



## DECISION REPORT

**TRIBUNAL REFERENCE NUMBER:** APW/007/2023-24/CT

**RESPONDENT:** Former Councillor Jeff Davies

**RELEVANT AUTHORITY:** New Quay Town Council

### 1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales ('the APW') has considered a reference in respect of the above Respondent.

1.2 The Case Tribunal determined its adjudication on the papers only and without the attendance of the parties at a meeting on 3 July 2024 conducted by means of remote attendance technology.

1.3 By letter dated 27 March 2024 the APW received a referral from the Public Services Ombudsman for Wales ('the PSOW') regarding a complaint made against the Respondent.

1.4 The allegation was that the Respondent had breached the Code of Conduct of the Relevant Authority by failing to comply with Paragraph 6(1)(a) of the Code of Conduct which states; '*you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*'

1.5 In summary, the details of the allegation were that the Respondent had sent messages of a sexually explicit nature to an individual which amounted to the offence of harassment, culminating in what could be perceived to be an attempt to blackmail the recipient, and which resulted in a conditional caution being issued by the Police. It was

alleged that this conduct could reasonably be regarded as bringing the Respondent's office as Member or the Relevant Authority into disrepute and was therefore suggestive of a breach of Paragraph 6(1)(a) of the Code of Conduct for Members.

1.6 The Respondent did not complete the standard APW response form regarding the allegation. Due to health issues, the Respondent said he was unable to attend an interview with PSOW officers, as he did not feel strong enough to do so and would not be attending any hearing due to his condition. The case bundle included oral and written submissions made by the Respondent however in response to the PSOW's investigation, and the Case Tribunal carefully considered these in its deliberations.

1.7 Listing Directions were issued by the Case Tribunal on 31 May 2024, and these provided a further opportunity for the parties to attend, to be represented, and to call witnesses at any hearing. The Listing Directions also provided further opportunities for the parties to submit written responses in relation to each stage of the adjudication. These three stages were determination of the facts, determination of whether there had been a failure to comply with the Code of Conduct, and any determination regarding sanction. The PSOW submitted a response in relation to sanction within the relevant timescales.

1.8 The Respondent did not respond within the relevant timescales provided in the Listing Directions, however the APW office received one submission from the Respondent outside the timescales, on the morning of the adjudication.

## **2. PRELIMINARY MATTERS**

2.1 Whilst the Respondent's e-mail received on the morning of the adjudication was received outside the specified timescales, the Case Tribunal decided to formally admit the document for consideration.

2.2 The e-mail in question noted that the 17-month process had affected the Respondent's mental health state, which was already poor. The Respondent also felt that the cost; *'to investigate something so trivial is shocking'*.

## **3. THE PSOW'S REPORT**

3.1 The PSOW's Report had been prepared following a complaint to the PSOW that the Respondent had breached the Code of Conduct. The complaint alleged that the Respondent had been charged by the Police with malicious intent to blackmail or harass an individual. The PSOW noted that the offence was initially recorded as *'blackmail'* in Police notes, but that an offence of blackmail was not established, and the Respondent ultimately received a conditional caution for a period of three months.

3.2 The relevant offence was that between 19 August and 21 September 2022, the Respondent had pursued a course of conduct which amounted to harassment which he knew, or ought to have known, amounted to harassment in that he sent numerous unwanted text messages to the victim of a sexual nature and threatened to publicly reveal a falsehood about the victim's brother. The conditions were that he would send a letter of apology to the victim, and that he was not to approach four named individuals including the recipient of the messages and his brother, a mutual friend and a work associate of the recipient. The Report concluded that the Respondent's misconduct, and the criminal caution he received, were serious matters and fell below the standards expected of a Member.

3.3 The Report noted that the behaviour in August and September 2022 had occurred whilst the Respondent was still a member of New Quay Town Council. It stated that it appeared that the Former Member's decision to resign from the Council coincided with the report of his behaviour to the Police. The report recognised that the Respondent had advised that he suffered with his mental health and that medication taken for this, along with alcohol, may have contributed to his behaviour when sending the messages.

3.4 The Report nevertheless concluded that the Respondent had demonstrated a significant lack of insight into the impact of his criminal behaviour upon the reputation of the Council and his role on the Council. The PSOW considered that although the conduct occurred in the Respondent's private life, the nature and seriousness of the offence which resulted in a criminal caution could reasonably be regarded as having brought his office as Member into disrepute. Additionally, although the matter was not reported in the press, the PSOW considered that it was likely that, in a small community, people in the locality and the New Quay Town Council would have become aware of it, and that the victim had been required to continue to address rumours in the community arising from this incident.

3.5 The PSOW concluded that the consequences of the Respondent's behaviour and the criminal caution could reasonably be regarded as having brought the office of Member and New Quay Town Council into disrepute, and that this was suggestive of a breach of Paragraph 6(1)(a) of the Council's Code of Conduct.

#### **4. THE RESPONDENT'S SUBMISSIONS**

4.1 The oral and written submissions provided by the Respondent in relation to the investigation included details of medical care he was receiving for his health issues. He said that he had resigned as he felt that his fellow Councillors were "*out for themselves*" and he felt that there was a person on the Council who was "*out to get [him]*". He referred to the incident as a "*personal feud*" between himself and the recipient of his messages, "*which had nothing to do with the Council*". He questioned how Paragraph 6(1)(a) of the Code could apply to this matter, when he was not arrested until after he had resigned his position as Town Councillor.

4.2 The Respondent had admitted to the Police straight away that he had sent the messages. He had explained that he was struggling with health issues and was taking medication but was also drinking alcohol at the time. He had also said that he was told by the Police that he would probably just get a warning and a 'slap on the wrist'. He said that he had no idea who the fourth person named in the Police caution was.

4.3 In e-mails with the Clerk to the Council dated 25 August 2022, the Respondent admitted that he had sent silly messages to two friends, that he did not remember doing so but, when he started to look through them, was so horrified, that he deleted them all without fully reading them.

4.4 In his statement to the Police dated 26 September 2022, the Respondent said that he was extremely embarrassed and upset about his actions over the past month and accepted that his behaviour and course of conduct had caused the recipient '*much distress*'. He said that this was not his intention, and he was full of remorse. He said he would never wish to blackmail anyone and did not know why he said these things but said that he had been going through a lot, and described his health issues and support which he was seeking. He said that the behaviour was all very out of character and offered sincere apologies to anyone he had hurt with his drunk actions. He wrote a letter to the victim in October 2022 to apologise for his actions over the previous two months.

4.5 The Respondent had said that the statements from the recipient of his messages and the recipient's brother were "*full of lies*". In summary the Respondent challenged the following matters within the statements. He said that he could not have started the rumour regarding the victim and the fourth person named in the caution, as he did not even know him, and he said that the Police agreed with him. The Respondent said that the caution did not prevent him from contacting anyone else or he would not have telephoned the victim's father at his office in February 2023.

4.6 The Respondent initially said that the suggestion that he had to be taken to hospital before his Police interview for being intoxicated was a total lie. He was shocked to read the complainant's account of his arrest, which he felt was very dramatic and sounded like his house was "*ransacked*" whereas the Police had been very nice and he was simply asked on the way to the Police Station if he was happy to give them his mobile phone, which he did straight away. He believed the Police investigation had settled the matter.

4.7 The Respondent confirmed that he had been good friends with the recipient of his messages in the past. He had apologised to him by telephone the morning after sending the messages in August 2022 and sent the letter of apology in October 2022 on Police advice. He said he would never have actually taken money from the victim and that he was "*just away with the fairys [sic]*." He stated that this was an admission of "*guilt of my embarrassment [sic] of sending such messages...*"

4.8 Finally, he informed the PSOW that he was shocked to have been informed that a PSOW investigation had been commenced as he believed the matter to be at an end

following his resignation. He felt that the incident occurred after his resignation and was a private matter and just a personal feud which was of absolutely no business or concern of the complainant and none of the information had been in the public domain. He felt that there was someone on the Council who was out to get him.

## **5. THE FINDINGS OF FACT**

### **Undisputed Facts**

5.1 The Case Tribunal noted the following undisputed material facts:

5.1.1 The Respondent was co-opted on to the Council on 25 July 2022. He received training on the Code of Conduct on 17 July 2022.

5.1.2 The Respondent sent sexually explicit text/WhatsApp messages to the recipient between 19 August 2022 and 21 August 2022. He sent a further message on 21 September 2022.

5.1.3 The August messages included an apparent threat of blackmail.

5.1.4 The Respondent resigned his position on the Council on the morning of 24 September 2022.

5.1.5 On 24 September 2022 at 14:00, an offence was reported to Dyfed-Powys Police.

5.1.6 On 25 September 2022 at 20:00, the Respondent was arrested at his home.

5.1.7 On 3 October 2022, Dyfed-Powys Police issued the Respondent with a 'Conditional administer [sic] for harassment (non-violence)' described as a 'conditional caution'.

5.1.8 The Police considered that the Respondent's apparent threat of blackmail in the messages to the recipient was not a genuine attempt to obtain money.

### **Disputed Facts**

5.2 The PSOW considered that the following constituted Relevant Disputed Facts:

5.2.1 Was the Respondent correct in stating that both statements from the recipient of his messages and his brother were "*full of lies*"?

5.2.2 Was the Respondent's behaviour in sending the messages to the recipient covered by the Code, as he resigned from the Council before he was arrested?

5.2.3 Did Former Councillor Davies start or spread any rumours about the relevant family?

### **The Case Tribunal's deliberations on the Disputed Facts**

5.3 The Case Tribunal noted the following in relation to the Disputed Facts: -

#### The first allegation as to whether the statements were "full of lies"

5.3.1 The Case Tribunal considered the specific comments in the two statements which had been challenged by the Respondent. The first statement had been provided by the brother of the individual who was the recipient of the messages, and the second statement had been provided by the recipient himself.

5.3.2 The statements indicated that it was the belief of the relevant individuals that it was the Respondent who had started certain rumours. The Respondent was adamant that he had not done so in relation to the recipient, and this point is further considered in the paragraphs below relating to the third allegation.

5.3.3 The first statement said that when the last few messages came through it became clear that the Respondent was asking the recipient, (his brother) for money, and "*trying to blackmail him for £2,000.*" The Respondent denied that this was the case and had explained to the Police that he would never wish to blackmail the victim or anybody else and did not know why he had said those things. The relevant notes indicate that the victim had accepted the Police conclusion that the offence of blackmail was not established because there had been no genuine attempt to obtain money.

5.3.4 The statements also indicated that the relevant individuals had tried asking the Respondent's family to have a word with the Respondent and to ask for the behaviour to stop. The Respondent denied that the individuals had spoken to the Respondent's sister, however the victim produced a message of apology which appeared to have been sent by the Respondent's sister, and which indicated that there may have been an approach.

5.3.5 The first statement mentioned that the Respondent had been banned from the local sports bar following an incident, which involved the Respondent as recorded in minutes of a meeting. The Respondent stated that following reference to witnesses and CCTV footage, the ban was rescinded after two days, and showed that it was he who had been assaulted. He said that contrary to the statement, his parents had never run the sports club and his father was merely a committee member alongside the victim.

5.3.6 The Respondent objected to a comment in the first statement that he '*appears to be a functioning alcoholic*' and referred to the list of the medication he was on. He explained that he was not supposed to drink at all, as there were so many, but he did '*mix them a bit back then which was making [him] be all over the shop*'.

5.3.7 The Respondent noted from the first statement that the victim's brother said that the Respondent had accused '*another local popular chap in Newquay*', of the matter contained in the messages sent in August 2022, which was unfounded. The Respondent wished to point out that this person was the brother of both the victim and the author of the first statement.

5.3.8 The Respondent challenged the first statement which stated that when the police picked him up, he had to spend the night in hospital because he was so drunk. He said that this was a total lie and the reason he was taken to hospital was due to a panic attack including chest pains. Having seen the police information however which made it clear that the Respondent was intoxicated on the night he was arrested and would need to be interviewed in the morning, he then said that he was a bit saddened to read that he had been sent to hospital for being intoxicated.

5.3.9. The Case Tribunal also noted that at one point, the first statement referred to the Respondent as having been '*voted in*', which was not the case, as the Respondent had been co-opted. The second statement also referred to the Respondent having received a conditional discharge for harassment and attempted blackmail, whereas he had received a conditional caution for harassment only, although the caution did refer to the context, being a threat to publicly reveal a falsehood.

5.3.10 The second statement referenced the fact that the recipient had received a letter of apology which he felt was an admission by the Respondent that he had carried out the offence in question. The Respondent said that it was an admission of embarrassment and was sent on Police advice. The Case Tribunal noted however that the Respondent had admitted the offence of harassment.

5.3.11 Finally, the first statement referred to the conditions of the caution being that the Respondent was '*never*' to contact his brother or '*our family*'. The Case Tribunal noted that this was incorrect, and that the caution referenced four specific individuals who were not to be contacted for a period of three months.

#### The second allegation as to the application of the Code of Conduct

5.3.12 The PSOW raised the question of whether the Respondent's behaviour was 'covered' by the Code as he had resigned from the Council before he was arrested. The Case Tribunal considered that this question moved into the third stage of the adjudication as to whether there had been a failure to comply with the Relevant Authority's Code of Conduct. The Case Tribunal concluded that the relevant question in this respect was whether the relevant behaviour occurred whilst the Respondent was a Member.

5.3.13 The Case Tribunal was satisfied that the Respondent had not been arrested and had not accepted a conditional caution at the time when he was a Member, as he had resigned before the arrest occurred. Nevertheless, the behaviour complained of had

taken place on 19 to 21 August 2022 and also on 21 September 2022 when the Respondent was still a Member.

#### The third allegation regarding certain rumours

5.3.14 The Report of the PSOW identified two rumours which it said had been started and spread in the community. The first was about the sexual orientation of the victim's brother. The second was a similar rumour about the victim himself.

5.3.15 As to the first rumour, the statements identified that an incident had occurred in a pub in New Quay on the 19 August 2022 when the Respondent had approached the victim's brother to make an allegation about his sexual orientation. The Respondent did not deny making this approach in any of his submissions, and he reaffirmed this allegation in his messages to the victim. The offence to which the Respondent admitted had made it clear that this was in the context of threatening to publicly reveal a falsehood about his brother's sexuality.

5.3.16 As to the second rumour, the Respondent had sent a message to the victim on 21 September 2022, informing him that there was a rumour going around his workplace about the victim's sexuality, and he had added, "*What the f\*\*k is that all about?*" The Respondent made passionate and emphatic submissions to the PSOW that he had not started this rumour. He said that he did not know the identity of the other person referenced in the rumour and he could not therefore have been responsible, and that the Police agreed with him.

### **The Case Tribunal's decision on the Disputed Facts**

5.4 The Case Tribunal decided the following in relation to the Disputed Facts: -

#### The first allegation as to whether the statements were 'full of lies'

5.4.1 The Case Tribunal noted that there were some inaccuracies and uncorroborated comments and opinions within the two statements. The Case Tribunal also noted that the statements included particular viewpoints, hearsay comments and what the individuals had understood or remembered about the facts and events. The Case Tribunal also considered that it was unfortunate that the first and second statements had not been signed until seven and eighteen months respectively after the events in question, as recollection of events will inevitably fade over time. It assessed the evidential value of these statements accordingly.

5.4.2 In conclusion, the Case Tribunal determined that the statements were not "*full of lies*" but did include some inaccuracies as highlighted above. It also concluded, however, that these did not go to the heart of the matter which the Case Tribunal was required to determine in relation to the Respondent's conduct, as it noted that the Respondent admitted the offence in question and did not deny at any stage that the behaviour had occurred.



### The second allegation as to the application of the Code of Conduct

5.4.3 The Case Tribunal was satisfied that the conduct complained of did take place whilst the Respondent was a Member. As the Code applies whether the individual is acting as a Member or in a private capacity in respect of conduct identified in Paragraph 6(1)(a) of the Code, the Case Tribunal was satisfied that the Code could potentially apply in this case, however determination of that question was a matter for consideration in the following, third stage of the adjudication.

### The third allegation regarding certain rumours

5.4.4 The Case Tribunal had no doubt that rumours had circulated in the community upon which the victim felt compelled to act and seek legal advice and support. It concluded that, on the balance of probabilities, the Respondent had started or spread the first rumour about the victim's brother. He had made a clear allegation to this effect in public at a local pub on 19 August and had then made a clear threat to further share this information on Facebook in his messages to the victim. On 25 August, he informed the Clerk to the Council that he had really sent stupid messages to friends like the recipient and another named individual "etc".

5.4.5 The Case Tribunal considered that there was insufficient evidence to indicate that the Respondent had started or spread the second rumour. Whilst the statement of the victim's brother surmised that the Respondent had started nasty rumours because he had been shut down in the message exchange between the 19 and 21 August 2022, this was unlikely to have been the case. From the Police notes, it was apparent that the victim's work associate, who had also been subject to the rumours, had been informed about them at the Eisteddfod in Tregaron, and this took place in the first week of August 2022 and before the Respondent had displayed the behaviour which was the subject of the complaint.

5.4.6 Whilst the behaviour demonstrated by the Respondent in his messages between 19 and 21 August 2022 included a threat to share information regarding the first rumour, he had not referenced the second rumour until 21 September 2022. He said that he had heard the rumour in his workplace, albeit he had apparently made assumptions about the victim's sexual orientation in the August messages, which were flatly rejected.

5.4.7 Whilst the statements referenced hearsay evidence that it was the Respondent who had started the messaging, it was clear that the victim had shared the August 2022 messages with members of the Respondent's family and also with his own family, and that there were a number of individuals who held this information. There were therefore several opportunities for the sharing of this rumour by other individuals, whether knowingly or carelessly.

5.4.8 The Case Tribunal noted that whilst it was possible that the Respondent had started or spread the second rumour, the test was that of the civil standard of proof. The facts had to be decided on the balance of probabilities and not on the balance of possibilities. In conclusion, the Case Tribunal was unable to conclude on the balance of

probabilities and on the available evidence, that the Respondent had been responsible for starting or spreading the second rumour,

## **6. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

6.1 The relevant provisions of the Code, overarching Code Principles, the European Convention on Human Rights ('ECHR') and PSOW Guidance on the Code of Conduct for Members state as follows.

### **The Code of Conduct for Members**

6.1.1 The relevant part of the Code are as follows; Paragraph 2(1)(d) of the Code states; '*... You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.*' Paragraph 6(1)(a) of the Code states; '*You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*'

### **Article 10 ECHR**

6.1.2 Article 10 of the ECHR states as follows:

*'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...'*

### **The Nolan Principles**

6.1.3 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the 'Nolan Principles' include the principles of 'Integrity', 'Upholding the Law', and of 'Leadership' as follows; '*Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority*'.

### **The Ombudsman's Guidance on the Code of Conduct**

6.1.4 With regard to Paragraph 6(1)(a) of the Code, the Ombudsman's Guidance states as follows: -

*'2.31...As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both*

*your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.*

*2.32 When considering whether a member's conduct is indicative of bringing their or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Chair of a Council, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their council into disrepute.*

*2.33 Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.*

*2.34 Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.'*

## **The Case Tribunal's determination**

6.2 The Case Tribunal's findings as to whether the material facts disclosed a failure to comply with the Code of Conduct were as follows: -

6.2.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Paragraph 6(1) of the Code for the following reasons.

6.2.2 As per Paragraph 5.4.3 above, there is no doubt in this case that the Respondent was a Member at the time that the Respondent sent the relevant messages in August and September 2022.

6.2.3 The Case Tribunal noted that the Respondent had accepted that he had engaged in criminal behaviour by accepting a conditional caution. The offence which the Respondent had admitted was that of harassment of the victim which he knew or ought to have known amounted to harassment. The Respondent had sent numerous and clearly unwanted messages of a sexual and salacious nature to the victim. Whereas Paragraph 4(a) of the Code refers specifically to the fact that a Member must not harass any person, that part of the Code did not apply when the Member was acting in a private capacity as the PSOW and witnesses had agreed was the case here. Paragraph 6(1)(a) could however apply in such circumstances.

6.2.4 Following the initial messages on 20 August 2022 and a response from the victim, making it clear that his messages were not welcome, the Respondent wrote, *"I will never text you again. Sorry"*. However, he then pursued the matter with further messages which the victim again made clear were not welcome, and the Respondent then wrote *"Well you have put me in my place. Sorry boy."* However later that day he then sent allegations to the victim about his brother.

6.2.5 On 21 August 2022, the Respondent then sent the further messages which could have been perceived to be an attempt to blackmail the victim. The Respondent's threat was as follows in the relevant translated messages. He had given the victim the option to, *"just make a simple £2000 a month payment to my bank account. Your choice. Keep the respect of the family or pay. Your call [sic]?? Let me know before lunchtime on Sunday afternoon. Pay or don't pay"*. He said that only one other person knew and added, *"Pay up or I go to the police. Ask him if you don't believe me. Then deal with it. Up to you. It is no worry to me if I have to tell everyone on Facebook etc."*

6.2.6 Whereas the Police concluded that there had been no genuine attempt by the Respondent to obtain money and the offence of blackmail was not established, the Case Tribunal considered that this evidenced behaviour was extreme and concerning. The victim stated that he had felt shock, anger, fear and disappointment at receiving the messages and described the impact this had upon his immediate family.

6.2.7 Following contact with the Respondent's family by the victim, the Respondent telephoned him to apologise for his behaviour. The recipient stated that this was a limited apology however, in that he felt that the Respondent was apologising for the way in which the recipient had taken the messages and the Respondent said that the recipient should never have spoken to his family and that it was none of their business.

6.2.8 The Case tribunal considered that after apologising for the August messages, it was disturbing to note that the Respondent had again decided to contact the victim on 21 September 2022. On this occasion, the Respondent sent a message to the victim to ask about a salacious rumour he had heard about him and another individual and asked, *"What the f\*\*k is that all about?"* The victim then reported the matter to the Police shortly after receipt of this e-mail.

6.2.9 The Case Tribunal was entirely satisfied that the admitted conduct could reasonably be regarded as bringing the Respondent into disrepute in his personal capacity. The witnesses had made it clear that they both felt that there was no connection between the allegations made against the Respondent, what he had done, and his role as Member. The key question for the Case Tribunal was therefore whether the conduct could, in addition to affecting his own reputation, reasonably be regarded as bringing the Respondent's office as Member and the Relevant Authority into disrepute.

6.2.10 On the balance of probabilities, the Case Tribunal was persuaded that the conduct as outlined above was so serious, threatening and disturbing that, despite the fact that it occurred entirely within a private capacity, it was very likely to reach the

public domain and such conduct was by an individual who held an important leadership role in the community as a Town Councillor. The Case Tribunal was satisfied that even though the Respondent had not been convicted of an offence, due to the nature and seriousness of the offence, it was extremely likely that the matter would be reported to the Police with serious consequences. This would inevitably be viewed by the public in the light of the Respondent's important status as a Member. This would be the case whether the conduct had been deliberate, reckless or occurred due to illness or intoxication. In summary, the Respondent had admitted the offence, which was a serious offence.

6.2.11 The Case Tribunal noted that there was no evidence that the matter was then reported in the local press or was the subject of social or other media interest. In addition, whilst the Case Tribunal acknowledged that there had been angry criticism by the Respondent of certain fellow-Members within the Relevant Authority around the same time as the incident in question, those issues were not relevant to the Case Tribunal's determination.

6.2.12 The Case Tribunal also noted that the Respondent had resigned from the Council before his arrest, giving the reason that the Council had been far from what he expected and had been extremely disappointed with certain behaviour, however it considered that on the balance of probabilities, the Respondent's resignation demonstrated some degree of recognition by the Respondent that he had potentially breached the Code due to his conduct.

6.2.13 Whereas the conduct clearly had a detrimental impact on individual members of the public, the Case Tribunal considered that the relevant incident also impacted upon New Quay Town Council. When members of the Council become aware of the Respondent's conduct towards the victim, they concluded that the matter should be reported to the PSOW due to their serious concerns about this behaviour.

6.2.14 The Case Tribunal was satisfied that in a small community, it was probable that the arrest and criminal action would become widely known within the community and would reflect very poorly on the Relevant Authority and make the Respondent's role as Member untenable. In conclusion, the Case Tribunal determined that, on the balance of probabilities, the course of conduct in which the Respondent had engaged could reasonably be regarded as bringing the office of Member and Relevant Authority into disrepute.

6.2.15 For the avoidance of doubt the Case Tribunal considered the Respondent's messages in the context of Article 10 of the ECHR. Whilst it considered freedom of expression to be a fundamental right, it was a right which could only be claimed where it did not impact on the fundamental rights of others, and it clearly did so in this case and impacted on an individual's private life. The Case Tribunal concluded that the messages in question were not made in a political context, and in any event, were so extreme and disturbing, that the protections offered to politicians by the ECHR to freely express views would not apply here.

6.2.16 The Nolan principles as extended in the Principles governing the conduct of elected Members in Wales underpin the Code of Conduct and underline the importance of integrity and propriety, the duty to uphold the law, the need to promote equality and respect and finally leadership by example, ‘*so as to promote public confidence in their role and in the authority*’. The Case Tribunal considered that the Respondent had failed to uphold these Principles.

6.2.17 In conclusion, the Case Tribunal determined that the behaviour to which the Respondent had admitted could reasonably be regarded as bringing his office and authority into disrepute. The behaviour to which he admitted constituted a serious offence, involving a course of conduct which amounted to harassment of the victim, by sending numerous unwanted messages of a sexual nature and which threatened to publicly reveal a falsehood about the victim’s brother.

## **5. FINDINGS IN RELATION TO SANCTION**

5.1 The Listing Directions dated 31 May 2024 provided the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, should this stage of the proceedings be reached.

### **The Parties’ submissions**

5.2 The parties’ submissions as to any sanction to be imposed in the event of a finding of breach of Paragraph 6(1)(a) of the Code of Conduct can be summarised as follows.

#### **The PSOW’s Submissions as to Sanction**

5.2.1 The PSOW’s representative made the following general submissions regarding sanction in a letter dated 18 June 2024. The PSOW highlighted the fact that the ethical standards framework’s purpose was to promote high standards amongst council members in Wales and maintain public confidence in local democracy. It noted that the purpose of a sanction was to provide a disciplinary response to Code breaches, place the misconduct and appropriate sanction on public record, deter future misconduct, promote a culture of compliance, and foster public confidence in local democracy.

5.2.2 The PSOW considered that the nature of the Code breach in question was serious in this instance, and it drew the Case Tribunal’s attention to matters from the APW’s Sanctions Guidance which the PSOW considered to be mitigating and aggravating factors in this case.

#### **The Respondent’s submissions as to Sanction**

5.2.3 The Respondent did not provide specific submissions in relation to sanction; however, he made the following general submissions. He said he could be passionate about topics, and he was happy to be in the Council as he had always liked politics. He thought he could help everyone. He accepted that he was; *“Wrong on both counts. Ive admitted [sic] this to the police and took my punishment. I will once again apologise [sic]*

*to every member of the New Quay county council [sic] for everything they feel I have done wrong and of course to all of your staff at the ombudsman [sic] who must have wasted, sorry, rephrase spent so much time on this investigation.”*

5.2.4 The submission sent by the Respondent, and admitted by the Case Tribunal on the morning of the proceedings stated the following; *“Please note that the effect that this whole “charad” has had on my already poor mental health state over the last 17 long months while this has been going on is nothing but unforgiveable. I am shocked that this case was not dropped and the amount of money it must have cost to investigate something so trivial is shocking. If this nonsense carries on for much longer I will be going to the press and current affairs media to bring it to their attention what really does go on and where the public money is being spent and wasted on such things...”*

### **Case Tribunal's deliberation as to Sanction.**

5.3 The Case Tribunal determined the following in relation to Sanction:-

5.3.1 The Case Tribunal considered all the facts and evidence and in particular, the medical evidence supplied by the Respondent in relation to his significant ill-health issues and reference to the support which he had sought.

5.3.2 It also had regard to the Adjudication Panel for Wales's current Sanctions Guidance. It noted the public interest considerations as follows in paragraph 44 of that Guidance; *‘The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.’*

5.3.3 The Tribunal's Registrar notified the Case Tribunal that there had been no formally recorded previous instances of breach of the Code of Conduct by the Respondent.

5.3.4 The starting point for the Case Tribunal was to consider the seriousness of the breach of the Code. The Sanctions Guidance made it clear in paragraph 35 that seriousness should be assessed with particular regard to matters such as the actual and potential consequences of the breach for any individuals, the wider public and/or the Council as a whole. The Case Tribunal considered that as it was serious, an admitted criminal offence of this nature would inevitably reach the public's attention, particularly as the Respondent was a vocal and active new Member of the Relevant Authority. It considered whether a finding of ‘no action’ would be appropriate in this case due to the Respondent's significant health problems, however it was satisfied that the admitted conduct in this case had been too serious to reach a finding of no action.

5.3.5 The Case Tribunal then had regard to paragraph 47 of the Sanctions Guidance which states; *'In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected.'*

5.3.6 The Case Tribunal considered that had the Respondent remained in office following the relevant incident, it would have imposed a moderate period of suspension to enable the Respondent to have sufficient time to reflect on his behaviour and to seek further medical advice and assistance for his health problems. As the Respondent had resigned from his position as Member however, the sanction of suspension was not available and the Case Tribunal considered that disqualification for a moderate period would instead be appropriate, to ensure that the Respondent had the opportunity to reflect upon the requirements of the Code of Conduct before contemplating any return to public office in future.

5.3.7 The Case Tribunal then considered any relevant mitigating and aggravating circumstances and how these might affect the level of sanction under consideration as follows. In doing so, it considered the APW Sanctions Guidance.

#### Mitigating Factors

5.4 The Case Tribunal concluded that the following mitigating factors applied in the Respondent's case:

5.4.1 Firstly, there was clear evidence that the misconduct was affected by personal circumstances, being significant health issues which had been acknowledged by the PSOW, Police and witnesses. The Respondent was candid with the Police regarding the messages he had sent, stating that he had been drunk at the time and did not intend to cause distress. It was recorded by the Police that heavy drinking had played a significant role in the offending behaviour. The Case Tribunal noted the Respondent's comment that he had been *"away with the fairies"* at the relevant time. He admitted that medication, along with the use of alcohol, may have contributed to his behaviour. The Respondent had indicated however that he was keen to address the underlying issue.

5.4.2 The Respondent had only had a short length of service and was inexperienced in the role of Member, as he had held this role for just less than two months.

5.4.3 The Case Tribunal was persuaded that there had been some recognition and regret by the Respondent as to the misconduct and any consequences of his behaviour. The PSOW acknowledged that the Respondent demonstrated remorse in communication with the Clerk to the Council after the incident and when arrested by the Police. He had admitted his conduct and was horrified once he did read what he had sent in August 2022 and immediately deleted the messages. He also informed the PSOW that, with regard to the victim; *"reading how such a torrid time he and his family were having saddened me"*. The Case Tribunal also considered that on the balance of



probabilities, the Respondent had recognised the impact of his conduct when he resigned from his role as Member.

5.4.4 The Respondent had also made an early apology for some of his actions. The Case Tribunal noted that the Respondent had apologised to the victim by telephone shortly after sending the messages in August 2022 and then sent a written apology in October 2022 following his arrest.

5.4.5 The Case Tribunal noted that there had been some co-operation with the investigation officer and the APW. Whilst the Respondent chose not to engage in the adjudication process until the morning of the adjudication, he explained to the PSOW that this was due to ill-health. The PSOW stated; *“Despite not wishing to be interviewed, Former Councillor Davies otherwise co-operated with the PSOW.”*

### Aggravating factors

5.5 The Case Tribunal concluded that the following aggravating factors applied in the Respondent’s case:

5.5.1 The Case Tribunal considered that there was a lack of real understanding or acceptance by the Respondent for his misconduct and any consequences. Whilst he had demonstrated remorse in relation to his conduct on occasions, it was apparent that he lacked true insight into the seriousness of the criminal behaviour and the impact that his behaviour had upon an individual and the likely impact that his behaviour would have upon the Relevant Authority. His apologies to the victim did not appear to be entirely sincere, as he apologised on the phone for how the victim had felt rather than for the conduct itself. With regard to the written apology following arrest, he said that he had apologised on Police advice and was only admitting to embarrassment. He told the PSOW that he considered the complaint to be rather *“pathetic”* and a *“nonsense”* and he thought the matter should be *“brushed under the carpet”*. It was clear that almost two years after the incidents, the Respondent still regarded the matter to be *“trivial”* and seemingly lacked insight into the impact his behaviour had upon others.

5.5.2 It also considered that the Respondent had ignored advice, training and warnings as to conduct. The Case Tribunal noted that the Respondent had received training on the Code of Conduct shortly before he signed his formal undertaking to abide by the Code in July 2022. This would undoubtedly have underlined the importance of members leading by example both in an official and private capacity, and of the impact of Paragraph 6(1)(a) of the Code. The Case Tribunal also noted that the Respondent had received general advice about conduct and the Code from the Monitoring Officer during August 2022 regarding a separate issue, and yet he persisted in sending a further e-mail to the recipient in September 2022.

5.5.3 The Case Tribunal considered that the Respondent had also demonstrated a pattern of behaviour in that he had decided to re-engage with the victim by sending the further e-mail in September 2022 referencing a rumour. He then contacted the victim’s office and spoke to his father in February 2023, without apparent insight as to the likely

impact upon the victim. The victim said that the Respondent had phoned his father's office and "*tried the office again many times afterwards*"

5.5.4 In addition to these factors, the Case Tribunal was satisfied that the nature of the conduct itself was an aggravating feature. By sending messages of a sexually explicit nature, found to be harassing and perceived by those affected to be an attempt to blackmail the recipient, the Respondent had engaged in what could reasonably be regarded as a disturbing and threatening course of criminal conduct.

### **Case Tribunal's determination as to Sanction.**

5.6 The Case Tribunal was mindful of the public interest in maintaining standards in public life and the overarching purpose of the Code of Conduct to maintain confidence in local democracy. It also considered the mitigating and aggravating factors as above. In all the circumstances however, in view of the serious nature of the admitted offence, the Case Tribunal remained of the view that disqualification was the appropriate sanction in this case.

5.7 The Case Tribunal considered a period of disqualification to be necessary and proportionate to allow the Respondent a further period of reflection in the light of his continuing failure to recognise the severe impact which his behaviour had on the recipient of his messages, and the wider impact this would have upon his role and Council which could reasonably have been foreseen.

5.8 The Case Tribunal accepted that the Respondent had been suffering from significant ill-health issues throughout the lengthy period from August 2022 to this current adjudication. There was nevertheless an expectation that members would act with integrity, in accordance with the trust that the public placed in them and promote public confidence through leading by example and upholding the law. It considered a sanction of disqualification was fair, proportionate and in the public interest in this case, in order to underline the importance of the standards regime in Wales, to promote a culture of compliance across the relevant authorities and to foster public confidence in local democracy.

5.9 As to the length of the period of disqualification, the Sanctions Guidance indicated that conduct which called into question the Respondent's fitness for public office would be relevant in determining this question. Whilst the Respondent had not acted as Member for a considerable period, bearing in mind the Respondent's submission on the morning of the adjudication, the Case Tribunal considered that the Respondent needed a further significant period in order to reflect upon his conduct and the impact of this conduct, and to receive further medical and other support if necessary before considering whether to engage in any role in local politics in future.

5.10 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified** for 12 months from being or becoming a member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.11 New Quay Town Council and its Standards Committee are notified accordingly.

5.12 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed.....  ..... Date 30 July 2024

Chairperson of the Case Tribunal: Ms C Jones

Case Tribunal Member: Ms M Tudur

Case Tribunal Member: Mr H E Jones