decide what they felt was right or wrong. What's wrong with that?

SL: *Well, I've tried to explain why I don't think it's an appropriate thing to do because if Councillor Heesom still thinks...still thought that I've not given him an insight into the meeting until the 5th of November, if he still thought that I was effectively trying to torpedo the warden service as it is valued by members. If he still thought that...where's the other one...that officers arranged a visioning day, but we have not agreed or scoped the content with members properly.*

If we still thought that...if he still thought that officers have failed to bring it to the committee through the normal channels and with background advice to me all of that...if that was still current as a view that the executive members are meant to be working with closely on housing and I was just meant to refute that and allow members to have a debate about it. I didn't feel that was acceptable. That was not the way I want to work.

MM: *All right. Well, let's deal with the issue of torpedo and warden service. You say it's changed, Councillor Heesom has said it's been reduced as a service, OK, you clearly disagree on that. But what's wrong with letting people decide who is right?*

SL: *I don't believe that...well, what I...I'll tell what I do believe. What I do believe is that chief officers and councillors have to have mutual respect and a way of resolving issues like this that don't involve a debate amongst all 70 members in which the chief officer feels undermined and professionally compromised and in which the executive member feels as if they can make these claims about their chief officer and still expect them to work alongside them. That's what I...that's my view on that. I felt that I was...*

5.39. We turn to what was said or not said during Visioning Day. We are satisfied that the Respondent did speak at Visioning Day. We are also satisfied that he had a conversation during the morning with the Chief Executive who was extremely concerned as to the note distributed. We are satisfied that the Chief Executive requested the Respondent to conduct himself properly during the day, as there were concerns as to the negative effect of the note.

5.40. Despite a number of witness statements, the best description of recollection we had from the Respondent as to events on Visioning Day from his view point was when prompted by the Chair (pg 26, 03.10.12 (1 of 3)):

HJ: *What time you arrived there Councillor Heesom.*

PH: *I got there after it had started, I'd had, I think it was something at my ward at the school I had to attend (inaudible 01:04:51). I got there and I think...*

HJ: *Could you give an approximate time?*

MM: *He does sir in his statement doesn't he?*

HJ: *No.*

PD: *Mr Murphy-*

HJ: *Look at the statement before you raise issues.*

PH: *I wouldn't put my heart on it.*

HJ: *Okay, was it morning or afternoon?*

PH: *Oh morning, it was sort of sometime between 9:30 and 10 I think.*

HJ: *And what was the state of play as you arrived?*

PH: *I think actually there was a minor intermission of some kind or the proceedings had not properly started. I spoke to Colin Everett he was there, he'd called in.*

HJ: *What do you recollect of that discussion with Colin Everett?*

PH: *Well he expressed concern about my position in relation to the meeting and we didn't go much further than that other than he was wondering, I think, whether I was going to interfere with the meeting or you know-*

HJ: *Did he ask you for any-*

PH: *-I think that's not fair really. But I did have the recollection that I was asked in some shape or form was I okay with the meeting.*

HJ: *And what was your response?*

PH: *Well I said yes I was there, I was here in the meeting and the people are here let's see what happens.*

HJ: *And was that a discussion in the room or outside the room?*

PH: *Outside the room in the ... not outside the room, it was out, the room was one with a sunken main centre with a slight podium all the way round it and we were on that elevated area.*

HJ: *But you thought there was some kind of break yes?*

PH: *Yes.*

HJ: *Okay, did you enter-*

PH: *He went then.*

HJ: *He went yes?*

PH: *He went then I think.*

HJ: *Did you hear him speak at all during the day?*

PH: *No. I didn't know he'd ... did he speak? I don't know whether he did speak. And I then went and sat down on one of the tables to the right of the centrepiece, centrepiece was a couple of easels with a table where the main Officers were sat and then there were probably about 12 or 15 at the most round tables spread out in front of that centrepiece and I went and sat at the table with ... some Councillor, I can't remember who, but and then we went through and I think when I gave my evidence, which is the*

point at which I wondered whether you had got a record of it, but when I gave my evidence in ... I forget which venue it was, it wasn't here.

HJ: *You sat at the table, what was the first thing that occurred whilst you were sitting at the table?*

PH: *I think there was a presentation.*

HJ: *By whom?*

PH: *It might have been Maureen, Maureen Harken; Mo as she was colloquially like to be called, Mo. And then there was I thought an opportunity to comment, I remember gaining the impression that a comment was sought and I got up and I said I think a one-liner or something and Maureen Harken came to me, not in a sort of a difficult way, and said, "No, we'll take comments later. Move on." Then there was a-*

HJ: *Do you remember what, did you actually say anything or did you just get to your feet?*

PH: *I think I just got to my feet and said, "I think I'd like to comment on some of the matters before us." It wasn't, for want of a better description, it was an electric moment.*

HJ: *Right. What happened then? That's when Maureen Harken said, "No, we'll..."-*

PH: *Yes, that's fine and I had got no problem with that. And then there was a presentation and there might have been a workshop.*

HJ: *Who was the presentation after Maureen Harken?*

PH: *I think it was, they split up into working parties and I think there might have been-*

HJ: *Did you participate in one of those working parties?*

PH: *Yes, I did, I can't remember which one.*

HJ: *There must have been lunch at some stage.*

PH: *Then there was a lunch.*

HJ: *Do you remember anything else significant before the lunch somebody else speaking?*

PH: *No, I don't, no.*

HJ: *Do you remember lunch?*

PH: *No, it's on the (inaudible 01:10:00) so I must have done. And then we came back.*

HJ: *You don't recall discussing your leaflet or anything with anybody?*

PH: *No, I maintained the point of view that there was nothing in that leaflet that had not been at table frequently before and...*

HJ: *What happened then in the afternoon?*

PH: *Then I think Sue gave a presentation and I think it was after that that Maureen said, "Are there any comments?" And that's when I got up and I felt that I needed to say that you know there were issues here that were to do with the sheltered accommodation forming part of the housing function in the Authority and it was*

particularly the bit in her slides where she focused in on the essence of the issues before the meeting were based on older people's strategy and the over 50s strategy and predominantly so and I felt that you know, it was incumbent on me at some point to put a mark down to say that, "That's fine, you know we're all working together but it does need to be..." you know, and that's where there might have been some misunderstanding where I might have said, "An Officer there is saying," but I don't think I did use it even in that sense but that's the only way I can contain or accept that, you know, somebody says they heard that. But there was no friction, it wasn't a fractious meeting.

HJ: *How long did you speak for?*

PH: *Oh, 2 or 3 minutes no more. And then Carol Ellis got up after me; about 4 or 5 people spoke and then they moved into another workshop. By that time the attendance at the meeting had dropped off considerably, as is often the case, and I would have thought that you know, by that second workshop there was probably only about 25 or 30 people left there and they were dripping away, so that by the time I think there was another workshop after that and by that time it had dripped off I think down to a 20 or so.*

HJ: *Did you stay until the end?*

PH: *I think so, yes, until you know, until the business had finished. I mean, I have to say of course I would because I was deeply troubled by the way that I suspected that there was a covert agenda going on here. I mean it almost I would say, stood to reason that there was more to this than, you know, a review or a look at how the care side ran inside the housing function.*

HJ: *Is there anything else you can remember of the meeting?*

PH: *No I don't think so sir.*

.....

(pg 35, 13.10.12 (1 of 3)):

PH: *On the top of page 513, 'As I trust you will recall...'*

HJ: *'Some clarification as to the item regarding the sheltered accommodation issues to be covered at the meeting' yes?*

PH: *Yes. 'As you are to recall there are of course the sheltered remains ... and is in the main a retained service and that the wardens' provision is fundamental to that service.' Both those issues therefore were in that letter with respect.*

HJ: *But she responds to that by saying that, 'The Visioning Day presentations will not include any discussion of reducing wardens' hours of work.' And says, 'And no suggestion that sheltered housing is anything other than a housing service.'*

PH: *Well I'm afraid that the agenda that she gave us it did in my view deal with those matters. Now, I would just make other point-*

HJ: *The agenda or the slides?*

PH: *The slides. And can I also make a point there's reference in that letter in 513, which I think-*

HJ: *Hold on, does the letter refer, your letter refer to the relief wardens?*

PH: *No it simply refers to the fact of not reducing the wardens-*

HJ: *Hours.*

PH: *Yes.*

HJ: *And she says, "Well, they're not in the presentations."*

PH: *She says in her letter, yes, but in my view was that they were implicit or the result of she was-*

HJ: *Were they expressly in the slides or implicitly in the slides?*

PH: *Certainly implicitly but I would have to go back and debate ... I mean with the greatest of respect, I mean we are talking here about fairly high-level policy issues and I am certainly prepared to talk all day about them but you know, I do want to make it clear that you know, that was my role. I mean I was the Senior Member in that area. And I wanted to draw your attention to, on page 531, which is something you might not have been aware of in terms of these issues, and that is the-*

MM: *Is that 513, sorry?*

PH: *513, that is: 'Perhaps we should also clarify the issues of the options strategy in regard to the sheltered accommodation provision.' What we were doing-*

5.41. We are satisfied that there were comments made by the Respondent, which elicited a strong response from the Officers. Comments were made by the Respondent which upset Susan Lewis. The following is an exchange in her questioning to illustrate (pg 7, 03.03.11 (3 of 3)):

MM: *Okay. When you say, and I am just going to rely upon what is said at the end there, 'I experienced his tone as aggressive, confrontational, dismissive and disrespectful'. Is it right you didn't mind the debate, what you objected to, tell me if I am wrong, is the fact that you say Patrick Heesom was 'aggressive, confrontational, dismissive and disrespectful'. That is what you objected to isn't it?*

SL: *I objected to his tone and I objected to the content of what he said. I can refer to my statement if you like.*

HJ: *What do you remember him saying which caused you offence?*

SL: *He referred, as I said I was down at the front of the large room with everybody seated and taking comments. And he talked about me, he referred to me as "that officer", and that "that officer has no business to be bringing these issues to you". Which was basically saying that I had no business to be there and help with that debate. So that wasn't about the debate itself about sheltered housing, that was about me "that officer having no business to be there talking to members about this issue".*

MM: *Can I just bring you back to this point Mrs Lewis and tell me if I am putting words in your mouth –*

SL: *And his tone was aggressive so -*

MM: *So it is two points, you said you objected to his tone as 'aggressive, confrontational, dismissive and disrespectful' that is what you objected to yes?*

SL: *That is one of the things.*

MM: *Okay now.*

SH: *Sorry can you just clarify for me, when you say his tone was aggressive, what do you mean by that? Because aggressive to one person means something completely different to aggressive to another. Can you just try and recall what was said and how it was said?*

SL: *I appreciate yes. He stood up, he addressed the room about me, so you know I was standing at the front of the room of people that I had been speaking to, he addressed the room about me not to me and he said, he was standing and he said “that officer has no business to be bringing these things here to you today” or words to that effect, and he said it in quite an aggressive way, not necessarily shouting but it was a very dismissive way about me. He didn’t refer to me by name or by title and it was very, very unpleasant. So much so that other people in the room experienced this as unpleasant, they were concerned for me –*

SH: *How do you know that?*

SL: *Well Maureen Harkin was standing next to me and she was clearly distressed by it and several councillors looked aghast and one of the councillors, Councillor Armstrong-Braun stood up to intervene to stop Councillor Heesom making a speech and said, “you know this isn’t the place for this, we don’t need that discussion here”. And then I think Maureen Harkin sensed, we didn’t want a very unpleasant thing to develop so on the programme we were due to go into groups to have a discussion topic, so Maureen Harkin then moved everyone into groups. So people reacted to if you like protect me because it was obvious that I was under attack.*

PD: *Can I clarify this, are you saying his intervention when he stood up was limited almost to one or two sentences?*

SL: *Yes I think it was a couple of sentences. And as I say it was because of the intervention of Councillor Armstrong-Braun and Maureen Harkin that it wasn't allowed to develop but it wasn't pleasant.*

MM: *And you obviously discussed this with other people then after the event yes?*

SL: *I discussed it briefly with Maureen Harkin after the event and then obviously I discussed it with the chief executive.*

MM: *And other people?*

SL: *I can't recall discussing it with other people immediately after the event. It was certainly, I informed my close colleagues on the management team as you would talk to people in your close management for example, who were directors. I do recall perhaps several days later mentioning that because it was something that people had heard about because there were a lot of people in the room and it was an unpleasant experience.*

However, we have to be satisfied with sufficient precision as to the words used, be they the actual words or the general tenor of the words. A significant amount of conflicting evidence was adduced as to the order of the day, when precisely Susan Lewis and Maureen Harkin spoke, when the Respondent spoke and the reaction of others. More significantly, however, we cannot on a balance of probability be satisfied of the tenor of words used by the Respondent at the Visioning Day beyond those contained in the note prepared by Susan Lewis on 12 November 2008 and expanded upon in her oral evidence.

5.42. It is of significance that immediately following Visioning Day, correspondence ensues and issues are raised by Susan Lewis as to the conduct of the

Respondent. This is insufficient to satisfy us on a balance of probability in terms of Visioning Day itself of a verbal attack. The highest that it could be put at is in reference to Susan Lewis he said the words *“that Officer”* and *“that Officer has no business to be bringing these things here to you today”*. That is insufficient, in our view, to satisfy a finding on the balance of probability that it was a sustained verbal attack on the Officer. We do note one Councillor felt it appropriate to offer an apology to Officers at Visioning Day. Susan Lewis in her ‘note of events’ refers to the Respondent’s tone as being dismissive or confrontational.

- 5.43. There is considerable discrepancy amongst witnesses as to the order of events and conduct of the Respondent. We are satisfied as per the memorandum prepared on 12 November 2008 (prior to any decision to make a referral to the Ombudsman) Susan Lewis was upset by being referred to as *“that Officer”* and by the Respondent’s tone (pg 23, 03.03.11 (3 of 3):

MM: *Well Mr Heesom’s position is Mrs Lewis, that he actually did want to debate but he was cut off by Maureen Harkin. I am going to refer you to B236, paragraph three, again that is your statement. And what you say at paragraph three, and it is midway down there. You have related how that Councillor Heesom stood up and you say what he said. And you say ‘I didn’t say anything because by this time I did not want a confrontation with Councillor Heesom’. And I suggest the problem you have got is you just don’t like being challenged in a public forum and you felt mortified by the fact he actually challenged you in front of all these people about the position.*

SL: *I disagree with you. As I have tried to explain. As a chief officer, I don’t expect an executive member to behave in the way that Councillor Heesom did by referring to me as “That officer has no business” etc. You know having followed the circulation of that document earlier in which it was claimed that I wanted to torpedo the warden service and that I had not taken reports to*

committee, and that I had not involved members in designing the event, so there were all those allegations that everybody in the room was aware of and then to stand up and make those derogatory comments about me, I could see no benefit to anybody for me to be challenging Counsellor Heesom in a large room with 50 odd people. And that is not about me not being able to accept challenge and I would say to you that I have got a long track record in senior management, I have done many difficult jobs and very, very challenging roles and that has never been a problem of mine.

The Respondent acknowledged he had spoken to the Chief Executive prior to entering the meeting room. It is significant if the Respondent had, as he alleges, such serious concerns, that he did not attend the meeting throughout the day. His full participation could have met any concerns as to Officers 'influencing' Members. We do find his intervention as per the briefing note and in her letter to the Chief Executive of 18 December 2008 (B477) *"Immediately after a presentation I gave, Cllr Heesom stood up and attacked what I said to the audience of approximately 50 people which included elected Members, staff from my Directorate and also some external partners. He referred to me not by name or title but as 'that officer'. I experienced his tone as aggressive, confrontational, dismissive and disrespectful."* Notwithstanding conflict in evidence heard from other witnesses, and whilst we are not satisfied of precise words used other than *"that Officer"* and *"that Officer has no business to be bringing these things here to you today"* we do find the note of events represents a truthful account of what happened at the meeting.

- 5.44. In terms of Visioning Day, we find the preparations had been fully scoped and discussed with the Respondent. His actions in circulating the letter and note to Councillors before the meeting were intended to undermine Susan Lewis, the Director. Comments in his note that Visioning Day was arranged without authority of Elected Members was unwarranted and without foundation and intended to undermine Officers.

5.45. Whilst we believe comments were made during the meeting by the Respondent, and there is some evidence that those comments caused upset to Susan Lewis, we do not find on the balance of probability that this was a sustained verbal attack. However, he referred to the Director as *“that Officer”* and intimated *“that Officer has no business to be bringing these things to you here today.”* His tone was dismissive and confrontational and the comments we have found were uttered were said with the intention of undermining Susan Lewis. We are satisfied from March 2007 to the date of the complaint being submitted to the Ombudsman, the Respondent engaged in a course of conduct against Susan Lewis which amounted to harassment.

6. COMMENTS MADE BY THE RESPONDENT

ALLEGATION

4.2.1 The Respondent’s conduct towards Susan Lewis, Director of Community Services.

vii. Paragraph 4(b), 2008 code - failure to show respect and consideration for others

Comments made by Cllr Heesom about Susan Lewis which Peter Evans, the Deputy Monitoring Officer overheard: “Sue Lewis is shit at her job” (14 November 2008) and made to Maureen Harkin (paragraph 123 of the Ombudsman’s report) Sue Lewis knew nothing about housing and “her days were numbered” (undated but after August 2008).

Comments overheard by Peter Evans

6.1. We are satisfied as a Case Tribunal that on 14 November 2008, Peter Evans, who was the Deputy Monitoring Officer, was walking along the corridor outside the Executive Room. The door was not fully shut. The Respondent was in the Executive Room and we are satisfied, on a balance of probability, that

there was at least one other Member present in the room. The Respondent was criticising Susan Lewis and used words “Sue Lewis is shit at her job”. The only person who heard the comment would have been the Member in the Executive Room and Peter Evans. Peter Evans prepared a hand written note on the same day which was delivered to Mr Barry Davies. Mr Evans was aware of current issues being considered by Barry Davies and Susan Lewis, in particular the events following on from the Visioning Day.

- 6.2. In coming to our findings, we considered the witness evidence of Peter Evans, Barry Davies and the Respondent. We have also considered witness evidence, for example, of Carolyn Cattermoul and Bernie Attridge as to their opinion as to how Susan Lewis was functioning in her role as Director of Community Services.

- 6.3. We accept the evidence of Peter Evans that the note which he prepared and handed to Barry Davies reflected accurately what he witnessed on 14 November 2008. It was suggested that Peter Evans in some way was acting maliciously towards the Respondent. We find no basis for such an allegation. Mr Peter Evans was aware of issues between the Respondent and Susan Lewis and of the involvement of Mr Barry Davies. He correctly prepared a hand written note which reflects his reasoning at the time *“thought you should know”*. A number of scenarios were put to Peter Evans, for example, that the Respondent may have been talking on the telephone or indeed repeating immediately a statement made to him by another. We are satisfied that neither of these scenarios are probable or indeed possible on the evidence heard. Peter Evans was clear that he had heard only the Respondent speaking at some length before and after hearing the words “Sue Lewis is shit at her job”. His note confirms the clear impression that somebody else was in the room. Peter Evans acknowledged that he did not see that person, or indeed, could not recollect when giving oral testimony of hearing another person speak. He conceded it was a possibility that there was nobody else in the room. This, however, does not take away from the general impression formed at the time when Peter Evans was making his note that the Respondent was involved in a conversation. The tone and intonation of the

Respondent's voice gave the clear impression of a conversation with a person present in the Executive Room.

- 6.4. The Respondent has no direct recollection of the event and therefore was unable to present any evidence to contradict what was recorded by Peter Evans and that the record was not an accurate record. His evidence, for example, at C34, was limited to putting forward alternative possibilities:

"If Mr Peter Evans heard these comments and it sounded like my voice I might have simply been reporting comments made by others. There is no contextual evidence offered by Mr Evans in the terms here set out I have to deny that I commented as is implied in the note of Mr Evans."

- 6.5. The Respondent's statement at C74 is that he has no recollection of saying "Sue Lewis is shit at her job".

"I have no idea to whom I am meant to have said it, or indeed if I am meant to have said it to anyone or to a gathering of people. I have no idea in what context I am meant to have said it. I have no idea if the person who reportedly heard the comment was eavesdropping on a private conversation or a conversation in the course of my performance as a councillor. I have no idea how the person who reported the words came to the conclusion that the alleged words were spoken by me. If, which it is denied, such words were allegedly spoken and heard then the words were either spoken whilst I was acting in a private capacity and therefore not subject to the Code or, if spoken in the course of my duties as a councillor, were a value judgement of the performance of a senior highly paid local authority officer."

- 6.5. We are satisfied that Peter Evans accurately reflected words which were said by the Respondent to another Member in the Executive Room. There is no basis for suggesting that Peter Evans was deliberately eavesdropping outside the Executive Room. As the note and the evidence of Peter Evans indicated,

he was walking along the corridor and the voice was loud and he was under no illusion that the person speaking was the Respondent. The comment was made in the Executive Room of Flintshire County Council and were words expressed by the Executive Member for Housing as to his comment upon a Director of the Authority.

- 6.6. There was considerable reticence by the Respondent to express what his opinion was of the performance of Susan Lewis. This can be seen in the transcript of the evidence dated 3 October 2012, (1 of 3). We are satisfied that in November 2008, in particular with events involving the Visioning Day, the Respondent held a negative view of Susan Lewis and her performance as a Director. This has to be viewed also in the context of the letter forwarded by the Chief Executive, following on from the initial comments made by the Respondent to the Chief Executive, in March 2008 after the initial appointment of Susan Lewis. In the letter, the Respondent was advised of the appropriate procedure for criticism, including confirmation any concerns should be raised in her formal appraisal process. The comment "Susan Lewis is shit at her job" was made by the Respondent on the same day as he forwarded a letter purporting to be an apology, in respect of his conduct on the Visioning Day, to Susan Lewis (B661).

Comments to Maureen Harkin as Regards Susan Lewis

- 6.7. Maureen Harkin was appointed as Interim Head of Housing in August 2008. The Respondent was one of two Councillors who interviewed her and appointed her to her post. Upon taking up her post, Maureen Harkin underwent induction. In the course of her induction, she was reintroduced to the Respondent who was the Executive Member for Housing Strategy. The Respondent stated to Maureen Harkin that he had been part of the interview panel that had appointed her and stated "*as Sue Lewis knew nothing about housing, [Maureen Harkin] needed to move from Flint to Mold to work closely with him*". This comment made Maureen Harkin feel uncomfortable (B281).
- 6.8. During subsequent conversations with the Respondent, the Respondent sought to make disparaging comments about Susan Lewis to the extent that

Maureen Harkin had requested him to refrain from making such comments.

- 6.9. We are satisfied that, on occasions, the Respondent repeated comments to Maureen Harkin, the Interim Head of Housing, that Susan Lewis, the Director of Community Services “knew nothing about housing”. We are satisfied that on at least one occasion between August 2008 and 12 November 2008, the Respondent stated to Maureen Harkin that “Susan Lewis’ days are numbered”. Whilst not the subject of an alleged breach, we are also satisfied that during this timescale the Respondent had expressed his lack of confidence in the Chief Executive and that when he (that is the Respondent) was appointed Leader of the Council, the Chief’s Executive’s days “were numbered”. The words that Susan Lewis’ days were numbered were intended as an indication to Maureen Harkin that he, the Respondent, would ensure Susan Lewis’ removal from post. It was not an innocent statement, for example in terms that there was an intention of Susan Lewis retiring.
- 6.10. We prefer the evidence of Maureen Harkin to that of the Respondent. Maureen Harkin was an interim appointment. At the time of giving her evidence she was no longer an employee of Flintshire County Council. A new full time Head of Housing had been subsequently appointed. Maureen Harkin had not wished to be appointed or to secure any substantive appointment. It was suggested on behalf of the Respondent that she may have an ulterior motive for fabricating her evidence. We find she had no such motive as her role with Flintshire County Council had ceased at the time she gave her evidence. Indeed, at the time of making the complaint against the Respondent, it was anticipated that a full time appointment would replace her.
- 6.11. In March 2009, she wrote to the Monitoring Officer complaining of disrespect shown by the Respondent to employees of the Council.

“Councillor Heesom has shown disrespect to senior employees and his colleague, Helen Yale, by making disparaging remarks to me and other members of my staff for, e.g. about Sue Lewis he has said “she knows nothing about housing” to the point where I have told him that I do not

agree with his views and would be grateful if he didn't repeat his remarks."

- 6.12. Susan Lewis, in a Briefing Note she wrote to the Leader of the Council and Chief Executive on 12 November 2008 (B660), comments:

"The context in which I make these observations includes other information provided by Maureen Harkin, which Maureen is willing to confirm if necessary. Maureen has reported that Cllr Heesom has said to her: Sue Lewis knows nothing about Housing, you will be working to me; 'Her days are numbered'.

- 6.13. The Respondent alleges both Maureen Harkin and Susan Lewis are fantasists and liars. We found no such basis. Both gave a truthful and consistent account of events. As an aside, we would note that in the course of these proceedings, the Respondent has made disparaging remarks about not only Officers but implied, for example Councillor Helen Yale was appointed to the Executive solely on the basis she was a woman.

- 6.14. It was put to a number of witnesses that Susan Lewis had little knowledge in terms of housing matters. This is a view that we are satisfied that the Respondent held on 25 March 2008 onwards. Susan Lewis was appointed to her role of Director of Community Services on 25 March 2008. The Respondent had immediately indicated to the Chief Executive that he did not believe she had previously performed to the required standard in her previous role and that she did not have the potential to be a Director of the Authority. The Chief Executive in a letter of 31 March 2008 (B485) provided a formal warning to the Respondent as to such comments:

"I am concerned that you hold such views, which have not been evidenced, and that you chose to address them to me in an inappropriate way, that is informally and not as part of a formal and supervised appraisal or evaluation of the individual".

6.15 The evidence of Maureen Harkin, which we accept, is that similar comments were made to her by the Respondent in respect of Susan Lewis' ability to perform her role. The statement "*she knows nothing about housing*" was not a warranted statement. Housing was one of the portfolios which fell within the ambit of the Director of Community Services. Susan Lewis was not a specialised housing expert. Her background had been in terms of social care. The Chief Executive, who had appointed her under the matching process approved by Members, took the view that she had the requisite ability and experience to take on the role of Director of Community Services. In terms of housing, it was always anticipated that there would be a Head of Housing operating to assist her in more specialised aspects. It is apparent that the Respondent did not understand this procedure, or chose deliberately to ignore it, and immediately after her appointment was critical of Susan Lewis. The making of disparaging remarks as to Susan Lewis' competence and knowledge was intended to undermine her position as Director of Community Services. Based upon our findings, the undermining of her position was not limited to disparaging comments to third parties but included direct comments and actions against Susan Lewis, which had a detrimental effect on her confidence.

6.16 In her Briefing Note of 12 November 2008 (B470) and in the context of the note circulated prior to Visioning Day, Susan Lewis states:

"The written circular is, in my view, an allegation of incompetence against me, and I feel professionally compromised. Unless this issue is dealt with, I have difficulty in seeing how I can do my job in such an environment."

6.17 We are satisfied that at some date prior to 12 November 2008, the Respondent made a comment to Maureen Harkin that Susan Lewis' days were numbered. This is consistent with the statement he had also made in terms of the Chief Executive. Further, it is consistent with comments he made to the Chief Executive in March 2008 and which are referred to in the Chief Executive's letter of 31 March 2008:

"I am also concerned that you implied that should you be in a position of leadership authority within the Council following the local elections you would expect me to review if not reverse the appointment. The appointment has been made, and the Council has obligations to Ms Lewis as her employer...I am sorry to have to write to you in such formal terms. However, it is necessary to record the advice I gave to you on 27 March [2008] in the form of a letter, and to request you to exercise caution in how you comment on the performance and integrity of a senior officer of the Council as a member of an employing body."
(B486)

- 6.18. In coming to our findings, we are satisfied that this comment was made to Maureen Harkin, but acknowledge that the comment is not mentioned in the letter to the Monitoring Officer (B285 – B287). However, Maureen Harkin was adamant in her written statement to the Ombudsman that this comment was made. The letter to the Monitoring Officer, which was seen by the Respondent in March 2009, referred to *"disparaging comments"*. It was an enclosure attached to the letter of complaint. The Respondent did not deny in his initial written response that he had made disparaging remarks about Susan Lewis. The comment was noted by Susan Lewis as having been conveyed to her by Maureen Harkin in her Briefing Note (B660), This document was available to the Respondent in March 2009 and he did not comment on the allegation.
- 6.19. In July 2009 the Respondent received the written witness statement of Maureen Harkin, which clearly sets out the comment *"her days were numbered"*. In his response to the Ombudsman prior to conclusion of the Ombudsman's investigation, he did not comment on that allegation. He was aware of an allegation of disparaging remarks against Susan Lewis within a matter of months of those being made and which included the remark *"her days were numbered"*.
- 6.20. Maureen Harkin was cross examined at length in terms of the alleged

comments made by the Respondent and as to Susan Lewis' experience in the field of housing. There was no attempt by Maureen Harkin to embellish her evidence. She gave a straightforward account. She explained that immediately upon her appointment comments were made by the Respondent as to Susan Lewis knowing nothing about housing. This is consistent with comments made to the Chief Executive in March 2008. The suggestion, made on behalf of the Respondent, that such comments were in some way confidential are rejected. This was the Executive Member for Housing giving his personal view on the Director of Community Services to the Interim Head of Housing. It would be apparent that such comments would undermine the position of the Director. Maureen Harkin also made it abundantly clear that Susan Lewis had an understanding of the housing issues but not to the extent of a housing professional. We quote from the exchange on 3 June 2011 (pg, 3, (2 of 2)):

MM: *Okay. Now you say then at B286 and paragraph four that 'Councillor Heesom has said to you some damaging remarks to other members of my staff for example Sue Lewis he has said "She knows nothing about housing". Do you see that?*

MH: *Yes.*

MM: *And in fact you also say in a previous part of your statement that "Her days are numbered"?*

MH: *Yes.*

MM: *Now can you give us an example of when Councillor Heesom said to you "Susan Lewis she knows nothing about housing and her days are numbered"?*

MH: *From very early on, I think the first week I started, the first meeting I had with Councillor Heesom. Councillor Heesom was on the panel that appointed me and he made it clear that he was*

influential in appointing me and he was taking me into his confidence that Sue Lewis knew nothing about housing and he wanted me to work closely with him. So that was from the very beginning. And subsequently over time as there were discussions or disagreements and I would say the director or Mrs Lewis has asked, "Oh she knows nothing about housing". I said, "Councillor Heesom that is not correct and I would rather you couldn't make those comments". And subsequently started saying, "I know you don't like me to say this so I will move on". And that is the sort of.

MM: *So you say it was confidential. Was there anybody else there when Councillor Heesom said this?*

MH: *No just me, it was in our induction meeting if you like.*

MM: *Okay. And when you had these confidential conversations where would they take place?*

MH: *It wasn't a confidential, I didn't say confidential meeting, it was an induction meeting and he said "I am taking you into my confidence that Sue Lewis". He didn't approve of Sue Lewis as being appointed and she knew nothing about housing and therefore he and I would have to work very closely together.*

MM: *Okay now it is right that you said earlier that Susan Lewis, well you knew far more about housing than Susan Lewis didn't you?*

MH: *I am 30 plus years in housing. I am a Fellow of the Institute and yes I have that background.*

MM: *And you probably also accept that Susan Lewis didn't know a lot about housing?*

MH: *Comparatively yes. But absolutely no. Obviously as a professional in the social care field, her inter linkages with housing were quite, I would have thought, robust and consistent. So she would have had understanding of the housing issues and knowledge but not to the extent of a housing professional.*

MM: *You would accept would you that there was a constituency of opinion that took the view that Susan Lewis didn't have much knowledge of housing?*

MH: *No, not to my knowledge. Obviously the people I dealt with, they recognised that Sue was taking on housing. There would be a learning curve in terms of the detailed issues but that is why she would have a head of housing.*

6.21. The Respondent in his initial responses, which he states he prepared in March/April 2009 and were submitted to the Ombudsman in November 2009, allege that the allegations by Mrs Harkin "are offensive". It would appear that those responses refer more to criticism relating to the December 2008 meeting which Maureen Harkin attended. He alleges that Maureen Harkin had an agenda, and in particular that she was in favour of the local authority transferring out its housing stock. The Respondent states "*I feel, in my view, that she has been motivated in her comments by that opinion that she holds.*" We find no basis for saying that the allegations in any way are untruthful either as suggested or as further suggested that Maureen Harkin was acting maliciously. Maureen Harkin provided a statement to the Ombudsman at a time when she knew she had no long term involvement with Flintshire County Council. She presented her evidence to the Case Tribunal at a time when she had ceased her involvement with the Council.

6.22. In his first response to the Case Tribunal (C34) the Respondent states:

"As to the comments alleged by Mrs Harkin I simply cannot recall their context or use. I am sure I would not have said them in the form as set

out by Mrs Harkin.”

- 6.23. The Respondent therefore is not able to dispute the precise form of words. He states he has no recollection. The Respondent in his response of February 2011, being the statement which he was directed at the outset of the proceedings to provide to the Case Tribunal, states as follow:

“I am also accused of saying to Maureen Harkin that Sue Lewis knew nothing about housing and that “her days were numbered”. I have no recollection of using those words. Sue Lewis was originally the director of Social Services and performed well in that role. She was appointed to the Housing Department by the Chief Executive, Colin Everett, without the job being externally advertised. She clearly had some knowledge of housing but I think it is fair to say that her main experience and knowledge was not in housing affairs. She ended up with two very difficult departments to manage. I deny that I ever said “her days were numbered”. It is not clear from the allegation when that is meant to have taken place, where it took place and in whose presence the words were allegedly spoken. All that I am told is that the alleged words were spoken after August 2008. It is now common knowledge that at the end of February 2009 Susan Lewis indicated that she wished to take early retirement.” (C75)

- 6.24. For the avoidance of doubt, we are satisfied that the words “her days were numbered” were spoken as indicated above and we are satisfied that they were spoken before 12 November 2008 and before any suggestion of Susan Lewis indicating a wish to take early retirement. In his latest statement, the Respondent says that Maureen Harkin was a witness who was prepared to exaggerate her evidence and indeed lie to the Case Tribunal. We find no basis for such an allegation. We assess Maureen Harkin as a witness who gave her evidence truthfully and without any form of exaggeration. The words uttered to her by the Respondent were inappropriate, and we find her interpretation of “her days are numbered” as being a threat that the Respondent was going to in some way oust Susan Lewis from her office. We

find the following piece of evidence from Maureen Harkin credible (pg 8, 03.06.11 (2 of 2)):

MM: *I just want to be fair to you and put Councillor Heesom's position. When he said to you that he knew more about housing than Susan Lewis and I suggest Susan Lewis wasn't going to be involved in housing in the long term that he was just, as far as he was concerned, stating facts.*

MH: *My professional view is that that was inappropriate to discuss those views with an incoming interim manager and using language like "She knows nothing" and "Her days are numbered" is not just stating fact.*

MM: *Well that is what we don't agree on the actual language used, it is a long time ago but whatever Councillor Heesom said in relation to that, he was stating facts.*

MH: *The fact that she wouldn't be here for long, I don't understand how -*

MM: *You just simply don't agree with that.*

MH: *- how could Councillor Heesom call that unless -*

MM: *Well I have put forward Councillor Heesom's position, we will hear from Councillor Heesom.*

HJ: *How did you interpret the phrase, "Days are numbered"?*

MH: *That councillor Heesom believed that he was going to oust the officer in some way.*

MM: *But you have no direct knowledge to say that do you?*

MH: *That's in 30 years' experience of dealing with councillors.*

MM: *Yes. Indeed. But that is just something you have imputed upon Councillor Heesom.*

MH: *Yes.*

6.25. This was a witness whom the Respondent acknowledged he had no difficulties with initially in terms of her post. He, indeed, had been one of two Councillors who had appointed her. He believed she was competent at her job. In cross examination of Maureen Harkin, Counsel for the Respondent concluded as follows (pg 16, 03.06.11 (2 of 2):

MM: *Sir can I say I think I have taken that as far as I can. Obviously Councillor Heesom's position is the same. I have put the point to you I don't need to get specifics Sir. Beyond Councillor Heesom's position as far as he was concerned you were costing the Council more money and we both agree he is a conscientious councillor we agree on that. He clearly understood it was unsustainable to have an interim head of housing, he actually wanted to get a permanent person to actually run the housing department.*

MH: *Councillor Heesom recognised the skills and experience I was bringing, believed I was value for money and told me I was value for money. And had no hesitation in extending my contract on a number of occasions.*

MM: *Well Mrs Harkin, I don't have to be unkind to you, my instructions are not unkind to you but whilst you might be flattered by what Councillor Heesom says, I think his position is*

you were wholly competent to do your job, but no disrespect to you, I don't think he felt you were the greatest thing since sliced bread and whilst you were competent to do your job, he actually wanted to get somebody very good to run the housing department. That was his position and he wanted to do it as soon as possible.

MH: *With all due respect he has changed his position, he did think I was the best thing since sliced bread. And it was the case that because of my experience, because, and we had this discussion on a number of occasions, in relation to recruiting permanent staff that he wouldn't get somebody of my experience and background because they would be appointing at a lower level that I was a director of five years standing at the time. My last permanent position earned a lot more than the head of housing would, the permanent head of housing would. And as such, well his expectations of the head of housing would have to be lessened because he shouldn't be comparing them with me.*

MM: *Well we will disagree on two things. As far as Councillor Heesom was concerned as a conscientious councillor he was going to strive to get an excellent head of housing, okay but I think we will agree on one last thing that he thought you were an intelligent, smart woman.*

6.26. We find that there was a great deal of reticence on the part of the Respondent to answer questions in a straightforward manner in terms of points put to him in respect of Maureen Harkin. At the outset of cross examination, he was asked about meeting Maureen Harkin after her appointment. He had no recollection of the conversation with Maureen Harkin and goes further to allege that what she states as to the first meeting following her appointment is "offensive". Maureen Harkin's evidence was however detailed in particular her recollection of the Respondent's suggestion that she moves to Mold to work more closely with him. We do not find that Maureen Harkin would have

fabricated such a conversation. The Respondent's evidence put at its highest is that he has no recollection of such a conversation. We repeat our finding that the Respondent immediately upon Susan Lewis' appointment to a Director role took the view she did not have the ability to act as Head of Housing. We reject the contentions put forward by the Respondent he had not formed such a view. We do not find his evidence credible and refer in part to the following exchange (pg 2, 02.10.12 (2 of 3)):

GH: Sir, grateful. Councillor Heesom I wanted to ask you about some comments that Maureen Harkin says that you said to her. So if I can take you to page 281 please, it's B281. You can see, well it's the fourth paragraph on that page, the last paragraph on that page, she says 'Councillor Heesom has made inappropriate comments to me about the competency of my colleagues. In my first week at Flintshire I met with Councillor Heesom as part of my induction. He commented that he was part of the interview panel and that he had appointed me and that as Sue Lewis knew nothing about housing, I needed to move from Flint to Mold to work closely with him. This made me feel very uncomfortable'. Now did you take part in the appointment of Maureen Harkin?

PH: I did.

GH: And were you in favour of appointing her?

PH: I was.

GH: Did you tell her that you had been part of the process?

PH: Well she would have known because she was interviewed by me.

GH: *There was an interview process?*

PH: *Hmm?*

GH: *There was an interview was there?*

PH: *Yes.*

GH: *And you were present?*

PH: *Yes.*

GH: *Did you tell her that you had voted for her or that you were in favour of her appointment?*

PH: *Yes I did support her on the basis that the –*

GH: *No did you tell her that?*

PH: *Sorry?*

GH: *Did you tell her that?*

PH: *Well she would have known, there were only two candidates and it was Helen Yale and I that interviewed the two candidates.*

GH: *How would she have known?*

PH: *I think we made the decision after the meeting.*

GH: *Did you tell her at any stage that you had been in support of her candidacy?*

- PH: *Well I mean no other than that she was appointed, I mean I knew nothing about her before.*
- GH: *So when she says that you told her that you had appointed her, she is wrong about that is she?*
- PH: *Well I can't quite follow you, with respect Mr Hughes. I mean she would have known that we appointed her because we interviewed her and we told her after the meeting was finished, we would be pleased to offer her the interim post. So she would have known because we told her.*
- GH: *Well yes, but what she says is that you told her, not merely that she would have known or that she knew anyway, 'He commented that he was part of the interview panel and that he had appointed me'. Did you say that?*
- PH: *I certainly didn't say it in the sense that you know, it's implied in that. I mean I can't –*
- GH: *In what sense is it implied there?*
- PH: *Well I can't quite grasp it to be honest with you, I mean you know, as though I was sort of somehow in her corner. I can't really understand what she is saying because like I say, we interviewed the two candidates, the other one had got very little experience, I am not quite sure on what basis she was shortlisted. And the other one was Maureen Harkin and we both spent some time talking to her and she had clearly carried out a similar job in a number of places –*
- HJ: *How many were on the panel?*
- PH: *Just Helen and I.*

HJ: *Just two. Do you have any recollection of a conversation with Maureen Harkin as she has indicated there?*

PH: *None at all no, I mean I think the indication that she perhaps attempts to set out in that paragraph is offensive frankly.*

PD: *Offensive?*

PH: *Offensive, yes I think really it is not for her to presume a relationship with me of that kind.*

GH: *She is not presuming the relationship, what she is asserting is that you spoke to her.*

PH: *Well I mean we might not –*

GH: *What she says is that you told her.*

PH: *We might not agree about that, but I mean any extent to which you know, I was in favour of her being appointed, I can only see was self-evident from the conclusion of the meeting.*

GH: *Do you remember meeting her during her induction?*

PH: *Induction?*

GH: *Yes.*

PH: *No I wasn't sure what inductions she went through to be honest with you.*

GH: *Why, well it seems likely doesn't it that during the course of induction the head of housing would be, or the interim head of*

housing would be introduced to the executive member with responsibility for housing?

PH: *Well she would have known that from the interview.*

GH: *So you don't recall being introduced to her or anything of that sort during the induction process?*

PH: *Not in any extraordinary way no, that no, I mean ...*

GH: *And what she says is that you told her that Sue Lewis knew nothing about housing and that accordingly she would need to move to Mold to work closely with you, what do you say about that?*

PH: *You know I am sorry, it's just nonsensical.*

GH: *How is it nonsensical?*

PH: *For my to have talked to her as she has implied there, I wouldn't have thought appropriate.*

GH: *Why is that nonsensical?*

PH: *Well, she is saying things about what I said there which are just not true.*

GH: *I mean as I understand it, you did think that Sue Lewis knew nothing about housing?*

PH: *No that's a leading question because it implies, you know she couldn't carry out the housing, the role of director and I think at that time we were all fairly open minded about it.*

GH: *This is at August 2008 is it?*

PH: *Hmm.*

GH: *You will recall that when I started cross examining you, I took you to a letter that Colin Everett wrote to you in March 2008, in which he challenged your criticisms of Susan Lewis' competence.*

PH: *Well apart from the fact that I think that letter of Colin Everett's was highly imprudent, it adduced a meaning to the contact which I don't accept. But I think I made it clear when this came up previously that my concerns were that I was not of the view that housing should have gone in with social, it should have gone in with the environment sector.*

HJ: *In August 2008 did you have any view on Susan Lewis' ability to act as head of housing?*

PH: *No I suppose the jury was out because you know `we'd ... I mean I think by August we hadn't seen much of Susan Lewis other than in the LSG, leader strategy group meetings.*

6.27. We are satisfied that the words, as indicated by Maureen Harkin, were said by the Respondent to Maureen Harkin and were said with the intention of undermining the position of Susan Lewis.

6.28. We are satisfied that from the date of Susan Lewis' appointment as Director to the date of complaint to the Ombudsman, the Respondent engaged in a campaign of personal attack upon Susan Lewis which did amount to harassment. The Respondent in our findings was critical of Susan Lewis in comments made to Maureen Harkin, a Senior Officer who worked under Susan Lewis in her Directorate. He had indicated to Maureen Harkin that Susan Lewis "*knew nothing about Housing*" and "*her days are numbered*"

The words uttered by the Respondent were inappropriate and we find that the comments “*her days are numbered*” was intended to be a threat that the Respondent was going to seek to oust Susan Lewis from her post. The comments were made with the intention of undermining the position of Susan Lewis.

7. MEETING 18 DECEMBER 2008

ALLEGATION

4.2.3. The Respondent’s alleged behaviour concerning Housing Allocations.

(xvi) Paragraph 4(b), 2008 Code – Failure to show respect and consideration for others and conduct at a meeting on 18 December 2008.

7.1. It is not disputed on 18 December 2008 a meeting took place between the Respondent, Maureen Harkin and David Humphries. Further, following the meeting, Maureen Harkin prepared a typed note of the meeting from her view point. This was typed on or before 16.46 hrs on 19 December 2008 as it was attached to an email sent to the Chief Executive and to Susan Lewis (B721). The original note is B722 and B723.

7.2. The email and note were attached to the letter of complaint by the Members of the CMT to the Ombudsman. The reference in the complaint is as follows (B627):

“Email of the 19 December from Maureen Harkin to the Chief Executive attaching the notes of a meeting with Councillor Heesom dated 18 December 2008, at which Officer B was present and in which Councillor Heesom attempted to influence allocations in Mostyn. This is believed to be in breach of 4(b), 4(c), 4(d), 6(a) and 8(a) of the Code. The contents of this letter are quite extraordinary and the seriousness

of the breaches of the Code can only be appreciated by reading the whole note. It demonstrates blatant intimidation through veiled and not so veiled threats and an intent to completely disregard the law relating to housing allocations and the professional views of a Senior Officer”.

7.3. The note was attached to the letter. We have previously made findings that the Respondent had received both the letter and attachments by at latest middle of March 2009.

7.4. In his initial response (C61) the Respondent states as follows:

“In regard to these allegations brought against myself it is transparent that those from the current acting Head of Housing Mrs Harkin are difficult not to see as those of a person with declared views about the case favouring transfer.

I have no doubt that my position in this matter, as someone who has said that I have found little justification for transfer, has proved to be a problem for her and I feel in my view that she has been motivated in her comments by that opinion that she holds. We have discussed in passing conversation, her career path and she has said clearly that she seeks to be a Head of Housing for a Housing Association body and has made no secret in talks of her views.

This has been a considerable disappoint to me because I was strongly in favour of her appointment six months ago. I have though made my views clear to her and that she would not therefore be staying at the county when her period of temporary interim employment came to an end. I can only conclude that she is exercising a response to that advice in her comments generally about the conversations that we have had. I repudiate her comments as being private and out of context, and malicious. Correspondence was raised with Ms Harkin on her appointment about sharing data and documents and

disappointingly she she failed to provide and perhaps I should have been aware at that early stage that she had an agenda.”

- 7.5. In his initial written response to the Adjudication Panel for Wales (C38) he states *“that note is from my position pure fiction. The dialogue bears no relation to forms of conversation used and it has no subject references.”*
- 7.6. The Respondent states that he wrote to Mrs Harkin requesting data about housing allocations in August and it should not be linked to the meeting in December. He further states *“In a hearing, further evidence will be brought to demonstrate that no overt or undue means were ever used to direct officers. On the contrary evidence is available of officers acting irregularly in the allocations provision. As a lead and senior member, I have been scrupulous in seeking to ensure a best of possible dialogues between officers and members, based on a policy of the utmost transparency and open presentation of information and advice.”*
- 7.7. In his written statement of 12 September 2012 (C139), the Respondent submits the note is part of a dossier being gathered against him and that in effect Maureen Harkin is supporting her friend, Susan Lewis, who was hostile to the Respondent. The Respondent further states *“I cannot remember the words that were used. I suggest that noone could. I think that the idea that I would threaten an officer in front of another officer with the kind of language used as set out in B288, paragraph 5 and 6, is wholly unrealistic. For the record, I would not threaten an officer in any circumstances.”*
- 7.8. The Respondent also submits (C140) that even if the words as alleged had been used, they should not be viewed as insulting, abusive or threatening. He further states that he has a general recollection of the meeting where *“there was no aggression in the air. There was no hostility or confrontation”*. He outlines also reasons about why he believes that any evidence of Maureen Harkin is unreliable.

7.9. There were three persons present in the room on 18 December 2008. The Respondent, Maureen Harkin, as Head of Housing, and David Humphries, a Housing Officer. The note prepared at latest by end of the afternoon on 19 December 2008 is detailed. The email forwarded on the 19 December 2008 to the Chief Executive and Susan Lewis states as follows:

“I decided to send you my note of the meeting with Patrick because as you will see I am concerned about the level and inappropriateness of the pressure brought to bear on me (witnessed by another senior officer) in relation to an operational activity, which is strictly outside the remit of the executive member. His conduct was intimidating and unprofessional and I am concerned that in my forthcoming absence other less able staff will be subject to the same behaviour as they address the voids situation in Mostyn. I leave it in your capable hands as to how to proceed in this regard but if you need anything further from me please do not hesitate to contact me direct.”

7.10. There is nothing in the email suggesting that the note was written at the request of any third party. We find it was written as a result of serious concerns which Maureen Harkin had following the meeting of 18 December 2008 and in particular the conduct of the Respondent.

7.11. It has been suggested that in some way Maureen Harkin has created a pure piece of fiction out of malice. We find no basis for such a contention. She no longer works for Flintshire County Council. She gave evidence in a straightforward manner, despite being pressed vigorously by Counsel on behalf of the Respondent. She remained of the view that the note represented an accurate factual description of what was said at the meeting. The Respondent could not offer alternative wording in terms of what was said at the meeting. He had been aware at the middle of March 2009 of the detail of what was being alleged. The letter of complaint set out the serious concerns which Members of the CMT had as to his conduct on 18 December 2008 and attached to that letter was a detailed note prepared at most within 24 hours of the meeting. His conduct was of such concern to the then Head of Housing

that she deemed it appropriate to forward the note to the Chief Executive. It is submitted that in two respects she has previously been untruthful:

- (i) Visioning Day – that there is some conflict in her evidence with that of Susan Lewis. We do not find that there is any significant conflict between the two witnesses in terms of whether Visioning Day would proceed and even if there were, it does not indicate that Maureen Harkin is being untruthful. There is at its highest a difference of emphasis on a matter of detail between the two witnesses.
- (ii) Maureen Harkin alleges that the Respondent had told her that he would delay the appointment of a new Head of Housing. It is submitted that is something which would not have been within his control. That is not the same as him not saying the phrase.

7.12. It is of significance that both the Respondent and Maureen Harkin believe that up until late autumn of 2008 she and the Respondent had a good working relationship. The Respondent believed that Maureen Harkin was competent at her job.

7.13. It is submitted on behalf of the Respondent that there is conflict between the evidence of Maureen Harkin and that of David Humphries. It would be true to state that David Humphries' recollection of the meeting on 18 December 2008 was not as clear or as detailed as that of Maureen Harkin. However, his written witness statement (B329) confirms *“During the meeting Councillor Heesom began questioning Maureen about allocations in Mostyn. He stated that he knew the right sort of persons for specific properties. He used inappropriate language such as “you are an intelligent, smart woman and we don't want to fall out over this”. He has said similar things to me, the inference being that we would “fall out” if I didn't agree with his viewpoint. This had no effect on me.”*

7.14. In examination in chief, David Humphries was asked in terms of the meeting and the note. He confirmed that the note was not a verbatim record but (pg

11, 02.06.11 (3 of 5)): *“it was reflective of the language used at the time”*. He confirmed that the words *“You’re an intelligent smart man and we are not going to fall out over this”* as words *“somebody might deem it to be inappropriate”* but he accepted the submission *“that [the Respondent] wasn’t trying to be insulting or abusive in any way.”*

- 7.15. The note confirms that the meeting had been requested by the Respondent. It refers to an email which the Respondent had sent to Officers in relation to allocations (B722).

“On arrival at the meeting Patrick Heesom presented me with a list of empty properties in Mostyn and a separate list of his priority people for re-housing. He then attempted to advise me as to the allocations of the empty properties.

I advised Patrick Heesom that all allocations must be made in accordance with current procedures, to which he cut across saying “don’t tell me that - the policy is not working”. I again attempted to explain the basis of needs which the policy did address and was told “I don’t want to hear that, I want you to listen to me as the Executive Member”. “I am going to change the policy and the panel I’m going to set up will see to that.” I advised him of the review of the policy that was ongoing and the seminar for members on proposed changes and was told he couldn’t wait for that.

He then said something along the lines of “I am not threatening you as I don’t need to, as I know you will follow what I am saying, as you won’t like the repercussions if you don’t and you won’t believe the man I can become if you put me in this position.” I reiterated that all allocations would be made according to the current allocations policy and advised him that the individuals that he was advocating for were not all in priority as assessed by the current policy.”

7.16. The note records a discussion as to specific cases and individuals the Respondent was advocating should be given particular council properties in his ward. The note then continues:

“Patrick said had more knowledge than we had of these people so I advised that he or they needed to share that with us if we were to help them appropriately. He said he would furnish additional information tomorrow in the meantime no more allocations should be made.

I advised him that we were speaking hypothetically as most of these properties were not ready for allocation yet but we would not hold back allocation any that became available while we were waiting for applicants to update us as that would be unfair and unmanageable.

The meeting concluded by Patrick stating “I am not going to fall out with you about this as you are a bright girl and I know you are listening to me.”

7.17. The note concludes with comment as opposed to detail of what was said:

“I am concerned about the level and inappropriateness of the pressure brought to bear on me witnessed by another senior officer in relation to an operational activity which is strictly outside the remit of the executive member. His conduct was intimidating and unprofessional and I seek appropriate guidance as to how to proceed in this regard to ensure more junior members of staff are not exposed to the same.”

7.18. Maureen Harkin was pressed when giving evidence about the note and remained of the view that it was a true reflection of the meeting of 18 December 2008 (pg 34, 03.06.11 (1 of 2)):

MH: *I'm passionate about housing and I do know the difference between someone being passionate and assertive and someone*

being aggressive and threatening and on that occasion it was a definite aggression and threatening interaction.

MM: *Well I suggest to you that Councillor Heesom was never threatening, in fact on the contrary, you're the one who shut him up at the visioning day?*

MH: *We're talking about two different occasions. This is talking about the allocations meeting in December which was part of my separate statement, where I raised an issue with the chief executive following it because I was so concerned and perturbed about the councillor's behaviour but also because of what he'd said towards his conduct towards other staff and more junior staff.*

MM: *Yes well I'm going to move on to the actual December 2008, but can I say you say it was a different occasion but it was the two same people wasn't it?*

MH: *Yes.*

MM: *Okay, now the last paragraph you say 'In December 2008 Councillor Heesom requested to meet with me. I agreed to combine the meeting with one that was scheduled to David Humphries'.*

MH: *Yes.*

MM: *Housing strategy manager and this was the 18th December 2008, 'prior to this meeting an incident occurred where Councillor Heesom contacted Chris Hegardy interim housing estates manager regarding the allegation of properties in Moston. Councillor Heesom was told no and that under no allocations policy the people he was allocating for were not a*

priority. Councillor Heesom attempted to influence my decision and I was concerned about how his intimidating and unprofessional manner could affect the members of my team'.

MH: Yes.

MM: *That's a conversation that's related to you by Chris Hegarty yes?*

MH: *No. It's two separate things. Councillor Heesom and Chris Hegarty had a discussion about allocations. The latter sentence is regarding my meeting with Councillor Heesom when although it was supposedly appertaining to a different subject allocations was the subject matter and that's where I complained about his conduct.*

MM: *And this is the 18th December 2008 is it?*

MH: Yes.

MM: *Yes okay. Well let's move onto that then. You say there, it's actually in the next paragraph and you say there, do you see I think it's the third sentence 'David Humphries supported the content of my note' do you see that?*

MH: Yes.

MM: *Well David Humphries actually gave evidence yesterday and it's right you asked him to make a note of that meeting didn't you?*

MH: Yes.

MM: *But it's also right that he didn't make a note?*

MH: *I can't recall now, I know I sent him my note and asked him if that was a fair reflection and he said yes.*

MM: *And in fact when asked about this occasion yesterday, putting aside whatever words were used, he suggested that Councillor Heesom at that meeting was not abusive or threatening?*

MH: *We have a different recollection of the meeting then.*

HJ: *What's your recollection?*

MH: *My recollection is as was stated in the statement I made and in the email to Colin Everett which I think is –*

HJ: *- do you have a recollection today?*

MH: *Yes certainly, but it's detailed in 288 but my recollection is we went to the meeting at Councillor Heesom's request, it was the day I was finishing for the Christmas break, very clear in my memory, Councillor Heesom presented me with a list of empty properties and a list of people he wanted for those properties, and I'll say it as I believe it happened, I said something along the lines of, "It doesn't work like that Councillor Heesom" and he said, "I'm not asking you I'm telling you" and I said, "This is not going to happen on my watch, I don't care how it's happened in the past, allocations policy is assessed and dealt with by other members of staff", he said something along the lines of, "You wont like the man I'll become if I don't get what I want" and I said, "Are you threatening me?" and he said, "I don't need to threaten you you're an intelligent woman I know you're listening to me".*

MM: *Now can I say to you, can I refer you to B329 please?*

MH: Yes.

MM: *And you can see, oh sorry I should say this statement starts at B328 and that's David Humphries statement to the ombudsman. And you can see at paragraph 1 it's the first full sentence there, he stated the right sort of person for specific properties used inappropriate language to David Humphries, although you said it was inappropriate, he said 'You're an intelligent and smart woman and we don't want to fall out over this'.*

MH: *Sorry where are you, I've not seen this before?*

HJ: *329 at the top of 329, you therefore decided to hold and then you've got 'during the meeting'.*

MH: *Okay.*

MM: *Now.*

PD: *Hold on –*

MM: *- I'm sorry sir of course yes. Now Mrs Harkin what's said there by David Humphries is that Councillor Heesom said you were an intelligent ... now would you consider yourself to be intelligent.*

MH: *Yes.*

MM: *And smart?*

MH: *Yes.*

MM: *And when Councillor Heesom said 'and we won't fall out over this' he was actually being light hearted about it he wasn't trying to threaten you?*

MH: *No I think he was being patronising and he was being threatening.*

MM: *Well there's a difference between patronising and threatening isn't there?*

MH: *Both in this case.*

MM: *And so what we've got is a situation where on the one hand you say that Councillor Heesom was threatening, okay? Councillor Heesom will say he wasn't threatening but equally you've got somebody, we've got David Humphries who says that he wasn't threatening either okay, so I suggest we have an independent witness who actually –*

PD: *- where is that Mr Murphy, that's not in my notes of what Mr Humphries said?*

HJ: *Language was inappropriate.*

GH: *As I understand it David Humphries was very clear yesterday that he'd had no problem with Councillor Heesom until this incident and that his was (multiple speakers 01.49.33) contrast.*

MM: *Sorry sir.*

PD: *'I had regular dealings with him, daily and weekly, the relationship was fine. On the visioning day I was focusing on my own presentation, I have not come across direct abuse as such that is in relation to Councillor Heesom the only exception is the Harkin meeting'.*

GH: *I think it's fair that I say that I've got a note that confirms exactly that. I also though have a note of the end of his evidence –*

MM: *- sorry, of exactly what sorry?*

GH: *What Mr Davies has just said that is that he was asked about the visioning day and he said that on that he didn't think that Councillor Heesom had been abusive to anyone. I've not seen, I can't read my writing, something about such abuse as such, the only exception is the Maureen Harkin incident but then in fairness I've also got his evidence at the end when he said that he didn't consider the conduct to be abusive, that's at the very end of my note of his evidence.*

SH: *My note at the same times says that he considered it inappropriate not abusive.*

GH: *That's right.*

MM: *And madam can I also say my solicitors note is 'I then put to him not insulting or abusive and he said I would agree with that'.*

HJ: *Yeah, he didn't say threatening and that's the point you put to this witness.*

MM: *I'm sorry sir, so not abusive or insulting yes?*

HJ: *The evidence yesterday from the other person in the room was that he felt it was inappropriate but he didn't think that it was insulting or abusive. Do you want to comment on that?*

MH: *Well in all of these matters it's the opinion of the person who is on receipt of any such abuse or threats to make their own interpretation, my interpretation was clear that I was being*

threatened, that I would suffer ramifications if I didn't concede to the councillor's instructions to allocate particular properties to particular people.

MM: *Mrs Harkin I think you'll agree you are an intelligent smart woman and you're also actually a very strong woman, you're the one who gets up and tells Councillor Heesom to effectively shut up and move him on, I suggest you're not the kind of woman who would be threatened by Councillor Heesom in a light-hearted way saying "You're an intelligent smart woman we're not going to fall out over this?".*

MH: *I put it to you that I made my decision on the day that his behaviour had crossed the line. That yes on other occasions I have taken that sort of light-hearted approach but as this was such a serious issue concerning allocation of very scarce resources particularly sensitive in that area that were completely inappropriate and the tone of the discussion was such that it wasn't a light-hearted threat, it was, "You wont like the man I'll become if I don't get my way", that was what was said.*

MM: *Okay. Now I'm just going to move back to your statement there at I think its 282i, you say at the last paragraph of 283 'The housing staff feel undermined by Councillor Heesom and frightened of the repercussions of any allocations they make in the Mostyn area. They're terrified of him finding a way to have a go at them about the allocations. As a result they come to me about every allocation in Mostyn. This has had a serious impact on my work and has damaged the confidence of my staff in making decisions in accordance with policy'. Can I refer you to B403 please?*

HJ: *It's a statement yes?*

MM: *Yeah it's B403, it's actually the start of a statement of Liam Williams.*

HJ: *I think (multiple speakers 01.55.37) –*

MH: *- he's obviously one of the local housing officers.*

MM: *And he actually gave evidence yesterday as well. The reason why I refer to him Mrs Harkin is because he was an officer in Moston for four years and therefore worked closely with Councillor Heesom, and as you can see what he does say in the third paragraph is, and it's the second sentence there, 'Although he was never nasty or abusive he would press his point of view sometimes by lengthy email' and he was at the cold face of this wasn't he, he was actually in direct contact as a junior officer in Mostyn?*

MH: *Yes.*

MM: *And what he said is that on the one hand Councillor Heesom was passionate about his constituency as I think you've accepted, and that the housing department was actually, well can I use the word dysfunctional, would you agree with that?*

MH: *No I wouldn't.*

MM: *It was in a state of, there was going to be a step change wasn't there, is that right?*

MH: *I wouldn't accept that the office was dysfunctional, I would say there were issues around allocations that needed addressing.*

MM: *Would you accept that the officers were under a lot of stress?*

MH: *Absolutely yes.*

MM: *And that Councillor Heesom going the extra mile for his constituents created a lot more work for the officers?*

MH: *If that is what we were talking about that would, you know I'd agree, but we're talking here about a councillor as Liam Williams states turning up at the office without appointments, demanding to be seen, pressing his point albeit in this instance saying never abusive or nasty, intimidating junior members of staff.*

MM: *Well I think the last bit's where we part company, what I think comes across from the evidence of Liam Williams and in fact overall as Councillor Heesom is that he can be passionate about his constituents, he can be like a dog with a bone in terms of fighting for their interests, the housing officers are under a lot of stress as you've accepted, and that he therefore creates a lot more work for these officers who are under all this stress.*

MH: *He creates a lot of stress as well by his conduct.*

MM: *Well by the fact he presses hard for his constituents but one thing about Councillor Heesom as Liam Williams says, he's not nasty or abusive to these officers?*

MH: *In this individual's experience, I've spoken to other members of staff who did not feel that that was the case.*

MM: *Well I suggest to you that the position is this, that Councillor Heesom is not nasty or abusive but he does create more work and given that these officers are stressed as it is, creating more work actually stresses them even more, they're the different slides?*

MH: *We agree to disagree.* “

- 7.19. We find that the note is a true and accurate reflection of the meeting. It is not, as suggested, a work of fiction. We note it was not explicitly put to Maureen Harkin that the note was fictitious. There was no conspiracy as such to create malicious allegations against the conduct of the Respondent. The Respondent has no direct recollection of that meeting. We have found in other parts of this Decision that his conduct towards Officers of the Council were at times threatening and we also find that he had, contrary to his role as a Ward Councillor, involved himself in allocation issues in a manner which was inappropriate.
- 7.20. We prefer the evidence of Maureen Harkin to that of the Respondent. The general tone of the meeting is supported by David Humphries, the other Officer present. We share the concerns expressed by Maureen Harkin and find that the Respondent's involvement in housing allocation issues, and the undue pressure he was seeking to put on Housing Officers in respect of housing allocations, were wholly inappropriate. In coming to our findings we have had regard to all the evidence, both written and that we have heard, and to the statements of the Respondent. We preferred the evidence of Maureen Harkin and David Humphries and, as noted, the position of the Respondent was that he was not able to assist in terms of direct recollection of words stated. This was notwithstanding the fact that he had been made aware in March 2009 of the full detail of the note. We find that Maureen Harkin to whom the Respondent's comments were directed at believed the words were threatening.
- 7.21. We find in terms of the meeting of 18 December 2008:
- a. The Respondent had sought to interfere in the housing allocation process by seeking that Officers operate outside the allocations policy.

- b. That he sought to bring undue pressure as an Executive Member on Housing Officers to operate outside the allocations policy. His conduct in seeking to persuade officers to allocate properties in his ward to specific individuals outside the Council's agreed policy breached the clear guidance given to the Respondent in a letter 14 December 2006 by the then Interim Head of Housing. (B699). The letter indicated such action could breach the *"law and current good practice..."*
- c. He stated in particular to Maureen Harkin Head of Housing *"I don't want to hear that, I want you to listen to me as the Executive Member"*. This was on the basis of the policy he viewed as not working. The policy, however, was the policy that had to be operated by the Officers.
- d. At the meeting, he stated words of the nature of the following: *"I am not threatening you as I don't need to as I know you will follow what I am saying as you won't like the repercussions if you don't and you won't believe the man I can become if you put me in this position."* We find that this is a direct threat to Maureen Harkin and that she perceived it as a threat. She felt intimidated and that the Respondent was inappropriately involving himself in operational activity which was outside the remit, both of his role as Executive Member and as a Ward Councillor.
- e. At the conclusion of the meeting, he stated *"I am not going to fall out with you about this as you are a bright girl and I know you are listening to me"*. This, again, was put in the nature of a threat. We find that the words were also patronising.

8. MEETING OF THE COMMUNITY AND HOUSING OVERVIEW AND SCRUTINY COMMITTEE 7 JANUARY 2009

ALLEGATIONS

4.2.6. The Respondent's conduct at a meeting of the Community and Housing Overview and Scrutiny Committee

- xxi. Paragraph 4(b), 2008 code - failure to show respect and consideration for others

Conduct towards officers at a meeting of the Community and Housing Overview and Scrutiny Committee held on the 7 January 2009.

- xxii. Paragraph 4(c), 2008 code - not to use bullying behaviour or harass any person

Conduct towards officers at a meeting of the Community and Housing Overview and Scrutiny Committee held on the 7 January 2009

- 8.1. It is alleged that the Respondent verbally "attacked" officers at a Scrutiny Meeting on 7 January 2009. In particular, his behaviour, it is alleged, undermined and embarrassed Officers and other persons who were present. The allegation is somewhat different to other allegations we have to consider, in that the complainant in terms of this allegation is Councillor Armstrong-Braun. The complaint did not emanate from members of the CMT.

- 8.2. We make the following findings of fact.

- 8.3. A meeting of Flintshire County Council's Community and Housing Scrutiny Committee was held on Wednesday 7 January 2009.

- 8.4. The following committee members were recorded as present: Councillors R.G Hampson, J B Attridge, G H Bateman, J C Cattermoul, R Dolphin, A M Halford, G Hardcastle, S Jones, D McFarlane, E W Owen, and H G Roberts, P R Pemberton (substitute for R Johnson).
- 8.5. The meeting was Chaired by Councillor R Hampson.
- 8.6. Councillors K Armstrong-Braun and A Wooley were also present at the meeting but were not members of the Community and Housing Overview and Scrutiny Committee.
- 8.7. The Respondent was at the meeting as a contributor being the Executive Member for Housing Strategy and Planning. Councillor N Matthews, the Executive Member for Waste Strategy and Management was also present. Officers present included Neal Cockerton who was Head of Technical Services. None of these three attendees were members of the Community and Housing Overview and Scrutiny Committee.
- 8.8. Towards the end of the meeting Neal Cockerton presented a report regarding a 12 month trial of a manned community (peripatetic) skip service to the rural community of Flintshire.
- 8.9. As the Executive Member for Waste Strategy and Management, Councillor Matthews was in agreement with the content of the report and proposed that the service be discontinued.
- 8.10. The Respondent stated he did not agree with the findings of the report and the recommendation not to make the trial permanent. The Respondent wanted the service to continue, especially in areas of deprivation, he raised concerns and was critical of the way the trial had been undertaken. The Respondent expressed the view that he felt the report did not outline the historical reasons leading to the provision of the service and did not address the difficulties members of the public experienced.

- 8.11. A discussion ensued with limited support for the Respondent's view. The meeting resolved to recommend to the Executive that the trial service should not be made a permanent service provision. We consider later findings in terms of what was said by the Respondent.
- 8.12. On 7 January 2009, Councillor Armstrong-Braun wrote to the Leader of the Council, Councillor Arnold Woolley, raising issues as to the Respondent's conduct at the meeting. Councillor Armstrong-Braun states in his letter (B600) that the Respondent was invited by the Chair to comment on item 7, the Community Skip Service. He further states "*Councillor Heesom gave a verbal attack on the report as to why it was brought to the Scrutiny Committee as it was completely misleading to Members etc etc*". The letter further indicates: "*his comments were verbally attacking the Officer for his report.*" (B600). A reply was forwarded by Councillor Woolley, date unknown, indicating he too had attended the meeting and was aware of what had transpired (B602). Councillor Woolley confirmed he had since met with both Executive Members and pointed out the need for harmony and mutual support. There is nothing further to suggest that Councillor Woolley found it necessary to take any further action specifically in response to this meeting.
- 8.13. We find the Respondent did criticise the way the trial was conducted and the report. We are not satisfied on a balance of probability that the Respondent verbally attacked Officers. Criticism of the report could, by implication, be criticism of the Officers. We have considered the evidence heard and are satisfied that there was a disagreement at the meeting on 7 January 2009 between the Respondent and Councillor Matthews. Both of these individuals were Executive Members. On the basis of the oral evidence of Councillor Matthews and in part Councillor Hampson, on a balance of probability we found the Respondent in the exchanges was loud and confrontational.
- 8.14. Councillor Heesom did not agree with the findings of the report and the recommendation not to make the trial permanent. He sought to draw members' attention to his belief that there were flaws in the conduct of the trial. Notwithstanding the fact that he was not a member of the Committee, he

sought to express those views. We are satisfied that the Respondent was invited by the Chair to comment on the report. We do not find, on the balance of probabilities, find that officers were verbally attacked at the meeting or the Respondent's behaviour undermined or embarrassed the officers.

8.15. In coming to these findings we have regard to the minutes of the Meeting (B603), to the extract from the hand written minutes of the meeting (B605) and to the exchange of correspondence. We have also given consideration to entry 29 in Councillor Woolley's journal (B260). We have considered elsewhere the provenance which should be given to this diary. We are satisfied that it recorded in general terms events soon after they occurred, or as soon as Councillor Woolley was able to write up the entry. They are not verbatim records. They were kept to monitor incidents involving the Respondent. The entry records in terms of events after the meeting as follows:

“I showed both Nancy and Patrick Klaus’s letter and talked through the event. Public arguments between Exec members must be avoided. Public attacks on officers ditto. Patrick unrepentant.” (B260)

8.16. Whilst the entry notes *“attack on officers”*, we are not satisfied on a balance of probability, and in particular with sufficient particularity, of words said or any particular express verbal attack on officers. We reject the contention put forward by the Respondent that in some way the letter written by Councillor Armstrong-Braun was penned by another person.

8.17. We have had regard to the written statement and oral testimony of Councillor Armstrong-Braun. The written statement and oral evidence of Councillor Matthews, the oral testimony of Councillor Hampson and the written statement and oral testimony of Councillor Wooley. Mr Cockerton made no reference to the meeting of 7 January 2009, either in his written or oral testimony. He would have been one of the Officers at the meeting.

8.18. The minutes of the meeting of 7 January 2009 record that the Respondent

“raised concerns regarding the content of the report” (B604/A). Councillor Halford is recorded as referring to the Respondent's comments that the report had been misleading. The minutes continued that Councillor Halford asked the views of Councillor Matthews and Neal Cockerton on the comments. Neal Cockerton responded that the report was factual and clear. The minutes do record that Councillor Matthews took exception to the Respondent's comments. There are no other references in support of inappropriate behaviour at the meeting.

8.19. We would indicate in reaching our findings, we considered the evidence of Councillor Armstrong-Braun to be inconsistent. He was the complainant who brought the allegation to the attention of the Ombudsman. In his complaint he alleges that Councillor Heesom verbally attacked an Officer. In the letter to Councillor Woolley he states: *“This is completely inappropriate behaviour by an Executive Member at meetings, which attack or give aspersions against several Executive Members and even Officers”* The written statement from Councillor Armstrong-Braun makes reference to the Respondent's treatment of Officers. Councillor Armstrong-Braun states that the action of the Respondent in saying that Members should refuse to accept the report *“undermined the officer”*. He makes reference twice to embarrassing officers and states: *“I feel that Councillor Heesom's behaviour goes beyond bullying as he has control over people - the officers.”* (B342)

8.20. The inconsistency was noted in questioning when asked by Counsel for the Ombudsman (pg 7, 14.06.11 (2 of 4)):

GH: *And what was it about that meeting that caused you to make a complaint to Arnold Woolley, to write to Arnold Woolley?*

KAB: *Is because a) the way he is Councillor Heesom jumped and had a go at Councillor Bernie Attridge.”*

8.21. There was no reference of the Respondent's behaviour towards Officers.

- 8.22. In his complaint, Councillor Armstrong-Braun refers to a verbal attack on Officers. In questioning again by Counsel for the Ombudsman he replied as follows: *“Memory wise he was just in a normal manner saying that the meeting should be, as you said it he was kind of little bit high tense I would say, but that is wrong and it should be stopped, not completely over aggressive, but that would still loud enough to dominate the room. Especially when the public are there, so was my concern. If there hadn’t been the public there, I wouldn’t have so much criticism, we call it in house.”* The inconsistencies in the evidence of Councillor Armstrong-Braun, both between his written and oral testimony also with the minutes of the meeting, lead us to the conclusion that we cannot rely on his evidence. We acknowledge that memory of a witness may fail with the passage of time. In addition, Councillor Armstrong-Braun’s recollection of details as to the meeting were vague, for example, when asked which Officer presented the report on peripatetic skips, he states *“That a – it was a lady who is like an interim for that department who in my view was extremely good and professional. I’ve always been impressed with that lady.”* The recollection would appear to be erroneous. The report was prepared by Neal Cockerton, a male. The initials “NC” appear in the handwritten notes to indicate that it was Mr Cockerton who made the presentation. Councillor Armstrong-Braun was unable to remember any of the other Officers present at the meeting or to recall which Member was present to answer questions on the report.
- 8.23. Councillor Matthews is noted as taking exception to the comments but she could not recall in evidence why she did take such exception. In her written statement, she states: *“Most of the challenge to the report came from Councillor Heesom...”* and *“...most of the discussion was generated by Councillor Heesom”*. Councillor Matthews in her statement refers to *“Things got a bit airiated (sic) with Councillor Heesom as they tend to do”*. Later in her statement, Councillor Matthews says *“It could be said that Councillor Heesom was interfering with my brief on this day but to a degree we would all be accused of that if we ask a question of another portfolio holder”*. Councillor Matthews was unable to expand on detail and there was no evidence of aggression towards Officers but she did indicate *“the comments were directed*

to the team that I was representing at that time.”

- 8.24. When questioned by Counsel for the Ombudsman: “*You’ve described a raised voice, was that the aspect that made it confrontational or was it the content of what was said or what?*” Her reply was: “*A combination*”. She could provide no further details.
- 8.25. Councillor Woolley, when questioned as to the Respondent’s conduct at the meeting, stated (pg 13, 07.06.11 (5 of 5)): “*It was his words, his manner, his attitude and it went as far as I was concerned beyond reasonable acceptable questioning protest a policy that was disagreed with and I know that Patrick frequently did and frequently does use the word robust but my own view and why I wrote that note was in my own measure it went far beyond that. It was also the fact that Patrick was, if I may say so, attacking one of our own*”. The criticism of Councillor Woolley was that there was an attack on “*an Executive member part of our coalition.*” There is no suggestion of any inappropriate conduct towards Officers.
- 8.26. Councillor Woolley in his written statement did say that he would have intervened in the meeting and issued a warning. That is not consistent with conduct which amounted to an attack on Officers.
- 8.27. Councillor Hampson’s recollection was that he did not think it was a particularly heated meeting. We take into account that he was not initially asked by the Ombudsman in terms of this meeting.
- 8.28. In the Respondent’s response (C49) he refers to “*This report to the committee raised a number of serious issues*”. He comments further on the report “*So removed was it from the original specification, that there has to be a question as to how the officers so completely misinterpreted the original specification.*” This indicates a degree of frustration with the report and Officers’ reaction to it. We make no findings on the content of the report but note that it was accepted by the Committee, notwithstanding the Respondent’s objections and beliefs.

- 8.29. The Respondent, in his witness statement (C162) states: “..I raised my concerns about the issue of the skips service. I did not shout. I was not abusive to anyone. Everything I said was on point. I appreciate that Nancy Matthews preferred community sites to skip sites, but I didn't. This was a genuine political difference that was discussed.”
- 8.30. Our findings of fact based on assessment of the evidence in terms of the Scrutiny Meeting on 7 January 2009, is that whilst the Respondent was critical of the report presented and the way it was prepared, and that he may have expressed his opinion in a loud and confrontational manner, we do not find that there is evidence of him showing lack of respect to others at that meeting or of him undermining Officers. The Respondent was loud and confrontational but that confrontation was with other elected Members.

9. HEAD OF PLANNING APPOINTMENT

ALLEGATIONS

4.2.5. Respondent's Conduct Regarding the Appoint of the Head of Planning

- xix. Paragraph 4(b), 2008 Code - failure to show respect and consideration for others.

Conduct towards Officers at the Head of Planning Selection Meetings on 29 January 2009 and 6 February 2009.

- xx. Paragraph 4(c), 2008 Code – Not to use bullying behaviour or harass any person.

Conduct towards Officers at the Head of Planning Selection Meetings on 29 January 2009 and 6 February 2009.

- 9.1. We make the following findings of fact in terms of the procedure adopted by Flintshire County Council as to Director appointments.
- 9.2. The procedure had been approved by Flintshire County Council Executive. The Head of Planning Appointment procedure was to follow this approved procedure. Members of the Appointment Panels had received briefings from Officers as to the process for Senior Management recruitment (P3697).
- 9.3. The recruitment process was a three-stage process (P3915).
 - a. Long-list Process – the relevant Director, including Human Resources checked candidates met essential criteria from application and probe their knowledge, skills and experience to do the job at long-list interview.
 - b. The Panel would agree the recommended short-list based on a review of applications, recommendations and written report from the long-list process. The Panel agree recommended questions for final interview and presentation topic.
 - c. The Panel would conduct final interview and make appointment decision, reviewing candidate presentation, additional behavioural competency, assessment and references.
- 9.4. The process and briefings noted the role of the Human Resources Department, together with the role of the relevant Director or Interim Director, in the appointment procedure.
- 9.5. The role of Human Resource Officers included advertising, candidate response, handling, planning and design of assessment process, organising the timetable of logistics, providing expert advice to Senior Officers and Member Panels on relevant procedure, policy and law and maintaining the integrity and fairness of the process.

- 9.6. The role of the Director was to conduct long-list interviews along with a representative of Human Resources and to recommend short-lists to the Panel and to advise Member Panels in respect of the final assessment.
- 9.7. The role of Member Panels was to receive advice from the relevant Director, including the Assistant Director of Human Resources, to agree a short-list of candidates and to conduct final assessment on short-listed candidates (P3905).
- 9.8. Member Panels were encouraged to agree a consensus on a decision. If a consensus were not possible, formal voting would take place with the Panel Chair having the casting vote.
- 9.9. We are satisfied that the Respondent had been made aware of the approved procedure, including the specific process relevant to both the appointment of the Director of Planning and Director of Housing. The Respondent was a member of the Executive. He was the Member with responsibility for Housing policy and had been briefed as a nominated Member of the Appointments Panel. The Respondent accepted in evidence there were prescribed procedures (see Response B902). The documents for the P Bundle were requested to be inserted in the Case Tribunal papers at the request of the Respondent. The briefings can be seen in the documents which follow on from page P3897. The documents specific to the Planning procedure can be seen at pages P3475 onwards. The procedure was an approved procedure and one to which the Members, in the words of the Respondent "*had signed up to*". The Respondent was, or should have been, aware of the individual roles of the Officers including those from the Human Resources Department in the appointment procedure. We find no basis for the suggestion made by the Respondent that the procedure was imposed against their will upon Members. Members may have had general feelings of disquiet as to the procedure but all Members were aware of the procedure and that it had to be followed. Members were aware of the role of Officers and the need to respect that role.

9.10. A detailed job description was prepared for Head of Planning. The relevant document can be seen at pages P3477 to P3483. In terms of knowledge and experience, the following were essential:

- a. Substantial Senior Management experience in a Local Authority within Planning Services,
- b. Experience of a range of activities involved in enforcement and provision of guidance to members of the public, developers and mineral operators.
- c. A record of achievement in developing and delivering service, objectives and plans based on performance management principles.
- d. Detailed understanding of public sector working, government priorities and policies.
- e. Success in developing working relationships internally and externally to deliver a wide range of technical and professional services.
- f. Significant experience of resource management (people, finance, physical resources).
- g. Experience of supporting projects and programmes, including collaborating on large capital programmes.
- h. A thorough awareness and understanding of current legislation, regulatory requirements and best practice in relation to all areas (P3485). Essential skills were also outlined (P3487).

9.11. Requirements also included a number of behavioural competencies, which can be seen at P3489 to P3495.

9.12. In accordance with the agreed procedure, long-listing interviews for the Planning post were undertaken by Carl Longland (Director) and Sharon

Carney from Human Resource. Long-list interviews took place on 19, 22 and 23 January 2009. Fifteen candidates had applied for the Planning post, 6 of whom were interviewed at the long-listing stage. The recommendation of Carl Longland and Sharon Carney was that two candidates were deemed suitable and were recommended to proceed to final interview.

- 9.13. Sharon Carney and Carl Longland prepared an overall candidate summary, which confirmed the number of candidates and outlined the six candidates who had attended at long-list interview stage. They prepared for Panel Members individual candidate summaries (P3541 to P3567). The summaries not only included summaries for the two recommended candidates, but also included assessment of those not recommended for final assessment. The two people who were recommended were [Mr A] and [Mr B]. In terms of [Mr A], the summary notes as follows:

“Andrew has recently been appointed to the position of Head of Planning Policy for the new Cheshire East Council that will come into being on 1st April 2009, following Local Government Review in Cheshire. However, Andrew lives close to Flintshire and he has expressed his desire to work here.”

- 9.14. We are satisfied that these documents were distributed to Members in advance or, at the very least, were available at the beginning of the meeting on 29 January 2009 to consider the short-list of candidates to be recommended for final interview. We are satisfied on the basis of the evidence of Jenny Williams, that the Respondent received the pack of information on 28 January 2009 and they were handed to him in the Executive Members’ room by Jenny Williams. We are satisfied that at the time the documents were handed over by Jenny Williams to the Respondent, the Respondent made a comment that the recruitment *“would not be proceeding as there were no suitable candidates to take forward”*. This was prior to him making any assessment of the individual candidate summaries. It was suggested in cross-examination to Jenny Williams that what the Respondent may have said was to question whether a candidate list of effectively one, was

sufficient for such an important post. We did not hear evidence from the Respondent to support that contention. Jenny Williams, in both her note (B761) and under cross-examination, was certain as to what was said and that it was unusual, in her view, for the Respondent *“to make a judgment so quickly without any sort of discussion around relative merits of the candidates”*. We found Jenny Williams to be a truthful witness.

- 9.15. We are satisfied at some date between 23 January and 28 January 2009 a conversation took place between Carl Longland and the Respondent. The purpose of the conversation was a desire by Carl Longland to advise in advance to the Respondent that only two candidates were being recommended for final interview. We are satisfied that Carl Longland did not express favouritism towards a particular candidate. The names of the candidates, including [Mr A], were mentioned. The Respondent retorted that he knew both candidates and was not satisfied that they were capable of doing the job. Both agreed, however, that they would wait to see what the Members had to say on 29 January 2009.
- 9.16. It was suggested in submissions and in the evidence of the Respondent, that this in some way was improper action on behalf of Carl Longland. We reject such a contention. The evidence of Carl Longland was straightforward in stating that in order to try and maintain Member/Officer relations, he was out of courtesy advising the Respondent that only two were being recommended for short-listing and gave the names of the two candidates. Individual candidate assessments had been prepared and were distributed to the Members prior to the meeting on 29 January 2009. Members had an opportunity of discussing those individual assessments at the meeting.
- 9.17. It was not a part of the planning appointment procedure that any form of external specialist adviser would be appointed.
- 9.18. An external adviser was appointed in terms of the Head of Housing appointment. The Director who had knowledge in terms of planning matters, to include the planning criteria, was Carl Longland. We are satisfied that at no time did the Respondent raise at either meeting in terms of the Head of

Planning that an external specialist adviser should have been engaged. It was not suggested in the Respondent's evidence that he had raised the issue of an external specialist to advise at either meeting. The engagement of an external planning adviser is separate to the issue as to whether the Human Resources Officer had planning experience.

- 9.19. We are satisfied as a Case Tribunal that the attitude of the Respondent to the Head of Planning process was a negative one. This attitude commenced after being advised that only two candidates were being recommended for short-listing and upon being advised of their names. He did not engage objectively with the appointment process. He sought to undermine the process by his actions, both on 29 January and 6 February 2009. At both meetings, he proposed, prior to any discussions as to the merits of the candidates, re-advertising. He deliberately failed to note and accept the role of Officers in the process, in particular the Human Resources Officers. He had been provided with a detailed brief as to the role of those Officers. His language, including body language, was intended to undermine the process as well as the confidence of Officers at the meetings. His final scoring for [Mr A], who was the successful applicant and who all parties agreed had to date carried out his role as Head of Planning to a high level, was to mark him in all categories with a minimum score of 1. This is the lowest score, five being the highest. This showed a refusal by the Respondent to engage properly in the process. He failed to act, as was required of a Member of the Appointment Panel, with objectivity.
- 9.20. The meeting on 29 January 2009 was to consider the names of candidates to proceed to short-list interviews for Head of Planning. Those present included Carl Longland (the Director), Sharon Carney and Jenny Williams (Human Resources Officers), the Respondent and Councillors Peers, Shotton, Sharp and Carver.
- 9.21. The Respondent was elected as Chair of the meeting. Members were given a further 10 minutes to read the briefing papers.

- 9.22. The Respondent immediately proposed at recommencement of the meeting that the post should be re-advertised. He indicated in his view there were no suitable candidates. The Officers, in particular Carl Longland and Sharon Carney, indicated to the Members that they should consider the individual candidate summaries prepared.
- 9.23. The Respondent questioned what was the qualification of Sharon Carney to be able to write reports on planning matters. Sharon Carney responded by indicating that Members should look at all the requirements of the post as outlined in the job description. We are satisfied that the Respondent in speaking to Sharon Carney was aggressive in tone and dismissive of her professional involvement. We note in a letter subsequently written by the Respondent he accepts he had questioned the Human Resources Officer who accepted *“that they had no planning remit or experience”*. We are satisfied the Respondent questioned at the meeting the qualification of Sharon Carney to make any assessment of candidates. The exchange Carl Longland and Jenny Williams felt to be inappropriate. It made Jenny Williams feel uncomfortable. Sharon Carney felt that the Respondent was being hostile towards her. In his initial response and in his later letter, the Respondent sought to justify his actions by stating that he was questioning the qualification of a Human Resources Officer to draw up the job specification. We are satisfied that the questioning went beyond this and included the questioning of the entitlement of the Human Resources Officer to engage at any point in the long-list process and in the recommendation of those to proceed to short-list interview. We are satisfied that the Respondent at this meeting adopted a hostile attitude towards Sharon Carney. We come to this finding based on the evidence of Carl Longland, Sharon Carney and Jenny Williams. We have considered their written memorandums, witness statements and their evidence before the Case Tribunal. They were questioned on the point by those representing the Respondent and remained of the view that the conduct of the Respondent was inappropriate.
- 9.24. The questioning of Sharon Carney at the meeting by the Respondent went beyond merely asking what qualifications she had to draw up the job

specification. The Respondent questioned her suitability to have any part in the long-list interview and providing recommendations to the Member Panel for short-list. This, in our finding, was a deliberate attempt by the Respondent to undermine the process as he was not amenable to either of the two candidates being recommended. It ignored the detailed briefing he had received, both verbally and in writing, as to the role of Human Resources Officers in the appointment process. It was part of the agreed procedure that a Human Resources Officer would have a central role in the long-list interview procedure. The Officer would have a role in drawing up individual summaries of candidates who had attended long-list interviews.

- 9.25. In our finding, the meeting on 29 January 2009 progressed with Carl Longland emphasising his belief that the two candidates being recommended were strong candidates. He also made reference to the fact that there was only a week to go to short-list interviews. Carl Longland stated that Members should not at that stage consider re-advertising. Carl Longland did specifically mention that the external candidate had been offered a job at Cheshire East Council and may be lost if the post were to be re-advertised. Carl Longland referred Members to the individual candidate summary reports prepared.
- 9.26. The Respondent suggested in his initial response to the complaint that the advice being given by Officers was “*weighted and negative*”. We find no basis in the evidence we have heard for such a submission. We are satisfied, both from reading the individual candidate summaries and the evidence, that the Officers were operating within their defined and agreed roles and were acting objectively. The individual candidate summary for [Mr A] was explicit in the comment that he had been “*appointed to the position of Head of Planning and Policy for the new Cheshire East Council*” that was being formed on 1 April 2009. His position was not something that was not known to Panel Members. Carl Longland indicated that if Members felt after discussing the report none were capable of being interviewed or being appointed, at that stage they could consider re-advertising. A discussion took place between Members, Officers responded to questions put to them by the Members. Following discussion, Members accepted on a vote of 6 to 1 (the Respondent dissenting) to accept

the recommendation to interview the two candidates. During the discussion, consideration was given as to why none of the other candidates interviewed at the long-list stage were suitable to be recommended. In terms of one of the candidates, mention was made that he had an unfortunate day in a drink being spilt on his clothing. This, we are satisfied, was not the reason why he was not recommended for appointment. The individual candidate summaries set out objectively, and with consideration of the job specification and the essential requirements, why two candidates only were being recommended and why others were not being recommended. In coming to our findings, we take into account the evidence of the Respondent and the evidence of Councillor Carver. The effect of the interventions and comments of the Respondent remained clear in the evidence of the three Officers. Comments were directed at them. Councillor Carver struggled to recall the precise details of the meeting. He had no recollection of an Officer being questioned as to her planning qualification. We are satisfied the Respondent did ask such a question. Councillor Carver's evidence was unable to recall matters of detail which is in direct contrast of the specific recollection of Officers.

- 9.27. In questioning, the Respondent states that he did not challenge Sharon Carney about her planning qualification at the first meeting. This contradicts the Respondent's written evidence that he had asked Sharon Carney about her planning background (B904).
- 9.28. There are serious inconsistencies in the evidence of the Respondent which lead us to the conclusion that, on balance, the evidence of the Officers present is to be preferred. Whilst the Respondent's voice may have remained calm, his tone and nature of questioning was intended to undermine the professional role of Sharon Carney in the appointment procedure.
- 9.29. We accept the Respondent did not raise his voice at the meeting but sought by his interventions to undermine the process and in particular the role of Sharon Carney.

- 9.30. On 6 February 2009, the Panel convened to interview the two recommended candidates. Those present included Carl Longland (Director), Pam Webb and Jenny Williams (Human Resources Officers). Sharon Carney attended in the afternoon to present BEI assessments. Councillors present included Councillors Peers, Shotton, Sharp and Carver.
- 9.31. At the beginning of the meeting, Pam Webb explained the procedure, including advising that Carl Longland would go and collect both candidates. The first candidate interviewed was the internal candidate, [Mr B]. The second candidate was [Mr A].
- 9.32. We are satisfied on the evidence of Carl Longland that when he attended to collect [Mr A], it was explained to him that as a result of attending the long-list interview, his proposed new employers had become aware of his interest in the post at Flintshire. He had formally accepted the offer of a post with Cheshire East Council. He was as a result on a higher salary than that indicated in his application form.
- 9.33. [Mr A] was interviewed. We saw nothing erroneous in Carl Longland not delaying the interview to explain any change in [Mr A's] employment status. It was known from the individual candidate summary which followed from the long-list interview that he had been offered a job with the Council. The post was not due to commence until 1 April 2009.
- 9.34. At the end of the interview, as agreed in advance by Panel Members, the Respondent invited questions from the candidate. [Mr A] asked what the Panel thought the main challenges were for planning within Flintshire. The Respondent immediately retorted that he did not think it was an appropriate question and refused to answer. There followed a significant period of silence. We do not find that the period of silence was minutes, as suggested by Pam Webb, but it was of sufficient length to make the candidate feel uncomfortable. The Respondent disputed that such a response was given to the question or that there was a significant period of silence. We are satisfied on the basis of the evidence of Officers, that there was such an exchange. This left such a

mark on the candidate that it was raised by him in a subsequent discussion with Carl Longland when he was offered the post. The actions of the Respondent were motivated on the basis that he did not wish [Mr A] to be appointed. We prefer the evidence of the Officers, in particular that of Carl Longland, to that of the Respondent and Councillor Carver. Carl Longland gave detail of the telephone conversation he had with the candidates that evening where [Mr A] made reference to the uncomfortable period of silence, noting *“he was waiting for the tumbleweed to blow across the room”*.

- 9.35. The scoring of the Respondent in terms of the two candidates was that in terms of all criteria for [Mr B], he marked him 2. In terms of the eventual successful candidate, [Mr A], he scored him the lowest mark of 1, and that mark for all individual criteria. Other than refusing to score, he could not have marked him lower. A score of “1” was defined as *“Poor – showed significant evidence to be judged lacking in the knowledge/skill/competence”*. He marked [Mr A] the same low score in all 13 criteria points. This supports our finding that the Respondent did not approach the appointment procedure with the objectivity required. Councillor Carver, in his evidence, believed [Mr A] was a strong candidate.
- 9.36. Following the lunch break, Sharon Carney was invited and attended at the Member Panel interview room to explain the BEI assessments. We are satisfied from the evidence the Respondent immediately sought to interject her presentation, stating that Panel Members should ignore the BEI assessments and that he had seen them change previous appointment Panel Members’ views. He questioned the scoring, stating that the star ratings did not match his assessment. Other Members contradicted his view. His attitude was an aggressive one and hostile to Sharon Carney. He shook his head violently and his body language was intended to give the impression that he was not interested in any response by Sharon Carney. His conduct was challenged by Pam Webb. The Respondent had no regard to the role of the Human Resources Officers in terms of the agreed appointment procedure. Pam Webb sought to give an explanation of the BEI process and the result.

The Respondent again stated that Panel Members should just ignore it. The exchange between Pam Webb and the Respondent became heated.

- 9.37. The Respondent then asked how long it would take to re-advertise the post. Pam Webb responded that she would not give that information and stated that if Panel Members felt unable to appoint, then the alternatives could at that point be explained to them. The Respondent became adversarial and aggressive. Councillor Shotton asked whether Carl Longland wished to comment and the Respondent responded by stating "*if he dares*". This was a comment made about a Director of the Authority in front of junior Human Resources Officers. At least one of those Officers thought the comment was inappropriate.
- 9.38. Carl Longland did mention during the exchange that [Mr A] had accepted the offer of a post with Cheshire East Council. The Panel approved the appointment of [Mr A]. The Respondent was one of two who did not favour [Mr A], who was subsequently offered the role and took up appointment with Flintshire. We heard evidence that he was performing well in his role.
- 9.39. Immediately following the meeting, a note was circulated by Carl Longland, advising Panel Members that he had spoken to [Mr A] but that [Mr A] had asked for the weekend to contemplate the offer. [Mr A] had also raised the issue of the starting salary.
- 9.40. In the immediate aftermath of the meeting the next working day, Monday, 9 February 2009, the Respondent wrote a letter to Carl Longland (B781 – B782). The letter acknowledges that at the first meeting he had questioned the qualification of the Human Resources Officer in terms of planning experience. The letter sets out advice given by the Respondent he did not believe that the approved candidate had demonstrated the necessary ability but that other Panel Members had taken a contrary view. The letter also acknowledged that as Chair, he had considered the failings of the candidates and as such there was a need to consider re-advertising. In the letter, the Respondent is critical of the role of Pam Webb and her intervention, stating "*It*

is difficult not to see this advice from the officer as an intervention directed to try to advise a decision without proper and full consideration of the options.” The letter accuses Carl Longland of failing to share information as to acceptance of the post by [Mr A] at Cheshire Council. The Respondent in his letter erroneously refers to West Cheshire when it was in fact Cheshire East Council. We are satisfied that Carl Longland did not know of an acceptance of the offer of the post until speaking to [Mr A] in the minutes prior to escorting him to the interview. All Panel Members were aware from the briefing note that [Mr A] had been offered the post at Cheshire East Council commencing on 1 April 2009.

- 9.41. The letter from the Respondent also states as follows – *“I have now sought external legal advice about the position and intend now to consider that advice to seek due investigation of the matters”*. We are satisfied that the Respondent had not sought such external legal advice. In his evidence, the Respondent acknowledged that he had spoken to other Councillors outside Flintshire but had not sought any external legal advice. The criticism of both Pam Webb and Carl Longland as outlined in the letter, in our findings, was unfounded and without merit. The misrepresentation in the letter that he had obtained independent legal advice was intended to give more credence by the Respondent to his complaint against Carl Longland. It would have caused the recipient anxiety, in particular as it is linked to a proposal for future ‘investigation’.
- 9.42. Carl Longland handed the letter to the Chief Executive. There was nothing improper in terms of doing so. If a Member writes such a critical letter to a Director, it is appropriate that it is referred to the Chief Executive in order for a reply to be formulated. Pam Webb contributed to the response from the Chief Executive forwarded on the afternoon of 9 February 2009. The response (B783) records that a number of Officers have taken *“personal and professional offence at the letter”*. The complaint was rejected. It notes that the manner in which the letter had been issued and its contents *“undermine senior personnel, their professionalism and their standing”*. It also records that the contents of the letter was inaccurate as an account of events. The

letter notes an allegation, which is denied by the Respondent, that he had made prejudicial comments against both candidates prior to final interviews. The letter reminds the Respondent of the agreed procedure and the role of Human Resources Officers. The letter dated 9 February 2009 concludes as follows – *“I would ask you to reflect on this formal e-mail and on the actions you have taken. This is regrettable behaviour which is not conducive to trusting member-officer relations and good governance. Unfortunately, this is not the first time we have had exchanges on your behaviour towards senior officers in recent times. I would appreciate you arranging to meet with me to assure me that there will be no repeat of inappropriate behaviour which undermines the professionalism and standing of senior personnel in the future. I have had no option but to inform Cllr Woolley of the issue and the outcomes.”* We are satisfied that the letter reflects the views of Officers as at 9 February 2009 and on the basis of our findings, is an accurate reflection of views and events at both Head of Planning Panel Member meetings. The letter clearly warns the Respondent as to his future conduct, in particular towards Member-Officer relations.

- 9.43. The Respondent answered the letter on 10 February 2009. He had spoken to Carl Longland and believed that matters had been resolved between him and Mr Longland and further, [Mr A] had accepted the offer of the post. The letter rejects any allegation of improper conduct *“and the value judgements you make about regrettable behaviour”*. The letter states that the Respondent would respond in some further detail in due course. We are not aware of any further response. We consider later the Head of Housing meeting which took place on 12 February 2009 and which resulted in an email on 13 February 2009 on behalf of the Chief Executive asking the Respondent to contact him as a matter of urgency.
- 9.44. In coming to our findings, we have considered and balanced the evidence from all parties, including that of the Respondent. We take into account that Pam Webb had prior to giving her evidence access to witness statements in particular that of Car Longland. However she had noted the Respondent’s conduct at the 6 February meeting in her initial statement which accompanied

the complaint to the Ombudsman. That evidence was not tainted by way of access to statements. Her initial statement was signed by her and dated 4 March 2009 (B735). In terms of the events on the 6 February the recollection of other officers was clear and we find significantly clearer and more consistent than the evidence of the Respondent. The Respondent's evidence when questioned was inconsistent in part with what he had written at the time (letter to Carl Longland) and in his initial response.

- 9.45. In terms of the Head of Planning appointment process, we find that the Respondent did not act with the objectivity required. At the meeting on 29 January 2009, he questioned Sharon Carney as to her planning qualification and such comments were made with the intention of undermining the Officer and her role in the process. At the meeting on 6 February 2009 he adopted an aggressive and hostile attitude to Sharon Carney and her presentation of BEI feedback. His comments on 6 February 2009 aimed at the Director of Environmental Services "*if he dares*" was intended to ensure that the Officer did not speak and was a threat. The complaint as to Officers' conduct as outlined in the letter to Carl Longland was unwarranted and misleading.

10. HEAD OF HOUSING APPOINTMENT

ALLEGATIONS

4.2.4. The Respondent's conduct regarding the appointment of Head of Housing

- xvii. Paragraph 4(b), 2008 code - failure to show respect and consideration for others

Conduct towards officers at the Head of Housing selection meetings on the 12/18/19 February 2009.

- xviii. Paragraph 4(c), 2008 code - not to use bullying behaviour or harass any person

Conduct towards officers at the Head of Housing selection meetings on the 12/18/19 February 2009.

10.1. The Head of Housing Appointment procedure was the same as for the Head of Planning, save that there was an independent person, with expertise in Housing involved at long-listing interview stage. There was a requirement that the candidate would be “a highly experienced housing professional with a full understanding of the complexities of managing a substantial housing stock within a local authority setting.” The Head of Housing was to be responsible to the Director of Community Services. The job description is contained in pages P195 - P201. The person specification is contained in pages P203 – P211. In terms of knowledge and experience, the following were noted as essential requirements:

- a. Substantial senior management experience in a local authority (or other substantial social housing landlord/agency) in at least one of the major housing services areas.
- b. A record of achievement in developing and delivering service objectives and plans based on performance management principles.
- c. Detailed understanding of public sector working, government priorities and policies.
- d. Success in developing working relationships internally and externally to deliver a wide range of housing services.
- e. Significant experience of resource management (people, finance, physical resources).

- f. Experience of initiating, developing and managing successful projects and programmes.
 - g. A thorough awareness and understanding of current legislation, regulatory requirements, case law, Ombudsman decisions and best practices in relation to all areas of housing services.
- 10.2. The Respondent was a member of the Appointment Panel. The dates for approval of the short-list was 12 February 2009 and the final interviews were held on 18 and 19 February 2009.
- 10.3. We are satisfied as a Case Tribunal that in December 2008, the Respondent had mentioned to the then acting Head of Housing, Maureen Harkin, the following:
- a. Shock and consternation that he had not been consulted on the recruitment of the permanent Head of Housing.
 - b. The Authority may be premature in seeking to replace Mrs Harkin.
 - c. Whether she would be applying for the position and was advised that she was not.
 - d. A wish for Mrs Harkin to remain in post.
- 10.4. We are satisfied on Monday 9 February 2009 he expressed to Mrs Harkin that there had been difficulty in the appointment of the Head of Planning and that he had already delayed the discussion on the long-listing for Head of Housing.
- 10.5. On 10 February 2009, the Respondent expressed a view that he would seek to delay Mrs Harkin's departure.

10.6. As a Case Tribunal we find the comments contained in a letter written by Maureen Harkin to Susan Lewis (B291) to be an accurate record of Maureen Harkin's recollection of conversations with the Respondent. We are not satisfied that she was in any way, as alleged by the Respondent, part of any form of conspiracy to create untruths. Her evidence was a recollection by an individual with no motive to be untruthful and the letter contains her true recollection of what was stated to her. We found her evidence on the accuracy of the letter to be credible (pg 10, 03.06.11 (2 of 2)):

MM: *Now the last document is at B291. Okay. I don't know Sir, in fairness to the witness, I don't suppose you have seen this document for a long time have you?*

MH: *No this was again part of my pack.*

MM: *Oh you have, well you are familiar with the document. I suppose I will crack on if I might Mrs Harkin.*

MH: *Yes fine.*

MM: *It is right isn't it that Susan Lewis asked you to draft this document?*

MH: *Yes she did. I had spoken to her and she said, could I send her a note which is why it says 'Further to previous informal discussions you have asked me to confirm in writing'.*

MM: *And it was drafted effectively to damage Councillor Heesom wasn't it?*

MH: *It was drafted to give my director a record of the conversation I had had with her. Which was a reflection of the discussions I had had with Councillor Heesom.*

MM: *And what is said there is not supposed to be helpful to Councillor Heesom, it is actually unhelpful to Councillor Heesom you would accept that wouldn't you?*

MH: *I wouldn't say it was drafted to be unhelpful, it is a factual representation of what went on in the run up to the appointment or unsuccessful appointment I think it was at this stage, of head of housing.*

MM: *Mrs Harkin, Susan Lewis has asked you to draft this document, it is clearly not helpful to Councillor Heesom what is in there, you would accept that wouldn't you?*

MH: *I would accept that this was a conversation I had with Susan where I had shared my recollections of what had gone on. And Susan asked me to confirm in writing what I had said. It is an actual statement. As to whether it is helpful or unhelpful is for the panel to decide.*

MM: *Yes but –*

PD: *Did she stand over you and ask you to put what was in this document?*

MH: *Absolutely not. And obviously, because I said to her, I had this conversation with Patrick and I was concerned after what she had told me about the delays etc that I was playing a part somehow in not progressing the permanent appointment, because Patrick held me in high regard. And she at that stage,*

asked me to send her a note and that is what that is. So Sue didn't know what the extent of my thinking was at the time.

.....

HJ: *Do you accept that this is a document which is critical of Councillor Heesom?*

MH: *I think it shows that Councillor Heesom was in no hurry to replace me and he may have delayed proceedings with that in mind. That is what I take it as. And at this stage I had no knowledge of any Tribunals or complaints that would have subsequently happened.*

PD: *Did you have any hidden agenda when you prepared this document?*

MH: *Absolutely not. I made a comment to my director, I was asked to give her something in writing and I considered it and I had given her that, I was concerned that what I had taken as harmless flattery may now be seen as motivated by something else, that was all.*

.....

MM: *The fact is this document was designed to damage Councillor Heesom and what is said there is not actually correct is it? Councillor Heesom never said that to you did he?*

MH: *Councillor Heesom absolutely said that to me. Which is why I put it in my statement. I have a professional integrity to protect as well, I don't make statements that I factually don't believe to be correct.*

MM: *And I suggest that that fact reflects how inaccurate this document is.*

MH: *In your opinion.*

MM: *It is indicative of how inaccurate this document is. Because what it implies is that Councillor Heesom was playing some funny games by trying to delay the head of housing. That is what you are suggesting isn't it?*

MH: *I am suggesting that Councillor Heesom would have been happy for me to stay, for however long I decided to stay and he gave me to believe that he would make that happen.*

MM: *No, but you are in addition to that suggesting that Councillor Heesom was playing some funny days by trying to delay the head of housing. That is what you are suggesting isn't it?*

MH: *No you are suggesting that. I am stating a fact that Councillor Heesom told me that he could influence the head of planning timetable, and if I would reconsider my position, he would influence this.*

MM: *Okay just to be fair to you then, you are saying there is no implication in this document that Councillor Heesom was trying to delay matters in terms of choosing the head of housing, is that right?*

MH: *I have given you my recollections of what happened in the run up to the appointment as to the importance or otherwise of that is for you to decide or for the panel to decide.*

10.7. The letter (B291) was an attachment to the complaint to the Ombudsman and formed part of papers presented to the Respondent in March 2009. In the Respondent's initial response (C53 – C69), he does not directly comment on what Maureen Harkin attributes as comments by him. He does suggest Maureen Harkin had an agenda against him.

10.8. He states *“I could only conclude that she is exercising a response to that advice and the comments generally about the conversations that we had. I repudiate her comments as being private and out of context and malicious.”* He does not specifically state that they are inaccurate or untruthful. The Respondent later in his evidence denies he said such statements. Maureen Harkin did prepare the letter at the request of Susan Lewis, which is openly acknowledged in the letter. This, however, does not undermine the truthfulness of what is said in the letter.

10.9. As at February 2009, the Respondent’s views were as follows:

- a. He had a belief that any senior officers were of “persuasion to transfer” housing stock out of the control of the local authority.
- b. As lead member i.e. Executive Member, he had until March 2009 resisted the pressure to transfer – he believed his resistance is a motivation for the allegations against him.
- c. He held a negative attitude towards Susan Lewis as he believed she did not have the necessary experience in housing matters and that she had been *“raised up without interview or members’ consultation”*.
- d. Whilst he accepted that HR had an input into the appointment procedure, he believed they were *“surreptitiously inserting”* other advice into the process. Members’ role *“as a selection panel has been unreasonably marginalised.”*

10.10. The Respondent had been involved in the Head of Planning process. Concerns had been raised as to his conduct in that process, which resulted in a letter being forwarded on 9 February 2009 (B745) by the Chief Executive to him. The letter addressed a complaint relating to Carl Longland but is relevant in terms of Head of Housing for indicating the following – *“The recruitment process that the Council has followed for the Head of Planning post exactly mirrors that agreed with members and that*

successfully implemented for the recruitment of our two new directors. There is no rule that a short-list of two is unacceptable, providing both of those candidates fully meet the initial long-listing criteria for the post and that they have successfully demonstrated at the long-list interview that they could meet the requirements; insofar as this could be judged purely by interview at that stage, of the job description, personal specification and behavioural competences. This independent assessment applies equally to internal and external candidates.

The Job specification for Head of Planning was included in the members briefing pack issued to all members of the long-list approval meeting and therefore available for reference throughout all member panel meetings.

The long-listing from candidate application details and the long-list interviews for all the current vacant Heads of Service posts were undertaken by the appropriate Director with the support of the relevant Human Resources Manager for that service who subsequently wrote up the candidate interview report forms. It is perfectly acceptable and appropriate for a skilled Human Resources Professional to participate in these procedures and explore evidence to match a candidate to the job in question or not. There would be no Human Resources function in any organisation anywhere if these processes could only be carried out by functional experts.

The issue of re-advertising only becomes material if the majority of the member panel find:

- a). they do not accept officer recommendations to take the two suggested candidates forward to final short list panel,*
- b). they do not feel that they are able to appoint from amongst the two candidates following final short list panel,*

c). *they consequently are not able to agree to make an offer to one of the two candidates following short list panel.*”

The email concludes as follows *“I would ask you to reflect on this formal e-mail and on the actions you have taken. This is regrettable behaviour which is not conducive to trusting member – officer relations and good governance. Unfortunately, this is not the first time we have had exchanges on your behaviour towards senior officers in recent times.”*

10.11. Applications for Head of Housing were considered initially by Susan Lewis, Natalie Pridding and an external housing specialist. There were 21 candidates. Eight candidates were invited to long-list interviews. Recommendations were that two be taken forward to final assessment stage. The overall candidate summaries set out the general assessment of the candidates (P255 – P257). Also prepared were individual candidate summaries for those recommended and not recommended for final interview. The individual candidate summary for [Mr C], who was not recommended for final assessment, can be seen at pages P279 and P281. In terms of knowledge and technical ability, the summary stated as follows *“[Mr C] did not provide evidence to suggest that he has significant experience of managing people. During [Mr C’s] career, his focus has been on strategic management, rather than operational experience, which is a large part of the Head of Housing role.”* It was noted that [Mr C] did not *“implement the changes himself”*. The conclusions were *“[Mr C] has a good track record of achievement in strategic management but does not have the balance of operational experience, which is needed for this position. We therefore recommend that he is not taken through to the final assessment stage.”*

10.12. We find that the housing pack which included the assessments, job description etc, was personally delivered by Jenny Williams to the Respondent prior to 11 February 2009. Her note (B766) confirms handing the pack to the Respondent and attributes to him a comment about Graham Eads. Graham Eads was involved in the assessment stage, which involved an informal interview. Mr McCale had been involved in the paper sifting. On

this basis also, we find that the Respondent made a comment that Graham Edes *“probably had stock transfer experience”*. The detail in her note leads us to find it is a truthful record. They contain details which Jenny Williams would have no knowledge.

10.13. On 11 February 2009, the Respondent and Councillor Helen Yale attended a conference in Cardiff. During 11 February 2009, Councillor Bernie Attridge had obtained his own copy of the pack relating to the appointment of Head of Housing. Email exchanges took place between Councillor Bernie Attridge and Councillor Helen Yale on 11 February 2009. The first of those emails timed at 8.53am (D505), was copied in to the Respondent. It stated as follows, *“Hello helen I could do with chat with you as I am very concerned after reading the paper work on the longlist and what officers are putting forward I am totally against only 2 people for interview we should have least four I will be asking for them to readvertise what is your view please? I have tried ringing patrick for his view but can’t get hold of him so I have copied him in to this email if you see him about county hall, can you tell him to ring me any thanks bernie”*

10.14. Councillor Yale responds indicating that she will be seeing Patrick in Cardiff. We are satisfied that during the day in Cardiff a discussion took place between Councillor Yale and the Respondent as to the appointment of a new Head of Housing on the following day. Concerns of Councillor Attridge included the fact that there were only two people listed for interview and of those two people, they both had been involved in transfer of housing stock. In the email exchanges it is proposed that there should be a meeting of some of the Councillors prior to the Panel meeting. Councillor Yale had not received her pack prior to attending Cardiff. We are satisfied that the Respondent had the pack with him as she indicates at 9.30am that she had not received the pack as yet and was nearly in Cardiff and *“will see [P]atrick in Cardiff”*. At 15.50 hrs, she has had an opportunity of reading through the pack and is able to comment. On the basis of evidence heard, she would not by 15.50 hrs have returned to Flintshire. This reiterates our findings that there were discussions between the Respondent and Councillor Yale at the conference in

Cardiff. It also confirms the Respondent had prior to travelling to Cardiff on 11 February 2009 received the housing pack.

10.15. At 15.55 hrs Councillor Attridge emails Councillor Yale stating *"Thanks helen, ron hampson is coming at 930 he's the same view as me."* This is responded to at 17.12 hrs by Councillor Yale *"So is patrick, have you had any feedback from any other panel members?"* In evidence, the Respondent indicated that he did not have a strong view either for or against the transfer out of housing stock from the local authority. In his words he was *"not carrying a torch either way in terms of transfer of stock"*. It is more likely than not that the phrase *"so is patrick"* is referring to *"coming to the meeting at 9.30am"*.

10.16. We find the Respondent's evidence as to discussions with Helen Yale and the attendance at a meeting wholly unsatisfactory. He was extremely vague and, it would be true to say, evasive, in terms of the email exchanges and the discussion with Councillor Yale. He sought to indicate that he did not know if he had picked up the email which had been copied to him. When asked if he recollected discussion with Councillor Yale, his response was *"it might have been something we discussed"*.

10.17. The evasiveness of the Respondent comes about as he seeks to distance himself from the meeting arranged for the morning of 12 February 2009 to discuss the approach and attitude of members to the short listing meeting for Head of Housing.

10.18. We are satisfied that the Respondent attended a meeting with Councillors Attridge, Yale and Hampson. This meeting may not have been a long meeting.

10.19. The purpose of the meeting was to discuss their approach to the recommendation by officers of only two candidates for short listing. We would stress there was nothing improper in an informal discussion, provided all members retained their independence and objectivity during the appointments procedure.

10.20. We come to the finding that the Respondent attended such a meeting on the basis of his evasiveness in terms of whether he had attended such a meeting and his recollection of the same. In his written statements, he does not deny not being party to a meeting during the morning of 12 February 2009. The Respondent indicated that he did see the Councillors that morning but stated (pg 2 05.10.12 (1 of 3)): *“it would have been about other matters”*. He further indicated *“...I have a recollection that Councillor Woolley said that there was a meeting in the Labour Room and I think he is attempting to say that meeting went on for some time. I have made it clear that I did go in to the Labour Room some time earlier in the morning but only stayed there a short while and there were subsequent entrants in that room, who I’ve read from the documents...”*

In questioning:

Chair: *But do you have any recollection of going into the Labour Room on that morning?*

Cllr H: *Yes, but it was –*

Chair: *You do have a recollection?*

Cllr H: *But it was very early on and it was for a specific different matter.*

Chair: *And who did you meet there?*

Cllr H: *It might have been Arron Shotton and Bernie.*

Chair: *Might have been?*

Cllr H: *Arron Shotton and Bernie.*

- Chair: *Is it certain you met them or are you saying it might have been them?*
- Cllr H: *It might well have been, I can't remember what the business was but it was certainly not panel business.*
- Chair: *But you can't remember specifically who was there?*
- Cllr H: *I am sure it was Bernie and Arron.*
- Chair: *You are again saying "I'm sure". I'm looking how certain that is. Is that from the papers you've gleaned that, or is that from your recollection?*
- Cllr H: *Let's say I can't recollect, then, Sir.*

10.21. We find it inconceivable, given the contents of the emails, the views of the Respondent as expressed in his initial response to the complaints, his stated view as to housing stock and the importance of the appointment of Head of Housing, that he would not have discussed matters with other Panel Members in advance of the meeting on 12 February 2009. This has to be viewed in the context of:

- a. A specific note by Councillor Woolley of a meeting of Panel Members being conducted during the course of the morning prior to the Panel Meeting.
- b. The firm view of Officers and indeed of Councillor Halford as expressed in her email, that there appeared to be an agreed position.
- c. The contents of the email on the previous day of a pre-arranged meeting for 9.30am and an indication that the Respondent would be attending.

d. The recorded comment from Councillor Attridge to Councillor Hampson that he had broken party lines in terms of the agreed position.

10.22. It is inconceivable that the Respondent was not party to those discussions. The Respondent acknowledged in cross-examination *"I'm not in dispute that I was in that meeting much earlier than that. But whatever went on in that meeting later on between those other people there, I was not there at that meeting. I think they are on record as agreeing that I wasn't there."*

10.23. Councillor Yale was adamant that the Respondent was party to a discussion in the morning. She stated, however, it was a brief discussion. The Respondent acknowledged he had popped into the room. A discussion involving the Respondent did take place.

10.24. The Respondent has sought to distance himself from any prior discussion between Panel Members as he is aware Officers have later suggested there was a pre-agreed position by Members. This view is confirmed in the email sent by Alison Halford (B274) to the Chief Executive and to Arnold Woolley on 16 February 2009, four days after the first of the Head of Housing meetings – *"Dear Colin, I don't feel very optimistic as PH BA & Ron H all agreed a position at the shambolic meeting."*

10.25. At the meeting on 12 February 2009 the Respondent was elected Chair. We are not satisfied that it had been specifically discussed between the Members that he would take the Chair. There was nothing improper in him being appointed Chair. However as the elected Chair he was under an obligation to ensure that the meeting was chaired correctly, the participants conducted themselves appropriately and the agreed procedure was followed fairly. Present at the meeting were Councillors Heesom, Attridge, Halford, Cattermoul, Hampson and Yale. The Chief Executive, Colin Everett, Susan Lewis, Natalie Pridding, Pam Webb and Jenny Williams were also present. During the course of the meeting and at an early stage, the Respondent challenged not only the contents of the reports as to candidates, but also the

qualifications and professional judgements of Susan Lewis and Natalie Pridding. He did so by indicating that they were not housing specialists. The Respondent presented his own personal assessment of the candidates. No invitation was given to Susan Lewis to explain why she had made a recommendation of two candidates only for short-listing. He queried the suitability of only having the two candidates to take forward to final stage selection. He questioned the validity of the HR Manager, Natalie Pridding, in being allowed to contribute to the long-list assessment process. Susan Lewis was challenged:

10.26. The evidence of Natalie Pridding was detailed as to the meeting (pg 72, 15.06.11 (1 of 2)):

GH: You tell us detail what happened at that meeting or perhaps you can just tell us what it was particularly that you objected to?

NP: Okay. I think the statement sets out why I was there and my involvement in the long listing interviews where Susan Lewis as director. I objected to the behaviour, really, of Councillor Heesom in the meeting. Firstly with regards to his comments about myself and Susan Lewis's professional capability to make a decision or recommend from the candidates to the member panel because both Sue and myself are very experienced in selection interviewing and we also had an advisor on the panel who had the housing expertise if that was required. So I did take exception to those comments being made.

GH: The comments that were made in that regard, how were they made?

NP: I think as it says in my statement, Councillor Heesom did directly criticize the contents of the reports in terms of the quality and questioned whether Sue and myself were able to give professional judgments or opinions on the candidates as we

weren't housing specialists. For me, the point of the long listing interview process is to assess the long list of candidates but we're looking at the depth of experience, the breadth of experience, the fit for the role and we are more than capable of doing that. I mean I'm a HR professional; I've been qualified for 10 years so I did personally take exception to those comments but I had also worked with Sue for –

GH: Can you slow down please we need to write –

NP: Oh, I'm sorry. I've also worked with Sue at that time for a period of three years and undertaken a number of interviews with her and had observed her to be competent in undertaking selection interviews.

GH: Now you, you say that he was critical of the content of the report and indeed question your capabilities.

NP: Yeah.

GH: Again, I'm afraid it's the same question, how would he do that also? It's not so much the content as the manner is what I'm interested in.

NP: Okay. In my opinion, I feel that the manner was inappropriate. In the long listing sessions I've attended prior to that, the meeting is ordered and structured and this wasn't. Councillor Heesom had been appointed as chair, and as chair, I don't believe in my view that the meeting was controlled properly and Sue, after the appointment of the chair, it's typical process that Susan Lewis would present her findings and I just do not feel she was given opportunity to do that and the reports was criticized before we had the chance to talk through them as would be normal process. And in terms of the manner, I just, it

was a side comment and I just didn't think it was professional or appropriate in the setting.

GH: *When you say side comment, by whom?*

NP: *By Councillor Heesom.*

GH: *Do you remember what was said?*

NP: *No, it was a co-, it was, sorry. In the meeting, it was a comment but it was off the cuff almost, if you see what I mean. The comment was made openly but it was, it just didn't sit right.*

GH: *Were you given an opportunity to address the suggestion that you lacked capability to comment?*

NP: *I can't recall, no.*

GH: *Do you recall the question of potentially re-advertising being discussed?*

NP: *Yes, I do.*

GH: *And who raised that?*

NP: *Councillor Heesom did fairly early on into the meeting. As it says in my statement, as soon as Councillor Heesom was appointed as chair, he questioned whether any of the candidates we had seen as part of the long listing process should be considered at all and raised the questions about whether the post should be re-advertised.*

GH: *Do you recall the end of the meeting? How did the meeting come to an end?*

NP: *The meeting was concluded with five candidates being recommended to go through to the final stage. I can't remember the meeting being sort of formally brought to a close but I do remember as, as individuals got up to leave that Councillor Heesom did walk past Susan Lewis and pat her on the shoulder because I was actually sitting next to Sue at the time.*

GH: *I think it's common ground that matters had got a bit heated.*

NP: *Yes.*

GH: *Towards the end of that meeting.*

NP: *Yes.*

GH: *Do you recall who was involved in that?*

NP: *Towards the end of the meeting from what I can remember, the meeting just wasn't controlled, it just sort of escalated into, I saw something that wasn't particularly appropriate and a number of people were adding in their views and comments.*

GH: *And how was that being done? Again, I'm more interested in manner than content.*

NP: *In my view, as chair or as appointed chair of the meeting and of the panel, I believe Councillor Heesom didn't bring the meeting around to order and it just escalated into, trying to think of the word but it just wasn't structured or professional.*

GH: *How did you feel at the end of the meeting?*

NP: *On a personal point of view, I did feel... and it was going back a couple of years now, I did feel undermined really on a professional level because I've never had my sort of own capabilities brought into questions before in my career. So I did feel quite undermined and embarrassed, really, because line manager was there, who was Pam Webb at the time. The chief executive was there and other, and councillors who I would working with. So I did feel my professional credibility was brought into question and I did feel undermined and embarrassed about that really and I do think that was unacceptable. I was also, just trying to think of the word, I was also concerned for Sue Lewis really, because I just didn't think the behaviour towards her was appropriate either. She was doing her job by going in to talk through the long listing reports as would be the case with any director or head of service who undertakes senior recruitment and her opinions were being questioned also her professional credibility and she has a long career within local government.*

GH: *How did she present after the meeting?*

NP: *She seemed to me and obviously I can't talk for her, she seemed quite shaken and upset but Sue wouldn't be the type because I've worked with her quite closely, to want to talk about it, she was quite a private person. So I could tell, because I work with her closely, that she was upset but she tried to hold it together but she seemed to me to be shaken.*

10.27. In allowing the meeting to become unstructured and unprofessional Councillor Heesom was showing a disregard for the agreed appointments process. The Officers were there to ensure that the process was followed, the conduct of the meeting flew in the face of agreed process and undermined the officers who were prevented from fulfilling their roles.

10.28. Susan Lewis who was challenged as to the role of Councillor Attridge stated (pg 4, 04.03.11 (3 of 4)):

MM: *And, if you look at what Bernie Attridge is saying, he's being quite blunt isn't he? "Frankly, I know more about housing issues than Mrs Lewis. If we listen to these officers we wouldn't get our way. I know more and I'm going to decide who I think is the best candidate" that's his position isn't it, so frankly whether you spoke or whether you didn't speak wouldn't have mattered because Bernie Attridge was going to make his own decision wasn't he?*

SL: *I think that I've made the point before, but what I'm complaining about was the treatment of us on 12th February and the fact that our staff were disrespected, that the conduct was very poor and that our advice wasn't sought and listened to - that's what I'm concerned about.*

10.29. Pam Webb conceded that she became angry and raised her voice in the meeting as she believed her staff were being badly treated. Councillor Yale states that Pam Webb did not speak appropriately to Members and described her manner as vicious. An exchange took place which the Respondent did not seek to prevent. Pam Webb said in oral evidence (pg 4, 01.06.11 (3 of 4)): *"I was the line manager of these people and also Susan Lewis was visibly upset and you know Susan Lewis was more senior than I was but my role as the head of HR is to make sure people are treated with dignity and respect and these people were not being treated in that way and nobody was stopping it and I had to stop it, and they wouldn't listen to rational debate or discussion and they were shouting and therefore I had to raise my voice to stop it, and at that point the chief executive intervened and the meeting ended. But I was not vicious, I don't work in that way. I was professional and it was evidenced and I tried my best to stop it".*

10.30. We are satisfied the Respondent exhibited a considerable amount of aggression towards Susan Lewis and Natalie Pridding. There was also a heated exchange between Councillor Attridge and Pam Webb. Councillor Attridge subsequently apologised to two officers for his conduct.

10.31. We are satisfied that there was aggression and criticism of the Officer by the Respondent (in particular of Natalie Pridding and Susan Lewis) on the basis of:

- a. The records made within a month of the incident by Officers. There is no attempt in those records, in our view, to embellish what occurred. Indeed, the criticism is that they do not go to specific detail as to exact words used. They give a clear impression, however, of aggression by the Respondent towards individual Officers. In our view, there was an attempt to undermine the appointment procedure. The Respondent's conduct should be seen in the context of a letter sent to him three days prior to this meeting by the Chief Executive, explaining the role of HR in the long-listing/short-listing process and warning him as to his future conduct.
- b. The vagueness of the Respondent to specifically outline his recollection of what was said at the meeting and his failure to acknowledge the effect the meeting had on Officers of the Authority.
- c. We note the Respondent sought to propose re-advertisement of the post, notwithstanding the comments as to appropriateness from the Chief Executive three days earlier.
- d. In terms of comments to Natalie Pridding, there is a significant consistency that her position was undermined by the Respondent. He initially sought to blame Councillor Attridge for any criticism of Natalie Pridding. The criticism at the meeting of her, we find, emanated from the Respondent and not from Councillor Attridge. He Chaired a meeting in a manner which allowed not only himself, but other

Councillors in the words of Councillor Attridge “*to give the gaffers a roasting*”. The “*gaffers*” being Susan Lewis, Pam Webb and Natalie Pridding. We find no basis in the criticism made of Natalie Pridding that her role, as indicated in cross-examination of the Respondent, was “*to do the paperwork and the linking up*”. This itself was a patronising comment of an experienced HR Officer and gives an insight as to the Respondent’s attitude towards Officers of the Council. The procedure had emphasised the role of HR, of which Natalie Pridding was the Officer from HR commissioned with assisting in the long-listing process.

- e. It is significant that the Chief Executive writes to the Respondent on 13 February 2009 requesting an urgent meeting.

10.32. The evasiveness of the Respondent did not impress the Case Tribunal. We had sought to obtain from him his direct recollection of events of 12 February 2009. For example on pages 7 and 8 of the transcript of 5 October 2012 (2 of 3), when asked about Natalie Pridding’s account, he indicates

PH: *I don’t recollect that at all.*

GH: *Do you not recollect it or are you saying you didn’t do it in the face of these people who say you did?*

PH: *Well she’s referring specifically there to the content of the reports. I might well have made a comment about the content of the reports but the extra added in bit there, “stating that neither Susan Lewis and myself were equipped to give professional judgements,” is rather an extension of what I recollect I am sure happened. I’m sure I did at some point in a steerage way, rather than a direct way, comment on the content of the reports*

10.33. We find that at the end of the meeting he approached Susan Lewis and in a patronising manner and inappropriately touched her. We cannot be certain

whether the touch was to the lower back or to the shoulder. It was not, as alleged by the Respondent, an accidental coming together. It was intentional. It was considered by Susan Lewis and Pam Webb as a patronising act. It was not, in our view, any form of assault but was inappropriate, given the clear upset felt by Susan Lewis as a result of what was said in the meeting.

10.34 In coming to our findings of fact in terms of the meeting on 12 February 2009, we have considered and balanced to all the witness evidence presented. We have treated part of the evidence of Pam Webb with caution, where her evidence makes reference to comments by her of other witness statements, where those witness statements were not formally put to her. Both her attendance note and witness statement in terms of the Head of Housing meeting 12 February 2009 were prepared without consideration of any other witness evidence. We are satisfied her evidence was from her direct recollection and we found her to be a truthful witness.

10.35 We have earlier noted that we do not find credible the interpretation sought to be given by Councillor Halford as to her emails written shortly after the meeting. Those emails in our findings clearly indicate she had at that time serious concern as to the Respondent's conduct at the 12 February meeting. Other officers had serious concerns as to the Respondent's conduct such as Natalie Pridding and Jenny Williams. The latter witness describing the Respondent as being dismissive toward Susan Lewis and Natalie Pridding. We have regard to the evidence of Councillors present. Councillor Attridge acknowledged he out of all of the Councillors present "was out of order" and he was impressed with how the Respondent chaired the meeting. He did believe in his written statement that the Respondent should have apologised to officers, though in his oral evidence qualified this by saying it was on behalf of the Committee as a whole that such apology should have been tendered. Councillor Yale thought the Respondent was the "most challenging of officers" at the meeting. She referred in her witness statement to two of the officers appearing teary eyed. We have had regard to the evidence of other councillors present including Councillors Cattermoul and Hampson but return to the fact that the most detailed and credible evidence was from officers

present. They were the ones against whom comments by the Respondent were being directed at. In terms of Councillor Halford, her oral testimony lacked credibility in light of emails which she subsequently wrote after the meeting. As a Case Tribunal, we considered that the interpretation that a reasonable person would place on the emails reflects more accurately than her oral testimony the nature of events on 12 February 2009.

10.36 We also note that a significant part of the final witness statement submitted on behalf of the Respondent is not direct evidence of his recollection of events but his consideration and interpretation of other witness evidence presented at the Case Tribunal. The Respondent has maintained that he had not behaved at the 12 February meeting in any untoward manner. That position is not credible on the basis of the evidence we heard and the documents prepared at or close to the event. Our task has been hampered by not only the Respondent, but, it would be true to say, other witnesses (and in the main fellow Councillors) who have been defensive in terms of evidence given and reluctant to state in clear and plain language their recollection of events. This is particularly true of the meeting of 12 February 2009. Several versions of that meeting were presented with a particular witness seeking to give a spin of the events based upon what they perceived to be a particular agenda. Whilst having regard to the submission by the Respondent that the officers had “an agenda” against him we remain of the view that we preferred the evidence in particular of the more junior Officers of Flintshire County Council present, such as Natalie Pridding and Jenny Williams. They did not appear to have any “hidden agenda”. They had prepared independently and without input from any other party typed memorandums in or around the beginning of March 2009. These were not witness statements obtained with the assistance of an investigator but were statements setting out in their own words, their recollection and impressions in terms of the meeting of 12 February 2009.

10.37. Susan Lewis also provided clear oral evidence. However, her typed memorandum did not go into particular detail of what was precisely said at the meeting on 12 February 2009. In terms of Pam Webb, it is our finding that during the meeting on 12 February 2009 she became annoyed and that there

was towards the latter part of the meeting a strong verbal exchange between her and Councillor Attridge. As a result of this exchange, Councillor Attridge subsequently apologised for his conduct to two officers of the Council.

10.38. We note the similarity in the conduct of the Respondent at the meeting of 12 February 2009 to his conduct at the long-listing meeting for the Head of Planning on 29 January 2009. The Respondent sought to undermine the position of Officers and in particular Natalie Pridding and Susan Lewis. Though he had been fully briefed as to their role, he deliberately ignored that role, notwithstanding the briefings he received and the warning he had received from the Chief Executive in written form following the Head of Planning process. He sought, in particular, to question the qualification of Natalie Pridding to take part in the long-listing process. This ignored the fact that it had been agreed that Human Resources would have a specific role. He sought to undermine the process and the confidence of the Officer by questioning her qualification. The attack was a personal attack on Natalie Pridding and, to a lesser extent, on Susan Lewis. In both instances, he also sought to undermine the process by proposing re-advertisement. Further, the Respondent sought to stop any intervention by a Senior Officer in the Head of Housing 12 February 2009 meeting, both Susan Lewis from expanding upon her reports and upon the Chief Executive, Colin Everett, from explaining to members the role of Human Resources. This has a similarity to his seeking to stop Carl Longland from contributing in the Head of Planning meeting.

10.39. We make the following findings in terms of the Head of Housing Meetings on the 18 and 19 February 2009. As a result of events on 12 February 2009, Pam Webb had withdrawn from her role as Human Resources Director to attend the meeting. Helen Stappleton was deputised to take her place.

10.40. It should be noted that this is the only meeting in which Helen Stappleton was present. She prepared a detailed note on 11 March 2009 (B770 – B773). It sets out in some detail the events of 19 February 2009.

10.41. Five candidates were interviewed on 18 and 19 February 2009.

- 10.42. We make a finding that there was nothing untoward with the conduct of the Respondent in terms of the interview of the candidates.
- 10.43. The interviews were concluded by lunchtime on 19 February 2009. A discussion took place between Helen Stapleton and the Respondent as to the procedure for the afternoon. The Respondent indicated that the scoring from the interview process was to be submitted prior to receipt of the BEI feedback. He mentioned that he had seen their feedback influence the way in which members had scored.
- 10.44. During lunchtime, the Respondent also refused to sign and date a document confirming the stages of the selection process. He refused to do so on the basis that it contained a phrase that the members had “*accepted*” recommendations made by Officers. The document indicated that additional candidates had been added to those recommended but the Respondent still refused to sign the paperwork.
- 10.45. The Respondent gave the impression to Helen Stapleton that he was dismissive of the value of BEI.
- 10.46. When the Panel reconvened, a discussion took place as to whether BEI feedback should be received prior to or after scoring. Panel Members agreed that they were to score the candidates first and subsequently receive the BEI feedback. The procedure was in the control of the Panel and we do not find that in scoring candidates prior to receipt of BEI feedback, was in any way an attempt to undermine the process or to undermine Officers.
- 10.47. BEI feedback was provided by Natalie Pridding and Sharon Carney. We do not find that there was any specific comment made by the Respondent which could be viewed as undermining the role of the Officers at the meeting on 19 February 2009. The Respondent, by way of lack of engagement and body language, gave the impression to officers present that he did not view the BEI assessments as being relevant and appeared to be dismissive of the

feedback. He, however, was not alone amongst Panel Members in forming that view with Councillor Yale taking a similar view.

10.48. At the conclusion of the feedback, the Respondent requested that Natalie Pridding and Sharon Carney vacate the room. Whilst this was unusual that they were not present during deliberations, we do not find in asking them to leave the room that it undermined either the process or the Officers. It was again for the Panel to control how it operated.

10.49. The Respondent immediately proceeded to a vote regarding appointment without further discussion. This did not allow Officers, in particular Susan Lewis, to provide any input in to the discussion or to share her views on candidates. This was disrespectful of her position as a Director and we find it was motivated by the Respondent's previously formed view that he did not believe that she was capable of fulfilling her role. After the vote in favour of the candidate, [Mr C], Susan Lewis and the Chief Executive did raise their concerns. The Respondent stated it was too late, that the vote had been taken and the candidate appointed.

10.50. Whilst we find that at least three of the Councillors, which included the Respondent, had at one point vacated the room and held a discussion, we cannot be satisfied that the discussion was to pre-arrange the process or pre-arrange the appointment. We are not satisfied that the discussion, on a balance of probability, was to formulate a pre-arranged view.

10.51. [Mr C] was appointed to take up the role of Head of Housing. We do not find anything untoward in the scoring by the Respondent of the candidates. This is contrary to our views of his scoring of candidates in the Head of Planning appointment. The majority view of the Panel Members was that [Mr C] should be appointed. It was suggested that there may have been reasons associated with Officers why [Mr C] did not take up his post. We do not find on the basis of the evidence presented that Officers in any way had interfered with [Mr C] taking up his post.

10.52. In coming to our findings, we have had regard to all the evidence, including those of Officers and Councillors. The most detailed piece of evidence, and most reliable in terms of factual recollection, is the note prepared by Helen Stappleton. During her evidence she did not veer significantly from that note. It sets out within a matter of weeks factually and in a matter of fact manner the events on the 18 and 19 February 2009. It does not contain emotive language and is not an attempt to embellish the conduct of the parties. Natalie Pridding and Jenny Williams were present for only part of the meeting on 19 February 2009. The evidence of the Chief Executive, Colin Everett, and Susan Lewis was whilst they were critical of being not allowed to contribute and of the dismissive attitude towards BEI, there appears to be no specific examples of abusive conduct at that meeting. The evidence of Councillors would also appear to support the impressions of the meeting provided by Helen Stappleton.

10.53. The meeting, however, has to be viewed in the context of the Head of Planning process and written correspondence forwarded subsequently by Colin Everett to the Respondent.

10.54 In terms of the Head of Housing process, we find that the Respondent's conduct on 12 February 2009 included a verbal attack, both on Natalie Pridding and Susan Lewis and that he was seeking to undermine the role of the Officers at that meeting. We do not find that there was any such verbal attack on 19 February 2009.

11. HOMELESSNESS PREVENTION INTERVIEW, 25 FEBRUARY 2009

ALLEGATIONS

4.2.3. The Respondent's alleged behaviour concerning housing allocations

xvi. Paragraph 4(b), 2008 code - failure to show respect and consideration for others

Conduct at a homelessness interview held on 25 February 2009.

- 11.1. The allegation against the Respondent in terms of this interview are relatively straightforward where it is alleged that the Respondent intimidated Caroline Littlewood, a Homelessness Prevention Officer employed by Flintshire County Council.

- 11.2. On 25 February 2009, the Respondent was in attendance for part of the meeting she had with the Rowlands family. As a result of the conduct of the Respondent, Caroline Littlewood felt very stressed and intimidated and that her position had been undermined by wrong advice being given by the Respondent to the Rowlands family at the meeting. The Respondent denies any such wrongdoings. The evidence that we have to consider is the witness statement and oral evidence of Caroline Littlewood. She had also prepared, according to her, "within 10 minutes" a detailed note of the meeting. We heard from Pam Davies that Ms Littlewood came out of the meeting immediately and complained as to the conduct of the Respondent and was advised to make a detailed note of the meeting. We also heard from Mr and Mrs Rowlands. We did not hear from their daughter [Ms R]. Mrs Rowlands' evidence was limited in part to events associated with the giving of evidence to the Case Tribunal. The Respondent also gave evidence as to events at the meeting. Contained within the P Bundle were a number of documents. These included:
 - a. Application for Housing by [Ms R], 8 October 2008 (P2325 – P2343).
 - b. Home Visit Report, 20 January 2009 (P2299 – P2303).
 - c. Case notes (P2305 – P2317).

- 11.3. On 22 January 2009 a letter was written by the Respondent to Maureen Harkin, which included reference to the case of [Ms R] (P2351). The letter includes the following:

“Could I confirm firstly that I have submitted further references for the application by [Ms R and Mr L] regarding their need for a vacant property possibly at No [] Ffordd Pennant. They have been given notice to vacate their temporary let and are back with their parents.”

11.4. It should be noted in the application and home visit, no mention is made of any concerns as to disrepair.

11.5. In terms of events prior to 25 February 2009, we find the following:

- a. [Ms R] had moved into private rented accommodation with her young son in April 2007. It is unclear whether in February 2009 her boyfriend was still living with her. She had made a Housing Application to Flintshire in October 2008.
- b. At the time of the interview, Caroline Littlewood was employed as a Homelessness Prevention Officer at Flintshire County Council. She had approximately 9 years' experience and conducted some 12 – 16 homelessness prevention interviews per week. Her job was to meet with persons who were homeless or were threatened with homelessness and if she concluded it appropriate, would refer the client for further advice.
- c. On 26 January 2009, [Ms R] contacted Caroline Littlewood by telephone, stating she had received a Notice to Quit. On discussing the Notice, Caroline Littlewood advised [Ms R] that the Notice was invalid. She was further advised if she received a valid Notice, she should contact her again. On the following day, 27 January 2009, [Ms R] contacted Caroline Littlewood again and advised her that a new (second) Notice to Quit had been received. [Ms R] read the Notice to Ms Littlewood. She was again advised that the second Notice was also invalid. Caroline Littlewood further advised [Ms R] that she was neither homeless nor threatened with homelessness.

- d. On 10 February 2009, [Ms R's] mother, Mrs Susan Rowlands, contacted Caroline Littlewood and advised her that she wanted to obtain a Council house for her daughter. Caroline Littlewood advised that she could only assist with giving advice as to her daughter's housing options.
 - e. On 23 February 2009, [Ms R] made a further telephone contact, requesting an appointment with Caroline Littlewood. An appointment was arranged initially for 25 February 2009 at 10.45am but at the request of Mrs Rowlands, the appointment was moved to 14.45 hrs. Caroline Littlewood was not advised in advance of the meeting that the Respondent intended to attend.
- 11.6. A meeting took place at the Council Offices in Flint on 25 February 2009. The room had two separate entrances. Caroline Littlewood was positioned behind a glass screen. [Ms R] was accompanied at the meeting by her parents, Mr Gareth Rowlands and Mrs Susan Rowlands. She had her young son with her.
- 11.7. We are satisfied that the Respondent was not present at the meeting at the outset but attended as the meeting progressed. As at February 2009, the Respondent was an Executive Member of Flintshire County Council and held the portfolio for Strategic Housing and Planning.
- 11.8. Much of the above was not disputed and is evidenced in documents and in witness evidence we have heard.
- 11.9 There is considerable conflict as to the events at the meeting. Caroline Littlewood states that the Respondent's interventions made her feel intimidated and stressed and that the advice he was giving the Rowlands family was wholly inappropriate. The Respondent states that he acted properly throughout and that if anyone felt intimidated by conduct, it was the Rowlands family being intimidated by Caroline Littlewood. He is supported in this view by Mr Gareth Rowlands.

11.10. The evidence we heard from Caroline Littlewood, which was supported by Pam Davies, is that within a matter of minutes of the meeting concluding and as a result of the concerns expressed by Caroline Littlewood she was advised to type an attendance note. The evidence of Caroline Littlewood was that she typed this note within 10 minutes of the meeting concluding. We outline below in full the note:

Re: Interview with Ms R, 25.02.09

I have just carried out a homeless prevention interview with the above applicant, she and her son are currently in a private rented property at [], Mostyn.

I was originally requested to contact her on 26.1.9 which I did, Ms R advised me that she has received NTQ on her property, I had a copy of the NTQ which was sent with her Housing Waiting List form, given to me by Officer G. I advised her that it was invalid as it did not give her 2 months notice. I advised her to re-contact me if she does receive valid notice.

On 27.1.9 I received a call from Ms R advising she had received another NTQ, she read it to me over the phone and again I had to advise her it was invalid and advised her that she was not homeless or threatened with homelessness.

On 10.2.9 I received a call from Ms R's mother, who advised me she wanted to get a council house for Ms R. I advised I could only assist with her housing options.

On 23.2.9 I received a call from Ms R asking for an appointment with me, appointment was made for 25.2.9 at 10.45, I later received a call from her mother asking for an afternoon appointment so that she could also attend. The appointment was changed to 2.45pm.

I attended the appointment today and Ms R, her son, mother and father came in to the interview room, Mother said she had tried to contact [] on 24.2.9 regarding the interview, I advised Officer K had not been available all day due to the tenants conference.

Whilst I was talking Councillor Heesom attempted to enter the interview room from the staff side, I requested he return to the reception side. He told me he had arranged to meet the family here. (Neither the family nor Councillor Heesom had advised me of this prior to the interview).

I again advised that Ms R was not homeless as she had not received valid notice, Councillor Heesom said the notice expires on Saturday 28.2.9 and he would advise her to leave and move in with her parents, which would make her overcrowded. I advised against that as I said she does not have to leave and could be deemed to be intentionally homeless if she took this course of action. I felt that I was in the position of having to argue my point with the Executive Member, who was giving them incorrect advice which would be detrimental to their housing application.

Councillor Heesom said she would gain extra points if she was overcrowded, I advised against this as she could be deemed to be deliberately worsening her own circumstances.

Councillor Heesom then said there were problems with their private sector accommodation as, in his opinion, it was damp and cold so he would advise her to leave because of this, I asked had they requested environmental services to visit, Councillor Heesom said not he did not want to involve them, we should take his word for it and not involve Environmental Services, which would be our normal policy. Again, this left me feeling undermined and the family were starting to become agitated. I felt that Councillor Heesom was doing nothing to alleviate the situation, he was fuelling the families dissatisfaction with my professional advice. On numerous occasions he stressed he would be advising the family to leave their accommodation on Saturday.

I explained homeless procedure to them, and stressed homelessness was not a quick way to obtaining council accommodation in an area of their choice.

Immediately after the interview I spoke to my Line Manager, Officer K, as I was extremely concerned about the situation I was subjected to, without prior notice. I felt intimidated and pressurised throughout this interview.

Officer I

Housing Options Office (Prevention)

11.11. The note is written in a neutral fashion. It contains no value judgements and is an attempt to be a factual record of what Caroline Littlewood recalled of the meeting. We found Caroline Littlewood to be a credible witness. She dealt with numerous interviews but this interview, due to the conduct of the Respondent, was a meeting which stuck with her and her recollection remained clear. She did not strike us as an individual who could be intimidating, as alleged by the Respondent. The Respondent challenges the validity of the note, accusing Caroline Littlewood of “*making it up*”. He offers a number of suggestions as to why she may have done so:

- a. The timing of her note is a matter of days before the SMT decided to submit a complaint to the Ombudsman. In his written statement of 12 September 2012, the Respondent making reference to the timing of Caroline Littlewood’s complaint, as being “*a couple of days before the CMT met, and decided at the behest of Colin Everett to lodge a huge complaint against me. The knives were well and truly sharpened and were out for me at this stage. The incentive for officers to bad mouth me and make things up about me by this stage must have been irresistible.*” He goes further that the timing of the complaint was “*beyond coincidence*” being a matter of days before the decision was made to file the complaint. He surmises

that word must have got around from Barry Davies to *“give me whatever dirt you have on Councillor Heesom”*.

We found no evidence that Caroline Littlewood had in any way been influenced by the concerns of Senior Officers as to the conduct of the Respondent. There is no evidence that Caroline Littlewood had been contacted by any Senior Officer. The advice given to her by her Line Manager was straight forward advice that as she had concerns about the meeting she should make a record of it. The note is a straight forward factual record of events.

- b. The Respondent alternatively suggests that Caroline Littlewood made up her version of the interview on the basis that she had not handled the interview well and had lost control of the situation or, as an alternative, had resented some of the questions from the Rowlands family. We, again, find no basis for such a suggestion. The note is in no way defensive.

11.12. Caroline Littlewood was questioned as to her note and remained consistent that she did not make up the note and that it was an accurate record of events (pg 18, 09.06.11 (2 of 3)):

MM: *The reality is Mrs Littlewood you resented the Rowlands questioning you when you actually just wanted to be dogmatic and tell them what the position was and that was what you resented wasn't it?*

CW: *Not at all, no.*

MM: *And that is behind this note isn't it that you have made up against Councillor Heesom.*

CW: *Not at all. Not at all.*

PD: *Did you make up the note?*

CW: *No I didn't make up the note. Those were valid notes from the interview.*

And later (pg 20, 09.06.11 (2 of 3)):

MM: *Can I just say to you Mrs Littlewood in the round exempting what Councillor Heesom has said, the Rowlands have read your note and they suggest it is full of falsities.*

CW: *Right.*

HJ: *Do you want to comment on that. Is that note true or untrue.*

CW: *That is totally untrue.*

HJ: *What is, what they are saying is untrue.*

CW: *Yes. Yes.*

HJ: *You stand by your note.*

CW: *Oh absolutely yes. I made them straight after. There is no doubt in my mind that is what happened.*

11.13. In his witness statement of 12 September 2012, the Respondent makes various allegations as to how he states Caroline Littlewood behaved at the interview. He believed:

- a. The Rowlands felt intimidated by her,
- b. She was being dogmatic,
- c. She simply would not listen to their concerns,
- d. Her attitude made the Rowlands upset,

- e. She would not enter into constructive dialogue,
- f. She sought to lecture them.

11.14. The Respondent identified the Rowlands as vulnerable people and states *"It is hard to overestimate how appalled the Rowlands felt by the behaviour of the Officer"*.

11.15. It is significant, in our finding, that the Respondent made no complaint in the aftermath of the meeting as to the conduct of Caroline Littlewood. There is ample evidence before us of where the Respondent felt an Officer had behaved inappropriately he would immediately make written complaint about the officer. Examples include the cases of Susan Lewis, Elaine Williams and Carl Longland. The Respondent acknowledged that he had no previous dealings with Caroline Littlewood prior to the meeting. At the time Caroline Littlewood gave her sworn evidence before the Case Tribunal, she was no longer employed by Flintshire County Council, which adds less credence to the suggestion that she was giving her evidence under pressure from Senior Officers. In summary, we found Caroline Littlewood a consistent, reliable and credible witness. She was supported by Pam Davies, who confirmed that Caroline Littlewood had expressed concern immediately as to the Respondent's conduct at the meeting and was advised to prepare the note.

11.16. The evidence of Caroline Littlewood is also in stark contrast with the evidence of the Respondent. The Respondent's evidence as to the meeting was vague and at times evasive. He did not appear at times to have a good recollection of events at the meeting and appeared to rely partly on what he had read or heard in evidence, rather than direct recollection of events at the meeting. At times he would indicate that he would not have behaved in a particular way, rather than indicating that he did not actually behave in a particular fashion. Counsel for the Respondent in questioning Caroline Littlewood, stated that it is *"hard for Councillor Heesom to remember what happened in February 2008 (sic)"* (pg 19, 09.06.11 (2 of 3)). The response from Caroline Littlewood was *"well, I wouldn't say it was hard because I can remember it."* It should be noted also in terms of the note that it contains the words *"I have just"* which

indicates a very short time between the interview concluding and the note being written. It does not strike us that the contemporaneous nature of the note was challenged but merely that in some way it was false.

11.17. In his response to the Ombudsman on 16 September 2010 (C40) the Respondent puts forward no account for the interview of 25 February 2009, except to say *“These issues raised will be responded to through interview with the families concerned. The allegations are totally repudiated as the witnesses will confirm. Further detailed rebuttals to follow.”*

11.18. The Respondent was asked by Counsel for the Ombudsman whether he had a clear recollection of the meeting of 25 February 2009. His answer was not entirely clear.

11.19. The answer seems to suggest that the recollection was based on analysing other evidence, rather than actual recollection of the actual meeting (pg 8, 08.10.12 (1 of 4)):

PH: Reasonably. But largely because of what’s transpired. I don’t think I would have brought an awful lot of it back to mind if this hadn’t taken the form that it has”

11.20. Counsel for the Ombudsman sought to clarify

GH: What do you mean by that? Do you mean that your memory has been prompted by reading the documentation that’s all about it –

PH: My recollection has been prompted in as much as it was a difficult meeting and that remained in my mind. But the issues were I think Mrs, I have read somewhere, she says run of the mill.

11.21. In his written statement of 12 September 2012 (C166 para 424) the Respondent states that the Rowlands were very concerned about their daughter's position, in respect of her private rented accommodation as there were two pressing needs when they attended the meeting; firstly that the landlord had served them with a notice to quit and secondly the family had explained to him that the plug and light sockets were not safe for their grandchild. In his statement at C166 para 426, the Respondent describes the faulty electrics and his concern for the safety of the young child as the far more important issue. The assertion that his primary concern was in relation to faulty electrics in the property is not consistent with the Respondent's letter (P2351) to Maureen Harkin dated 22 January 2009 in which he says *'Could I confirm firstly that I have submitted further references for the application by [Ms R and Mr L] regarding their need for a vacant property possibly at No [] Ffordd Pennant. They have been given notice to vacate their temporary let and are back with their parents'*. This letter was written by the Respondent just under five weeks before the interview and does not mention any difficulties with faulty electrics, or any issues relating to concerns for the safety of the young child. In any event it could not be right that he was concerned about the electrics, or any other safety issues in the private rented accommodation, if his letter of 22 January was correct in stating that the family had moved back in with their parents.

11.22. In oral evidence, the Respondent said that the issues as he understood them were (pg 11, 08.10.12 (1 of 4)): *"that the house was in a dilapidated condition"*. This again is in contradiction with his letter to Maureen Harkin where he said [Ms R], her partner and their son had been given notice to vacate their temporary let. The assertion that the house was dilapidated is not supported by the Application for Accommodation completed by [Ms R] or by the Home Visit record, completed by Ms Godwin and signed by [Ms R].

11.23. The Respondent's account of when the Rowlands approached him for help also has some inconsistency. In his statement of 12 September 2012, the Respondent states that the Rowlands, as a family unit, came to him, and were very concerned about their daughter's position (C166 para 424). In his oral

evidence of 8 October 2012 he stated “...to be honest with you I think it might have been her mother who got in touch with me”(12.10.08 (1 of 4) pg 2/59).

11.24. When asked in cross examination when [Ms R] got in touch with him about her 'housing' the Respondent stated that he had been approached by Mrs Rowlands about a week before the interview. When subsequently directed to his letter written on 22 January 2009, which demonstrated he was appraised of the situation some five weeks prior to the meeting, the Respondent said he thought he was being asked about when he knew about the 'meeting'. When the Respondent suggested that he had been referring to his knowledge of the meeting about a week in advance he was reminded by Mr Hughes that the meeting had been arranged only some three days in advance. At this point he put forward the alternative proposition that he had been aware that the Rowlands were “seeking” a meeting about a week before. Later in cross examination the Respondent said that he had been involved in trying to assist [Ms R], probably for about two and a half years prior to the meeting. We found this to be both inconsistent and suggestive of a witness who was developing his evidence to fit the facts as they are presented.

11.25. In his oral evidence on 8 October 2012 in response to the following question in cross examination (pg 27, 08.10.12 (1 of 4)): “*Did you suggest [in the meeting] that you had advised the Rowlands, [Ms R] and her son to move out of the house and in with her parents?*” the Respondent responded: “*I certainly said that in my view, I am not so sure that I accept the form of words that Mrs Littlewood has used there, I certainly was of the view that on the information I had, that it was dangerous for her to go on living there*”. The Respondent then said, that he had said, or that he would have said, that she should move out and if necessary go and stay at her parents. The Chair then asked some questions:

HJ: *And did you go beyond that or did you just say dangerous to go on ... you didn't –*

PH: *I don't think I used the words dangerous to go on living there, I think I just said I think she should move out, or something to that effect.*

HJ: *And did you say to move out where?*

PH: *Well I mean it would be to move out and if necessary go and stay at your parents.*

HJ: *And is that something you recollect or is that something you are just surmising?*

PH: *I am surmising, but it is probably wholly correct.*

11.26. This evidence is inconsistent with his statement of 12 September 2012 in which the Respondent states *"I am certain that I never did, and never would have said to [Ms R] to move out of her accommodation in order to make themselves voluntarily homeless. I never said to [Ms R] to move out of her accommodation and move in her parents, beyond anything else, it is hard for them to live together, although I understand that they have lived together before, but room there is very tight. I never said because the property was damp and cold that they should leave. I would consider all of this advice to be wholly wrong advice to give".(C167 para 434).*

11.27. Although the Respondent denies making the link between moving out and making themselves voluntarily homeless, he does in oral evidence contradict his previous firm assertion that he would never advise Tahnee to move in with her parents.

11.28. We also note that the Respondent's letter of 22 January 2009 clearly states that [Ms R] had moved back in with her parents. When asked about the letter the Respondent said in oral evidence (pg 12, 08.10.12 (1 of 4)): *"I think at that time I thought they might be going back with their parents"*. The letter stated *"They have been given notice to vacate their temporary let and are back with*

their parents.” The Respondent put forward an explanation that he had given the impression that they were back with their parents because that is what he was told would happen when they left their property and that some of their belongings were already back with the family. We consider that in offering this explanation the Respondent was seeking to put a fanciful explanation on a clearly worded contemporaneous document (pg 12, 08.10.12 (1 of 4)):

GH: *Well at that time you seem to suggest that they were back with their parents don't you?*

PH: *Its difficult to draw a hard and fast rule Mr Hughes because I think we have been here before that tenants in these very close communities invariably do share an awful lot of –*

HJ: *Okay, did you understand that they were back with their parents?*

PH: *No I didn't actually I –*

HJ: *But do you accept that the letter gives that impression?*

PH: *Yes because that was what I was told.*

HJ: *Right. You were told that they were back with their parents?*

PH: *That was what was going to happen when they get out the property I was told yes.*

HJ: *Do you, read that sentence again –*

PH: *Oh yes it says are back, it's a present tense yes.*

HJ: Yes.

PH: *I accept that.*

PD: *So you were told that they were back with her parents?*

PH: *Yes, but I didn't pursue that matter to that level of detail. The important point I wanted to make to Mrs Harkin was they were in housing difficulties and I felt that maybe we ought to try and help them. I mean that's my job, that's my duty to assist and that was what I saw it as.*

HJ: *Did you believe you had responsibility to check facts before you put them in a letter?*

PH: *Well to a certain extent, but I mean the facts as I understand them were that they did feel they had had a notice to vacate their property and that you know, there was part of their belongings probably in their parents.*

(pgs 12 and 13, 08.10.12 (1 of 4))

11.29. Further, in explaining his letter, the Respondent proffered a suggestion that he considered the Rowlands' private rented accommodation to be a temporary let because *"I don't think that there was in their mind, a permanent arrangement"* (pg 13, 08.10.12 (1 of 4)). This explanation for the content of his letter was offered despite his interest in and knowledge of housing matters and despite him demonstrating an understanding that under legislation [Ms R] and her boyfriend were lawful assured tenants.

11.30. The Respondent gave evasive responses and attempted to put an alternative meaning on his previous words when asked about whether he agreed with the Rowlands' expectation that [Ms R] was entitled to, and should be given a council house. The Respondent stated that he did not consider this to be an unreasonable expectation *"given the way that custom and practice existed"*

(pg 10, 01.10.12 (1 of 4)). He went on to explain his understanding of the reason why [Ms R] might be entitled to a council house by saying "*Well that's, I don't know whether I can answer that, I mean because it seems to me that on first principles that she lives in Flintshire, she is a Flintshire resident and in some shape or form her family pay their taxes and that you know, we provide public housing available to Flintshire residents where they fulfil a list of criteria*". When questioned further about the particular needs of [Ms R] that justified giving her a house the Respondent appeared to offer a different explanation to his words, and evade the question, by suggesting that he was referring to [Ms R's] eligibility to apply for a council house, not the eligibility to be allocated one, saying: "*Well you see there again, that justified giving her a house, I wouldn't have put it that way. What I would have said was that what were the reasons why she was eligible to apply for a council house. So it's a bit different from what you said. And she was eligible to apply for a council house for the reasons I have just given you and that –*". When asked by the Chair "*Yes. But what gave her the entitlement to have, or be allocated a council house?*" the Respondent continued to evade the question saying "*Well it's because she's a resident, her parents are rate payers, she in some shape or form was a tax payer of some shape or form and as a Flintshire resident it was appropriate for her to make an application*". The explanation continued, as follows:

HJ: *Yes. But not the application, I assume you accept that if I am a Flintshire resident, my parents pay their taxes, that isn't the criteria –*

PH: *Ah no –*

HJ: *- which entitles me to a council house.*

PH: *But if you didn't have the criteria, you would hardly apply.*

HJ: *Yes. But she has applied, what gave her the entitlement to a council house in your view, not the right to apply, the entitlement?*

PH: *If she fulfilled certain criteria then there was in lower level terms an entitlement.*

HJ: *Yes. What did you understand to be her –*

PH: *Entitlement?*

HJ: *Yes. What criteria did she meet?*

PH: *She had been born and bred in the community, she was with child, she was a single parent, she'd been living at home, which I recounted to you a moment ago about her previous applications where her points list seems to have gone down the pan because probably she didn't apply appropriately to the letter. But she had, I think, in that initial assessment been given an allowance for overcrowded, because I think they did live for a while with Mr and Mrs Rowlands. But the other point of course is that she was in accommodation, private rented accommodation which was, in her opinion, not really fit for her and her child to be living in. (pg 12, 08.10.12 (1 of 4)*

11.31. The responses in our view show scant regard for the objective criteria which Officers have to apply in terms of allocation of Council Housing. They show some insight into the Respondent's views and actions in terms of the Dodds exchange. We note further that this is a Councillor seeking to go beyond making mere representations on behalf of constituents but seeking to 'bully' Housing Officers to make decisions beyond the objective criteria and agreed policy.

11.32. In questioning by Counsel for the Ombudsman, the Respondent was asked about the validity of the Notice to Quit that [Ms R] had received. The question, put twice, by Mr Hughes was straightforward and unambiguous. The Respondent's response was vague and evasive (pg 24, 08.10.12 (1 of 4)):

GH: *Did you come to your own view as to whether or not the notice was in some way defective?*

PH: *Well I mean the position is that if anybody takes rent then there is a form of legal occupation under some form of tenancy. But I mean, I always concluded that you know, if the property is otherwise deemed to be unliveable in, or is felt to be unliveable in, then some of those matters are not quite so automatic as extending to the person the right to stay there whatever. Because it becomes ridiculous doesn't it, that if the property is proving dysfunctional in some way, you know why would anybody want to carry on living in a property which was giving them problems? I think as well you have got to bear in mind that whilst it's not, I think material to the questioning of my being here, I think the relationship she had with her partner, this is in some ways personal and not for me to go into in any detail, but I mean there was a feeling, I think as I understood it, that if she was trying to maintain a relationship with her partner that this wasn't assisting.*

GH: *Did you come to your own view as to whether or not the notice to quit was in some way defective?*

PH: *Well as I said, from my point of view, my judgement in that was that if their property was not fit to live in, there really was not an awful lot of point in whether the tenancy*

was lawful or not. If it wasn't fit to live in, I don't see why anybody wanted to stay there.

11.33. For all of the reasons given above the Case Tribunal was of the view that the Respondent did not have a clear recollection of the meeting. His evidence was unreliable and inconsistent, with the contemporaneous documents, including his own letter, written prior to the meeting and with the evidence of Mr Rowlands, a witness called by the Respondent.

11.34. Mr Gareth Rowlands was called by the Respondent and in the main gave evidence supportive of the Respondent. He said that the Respondent was dignified and diplomatic throughout the meeting. Mr Rowlands said that Ms Littlewood was “not one bit” stressed and not intimidated. He was asked if the Respondent had intimidated Ms Littlewood in any way and replied (pg 26, 22.06.11 (2 of 2): *“Patrick was very dignified”*. Mr Rowlands was asked how he would describe the Respondent’s demeanour during the meeting? He replied *“Yes dignified”*. He was asked if he would use any other words and replied *“No”*.

11.35. Mr Rowlands described entering the meeting *“like entering a court room with the Mafia behind bulletproof glass”*, and that his family were not able to sit down. He said Ms Littlewood was sitting behind bullet proof glass. Furthermore Mr Rowlands described Ms Littlewood as “dogmatic”, explaining this in the following way (pg 27, 22.06.11 (2 of 2)): *“She had no intention of listening to our story, dogmatic, just unbelievable. I...to be honest I...the way she approached those and spoke to us, I felt as if I was like something that's under your shoe. I felt like...I felt like a piece of dog muck under my shoe. It was horrendous; I felt humiliated to be honest. I couldn't get absolutely nothing out of Ms. Littlewood, nothing”*. He said that they were unable to explain the dangerous state of his daughter’s property as Ms Littlewood would not let them do so.

11.36. Mr Rowlands said that although he did not usually get intimidated Ms Littlewood intimidated him as she was *“behind bullet proof glass and just*

standing up poo-pooing” him (pg 28, 22.06.11 (2 of 2)). He also said he was intimidated “*Because of the...because of everything that we said was unregistering with Ms. Littlewood. Not, nothing I could have said would have made her listen or come to a different conclusion*”. He also said that the meeting did not last ten minutes, then said ten to fifteen minutes, and that Ms Littlewood was standing up with a file under her arm ready to go.

11.37. Mr Rowlands gave evidence on two days, firstly on 22 June 2011 and secondly on 13 September 2011. Mr Rowlands could not recall any specific conversation between the Respondent and Ms Littlewood, at one point in evidence he claimed that he could not hear what was being said, later changing this to say the conversation was in private. We found Mr Rowlands to be inconsistent in his recollection of events; his version of events changed and evolved over the course of his evidence as new documentation and propositions were put to him. Although Mr Rowlands' was supportive of the Respondent's case in matters such that he was not intimidating Ms Littlewood, and that the electrics at the property were faulty there were some striking inconsistencies between the evidence of the Respondent and Mr Rowlands. These inconsistencies, examples of which follow, call into doubt the reliability of Mr Rowlands' evidence.

- a. Mr Rowlands said that the Respondent was present for the whole of the interview. The Respondent says that he came “*towards the end of the interview*” and suggests that he was present only for the last five minutes of the interview (C167 para 433). Ms Littlewood states that the Respondent arrived some five minutes after the interview commenced; The Respondent has never put forward the proposition that he was present for the whole interview, his case is that he was present only for the final five minutes. It simply cannot be the case that the Respondent was present for the whole of the interview. We are concerned that Mr Rowlands has such a poor recollection of what could be termed a basic and fundamental part of the meeting.

- b. Mr Rowlands evidence is inconsistent with that of the Respondent in relation to the suggestion that Environmental Services should be asked to visit the property. When asked about Ms Littlewood's suggestion that Environmental Services should have a look at the house Mr Rowlands said (pg 41, 22.06.11 (2 of 2)): *"No, we advised for the environmental services to have a look, it's a health hazard."* This is inconsistent with the Respondent, who does not deny that Ms Littlewood made the suggestion, and more significantly states that he (the Respondent) did not want to involve Environmental Services and neither did the Rowlands family.
- c. Mr Rowlands was asked (pg 41, 22.06.11 (2 of 2)): *"Do you recall Councillor Heesom raising the question of damp and cold at the property that your daughter was..."* He replied *"To be honest...I never...I never heard him say that."* He then made a vague reference to damp saying *"He raised the question about the house being in a deplorable state, another actually the damp in there and you know."* The Respondent does not deny that during the meeting it was raised that the property was damp and cold. The Tribunal has serious concerns regarding the credibility of Mr Rowlands' evidence.

11.38. Mr Rowlands changed his account of events. As an example on both the first and second day he gave evidence he initially described his daughter's rented accommodation at the time of the interview as *"the house wasn't fit for a grandchild, you know for a little child"* and *"I thought it was a hazard, electrically and things like that"*. He also explained that the property *"was in dilapidation sort of state and the electrics weren't very good"*. He was asked if the property was safe to live in to which he replied: *"No. We had an independent electrician to look at it and it was very dodgy, to say the least"*. He further said: *"The house was an accident going to happen. The electrics were deplorable"*. In cross examination Mr Rowlands conceded that the independent electrician was a friend of his daughter's partner. The report was not produced to the meeting with Ms Littlewood or to this Case Tribunal. Subsequently on the second day when Mr Rowlands gave evidence, he was

directed to documentation signed by his daughter, which recorded that her rented property was in good repair and that her reason for wanting to move was because the accommodation was too expensive. On reviewing the documents Mr Rowlands gave conflicting evidence to that given previously. He said that the accommodation was “borderline” unsafe and his concern had been for the future, saying that if his granddaughter had spent “two or three years there” it may have become unsafe.

11.39. This is such a significant change from the evidence on the first day that it does call into question Mr Rowlands' credibility as to events.

11.40. On the first day of Mr Rowlands' evidence he told the tribunal that he had known the Respondent for twenty to thirty years, stressing that he knew him only as a Councillor and not personally. He said that he had never had need to ask the Respondent for assistance in the past, and had only ever been in contact with the Respondent about this incident. He said that he never met the Respondent socially or at public functions. Mr Rowlands said that he knew the Respondent was his ward member and said that his own father had previously been on the council for years. Mr Rowlands said that he had lived in Mostyn all his life. Mr Rowlands clearly enjoyed a degree of informality with the Respondent, referring to him by his Christian name throughout giving evidence. When Mr Rowlands attended on the second occasion he twice stated that he had contacted the Respondent personally prior to attending. When asked how he had done so he moved from his earlier position, saying that his wife had phoned the Respondent as she had his telephone number as she was a caretaker of a community centre. This suggests that Mr Rowlands was trying to play down the extent of his knowledge of the Respondent.

11.41. In Mr Rowlands' evidence there is some inconsistency in respect of the Respondent's role and level of participation at the meeting with Ms Littlewood. At one point Mr Rowlands said that he (Mr Rowlands) was the main speaker from their side. He said that the Respondent agreed with everything the Rowlands tried to say and that the Respondent tried to put it over diplomatically (pg 30, 22.06.11 (2 of 2)):

HJ: *What did Councillor Heesom say during the...did he say anything during the meeting?*

GR: *He was just like agreeing with everything we tried to say and trying to put it over diplomatically, if you like.*

HJ: *Who was the main speaker from your side?*

GR: *I was.*

11.42. Later Mr Rowlands suggested that the Respondent had dealt with the technical side including the notice to quit and the condition of the property, but had not led all of the time (pg 46, 22.06.11 (2 of 2)):

GR: *Not all the time. But the technical side of it. He knew were more than what I do and I thought he could help in that way.*

GH: *So you let him do the technical side of it, as you say?*

GR: *If we had the chance, yes.*

GH: *What does...what do you mean by the technical side of it?*

GR: *We've...that is as you pointed out with the notice.*

GH: *Notice...*

GR: *Yes, that sort of...see that sort of advice.*

GH: *I see. So if there was no [an?] argument to be made like the notice to quit, Councillor Heesom would make it.*

GR: *If we had chance to argue that.*

GH: *See one of the technical points that Carolyn Littlewood says that Councillor Heesom raised was this business of extra points for overcrowded. Did you let him make that point?*

GR: *I...to be honest, I hadn't a clue with anything that like that.*

GH: *Another technical point I suppose is an argument based on the condition of the property, did you let him make that argument?*

GR: *Well, he did mention, I didn't mention it.*

11.43. Mrs Susan Rowlands gave evidence, immediately after her husband on 13 September 2011. We found significant elements of the evidence of Gareth Rowlands on 13 September 2011 to be in direct conflict with that of his wife, Susan Rowlands. This caused the Case Tribunal great concern as Mr and Mrs Rowlands were testifying to events in the very recent past. On 13 September 2011 both Mr and Mrs Rowlands were asked about events occurring between the time they had received the notification to attend the hearing and the time they attended. Both Mr and Mrs Rowlands agreed that the notification was received on Friday, 9 September (some four days before they gave evidence). Much of the remainder of their evidence was in conflict. We are further concerned as this conflicting evidence relates to the nature of contact, if any, Mr and Mrs Rowlands had with the Respondent prior to giving evidence to the tribunal.

11.44. Early in Mr Rowlands' evidence on 13 September 2011 he stated as follows (pg 3, 13.09.12 (4 of 5)):

PD: *Have you had any communications concerning coming here to give evidence today from Councillor Heesom?*

GR: *Well – hang on.*

PD: *Telephone call, letter, email, text message?*

GR: *No, no sorry, I got in touch with Patrick.*

PD: *Right.*

GR: *I got in touch personally, to tell him that I've got to go to his tribunal again.*

PD: *Right, have you received any communications from him?*

GR: *No.*

PD: *Concerning your evidence here this afternoon?*

GR: *No.*

PD: *Thank you.*

11.45. At the commencement of his evidence, Mr Rowlands stated unequivocally that he personally had got in touch with the Respondent to tell him that he was having to attend the tribunal a second time.

11.46. Towards the end of his evidence, in cross examination, Mr Rowlands confirmed that he had made contact with the Respondent, but when asked how he had done so the position changed. Mr Rowlands said that it had been his wife, Susan Rowlands, who had made contact with the Respondent. He said this was because she was caretaker of the community centre she had his (the Respondent's) telephone number. Mr Rowlands said that Mrs Rowlands

had told the Respondent that Mr Rowlands had to attend the tribunal again and that she had to attend, before handing the telephone to her husband. Mr Rowlands said that he then had a conversation with the Respondent (pg 11, 13.09.11 (4 of 5)):

GH: *...You say you were first told to attend today last Friday, is that right?*

GR: *Yes.*

GH: *And as I understand it, you say that you then contacted Councillor Heesom?*

GR: *Yes, I told him I was being, I had to report to the tribunal again.*

GH: *How did you do that?*

GR: *My wife phoned, my wife phoned.*

GH: *Your wife phoned Cllr Heesom?*

GR: *My wife phoned, yes because she's the caretaker of the community centre, she's got his number.*

GH: *Did you overhear that conversation?*

GR: *Over?*

GH: *Did you overhear the conversation, did you overhear you wife's conversation with Cllr Heesom?*

GR: *No, what did I say then? My wife...*

GH: *Sorry, well what you told us earlier, what you told us earlier you understand.*

GR: *I contacted him, yeah my wife, yeah, yeah.*

GH: *Was that you contacted him. Now, as I understand it you're changing that...*

GR: *No, no, no.*

GH: *And you say that you wife contacted him?*

GR: *No, no, no my wife, my wife contacted him and she said "I've got to go again" and I had a conversation, she passed the phone to me.*

GH: *I see.*

GR: *Like that, yeah.*

GH: *I see. So, your wife contacted Councillor Heesom?*

GR: *Yes.*

GH: *And, told Councillor Heesom that you were having to attend again?*

GR: *And, my wife.*

GH: *And that your wife was?*

GR: *Yeah, yeah.*

GH: *Then she passed the phone to you?*

GR: Yes.

11.47. There was a further suggestion from Mr Rowlands that he had contacted the Respondent:

GH: *When was that?*

GR: *I think it was Sunday. Sunday, when I had the letter Friday, and I phoned, well the wife phoned because she, then I took over yeah, and that was it.*

GH: *Yes thank you.*

11.48. Mrs Susan Rowlands gave evidence immediately following her husband. When Mrs Rowlands gave evidence she denied having made any contact at all with the Respondent in relation to attending the tribunal. Initially she denied having spoken to the Respondent at all in the week leading up to her attendance at the tribunal. She then further denied that she had 'telephoned' the Respondent "in the last week" but said that she had spoken to the Respondent in relation to community centre business (pg 15, 13.09.11 (4 of 5)):

PD: *Have you spoken to Councillor Heesom about coming here?*

SR: *No, no.*

PD: *Not at all?*

SR: *No.*

HJ: *Have you spoken at all to him in the past week?*

SR: No.

HJ: *Have you telephoned him in the last week.*

SR: *No. He is a councillor in our area.*

HJ: *In the last week have you spoken to him?*

SR: *Well, with community centre work yes, but not with this case.*

HJ: *And, you've not telephoned him about this case?*

SR: *No, no.*

11.49. It is clear that both accounts cannot be correct. Both Mr and Mrs Rowlands gave evidence that was inconsistent as it progressed and inconsistent with each other.

11.50. For all of the reasons given above the Case Tribunal has concluded that the evidence of Mr and Mrs Rowlands lack credibility and consistency to the extent that it cannot be relied upon as a true record of events. Furthermore we cannot be sure of the extent of the contact Mr and Mrs Rowlands had with the Respondent prior to giving evidence to the Case Tribunal. In reaching this conclusion we gave consideration to the Respondent's stated position that *"With the greatest of respects to the Rowlands, they are not the most articulate of my constituents"* (C167 para 433). We also took into account the Respondent's response to Counsel for the Ombudsman's closing submissions (Paragraph 612(f)) which asserted that *"A large part of the reason as to why he [the Respondent] attended (the interview), was due to the fact that the family were one of his least articulate in terms of expressing themselves"*. We did not concur that either Mr Rowlands or Mrs Rowlands had any notable difficulty expressing themselves, nor did they appear have any particular difficulties in understanding and responding to questions. In any event the

questions concerning contact with the Respondent were very straight forward, and if the telephone call was made on the Sunday, required recollection of events that had occurred just two days previously.

11.51. In reaching our findings of fact we also had regard to a number of documents found in the "P" bundles in particular P2351 (a letter written by the Respondent), P2325-2343 (an Application for Housing made by [Ms R], with a signed declaration by [Ms R] dated 8 October 2008, which was received by Flintshire County Council North Area Housing Office on 13 October 2008 and annotated as input by Sharon Godwin on 14 October 2008) P2299-2303 (a Home Visit Report carried out by S Godwin on 20 January 2009 with a signed declaration by [Ms R]), P2305-2317 (case notes and documents relating to [Ms R's] housing position) and P2319 - 2321 (a copy of the Assured Short-hold Tenancy Agreement between [Ms R] and her Landlord commencing 1 April 2007 for the property [] Ffordd Ddyfrdwy). We gave considerable weight to these documents; they were documents made contemporaneously, and prior to the meeting. These documents were completed to record the facts of [Ms R] housing matters as they stood at the time. In both the Application for Housing and Home Visit Report [Ms R] has signed a declaration confirming the information recorded to be truthful and correct. Both documents make clear the implications of making a false declaration. There is no reason to suggest that these documents were not completed honestly and correctly.

11.52. We also give considerable weight to the contemporaneous note prepared by Caroline Littlewood at B400 (the note). We do so because we accept that this is a note of some detail made within ten minutes of the conclusion of the meeting. We also accept that the note was made by Ms Littlewood at the request of her manager Pam Davies. Ms Davies had indicated, to Ms Littlewood, that she would be forwarding the note to her manager. Although not a verbatim note, it is an account made by Ms Littlewood whilst the events of the meeting were fresh in her mind. In these circumstances we believe the note to be an accurate account of the meeting; recording the background to the meeting, the issues discussed and the behaviour and attitude of the

Respondent. When Ms Littlewood was asked by the Chairman: “*You stand by your note?*” Ms Littlewood replied: “*Oh absolutely yes. I made them straight after. There is no doubt in my mind that is what happened.*” (pg 20, 09.06.11 (2 of 3).

11.53. Caroline Littlewood was asked by Counsel for the Ombudsman about the circumstances in which the note was prepared and said (pg 12, 09.06.11 (2 of 3): “*Because I was concerned about how the previous interview we had had, had gone and what had happened so I came and spoke to my line manager and she suggested I put it in writing. So I went to her with my concerns immediately after the interview.*” When asked when she had made the note Ms Littlewood replied “*Immediately.* When asked “*So what within?*” Ms Littlewood went on to say “*Within ten minutes I would say. I just came up and did it.*”

11.54. We also have regard to the evidence of Pamela Anne Davies, Line Manager to Ms Littlewood, who said on oath “*Caroline Littlewood came to see me as soon as she came out of the interview and told meSo I asked her would she put that in a report which I would forward to my manager*”.

11.55. In determining the time span between the meeting concluding and the note being made, in addition to the credible evidence of Ms Littlewood and Ms Davies, we also have regard for the first paragraph of the note which opens “*I have just carried out a homeless prevention interview with the above applicant*”, use of the word “*just*” indicates a very short time between the interview concluding and the note being written. We also note the final paragraph of the note which states “*Immediately after the interview I spoke to my Line Manager...*” again the use of the words *Immediately after the interview* does not suggest any lapse of time between the events.

11.56. Although Ms Littlewood was cross examined in relation to the accuracy of the note the contemporaneous nature of the note does not appear to be

challenged by the Respondent. On the contrary his Counsel, in Closing Submissions, refers to the note as being contemporaneous (para 588).

11.57. For all the reasons outlined above we accept that Ms Littlewood went to seek advice from her Line Manager immediately after the interview and that the note was made immediately after the advice was sought.

11.58. In conclusion and again for all of the reasons outlined above we prefer the evidence of Ms Littlewood and Ms Davies to that of the Respondent and Mr and Mrs Rowlands. We consider the note made by Ms Littlewood to be an accurate record of both the events of the meeting and how Ms Littlewood felt during and after the meeting.

11.59. We now turn to our findings.

11.60. We find Ms Littlewood had no dealings with the Respondent prior to 25 February 2005. Ms Littlewood says in her written statement "*I had never had any dealings with Councillor Heesom until 25 February 2005*" (this was corrected to 2009 when she was asked to confirm that her statement was true at the commencement of her oral evidence). The Respondent did not suggest that he had been any previous dealings with Ms Littlewood. He confirms that he had not met Ms Littlewood when asked about his entry to the interview, saying in evidence "*I had never seen Mrs Littlewood before so I didn't know her*" (pg 22, 08.10.12 (1 of 4)).

11.61. We find that the sole purpose of the Respondent attending the meeting on 25 February 2009 was to seek an accelerated route for [Ms R] to obtain a council house. We arrive at this finding based on the following: [Ms R] had completed and signed an application for council housing on 8 October 2008. At the time of the meeting the Respondent had already made representations and supplied references in support of [Ms R's] application. When Mr Rowlands was asked what he expected following the meeting of 25 February he stated "*I was hoping that my daughter could get a council house, simple as that*" (pg 34, 22.06.11 (2 of 2)).

11.62. The Rowlands family felt that [Ms R] should be allocated a council house and were agitated by the fact that wardens' properties were empty, and had been for a number of years, and were aggrieved that people with a local connection were not allocated council houses in preference to applicants with no such connection. Mr Rowlands told the Case Tribunal that [Ms R] had previously lost her place on the waiting list and had all her points removed, this was confirmed by the Respondent, who explained that an administrative exercise was carried out annually inviting those on the waiting list to confirm that they wished to remain on the list; anyone failing to respond was removed from the list. The Respondent stated this had happened to [Ms R] and that the family felt cheated by it. The Respondent was trying to assist his constituents to secure a council house. He believed that [Ms R] should be allocated a council house in his ward. The Respondent stated: "... *But why I am making the points about this is that it was, I think, part of the frustration of Mr and Mrs Rowlands, that's the parents, that they felt that in a slightly old fashioned way that you know, they were people in the community, played their part and they felt their daughter was entitled to a house*" (pg 9, 08.10.12 (1 of 4)).

11.63. We have commented earlier as to our finding that the Respondent failed to objectively apply his mind to the relevant criteria and to the approved policy to be applied by Officers.

11.64. The nature of Ms Littlewood's role was stated in her written statement and further explained in oral evidence. Ms Littlewood's job was to meet with persons presenting as homeless, or threatened with homelessness. If the homelessness was confirmed, or could not be prevented, Ms Littlewood then referred the client to a Homeless Officer.

11.65. Ms Littlewood was only able to give advice on homelessness prevention; she could not assist with applications for housing. She gave correct advice in relation to the notice to quit and in relation to the perceived difficulties with the accommodation. This probably was a source of frustration for the Rowlands family as it did not assist their case.

- 11.66. We find no valid notice to quit had been served. The property was not in such a state of dilapidation that it required [Ms R] to immediately vacate. If it was in such a state, the Respondent would have accepted the offer for involvement of Environmental Services.
- 11.67. The Respondent attempted to join the meeting a short time after the meeting commenced (more likely than not within five minutes of the meeting commencing). He attempted to join from the staff side. Ms Littlewood asked him to return to the reception side, which he did.
- 11.68. In his statement of 12 September 2012 the Respondent says nothing of how he entered the interview room, but he does say that he came “*towards the end of the interview*” and suggests that he was there for the last five minutes of the interview(C167 para 433). Mr Rowlands stated that the Respondent had been present for the whole of the meeting. Ms Littlewood in oral evidence states that he arrived some five minutes after the start of the meeting. She recorded in her note that the Respondent attempted to enter whilst she was talking; which indicates that the meeting had commenced when he arrived. Given the amount of issues the Respondent is suggested to have contributed, and Mr Rowlands recollection that the Respondent was present throughout the interview we find it more likely that he was there for the majority of the meeting as opposed to the final five minutes and that he arrived nearer to the beginning than the end of the meeting.
- 11.69. In her note at B400 Ms Littlewood recorded “*Whilst I was talking Councillor Heesom attempted to enter the interview room from the staff side, I requested that he return to the reception side*”. For the reasons given above we accept B400 as an accurate note of the events of the meeting. In reaching this finding of fact we considered the matter that it was put to Ms Littlewood, by Mr Murphy, that the Respondent had not tried to enter the interview room from the staff side (pg 19, 09.06.11 (2 of 3)):

MM: *And Councillor Heesom didn't enter the room through the staff side, he entered at the same side as the Rowlands entered the room.*

11.70. Ms Littlewood's response was consistent with her written evidence:

CW: *He tried to get through to the staff side but wasn't given access so he went in with the family.*

11.71. We reject Mr Murphy's assertion based on the note at B400, Ms Littlewood's evidence and to a limited extent, the evidence of Pam Davies. Ms Davies gave hearsay evidence on this matter, and as such we do not attach significant weight to this aspect of her evidence, nonetheless she was recalling what she had been told by Ms Littlewood immediately following the interview and stated: *"Caroline Littlewood came to see me as soon as she came out of the interview and told me And that he actually came into, came into her side of the interview room, but she asked him to go to the other side where the applicants were. I asked her would she put that in a report which I would forward to my manager."* (pg 6, 09.06.11 (3 of 3)).

11.72. Further, the Respondent admits that he did so; in oral evidence the Respondent confirms that he did initially enter from the staff side saying *"....you know, anybody could be forgiven for either going in the wrong door or not finding their way around and that's what happened."* (pg 22, 08.10.12 (1 of 4)).

11.73. This issue was further clarified when the Chair asked *"So you did enter initially from a door which wasn't the door you were meant to enter from?"* and the Respondent replied *"Yes. Yes, unavoidable mistake."*

11.74. We find Ms Littlewood at the meeting reiterated the Notice to Quit was invalid.

11.75. The Respondent's evidence in respect of the notice to quit is inconsistent. In his written statement of 12 September 2012 he accepts that Ms Littlewood

advised that the Notice to Quit was not valid and that she was correct in her advice. C166 Para 425 states "*Caroline Littlewood quite rightly made the point that it was not a valid notice to quit, and of course that is right*".

11.76. However he puts an alternate position in oral evidence when the Respondent states that he was not present at the meeting when Ms Littlewood put it to the Rowlands that the notice to quit was not valid.

11.77. When considering this matter we gave consideration to the issue that the Respondent's concession, that Ms Littlewood was correct in saying the notice to quit was not valid, is blurred in oral evidence, by his suggestion that in his view a valid notice to quit is somehow linked to the condition of the property. We refer to the earlier exchange between Counsel for the Ombudsman and the Respondent. We as a Case Tribunal sought clarification (pg 24, 08.10.12 (1 of 4)):

HJ: *But your assessment in May 2008 wasn't that it was in a state of disrepair that it was unfit to live in?*

PH: *No, but that doesn't mean to say that it was fit to live in.*

HJ: *But you didn't see the notice to quit?*

PH: *No, I don't remember that, I was only told, you know that they had been asked to leave.*

GH: *Did you accept the advice that Caroline Littlewood –*

PH: *I can't recollect –*

GH: *- was offering?*

PH: *Hmm?*

GH: *Did you accept the advice that Caroline Littlewood was offering that is that the notice to quit was defective, it was not good to get possession back for the landlord?*

PH: *Yes.*

PD: *You did accept her advice?*

PH: *Yes. I mean it was a (00:56:04 non sancator?) really because I mean, I can say it's a matter, a position which is subsidiary or secondary to the issue that the person in there, the property wasn't in their view A, fit to live in, B, was not assisting any attempts she might be making to improve the relationship with her partner.*

11.78. We also note that in the extract from the transcript above the Respondent denies seeing the notice to quit. In evidence he also stated that (at the time of the meeting) he knew about the notice but did not request to see the notice (pg 24, 08.10.12 (1 of 4)):

GH: *Did you ask to see the notice?*

PH: *No I don't recollect that.*

11.79. This is at odds with a note following the Home Visit Report of 20 January 2009 detailing the Visiting Officer's Report at P2305 which states: *Given notice to leave 31/1/09 end of Dec. beg of Jan info given to Cllr Heesom.....I explained that legally they would need to give 2 months notice. She has been dealing with Cllr Heesom, and she has given him her notice and covering letter...".* This indicates to the Case Tribunal that the Respondent had not only seen the notice to quit, at the time of the meeting but had been given the notice by [Ms R] prior to sharing it with officers of Flintshire County Council.

- 11.80. We find at the meeting the Respondent did state that he would advise [Ms R] to leave her private rented accommodation and move in with her parents when the invalid notice expired (on 28 February 2009).
- 11.81. In reaching this finding we had regard to Ms Littlewood's written statement, her note at B400 and her oral evidence, which we find is an accurate note. In her note at B400 Ms Littlewood records "*Councillor Heesom said the notice expires on Saturday 28.2.9 and he would advise her to leave and move in with her parents, which would make her overcrowded*". For reasons stated above we accept this note.
- 11.82. In cross examination of Ms Littlewood Mr Murphy asked (pg 19, 09.06.11 (2 of 3)): "*I just want to be clear what you are saying, you are saying Councillor Heesom suggested the family moves in, the daughter and her child moves in with the Rowlands is that right?*" Ms Littlewood responded: "*Yes with her parents*". When Mr Murphy continued: "*The parents yes. Well that is emphatically denied on the part of Councillor Heesom. He never said that and he never would say that, it would be wholly improper advice for him to give.*" Ms Littlewood stated: "*It was wholly improper advice that he gave that was my concern, yes*".
- 11.83. In her written statement Ms Littlewood said "*He (Councillor Heesom) was giving completely inappropriate advice....*" We also have regard to the evidence of the Respondent and Mr Rowlands.
- 11.84. The Respondent in his written statement of 12 September 2012 states "*I am certain that I never did, and never would have said to [Ms R] to move out of her accommodation in order to make themselves voluntarily homeless. I never said to [Ms R] to move out of her accommodation and move in her parents, beyond anything else, it is hard for them to live together, although I understand that they have lived together before, but room there is very tight. I never said because the property was damp and cold that they should leave. I would consider all of this advice to be wholly wrong advice to give*".(C167 para 434).

11.85. This statement was tested in cross-examination on 8 October 2012 and an alternative position was stated. The Respondent was asked (pg 27, 08.10.12 (1 of 4)): *“Did you suggest (in the meeting) that you had advised the Rowlands, [Ms R] and her son to move out of the house and in with her parents?”* The Respondent responded: *“I certainly said that in my view, I am not so sure that I accept the form of words that Mrs Littlewood has used there, I certainly was of the view that on the information I had, that it was dangerous for her to go on living there”*. The Respondent then said, that he had said, or that he would have said, that she should move out and if necessary go and stay at her parents. (see earlier paragraph 11.25 for exchange)

11.86. It is on the basis of the evidence from Ms Littlewood that we make our finding. The finding is strengthened by the evidence given by the Respondent.

11.87. We find during the meeting on more than one occasion the Respondent advised and asserted that if, as he advised, [Ms R] and her son moved in with Mr and Mrs Rowlands, the Rowlands' accommodation would be deemed to be overcrowded and as a consequence [Ms R] would gain extra points to assist council housing allocation.

11.88. In her note at B400 Ms Littlewood records *“Councillor Heesom said the notice expires on Saturday 28.2.9 and he would advise her to leave and move in with her parents, which would make her overcrowded”*. Later in the note she recorded *“Councillor Heesom said she would gain extra points if she was overcrowded”*. The Respondent denies saying that he gave the advice above. Mr Rowlands said that he knew nothing of the points system, but he clearly understood that [Ms R] had been awarded points for overcrowding in the past, when she and her child were living with her parents. For reasons stated earlier the panel prefer the evidence of Ms Littlewood.

11.89. During the meeting Ms Littlewood correctly advised against the Respondent's advice that [Ms R] and her child should leave their rented accommodation and move in with Mr and Mrs Rowlands. Ms Littlewood advised that if [Ms R] and

her child were to follow the Respondent's advice and move in with her parents then [Ms R] would be deemed intentionally homeless, and deliberately worsening her own circumstances.

11.90. In her note at B400 Ms Littlewood records "*Councillor Heesom then said there were problems with their private sector accommodation as, in his opinion, it was damp and cold so he would advise her to leave because of this*". We accept this note for reasons given above. In addition we have regard for the fact the Respondent does say in oral testimony that he had advised that she should move out, and if necessary go to live with her parents. We have considered this admission in light of the previous denials but prefer the evidence of Ms Littlewood, which remained consistent when tested. Similar testing of the Respondent's evidence led to his concession that he would advise [Ms R] to leave.

11.91. We find Ms Littlewood asked if a request had been made for Environmental Services to visit in respect of the damp and cold reported in the private rented property.

11.92. In her note at B400 Ms Littlewood records "*I asked had they requested environmental services to visit*". She explained that would be normal policy in the circumstances.

11.93. The Case Tribunal concluded that this is advice of a familiar nature for Ms Littlewood and that she would have asked this question as a matter of routine. The Respondent does not deny that the enquiry was made. He denies saying that it was not necessary to involve Environmental Services as Ms Littlewood should take his word for it. He gives an alternative explanation for why he did not want them involved, but does not deny that Ms Littlewood suggested that a referral should be made in the circumstances described. The Respondent's explanation for why he did not want Environmental Services involved was, he said, to protect the interest of the landlord, Mrs Griffiths. He said that the Rowlands would not wish to cause her difficulties and neither would he; he said: "*You see one of the issues here which I read in reading the various*

statements about this case, is that the liability for the condition of the house in such matters was something that people would be careful about, that if the house was being improperly let because it wasn't fit to live in, then other agencies or liabilities could be created for Mr Griffiths or Mrs Griffiths. And I think there was a view that, as I picked up that you know, at that stage they weren't going to you know, labour that point.” (pg 16, 08.10.12 (1 of 4)).

11.94. [Ms R's] private rented property was not cold and damp. This was not the reason [Ms R] was seeking Council accommodation.

11.95. Ms Littlewood told the Case Tribunal that she had not previously been informed of any issue with damp at the private rented property, despite having spoken to the [Ms R] and Mrs Rowlands on previous occasions.

11.96. The note at B400 makes mention of the Respondent's assertion that the property was damp, however it also records that the Respondent was not in favour of following the correct action to address this issue, namely asking Environmental Services Department to visit the property to assess the position.

11.97. In reaching the finding that there was no significant issues with dampness at the property we have regard to records, signed by [Ms R] which report the property as being in good repair, and a letter written by the Respondent in support of [Ms R's] and [Mr L's] application for housing.

11.98. Given the poor state of repair subsequently described by the Respondent it is of note that his letter of 22 January 2009 makes no reference to any issues concerning the poor condition of the private rented property.

11.99. Further, on 8 October 2008, less than five months before the meeting, [Ms R] completed and signed an Application for Housing (P2325-2343). On page 2341 of the document the reason for applying is given as '*Cannot afford current accommodation*'. Furthermore, the Application invites the applicant to 'Please describe any disrepair to the property in the box below' (P2333). This

box is left blank. We find that if the property was damp it would have been recorded in this section of the form. In oral evidence the Respondent accepted that the box was blank and that in the middle of October 2008, it appeared that disrepair was not weighing on [Ms R's] mind. However he added "*I would conclude that, but I caveat that in as much as that, I think as I say, the position was that the house had actually been empty for some time previously and it's quite you know, likely to be the case that from when April 2009 or when this application is received in 2008, that by 2009 some issues had arisen*" pg 15, 08.10.12 (1 of 4)). We find it highly unlikely that disrepair to the extent suggested many times by both the Respondent and Mr Rowlands could have occurred in the relatively short period between October 2008 and February 2009. We are not persuaded by the Respondent's suggestion.

11.100.P2299-P2303 documents a Home Visit Report made by S Godwin on 20 January 2009. This visit was undertaken just five weeks prior to the meeting. The Home Visit Report concludes with a signed declaration by [Ms R] confirming that the information is correct to the best of her knowledge. Page P2301 records the Decoration / Standard to be 'Good'. When this was put to the Respondent he said "*Well in the sense that that's what she has written there, but you would have to go into some detail I think to find out what she meant by good.*" (pg 19, 08.10.12 (1 of 4)). We do not need to go into further detail to conclude that a damp property no longer fit for habitation is unlikely to be described by anyone as being of a "*good standard*".

11.101. In conclusion there are three contemporaneous records, two signed by [Ms R] and the third a letter written by the Respondent - none of which mention any problems with the condition of the property. To the contrary when invited to describe any disrepair to the property [Ms R] left the box blank and signed in agreement that the standard of the property was good.

11.102. The documents provided every opportunity for [Ms R] to record any issues she had with the state of repair of her private rented property, at no time did she record any such issues. We find that she did not record damp because none of significance existed at the property. In defence of this position the

Respondent suggested that the Rowlands would not wish to bring the disrepair to anyone's attention for fear of causing difficulties for the landlady.

11.103. There is no documented evidence in any recorded contact between [Ms R] and FCC, or between the Respondent and FCC, to support the Respondent's assertion that the property was damp and cold. The Respondent's explanation regarding protecting the landlord from consequences is not accepted given the fact that dampness was mentioned at the meeting.

11.104. The Respondent said he did not want to involve Environmental Services. Further, he did say that the council should *"take his word for it"* (the fact that the house was damp and cold).

11.105. In her note at B400 Ms Littlewood records *"Councillor Heesom said not he did not want to involve them, we should take his word for it and not involve Environmental Services"*. When giving evidence in response to being asked by Mr Hughes: *"What was your concern about the stance being taken by Councillor Heesom at this meeting?"* Ms Littlewood says: *"It was the fact that, I am just reading through it now, that I say it hadn't been brought to my attention before and the fact that he said to me when I raised that concern that we should take his word for it. We have to take a professional's word, that is why we would get environmental health in who would then put it in writing and have a report to take further action on."*

11.106. In cross examination this was tested and Ms Littlewood confirms that the Respondent did say that she should just take his word for it and this was her *"great concern about the whole interview"* (pg 19, 09.06.11 (2 of 3)). Explaining that *"We can't take anybody's word we have to get correct officers to check these properties out"*. We accept the note at B400 as an accurate record for reasons given previously. This is supported by Ms Littlewood's consistent and clearly recalled evidence tested in cross examination.

11.107. At the meeting neither the Respondent nor any member of the Rowlands family raised any concerns regarding the safety of the electrics at the private rented property.

11.108. The note at B400 makes no mention that any issue was raised at the meeting about the electrics at the property.

11.109. In the Respondent's oral evidence the issue of the electrics is explored further. The Respondent suggests that he did not mention the electrics and he is not sure whether the faulty electrics were mentioned by Mr Rowlands at the interview on 25 February 2009 (pg 21, 08.10.12 (1 of 4)):

GH: *You didn't say anything during the homelessness interview about a problem with electrics at all did you?*

PH: *No what I was concerned about there was this business I didn't want to get involved in anything that was going to force Mrs Griffiths into some form of liability.*

GH: *Well you did allege that there was a problem with damp and cold at the property?*

PH: *I am not so sure to be honest with you that electrics wasn't mentioned. I know Mrs Littlewood didn't mention it, but I am not so sure that wasn't mentioned, by Mr Rowlands to be honest with you.*

11.110. Mr Rowlands stated that the family had been unable to raise the issue as Ms Littlewood would not listen. Ms Littlewood recorded the issues of damp, so she must have listened to this. There is no reason to suggest that she would not have listened to information concerning the electrics.

11.111. At the beginning of his first session of giving evidence Mr Rowlands was asked about the meeting of 25 February 2009 by Counsel for the Respondent.

He was specifically asked why he was at the meeting to which he replied: *“Due to the housing problem of my daughter which she was going to be homeless”*. 11.06.22 (2 of 2) pg 24/57. He went on to explain that the property *“was in dilapidation sort of state and the electrics weren’t very good”*. He was asked if the property was safe to live in to which he replied: *“No. We had an independent electrician to look at it and it was very dodgy, to say the least”*. Given that the electrics are subsequently described as the principal concern it is difficult to conceive that the issue of dampness was raised in preference to that of faulty electrics.

11.112. Mr Murphy carefully explored with Mr Rowlands his assertion that he had not been able to raise the issue with the electrics (pg 27, 22.06.11 (2 of 2)):

MM: *...you say you are living in a...your daughter is living in a dangerous property. Did you explain this to Ms. Littlewood?*

GR: *Couldn’t...couldn’t get nothing, absolutely nothing. I could say she was living in a septic tank at the bottom of my house and nothing. Nothing, just blanket, dogmatic, rude.*

11.113. Later Mr Murphy explored this further with Mr Rowlands:

MM: *Are you saying that you explained the situation, but she was unreceptive, or were you saying that you never got a chance to explain the situation?*

GR: *None whatsoever.*

MM: *Is it that...sorry.*

GR: *It’s a waste of time, waste of everybody’s time.*

MM: *OK. I just want to be clear, are you saying you never got a chance to explain what the position was?*

GR: *No, not one iota. No, no.*

HJ: *You didn't get a chance to explain anything?*

GR: *Nothing, virtually nothing.*

MM: *And just help me with this because of course this is an important point. Did she...you accept...you explained her demeanour and but did you get a chance to explain the dangerous nature of where your child and grandchild was living?*

GR: *No, it wouldn't have...no, no, I couldn't..couldn't get any, couldn't get a reasonable...I would say I was intimidated.*

11.114. When Mr Rowlands returned on a second day he tempered his evidence in relation to the state of the electrics as indicated earlier in the determination, the problem changed from one of an immediate and urgent safety issue to an issue which could develop within two to three years.

11.115. We find that the electrics were not mentioned in the interview because they were not an issue.

11.116. In his evidence at C166 para 428 and 432, the Respondent twice suggests that the absence of awareness and reference to the faulty electrics in Ms Littlewood's note (B400) makes the point that she was not listening at the meeting. We find that it is more likely than not that there was no mention made of faulty electrics at the meeting.

11.117. Ms Rowlands' private rented property was not in a dangerous state due to faulty electrics.

11.118. In reaching the finding that there were no significant issues with electrics at the property we have regard to the note at B400. Despite this note being a reasonably detailed account of the meeting it makes no reference to any problems with the electrics in the private rented accommodation. We find that if faulty electrics were being raised as an issue it is more likely than not that this matter would have been recorded in Ms Littlewood's note. In cross examination Ms Littlewood said that she did not think the electrics were mentioned in the meeting.

11.119. We make these findings for the same reasons that we made our findings above in relation to the property not being damp and cold. There is nothing in the documentary evidence in any contact between [Ms R] and FCC, or between the Respondent and FCC, to support the Respondent's and Mr Rowland's assertion that the private rented property had faulty electrics.

11.120. Furthermore when asked to explain why he thought his daughter was homeless Mr Rowlands replied *"Because of the state of the property. If that guy wanted that property clean, electrics done, got it new heating, he had to do it without any accident pre-empting (pg 38, 22.06.11 (2 of 2))."*

11.121. On the first and initially the second day he gave evidence Mr Rowlands described his daughter's rented accommodation at the time of the interview as *"the house wasn't fit for a grandchild, you know for a little child"* and *"I thought it was a hazard, electrically and things like that"*. He also explained that the property *"was in dilapidation sort of state and the electrics weren't very good"*. He was asked if the property was safe to live in to which he replied: *"No. We had an independent electrician to look at it and it was very dodgy, to say the least"*. He further said: *"The house was an accident going to happen. The electrics were deplorable"*. Subsequently on the second day Mr Rowlands gave evidence, he was directed to documentation, signed by his daughter, which recorded that the property was in good repair and that her reason for wanting to move was because the accommodation was too expensive. He changed his position saying that the accommodation was *"borderline"* unsafe

and his concern was for the future, saying that if his granddaughter had spent two or three years there it may have become unsafe.

11.122. Mr Rowlands said that they had an independent report stating that the electrics were faulty. He conceded that they had not taken the report to the meeting. He stated that in particular the immersion heater switch was unsafe. This report has never been produced to the Case Tribunal. Later we were told that the whole house was unsafe. The Respondent also gave inconsistent evidence in respect of the state of the electrics at the property, at one point saying that he had witnessed the child crawling near to faulty sockets, then saying that he only been told that the electrics were faulty and had believed the word of Mr Rowlands and was concerned for the safety of the child.

11.123. During the meeting the Respondent did give incorrect and inappropriate advice to [Ms R] which, if taken, could have worsened her position.

11.124. This is detailed in B400. If [Ms R] had left her accommodation she would have done so voluntarily. This could have worsened her position. The Respondent was suggesting that she should become homeless thus improving her points allocation. As this would have had a detrimental effect on her application the Respondent's suggestion was inappropriate. In cross examination Ms Littlewood said of the Respondent: "*He did give inappropriate advice which was why I made my note straight after the interview because the advice he gave them could have been detrimental to their housing*" (pg 18, 09.06.11 (2 of 3)).

11.125. Ms Littlewood had to repeatedly challenge the advice of a senior councillor and Executive Member in the presence of the Rowlands family.

11.126. Ms Littlewood had to give correct advice to [Ms R]. However this was very difficult given the contrary, and incorrect, advice proffered by the Respondent. The Respondent was the Executive Member for Housing Strategy. In her statement Ms Littlewood says "*He was giving completely inappropriate advice and I was trying to explain procedures and legislation.*" Ms Littlewood had to

challenge the advice, she knew it to be wrong and potentially harmful to her client. Although experienced in her field Ms Littlewood was sufficiently concerned that she immediately went to seek advice from her manager.

11.127. The Respondent did talk over Ms Littlewood during the interview.

11.128. In her written statement Ms Littlewood explains how the Respondent was talking over her and kept interrupting as she continued to give the necessary advice. We accept this account as a correct record for reasons already given.

11.129. The Respondent's inappropriate advice made it very difficult for the officer, Ms Littlewood, to manage the expectations of the Rowlands. As a result the meeting became difficult and the family were agitated.

11.130. This was the reason Ms Littlewood went directly to her manager. The meeting did involve conflict between the Respondent and Ms Littlewood.

11.131. Ms Littlewood was unable to assist [Ms R] further, she was only able to advise on homelessness prevention and could offer no further advice to assist in the quest to obtain a council house.

11.132. Ms Littlewood explained that her job was to meet with persons who present as homeless or threatened with homelessness. She further explained that if she was unable to prevent the person becoming homeless or they were already homeless she then referred them to a Homeless Officer.

11.133. In her note at B400 Ms Littlewood records that when Mrs Rowlands telephoned on 10 February 2009 advising that her daughter wanted to get a council house she had explained to Mrs Rowlands that she was only able to assist with her housing options. She correctly advised that issues relating to the condition of a property should be dealt with via other channels and they did not place the family in a position of homelessness. If, as Mr Rowlands describes, the family went to the meeting with the expectation that [Ms R]

would be allocated a council house that were always going to be disappointed with the outcome.

11.134. Ms Littlewood emphasised that homelessness was not a quick way to secure council accommodation in an area of the family's choice. The Respondent did not disabuse the Rowlands family of this, and indeed by his interventions and advice sought to encourage the view that [Ms R] being 'homeless' was an automatic means of getting a Council property.

11.135. Ms Littlewood felt stressed, intimidated, and undermined at, and following, the meeting due to the conduct of the Respondent.

11.136. In her written statement Ms Littlewood said that as a result of the interview she was "*very, very stressed and completely intimidated*". She said that she told the Respondent that she was unhappy and that he was putting her in a very awkward position. She said that the Respondent did not respond to that. She also said that the interview was a very intimidating experience. In her note at B400 Ms Littlewood said that the Respondent's assertion that she should "*take his word for it*" and not call Environmental Services in respect of the damp left her feeling undermined. She also recorded in her note (B400) that she felt intimidated and pressurised throughout the interview. Ms Littlewood held a relatively junior position, albeit she was experienced in the role. It was difficult and uncomfortable for her to offer correct advice in direct opposition to such a senior councillor. She said that no other councillor had ever attended such meetings. She also said that if the Respondent had requested to be present at the meeting she would have agreed and would have asked a more senior member of staff to be present. His unannounced attendance was unsettling in itself, Ms Littlewood could not meet the expectations of the client and the Respondent's intervention caused her such concern that she felt the need to go and seek advice from her manager, Ms Davies, at the conclusion of the meeting.

11.137. Ms Davies gave evidence which supported Ms Littlewood's assertion that she felt stressed, intimidated and undermined. When asked by the Chair for

her recollection of what had happened after the meeting Ms Davies said *“Caroline Littlewood came to see me as soon as she came out of the interview and told me that Councillor Heesom had attended the interview but she wasn’t aware he was going to attend..... And that she was extremely stressed and felt intimidated and undermined by Councillor Heesom’s presence. So I asked her would she put that in a report which I would forward to my manager.”* (pg 6, 09.06.11 (3 of 3)).

11.138. The Respondent said in cross examination that he did not inform the officer that he was going to attend as prior to the meeting he did not know whether it was a homelessness or an allocations meeting, he did not know who the meeting was with, whether it was a formal meeting or what the arrangements were.

11.139. Mr Rowlands suggested that Ms Littlewood had behaved inappropriately. He described Ms Littlewood as hostile, dogmatic, and unwilling to listen. He said that he felt intimidated and unable to get anywhere with the interview. The Respondent says that it was Ms Littlewood who was rude, suggesting that it might be for a number of reasons. Mr Rowlands said that Ms Littlewood would not listen to them. Given the detailed contemporaneous note made it cannot be right that Ms Littlewood did not listen.

11.140. Ms Davies and Ms Littlewood both gave credible evidence in this regard. Ms Davies advised Ms Littlewood to make a note of the meeting. This is an entirely reasonable response for a manager to make when faced with such a matter. Ms Littlewood made a note, as requested, within 10 minutes of the conclusion of the meeting.

11.141. In oral evidence Ms Littlewood explained that it was very unusual to make a note as she had done at B400 she estimated that throughout her career she had only made two or three. She confirmed that the making of such a detailed note was unusual with the words *“Oh totally unusual yes. I just felt it had to be done and had to be done immediately so I got the facts correct”* (pg 20, 09.06.11 (2 of 3)).

11.142. At the Homelessness Prevention interview, we find the Respondent made inappropriate comments and sought to wrongly interfere in the role of the Homelessness Prevention Officer. He acted in a manner which intimidated and undermined the role of Caroline Littlewood and amounted to an attempt to bully the Officer.

12. SUBMISSIONS RE ABUSE – PREAMBLE

12.1. In these proceedings, the Respondent through his legal representatives, has made a significant number of submissions in terms of legal issues and procedure. The Respondent since being advised of a complaint having been made to the Ombudsman has been represented by solicitors. The first confirmation that he was legally represented is contained at B856, a letter erroneously dated 6 February 2009, received by the Ombudsman on 27 April 2009. The Respondent subsequently instructed Howe & Co who have engaged Counsel to represent him at the Case Tribunal. Proceedings were initially delayed so that the Respondent could clarify the position as to an indemnity provided by Flintshire County Council to their Councillors in terms of legal costs of representation. This is an issue in which we as a Case Tribunal have no involvement.

12.2. The Case Tribunal has sought to balance the Respondent's right to address issues he considers relevant with ensuring progress being achieved and issues the Case Tribunal considers relevant being addressed. The Case Tribunal has ensured that all participants including the Respondent have had a fair hearing. Counsel on behalf of the Respondent has on a number of occasions made assertions that the Respondent feels he is being victimised throughout the investigation and the adjudication and that he is not having "a fair hearing". Such contentions are rejected by the Case Tribunal. Interventions directed to his legal representatives have been intended to ensure that the hearings proceed expeditiously and fairly. Case Tribunal

Members have asked their own questions of witnesses and the Respondent to assist the process, clarify issues and to facilitate our findings of fact.

- 12.3. Initial estimates for the hearing of evidence were inadequate. This necessitated rearrangement of the timetable and the need to work around all parties' availability for rearranged sitting dates. Attached to this Decision is the dates upon which we as a Case Tribunal sat. The Respondent was due to commence his sworn testimony on 20 September 2011. We were advised in writing on 19 September 2011 he was unwell. The Case Tribunal on the eve of the Respondent's sworn testimony had to adjourn hearing the Respondent's evidence for a period of 12 months to allow the Respondent to recover from ill health. Case management hearings occurred between September 2011 and July 2012. The Respondent gave sworn evidence commencing 17 September 2012 for 14 days.
- 12.4. We concluded hearing evidence on 12 October 2012. It was agreed final closing submissions on findings of fact would be in writing.
- 12.5. Transcription of the Respondent's evidence was required before such written submissions could be finalised. The submissions were received as follows:
 - a. Ombudsman on 16 November 2012.
 - b. Respondent on 3 December 2012.
 - c. Response on behalf of Ombudsman 4 December 2012.
 - d. The Respondent wished the opportunity to present a further response which was permitted on 31 December 2012. The Respondent indicated an intention to lodge a further submission as to recusal and standard of proof but none have been received.
- 12.6. We as a Case Tribunal have therefore proceeded to consider our decision, notwithstanding the non-receipt of any further submissions and the parties advised accordingly.
- 12.7. To assist the Respondent he was permitted to present the bulk of his evidence in chief by way of a written statement. This was a direction given after the

Case Tribunal had been adjourned for approximately 12 months and after considering medical reports, including confirmation that the Respondent was medically fit. The Respondent was also able to prepare this witness statement with the assistance of solicitors, having heard all of the evidence. Counsel for the Respondent supplemented his written evidence by examination in chief. Sitting days were curtailed to meet any concerns as to the Respondent's health. Questioning of the Respondent by Counsel for the Ombudsman plus re-examination of the Respondent continued between 20 September 2012 and 12 October 2012. We are fully satisfied the Respondent was able to give his evidence properly and understood fully the issues. The Respondent during his period of illness was re-elected as a Councillor.

- 12.8. Those representing the Respondent at the outset of the proceedings, on 17 January 2011, submitted a skeleton argument headed "Skeleton on Abuse of Process". The Case Tribunal were not initially asked to rule on that submission but were told by Counsel for the Respondent to hold it in abeyance pending a possible future application. The skeleton was responded to by Counsel for the Ombudsman on 20 January 2011. We were subsequently invited to consider the arguments as to abuse of process by way of more detailed submission on 21 October 2011. This was a period of time when the Case Tribunal was stood adjourned pending recovery of the Respondent's health and prior to him giving evidence. We were invited at that stage to consider the issues as to abuse of process. The Case Tribunal ruled consideration of such an application should occur at the conclusion of the evidence and findings of fact. The Ombudsman provided a response on 14 November 2011. Though no direction was given, those representing the Respondent submitted on 17 February 2012 (but amended on 21 February 2012) a further submission in response to the submissions of the Ombudsman. We have taken those submissions into account, notwithstanding the lack of any formal permission or direction. We also take into account the closing submissions made by those representing the Respondent and the Ombudsman. On a distinct issue we invited a brief written submission by the current Monitoring Officer for Flintshire County Council in terms of the status of the Corporate Management Team (CMT).

12.9. Those representing the Respondent indicated on 3 December 2012 that they intended to submit a further application seeking a ruling from the Case Tribunal that they should recuse themselves from continuing with hearing the case and making a decision. This was promised to be received by the Support Unit of the Adjudication Panel for Wales by 7 December 2012. No such application was received. A further email was received on behalf of the Respondent on 7 December 2012 indicating further time was required and that the application was going to be submitted by week commencing 10 December 2012. No such application was received. On 13 December 2012 those representing the Respondent advised they were still not in a position to submit but hoped to do so “*shortly*”. No such submission has been received. On 31 December 2012 a letter was forwarded to those representing the Respondent indicating that the Case Tribunal would proceed to consider its findings of fact and the application for stay/strike out, notwithstanding non-receipt of any further submission. If such a submission were made consideration would be given to it. No further submission has been received. Notwithstanding the lack of any formal application, the Case Tribunal in reaching this decision has considered whether there is any basis that any “fair minded and informed observer” having considered the facts would conclude any real possibility of bias. We have found none. An outline of the number and dates of earlier submissions and written decisions has already been provided in this Decision. It is not intended as part of this Decision to repeat those earlier rulings.

12.10. We repeat comments made at the outset of this Decision that the factual issues are limited in nature and are relatively straightforward. As indicated earlier they relate to a specific and limited number of incidents. We have to decide in terms of those incidents the facts. Some factual findings are necessary in terms of the submission made as to abuse of process. It is not intended, however, that we answer specifically each and every point made in terms of the lengthy submissions to stay or strike out proceedings on grounds of abuse of process. We set out below our decision in terms of those points on a general basis.

12.11. The submissions on abuse of process fall into 12 grounds.

1. Ulterior motive for pursuit of complaint to the Ombudsman.
2. Stale allegations.
3. Investigation by the CMT.
4. Witness contamination.
5. The Ombudsman's flawed investigation.
6. The Ombudsman's investigation being hijacked by the CMT.
7. The Ombudsman's failing to consider at all Councillor Heesom's rights under the European Convention for Human Rights.
8. CMT and Ombudsman's failure to interview Councillor Heesom at all.
9. Prejudicial delay.
10. Failure to disclose.
11. The Monitoring Officer/Complaint accessing Mr Attridge's emails.
12. Cumulative effect.

13. Corporate Management Team (CMT)

13.1. In addition to the 12 points noted above the Respondent submits that the complaint made to the Ombudsman was a complaint by a public body namely the CMT. Though not entirely clear we have assumed this is made in support of later submissions as to duty to disclose, investigation by the CMT, hijacking of investigation etc. It is submitted that the CMT were:

- a. Acting in a public capacity,
- b. To ensure the Respondent would not be abused,
- c. The CMT were under a duty of disclosure similar to the duty on a Public Authority in a Judicial Review application (paragraph 2 of the Response 21 February 2012).

- 13.2. We would refer to our earlier ruling dated 16 February 2011 on a similar point when we indicated *“This was not a complaint, as was acknowledged by Mr Murphy towards the end of his Response, by the Public Authority known as Flintshire [County Council]”*. Mr Murphy on behalf of the Respondent in his latest submissions states that having now given the matter further consideration it was a concession which he should not have made. He now maintains that the CMT were acting as a Public Body. It is submitted that their actions were public in nature and as a result therefore their action in submitting a complaint to the Ombudsman would have been susceptible to an application for Judicial Review. No such application was made nor, as far as we are aware, is intended to be made.
- 13.3. The current Monitoring Officer outlined in his submission the legal status of the CMT. The CMT, at the relevant period, comprised of a number of Senior Officers of the Council, including the Chief Executive and the Monitoring Officer. At the relevant period, the CMT was not formally constituted within the Constitution as a decision making body. It was submitted that the CMT had no terms of reference which had been approved by the Council or the Executive. No functions or powers (executive or non-executive) had been delegated to it, nor were any powers required to be exercised in consultation with the CMT. It had no identity and no decision making power in its own right. It should be noted the initial decision to follow the route of a complaint to the Ombudsman was made by the Strategic Management Team (SMT) which comprised of some CMT members. It was decided however by the SMT to seek the views of all the individual members of the CMT as to whether they would support a referral to the Ombudsman.
- 13.4. We have not seen any evidence to support the contention that the referral to the Ombudsman was a formal referral on behalf of Flintshire County Council. Neither the Executive nor the full Council were involved in the referral. The decision to refer matters to the Ombudsman was in our findings not a decision of Flintshire County Council. The power to make such a referral had not been delegated to the CMT. There had been no authorisation for such a complaint to be made by the Council or its Executive. The Chief Executive sought

agreement of all members of the CMT. He did so on the basis that individually he required each to confirm their individual agreement to the complaint being submitted, and for each individually to sign the letter of complaint. If the CMT had a legal status, which bound all Officers, then the requirement for each to sign the letter would not have been necessary and the signature of the Monitoring Officer or Chief Executive alone to the letter would have been sufficient. This was a decision initially taken by the SMT and subsequently individually by each of the individual members who made up the CMT. The CMT was not Flintshire County Council. It is accepted that in the case of at least two of those members, they had not personally witnessed conduct by the Respondent, which subsequently became the subject of the complaint. However, they had received information as to the issues and no doubt would have read the letter, considered its contents and attachments before putting their signature to the letter.

- 13.5. As is conceded by those representing the Respondent, any individual can make a complaint of an alleged breach of the code of conduct to the Ombudsman. It is a matter for the Ombudsman as to whether he undertakes an investigation. In this case, eight individual members of the CMT signed a letter of complaint which was forwarded to the Ombudsman, referring to alleged breaches of conduct by the Respondent of the County Council's Code of Conduct. The CMT had no special legal status which gave the facts noted in the letter any greater credence, nor indeed did it impose upon them any greater duty in terms of investigation before the submission of the complaint. The investigation was to be carried out by the Ombudsman. The individual members of the CMT arranged for collation of material to provide some factual basis for their complaint. If the Ombudsman was satisfied that there was no such basis, that would have been the end of the matter. It has subsequently transpired that the concerns of the Ombudsman, on publishing his report, were such that a referral was made to the Adjudication Panel for Wales. This Case Tribunal has carried out its own inquiry by way of hearing, where witnesses have been called, questioned and submissions received on behalf of the Respondent. We repeat our earlier ruling that the CMT was not, and is not, Flintshire County Council.

14. ULTERIOR MOTIVE FOR PURSUIT OF COMPLAINT TO THE OMBUDSMAN.

14.1. The Respondent submits the initial complaint to the Ombudsman by the Members of the CMT was for a collateral purpose, namely:

- a. The prevention of the threatened early retirement of Susan Lewis, and/or
- b. The removal of the Respondent from this Executive position, and/or
- c. The removal of the Respondent from the possibility of becoming Leader of the Council.

14.2. In terms of findings of fact, the following are relevant:

- (i) There had been a series of incidents, in particular, between November 2008 and the end of February 2009, where concerns had been expressed or incidents witnessed by some of the members of the Corporate Management Team. These related to the Respondent's conduct which could, if true, have given rise to a potential breach of Flintshire County Council's Code of Conduct.
- (ii) One of the areas of concern was the Respondent's conduct towards Susan Lewis, who was the Director of Community Services. Prior to the end of February 2009, on a number of occasions issues as to the Respondent's conduct had sought to be addressed by the Chief Executive of Flintshire County Council and others. For example:-
 - a. At a Group Leaders Meeting on 14 March 2007 concerns were expressed as to "*personal attacks*" on Officers. The Respondent was present.

- b. On or around March 2007 at a meeting between Barry Davies and the Respondent a request was made to the Respondent to consider apologising to Susan Lewis. He declined.
- c. The Chief Executive wrote to the Respondent on 31 March 2008 (B680) noting concern as to views expressed by the Respondent; questioning the appointment of Susan Lewis on the grounds that she had not performed to the required standard. The Respondent was reminded that any such comments should be made as part of a formal and supervised appraisal or evaluation of the individual. The letter concluded warning the Respondent he should *“exercise caution in how you comment on the performance and integrity of a senior officer of the Council as a Member of an employing Body”*.
- d. Correspondence in November and December 2008 as to events at the Visioning Day. This was linked to a document circulated by the Respondent. On 15 December 2008, the Chief Executive wrote to the Respondent requesting confirmation *“that you are prepared to withdraw the written submission you made (in extracts) in addition to making an apology. We are overdue on resolving this mediation and if we do not reach a satisfactory resolution by the close of business today I am concerned that Susan may decide to submit a formal complaint.”* (B665).
- e. In an email dated 9 February 2009 (B783) sent by the Chief Executive to the Respondent in response to his letter of complaint as to Mr Carl Longland, the following paragraph is noted – *“The manner in which the letter has been issued, and its content, undermines senior personnel, their professionalism and their standing. The letter is inaccurate as an account of affairs and does not raise any material issues to support a complaint against the appointment made. We are now in a position of having entered a verbal contract with the successful applicant. I have also been made aware that you made private remarks of a*

prejudicial nature against both candidates on the days leading up to the final interviews; this is improper conduct.” The email concludes – *“I would ask you to reflect on this formal email and on the actions you have taken. This is regrettable behaviour which is not conducive to trusting member – officer relations and good governance. Unfortunately, this is not the first time we have had exchanges on your behaviour towards senior officers in recent times. I would appreciate you arranging to meet with me to assure me that there will be no repeat of inappropriate behaviour which undermines the professionalism and standing of senior personnel in the future. I have had no option but to inform Councillor Woolley of the issue and the outcomes.”* The response from the Respondent denies any impropriety on his behalf. He states on 10 February 2009 (B785) he will respond further in due course – *“Regarding your letter I will need to respond to that in some further detail in due course but it is important that I make clear to you that I totally reject your point about improper conduct and the value judgements you make about regrettable behaviour.”*

- f. Following a short-listing meeting on 12 February 2009, the Chief Executive wrote to the Respondent as follows – *“Sylvia has asked you to contact me urgently: please call me asap and before 9.00 if possible.*

I am deeply concerned at the conduct of yesterday’s panel meeting and need to be assured of your commitment to the process.

The meeting has had regrettable consequences on relationships, morale and belief that all parties are indeed committed to progressing the authority forward”. (B786).

- 14.3. The above are examples of concerns raised as to the Respondent's conduct towards officers. Similar concerns had been raised as to interference in housing allocation matters.
- 14.4. The issue of the Respondent's conduct culminated at a meeting of the SMT on the 27 February 2009. The persons present at this meeting were Colin Everett, Mr Budd, Carl Longland and Susan Lewis. At that meeting, Susan Lewis indicated that she was considering making an application for early retirement. There was no mention at that meeting of a constructive dismissal claim. The Chief Executive had in an email to the Respondent on 26 February 2009 raised the issue of a potential constructive dismissal claim, if conduct towards Susan Lewis continued. Mr Barry Davies, the Monitoring Officer, was invited to attend the Strategic Management Team meeting. He provided advice. The CMT included all members of the SMT plus a Mr Guest, Pam Webb and Mrs Feather. They were subsequently contacted by the Chief Executive as to whether, as individuals, they were willing to be party to a complaint letter to the Ombudsman. As a finding of fact and based upon the evidence of Colin Everett, which has not been contradicted in terms of any other evidence, had a member of the CMT not agreed to be a signatory, a referral to the Ombudsman would have occurred in any event. In our findings it is more likely than not that in any event Susan Lewis would have made her own referral.
- 14.5. The meeting of the SMT was not minuted and was followed up by an email on 1 March 2009 (D370) from the Chief Executive to all members of the CMT noting "*support for the proposed course of action on the confidential and significant member conduct relationship issue with which we have been wrestling over the past week...I have now spoken with all 7 CMT members who are all understanding and supportive of the proposed course of action.*" The email confirmed that the Monitoring Officer was to make urgent contact with the Ombudsman and the need to agree an urgent and safe process for investigating a course of action. The letter of complaint signed by all members of the CMT was sent on 12 March 2009.

- 14.6. On 16 March 2009 a meeting was held between the Chief Executive, and the Leader of the Council, Councillor Arnold Woolley. On 16 March 2009 Councillor Arnold Woolley at a meeting with the Respondent, invited him to step down from his Executive position. There is no evidence before us that this was at the specific request of an officer. On 17 March 2009 the Respondent stepped down from his Executive position. The exchange of correspondence is at E71.
- 14.7. On 1 March 2009, Susan Lewis submitted a written request for consideration for early retirement. This letter was not copied to the Ombudsman with the complaint, though extracts were included in a statement prepared by Susan Lewis. Susan Lewis on 19 March 2009 requested that her application for consideration for early retirement be stood in abeyance, pending consideration of the complaints to the Ombudsman.
- 14.8. In early 2010, Susan Lewis resurrected her request for early retirement and later in the same year she retired.
- 14.9. The submission made on behalf of the Respondent is that the letter of complaint by individual members of the CMT to the Ombudsman was a direct response to Susan Lewis' request for early retirement. It was formulated in order to prevent her retirement and to avoid embarrassment to the Chief Executive who had been responsible for appointing her. We reject the contention that the primary motive for the complaint was to avoid Susan Lewis' retirement. The reason for the complaint being submitted to the Ombudsman was that the members of the CMT had reasonable grounds for believing that the Respondent may have breached Flintshire County Council's Code of Conduct. One member of the CMT, Susan Lewis, had reached a point where the Respondent's alleged conduct had caused her such distress that she was contemplating whether to continue with her employment. She had already previously submitted a letter of complaint to her employer. The conduct she had experienced, she believed, amounted to a breach of the Code of Conduct and it was on this basis that she and other members of the CMT came to the view that a complaint to the Ombudsman was appropriate. There were a number of concerns in existence as at the end of February

2009. Colin Everett, the Chief Executive, in response to cross-examination, gave the following response – starting at page 40, 8 March 2011 (1 of 4):

MM: *And what you say there, “Thank you for your support for the proposed course of action on the confidential and significant member conduct relationship issue, which would have been ... which we have been wrestling with in the past week. I’ve avoided any ... adding any case detail to this e-mail for information security reasons. I’ve now spoken with all seven CMT members who are understanding and supportive of the proposed course of action.” So within 48 hours of Mrs. Lewis putting a request for early retirement in, you’ve got all ... over the weekend, you’ve got all CMT members signed off to this complaint, haven’t you?*

CE: *The meeting, Chair, on the Friday, if I can just distinguish ... sorry, this is a bit of jargon. But there’s a difference between SMT and CMT. The strategic management team is the ...*

MM: *We’ll agree on that.*

CE: *Pardon?*

MM: *We’ll agree on that.*

CE: *Agree on what, Chair?*

HJ: *There’s a difference between SMT and CMT.*

MM: *Yeah, carry on.*

HJ: *Carry on.*

CE: *OK, thank you. And so strategic management team is the three*

directors and myself and the corporate management team brings in then the four corporate heads, Mr. Davies being one. And we had very informal but fairly regular strategic management team meeting. This was about counter-strategy, big issues, finance. And there was one on the Friday. So myself, Mr. Budd, and Mr. Longland and Mrs. Lewis were present. Things, as suggested in my e-mail here, the wrestling over it had come to a head over that week for Mrs. Lewis. She shared her views and desperation and outcome of that meeting was a mutual, and it was mutual, decision of that group to make a referral to the Public Services Ombudsman.

Because of the way I've worked to introduce a feeling of corporate management and collectivism in the council to good effect, I thought it was such a difficult step and a big step to take. We invited Mr. Davies down to the meeting to give advice. And I then contacted the three absent members of corporate management team, that's Mr. Guest, and Ms. Webb and Mrs. Feather over the weekend by phone to share the situation and ask if they agreed. And I put the emphasis on "ask" if they agreed and they did. And this then was the culmination of that where I put round at the e-mail which hopefully is self-explanatory on process and the importance of handling process correctly for the council's reputation and all the individuals involved.

SH: *What would you have done if they hadn't all agreed?*

CE: *If they hadn't all agreed, a decision of the senior directors, distinguishing SMT and CMT, had arrived naturally on the Friday. I would have still, I believe, made the referral but not with everybody acting as a signatory. If some either did not want to be part of the signatory or did not agree if they'd have good views not agreeing, I might have reflected and taken those into*

account before making a final decision. But the seriousness and the balance of evidence to us was so strong; it was a fairly immediate decision. All did agree and no pressure was put on them to do that whatsoever.

MM: *But it was all urgent, wasn't it? You explained to the CMT, look, if you don't sign up to this, Sue Lewis is going to put in a request ... she's already put in a request for early retirement on 1st of March, this is a Sunday, OK. And if she ... if we don't actually sign this off, if we don't actually make this complaint to the ombudsman, she's going to carry this through. That's what's happened, isn't it?*

CE: *No, Chairman. There's a wider context here. I've mentioned the attempt to mediate. The breakdown in relationships with Susan Lewis was such, not only were they of importance to Susan Lewis and maintaining continuity in her service. The discussion on the Friday between myself and other colleagues was if we don't act to deal with what we think is improper conduct, what will happen next in the council, what will we be accepting as tolerable behaviour. And when we bear in mind some of the context here is protecting more junior members of staff, such as in some of the housing cases, we were actually talking about our duty of care, which we take very seriously to 9,000 employees. And standing up to say where we can't mediate conduct and can't be assured of good future conduct, we need to act. And that's why we made the decision.*

MM: *Mr. Everett, you were concerned about Susan Lewis retiring within a year of taking over the housing portfolio in September '08. That's what you were concerned about, wasn't it?*

CE: *Not solely, Chair. One of my concerns was about what is tolerable member conduct.*

- MM: *OK. When you say not solely, OK, what do you mean by that? How much of consideration was there?*
- CE: *It was the consideration which brought it to a head as an urgency. It wasn't the sole consideration in my mind.*
- MM: *See, the urgency ...*
- CE: *If I could finish, Chairman, the answer please. I've mentioned junior officers. And in the bundle of evidence some of the evidence from junior housing officers is quite self-explanatory. And where, for example, I had had senior and junior housing officers asking me in housing cases for support and reassurance to follow policies through effectively, what was in my mind, to be absolutely precise, was if we don't manage conduct in this case, how can we be assured we can manage conduct in any other case? How will junior officers have confidence in their senior management? This was a question of integrity, Chairman.*
- MM: *You're not saying the complaints of the junior officers led to the urgency of this being dealt with in 48 hours, are you?*
- CE: *Chairman, I'd be very keen seeing it was all part of the context. The request for early retirement added the urgency to the context.*
- MM: *The urgency, Mr. Everett, was to stop Susan Lewis retiring. That was the urgency, wasn't it?*
- CE: *I've just answered that, Chairman, to say it was the urgency. But the context was what I've described in my earlier statement.*
- MM: *And the reason for the urgency to stop Susan Lewis retiring is*

that it would look bad for you if she retired within a year, that's right, isn't it?

CE: *No, Chairman, incorrect.*

MM: *You don't ... you dispute that you were concerned with Sue Lewis retiring within a year?*

CE: *It's not the same question, Chairman.*

MM: *All right, we'll do ...*

CE: *I'll have your guidance please on which question ...*

HJ: *Well, answer the second one now. Were you concerned with her retiring within one year?*

CE: *Absolutely.*

MM: *And why were you concerned ...*

CE: *But, Chairman, if you're asking me ...*

HJ: *Yeah, and explain why. Explain why, thank you.*

CE: *OK. Could I have some courtesy from the question, please?*

HJ: *Yeah, let's get on with it.*

CE: *Why, because I've mentioned I've just formed a new management team and Susan Lewis had a high reputation in social services with the people that she line-managed and she was building relationships with people in housing that she was now newly managing. The council had been living on interim*

appointments and acting up arrangements and uncertainty. If you look at the recruitment campaign that I replied to and was successful with, strong professional leadership with a priority of future direction and organization of the council was what I was asked to do. I've been ... it's quite a difficult process of getting people alongside, whether restructuring, getting people in positions. We were confident in going forward. For the council's sake, not my own, I didn't want that that to be destabilized and I would have said the same for any other senior officer in that group, not that one alone.

MM: *You see, it would have looked awful for you, Mr. Everett, wouldn't it? You appoint this lady and she takes over in September '08. In March '09, she wants to go. Within a year, you've got a potential employment claim of hundreds of thousands of pounds. You'd have looked awful and that's why you were determined to stop this.*

CE: *At that point, Chairman, we didn't have a potential claim. I've covered that point earlier. That was a risk in all of these. There was no intention from Susan Lewis. That was not my motive. It was purely the interests of the council.*

MM: *On the 20 ...*

HJ: *I think we can agree on this point. They would ... had you taken no action, the possibility of a constructive dismissal claim would have been greater?*

CE: *Yes, I hadn't thought of that at the time, and ... but yes, I mean that's a reasonable assumption.*

HJ: *The point being put to you, not the council's reputation which was at stake here, but it was your own personal reputation.*

CE: *Chairman, I can't be more absolute. No, that was not what was in my mind at the time.*

MM: *Mr. Everett, on the 26th of February, you've said to Mr. Heesom if he continues the way he is, if he carries on, it could lead to a constructive dismissal claim. That's what you worry on the 26th of February. The chronology is clear. On the 27th of February, the day after, Sue Lewis actually puts in her request for early retirement. And she puts it in a language that relates to a constructive dismissal claim like breach of trust. You're concerned about a constructive dismissal claim and it happening within a year of her appointment. That's the concern, isn't it?*

CE: *Sorry to be repetitive, Chair, but the questions are making me be repetitive. No.*

MM: *And the reason for the urgency is to stop Sue Lewis retiring. That's the urgency, isn't it?*

CE: *I've answered that. This is the third time now, Chairman, to say the context was what I've described. The urgency in that particular week, that particular time was the request for early retirement.*

MM: *Yes, and so we agree. So it's to stop Sue Lewis retiring, that was the urgency. I know you'd say that you were going to make the request ... that you were going to make the complaint to the ombudsman anyway. But the urgency was to stop Sue Lewis retiring. That's right, isn't it?*

CE: *For the fourth time, yes, Chairman.*

14.10. We find that the urgency of dealing with matters swiftly after 27 February 2009 was linked to concerns expressed by Susan Lewis and her request for early retirement. There was no link as to a direct threat of constructive dismissal as at February 2009, though this was one of the matters which clearly the Chief Executive had under consideration. He had correctly advised the Respondent of such a risk if his conduct continued. The urgency was also as a result of ensuring good governance. A complaint would create uncertainty and could affect the good management of the Council. The primary motive of the complaint, however, was the conduct as alleged of the Respondent and in particular its effect on the operation of the Council and upon Council employees. There was a reasonable basis for such concerns. These concerns had been highlighted and addressed in correspondence and at meetings with the Respondent prior to the end of February 2009. We are satisfied on a balance of probability that even if there had been no request for early retirement, a complaint would have been submitted to the Ombudsman. It should be noted further that the submission of the complaint to the Ombudsman did not result in the withdrawal of the request by Susan Lewis for early retirement. Her response was that the request be stood in abeyance.

14.11. There had been numerous previous attempts to deal with the issue without a formal referral to the Ombudsman. At the end of February 2009 the members of the CMT concluded that a complaint to the Ombudsman was the only avenue open to them. It was not for members of the CMT to have concluded absolutely that there had been breaches of the Code of Conduct, merely that they had a reasonable basis for believing there may have been breaches.

14.12. In the submission made on behalf of the Respondent, a general submission is made that Officers in the Housing Department had held for a significant period of time a grudge against the Respondent. We fail to see the full relevance of this submission but in our findings there is no evidence that personal animosity in any way affected the judgement of members of the Housing Department as to their grounds of complaint as to his conduct. The Respondent seeks for example, to attribute considerable weight to the fact

that he was perceived as a prominent opponent of housing stock transfer. His sworn evidence, however, was that he had not formulated any final opinion as to whether the Council's housing stock should be transferred. It is inconceivable that junior members of the Housing Department would be motivated to, in effect, create untruthful statements as to the conduct of the Respondent on the basis of a political decision as to housing stock transfer. Notes were kept in terms of incidents involving the Respondent. This is a normal and reasonable response when employees feel threatened or undermined by the actions of a person perceived as their senior, in this case their Executive Member. The actions of Housing Officers is not, as described by the Respondent, "*some form of covert intrusive treatment*". The notes we have seen contain no examples of embellishment. As noted earlier in our Decision we found the members of the Housing Department who gave evidence to be truthful and reliable witnesses of fact. It was not put in questioning by Counsel for the Respondent to a number of officers of the Housing Department that they were engaged in a conspiracy to remove him from his Executive position.

- 14.13. Considerable comment and weight is given by those representing the Respondent that Susan Lewis was not, when appointed, competent to carry out in full the role of Director of Community Services, which included responsibility for Housing. In our findings the Respondent, immediately upon her appointment as Director of Community Services, expressed his dissatisfaction with the appointment and questioned her ability to carry out her appointed role. He was warned immediately in writing by the Chief Executive that if he had such concerns, they had to be raised in a formal appraisal procedure. He sought, on the basis of our findings of fact, to seek to undermine and attack Susan Lewis, not by way of a formal appraisal procedure, but by way of comments directly to Susan Lewis, comments to others and by attempts to undermine her authority. This conduct did have the effect of undermining the confidence of Susan Lewis to the extent that at the end of February 2009 she sought early retirement on compassionate grounds. We do not find a basis for the submission made on behalf of the Respondent that there is "*now a wealth of evidence...that Susan Lewis was not competent*

to carry out the tasks that the job demanded.” Whilst some Councillors, had concerns as to how Susan Lewis performed, for example at scrutiny meetings, no evidence was presented to us of her failing in her role as a Director. No specific examples were given of failures on her part to manage her department. The issue of her capability in any event is marginal to our adjudication. It is the conduct of the Respondent which we have to consider. Even if the Respondent was correct in his perception as to Susan Lewis’ ability to perform her role, it had been spelt out to him as early as March 2008 how he should raise such concerns. He chose not to follow that advice but in effect to take matters into his own hands.

14.14. There had been, in our findings, an attempt at informal mediation. The Respondent had failed to engage and to take note of advice given. If a Councillor conducts himself or herself in a manner which potentially breaches the Code of Conduct, the appropriate course of action is to refer the matter to the Ombudsman. There is no requirement for mediation to be undertaken before a referral is made. The Member Officer Protocol does make reference to an attempt to mediate issues. In our findings there had been attempts to mediate, for example, following the Scrutiny Meeting, following Visioning Day, and initially following the short-listing Housing meeting on 12 February 2009 but the Respondent failed to acknowledge any wrongdoing on his part. What was clear to the Chief Executive, was that mediation would not result in the concerns of Officers being resolved.

14.15. It is submitted by the Respondent that in some way the decision of 27 February 2009 was deliberately not minuted. The submissions on behalf of the Respondent contain a fundamental error of understanding of the facts. It refers to a CMT whilst the evidence of the Chief Executive which we accept was that it was an SMT meeting. We do not find any deliberate decision not to minute the meeting. Not all SMT meetings were minuted.

14.16. Reference under Ulterior Motive is also made to the fact that there was no reference in the information provided to the Ombudsman of the request for early retirement on compassionate grounds by Susan Lewis. We see nothing

in this point to support a contention that there was any form of ulterior motive. In our view the contrary could be stated if the Ombudsman were made aware that part of the reason a complaint was made, or as to its timing, was as a result of an indication that an employee wished to apply for early retirement, that could be said to adversely affect the Ombudsman in his consideration of matters. The Ombudsman is under a statutory duty to carry out an investigation and analysis of the facts of the case. The lack of disclosure does not, in our view, support any contention that there was an ulterior motive in the complaint being made.

14.17. The Respondent submits that there was a further ulterior motive, namely his removal from his Executive position. There is no direct evidence that the complainants were aware that a consequence of the complaints would be his removal from his Executive position. A meeting took place between the Chief Executive and the Leader of the Council. We are advised that a meeting subsequently took place between the Leader of the Council and the Respondent. No formal direction was given by the individual members of the CMT nor the Chief Executive that he should be removed from his Executive position. They had no power to remove an Elected Member from the Executive. It was a decision which the Respondent reached following discussions with Councillor Woolley the Leader of the Council. Whilst during the course of cross-examination, it was submitted that Councillor Woolley in some way was motivated by seeking to remove the Respondent from his Executive position this is not put forward as part of the submission for a stay on the grounds of abuse of process. The argument falls down also on the basis that Councillor Woolley was not party to the complaint.

14.18. It is further submitted that in some way there was a motivation to remove the Respondent from the possibility of becoming Leader of the Council. The Leader of the Council is elected at an Annual General Meeting of the Council. His election is a decision of elected Members. It does not involve Officers. It was the Officers who had made the complaint to the Ombudsman.

14.19. The Respondent has during the proceedings put forward a number of differing theories of grand conspiracies against him. We find no basis for any of those

theories. Those suggestions in part we find are an attempt by the Respondent to divert attention away from the central facts in the case and whether or not he acted in the manner alleged by officers of the Council. There were reasonable grounds for the concerns of the Officers, they related to the conduct of the Respondent which could amount to a breach of the Code of Conduct.

14.20. Motivation also has to be considered in the context that:

- a. The CMT are not the body who make any decision as to whether or not there has been a breach,
- b. The referral was to the Ombudsman who had the statutory responsibility to consider whether to carry out an investigation and, if so, to undertake that investigation.

14.21. We have been referred to a number of authorities by Counsel for the Respondent. We have considered the submission but struggle to find their direct relevance to the facts of this case. Based on our findings of fact, there was no ulterior motive to justify a stay or strike out. The reason for the complaint was the Respondent's conduct. As to timing of the complaint, there was a link to Susan Lewis' employment position, however her position was adversely affected by the Respondent's conduct. The employment position of Susan Lewis was not the predominant factor in making the complaint and even if it were, it would not in our finding amount to a ground to stay or strike out these proceedings. We find no basis for submitting in any way it was an attempt to interfere, for example, with the Respondent's future aspirations to be Leader of the Council. Even if a significant motivation was the retention of Susan Lewis in her role, this was not an improper motive.

14.22. We referred Counsel for both the Respondent and the Ombudsman to the case of *JSCBTA Bank v Ablyazov & Others 2011 EWHC 1136*. Neither has sought to comment on this case. The head note to the case indicates as follows:

“An insolvent Kazakh Bank had not abused the court process by pursuing actions to recover misappropriated assets. Though it was arguable that the President of Kazakhstan had persuaded the Bank to bring the actions in order to eliminate a political opponent, it was unrealistic to suppose that the proceedings had not been brought, at least partly, for the legitimate purpose of recovering losses to the benefit of the Bank and its creditors.”

14.23. Even if, as suggested in this case on behalf of the Respondent there was an ulterior “political” motive for the complaints, the primary purpose was that there were grounds to believe that he had breached the Code of Conduct. It is not accepted by this Case Tribunal that there was any such political motive. The Code of Conduct and the powers of both the Ombudsman and the Adjudication Panel were established to ensure good conduct by elected Councillors and to maintain public confidence. The referral to the Ombudsman by the individual members of the CMT was consistent with these principles. There was genuine and serious concern as to the Respondent’s conduct towards Susan Lewis, its effect upon her, his conduct towards other more junior Officers of the Authority, his involvement and interference in housing allocations in his own ward. These concerns were the motivation for the referral to the Ombudsman and were entirely justified. Whether the facts are made out will depend upon the investigation by the Ombudsman and subsequently if there were a referral to the Adjudication Panel for Wales, adjudication by a Case Tribunal having considered all the evidence and representations.

15. STALE ALLEGATIONS

- 15.1. The Respondent relies in support of his abuse argument, that the allegations which are the subject of our adjudication are stale.
- 15.2. In support of this ground, the Respondent refers to two events and the complaints which arise out of them. Firstly, the events that occurred on or around 14 February 2007 at the People and Performance Overview and Scrutiny Committee. Secondly, the events which occurred later that year and which led to the Respondent writing a letter dated 9 August 2007 to Mr and Mrs Dodd and to [Ms M], which has been referred to in these proceedings as the “Dodds Exchange”. It should be noted the allegations relating to the Dodds exchange extend beyond the letter of 9 August 2007 to dealings as to the exchanges as late as November 2007.
- 15.3. It is suggested that we as a Case Tribunal by considering and proceeding to adjudicate upon these complaints, have subjected the Respondent to some procedural unfairness, such that we should not only stay and/or strike out our investigation into these events but also all the other complaints.
- 15.4. The Respondent relies in support of his application to stay on the basis of the allegations being stale. It is submitted the Dodds Exchange had already been the subject of an investigation by the Monitoring Officer, Mr Barry Davies, and he had concluded, that the Respondent had done nothing wrong. Despite this, Barry Davies did not alert the Ombudsman to this “earlier investigation” and this failure gives rise to serious concerns about the evidence that Barry Davies gave to this Case Tribunal and, presumably, in particular in relation to these events. It is submitted we are estopped from investigating this incident because it has already been investigated and the Respondent was found not to have done anything wrong. By allowing the case to proceed, and for us to make findings of fact about these two events and again we assume the other complaints, we are in effect making it impossible for the Respondent to have a fair hearing. In support of this ground, the Respondent postulates what else did Barry Davies fail to reveal to the Ombudsman, the Respondent and/or his

advisers and to the Tribunal. These arguments are developed in the body of the arguments submitted by Mr Murphy at paragraphs 77-90.

- 15.5. The first issue for us to consider is that of estoppel. Are we, as a Tribunal, estopped or precluded from considering the events surrounding the Dodds Exchange because Barry Davies had, it is claimed, at an earlier stage decided that the Respondent had done nothing wrong. It is not necessary for us to comment on the general principle of estoppel in this respect. It should be noted there was no formal referral of the letter to Barry Davies for investigation. His comments, which were not directed initially to the Respondent, related to a complaint by one of the participants to the exchange as to actions by Officers of the Council.
- 15.6. The Respondent on receiving the witness statements, which included questionnaire of the Dodds, was fully aware that the issue of the exchange was under consideration. In discussions with Mr and Mrs Dodd, Barry Davies accepted that he had indicated that he did not think that the August letter contravened the Code of Conduct. As at March 2009, the Respondent is of the view, as indicated in his response (C62): *“In this absolutely awful matter, two issues are raised. One is a claim that I wrote a letter purporting to give authority to the exchange. That letter did no such thing and was the subject of a query to the Monitoring Officer and it was found to not contravene the guidance. I have properly and appropriately not dealt further with the matter.”* The indication given by Barry Davies to the Dodds was in early September 2007. Evidence from the Respondent was that he had spoken to Barry Davies about the Dodd letter and been "exonerated". He could not be precise as to circumstances nor date but on the balance of probability it would have been late August 2007 (pg 15, 18.09.12 (1 of 3)):

MM: *Oh no, be under no doubt sir. Now, you've seen what Cora Dodds said, about what Barry Davis said and she's said that on oath as well as in her statement. Now you in your statement say that Barry Davis exonerated you. I just want to be clear about this. Did he exonerate you of ... you know, there's different*

issues with the Dodds, there's your correspondence with councillors to put it neutrally, your ... obviously your letter of 9 August 2007, different elements. Did he exonerate you of everything or just you know, one item?

PH: *No, it was across the board, everything.*

HJ: *Is this a conversation you had with Mr Davis?*

PH: *Yes I had a conversation with –*

HJ: *Right, when did you have this conversation?*

PH: *I had it in his office, the date I can't recall, but it was clearly sometime at the end of August.*

HJ: *In his office?*

PH: *In his office at County Hall.*

HJ: *Can you remember what was said?*

PH: *Not in ... other than general, we were talking about a number of other council issues and that came up in the conversation.*

HJ: *And what did he say?*

PH: *He said, it was a clever letter and that I don't think there's anything wrong with it.*

HJ: *Thank you.*

MM: *But beyond that Councillor Heesom you've just said that he exonerated you of all your involvement in what's known as the Dodds' exchange, is that right?*

PH: *Yes. We were putting the matter ... what had happened, behind us in that conversation.*

MM: *And you used the term across the board.*

PH: *Yeah.*

MM: *Okay. Now sir I will actually refer to that transcript, I know you ... sorry sir, but I'm not taking your point, I know you said -*

HJ: *Yeah well I ... I was just looking through it as well.*

MM: *No sir, it's -*

HJ: *It's partly for submission, so -*

MM: *Well sir, well I would like to take Councillor Heesom through this and so it might be instructive for the panel actually.*

HJ: *Yeah, there's a general statement about exonerating me from any wrongdoing, which he's just given evidence in terms of a conversation in Mr Davis's office.*

MM: *Yes, but I thought it only right sir to clarify that he's exonerating on all issues, not just -*

HJ: *Well his evidence was, a clever letter and didn't think anything wrong with it and that they were putting the matter behind them. You put a leading question then to him that it was exonerating him from all aspects, wasn't it Councillor Heesom.*

MM: *Can I say sir, I didn't put a leading question, I think what you'll recollect is, what I put was, did he exonerate you of everything or was it just –*

HJ: *Was there anything else said at that meeting?*

PH: *Not on this subject, no.*

HJ: *No.*

MM: *Sir, can I say, it wasn't a leading question. What I put was the two alternatives, did he exonerate you just in one area or was it for all of your involvement, sir? It wasn't a leading question. Sir, leading questions go to weight as I know and you know better than me sir. So it was not a leading question.*

HJ: *But nothing else was said at that meeting, is this witness's evidence.*

MM: *No sir, the witness's evidence is that he was exonerated across the board in terms of the Dodds' exchange.*

HJ: *He hasn't said that. You said that.*

PH: *No. I said something similar.*

HJ: *Well yeah, what you said, it was a clever letter, and I didn't think anything wrong with it.*

PH: *And –*

MM: *Sorry Patrick.*

PH: *I said something else.*

MM: *In addition sir –*

HJ: *What else did you say? What else was said?*

PH: *I thought I said that ... that across the board there weren't any issues that remained. I mean I can't give you a verbatim, but that was essentially –*

HJ: *Okay, well the transcript will show it when it comes out.*

MM: *Indeed sir, my recollection is, the witness said, across the board. That's the term he used. When I put that to the witness I wasn't offering that phrase, that's the phrase he gave.*

HJ: *Okay. We'll have a look when the transcript gets out.*

MM: *Just for the sake of clarity then, it's on the record that Councillor Heesom's evidence is that Barry Davis exonerated him of all involvement in the Dodds' exchange.*

HJ: *I've got the note and we will look at the transcript when the transcript come out, as to what was said.*

MM: *Okay, well sir, if there's any doubt we can just ask Councillor Heesom again to ... obviously, Councillor Heesom, I won't load the question sir, I won't lead, I'll put it in two alternative ways -*

HJ: *Can you tell us what was said at that meeting, verbatim, as you recall it?*

MM: *Well sir, can I just put the question, this is my witness sir, can I just ask my witness my own question sir? You know -*

HJ: *Okay, go on.*

MM: *I just put it once again sir, the way I put it the last time. Councillor Heesom, there's two alternatives I'm going to put to you, one is this, Barry Davis exonerated you at one element of the Dodds' exchange, for example there's the letter, there was Elaine Williams, there's you chasing up officers. Did he exonerate you in relation to one incident of the Dodds' exchange? Or did he exonerate you of all your involvement in the Dodds' exchange?*

PH: *At that stage I understood it to be across the board on the matter, he was exonerating me.*

The conversation it should be noted was in the words of the Respondent "we were talking about a number of other council issues and that came up in the conversation". It is indicative that there was no formal investigation undertaken by Barry Davies. The Respondent's initial response was that there had been a 'query' to Barry Davies. It should be noted since the date of the conversation issues subsequently arose in terms of for example on or around 25 September the Respondent wrongly advising the Dodds that the exchange would be proceeding, email 6 October 2007 and email 17 October 2007 when the Respondent demands suspension of an officer and that he will be calling a full council meeting. As at the date of the meeting with Barry Davies we find

- a. The conduct and issues which we are asked to adjudicate were ongoing - therefore any "exoneration" could not be "across the board". Some of the issues had not at that time arisen.
- b. There had been no formal referral to Barry Davies as Monitoring Officer or indeed to the Ombudsman, and there had been no "investigation" by Barry Davies. He had not for example obtained any statements, copy emails etc from others.

- c. Barry Davies did indicate the wording of the "letter" was clever
None of the above indicate that we nor indeed the Ombudsman are precluded from considering any breaches arising out of the Respondent's alleged conduct relating to the Dodds exchange.

15.7. The matter under consideration by ourselves goes beyond the letter in that we are asked to consider findings of fact as to whether before and after the writing of the letter and in particular the Respondent's conduct surrounding the mutual exchange breached the code of conduct. The issues relating to the letter have not been the subject of any prior referral to the Ombudsman. The Ombudsman correctly became seized of the matter and has investigated. We do not see that there should be any stay for abuse of process on the basis that the matter has previously been investigated. The comments of Barry Davies are not binding and relate to a limited part of the issues we have to consider. Running parallel to issues with the parties to the mutual exchange was a complaint as to the alleged conduct of an Officer, namely Elaine Williams. It is submitted in terms of dealing with Elaine Williams that the "issue" had been dealt with. It is apparent however that the issue which was dealt with was the issue of a formal complaint as to Elaine Williams' conduct and not the conduct of the Respondent. The email from the Assembly Member to Elaine Lewis (sic) refers to a meeting between the Assembly Member and the Chief Executive (B548). The wording of the headings to the letters received suggests that the incident is identified as "*Staffing Issues - EW*" (B544) and the "*Support for Staff*" (B547). It relates to a formal complaint raised against Elaine Williams.

15.8. We do, however, rely upon our findings of fact in relation to the complaint concerning the Dodds Exchange and in light of those conclude there was inappropriate conduct by the Respondent:

- a. prior to 9 August 2007,
- b. in writing the letter of 9 August 2007, and
- c. in dealings with Officers associated with the exchange from 9 August

2007 to 23 November 2007.

15.9. We have been told, and conclude, that the Dodds exchange has not been the subject of a previous referral to or an investigation by the Ombudsman. Similarly, the Adjudication Panel for Wales has not been asked to consider this allegation on any previous occasion.

15.10. There is nothing within our regulations which prevents us from considering, amongst other allegations, the circumstances leading to the Dodds Exchange. There is no suggestion in the submissions received that the Respondent has in any way acted to his detriment. There is of course the implication of a detriment by way of passage of time. In our findings:

- a. There was no formal investigation by Barry Davies in 2007 as to a complaint against the Respondent.
- b. There was no referral or investigation previously by the Ombudsman or the Adjudication Panel as to the Respondent's conduct surrounding the Dodds exchange.
- c. There has been no previous formal decision or adjudication on the issue.
- d. The mention by Barry Davies of "nothing wrong" was initially in passing to the Respondent and was made in August 2007 prior to the final date of events upon which we are asked to adjudicate. Discussions with the Respondent were on an informal basis as acknowledged by the Respondent in his evidence.

15.11. It is advanced by the Respondent that this is a case of double jeopardy. As we have already indicated, Mr Murphy suggests that Mr Barry Davies had already exonerated the Respondent from any blame in respect of the Dodds Exchange and, accordingly, those events should not have been included as

part of the complaint and thus we as a Case Tribunal cannot adjudicate upon them. It is also stated that they were only included by the Monitoring Officer as part of the complaint for background purposes.

15.12. Dealing firstly with double jeopardy, and as we have already indicated, there is nothing within our Regulations which prevents us from considering issues as part of a complaint which has been referred to us by the Ombudsman and which has been the subject of his investigation. As we have already indicated, there has been no previous investigation of these issues by the Ombudsman and the Adjudication Panel had not been asked to consider those matters before now. In those circumstances, there is no double jeopardy.

15.13. Notwithstanding that the Monitoring Officer included the circumstances surrounding this incident for background information, the fact is that the Ombudsman chose to investigate the whole issue. They formed part of his report which was referred to the President of the Adjudication Panel and, as we have already ruled in our earlier Listing Directions, they form part of the allegations which we are considering and will proceed to rule upon as part of our fact finding role.

15.14. There is nothing in our findings which causes us concern as to the overall credibility of Barry Davies. He did acknowledge comments in August and September 2007. The Respondent has sought to place his actions at that time as some form of "formal investigation". It was not. He was dealing with complaints by tenants as to refusal to sanction mutual exchange. If, as suggested, Officers were motivated to act maliciously towards the Respondent, it could be assumed they would have wished to raise the Dodds exchange as a specific complaint. They indicated it was given as background information. It was the Ombudsman, as he was entitled to do so upon review of the complaint and whether he would investigate, who concluded a potential breach.

15.15. It is suggested that the passage of time means that the two events relied upon in the complaint and, presumably, the other allegations as well (although no

reference is made to whether some or all of these are also stale) occurred at such a time that it would be unsafe for us to proceed to make any findings of fact upon them.

15.16. The first in time of the complaints that we are charged with adjudicating upon, is the events that occurred at or around the People and Performance Overview and Scrutiny Committee, which took place on 14 February 2007.

15.17. The Respondent's conduct towards Susan Lewis and Maureen Mullany on that day was included as parts of the complaint from the members of the CMT by letter dated 12 March 2009. We became seized of the report from the Ombudsman in July 2010, began to hear evidence about this and the other complaints in January 2011 and eventually completed our hearing of evidence on 12 October 2012.

15.18. The second in time of the complaints were the events surrounding the Dodds Exchange, culminating in November 2007. These events, therefore, occurred just over two years and 18 months before the complaint was submitted.

15.19. The other events that are the subject of the complaint occurred after this and thus are much closer to when the complaint was submitted by the CMT in March 2009.

15.20. There is no provision in our regulations which prevent us from considering the facts surrounding a complaint because those underlying events had occurred up to two years before the complaint was submitted. Reference is made in Mr Murphy's submission to a one year time bar. That appears to be a reference to the Ombudsman's investigative powers into maladministration, which has no bearing on Code of Conduct matters.

15.21. When considering matters that come before the Civil Courts, Disciplinary Tribunals and the Criminal Courts (which is often relied upon by the Respondent as a basis for advancing some arguments in his abuse application) the Courts often come across situations and events which have occurred well in excess of two years before a complaint is submitted to an investigating authority.

15.22. When considering the events of 14 February 2007, we must not forget that on the following day Susan Lewis raised her concerns at a meeting of the CMT. Arising out of that the Acting Chief Executive raised matters of member conduct, in general terms, at the Group Leaders meeting. The Respondent was present at that meeting. Additionally, shortly after that incident is alleged to have occurred, Susan Lewis put her concerns on paper by letter to the then Acting Chief Executive of Flintshire County Council, although it does not seem as though matters were taken further at that stage. Certainly, no reference was made to the Ombudsman. The Respondent was aware of issues relating to the meeting as Barry Davies had raised with him the question of an apology. As acknowledged by the Respondent, he was aware in August 2007 of issues surrounding his conduct in the Dodds exchange.

15.23. The Respondent was evasive throughout as to issues relating to the Dodds exchange and more generally as to issues of concern as to his involvement in housing allocations. We are not persuaded that the Respondent has been prejudiced by a delay of two years, such that we should stay these proceedings. Any such delay would have to be such as to make any attempt to adjudicate an abuse of process. There exists a significant amount of contemporaneous documents, including minutes and handwritten notes and witnesses have firm recollection. The Respondent also exhibited detailed recollections of certain aspects of events in 2007. For example, in terms of the Scrutiny Meeting, describing the directorate as a 'shambles', sickness levels and details such as "back to work interviews on a Sunday". In terms of the Dodds exchange, he had a detailed recollection such as Mrs Dodd's health condition. In our findings, the Respondent, not through delay but through choice, appeared not to be willing to share more details. As we have indicated in this decision, we find him deliberately evasive. His lack of detail in his evidence was not due to delay.

15.24. For those reasons, we reject the application to strike out and/or stay for abuse on the grounds that the allegations are stale. We have in coming to this conclusion considered the Respondent's Article 6 Rights.

16. INVESTIGATION BY CMT

- 16.1. The next ground for us to consider is that set out at paragraphs 91 – 104 of Mr Murphy’s submissions, namely that the CMT itself carried out an investigation prior to submitting the evidence to the Ombudsman. We refer in our findings to other facts and reasons contained in this decision, in particular to the status of the CMT and comments as to alleged flawed investigation by the Ombudsman.
- 16.2. It is suggested that this “*12 day officer led travesty masquerading as an investigation*” was a sham. It is also argued that it was self serving in that all it did was to “*authenticate a pre-determined course*” namely to refer the concerns that had been raised by Susan Lewis and others to the Ombudsman on an urgent basis. Further, the Respondent contends that there was no independent evaluation of the evidence that issues were “dredged up” which had already been resolved, and that no attempt was made to test the officer led concerns by talking to Councillors. Further, the CMT, it is submitted, failed to give notice to the Respondent of the concerns and that there was no attempt to resolve the issues by mediation.
- 16.3. The arguments set out under this heading on behalf of the Respondent are duplicated by way of submissions advanced in other parts of the submission for abuse of process. We address most of the relevant submissions in other parts of this decision. Under this heading, we restrict our findings to the question of whether CMT undertook its own investigation and, if so, whether that is a basis for staying the proceedings on the grounds that that in itself is an abuse of the process.
- 16.4. We preface our findings by reiterating, as noted in this decision, that the initial consideration of whether to refer matters to the Ombudsman was taken at a meeting of the SMT. It is a fact ignored by the Respondent in his

submissions. It is subsequently that contact is made with all individual Members of the CMT as whether they would be signatories to a complaint.

- 16.5. Any letter of complaint had to contain sufficient details to assist the Ombudsman as to whether he should or should not carry out an investigation. The role of Barry Davies was to collate into a single document the concerns and incidents which the individual Members of the SMT and CMT had in regard to the Respondent's alleged conduct.
- 16.6. In other parts of this decision we, as a Case Tribunal, have outlined our findings of fact as to the increasing frequency of incidents of concern involving the Respondent up to March 2009, and apparent failures by him to respond to words of caution.
- 16.7. The Ombudsman made it clear to the Respondent in correspondence forwarded that the initial consideration the Ombudsman would be making was whether he, the Ombudsman, would be carrying out an investigation. Letters dated 17 March 2009 and 7 April 2009 are referred to later in this decision.
- 16.8. The Ombudsman indicated to the Respondent at that initial stage that if he wished to provide a response he could do so, but also indicating there was no obligation to do so. Whilst the Respondent had received the letter and attachments signed and forwarded by the individual Members of the CMT, and had begun preparing a response, he chose not to submit any comments to the Ombudsman at that stage.
- 16.9. Our finding is that no formal investigation was carried out by the CMT or its individual Members. Collation of documents and details of incidents took place and were formulated into a single letter of complaint to the Ombudsman. If, for example, there were an incident for which a simple, clear explanation could be given by the Respondent, it was open to him to provide such an explanation prior to the Ombudsman taking the decision whether to investigate.

16.10. In our findings, there was no malice involved in the decision to make the referral to the Ombudsman. The decision arose out of genuine and reasonable concerns as to the conduct of the Respondent. The issues relating to the Respondent were, whether rightly or wrongly, causing concerns to the Officers and affecting, in their eyes, the good management of the Council. As noted in emails between 27 February 2009 and 12 March 2009, prior to submission of the letter to the Ombudsman, concern was expressed as to dealing with the issues confidentially and urgently. The concerns being that the management of the Council may be adversely affected if elected Members, including the Respondent, were made aware such a letter was being forwarded.

16.11. The Respondent was made properly aware of the letter and its attachments after it was forwarded, by way of:

- a. Meeting with Leader of the Council, who had been advised of the letter by the Chief Executive,
- b. Formal notification by the Ombudsman.

16.12. Immediately the Ombudsman decided he would conduct an investigation, the Respondent was advised in writing.

16.13. On the basis there was no formal investigation by the CMT, we do not intend to address separately the submissions made that in some way that "investigation" was flawed. We do address a number of these issues separately in considering, for example, the Ombudsman's investigation and knowledge which the Respondent had of the details of the complaint.

16.14. The first issue that we have to determine is whether the CMT did carry out an investigation and whether that investigation was flawed, whether for the reasons contended for by the Respondent, or otherwise.

- 16.15. Having reviewed the evidence, both documentary and oral, we are satisfied and find that the CMT were not required and did not carry out an investigation in the sense of that which the Ombudsman undertook.
- 16.16. At a meeting of the SMT on 27 February 2009, it was resolved that the concerns raised by Susan Lewis and others would be referred to the Ombudsman. Mr Barry Davies, the Monitoring Officer, was charged with the responsibility of assembling such preliminary evidence as could be provided to the Ombudsman. Once that evidence was assembled and the individual Members of the CMT had agreed and become signatories to the letter of complaint, the Monitoring Officer submitted the letter of complaint and attachments to the Ombudsman.
- 16.17. Upon receipt of that information, the Ombudsman in accordance with his statutory powers, reviewed the complaint and concluded that he should investigate. He therefore commenced an independent investigation which resulted in his report dated 22 July 2010 which in turn was referred to the President of the Adjudication Panel for Wales, at B1 – B233, and which in turn resulted in this Case Tribunal carrying out its adjudication.

17. WITNESS CONTAMINATION

- 17.1. Counsel for the Respondent contends that the Ombudsman has facilitated the contamination of evidence before this Case Tribunal, which has been detrimental to the Respondent.
- 17.2. He refers to the case of *R v Momodou* [2005] 2ALL ER, a decision of Judge L J at page 587, who said that in relation to criminal proceedings: *“This is the logical consequence of (the) well-known principle that discussions between witnesses should not take place, and that the statements and proofs of one witness should not be disclosed to any other witness”*.

- 17.3. Mr Hughes on behalf of the Ombudsman suggests that this authority relates solely to the practice in a criminal trial and that the authority is not applicable to proceedings before this Tribunal.
- 17.4. Mr Hughes reminds us that our proceedings are governed by our own rules and, in particular, we are entitled *“to conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the adjudication. The Tribunal will, as far as is possible, try to avoid formality in its proceedings”*.
- 17.5. Further: *“The Tribunal can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a Court of Law. The Tribunal shall not refuse to admit any evidence that is admissible at law and is relevant.”* (Paragraphs 42 and 48 of the procedures relating to consideration by Case Tribunals and Interim Case Tribunals of references from the Public Services Ombudsman for Wales, made under the Local Government Act 2000 and the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001).
- 17.6. It is clear from the above that it is for this Case Tribunal to govern its own procedures in accordance with the Regulations. Whereas Mr Murphy on behalf of the Respondent suggests that it is common ground between him and Counsel for the Ombudsman that our proceedings are more akin to criminal than civil proceedings, we do not accept that our proceedings are akin to criminal proceedings. Ours is a quasi-inquisitorial process and our procedures are governed by our own rules. We have commented in other parts of this decision as to the nature of our proceedings.
- 17.7. Notwithstanding the above, we as a Case Tribunal are conscious of ensuring that the evidence, and in particular witnesses that have appeared before us have not been influenced by other witnesses or, for that matter, by others.
- 17.8. Indeed, Mr Murphy in his submission readily accepts that we have *“been quite fastidious that witnesses who have not yet given evidence, should not be*

allowed in Court to hear the oral evidence being given.” Throughout, we have been at pains to warn witnesses on conclusion of their evidence that they should not discuss their evidence with others, whether those be relatives, colleagues (in the case of Council employees), Councillors or indeed anyone who is involved in this case and who may not as yet have appeared before us.

17.9. We are satisfied that as far as we can, we have protected the integrity of our quasi-inquisitorial process.

17.10. We accept, however, that it is inevitable that in certain instances, there will be discussions about the proceedings. Indeed, reports of our proceedings have appeared in the local press and it is inconceivable that witnesses who have not appeared before us, whether requested by the Case Tribunal or called by the Respondent, will not have seen such reports.

17.11. Whereas the Panel has its own rules and regulations of procedure, we do have regard to the comments of the now Lord Chief Justice, Lord Justice Judge, and in particular his reference to the well-known principle that statements and proofs of one witness should not be disclosed to other witnesses. That of course is in the context of a criminal trial. In civil proceedings, it is not unusual for witnesses to have seen and considered other written witness statements before giving oral evidence.

17.12. As far as we are aware, save in two instances, which we will deal with in this decision, the principle of not seeing other witness statements has been followed.

17.13. Mr Murphy on behalf of the Respondent has referred us to the fact that the Ombudsman provided Pamela Webb, who gave evidence before us on 1 June 2011, with more than just a copy of her own witness statement (pg 8, 01.06.11 (2 of 4)):

PW: *...I have been given a full copy of the bundles which I requested and the Ombudsman kindly sent to me and I have removed*

some original copies from there that are included in those bundles and I just have them to hand. I have no additional documents.

MM: *No that is fine. The statements you have got you got from the Ombudsman. Is that right?*

PW: Yes.

MM: *Okay, that is fine...*

17.14. Pamela Webb was formerly employed by Flintshire County Council as Interim Head of Human Resources. By the time she gave evidence to the Case Tribunal, she was no longer employed by Flintshire. It seems that upon being requested to attend to give evidence before us, she approached the Ombudsman and requested from him a copy of her own witness statement dated 3 June 2009, which is in our Bundle at page B429. In addition, she also asked the Ombudsman to provide her with copies of the documents referred to above.

17.15. Mr Murphy suggests that as a result of this, she has been able to prepare for her appearance before this Case Tribunal and to tailor her evidence accordingly or, if not, there is at least a clear danger that she may have been able to do so.

17.16. No application was made by Counsel for the Respondent at the time for her evidence to be excluded from our consideration.

17.17. Pam Webb's evidence before this Tribunal was restricted to events at two meetings:

- a. Head of Planning – final interviews, 6 February 2009
- b. Head of Housing – long-listing meeting, 12 February 2009

17.18. Her evidence also touched upon complaint letters by the Respondent to Carl Longland. She was of course a signatory to the letter to the Ombudsman.

17.18. It is regrettable that Pam Webb was provided with a number of witness statements. No such request was made of the Case Tribunal and had such a request been made, our Support Unit would have advised Pam Webb that all she would be provided with would be a copy of her own witness statement and documents emanating from her. At the time of the giving of her evidence, she was no longer an employee of Flintshire County Council. She quite properly wished to refresh her memory, which should have been limited to documents she prepared or had sight of at the time.

17.19. It should be noted any documents were not provided to her until shortly prior to her appearance before the Case Tribunal. She had, of course, previously prepared her statement, which accompanied the complaint to the Ombudsman (B735 - B742) and her witness statement.

17.20 We have reviewed the evidence of Pam Webb in the context of the allegations that are relevant to the events upon which she gave evidence.

17.21. In terms of number of events, they are a small proportion. Further, her memorandum (B735 to B742) was prepared before any further witness statements were given to her. She also signed the memorandum and dated it 4 March 2009. She also provided a witness statement to the Ombudsman prior to receiving any further statements.

17.22. We are not persuaded that upon being provided with copies of other witness statements before this Tribunal, that her evidence as set out in her witness statement has been materially tailored or influenced by reviewing those documents. Where we consider any doubt on the issue, we disregard that element of her evidence.

17.23. For the avoidance of doubt, we are not persuaded that there was any attempt by the witness to influence the outcome of our enquiry, that the Ombudsman

in providing Mrs Webb with background documents tried to influence our decision, or that at any time during her evidence before this Case Tribunal that Pam Webb did not give evidence that was truthful. Indeed, as can be seen from our findings of fact regarding the events of 6 and 12 February 2009, her evidence was not central. There were a significant number of other witnesses whose evidence we have considered in making our findings.

17.24. Pam Webb is not the only example where a witness who has given evidence before the Tribunal had been provided with documents or other relevant evidence. Councillor Halford, who was called to give evidence at the request of the Respondent, readily conceded that she had been provided with copies of papers by the Respondent. This was contrary to the directive given by the Ombudsman by letter of 31 March 2009 (B851) that the Respondent was not to discuss the complaint with any of the witnesses. To do so may be construed as a breach of the Code. There were of course no formal witness statements obtained at that time, however, the attachments to the complaint letter contained emails from Councillor Halford where she is critical of the Respondent's conduct, in particular at the meeting of 12 February 2009 (B750). The witness when she gave evidence acknowledged she had been given papers by the Respondent which were referred to in correspondence from the Ombudsman.

17.25. We have not excluded her evidence on this basis.

17.26. It should be noted also that Mrs Dodd prior to her giving her evidence discussed matters with legal representatives for the Respondent. They assisted her in preparation of a further statement (E2 – E11). In the statement, reference is made to page numbers contained in the Case Tribunal Bundle, which suggests she had access via the Respondent to our papers.

17.27. We do not find that there is a basis for proceedings to be struck out or stayed on the basis the Ombudsman released to 1 witness out of more than 48 witnesses who have appeared before us, copies of witness statements.

18. PSOW FLAWED INVESTIGATION

18.1. It is necessary to explain some of the background in terms of the Case Tribunal being seized of matters. On 13 March 2009, the Ombudsman received in letter form with annexes, allegations from all the individual Members of the Corporate Management Team of Flintshire County Council. The letter alleged the Respondent had failed to observe its Code of Conduct. On 3 April 2009, the Ombudsman received a further letter of complaint from Councillor Armstrong-Braun alleging a further incident where it was alleged the Respondent had failed to observe the Code of Conduct. The Ombudsman had to decide whether to investigate the complaints. If he decided to investigate, he thereafter had to take a decision as to whether the complaints disclosed a prima facie case of breach of the Code of Conduct. If he decided such a prima facie case was made out after completing his investigation he had three options:

- a. to take no further action;
- b. to refer the matter to the Council's Monitoring Officer for consideration by the Authority's Standards Committee;
- c. to refer the case to the President of the Adjudication Panel for Wales who would thereafter establish a Case Tribunal.

18.2. Under Section 71(3) of Part 3 of the 2000 Act, the following statutory provision exists:

"Where the Public Services Ombudsman for Wales determines in relation to any case that a finding under Section 69(4)(d) is appropriate, he must:

- a. produce a report on the outcome of his investigation,*

- b. refer the matters which are the subject of the investigation to the president of the Adjudication Panel for Wales for adjudication by a Tribunal falling within Section 76(1), and*
- c. send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for Wales.*

18.3. Section 69(4)(d), states:

“that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a tribunal falling within Section 76(1).”

18.4. Regulations exist in terms of procedure to be adopted by the Case Tribunal. The Tribunal is not limited in its consideration to facts or evidence as outlined in the report produced by the Ombudsman. Section 9 of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009, defines the role of the Public Services Ombudsman for Wales.

9.1 – The Public Services Ombudsman for Wales is entitled to attend, and the tribunal may request the Public Services Ombudsman for Wales to attend, the hearing of an adjudication for the purposes of:

- a. presenting a report and/or explaining any of the matters in it, and*
- b. otherwise playing such part or assisting the tribunal at the hearing as the Tribunal considers appropriate.*

18.5. Directions have been given during the course of the proceedings as to the provision of further information, disclosure of documents and attendance of witnesses. The Case Tribunal has its own role to enquire. The extent to which

the Ombudsman's investigation may be flawed, if at all, may not be relevant in terms of findings by us as a Case Tribunal. Representations on behalf of the Ombudsman vehemently deny any flaws in the investigation.

18.6. We as a Case Tribunal do believe that we could have been better served in the current proceedings by the witness statements being more focussed in terms of specific allegations. Further there could have been more prompt disclosure of documents which had been delivered to the Ombudsman by Flintshire County Council. Those documents were not relied upon by the Ombudsman in his report and were not mentioned in his Report. Witnesses have attended before the Case Tribunal and given sworn testimony. We have allowed Counsel for the Respondent to cross-examine all the witnesses called to give evidence and who were interviewed by the Ombudsman. The Respondent through his Counsel has been given a full opportunity to test the credibility of the witnesses. A number of the witnesses, it would appear, were subsequently spoken to by legal representatives on behalf of the Respondent and with the exception of Mrs Dodds, no further witness statements were presented to us by those representing the Respondent. The Respondent was permitted to call witnesses not spoken to by the Ombudsman in the course of his investigation. We permitted such witnesses who had relevant evidence to attend and give sworn testimony. During the course of the proceedings we gave directions as to further disclosure of documents. A substantial amount of documents were held by the Ombudsman and not referred to in his report nor initially disclosed to the Case Tribunal. We ordered the disclosure of such documents and acceded to an application on behalf of the Respondent for an adjournment to allow them to consider such documents. The Respondent requested the bulk of those documents to be copied and placed with the Case Tribunal papers. They are the documents contained in the 5 lever arch files known as the P bundles.

18.7. Following referral of the complaints to the Ombudsman he wrote to the Respondent as follows:

- a. 17 March 2009 (B847) – *“I enclose for your information a copy of a complaint we have recently received from Mr Davies against you. I will let you know in due course whether or not the Ombudsman is going to investigate this complaint. You need not respond to this letter if you do not wish to. However if you do comment on the complaint at this stage, we may take account of what you say in deciding whether to investigate. Your comments may also be disclosed to the complainant, or in any subsequent proceedings. If you do wish to comment, it would be helpful if you could let me have your comments in writing within the next two weeks.”* We are not aware of any response by the Respondent to this letter.
- b. 7 April 2009 (B849)– a similar letter was sent in respect of the complaint made by Councillor Armstrong-Braun.
- c. 31 March 2009 (B851) – a letter was forwarded on behalf of the Ombudsman by the Director of Investigations, referring to the letter of 17 March 2009. It noted the Ombudsman had considered carefully the information provided and decided to investigate the complaint. It indicated which breaches were to be focussed on. It confirmed that the Director of Investigations had been asked to conduct the investigation. It further states:

“You will appreciate that there are a number of witnesses which we need to interview, and I am making arrangements for this to be done. At the conclusion of this part of the investigation we will review the evidence again to assess whether the investigation should continue. If it is decided to continue then copies of all the evidence on which the Ombudsman made that decision will be made available to you before we seek your formal response.

That response can be requested as a written response, through an interview or a combination of both methods. Until then I am not seeking a response to the complaint from you. However, if you do

decide to submit a response at this stage, please bear in mind that the response may be included in any report that the Ombudsman may issue for consideration by the Adjudication Panel for Wales or your Council's Standards Committee.

I understand that this is a difficult time for you and I assure you that our enquiries will be completed as quickly as a thorough investigation permits. May I take this opportunity to advise you that it would not be helpful for you to discuss the complaint with any of the witnesses. To do so may be construed as a breach of paragraphs 4(c) and 7(a) of the code.

If you would like to discuss the process of the investigation please do not hesitate to contact me. Otherwise, I will contact you again once the interviews have been completed."

- d. On 27 April 2009 (B856), the Ombudsman received a letter from P Lloyd Jones & Co Solicitors on behalf of the Respondent referring to the letters of 17 and 31 March 2009 and the complaint form. The letter stated as follow:

".....In order to advise our client we hereby invite the actual issues considered by the Ombudsman in arriving at his decision. It is noted that our client was not consulted in relation to the said process other than submission of the appropriate complaint documentation. As you will appreciate our client was advised that he did not need to respond to the Code of Conduct complaint and would respectfully suggest that your initial letter should have provided a far greater transparency in relation to the process to be undertaken.

In the circumstances we hereby invite an appropriate timetable to be provided in relation to the investigation and more particularly the manner in which the investigation is to be

performed. We are in possession of a response by our client to the issues raised in the complaint but will defer submission of same pending your responses to the issues raised herein.

Notwithstanding the above, we assume that you are aware that the issue of the Code of Conduct complaint has been placed in the public domain and suggestion made by the Corporate Management Team that the Code of Conduct complaint was the last resort. However, the Corporate Management Team appear to be in conflict with the protocol on member/officer relations and we enclose an extract in relation to same and would refer you to Clause 14. As far as we are aware the said process has not been undertaken and it would appear that the Corporate Management Team have acted in a precipitous manner as against Councillor Patrick Heesom. It is also noted that the entire Corporate Management Team appear to have endorsed the complaint although the complaint is limited to issues which do not involve the entire Corporate Management Team.”

- e. A letter was received on the same date by the Ombudsman referring to the complaint made by Councillor Armstrong-Braun. The letter (B865) from the solicitors states as follows:

“.....We reiterate the previous representations made in our earlier correspondence concerning the conduct of the case by the Ombudsman. We also invite intimation at the earliest opportunity as to whether the investigation by the Ombudsman is appropriate, bearing in mind the response of the Council Leader and the lack of conciliation and/or mediation in this particular matter. Notwithstanding the content of the response by the Leader of the Council we would respectfully suggest that the said response addresses any concerns that Councillor Armstrong-Braun has expounded. Nevertheless, and without prejudice to the above comment, we hereby give notice that our

client does not accept the matters addressed by Councillor Armstrong-Braun.”

- f. The Director of Investigations on behalf of the Ombudsman replied on 29 April 2009 (B873) as follows:

“It may be helpful if I explain that the Ombudsman’s function is to consider complaints that a member of a local authority has or may have breached the authority’s code of conduct for members. In deciding whether to investigate the complaint the Ombudsman applies a two-stage test.

Firstly, the complainant must submit significant evidence to support the complaint. Secondly, the Ombudsman must be satisfied that if proved, a Standards Committee would compose a sanction. However, before we reach a decision, the member concerned is informed that the complaint has been received and given all the information we had in support of that complaint. Your client was informed of the complaint and given all the evidence submitted in its support on 17th March 2009.

In our letter dated 31st March 2009, we informed your client of our decision to investigate the complaint. That letter informed your client of the alleged breaches of the code that were subject of the investigation. The letter also set out the investigation process and invited your client to contact me if he wished to discuss that process. It is not possible to give an indication of how long the investigation will taken, although it will be concluded as quickly as a thorough investigation permits.

I note your comments about the action of the corporate management team but the workings of the officer/member protocol and any breach of that protocol by officers is outside the

Ombudsman's jurisdiction. As I explained earlier his jurisdiction is confined to the actions of members."

- 18.8. No representations were made by the Respondent nor his solicitor as to witnesses whom the Ombudsman should interview. There was no obligation on the Respondent to provide a response. He did not provide a response though his solicitors noted he had prepared an initial draft. He had available copies of the complaint and all the attachments.
- 18.9. The investigation on behalf of the Ombudsman was carried out by his Director of Investigations. Documents were obtained and Officers, elected Members and members of the public were spoken to. It would appear from witness evidence before the Case Tribunal that interviews on behalf of the Ombudsman were by way of questions and answers, a witness statement drafted and submitted to the witness for them to consider, amend and sign. It is apparent from looking at the original handwritten statements that a number were amended prior to signature. Approximately 50 witnesses provided written statements. Further documentation was provided by some of the witnesses some of which was attached to their witness statements and some supplied separately to the Respondent. For example, Councillor Arnold Woolley produced his diary. Relevant pages were attached to his statement. Witnesses such as Peter Pemberton produced a hand written note which was attached to his witness statement.
- 18.10. Some of the witness statements cover issues which are not before this Case Tribunal. We have made directions where such evidence is to be excluded from our consideration. We have been critical that some of the witness statements are poorly drafted in terms of vagueness as to dates or to which meeting specific comments refer. We initially prepared a list of witnesses from whom we considered it essential that we heard live evidence. This list was significantly expanded upon following representations by those representing the Respondent. All witnesses spoken to by the Ombudsman and who were called to give oral evidence were allowed to be cross-examined by those representing the Respondent This was notwithstanding the fact that some of

those witnesses had been spoken to by legal representatives of the Respondent. With the exception of Mrs Cora Dodd, no further witness statements were adduced for our consideration by those representing the Respondent. The Respondent was given every opportunity to call witnesses whose evidence we considered to be relevant to the issues under consideration.

18.11. On 31 July 2009, following conclusion of the investigation and the obtaining of witness statements, copies of those witness statements and other documents obtained during the enquiries were forwarded to the Respondent. Three additional witness statements were forwarded on 4 August 2009. The letter of 31 July 2009 (B875) also noted the following:

“We now need to interview you so that you can respond to the complaint now that you are aware of all the evidence that we have gathered. However, before arranging the interview it is only fair to give you the opportunity to consider in full the large amount of information which is now supplied to you.

Therefore, I should be grateful if you would let me have some convenient dates in September so that we can arrange a mutually convenient date. An early indication of your dates would be appreciated so that we can make the necessary logistical arrangements.

As a guide I suspect the interview may go into two days and so consecutive dates would be appreciated.

I confirm that the investigation is still focussing on alleged breaches of the Code as set out in my letter dated 31 March 2009.

Finally, the information has been sent to you in confidence and should not be disclosed to anyone other than a legal or other adviser. If the information is disclosed to other persons disclosure may amount to a

breach of paragraph 4(c) and 7(a) of the code. In addition you should not discuss the complaint with any of the witnesses whether directly or indirectly as such contact may be construed to similar breaches of the code.

I look forward to receiving your convenient dates. Once we have arranged for the interview, I will explain the procedure which will govern the interview.”

18.12. The letter of 4 August 2009 (B877) again enquired whether the Respondent could provide convenient dates for an interview as soon as possible.

18.13. On 14 August 2009 (B878), a further letter was forwarded, asking whether the Respondent was now in a position to indicate convenient dates for interview.

18.14. On 27 August 2009 (B879), a further letter was sent by the Director of Investigations, referring to the earlier correspondence and noting he had not had any reply. The letter indicates as follows:

“As I explained in my letter dated 31 July 2009, having completed the first stage of the investigation you have been invited for interview so that you can provide your explanation and account of the matters subject to the complaint against you. I also, in that letter, asked you to clarify dates in September which were convenient to you.”

18.15. The letter offered two different sets of consecutive dates in September 2009.

18.16. A response was received to the letter from the Respondent’s solicitors noting he had now been served with the substantial amount of documentary evidence for his consideration. No indication was given in the letter of any delay in his receipt of the documentation. At the hearing, the Respondent stated there may have been delay in him receiving the documentation due to the large parcel having gone to another address. This however did not relate to the subsequent letters. No such indication was given at the time by his

solicitors, nor did the Respondent explain why he did not respond to further letters received. The Respondent's solicitors in the first response to the Ombudsman's request for an interview suggest the proposed interview dates may be unrealistic as "our client is carefully considering each and every exhibit page". The letter 1 September 2009 (B881) further notes:

"Nevertheless we recall that an indication was given in the first instance that a decision would need to be taken as to whether or not the Ombudsman should continue the investigation. It does not appear that information has been provided in relation thereto but for the avoidance of doubt, would be grateful if you would confirm the initial investigation undertaken by you has been considered by the Ombudsman and that a decision has been taken to pursue the original complaint. We note that the original complaint has now been substantially supplemented by the investigations carried out by your department, without the benefit of consideration of the documentary evidence served. It would appear that the original complaint has now been substantially enhanced by your department as against the initial complaint lodged."

18.17. On 9 September 2009 (B883), a response was forwarded by the Director of Investigations, making reference also to a telephone call on 8 September 2009. It states:

"I can confirm that the Ombudsman has decided that the investigation should continue. This decision was made after reviewing all the available information. I can confirm also that on 31 July 2009 Councillor Heesom was sent all the information considered by the Ombudsman before he made his decision.

During our telephone conversation we discussed the option of Councillor Heesom initially providing a written response to the complaint. I confirmed that the investigation is confined to the complaints made by the Corporate Management Team and Councillor Armstrong-Braun and had not been extended. However, enquiries had

added to the evidence originally submitted by both complainants. We agreed that the provisions of a written response would be a better way forward rather than proceeding to interview straight away. I am grateful to you for this agreement which you will convey to Councillor Heesom.

It would be helpful if we could receive such response by Friday 2 October 2009. I appreciate that there is a large amount of information to consider, and the Councillor Heesom is still conducting his full duties as Councillor. However, he has had the information since 31 July 2009 and the above date will be some 2 months after he had received it. I do not believe that this is an unrealistic target. No doubt you will contact me again if there is likely to be a delay.

Once we have receive and considered the response, we will then be able to decide whether an interview will be required. If one is required, it will in all likelihood be more targeted, and therefore require less time than one conducted without a written response.

If I can provide any further information about an investigative process please do not hesitate to contact me.”

18.18. No written response was provided by 2 October 2009 but a letter was sent to the Ombudsman by the Respondent’s Solicitors 2 October 2009 (B885) stating

“We hereby give notice that we have received from our client appropriate statements in relation to the aforementioned parties. We have been invited by our client to consider the said documentation before submitting the same to your good selves. We will review same and forward the documentation as a matter of urgency.

However, the response in relation to the complaint of FCC is based upon the original papers. Our client is still “trawling” through the substantial documentation submitted to him for consideration. We are

uncertain as to whether there will be need for an addendum to the original statement. We trust the information herein is satisfactory for your purposes at this stage. Nevertheless, we anticipate that the documentation referred to herein will be in your possession during the course of the week commencing 5th October 2009. “

18.19. On 13 October 2009, the following letter (B886) was forwarded by solicitors on behalf of the Respondent:

“Further to your correspondence of the 9th September 2009, we note that the Ombudsman has decided that the two investigations should continue and that all necessary documentation was submitted to our client before the appropriate final decision of the Ombudsman.

We note the agreement that a written response by our client would be a satisfactory response and in this context our client “single handedly” has been considering the substantial volume of documentary evidence which has been produced by your department after a number of months investigation. As you will appreciate, our client does not have the resources available to the Ombudsman’s Office and has endeavoured to deal with the matters in an appropriate timescale.

In the first instance, we take the opportunity of enclosing herein our client’s response and Appendix in respect of the complaint made by Councillor Armstrong-Braun.

It is anticipated that our client’s responses to the original complaint laid by the Management Team will be forwarded to you within the next 48 hours, as the Writer is currently reviewing the documentary evidence as submitted to our office. Therefore as you will appreciate, our client has prepared his submissions and has requested our advice thereon. We will contact you further in due course.”

18.20. The letter had attached the Respondent's response to the complaint from Councillor Armstrong-Braun only. The response to the remaining part of the complaint was not forwarded until 12 November 2009.

18.21. The response by the Director of Investigations for the Ombudsman to the Respondent's solicitors dated 18 November 2009 (B889) was as follows:

"Thank you for your letter of 12 November. We are yet to receive a hard copy of your faxed letter and enclosure of this date and would be grateful if you could provide a hard copy.

In view of the comprehensive response which has now been provided in respect of both complaints, the Ombudsman does not propose to interview Councillor Heesom. The Ombudsman's intention is to proceed to issue a draft report, upon which you will be given an opportunity to comment in due course."

18.22. The Respondent did not respond to this letter nor to the indication that the Ombudsman via his investigator did not intend to interview the Respondent.

18.23. The Ombudsman prepared a draft of his report. In that report he summarised the responses received from the Respondent. A copy of the draft report was forwarded to the Respondent on 2 June 2010 and his comments were invited by 29 June 2010. The Respondent's solicitors requested an extension for a response until 14 July 2010 which was granted. Reminders were sent subsequently by the Ombudsman which resulted in a further letter being received from the Respondent's solicitors dated 19 July 2010 requesting a further extension. This request was refused, though the Respondent was advised that representations on matters or evidence not contained in the report could be made to the Case Tribunal convened by the President of the Adjudication Panel for Wales.

18.24. To the extent that we have to consider the nature of the Ombudsman's investigation, we find no grounds submitted on behalf of the Respondent that the Ombudsman "*appeared to have acted in a wholly biased way*". The Ombudsman had received a complaint, he considered the complaint and decided that it should be investigated, the investigation was delegated to an appropriate Director and statements were obtained and copied to the Respondent. The Respondent was advised throughout of the nature of the complaint and the evidence supplied. At no time was there any indication given by the Respondent that he wished a specific witness to be interviewed. The Ombudsman was acting upon the information he had received from the individual members of the CMT and from Councillor Armstrong-Braun. All the initial documents were supplied by the complainants. We fail to see from what other source initial documents would emanate. Subsequent documents were supplied by the Council, through its Monitoring Officer, who was one of the complainants, and by individual witnesses. All of this, however, is subject to the premise that we as a Case Tribunal carry out our own adjudication of the facts of the case. Our procedures and practices are outlined in the Regulations. Those representing the Respondent have sought to make a direct analogy between criminal proceedings and our procedures. That is incorrect. The Ombudsman's Counsel conceded some similarity when considering the issue of motive. The concession was not a concession that for example, strict rules of evidence for criminal proceedings should be applied to our procedure. Counsel for the Ombudsman in his submission 20 January 2011 states:

"4 - At least in relation to the process by which the Panel becomes seized of the case, the process is much more akin to a criminal process than a civil one. In an ordinary civil process a claimant makes a claim against a defendant and places a defendant at immediate risk in relation to the outcome of the process. It follows that the claimant, in an ordinary civil claim, can abuse the process, by placing a defendant at immediate risk in relation to the outcome of the process for an ulterior motive. Where the ulterior motive is the exclusive (I stress,

“exclusive”) motive for the claim, the court will not permit such conduct.”

18.25. At paragraph 6 of his submission Counsel for the Ombudsman notes, after outlining the procedure, how a complaint is referred to the Ombudsman and investigated,:

“6 – That makes this process more akin to the usual initiating criminal process. A victim informs the police of a potential offence. The police investigate the potential offence. If they find sufficient evidence to support the potential offence they refer a file to the CPS, the CPS decides whether or not to prosecute and then, if the CPS prosecutes, a trial process takes place to determine innocence or guilt. The criminal process (and the PSOW says this process) is not subject to: “ulterior motive/abuse of process”, precisely because of the independent role of the police and the CPS. That is because the victim cannot properly be said to be in control of the progression of the process (in criminal cases the police and the CPS usually take that role and in the present process, the PSOW takes that role)...”

18.26. This does not mean that the role of the Ombudsman in the proceedings itself is akin to a prosecutor. It is submitted in the submissions as to a flawed investigation that because the role of both police officer and prosecutor is carried out by the Ombudsman, that in some way this is flawed. It would be true to say that most disciplinary procedures would fall foul of such provision. In this case, the complainants are the individual who made the complaint. The Ombudsman’s role was to assess that complaint and to investigate. He considered an investigation should be carried out and he deputised it to a Director of Investigations.

18.27. It is further submitted that the investigation is in some way flawed because of the lead role taken by the Council’s Monitoring Officer. It is submitted on behalf of the Respondent as follows:

“Any assertion that the complainant (the CMT in this case) was independent of the Ombudsman, and that the complainant in this case did not affect greatly the investigation of the Ombudsman, is clearly flawed.”

18.28. We do not accept either the factual or legal premise of this submission. The Monitoring Officer was one of the persons who made the complaint. He had a responsibility for producing documents to the Ombudsman. There is no suggestion that the Director of Investigations was in any way hampered by the conduct of the Monitoring Officer. The Monitoring Officer and, it appears, others at Flintshire County Council, made practical arrangements in terms of arranging interviews. It has not been submitted and there is no evidence that at any time the Monitoring Officer was present when witnesses were interviewed. There is no indication that the Monitoring Officer or any other persons at Flintshire County Council had an input in, for example, amending statements. The Monitoring Officer has a statutory position in terms of these proceedings. At the outset of the proceedings, this was raised with those representing the Respondent and the Monitoring Officer was not allowed to sit in on proceedings until he had concluded his evidence. His dual role was emphasised to those representing the Respondent who did not object to this course of action. Subsequently, the Monitoring Officer at the request of not only the Case Tribunal but also of those representing the Respondent carried out searches for other documents and copies have been provided to us. The Monitoring Officer and the Ombudsman are independent of each other and to suggest otherwise is wrong.

18.29. It is submitted that an option open to the Ombudsman would have been to refer the case to the Standards Committee. The Ombudsman can only refer a matter to the Standards Committee if he believes it is appropriate, in particular in terms of the seriousness of the allegations and the sanction to be imposed. The seriousness of the allegations and the level of involvement of members in this case would have made it a wholly inappropriate case in our view to refer to the Standards Committee.

18.30. It is suggested that failure to be “*open and frank*” with the Ombudsman by the Monitoring Officer and others has in some way created a flawed investigation. It is suggested, for example, that the Monitoring Officer had personally investigated the Dodd’s exchange. He had been involved in the Dodd’s exchange and had indicated to Mr and Mrs Dodd that he did not think that the Respondent had done “anything wrong” in the letter sent by the Respondent to them. It should be noted that the original referral to the Ombudsman in terms of the Dodd’s was by way of background information. The Ombudsman having received the information, took a contrary view that there was a matter which had to be investigated. He did so on the basis he has an independent role in the investigative process. The investigation revealed far greater evidence beyond the letter. Failing to reveal matters as to the request for early retirement by Susan Lewis does not undermine any part of the investigation by the Ombudsman. Indeed, as we previously indicated, knowledge of that background could well influence an investigator to take the matter more seriously. Some witnesses interviewed by the Ombudsman’s investigator clearly did give evidence which would be termed as favourable to the Respondent. The Respondent chose not to respond to the initial investigations, as he was entitled to do, but if he felt it was important before the Ombudsman finalised his report that there were witnesses who should be spoken to, he could have directed the Ombudsman’s investigators to such persons. This was an option open to the Respondent even before the Ombudsman had concluded he would conduct an investigation. The procedure before us as a Case Tribunal has allowed the Respondent to also call witnesses who are relevant to the issues.

18.31. As a Case tribunal we have noted some of the witness statements obtained by the Ombudsman could have been more detailed, and focussed. In respect of two witnesses, whilst asked by the Ombudsman about certain incidents they were not asked to comment on other incidents at meetings where they were present. Our proceedings, however, have allowed the Respondent and indeed the Case Tribunal to ask any questions considered relevant of those witnesses. Failure to follow all particular lines of enquiry does not mean that an investigation is flawed. Coming to his conclusions, the Ombudsman

summarised and considered the responses of the Respondent. Those representing the Respondent have submitted to us as follows:

“...the Ombudsman’s actions will inevitably have been influenced by the source of the complaint, the apparently comprehensive “investigation which had already taken place, and the disingenuous suggestion that all other avenues had been exhausted without success”.

18.32. Any complaint is going to reflect matters from the perception of the complainant. The role of the Ombudsman is to initially assess that as to whether any investigation is to be carried out and thereafter if considered appropriate to carry out the investigation. There is no suggestion that the Ombudsman did not carry out his investigation on anything other than an independent basis. There was no undue reliance or any misconception in the investigation on the basis that the initial information was as a result of collation of documents carried out by individual members of the CMT. It is misleading to suggest that the Ombudsman in any way limited his role due to the nature of the information provided with the complaints. The enquiries made on behalf of the members of the CMT were also appropriate, proportionate and fair. The issue of other avenues to deal with any alleged misconduct by the Respondent was raised in early correspondence with the Ombudsman and responded to appropriately. It is wholly misleading on behalf of the Respondent to suggest the collation of information in order to submit a letter of complaint to the Ombudsman amounted to a “comprehensive investigation”.

18.33. The relevance of *R v Leominster Magistrates Court Aston and Another ex parte Manor Brewery Company (The Times, 8 January 1997)* is in respect of disclosure and has been addressed by us in an earlier ruling.

18.34. We see no basis to find that the Ombudsman’s investigation was flawed. Even if that investigation had been flawed, we are carrying out a fresh

adjudication. The procedure has allowed the Respondent to have a full and fair hearing of all the relevant issues.

18.35. In a response to comments made on behalf of the Ombudsman, those representing the Respondent indicate *“it is not accepted that the Ombudsman was independent of the CMT. On the contrary, it is submitted that the two worked as a team, and the Ombudsman’s investigation was biased, or was tainted with the appearance of bias against [Councillor Heesom].”* We find no evidence to support such a contention. Witnesses were spoken to independent of the Monitoring Officer. The fact that practical arrangements to set up interviews were made by Flintshire County Council does not invalidate the process nor the independence of the Ombudsman. No witnesses indicated, for example, that their witness statements had to be channelled through the Monitoring Officer or any member of the CMT. They were statements independently and freely given to the Ombudsman by those witnesses. The Ombudsman subsequently weighed up all the evidence in the course of his investigation and prepared the report, which included consideration being given to the written responses of the Respondent. We repeat, we as a Case Tribunal are not in any way governed by the findings of the Ombudsman and independently have carried out an inquiry and reached our own conclusion on the facts of the case.

18.36. It is suggested that witnesses who subsequently gave favourable evidence on behalf of the Respondent were treated differently. We find no basis for such a submission. In terms of Mrs Dodd, her evidence was that she had been interviewed where questions were asked and answered. She states *“and at the end, they asked to just briefly look at the statement and sign it.”* (pg 11, 16.06.11 (2 of 3)). They also said that we would receive copies of the statements through the post and whatever we did not agree with, we could amend it.” Mrs Dodd states this never happened. No formal witness statements were prepared and their evidence put forward as a questionnaire. This did not detract from the strength of that evidence. Mrs Dodd with the assistance of those advising the Respondent has been able to prepare a full statement which has been put before us as a Case Tribunal. We have had

the benefit of Mrs Dodd giving sworn evidence. To suggest that because one witness's evidence was initially in the form of a questionnaire as opposed to a witness statement, as giving the appearance of bias, is wholly without foundation.

19. THE OMBUDSMAN'S INVESTIGATION BEING HIJACKED BY THE CMT

- 19.1. A further basis submitted by the Respondent is that he seeks a stay or strike out due to abuse of process, namely that the Ombudsman's investigation was hijacked by the CMT.
- 19.2. Mr Hughes in his submission on behalf of the Ombudsman, rejects any suggestion that there is any basis that the Ombudsman's investigation was in some way improperly influenced by the CMT. He argues that there is no evidence to support the Respondent's contention to that effect. He also states that the reference to the case of *R v Leominster Magistrates etc* has no relevance to the present process, by which we assume he means our adjudication, and the current stage of the proceedings, namely our consideration of, and findings of fact, coupled with our deliberations and decision on the Respondent's application for a stay of the proceedings due to abuse of process.
- 19.3. The Respondent sets out his case under this heading at paragraphs 166 – 178 of his written submissions on abuse.
- 19.4. His contentions can be summarised as follows:
- a) The Code of Conduct regime envisages that the Ombudsman will only investigate if he receives a complaint from an individual who has direct knowledge of the behaviour they are complaining of. Reference is made to the Ombudsman's updated guidance. As an example, the Respondent refers to the evidence of Peter Evans concerning his alleged overhearing of the Respondent

remarking that Susan Lewis “was shit at her job”, yet for whatever reason, the Ombudsman chose not to interview Mr Evans.

- b) The Ombudsman recruited the CMT as part of his investigation team and used officers of Flintshire County Council to coordinate his meetings and discussions with potential witnesses.

- c) The Ombudsman has during his investigations demonstrated bias against the Respondent.

19.5. We shall deal with each of these arguments in turn. Firstly, it is correct that the Ombudsman’s guidance envisages that his role and preparedness to investigate a complaint must be based on the complainant having “direct knowledge of the behaviour they complained about”.

19.6. The Respondent suggests that since in this case the complaint was submitted by the CMT, some of whom had no “direct knowledge” of any of the incidents that are the subject of the complaints, that the Ombudsman should have rejected the complaint and not pursued his own investigations.

19.7. There is a misconception in the submission as the Respondent seeks to equate “direct knowledge” with “directly witnessing”. All of the signatories of the letter of complaint were aware of concerns raised by Officers, some of them Junior Officers, of Flintshire County Council.

19.8. The Senior Officers resolved that a referral should be made to the Ombudsman. Before the letter was sent, collation took place of the information available and memorandums/statements prepared by the individuals concerned were attached to the letter as well as emails and letters.

The individuals who became signatories to the letter would have considered the contents before signing and therefore had “direct knowledge” of events. To suggest that complaints could only emanate from persons subjected to, for example, abusive conduct, or who were present and witnessed such conduct, is erroneous.

19.9. The argument also ignores the fact that one of the members of the CMT was Susan Lewis, who not only signed the complaint as an individual member of the CMT but also was someone who it is alleged that the Respondent had directed his campaign of bullying and harassment against over a period of some two years.

19.10. In addition, other (but not all) of the individual members of the CMT also had directly witnessed some of the incidents that are referred to in the complaint. For example, Carl Longland, Colin Everett, Pam Webb and Barry Davies.

19.11. For those reasons, we see no basis for the argument that the Ombudsman’s investigation was in some shape or form flawed, because he accepted the complaint which had been signed by all the individual members of the CMT, albeit that some of them had not witnessed some of the events complained of.

19.12. We now turn to the role of Peter Evans, the Deputy Monitoring Officer and the Assistant Legal Adviser to Flintshire County Council. We refer the parties to our findings of fact regarding the evidence of Peter Evans and in particular concerning his contemporaneous note which he prepared after, he says, he overheard the Respondent commenting that Susan Lewis was “shit at her job”. We refer to an earlier ruling also given in terms of this incident.

19.13. We have already indicated in this decision that the Ombudsman’s investigation could have been more focused on the main allegations which are the subject of the complaint and that the written statements obtained could have been clearer and more concise. We also accept that the Ombudsman did not, but perhaps should have, interviewed Mr Evans. However, Mr Evans

gave evidence before us and we refer to our findings of fact concerning that evidence.

19.14. For those reasons, the fact that Mr Evans was not interviewed by the Ombudsman does not detract from his evidence which we have already indicated we accept.

19.15. We now turn to the claim that the Ombudsman recruited the CMT as part of its investigating team. It is true that we had evidence during our investigations that the Ombudsman did ask Officers of the Council to assist him in coordinating arrangements and arranging facilities for his staff to interview potential Council employees during working hours. Indeed, it would be surprising that they did not, when one takes into account the fact that the Ombudsman's offices are located some 180 miles away from Flintshire County Council's offices in Mold.

19.16. However, to suggest that such discussions and coordination resulted in Members of the CMT being "recruited" as part of the Ombudsman's investigation team is not only fanciful but frankly absurd. Flintshire also had a duty of care to employees and had to ensure appropriate arrangements.

20.17. Finally, during the lengthy process of receiving evidence from 48 witnesses over 52 days, and in preparation of our findings of fact and this response to the application for a stay, we found no evidence that the Ombudsman has demonstrated a bias towards any of the complainants or more in particular, against the Respondent.

20. THE RESPONDENT'S HUMAN RIGHTS

20.1. It is submitted that at no point in the investigation did the Ombudsman consider the Respondent's rights under Article 6, 8 or 10 of the Convention ECHR. We as a Case Tribunal have heard matters afresh and have had full regard for the Respondent's rights under Article 6, 8 and 10.

- 20.2. In terms of Article 10, that is an aspect of matters we will need to consider after making findings of fact. In the submissions made, at paragraphs 179 – 184, no direct issue is raised in terms of lack of regard to Article 6 and Article 8 rights by the Ombudsman. Reference is made to the earlier submission on behalf of the Respondent (17 January 2011). Much of the submissions are made in terms of ulterior motive, which has already been addressed. Unfairness is claimed on the grounds of delay. This Judgment addresses issues of delay. We see no issues in terms of Article 6 and Article 8 being raised, which would justify a stay of proceedings nor of strike out.
- 20.3. In terms of Article 10, as a Case Tribunal hearing the matter afresh, we will consider issues under this Article based upon our findings of fact. In terms of the Ombudsman, we note the submission on behalf of the Ombudsman that whilst the words “Article 10” were not specifically referred to, this is a matter which was under consideration by the Ombudsman and there was no need to specifically note the same in his report. No examples are provided by the Respondent as to where the lack of regard by the Ombudsman may have breached his rights. The Ombudsman was entitled to investigate. He did so. He notified the Respondent accordingly and provided copies of all documents relied upon to the Respondent. He invited representations by the Respondent. He considered those representations. He supplied a draft copy of his report to the Respondent and invited comments before finalising the report.
- 20.4. In terms of the report, it includes consideration of the Respondent’s right of free speech. For example, at paragraph 578 of the report (B216) referring to comments at the Scrutiny Meeting on 14 February 2007, the Ombudsman notes:

“I take the view that the comments which the evidence suggests were made by Councillor Heesom at the meeting amounted to a failure to show respect and consideration for others, both in their substance and in the context of the meeting. Whilst members are entitled to raise concerns about the performance of officers and indeed departments

generally, they should ensure that such concerns are raised in the appropriate forum and in an appropriate manner and, that any comments they do make do not contravene the Code.”

- 20.5. Paragraph 581 – *“Accordingly, whilst I have carefully considered Counsellor Heesom’s concerns about the substance of Mrs Lewis’s statement at the Visioning Day, it seems to me that there is sufficient evidence to suggest that his behaviour crossed the line of legitimate challenge and did involve the use of bullying behaviour.*
- 20.6. Paragraph 588 – *“...I take the view that Councillor Heesom’s behaviour crossed the line from robust questioning of officers at the meeting and was behaviour which compromised or which was likely to compromise the impartiality of an officer.”*
- 20.7. Paragraph 593 – *“Whilst a member may legitimately challenge an officer’s views, such a challenge must not cross the line from being forceful to bullying.”*
- 20.8. Paragraph 605 – *“It therefore seems to me from the evidence that Councillor Heesom’s behaviour crossed the line from robust and challenging to intimidating and bullying [Head of Housing].”*
- 20.9. Paragraph 611 – *“Councillor Heesom’s letter to Mr Longland also, in my view, sought to undermine him and went beyond a mere expression of his views on the matter, instead involving bullying behaviour. I particularly note Councillor Heesom’s comment that he sought legal advice and intended to seek due consideration of the matters at hand. On the basis that the letter was an internal document only and further to my published guidance on the Code, I do not take the view that the evidence supports a breach of paragraph 6(1)(b) of the Code in relation to Councillor Heesom’s letter to Mr Longland.”*
- 20.10. Paragraph 615 – *“Councillor Heesom’s general behaviour towards officers at the meeting suggested that he failed to show respect and consideration to*

them, particularly with reference to the level of challenge it appears he employed in relation to the report”.

20.11. These are only examples. The report takes into account what the Respondent was saying in terms of the comments admitted and comments denied and their context. We do not find there should be a stay on the basis that there had been no consideration of any Article Rights under the ECHR by the Ombudsman. As indicated, we are considering matters afresh. We will be giving due consideration to Article 10 when considering breach.

21. FAILURE TO INTERVIEW

21.1. It is further submitted that there has been an abuse of process as a result of the failure of the CMT and the Ombudsman to interview the Respondent.

21.2. We have outlined above the procedure which was followed by the Ombudsman when the complaint was made. We have also outlined the concerns leading up to the complaint and the apparent failure of the Respondent to accept words of caution. The following would appear to be undisputed.

21.3. Within four working days of the Ombudsman receiving the complaint from the individual Members of the CMT, a copy of that complaint, together with the attachments which included notes prepared by, for example, members of the Housing Department, were handed to the Respondent. Further, the Ombudsman posted to the Respondent a copy of the complaint letter and attachments under cover of his letter 17 March 2009.

21.4. He was advised that he need not respond to the letter if he did not wish to do so. However, if he did wish to respond, the Ombudsman may take account of what he says in deciding whether to investigate.

21.5. A similar procedure ensued in respect of the complaint made by Councillor Armstrong-Braun.

- 21.6. By at latest 27 April 2009, the Respondent had prepared a response to the issues raised in the complaint. This is noted in the letter 27 April 2009 received by the Ombudsman from the Respondent's solicitors.
- 21.7. On 31 July 2009, copies of all witness statements (with the exception of Mrs Helen Stappleton, Mr Carl Longland and Miss Jenny Williams) had been forwarded to the Respondent. The remaining three witness statements were forwarded on 4 August 2009. This is a period of less than five months after receipt of the initial complaint.
- 21.8. On 31 July, 4 August and 14 August 2009, the Respondent was invited to contact the Ombudsman to provide dates for arrangements for interview. He did not respond to those letters. On 27 August 2009, two alternative set of dates were provided to the Respondent for an interview. On 1 September 2009, it was submitted that the suggested interview dates were unrealistic having regard to the further time which the Respondent wished to consider the documentation.
- 21.9. A telephone conversation took place between the Investigator and the solicitor acting for the Respondent, when it was agreed that the initial response of the Respondent would be in written form only. The date of 2 October 2009 was noted as the proposed date for response. A response in terms of the complaint of Councillor Armstrong-Braun was sent by solicitors for the Respondent on 13 October 2009. Notwithstanding the fact that the letter indicated that the response to the complaint made by the members of the CMT would be forwarded within 48 hours i.e. on or before Thursday 15 October 2009, the response was not sent until Thursday 12 November 2009.
- 21.10. On 18 November 2009, the Director of Investigations indicated that in view of the comprehensive response, the Ombudsman did not propose to interview the Respondent. It was noted in the letter that there would be a further opportunity for the Respondent to comment on the draft version of the report.

The Respondent chose not to respond to the draft report within the timescale allowed.

21.11. Reference is made in terms of criminal cases as to the need to interview those under suspicion of having committed criminal offences. Reference is made also to delay, which could result in the individual not receiving a fair trial.

21.12. We repeat that this is not a criminal case but we are fully aware of the rights to ensure the Respondent has a fair hearing in accordance with his Article 6 Rights. The Respondent was given the opportunity to provide dates for an interview and to attend such an interview but he chose, through his legal representatives, not to avail himself of that opportunity. Initially his preference as expressed via his solicitor was to provide such responses in writing. The Ombudsman's Code of Conduct notes the benefit from a face-to-face interview. This, however, does not impose an obligation on the Ombudsman to interview. As a Case Tribunal, we believe some of the issues may well have been assisted by a face-to-face interview, as it may have clarified the facts in dispute. The response provided by the Respondent in November 2009 was indeed comprehensive. It is only in the course of his evidence that the Respondent noted that for an unexplained reason his response did not address the contents of the witness statements which had been provided to him at the end of July 2009. We note the Respondent's solicitors had in September 2009 requested further time in preparation of a response as the Respondent wished to consider each and every page of the documents provided to him. The fact that he did not avail himself of that opportunity is a matter which must rest at his door. The Respondent was afforded every opportunity to present his case to the Ombudsman. He could initially have responded in March 2009. It is known in April 2009 that he had prepared a response but had chosen not to forward it to the Ombudsman. At the beginning of August 2009 he could have responded, either in written form or by confirming the dates for an interview. He did not respond to three letters inviting him to attend for interview nor did he accept the set of dates provided for an interview. It was agreed at the beginning of September 2009 that within

four weeks he would provide initially a written response. The Respondent exceeded significantly the agreed deadline for submission of his written response, by a period in excess of six weeks. No dissent was indicated by the Respondent or his solicitors to the suggestion in November 2009 that the Ombudsman would proceed on the basis of the written response only.

21.13. There was no obligation upon the members of the CMT to interview the Respondent prior to submitting the complaint. Indeed, their attempts to resolve issues directly had not been successful.

21.14. The bulk of the authorities quoted by those representing the Respondent refer to delay in defendants (in the main as to criminal proceedings) being made aware of the precise nature of the conduct under scrutiny. The Respondent was aware within a week of the complaint being made to the Ombudsman of the nature of those complaints and also had copies of the evidence supporting it. He was provided within five months of the complaint being made with copies of the witness statements. He was therefore made fully aware of the nature of the investigation and of the precise details of misconduct alleged. There is no set limitation date for the bringing of a complaint to the Ombudsman.

21.15. The Case Tribunal takes on board the period of time which has passed between the incidents alleged to have occurred in 2007 and 2008. There are, however, a number of documents available which assist both the Case Tribunal and the Respondent in terms of those incidents. The Case Tribunal takes on board that as time passes memories will fade.

21.16. None of the incidents complained of should be stayed on the basis of either failure to interview the Respondent nor in terms of any delay.

21.17. Those representing the Respondent have referred to each specific incident as regards their submission that the failure to interview the Respondent has resulted in an abuse of process. Some of the points made in the submission do go somewhat further, for example, in terms of issues not being raised at

the time and/or individuals being of the view that the facts did not give rise to any potential breach of the Code of Conduct.

21.18. The submissions made on behalf of the Respondent do contain some factual errors.

21.19. At paragraph 210 of the Submissions, the Respondent states he was handed a letter of complaint by the Chief Executive and Barry Davies on 15 March 2009. It is submitted further on behalf of the Respondent that it was not until the end of July 2009 that the Ombudsman sent the Respondent documents and witness statements. This is erroneous as on 17 March 2009 a letter is forwarded enclosing the complaint and attached documentation to the Respondent. It was the witness statements and any documents attached to the witness statements that were forwarded on 31 July 2009. Those statements of course had not been obtained in March 2009.

21.20. It is further submitted that the Ombudsman "*had frozen [Councillor Heesom] out of the investigation*". This is not correct. In his letter of 17 March 2009 the Ombudsman indicated that whilst there was no obligation to reply, it was open to the Respondent to respond. We know from the first letter sent by the Respondent's solicitors to the Ombudsman that the Respondent had prepared an initial draft response. The submission in sub-paragraph 4 of paragraph 210 that it was not until the beginning of September 2009 that the Respondent "*was able to sit down and properly evaluate those documents and witness statements*" is wrong in fact. He had in March 2009 a significant amount of documents, which included memorandums prepared by members of the Housing Department, and knew the nature and detail of the majority of the complaints. The witness statements were forwarded to him at the end of July 2009. No indication is given in any correspondence in August/September 2009 that there had been a delay in receipt of the documents from the Ombudsman.

21.21. We briefly address the general submission as they relate to the specific incidents:

I. Scrutiny Meeting, 14 February 2007.

- a. It is accepted that the complaint to the Ombudsman was not made until 2 years after the events complained of. We would point out that there is no limitation point and a delay of 2 years in our view would not amount to grounds for a stay on abuse of process. Minutes remain in existence to assist. We have also had benefit of unofficial handwritten notes.
- b. The Respondent was aware at the time of concern as to his conduct. Susan Lewis had noted on the following day to the Scrutiny Meeting what she considered to be rude and disrespectful behaviour by the Respondent. The complaint was also reiterated in a letter to Chris Kay, the Acting Chief Executive and Barry Davies on 19 March 2007. Reference is made in the letter to it being raised on 15 February 2007 also.
- c. The evidence of Barry Davies, in his written statement at B240, is as follows: *“Following the meeting of the People & Performance Overview and Scrutiny Committee in February 2007 I did mention to Councillor Heesom that Susan Lewis had been upset by the comments that he had made at the Committee meeting. I suggested that he may wish to consider apologising to Susan Lewis. He indicated that he did not feel it appropriate to do so, as he had a wealth of information to support the comments that he had made. I did indicate that there was a process for dealing with issues of perceived competence and he appeared to accept what I said. He was however adamant that he was not going to apologise for the statements that he had made.”* Barry Davies, under cross-examination, stated as follows: *“...in the subsequent statement, I indicated that I’d spoken to Councillor Heesom about it, indicated that an apology would be helpful, and he was not prepared to give that apology.”* The response from Counsel to the Respondent to the

statement was: *“Oh, no, can I say, we accept that, because Councillor Heesom’s position is he did nothing wrong.”*

d. Later, the exchange is as follows:

Chair: *...What has been said is Mr Davies spoke to him, asked for an apology, no apology was forthcoming because he didn’t think he had done anything wrong. Did you deem it “dealt with”?*

B Davies: *“No, it patently wasn’t dealt with”.*

Counsel: *“Well it didn’t go any further, did it?”*

B Davies: *“It didn’t go any further, no.”*

And Barry Davies in his evidence further states.

B Davies: *“15th of February, yes...it might have been the same day or certainly the next day because I spoke to Councillor Heesom about it. Yes, it went no further because Councillor Heesom indicated that he felt he had got ample evidence for what he said at that meeting in relation to the shambolic nature of the Directorate.”* (pg 8, 17.02.11 (1 of 3))

e. The written statement of the Respondent in February 2011 states as follows:

“When I described the Directorate as being “a shambles” I was referring to what I considered to be a poor level of performance within the Department on the question of employee absenteeism. I did not direct my comment at any individual but it was my value judgement on the performance of the

Department. I have no recollection at all of using words to the effect that managers were being dispensed with and that there were “more to go.”

The Respondent therefore in his evidence had specific recollection of the meeting. Indeed, he has been able to present to the Case Tribunal significant details as, for example, to sickness records and concerns as to the performance of the department.

- f. In examination in chief, the Respondent acknowledged that Barry Davies had spoken to him asking him to apologise. He does not in his statement indicate a date of the conversation with Barry Davies, noting only *“I did not even know about this complaint until months later”*. The evidence of Barry Davies is that he spoke to him following the meeting in February 2007. As a finding of fact, we find that Barry Davies spoke to the Respondent raising concern of his conduct in the meeting on 14 February 2007 very close to the meeting, more likely than not within weeks at most and not months later as alleged by the Respondent. The trigger for Barry Davies speaking to the Respondent would have been the complaints made to him verbally on 15 February 2007 and / or the letter copied to him on 19 March 2007.
- g. We further note that the Respondent in his examination in chief by his own Counsel accepted that Chris Kay the then acting Chief Executive had spoken to him (pg 14, 17.09.12 (2 of 3)):

Mr Murphy: *“When Barry Davies spoke to you, you said it was months later in your statement, did he actually explain in detail the complaint that’s been made? The complaint that was being made by Susan Lewis?”*

Cllr Heesom: *"No, it was, I think a part of the meeting where we were talking about other things and it was "oh, by the way, Susan Lewis wanted you to apologise".*

Mr Murphy: *"...Councillor Heesom, when Barry Davies spoke to you about this, and you alluded to the fact that it was at a meeting dealing with other issues, did he go into detail of the complaint, or did he just say there has been a complaint?"*

Cllr Heesom: *"No, he didn't".*

Mr Murphy: *"Now also Chris Kay spoke to you about this."*

Cllr Heesom: *"Again, in passing. It was not like, "oh, can I see you about this?"*

Mr Murphy: *"Neither of them went into detail?"*

Cllr Heesom: *"No"*

The Respondent was able to provide substantial detail as to some of the finer points relating to the 2007 scrutiny meeting. For example, he was able to give his reasons why Susan Lewis had been called to the meeting, and a response by Susan Lewis *"that they were getting on top of the job and they were doing well"*. He could recollect Mrs Mullaney and Mrs Lewis being *"fairly resistant to criticism"*. In examination in chief the Respondent stated (pg 17, 17.09.12 (2 of 3)):

Mr Murphy: *"Now just help with this, Councillor Heesom, obviously its a matter of public record that you use the word "shambles". I just want to ask you this, independently of the two minutes, do you have any*

recollection of actually using the word “shambles”?”

Cllr Heesom: *“No, I don’t actually but I think it was a fairly good description of what I recollect to have been reports about how they were managing the staff in that section. Having to resort to interviews on Sunday, and procedures of that kind, I felt perhaps was not what it should have been. “*

h. In evidence, the Respondent stated his recollection of the meeting was, *“Pretty clear I didn’t say that. It’s clear enough to remember that I was concerned about the management of the return to work after the sleep ins”* (pg 5, 20.09.12 (2 of 3)). During questioning he stated as follows in terms of the 2007 meeting

Chair: *“What do you remember saying?”*

Cllr Heesom: *“I remember saying that I don’t see where this working arrangement is getting us, it sounds like a shambles to me.”*

Chair: *“You remember that?”*

Cllr Heesom :*“Yes”.*

When asked by Counsel for the Ombudsman the Respondent stated: *“I think my comments in that regard, if you just give me a moment, Gwydion, please...is a that five and a half years ago now and certainly at the time it became an issue in 2009, I think the amount of recall one has of parts of the dialogue is not 100% reliable but this is an issue which has become something I’ve thought about and therefore I naturally have some thoughts about it. But in terms of not being told about it, I was particularly, interested in...”* (pg 6, 20.09.12 (2 of 3)).

We note also the issue of members conduct at the scrutiny meeting was raised at the Group Leaders Meeting on 14 March 2007. The Respondent was present.

There is no evidence to suggest that the matter was dealt with as having been closed. There was no referral to the Ombudsman in 2007. There was no referral to the Standards Committee. This is not a case where the breach or any potential breach was formally considered in such an environment and a finding of no breach having been made. There was no indication and no evidence presented by the Respondent that he had been expressly told that complaints arising out of his comment in February 2007 and indeed March 2007 had been dealt with.

We have already made a ruling in terms that there is no failure to disclose documents in existence, which would adversely affect the Respondent's right to a fair hearing and do not intend to repeat them in response to the further general submissions made by Counsel for the Respondent.

II. The Dodd's Exchange

- a. The submission made on behalf of the Respondent is that he did not obtain full details of the complaint until the beginning of September 2009. The Respondent was however aware that this was a matter which had been referred to the Ombudsman. It was, however, in the words of the letter, page 5, B627, "*As this is over 12 months old it is submitted as background information*".
- b. There is no time limit in terms of making a complaint to the Ombudsman nor in terms of what the Ombudsman can investigate. The Ombudsman deemed it appropriate to investigate the matter and to include it in his report. It has been included as a matter for

adjudication by the Case Tribunal. The response of the Respondent, on his own admission drafted in March/April 2009, comments upon the events surrounding the mutual exchange. Substantial detail is provided, suggesting the Respondent had a clear recollection of matters.

- c. A separate issue is whether or not the Monitoring Officer had dealt with matters. We refer to our earlier ruling in this regard.

III. 4 July 2008

The Respondent was aware in March 2009 of a complaint in terms of his conduct at the meeting on 4 July 2008. At no time in his response (March 2009) does he indicate that he has no recollection of the meeting. Indeed, he goes into some detail. The Respondent states that no gratuitous offensive remarks were made. The Respondent has had every opportunity in the course of these proceedings to present his case as to the events in July 2008 and any delay or failure to interview him does not affect his right to a fair trial.

IV. Visioning Day

- a. Issues in respect of the Visioning Day were raised almost immediately with the Respondent. There is an exchange of correspondence in respect of the same. Again, the Respondent during the course of these proceedings, has had every opportunity to put his case. No prejudice has been caused to the Respondent by the delay, in
 - (i) the complaint being made, and
 - (ii) commencement of our adjudication.
- b. This Case Tribunal has already noted and takes account that the longer a period has elapsed, the less clear a witness recollection may be. This is true not only of the Respondent and witnesses he believes support his case but also true of other witnesses. Part of the role of the Case Tribunal is to assess the evidence presented before it. In the

response drafted initially in March 2009 by the Respondent, he goes into some detail in respect of Visioning Day and again clearly has recollection of the event. Submissions made on Visioning Day, are:

- (i) *“The delicate balance and nuance involved in challenging someone...demands of the complaint is dealt with expeditiously.”* If this were true then most criminal proceedings would not proceed further if matters less than 12 months old could not be referred to.

It is submitted that what was said or not said lasted only a few seconds. It would be true to indicate that there are considerable varying accounts of what was said by the Respondent and the length for which he spoke. There is no prejudice caused by the delay in:

- (i) Complaint being made to the Ombudsman within 5 months of the events,
 - (ii) Of the Respondent being made aware, including some detailed notes in March 2009, and him commencing to prepare his response and address his mind to matters.
- (ii) It is submitted that matters have been resolved. Reference is made to a letter written to Susan Lewis by Colin Everett, the Chief Executive on 19 December 2008. This letter outlines the options open to Susan Lewis and include a complaint in terms of referral to the Ombudsman. There is mention of a written apology with a letter removing sections of the documents circulated in advance of the meeting. The Respondent refused to withdraw the offending remarks from this document. The matter, therefore, was not resolved.
- (iii) On 15 December 2008, the Chief Executive had written to the Respondent asking him whether he would be prepared to

withdraw the written submission. It noted that they were “overdue on resolving this mediation and if we do not reach a satisfactory resolution by the close of business today I am concerned that Susan may decide to submit a formal complaint” - B476. A formal complaint was issued on 18 December 2008 – B477 and B478. The letter (B481) referred to by those representing the Respondent is a letter indicating the options open to Susan Lewis, not in any way that the complaint had been resolved. The letter itself notes “Councillor Heesom has not responded to my reminders over the outstanding request”. There was no resolution of that complaint. Events in March 2009 moved on where Susan Lewis was a party to a complaint to the Ombudsman as per the third option outlined in the letter.

V. Peter Evans Complaint

We have previously ruled in terms of Peter Evans giving evidence and do not intend to repeat matters noted therein. It is accepted that Peter Evans did not approach the Respondent about what occurred at the time. The Respondent was subsequently aware that Peter Evans was to be called to give evidence and to be cross-examined. The matter is viewed in the context of the Respondent indicating that he had “no issues with Susan Lewis”.

VI. 18 December 2008

- a. We refer to earlier rulings in respect of this matter being included in matters under consideration. Issues as to credibility of alleged contemporaneous notes are matters which this Case Tribunal will consider. There is no significant delay. The documents supplied to the Respondent in March 2009 included details of the incident on 18 December 2008. The letter to the Ombudsman highlights the seriousness of the incident – B627: “The contents of this letter are quite extraordinary and the seriousness of the breaches of the Code can only be appreciated by reading the whole note. It demonstrates blatant

intimidation through veiled and not so veiled threats and an intent to completely disregard both the law relating to housing applications and the professional abuse of a senior officer.”

- b. The Respondent therefore within four months of the incident had a detailed note prepared by Maureen Harkin. At that stage he would have had the opportunity of addressing his mind to matters raised.

VII The Homelessness Interview, February 2009

- a. It is submitted on behalf of the Respondent that he did not see the note until August 2009. We do not accept this as it is part of the appendices attached to the complaint letter. The letter (B627) makes reference to an email dated 25 February 2009 attaching other emails and statements of interview. It refers to the Respondent's *“pressurising and intimidating behaviour at a homeless prevention interview”* and notes potential breaches in the Code.” The emails can be seen at B731 and B732. The statement is at B733.
- b. The submissions made on behalf of the Respondent at paragraph 224 are wholly misleading. It states *“This incident happened in February 2009. What is clear is that a note was made of this incident, by Caroline Littlewood, however again CH did not see the note until August 2009, and neither did the Rowlands. Had the CMT and the Ombudsman not made the deliberate decision to freeze CH out of the investigation, then CH would not have been so prejudiced by the delay.”*
- c. The note was attached to documents sent in March 2009 to the Respondent. He was advised that the matter was under investigation and could have commented at that stage if he so wished. There is no delay. There is no prejudice.

VIII The Head of Housing and Head of Planning and Recruitment Process

- a) This was similar to other issues where Respondent advised close to the events of matters complained of and was given every opportunity to respond. His written response contained details as to his case in terms of the meetings and process which were considered by the Ombudsman prior to submitting his draft and final report.

- b) It is submitted in some way that failure to interview reflects appearance of bias on the part of the Ombudsman. We repeat that invitations were made to the Respondent to attend an interview. He chose not to take up initially the offer of an interview. In fact, he did not respond to correspondence for a 4 week period. Subsequently, his solicitor agreed that a written response would be provided. No dissent was indicated on behalf of the Respondent to the fact that the Ombudsman's report in draft form would be prepared on the basis of those written responses. Further, when the draft report is submitted, no response is received from the Respondent, which could have included a request for him to be interviewed at that stage. There is no preferential treatment of the CMT or any other member of the Authority. The Ombudsman correctly liaised with those who had made the complaint. We reiterate that we as a Case Tribunal, independent of the Ombudsman, have to consider the evidence afresh.

21.22. It is further submitted on behalf of the Respondent, for example, that the Chief Executive assisting in terms of providing a list of all employees involved in the case, and noting *"the need to receive personal communication of the action taken and support and, if necessary, protection they will be offered in the interim"* compromised the Ombudsman's investigation. We do not find it so to be. The County Council had a duty of care towards employees and this is noted in the email. It has not been suggested that any person was present when witnesses were interviewed. The offer of support by an employer is appropriate. The nature of the allegations made against the Respondent included intimidating behaviour towards employees. Again, it is reasonable

for an employer to consider whether protection is necessary. To suggest in some way that witness evidence is not free and independent, is wholly misleading and without basis.

21.23. In fact, it is submitted that the Respondent did not have an opportunity to respond to the draft report. The draft report was forwarded on 2 June 2009 requesting a response by 29 June 2009. An initial extension, at the request of the Respondent, was given to 14 July. No request for further extension was obtained prior to 14 July. The Ombudsman received a further request on 19 July for an extension, which was declined. We find nothing unreasonable in that respect. This was an individual who had the benefit of legal representation. At no time was it indicated by those representing the Respondent he wished to be interviewed.

21.24. We have outlined previously issues as to contact between the Ombudsman and the Respondent. In summary, the Respondent was offered the opportunity to be interviewed and to arrange dates. He did not avail himself of that opportunity. His solicitor agreed that responses would be in writing initially. Those were received after considerable delay. The Ombudsman's investigator took the view that he would proceed on the basis of written submissions and this was conveyed to the Respondent. At no time was it indicated on behalf of the Respondent, who had the benefit of legal representation that he wished to be formally interviewed. He was forwarded the draft report and invited to comment. He was granted an extension of time. He did not comment in the six week period from receipt of the draft report to the indication that the Ombudsman was proceeding to finalise the report. The Respondent has had every opportunity to present both written and oral evidence to the Case Tribunal. Failure to interview the Respondent in no way resulted in a flawed investigation. We would re-emphasise however that we are considering matters afresh, based upon the evidence that we have heard and the representations made. We are in no way bound by the contents of the Ombudsman's written report. The report forms the statutory basis for the referral to the Adjudication Panel for Wales. The report also sets out in some detail the contents of the response supplied by the Respondent.

22. PREJUDICIAL DELAY

22.1. It is submitted on behalf of the Respondent that there has been prejudicial delay. At page 5 of the Respondent's submissions, it is stated as follow:

“The biased nature and prolonged duration of these investigations has led to a situation whereby witness evidence favourable to CH could only be sought at some distance in time from the events at issue. This has resulted in real difficulty for CH in assembling, preparing and marshalling his defence, and an imbalance between witnesses against him who, were afforded the opportunity to put forward their detailed version of events unchallenged at an early stage, and those supportive of him, who are inevitably hampered in their recollections by the lapse of time.”

22.2. We refer in this decision to our findings of fact and to comments and reasons given in this decision which relate to delay. We refer to earlier comments as to the timing of the Respondent being advised of the complaints and details of those complaints. Counsel for the Respondent expands upon his submission in paragraphs 268 to 296 and quotes a number of extracts from the questioning of witnesses.

22.3. As a Case Tribunal, we note if there has been delay in referring a complaint to the investigative statutory body and that the delay results in serious prejudice to the person being investigated, then proper consideration should be given to staying the adjudication of such a referral. Counsel for the Respondent has referred to the case of *R v S (2006) EWCA Crim 756* - a criminal case where the burden of proof is greater than in our process. Whilst as general principles, the case is of assistance, the findings of the case are not binding in terms of our process. The five factors outlined are:

a. Even where delay is unjustifiable, a permanent stay will be the

exception, rather than the rule.

- b. Where there is no fault by the complainant or prosecution, it would be very rare for a stay to be granted.
- c. No stay should be granted in the absence of serious prejudice to the Defendant, such that no fair trial could be held.
- d. When assessing possible serious prejudice, the Judge should bear in mind the power to regulate the admissibility of evidence and (the trial process itself).
- e. If having considered all those factors, the assessment is that a fair trial is possible, a stay should not be granted.

22.4. The submissions made on behalf of the Respondent are erroneous as to facts. It is acknowledged that a complaint was made in March 2009 but it is alleged that the Respondent did not receive “the body of documents sent to him, including the copies of documents sent by the CMT” until September 2009. As a matter of fact, that submission is wrong. The attachments to the letter of complaint were forwarded to the Respondent under cover of the letter from the Ombudsman on 17 March 2009. The attachments contained detailed attendance notes setting out specific acts or comments which it was said could potentially amount to a breach of the code of conduct. In our findings, and based upon the evidence of the Respondent, he had been handed the details some four days after the complaint was submitted, by the Chief Executive. His response, which he began in March 2009, makes direct reference to the documents attached to the letter of complaint. It is further admitted that the witness statements were only received by him in September 2009. That, again, is misleading as they were posted, at latest, by early August 2009.

22.5. Two of the incidents being investigated went back to 2007/2008 but most of the incidents referred to events between November 2008 and February 2009. A period of less than 6 months had elapsed between the Respondent being

aware of specific details of these incidents. Indeed, in terms of the incidents of February 2009, the Respondent was aware of concerns as to his conduct and, in particular, details of that conduct, within a matter of weeks. In criminal cases, a defendant may not see witness statements until he is charged, which may be years after the events.

22.6. It was open to the Respondent to immediately approach those Councillors not referred to in the letter of complaint or the attachments. He could have done so in March and April 2009. It was open for the Respondent to approach any potential witnesses who were not interviewed by the Ombudsman when he received the witness statements in August 2009. Further, he had the opportunity of advising the Ombudsman of any witnesses he believed should be interviewed. He did not advise the Ombudsman of any such essential witnesses.

22.7. There is no passage of time in this case which would amount to an unjustifiable delay. The complaint was made expeditiously by the members of the CMT. Indeed, it is one of the criticisms of the Respondent that they dealt with collation of information as a matter of urgency and did not interview him. The Respondent has also submitted that the complaint may have been premature in that they had not followed through other alternatives, such as mediation. It is difficult for the Respondent to logically submit on the one hand that there had been a delay in submitting the complaint whilst at the same time saying that the complaint was submitted prematurely. The Ombudsman undertook the investigation, interviewing witnesses within a matter of four months of the complaint being received. The witness statements were disclosed promptly to the Respondent. We refer again to our earlier findings in terms of the timescale of information being provided and responses being received from the Respondent.

22.8. Part of the submissions put forward on behalf of the Respondent in this context, relate again to criticism of the manner in which the Ombudsman conducted his investigation. We have in this decision set out our findings in

terms of that investigation and find no basis that the investigation was fundamentally flawed.

22.9. We see no unfairness to the Respondent caused by any perceived delay. He had all the necessary information. Witnesses, he states favourable to him, did not have the opportunity closer to the events in consulting documentation. We do note that the Respondent did consult with Councillor Halford and provide copies of documents which he, as the Respondent, had. Councillors would of course have had access to their own records, minutes etc. The Respondent did not choose to direct the Ombudsman to any particular witnesses which he wished to be interviewed.

22.10. We find that there is no differential treatment as to witnesses viewed by the Respondent as “helpful to him”, and to other witnesses.

22.11. Whilst we have been directed to passages from the evidence, which the Respondent states highlights the difficulties he complains of, we have given full consideration to those concerns. As indicated, we have balanced the evidence heard and taken into account the passage of time which has elapsed. We do not accept that the Respondent’s ability to properly advance his case has been prejudiced by any overall delay.

22.12. The Respondent has been represented throughout proceedings by solicitors. Indeed, he consulted solicitors within a matter of weeks of the complaint being submitted to the Ombudsman.

22.13. At no stage prior to the application to stay the proceedings for abuse of process was any indication given by the Respondent or those representing him that he was due to the passage of time unable to respond to the complaints or that he was in any way handicapped in the preparation of his response. Those advising him are aware that we have the power to summons witnesses to appear before us. We have ordered disclosure of documents as and when we have considered it appropriate. We adjourned proceedings initially to allow the Respondent to resolve issues as to funding of legal

representation and subsequently to allow him to consider fresh documents disclosed. There has been considerable delay in concluding the proceedings as unfortunately there were health issues associated with the Respondent which meant he could not give sworn testimony. We have noted in earlier decisions, of course, during the period we were adjourned and whilst the Respondent was unable to give sworn testimony, he was re-elected as a Councillor in his Ward. We have already commented that as a Case Tribunal, greater assistance could have been provided if there had been a more focused approach to the allegations by the Ombudsman and that evidence was more focused on specific incidents, be that evidence in support or in opposition to the allegations made. The wide ranging nature of the evidence gathering procedure by the Ombudsman has contributed to the length of our hearing. The Respondent has had an opportunity of not only cross-examining witnesses as to particular events, but also to question witnesses on issues which may be somewhat ancillary to the central issues in this case. We are not satisfied that any delay has prejudiced the Respondent's opportunity to present his case. A fair trial has been possible.

22.14. It is inevitable on a case such as this, that when witnesses are approached, whether by Officers within Flintshire County Council, the Ombudsman or indeed the Respondent, those witnesses, despite advice to the contrary, may discuss matters direct with their colleagues. We have found no evidence that any such discussions have taken place which procedurally or otherwise would not allow a "fair trial" to take place. We do not, therefore, find that there is a basis for a stay or strike out of proceedings on the basis of prejudicial delay.

23. FAILURE TO DISCLOSE

23.1. It is submitted on behalf of those representing the Respondent that the CMT were effectively in charge of disclosure and have withheld vital documents from the Respondent and his representatives. Documents would appear to be as follows:

- a. Email correspondence 1 March 2009 to 19 March 2009. These appear not to have been disclosed prior to the Hearing commencing. Emails as they exist have been adduced and disclosed.
- b. The original hand written notes of the meeting of 14 February 2007. A typed version has been adduced. It has been indicated on behalf of Flintshire County Council that the hand written version is no longer available. The typed versions adduced have included annotated notes of some of the people who attended as to their suggested wording. Beverley Symonds produced her own “unofficial” hand written notes when she gave evidence.

23.2. In the submissions made, these are the only two sets of documents it is submitted that there has been a failure to be disclosed to the Respondent. This is in the context of approximately 7,000 pages plus being contained in the Case Tribunal Bundle.

23.3. We have made an earlier ruling in terms of disclosure of documents and do not intend to repeat those rulings.

23.4. The submission on behalf of the Respondent further notes *“the Ombudsman has also withheld vital documents that were passed to him by the CMT.”* These were subsequently disclosed as a result of a ruling made by this Case Tribunal and at the request of the Respondent, they have been copied and included in the case papers in the P Bundle. We have requested at all times that documents that we consider to be relevant should be disclosed. No indication was given as to what other documentation should have been disclosed.

23.5. The Respondent on his own admission accepted that he has a “room full of documents”. He has given disclosure in piece meal fashion even as late as the final days of his evidence, adducing to the Case Tribunal further fresh documents without identifying their source or provenance. No other examples

are given as to what important documents should have been disclosed to the Respondent or his representatives.

23.6. It is also suggested that there was a failure to disclose information or documents to the Ombudsman by the CMT. We have dealt with such issues earlier in this ruling, in particular the complaint letter not containing reference to a request by Susan Lewis for consideration for early retirement. The letter of complaint attached relevant documents as was deemed appropriate by the individual members of the CMT. The Ombudsman carried out subsequently the investigation and obtained a significantly greater amount of documents. We fail to see any grounds for seeking a stay on the basis of failure to disclose documents.

23.7. It would be true to say in terms of the P Bundle that most of the documents to which we have referred to could be said to be unhelpful to the Respondent's case. We have considered each and every application made for disclosure of documentation and a general suggestion in some way that there may be some hidden documents which would assist the Respondent is not one which has any substance in fact or in law.

24. ACCESS OF BERNIE ATTRIDGE'S EMAILS

24.1. This is a matter which has previously been considered by this Panel and we do not intend to repeat earlier rulings made. We understand that the ruling that we recuse ourselves on the basis of those emails being obtained and produced to us, was the subject of an application for Judicial Review by the Respondent. We understand that permission to make such an application for Judicial Review was not granted and the facts surrounding the obtaining of emails forwarded by Bernie Attridge have previously been addressed. There is and was no suggestion of those being "secretly obtained". As soon as we were made aware of those emails they were disclosed to the Respondent and his representatives. Councillor Attridge was re-called as a witness so any issues arising from those emails could be put to him. We again refer to the

statutory role which the Monitoring Officer has in these proceedings to assist us in terms of any further information we require. We repeat no issue was taken at the time in terms of Mr Barry Davies, once he had concluded giving evidence, assuming the role of Monitoring Officer in these proceedings.

25. CUMULATIVE EFFECT

- 25.1. Finally, we turn to Ground 12 of the application to stay, which is put on the basis that even if none of the individual grounds justify a stay or strike out, when considered cumulatively, they do. We readily accept the principle that an accumulation of matters, which independently would not warrant staying a process as an abuse, may collectively justify doing so.
- 25.2. We have rejected the individual grounds relied upon by the Respondent in support of his contention that these proceedings should be stayed or struck out and that we should not proceed to the next stage. We have made our findings of fact. We conclude on the basis individually on the eleven grounds submitted for a stay and/or strike out for abuse of process that there is no basis to stay or strike out the proceedings..
- 25.3. As we have already explained at the beginning of this decision, it was necessary for us to consider the evidence (both the oral testimony and the documents) and to deliver our findings of fact before we could consider the application to stay for abuse. We have previously indicated to the Respondent we would not consider the application for a stay until we had heard all the evidence and, by implication, considered that evidence and made findings upon it, such as to underpin this decision on abuse of process.
- 25.4. Having rejected all 11 grounds relied upon by the Respondent in support of his application for a stay, we have concluded that when taken together, the grounds do not enable the application to get over the threshold referred to by Beldam L J in the case of *R v Milton Keynes Magistrates ex parte Roberts* [1995] Crim LR 224.

- 25.5. Many of the submissions made, in our view, are misconceived and are without basis in fact or in law. The number of submissions advanced should not strengthen an argument on cumulative effect when in our finding individually or together there is no basis to stay or strike out the proceedings. We see no basis for the serious allegation that the Ombudsman's investigation was 'biased' or indeed flawed. To stay or strike out proceedings for abuse of process there is a high threshold. The Respondent's submissions individually and cumulatively do not come close to such a threshold.
- 25.6. Accordingly, for all reasons given in this decision, the application for a stay and/or strike out for abuse of process is rejected.

Witness Evidence Sessions

No.	Name	Date(s)
1.	Peter Wynne	18.0.1.11
2.	Barry Davies	18.01.11, 19.01.11, 20.01.11, 16.02.11, 17.02.11
3.	Elaine Williams	19.01.11
4.	Susan Lewis	03.03.11, 04.03.11, 09.03.11
5.	Colin Everett	08.03.11
6.	Richard Birchett	10.03.11
7.	Peter Evans	01.06.11
8.	Pamela Webb	01.06.11
9.	David Humphreys	02.06.11
10.	Helen Munden	02.06.11
11.	Liam Williams	02.06.11
12.	Neil Cockerton	02.06.11
13.	Maureen Harkin	03.06.11
14.	Nancy Matthews	07.06.11
15.	Lee Roberts	07.06.11
16.	Jennie Williams	07.06.11
17.	Arnold Woolley	07.06.11, 08.06.11, 15.09.11
18.	Helen Brown (formerly Yale)	09.06.11, 13.09.11
19.	Caroline Littlewood	09.06.11
20.	Carina Edwards ¹	09.06.11
21.	Pam Davies	09.06.11
22.	Sharon Carney	14.06.11
23.	Klaus Armstrong-Braun	14.06.11
24.	Carl Longland	14.06.11
25.	Helen Stapleton	15.06.11
26.	Natalie Pridding	15.06.11
27.	Christopher Kay	15.06.11
28.	Cora Dodd	15.06.11, 16.06.11
29.	Peter Pemberton	16.06.11
30.	Maureen Mullaney	21.06.11
31.	Gillian Conway	21.06.11
32.	Paul Neave	21.06.11
33.	Bernie Attridge	22.06.11, 28.06.11, 13.09.11
34.	David McFarlane	22.06.11
35.	Gareth Rowlands	22.06.11, 13.09.11
36.	Clive Carver	28.06.11
37.	Nigel Steel-Mortimer	28.06.11
38.	Carolyn Thomas	29.06.11
39.	Carolyn Cattermoul	29.06.11, 30.06.11, 05.07.11, 11.06.11
40.	Rita Johnson	05.07.11
41.	Alison Halford	05.07.11, 13.07.11, 14.07.11, 15.07.11
42.	Rhiannon Hughes	13.07.11
43.	Ron Hampson	13.07.11, 14.07.11
44.	Ronald Evans	12.09.11
45.	Susan Rowlands	13.09.11
46.	Isabelle Smith	13.09.11

¹ Called but released without giving evidence.

47.	Beverley Symonds	14.09.11, 23.02.12
48.	Dr Prem Mahadun ²	17.07.12

Cllr P Heesom Evidence Sessions

Month	Date	Number
2012		
September	17, 18, 19, 20, 21, 25, 26	7
October	2, 3, 4, 5, 8, 9, 12	7
	TOTAL	14

Tribunal Sitings - Public

Month	Date	Number
2011		
January	18, 19, 20, 25	4
February	15, 16, 17	3
March	3, 4, 8, 9, 10	5
June	1, 2, 3, 7, 8, 9, 14, 15, 16, 21, 22, 28, 29, 30	14
July	5, 11, 12, 13, 14, 15	6
September	12, 13, 14, 15	4
2012		
February	23	1
July	17	1
September	17, 18, 19, 20, 21, 25, 26	7
October	2, 3, 4, 5, 8, 9, 12	7
	TOTAL	52

Tribunal Sitings – Case Management (with parties)

No.	Date	Purpose
1.	10.11.10	Pre-hearing review, Cardiff
2.	22.11.10	Telephone case management conference – re listing direction
3.	08.02.11	Telephone case management conference – re conduct of proceedings
4.	14.11.11	Telephone case management conference – re Cllr Heesom medical condition
5.	29.05.12	Telephone case management conference – re Cllr Heesom medical condition

² Medical evidence only