

**Investigation into a complaint against
Councillor Darren Fower,
Peterborough City Council**

A report for the Monitoring Officer of
Peterborough City Council

24 September 2018

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1 Executive Summary

- 1.1 ch&i associates was appointed by the Monitoring Officer at Peterborough City Council (the Council) to investigate two complaints about the conduct of Councillor Darren Fower, a member of the Council. The complaints were submitted by Councillor John Holdich OBE¹ and Councillor John Fox².

Scope and focus of the investigation

- 1.2 On **1 March 2018**, the Peterborough Telegraph published a letter from Councillor Darren Fower in which he criticised Councillor Fox's decision to close the public gallery in the Council chamber during Council meetings. Councillor Holdich and Councillor Fox both alleged that the letter, in which Councillor Fower stated '*WE should not be barred and such facists tendencies NEED to end NOW!*', was disrespectful to Councillor Fox and unfairly damaged the reputation of the Council
- 1.3 Councillors Holdich and Fox also alleged that Councillor Fower improperly used personal information provided by those who signed up to support an online petition that called for the re-opening of the public gallery. It was alleged that Councillor Fower used the names and addresses gathered to generate emails to the Council's Chief Executive, the Leader and the Mayor without the signatories' knowledge or permission.

Recommendation

- 1.4 My approach in this case has been to equip the Council to determine the allegations through any of the routes open to it, namely:
- i. The member *was not* acting in councillor capacity therefore the code was not engaged and the member did not breach it;
 - ii. The member *was* acting in member capacity, but did not through their conduct breach any Code paragraph;
 - iii. The member *was* acting in member capacity and breached the Code.
- 1.5 The investigation has established that Councillor Fower did act as alleged and in my view did so in his councillor capacity; as such the Code of Conduct was engaged.
- 1.6 Councillor Fower is clearly a committed and hardworking member of the Council who is passionate about representing his local community. I consider though that on this occasion Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in to attack the reputation of Councillor Fox individually and the Council more generally.

¹ At the time of the alleged conduct, Councillor Holdich was Leader of the Council

² At the time of the alleged conduct, Councillor Fox was Mayor and Chair of the Council.

- 1.7 I also consider that while Councillor Fower's on-line petitions may have been well-intentioned, he failed to ensure that the information he obtained from those who supported them was handled appropriately. Councillors must make their constituents aware of how they will use any information they provide and ensure that they are in agreement.
- 1.8 Accordingly, it is my view that Councillor Fower breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post.
- 1.9 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I consider that this is a matter that could be resolved informally, it is my view that any resolution would have to involve Councillor Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this my recommendation would be that this matter be referred to the Hearings Panel of the Council's Constitution and Ethics Committee.

2 Official details of Councillor Darren Fower

- 2.1 Councillor Fower has served as a member of the Council continuously since 3 June 2004; he was also a councillor between 4 May 2000 – 3 May 2001. Councillor Fower is currently an Independent councillor representing Gunthorpe Ward. His current term of office is due to end on 7 May 2020.

3 The relevant legislation & protocols

Localism Act 2011

- 3.1 By section 27(1) of the Localism Act 2011 (the Act) a "relevant authority" is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".
- 3.2 By section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity".
- 3.3 Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so called "Nolan principles".
- 3.4 The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy, as was recognised by Beatson J, as he then was, in R

(Calver) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local government while at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.

- 3.5 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 3.6 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.
- 3.7 The Council’s arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer’s report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I am of the view that this is a matter that could be resolved informally, it is my view that this would have to involve an acknowledgement from Councillor Fower that his conduct ‘crossed the line’; without this my recommendation would be that this matter is referred to the Hearing Panel of the Council’s Audit Committee.

Peterborough City Council’s Code of Conduct

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

PART 1 GENERAL PROVISIONS

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example

- 3.10 Further to the above, the Council’s website states:

What is expected of councillors

Councillors come into contact with a very wide range of people and are asked to make decisions about many different local issues. It is important that they follow high standards of behaviour and integrity, acting as they do on the public's behalf. The council Members' Code of Conduct sets clear guidance for councillors, the key points are:

- councillors must treat others with respect
- councillors must not bring the council into disrepute

4 The investigation

- 4.1 This investigation was conducted by Alex Oram and Mark Hedges on behalf of the Council's Monitoring Officer. Alex is a director of ch&i associates³, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark is a former Police Detective with twenty years' experience of investigation work.
- 4.2 During the course of this investigation we have interviewed Councillor Fower and Councillor Holdich; we have considered evidence provided by the Council and Councillor Fower; and we have also obtained the necessary documentary evidence from the Council website and various other internet sites.

5 The evidence

Background

- 5.1 Meetings of the full Council are routinely held in the Council Chamber at Peterborough City Hall. The public gallery is located on a balcony, approximately six metres above the Chamber.
- 5.2 On **19 July 2017**, immediately prior to that evening's Council meeting, approximately thirty people conducted a peaceful protest outside City Hall. The protestors called for the resignation of Councillor Andy Coles. Councillor Coles had been featured in a Channel 4 programme that centred on an investigation into the activities of undercover police officers in the 1990s. The programme alleged that Councillor Coles, who was a Police Officer at the time and not a

³ Alex is not a lawyer and therefore nothing in this report should be interpreted as legal advice. Any opinions offered are based on his experience of having been involved in over 300 standards investigations.

member of the Council, had infiltrated a group of animal rights activists and become involved in a sexual relationship with a young female activist under false pretences.

- 5.3 At the start of the Council meeting those involved with the protest moved into the public gallery above the Council Chamber. When, towards the beginning of the meeting, the Mayor announced that no public questions had been received there was a minor disruption in the public gallery; I understand that this was because the female activist referred to above (who had been featured in the documentary) had submitted a question pertaining to the appropriateness of Councillor Coles sitting on the Council⁴. When a member of the public tried to draw the Council's attention to her question, others in the gallery joined in either with questions of their own or with shouts such as "*Shame on you, Andy Coles*". In addition, a large banner was draped over the front of the gallery which read: '*Human Rights Abuser Andy Coles*'. There were repeated demands for his resignation or suspension.
- 5.4 At this point the Mayor (who is also Chair of the Council), Councillor John Fox, took the decision to adjourn the meeting temporarily because the protest made it impossible for councillors to properly consider the matters on the agenda. The two Police officers present, along with Council officers, asked the protestors to allow the Council to conduct its scheduled business either by remaining quiet or by leaving. The protestors refused to do either and therefore Councillor Fox took the decision to adjourn the meeting until **26 July 2017**.
- 5.5 A Council spokesperson subsequently stated: "*The decision to postpone the meeting of Full Council until next Wednesday (July 26) was not one that we took lightly. It was imperative that we balanced the rights of people to protest with our obligation to make sure all members of the public, councillors and staff are safe, to ensure that the democratic procedures of the council can continue. This is what we must achieve for next week's meeting and we are in the process of exploring ways that this can happen, in consultation with the police. We will provide residents with an update as soon as we have a clear way forward.*"
- 5.6 On **25 July 2017**, the Council announced that the public gallery would not be opened for the rearranged meeting. Councillor Fox made the following public announcement: "*It is with the greatest reluctance that I have taken the decision, under my inherent powers as chairman, to exclude the public from the council chamber and public gallery at the reconvened council meeting. I have come to this view after very carefully weighing up the needs to secure the safety of the public and members, and the need to ensure that the legitimate democratic processes of the council are not further frustrated. In forming this view I have taken the advice of officers, the police and the council's legal officer. I am mindful that this is a very unusual step. In order to ensure that the public have access to the proceedings as they occur I have given instructions that arrangements for a live stream of the meeting to take place in the Bourges-Viersen Room for the*

⁴ The question had been rejected on the basis that it was potentially defamatory and related to a confidential and ongoing inquiry.

public to view. Accredited members of the press and councillors' guests will be permitted into the chamber as usual."

- 5.7 The Council meeting of **26 July 2017** took place with the public gallery closed and a private security firm in place in case of disturbance. As the 'Sack Andy Coles' campaign group continued to protest outside of meetings, the decision was taken to keep the public gallery closed until the safety of those attending Council meetings in the raised gallery could be ensured. The Council's Head of Constitutional Services told me that this decision was taken after the Police voiced concerns about the safety of the public gallery; specifically, that if any further disturbances were to take place the design of the gallery made it unsafe to clear it using usual Police tactics. What had been verbal advice from the Police at the time has since been confirmed in writing by the Police Officer who had been present at the Council meeting on **19 July 2017**.

Councillor Fower's campaign

- 5.8 In **February 2018**, Councillor Darren Fower launched a campaign to get the public gallery reopened. As part of these efforts Councillor Fower started an e-petition on the Council's website⁵ which stated:

We the undersigned petition the council to Get the Mayor of Peterborough to repeal his decision to not allow members of the public to sit in the gallery in the chamber, during meetings of Full Council.

FACT: The decision to close the gallery to members of the public, during meetings of Full Council was finalised by the Mayor Cllr JOHN FOX. This has meant for the last 4 meetings, local tax payers have been unable to take a seat in their allocated and designated area!

Worth Noting:

** During this time, PCC have spent thousands and thousands of pounds on a security firm.*

** Police Officer time has been wasted, by their attendance.*

** The protesters offer no threat to councillors, unless you consider perhaps having to talk to a local citizen as a threat?*

- 5.9 In addition to the above, Councillor Fower set up at least two private online petitions, one using an online link management platform called 'bitly' (found at <http://bit.ly/Council-Gallery>) and one using an online form builder called JotForm (found at <http://form.jotforme.com/DarrenFower/publicgallery>.⁶)

⁵ This ePetition ran from 22/02/2018 to 07/03/2018 and garnered 35 signatures.

⁶ The actual petition pages are no longer active and I have not been provided with a screen shot of anything from that page other than the form that users were invited to fill in

- 5.10 Councillor Fower publicised the campaign on his own website (darrenfower.com), his Facebook account and on Twitter. Councillor Fower also sent out emails⁷ which included a link to at least one of the petitions. As an example, the investigation has been provided with the following email that was sent to Mr Vince Moon⁸ on **23 February 2018**:

*Did you know the term **DEMOCRACY** comes from the Greek demokratia “democracy” from demacronmos “people, the masses” and -kratia “rule, government,” from kratos “strength, power, authority”?*

Basically it’s PEOPLE power!

Q: Did you know the ex-Tory councillor and now Mayor of the Council, Cllr John Fox, has decreed that members of the Peterborough public, SHOULD NOT be allowed to sit, in the public gallery.... In the Council Chamber!?

Local citizens / taxpayers / voters have been barred from their rightful place for the past four meetings!!!!

(That’s the past eight months)

*With that in mind..... I really **NEED** you to be a star and add YOUR support to our campaign via this LINK: <http://bit.ly/Council-Gallery>⁹*

It only takes five seconds!

Why? We need to remind the Council that they are there to serve us, WE should not be barred and such facists tendencies NEED to end NOW!

Your support is greatly appreciated!

Darren

Peterboough City Councillor

Gunthorpe ward [sic – all emphasis as in the original]

- 5.11 The web addresses shown in paragraph 5.9 and included in the above email linked to an online form that invited those who chose to do so to provide their name, postal address¹⁰ and email address. Under the form there was a red button with ‘ADD YOUR SUPPORT’ written on it.

⁷ Councillor Fower’s circulation list is not fully known; it is evident though that it includes officers of the Council

⁸ Mr Moon, like Councillor John Fox, is a member of Werrington First

⁹ The form was hosted by an online link management platform called ‘bitly’:

¹⁰ It was noted that you must live in Peterborough

- 5.12 Having received the above email from Councillor Fower, Mr Moon completed the online form and clicked to add his support. The investigation understands that numerous people did the same; as examples I have been provided with evidence that on **25 February 2018**, Samantha Milburn filled in the form and on **27 February 2018** Mr Christian Hogg did the same.
- 5.13 Anyone who clicked the 'add your support' button all generated the following email; the example shown was automatically sent to the Council's Chief Executive, Ms Gillian Beasley:

"Dear Gillian

*I just wanted to say that, as a local resident I am completely against the Mayor's decision to ban members of the **Peterborough Public** from the **Council Chamber Gallery**.*

I realise that you are apolitical, but the diminishing of local democracy is a travesty!

*I call on you as the **CEO** to request that the Mayor withdraw his decision **ASAP!***

I'd appreciate a response to this email, too!

[sic]

Councillor Fox (as Mayor) and Councillor Holdich (as Leader) both received similar emails whenever anyone filled in the relevant form and added their support to one of Councillor Fower's online petitions. While all the emails were shown as having been sent by 'noreply@formresponse.com', each email was signed off with the name and postal address of the person who had filled in the form.

- 5.14 On **28 February 2018**, Gillian Beasley responded via email to Ms Milburn and Mr Hogg¹¹ respectively to confirm that she had received several emails similar to that received from them and as such the Council had prepared a statement, which she attached, to clarify its position on the matter. The statement, which was also published on the Council's website, stated:

The decision to close the public gallery was made following a council meeting on 19 July 2017 because of a significant disturbance which made it impossible for the council to conduct important business, including the approval of a plan to tackle crime and disorder in the city. Before the meeting was adjourned, an attempt to clear the public gallery was made by council officers, assisted by the police. This was unsuccessful due to the disturbances taking place. Following the adjournment, the police voiced concerns about the safety of the public

¹¹ Mr Hogg is the Local Party Chairman of the Liberal Democrats and therefore Ms Beasley knew his email address

gallery. Specifically, that if any further disturbances were to take place, the current layout and design of the public gallery made it unsafe to attempt to clear the area. Having received this advice, the public gallery was temporarily closed. Since then, a full survey has been undertaken and we have commissioned a structural engineer to make improvements. It is expected that the public gallery will reopen in the next few months. Public attendance is welcomed at council meetings, whether to support, protest or simply to observe proceedings. However, when a protest of other actions leads to the disturbance of a meeting to the extent where business cannot be conducted, our rules of procedure require us to remove any individual(s) causing that disturbance. It is vital that this can be done, while ensuring the safety of all. In the meantime, we have made arrangements for the public to view the proceedings live via a video link to the Bourges Room in the Town Hall or to [view the discussions and debate via Facebook Live](#). This has proved incredibly popular and has made Full Council accessible to a far greater number of residents who would otherwise be unable to attend each meeting and each video is available to watch again and again, rather than just at a set time and day. The average number of views for each meeting is over 5,000, far more than we could actually fit in the public gallery. Due to the success of the live recordings we will be proposing to keep this service once the public gallery is open again.

- 5.15 Ms Milburn emailed Ms Beasley to thank her for the update; she stated though: *“I just want to point out that I did not send that email they are not my own words! I would not address an email like that. I will be investigating that! I signed a petition circulated by Darren Fower as I thought I would be helping to contribute to an investigation of opening up the public gallery so I am unsure as to why you received an ‘automated’ email as if addressed by me.”*
- 5.16 Mr Hogg also responded to Ms Beasley via email to confirm that although he supported the re-opening of the public gallery at the earliest opportunity, the Council’s position seemed perfectly reasonable. Mr Hogg added that he was disconcerted that his support of an online petition had generated an individual email to her without any warning. Mr Hogg asked whether the Council’s legal officer should review Councillor Fower’s petition or whether he would be better served taking his concerns to the Information Commissioner. Ms Beasley confirmed that she would arrange for the matter to be looked into.
- 5.17 On **1 March 2018**, the Council’s Information Governance Compliance Officer reassured the Chief Executive that although Councillor Fower was clearly capturing and sharing personal data via his online petition, the fact that he was not doing so privately meant that the Council bore no legal responsibility for the security of the data collected. The Officer commented *“I can see that it could come as something of a shock to someone who thinks they are signing a petition to then get an email from the Chief Executive... he [Councillor Fower] is clearly not explaining to people what is happening with their data because it seems like you are adding your support, not agreeing to having PCC [the Council] know all about you”*. The Officer acknowledged that while the form on the petition site gave no indication as to how the data collected might be used, he had not filled

in the form and therefore did not know what information was provided once users had clicked to add their support. The Officer recommended that anyone who raised the matter with the Council, like Ms Milburn and Mr Hogg, be advised to take the matter up with the Information Commissioner if they wished.

Councillor Fower's letter

5.18 On **28 February 2018**, Councillor Fox, who had been sent a copy of the email shown in paragraph 5.10 of this report by Mr Moon, emailed the Council's Head of Constitutional Services to ask what the Council were going to do about it. Specifically, Councillor Fox complained that Councillor Fower's reference to '*facists tendencies*' was a personal insult. On the advice of the Monitoring Officer, Councillor Fox was informed that he could make a code of conduct complaint if he wished.

5.19 On **1 March 2018**, the following was published in the Peterborough Telegraph:

Did you know the term DEMOCRACY comes from the Greek demokratia "democracy" from demacronmos "people, the masses" and -kratia "rule, government," from kratos "strength, power, authority"? Basically it's PEOPLE power!

Question: Did you know the ex-Tory councillor and now Mayor of the Council, Cllr John Fox, has decreed that members of the Peterborough public, SHOULD NOT be allowed to sit, in the public gallery.... In the Council Chamber!?

Local citizens / taxpayers / voters have been barred from their rightful place for the past four meetings! (That's the past eight months)

With that in mind..... I'd like to invite readers to add their support to our campaign, calling on the Council to change it's mind, via this LINK: <http://bit.ly/Council-Gallery>¹²

It only takes five seconds! Why? We need to remind the Council that they are there to serve us, WE should not be barred and such facists tendencies NEED to end NOW! Your support is greatly appreciated!

*Cllr Darren Fower
Gunthorpe ward [sic]*

5.20 On **5 March 2018**, Councillor Fox emailed the Council's Monitoring Officer to point out that Councillor Fower had made the same '*facists tendencies*' remark in the local paper; Councillor Fox informed her that he had been approached in the pub and asked if it was true. Councillor Fox stated "*When I receive the complaint form I will complete it but I truly believe that as a Council we should be contacting the Peterborough Telegraph with a message to counter this vile*

¹² The form was hosted by an online link management platform called 'bitly':

comment. I am proud to be the Mayor but I am prouder to be a Veteran and I see this as a total insult that also brings the Council into disrepute.”

- 5.21 On **6 March 2018**, Councillor John Holdich (Leader of the Council) submitted a formal complaint about Councillor Fower’s conduct. Councillor Holdich stated: *“He [Councillor Fower] referred to the Mayor using the words “facist tendencies” which is extremely offensive and disrespectful to him both as Mayor and personally, given his Service background...On the same issue Councillor Fower has been collecting “signatures” for a petition regarding the closure of the public balcony. In doing so, he has used people’s contact details without their knowledge or permission, to generate emails to the Council’s Chief Executive, the Leader and the Mayor. I understand that this is in breach of legislation regarding how he can act as a Data controller as he misused people’s data.”*

Councillor Fower’s response to the complaint

- 5.22 Councillor Fower told us at interview that in the first instance he considered that the decision to close the public gallery had been an over-reaction to what was a fairly minor protest: *“I believe that even if you do get difficult members of the public, you should be able to handle it in such a way that either allows them to leave without affecting anyone else or be able to remain composed. We have had people shouting from the public gallery before and from my perspective, the group who were protesting didn’t pose a threat at those meetings“*. Councillor Fower said that members were initially led to believe that it would be a one-off and that he did not start his campaign until the gallery had been closed for several months with no information as to when it might be re-opened. Councillor Fower questioned whether the Police had even formally recommended that it was a safety concern, adding that even if they had Councillor Fox had not been duty bound to follow that advice.
- 5.23 Councillor Fower stressed at interview that he fundamentally disagreed with the decision to bar the public from the Chamber. Councillor Fower argued that while the design of the public gallery is far from ideal, it has coped with all types of protests and heated debates since 1933 without any safety concerns leading to its closure. Councillor Fower told me that prior to the closure of the gallery he had long argued for the Council to do more to encourage public participation at meetings, pointing out that the public gallery has no signage for people who might want to attend and provides no access to wheelchair users¹³. Councillor Fower felt that this demonstrated that in truth the public were generally not welcomed.
- 5.24 In terms of specifically targeting Councillor Fox; Councillor Fower pointed out that the decision to close the public gallery had been made using the powers granted to Councillor Fox as Chair and Mayor of the Council. While Councillor Fower was of the belief that the decision had in fact been made by the Conservative administration, Councillor Fox’s actions meant that they were been able to bar the public from meetings without a debate or the agreement of the Council. Councillor Fower said that as a result, opposition councillors were not allowed to

¹³ In his comments on the draft report Councillor Fox stated: *“The statement that there is no access for wheelchair users is a total fabrication as myself and the Disability forum manager Bryan Tyler organised with PCC an area within the chamber that is for exactly for that purpose”*

raise any concerns about the decision in the Chamber or even register an objection to it.¹⁴

- 5.25 Councillor Fower acknowledged that the letter published in the local press (which was almost identical to one circulated via email) was emotive, however he refused to apologise for that fact. Councillor Fower said that he wanted to draw people's attention to a legitimate campaign that was clearly in the public interest. Councillor Fower invited me to look up the definition of fascist, where he said I would find its meaning as '*forcible suppression of the opposition*'. Councillor Fower said that for him that is effectively what the closure of the public gallery felt like: "*It is my role as the opposition to challenge and I strongly believe that members of the public as tax paying citizens should be able to walk into the public gallery and allowed the right to protest.*"
- 5.26 Councillor Fower was keen to stress that it had not been his intention to unfairly malign Councillor Fox or attack him personally: "*but rather to address the action taken as a whole and my belief that it had been neither fair nor democratic. I stand by the things written in my letter as absolute fact.*" Councillor Fower maintained that at no time did his letter state that Councillor Fox was a fascist, though he acknowledged that he maybe had not expressed himself as clearly as he perhaps could have. Councillor Fower still believed though that his meaning was clear; the Council, through Councillor Fox, had barred the public from meetings and in his view, this was an example of a fascistic tendency that had to be stopped.
- 5.27 Councillor Fower confirmed at interview that the petitions referred to above were created so that when an individual added their support automatic emails were sent in their name to relevant parties within the Council. Councillor Fower acknowledged that this was not made explicitly clear when people were filling them in; his belief though is that on completion an email was also automatically generated and sent to the petitioner explaining how their data had been used; this included confirmation that emails had been sent in their name. Councillor Fower pointed out that two of the only three people who had expressed any concern about this matter (Mr Moon and Mr Hogg) also had political reasons for doing so.
- 5.28 Councillor Fower told me that he would be able to provide the investigation with evidence of the email that was sent to petitioners after they have clicked to add their support. To date though this has not been forthcoming and until that time I must provisionally conclude as a fact that those who signed the petition did so not knowing that emails would be sent to senior figures within the Council in their name and including their personal details. Councillor Fower did make the point as well though that he did not believe he had misled anyone; they had all willingly

¹⁴ In his comments on the draft report Councillor Fox stated: "*When I adjourned the meeting to the Mayors parlour on advice from the legal officer, I asked for all group leaders to join me in the Mayor's parlour to discuss the situation along with the Police. After a long discussion the group leaders, of which Cllr. Fower's Leader was there, decided that we had no choice but to suspend the meeting. This was not my decision alone and I was most definitely not dictated to by the Conservative administration in any way.*"

decided to provide their names and contact details to support his campaign and their details had only been used for that purpose.

6 Have there been failures to comply with the Code?

Official Capacity

- 6.1 Before I make a recommendation as to whether Councillor Fower's conduct amounts to a failure to comply with the Code of Conduct, I need to decide whether he was acting as a councillor (i.e. acting in his official capacity). Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The Council has reflected this wording in their own Code.
- 6.2 It is clear then that the Code does not seek to regulate what members do in their purely private and personal lives; the Code only applies to members when carrying out Council business. When considering this matter, I am mindful that Councillor Fower's campaign used various means of communication that did not require him to be a councillor and which could have easily been utilised by any member of the public (on-line petitions / emails / Facebook / Twitter etc). Indeed, in response to the concern that the Council might be held accountable for potential data breaches caused by Councillor Fower's petition, the Council's Information Governance Compliance Officer reported that this could not be the case because Councillor Fower "*is clearly not acting in his capacity as a member of the Council i.e. he is not working on our behalf therefore he is operating as his own data controller.*"
- 6.3 The fact that Councillor Fower was not acting on behalf of the Council does not mean though that he was not acting in his capacity as a councillor. Councillor Fower himself stated that part of his role as an opposition councillor is to challenge the administration and represent the rights of his constituents. In this instance Councillor Fower's petition and associated emails / letters directly concerned Council business; he was in effect trying to use his position as a councillor to garner support and put pressure on the Mayor to overturn the decision to close the public gallery. It is relevant that a review of Councillor Fower's use of social media shows that it is intrinsically linked to his position as a councillor; he is titled as such on both Facebook and Twitter and the majority of his posts are related to Council business. Further, throughout this campaign, Councillor Fower has referred to himself as 'Councillor Darren Fower' in all correspondence, including his letter to the press. In my view there can be no doubt that Councillor Fower was acting in his official capacity throughout and therefore this complaint does fall within the jurisdiction of the standards framework.

Has Councillor Fower breached the Code of Conduct?

- 6.4 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code there

is an expectation that members will treat their fellow councillors, Council officers and members of the public with respect. This is not to say that councillors should not be encouraged to engage in vigorous public debate on matters pertaining to the Council, however the impact of such debate is diminished, rather than accentuated, when it is cast in abusive or offensive terms.

- 6.5 In addition, while Code of Conduct complaints should not be allowed to substitute for complaints that would be better considered by the Information Commissioner, councillors do regularly get access to information of a confidential or sensitive nature. In order to comply with the Code, councillors must not only ensure that they handle this information carefully; they must make their constituents aware of how they will use any of the information provided and ensure that they are in agreement.

Freedom of expression

- 6.6 Any consideration as to whether Councillor Fower failed to comply with the Code must also take into account his right to free speech, in particularly the higher level of protection offered to political speech.
- 6.7 In *Heesom v Public Service Ombudsman for Wales* Mr Justice Hickinbottom considered a councillor's right to free speech in some detail.¹⁵ His considerations drew attention to a number of earlier cases in which the following propositions could be derived:
- a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
 - b. The enhanced protection applies to all levels of politics, including local.
 - c. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated
 - d. Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
 - e. The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.

¹⁵ Full judgment <http://www.landmarkchambers.co.uk/userfiles/Heesom.pdf>

- f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- g. As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.
- h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

6.8 In considering whether a breach finding would amount to a disproportionate restriction on Councillor Fower’s right to freedom of expression I am firstly mindful that under the Localism Act the range of sanctions is very limited; as such, any interference of his rights is likely to be minimal. Having said that, I must give weight to the fact that his comments were directed towards an elected councillor; politicians are required to have a thick skin and be tolerant of criticism and other adverse comments. In addition, in a political context councillors are able to be slightly more exaggerated and offensive in their language than what might be considered acceptable outside that context.

Councillor Fower’s conduct

- 6.9 In his letter to the local paper Councillor Fower strongly advocated for the re-opening of the public gallery. When doing so it is maybe not surprising that he focused not the reasons why the decision was taken and instead took a more emotive approach. It is not part of my role though to consider the rights and wrongs of his argument; my focus is only on whether Councillor Fower unfairly maligned Councillor Fox and brought his authority into disrepute when making it.
- 6.10 In order to do this I have to recognise both Councillor Fower’s right to free speech and the reality of political life. Politicking involves the use of carefully chosen facts to create an impression that supports an overall goal. The public generally accepts that politicians will be selective in the information they deploy in support

of their political positions. The question as to whether this information is fair and balanced should be, in the first instance, the stuff of political debate and journalistic analysis. In my view, the presumption should be that censure through the regulatory approach of the Code should be reserved for cases where impropriety (for example the procurement of unfair advantage), mischief or abusive ends are being pursued under the mask of promoting debate. Politicking, even if it involves unbalanced and misleading information, is not necessarily a form of deception, provided that the core assertions are correct. It is when members cross the line and either deliberately deceive or abuse others that public trust plummets and the member risks breaching the Code.

- 6.11 The aspect of the letter that most upset the complainants concerned Councillor Fower's decision to include the line "*WE should not be barred and such facists tendencies NEED to end NOW*". Both Councillor Fox and Councillor Holdich were clear that they interpreted this as a personal attack on Councillor Fox; Councillor Fox said that as a Veteran he was particularly upset at being described as a fascist. Councillor Fower on the other hand was adamant that he was not attacking Councillor Fox personally, just the decision that was taken. Councillor Fower acknowledged that he used emotive and possibly inflammatory language; he argued though that the decision to close the public gallery was such as to merit the comparison.
- 6.12 Councillor Fower invited me to consider his definition of the word 'facist' (*'forcible suppression of the opposition'*) against Councillor Fox's decision to close the public gallery. Councillor Fox, on the advice of officers, took the decision to close the public gallery after genuine safety concerns were raised by the Police. Protestors continued to be allowed to protest on and around Council premises. Councillor Fower was not barred from attending Council meetings; indeed, members of the public were still able to enter the Chamber to ask questions or when invited and anyone could view the proceedings from an adjoining room / on the internet. Meanwhile, Council officers sought to make structural changes to the public gallery so that the safety concerns could be addressed and the public gallery reopened. While I have no doubt that Councillor Fower did have genuine concerns about the closure of the gallery and can understand his frustration at the time taken to ensure full public participation again, given the facts as set out above I find his comparison between the Council's closure of the public gallery with the *'forcible suppression of the opposition'* of little merit, verging on the offensive.
- 6.13 In considering whether Councillor Fower has breached the Code I am also mindful that the definition of 'facist' is not limited to the definition offered by Councillor Fower. Defining facism is a notoriously difficult scholarly task and therefore not one I will attempt here. Within the context of political language though its value appears more rhetorical than analytical; being most commonly used as a pejorative term for supporters of the extreme far right or a derogatory insult flung at those in power. It is my view Councillor Fower was deliberately trying to use inflammatory language to raise the profile of his campaign. Further, while I note that Councillor Fower claimed to be attacking the decision rather than the person making it, the earlier part of his letter firmly and critically places sole responsibility with Councillor Fox. The phrase 'such facists tendencies NEED to

end Now' appears to personalise the accusation, as if he is referring to Councillor Fox's individual characteristics.

- 6.14 On balance it is my view that Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in order to attack the reputation of Councillor Fox individually and the Council more generally. While I recognise that Councillor Fox, as a councillor, should be expected to have a thick skin and be prepared to accept a certain level of public criticism, he should not have to face such public abuse. In my view Councillor Fower's conduct demonstrates a failure to promote and support high standards of conduct and leadership when serving in his public post. As such, I am of the view that he breached the Council's Code.
- 6.15 Further to the above, as part of his campaign Councillor Fower started at least two online petitions which, when completed, generated automatic emails from the petitioner to senior figures within the Council. The evidence I have seen suggests that those completing the petition did so not knowing either the content of these emails or that they would be circulated in their name; at least two actively expressed their concern that this had occurred.
- 6.16 While I accept that those who signed the petition must have done so with the understanding that their details would be used in order to put pressure on the Council to re-open the public gallery, it is my view that their reasonable expectation would have been that their name would simply appear on a list of petitioners that would in turn be presented to the relevant individual / body. In my view Councillor Fower should have sought specific consent from those signing up to the petition before sending emails out in their name; this should have involved their being shown what had been drafted (in their name) and the details of who it would be sent to. In my view Councillor Fower's failure to do this was reckless and amounts to a failure to comply with the Code.

7 Recommendation

- 7.1 The investigation has established that Councillor Fower did act as alleged and in my view did so in his councillor capacity; as such the Code of Conduct was engaged.
- 7.2 Councillor Fower is clearly a committed and hardworking member of the Council who is passionate about representing his local community. I consider though that on this occasion Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in to attack the reputation of Councillor Fox individually and the Council more generally
- 7.3 I also consider that while Councillor Fower's on-line petitions may have been well-intentioned, he failed to ensure that the information he obtained from those who supported them was handled appropriately. Councillors must make their constituents aware of how they will use any information they provide and ensure that they are in agreement.

- 7.4 Accordingly, it is my view that Councillor Fower breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post.
- 7.5 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I consider that this is a matter that could be resolved informally, it is my view that any resolution would have to involve Councillor Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this my recommendation would be that this matter be referred to the Hearings Panel of the Council's Constitution and Ethics Committee.