



**Independent investigation into allegations
concerning**

**Councillor Ed Murphy
of
Peterborough City Council**

**Report into complaints by
Councillor David Seaton
and
Mrs Alison Seaton-Paige**

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1: Executive Summary

- 1.1 Peterborough City Council's Monitoring Officer instructed us to investigate three complaints about Councillor Ed Murphy's conduct; two that were received from Councillor David Seaton and one Mrs Seaton-Paige. All of the complaints related to comments that were allegedly made by Councillor Murphy about Councillor Seaton. These included:
1. That Councillor Murphy made disparaging comments about Councillor Seaton during a City Council meeting and continued to do so on Facebook on while the meeting was being webcast.
 2. That Murphy called Councillor Seaton "*controlling and bullying*" in a Facebook post.
 3. That Councillor Murphy used the offensive acronym 'FOAD' on Facebook.
- 1.2 As part of this investigation we considered firstly whether the alleged conduct fell within the jurisdiction of the standards framework; a councillor only has to abide by their Council's Code of Conduct when they are conducting the business of that authority. For those allegations that did engage the Code; we have gone on to consider whether by his conduct, Councillor Murphy failed to promote and support the high standards of conduct required when serving in his public post.
- 1.3 The investigation has established that Councillor Murphy did act as alleged and in the case of the first two allegations, did so in his councillor capacity; as such, the Code of Conduct was engaged. Councillor Murphy is clearly a committed and hardworking member of the Council who is passionate about representing his local community. We have concluded though that Councillor Murphy's comments about Councillor Seaton on Facebook went beyond the "rough and tumble" of local politics and instead amounted to online personal abuse.
- 1.4 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. In considering what action the Monitoring Officer should consider taking, we are not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is necessarily justified, particularly given the limited nature of the sanctions available. While we think that Councillor Murphy's conduct did on this occasion cross the line, it is a finely balanced decision. It is also evident that his conduct was not without provocation, in that when trying to get Councillor Murphy excluded from the meeting of 16 May 2019, Councillor Seaton made comments about Councillor Murphy that are in many ways similar to those complained about. There appears to be a long standing and ongoing public 'spat' between Councillors Murphy and Seaton which in our view has done little for the reputation of either; councillors are required to set standards of

behaviour and not allow their conduct to descend to the levels they might perceive in others.

- 1.5 In light of the comments above, our recommendation is that Councillor Murphy be offered some training in relation to his use of Social Media when acting as a councillor. If Councillor Murphy refuses the offer of training, our recommendation is that this matter be referred to the Council's Hearings Panel for local hearing.

2: Councillor Murphy's official details

2.1 Councillor Murphy has served on Peterborough City Council since May 2011. He is currently the ward member for Ravensthorpe. He is a member of the Labour Party.

2.2 Councillor Murphy currently sits on the following Committee's:

- Cambridgeshire Police and Crime Panel (Reserve) Peterborough City Council
- Cambridgeshire Police and Crime Panel Complaints Sub-Committee
- Constitution and Ethics Committee
- Constitution and Ethics Sub-Committee
- Planning and Environmental Protection Committee(Reserve)

3: Relevant legislation and protocols

The Localism Act 2011

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity. For the purposes of this investigation, the relevant authority is Peterborough City Council.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles: -

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;

- (e) Openness;
- (f) Honesty;
- (g) Leadership.

- 3.3 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.
- 3.4 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. For the purposes of this investigation, the relevant authority is Peterborough City Council.
- 3.5 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.

Peterborough City Council's Code of Conduct

- 3.6 Under Section 27(2) of the Localism Act the Council established a Code of Conduct for members (the Code).
- 3.7 The Code adopted by Peterborough City 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

3.8 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

3.9 ***European Convention on Human Rights (ECHR)***

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

3.11 Article 10 of the ECHR provides:

Freedom of expression

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

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

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

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

3.13 The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. A key issue for determination is thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to an elected member’s right to freedom of expression than is necessary to accomplish the legislative objective of the Code.

3.14 In *Heesom v Public Service Ombudsman for Wales* Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail. 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.
- 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.

4: The evidence gathered

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 associates¹, 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 Murphy , Councillor Seaton and Mrs Seaton-Page; we have considered evidence provided by the Council and taken from the Council website; and we have watched the relevant Facebook webcast and examined Councillor Murphy’s use of Facebook generally.

The Evidence

Background

- 4.3 Councillor Seaton and Councillor Murphy both told me that they have longstanding concerns about the way the other conducts themselves; both in the

¹ 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.

chamber and on social media. This has led to them making several complaints about the other before and during this investigation.

- 4.4 Councillor Seaton told me that he believes Councillor Murphy to be a bully who has a tendency to target women. Councillor Seaton told me that he understands that Councillor Bashir made a complaint about Councillor Murphy's conduct towards her. He also told me that he spoke informally to the Council's Chief Executive about Councillor Murphy's behaviour towards two women within the Labour Party; they agreed that this was not a matter that the Council could directly involve itself in. Councillor Seaton said that Councillor Murphy had agreed to apologise to him during 2018 for things he had said; *"instead he issued a pretty nasty statement to the Peterborough Telegraph² and since then, has consistently refused to apologise."*
- 4.5 Councillor Murphy told me that he considers Councillor Seaton to be a misogynist and understands that there has been more than one complaint made about him as a result. By way of an example, Councillor Murphy told us that, in **May 2018**, a Labour candidate in the local elections made a complaint about Councillor Seaton included allegations of misogyny and the objectifying of women³.
- 4.6 I make reference to the above in that they are relevant to comments made by Councillor Murphy on Facebook and to provide context to the allegations under consideration in this report.

Matters related to Complaints 1 & 2

- 4.7 At its meeting on **25 February 2019**, the City Council's Cabinet received a report in relation to the Council Tax Support Scheme for 2019/2020, including feedback from the consultation and the continuation of the Council Tax Hardship Policy (the report).
- 4.8 At the City Council meeting of **6 March 2019**, Councillor Seaton introduced the report and provided Council with some background information. He advised that until 2013, residents on low income could claim Council Tax Benefit, which had the potential to cover up to 100% of their Council Tax. In 2013, Council Tax Benefit was abolished, and each local authority was given the responsibility to design and adopt its own scheme. Pensioners were exempt from the changes and the new schemes only affected working age claimants, who received a 30% reduction. The scheme has remained in place since 2013, however funding from central Government to support the City Council had continued to diminish. The Cabinet were proposing that the City Council adopt a scheme that contained the following components:

² Councillor Seaton told me that Councillor Murphy was quoted in the Peterborough as follows: *'Hopefully some of these sexist, yesterday men will be removed from senior positions.'*

³ The Council's Monitoring Officer concluded though that Councillor Seaton had not been acting in his capacity as a councillor and therefore the matter fell outside the jurisdiction of the standards framework.

- a. The existing 30% reduction that is applied at the end of the benefit calculation is replaced with a 30% liability reduction applied at the start of the calculation.
- b. Increasing the 30% liability reduction by 1% a year for 3 years, starting in 2019/20.
- c. Reducing the capital limit to £6,000 for non-passported claims.
- d. To amend appropriate rates in line with annual upratings.
- e. To allow the use of Universal Credit Data Share documents as claims for Council Tax Support

4.9 Members debated the recommendation and in summary the points raised included:

- Members wanted to know how many residents were affected by the changes and by how much.
- Moving the existing 30% reduction applied at the end of the benefit calculation to the start of the calculation would lead to higher council tax increases for some of the poorest residents.
- Members felt that Council Tax would rise and disproportionately affect poorer people who would receive a reduction in the amount of assistance received.
- The Council Tax Support Scheme discourages people from taking up employment and some Members felt for this reason they could not support the proposal.
- The online consultation was complicated and not easy to understand and only two people responded. Members asked how the consultation could be justified with only two responses.
- 30% change from net to gross liability would generate an additional £225,000 and would affect 1,991 people. The 1% increase would generate £79,000 and affects 8698 people and the £6,000 capital limit will generate £22,000 which will affect 43 people. This was not confirmed by the Cabinet Member for Resources.
- Concerns were raised regarding the disregard of child benefit affecting poorer families and pensioners had expressed concern about the capital limit reduction from £16,000 to £6,000.

4.10 During the debate, Councillor Murphy told the meeting that in his view Councillor Seaton had got something right by proposing that the Council Tax increase be maxed out⁴ at 2.99%. Councillor Murphy pointed out though that that increase would disproportionately affect the most vulnerable because of their lower incomes and that these were the residents who were seeing the benefits on which they relied being further eroded by cuts in services.

4.11 Responding to Councillor Murphy, Councillor Seaton stated: “*Councillor Murphy said that we’re maxing out Council Tax by increasing it by 2.99 percent. That’s rich, from a Councillor who, twelve months ago – headline in the Peterborough Telegraph – I mentioned it earlier, wanted to increase Council Tax by fifteen percent. That’s not maxing out, but 2.99 is? But, hey ho.*”

⁴ This is the maximum allowable increase without the need for a referendum.

4.12 Councillor Murphy responded to Councillor Seaton:

“On a point of accuracy, if you recall the debate and the comment, which is there and people have commented on, I said if the Leader of the Council then wanted to go for that sort of increase in council tax, and it would solve the housing emergency and all those big problems in Peterborough, I might be minded to support it. You’re getting a reputation for telling porky pies. Now, sometimes, when you actually tell the truth people think you’re lying. Like today, you’re probably right, we are borrowing money to pay – we are selling assets to pay off – but people think you’re not doing that –”

- 4.13 Councillor Seaton told us that he considered Councillor Murphy’s interjection to be completely inappropriate because he was effectively calling him a liar. While Councillor Seaton said that he encouraged robust debate, he did not believe that councillors should attack the personal integrity of those they are debating with.
- 4.14 Councillor Murphy told me that he had been careful not to accuse Councillor Seaton of being a liar; his interjection was in fact to simply correct what had been both a factually incorrect and pointless attempt by Councillor Seaton to have a dig at him. Councillor Murphy acknowledged stating, in the context of an incorrect comment being made about him, that Councillor Seaton had a reputation for ‘telling porky pies’; Councillor Murphy contended though that this was simply a fact based on his discussions with members of the public. Councillor Murphy pointed out that that he had not said either way whether this reputation was warranted or not. Councillor Murphy stressed that the point he was actually making at the meeting was that he largely believed that Councillor Seaton was being open and honest about the budget.
- 4.15 Councillor Seaton took exception to Councillor Murphy’s comment and challenged the Mayor to intervene: *“Mr Mayor. This is a Member insulting another Member and each Council you allow this Council; this Councillor; to bully women, to insult other colleagues, and you say nothing.”*
- 4.16 The Mayor turned to Councillor Murphy and suggested that accusing another councillor of ‘telling porky pies’ was probably not acceptable unless he had evidence. Councillor Murphy responded: *“Sorry, Mr Mayor, I was just pointing out that many of the public actually don’t believe a word he says now.”*
- 4.17 Councillor Seaton then proposed that Councillor Murphy either apologise for the comment or be removed from the chamber: *“Either Councillor Murphy apologises, or he should be removed from the chamber. Every Council meeting he bullies women in this chamber, he insults colleagues in this chamber. It is entirely unacceptable behaviour, he has just accused me of lying, not just at this Council meeting, he’s doing it all the time. When we had all party scrutiny; remember that? ”Porky pies’ there as well. We should move to a vote on removing Councillor Murphy from this chamber.”*

- 4.18 The Monitoring Officer pointed out to all present that before the Council could consider Councillor Seaton's proposal, they would first have to agree that Councillor Murphy is not heard further. Councillor Seaton amended his proposal and it was carried with twenty-eight for, nineteen against, three abstentions, and two 'no votes'.
- 4.19 Councillor Seaton then proposed the Councillor Murphy be removed from the Chamber. The Monitoring Officer again intervened to clarify that this could only be proposed if Councillor Murphy disregarded the previous motion. Councillor Seaton said that this was a shame; he then proceeded to respond to the issues that had been raised in relation to the report. The recommendations included in the report were subsequently agreed by the Council. The Mayor then moved the meeting on to the next item, which was again present by Councillor Seaton.
- 4.20 The City Council generally live streams its Council meetings on its Facebook page. The live stream allows Facebook users to not only view proceedings but add real time comments that are posted alongside the video feed. As the votes in relation to the report were being announced, Councillor Murphy (using his personal Facebook account titled 'Ed Murphy') posted:
- "Check out Cllr Seaton who's had a number of allegations of misogyny made against him. Many Folk just don't believe a word he says these days".*
- 4.21 One of the people viewing the feed responded to Councillor Murphy on Facebook to point out that his comments were just as '*unparliamentary*' when posted in the Facebook comments; another said they thought Councillor Murphy had been silenced. Others on Facebook were subsequently supportive of Councillor Murphy.
- 4.22 Mrs Seaton told us: *"On the night of the meeting that was broadcast in March, I happened to be here for the evening. I popped online to see how the meeting was going and was utterly appalled to see these things about my husband. During the Webcast, people can comment live. Councillor Murphy was taking this opportunity to provide his own commentary after he was told in the chamber that he was not to be heard from anymore. It can be a very volatile arena, which is why I don't tend to watch the whole thing, and I just happened to be on there at that point and it made me very unhappy. Having these things said reflects a great deal on both my husband and me... I was so offended at the time that I actually considered going to a solicitor for slander and libel. I found it very painful. I know David [Councillor Seaton] is a strong character and he will defend with vigour. If he is poked, he will poke back but he is not a liar and he is most definitely not a misogynist. That to me is a deeply insulting and harmful thing to say."*
- 4.23 In his complaint, Councillor Seaton also provided a screenshot of another comment made about him by Councillor Murphy on Facebook, which stated *"people who are not in control of themselves or habits do tend to try controlling and bullying others. Seems to be the case with Cllr Seaton"*. Councillor Seaton told us that he believed that this comment was made at a similar time; the

investigation has not been able to find the relevant comment on any current Facebook thread, however.

- 4.24 Councillor Murphy told us that he had no recollection of having made the comments attributed to him on Facebook, however he did not challenge the assertion that he did so. Councillor Murphy again questioned what such a comment should warrant a Code of Conduct investigation, claiming that he had said nothing that was incorrect or unfair.
- 4.25 At the same meeting, during a discussion on the subsequent item, Councillor Murphy (now allowed to speak once more) asked for clarification with regards a supplementary paper that had been produced to correct a minute taken at an earlier meeting. Councillor Murphy asked whether anyone had actually checked the audio of the relevant meeting to ensure that the amendments set out in the supplementary paper had been agreed; or were members just being asked to believe Councillor Seaton. The Council's Monitoring Officer confirmed that it had been a clerical error with regards the recording of the relevant decision and that the amendment had nothing to do with Councillor Seaton.

Matters related to Complaint 3

- 4.26 'Peterborough Politics – Official' is a 'closed'⁵ group on Facebook that was set up by Councillor Darren Fower in September 2015 (the politics group). Members of the group are invited to only post about political issues that relate to the activities associated with the governance of Peterborough.
- 4.27 In the run up to a Parliamentary bi-election (which took place on **6 June 2019**), a member of the public [Mr B] posted in the politics group: "*I know this is a majority Labour page 😊... and expecting many silly comments... but 🙌 Just a little reminder to vote for the BREXIT PARTY in the up and coming elections 🇬🇧. This is about showing we won't be ignored and that we want what we voted for...*"
- 4.28 We have not been able to access the original post during the investigation; it is common ground though that Councillor Murphy commented on the post as follows: "FOAD".
- 4.29 Councillor Murphy acknowledged posting the message on Facebook, though he made not comment with regards what FOAD might mean or refer to. Councillor Murphy was clear that the exchange and therefore his comment had no connection to his role as a councillor; in his view the Code only exists to regulate what councillors do when they are conducting Council business. Councillor Murphy also pointed out that the message was left on a private Facebook group that regularly includes very robust exchanges and that nobody actively engaged in exchange complained.

⁵ Only members of the group can see who is in the group and what they post. Any Facebook user is able to apply to join the group; membership decisions rest with the administrator, however. There are currently approximately 3000 members of the group.

4.30 In his complaint, Councillor Seaton stated that Councillor Murphy's comment, which is a well-known acronym for 'Fuck Off And Die', was clearly in breach of the Council's Social Media Policy. Councillor Seaton told us he believed that the conduct could damage the reputation of the Council: "*The post talked about voting for the Brexit party; vote for Mike Greene in the Peterborough election. It was talking about politics and therefore it is Council business. When you're talking local politics, it impacts upon Council matters and Council politics because those things are fairly intertwined. The people campaigning for MPs are the same people who stand within the Council Chamber.*"

5: Reasoning as to whether there have been failures to comply with the Code of Conduct?

Capacity

- 5.1 The complaints referred to above are clearly about a serving councillor and about actions that took place during his term of office. The complainants therefore may understandably assume that their concerns fall within the scope of the standards framework. However, a complicating factor to be considered relates to so-called 'official capacity', in other words, before we make a recommendation as to whether Councillor Murphy's conduct amounts to a failure to comply with the Code of Conduct, we need to decide if he was acting as a Councillor (i.e. acting in his official capacity) at the relevant times.
- 5.2 Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The Council has reiterated this in Part 1 of their Code, as set out in paragraph 3.7 of this report. The Code then does not seek to regulate what members do in their private and personal lives. The Code only applies to members when conducting Council business or when carrying out their constituency work. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person's membership of their authority is needed.
- 5.3 The comments made by Councillor Murphy during the Council meeting of **6 March 2019**, which prompted the Council to vote to temporarily silence him, were clearly made in his official capacity; he was present at the meeting as a member of the Council and only allowed to participate in the debate in that capacity. All the other comments complained about however relate to posts Councillor Murphy published on Facebook. When it comes to social media, councillors can often have 'blurred identities'; this is where a member has a social media account that they use both as a councillor and as a private individual. For example, using the same Facebook account, a councillor might post a message / photographs about their family holiday (personal) and then post an explanation about their Council's position on pothole repairs (councillor). Such blurred identities can have implications on how Code of Conduct complaints about such matters can be considered.

5.4 In offering our own views on this, we recognise that the Localism Act is vague on the key point of what acting in ‘official capacity’ involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have, however, is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance as to how Councils must interpret what ‘official capacity’ means.

5.5 Under the previous legislation, a fairly restrictive view on capacity was generally taken by the Adjudication Panel for England, the First Tier Tribunal (Local Government Standards) and the High Court. In the standards case of “Livingstone v The Adjudication Panel for England [2006]” Mr Justice Collins considered the question of official capacity in relation to a complaint about the then Mayor of London, Ken Livingstone. On the facts of that case, Collins J found that Mayor Livingstone’s offensive comments to a journalist were not sufficiently connected to his position as Mayor as to engage the Code of Conduct, despite the fact that the offending comments were made as Mayor Livingstone was leaving an official function. Collins J rejected the finding of an earlier Tribunal - that Mayor Livingstone’s conduct had brought his office into disrepute - on the basis that Mayor Livingstone had effectively stopped ‘conducting Council business’ as soon as he put his coat on and left the function; his exchange with the journalist outside the event therefore did not fall within the jurisdiction of the standards framework. Collins J stressed that in cases such as this it was important to maintain the distinction between the man and his office, even where the matter concerned high-profile individuals.

5.6 In APE0458 Sharratt the tribunal supported this position, observing:

“The dedication of many councillors to activities in public life means that often their social and professional lives are shaped by their roles as councillors and in turn shape how they approach those activities. However, while they [councillors] may always be conscious of their office as councillor and carry out a wide range of activities in which that is a factor in their thinking, no reasonable observer would conclude that they are carrying out the business of the office of councillor; a test which, in the light of the decision in Livingstone, should be narrowly construed.”

5.7 The Upper Tribunal decision in MC v Standards Committee of the London Borough of Richmond [2011] UKUT 232 (AAC) provided a helpful distillation of the previous High Court cases on capacity. The principles stated in the Richmond case were as follows :-

(a) was the councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?

(b) a fact sensitive approach is required to the above;

(c) the question is one for the tribunal to determine, not a reasonable observer.

- 4.31 When considering the circumstances surrounding Councillor Murphy's various comments on Facebook, we are mindful that many of those reading his posts would have been aware that he was a councillor. As part of this investigation we reviewed Councillor Murphy's general use of Facebook and his account is a good example of the 'blurred identity' referred to above. Councillor Murphy has had a Facebook account under the name 'Ed Murphy' since September 2007; this predates his becoming a councillor by 4 years. A wider review of Councillor Murphy's Facebook account shows that he uses it both to discuss / highlight matters that directly relate to Council business and to highlight matters that have absolutely nothing to do with his role as a councillor. Councillor Murphy's profile on Facebook makes no reference to his position as a councillor, however his posts make it clear that he is one. Councillor Murphy has also activated the 'Follower' functionality on his profile; this tends to be used by public figures / celebrities or businesses to allow people to be notified, to access and to share content posted by Councillor Murphy without being a 'friend'.
- 5.8 Judge Laverick specifically considered the use of social media by a councillor in First Tier Tribunal Case No. LGS/2011/0537. When considering the capacity in which a councillor was writing in an online blog, Judge Laverick stated that it was perfectly reasonable for a councillor to write posts / make comments in their private capacity even if their social media account clearly identified them as a councillor; the key determining factor when it came to deciding the capacity in which the councillor was writing was whether the content of the relevant post was sufficiently connected to Council business in order for the Code to be engaged⁶. Judge Laverick accepted that under those circumstances it was possible for a councillor to make offensive and possibly defamatory comments on the internet that could well damage the reputation of their Council without engaging their Council's Code of Conduct.
- 5.9 A councillor's use of social media was also considered by Judge Lister in First Tier Tribunal Case No. LGS/2012/0597, which concerned an appeal against a decision made by Surrey Heath Borough Council's standards committee. The standards committee had found that one of their members had been acting in their official capacity when making general political and satirical comments in an online blog. In her considerations Judge Lister gave regard to the guidance that had been produced by Standards for England, which stated:

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

It is unlikely that private blogging will fall within the scope of the Code... It is important to draw a distinction between comments on a blog about council business and comment about general political issues. The context is

⁶ This position was supported in *McTigue v Middlesbrough Council* (2009) APE 421, where a councillor was deemed to be acting in her official capacity when posting in an online forum despite writing under a pseudonym which did not identify her as a councillor solely because she was writing about a matter that directly related to Council business.

important and the decision as to whether the Code is engaged is fact sensitive and case specific.”

Judge Lister overturned the Standards Committee’s decision, stating that although the member had been clearly identifiable as a councillor, the reference to that position in his description about himself had just been part of his wider profile and not an indication that he was actually conducting the business of his authority. Importantly the posts, while political in tone, did not specifically relate to Council business.

5.10 In our experience decisions such as those described above have been difficult for many people to fully accept. This is reflected in a 2019 report titled Ethical Standards in Local Government, which was published by the Committee on Standards in Public Life: *“The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour.”* The report suggested that high standards of conduct are desired / expected of public office holders in their use of social media, even when they purport to be acting in a personal capacity. The Committee on Standards in Public Life expressed the view that what is relevant to the public is not just whether an individual was conducting Council business, but also whether the behaviour itself is in public or in private. In their view the restrictions on what an individual can do or say in public are different in kind from any restrictions on an individual’s private life; they therefore recommend that the primary legislation under which the Code is applied be changed: *“Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches”*. The report though makes it clear that the current legislation does not reflect this when it comes to considering the conduct of councillors in England.

5.11 When applied to Councillor Murphy’s conduct, it is evident that the changes suggested by the Committee on Standards in Public Life would automatically bring all of his posts on Facebook within the scope of the standards framework. As it is, councillors are able to say things on social media that are objectively offensive without engaging the Code; the key factor is whether the content is sufficiently connected to Council business to warrant regulatory intervention.

5.12 The three Facebook comments we have been asked to examine are:

I. *“Check out Cllr Seaton who’s had a number of allegations of misogyny made against him. Many Folk just don’t believe a word he says these days”*.

This was posted on an official Council webcast during a Council meeting and concerned a councillor / incident relevant to that meeting. As such we consider it falls within the jurisdiction of the Code.

II. *“people who are not in control of themselves or habits do tend to try controlling and bullying others. Seems to be the case with Cllr Seaton”*

Although the investigation has been unable to establish the exact context to this post, it clearly refers to a serving councillor and appears to be a criticism of the way that he conducts himself in that capacity. The role of a councillor is to provide a bridge between the community and the Council. As well as being an advocate for their local residents, representing their views at council meetings and signposting them to the right people within the authority, councillors are responsible for communicating back to their constituents about the decisions they and their Council make, providing a view as to the general effectiveness of their local authority and its members / officers. As such we consider it falls within the jurisdiction of the Code.

III. "FOAD".

This was posted as a comment on a Facebook post that called for people to vote for the Brexit Party at the forthcoming elections. Generally, councillors are not considered to be conducting Council business when electioneering / commenting on matters related to an election. We have seen no compelling evidence that would lead us to consider that Council Murphy was acting in his official capacity when posting this comment; As such we consider that this allegation does not fall within the jurisdiction of the Code; as such Councillor Murphy cannot be found to have failed to comply with it.

Has Councillor Murphy failed to comply with the Code of Conduct?

Code principles

- 5.13 The Council's Code requires members to have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Councillors must promote and support high standards of conduct when serving in their public post. 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.
- 5.14 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. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
- 5.15 Any consideration as to whether Councillor Murphy 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. In considering whether a

breach finding would amount to a disproportionate restriction on Councillor Murphy's right to freedom of expression. We 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

- 5.16 The focus of this investigation has been on Councillor Murphy's publicly stated view that Councillor Seaton risks people not believing him when he tells the truth because he is getting a reputation for telling '*porky pies*'; that he has had allegations of misogyny made against him; and that he '*seems*' to fit into the category of a person who tries to control and bully others because they can't control their own behaviour.
- 5.17 We have been involved in several cases in the past where a member's use of the word 'liar' has been considered a breach of the Code, some of which were considered at Tribunal level. While these were considered under the previous standards framework (and therefore the sanctions referred to are no longer applicable), they remain relevant to any considerations under the current Code.
- 5.18 As an example, Councillor Adkins of Ashfield District Council was found to have breached the Code when he called Chief Superintendent Nick Holmes a liar during a Council meeting. In that instance, the Tribunal considered whether the 'truth' of the accusation was relevant to their considerations; did it matter if the Chief Super had lied and could Councillor Adkins prove it? The Tribunal decided that there were circumstances where the veracity of the accusation might be relevant, however in this case it was considered that Councillor Adkins belief that what he was saying was true did not justify the comment: "*There is nothing wrong with making fair criticism of a public official in an appropriate manner but to impugn the integrity of a police officer on the flimsiest of information in a public forum was clearly unacceptable*". Councillor Adkin's was suspended from office for 3 months. Councillor Mason of Needham Market Town Council was also found to have breached the Code when he called another councillor and the clerk '*proven blatant liars*' at a Council meeting; Councillor Mason was disqualified from office for a year⁷.
- 5.19 Shortly after the Mason case, the Adjudication Panel for England upheld an appeal from Councillor Whipp, who had been found in breach of the Code after calling two other councillors '*liars*' during a Council meeting; the Council's Standards Committee considered that his use of the word liar was disrespectful because "*went beyond political expression, was rude and offensive and amounted to an expression of anger and personal abuse.*" Relevant to this case is the fact that the Judge in the appeal overturned the Council's decision because Councillor Whipp has accused other councillors of being liars; they, unlike officers or members of the public, are expected to be able to cope with a certain level of 'abuse' and usually have the same public platform on which to respond.

⁷ It should be noted that Councillor Mason's conduct was viewed particularly seriously as his accusation was premeditated and utterly unrelated to any matter on the agenda; the accusation had no demonstrable justification; one of the accused was a Council officer with no right of reply; and the accusation was made as the councillor accused of being a liar was being appointed as Mayor - a particularly special occasion that was ruined by Councillor Mason's unprovoked attack.

It was also considered relevant that in this instance the member's use of the term 'liar' had some justification as there was evidence that councillors to whom he had addressed his insult had not told the truth. The Judge noted that while the term 'liar' was well known to be considered 'unparliamentary language', this was not relevant to considerations unless the relevant Council had a custom or tradition of enforcing the same rules of debate.⁸

5.20 Councillor Seaton strongly felt that Councillor Murphy's criticism of him had crossed the line because Councillor Murphy attacked his personal integrity when accusing him of being a liar. Councillor Seaton said that he welcomes robust debate, however this was no longer simply part of the '*rough and tumble*' of local politics but a '*slandorous*' attack that was without merit.

5.21 Councillor Murphy rejected the allegation that he had called Councillor Seaton a liar, stressing that he had been careful to only suggest that Councillor Seaton was getting a reputation for telling lies. Councillor Murphy pointed out that he made the comment in response to a wholly unnecessary and inaccurate attack on him by Councillor Seaton in the chamber; he also told us that Councillor Seaton had previously accused him of telling lies⁹. With regards his other comments; Councillor Murphy acknowledged that they were critical but considered them to be fair and sufficiently qualified. Councillor Murphy said that it is an undisputable fact that allegations of misogyny had been made against Councillor Seaton and that, from his perspective, Councillor Seaton does seem to sometimes try to control and bully others.

5.22 A councillor's right to free speech means that they can make comments, in a political context, that might be considered provocative, offensive and exaggerated. In addition, value judgments are tolerated even if untrue, so long as they have some – any – factual basis. Taking account of the Nolan principle of leadership however, there is general ethical obligation on councillors to consider carefully, when using their position to criticise another councillor, whether they can substantiate any assertions they make with evidence. While the Code is not intended to constrain members' ability to question and probe each other, it must be done in an appropriate way. People who stand for public office must be prepared to have their integrity questioned (to an extent), however individuals should not be subject to unreasonable or excessive personal attack. Further, if a councillor uses their position to cast negative aspersions against another in bad faith or for an improper motive, then the councillor is likely to be in breach of the members' code of conduct¹⁰.

⁸ It should be noted that despite upholding the appeal on the grounds that it did not pass the 'disrespect test', the Judge said that he would have likely supported a finding that the conduct brought the councillor's authority into disrepute had the original Standards Committee concluded as such.

⁹ This was acknowledged as a fact by Councillor Seaton.

¹⁰ In the case of Buchanan (APE0417 2009) the First-Tier Tribunal found that the councillor could not have reasonably believed in the truth of the serious misconduct allegations he had made about another. The Tribunal found that the councillor had acted maliciously, as he had made his complaints as an act of revenge to cause damage to the other person because that person had previously complained about him and damaged his political career. The Tribunal concluded that the councillor's conduct was disreputable and disqualified him from office.

- 5.23 In a finely balanced judgement, we have concluded that Councillor Murphy has breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post. While we do not consider that Councillor Murphy's comments said in the meeting of **6 May 2019** (which led to the vote to silence Councillor Murphy) amount to a failure to comply with the Code, we do consider that the comments he made on Facebook were inappropriate. Standards Board guidance consistently made it clear that attacking the 'thing said' rather than the 'person saying it' was far less likely to be considered a breach of the Code. While we note that Councillor Murphy did qualify his assertions about Councillor Seaton to an extent, he still effectively expressed the view that Councillor Seaton was a liar, a bully and a misogynist. We consider this no more than a personal attack on Councillor Seaton's character rather than a genuine attempt to challenge or question any 'issue' relevant to the business at hand or on making a political point.
- 5.24 In reaching our conclusion we note that Councillor Murphy's comments about Councillor Seaton were made on the live webcast of the meeting during a discussion on an item where the Council had resolved that Councillor Murphy could no longer contribute. We are confident that the Council did not introduce this functionality so that councillors can abuse their colleagues in online discussions as they take part in a Council meeting. We would invite the Council to consider whether members need any guidance in this regard.

6: Conclusion and recommendations

- 6.1 The investigation has established that Councillor Murphy did act as alleged and in the case of the first two allegations, did so in his councillor capacity; as such, the Code of Conduct was engaged. Councillor Murphy is clearly a committed and hardworking member of the Council who is passionate about representing his local community. We have concluded though that Councillor Murphy's comments about Councillor Seaton on Facebook went beyond the "rough and tumble" of local politics and instead amounted to online personal abuse.
- 6.2 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. In considering what action the Monitoring Officer should consider taking, we are not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is necessarily justified, particularly given the limited nature of the sanctions available. While I think that Councillor Murphy's conduct did on this occasion cross the line, it is a finely balanced decision. It is also evident that his conduct was not without provocation, in that when trying to get Councillor Murphy excluded from the meeting of 16 May 2019, Councillor Seaton made comments about Councillor Murphy that are in many ways similar to those complained about. There appears to be a long standing and ongoing public 'spat' between Councillors Murphy and Seaton which in our view has done little for the reputation of either; councillors are required to set standards of

behaviour and not allow their conduct to descend to the levels they might perceive in others.

- 6.3 In light of the comments above, our recommendation is that Councillor Murphy be offered some training in relation to his use of Social Media when acting as a councillor. If Councillor Murphy refuses the offer of training, our recommendation is that this matter be referred to the Council's Hearings Panel for local hearing