

CONFIDENTIAL REPORT



PRIVATE AND CONFIDENTIAL

Case reference: 1076990/1

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Suffolk Coastal District Council, into allegations concerning Councillor Gillard, a Member of Woodbridge Town Council.

Dated: 15 February 2019

VOLUME 1 REPORT

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1. Executive Summary

- 1.1 Councillor Patrick Gillard is a Member of Woodbridge Town Council having been first elected in 2014.
- 1.2 In early 2018 the then Town Clerk resigned from the Council's employment. A new Town Clerk was appointed and took up the position in April 2018.
- 1.3 On commencing employment with the Council, the new Town Clerk identified a number of issues left by the former Town Clerk which caused some concern. This initially concerned the deletion of some of the Council's files and emails held on the Council's computer, and a matter relating to the failure by a contractor to deliver a number of signs ordered by the former Town Clerk.
- 1.4 When the deletion of the information from the Council's computer was identified Councillor Gillard tried to assist in the recovery of the information.
- 1.5 There was some question over whether the information was deleted as part of the preparation for and implementation of the General Data Protection Regulations (GDPR) introduced in 2018 or whether it was the former Clerk just deleting files.
- 1.6 The matter was discussed by Councillors informally.
- 1.7 The problems identified with the signs related to the quality and accuracy of the signs which had been delivered and some which had been paid for but were still outstanding. This was discussed by the Councillors at a meeting held on in June 2018. The item was considered to be confidential as it involved ongoing negotiations with a local company.
- 1.8 On 16 June 2018 an article was published in the East Anglian Daily Times which covered the issue about the signs. The article includes a photograph of Councillor Gillard and another Councillor and attributed quotations to them about the issues relating to the signs.
- 1.9 A further article was published in the East Anglian Daily Times on 28 June 2018. This article was about the 'loss of data' by the Town Council, again this included a photograph of Councillor Gillard and another Councillor and attributed quotations to them.
- 1.10 Complaints were made by four Town Councillors regarding Councillor Gillard's conduct. Following assessment the complaints were referred to us for investigation, the issues covered were:-
 - (i) breach of confidentiality by going to the press with information relating to the deletion of information from the Council's computer and matters relating to a contract for the supply of signs to the Council;
 - (ii) bullying of the former and current Town Clerk;
 - (iii) not treating the Council's employees with respect;
 - (iv) attempting to persuade a fellow Councillor to tell lies about other Councillors;

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- (v) misuse of position;
- (vi) bringing the Council in to disrepute; and
- (vii) not having regard to advice provided by officers.

1.11 We have concluded that:-

- (a) Councillor Gillard was acting in an official capacity in relation to some of the conduct alleged to have occurred;
- (b) Councillor Gillard was not acting in an official capacity when he telephoned a Councillor;
- (c) whilst challenging, Councillor Gillard's conduct towards the Council's employees did not constitute a breach of the Code of Conduct;
- (d) Councillor Gillard did not use his position improperly by backing a candidate at a by-election;
- (e) Councillor Gillard did not fail to have regard to advice provided by officers;
- (f) Councillor Gillard did not bring his office or the authority in to disrepute.
- (g) however, Councillor Gillard did disclose confidential information which was a breach of the Code of Conduct;

1.12 Our conclusion is that there has been a breach of the Code of Conduct of the authority concerned by Councillor Gillard.

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2. Councillor Gillard's official details

- 2.1 Councillor Gillard was first elected to Woodbridge Town Council (The Council) in 2014.
- 2.2 Councillor Gillard signed a declaration of acceptance of office most recently on 26 May 2015.
- 2.3 We are not aware of whether Councillor Gillard has received training on the Councillors' Code of Conduct.

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3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) 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.

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 Authority adopted a Code of Conduct (attached at WC 1) on 15 May 2018 in which the following paragraphs are included:-

3.4 Paragraph 1 of the Code states:-

You must treat others with respect.

3.5 Paragraph 2 of the Code states:-

You must not-
(2) *bully any person*

3.6 Paragraph 3 of the Code states:-

You must not-
(1) *disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where-*
(a) *you have the consent of a person authorised to give it;*
(b) *you are required by law to do so;*
(c) *the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or*
(d) *the disclosure is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the council; or*

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(2) prevent another person from gaining access to information to which that person is entitled by law

3.7 Paragraph 4 of the Code states:-

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or council into disrepute.

3.8 Paragraph 5 of the Code states:-

You-

- (1) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and*
- (2) must, when using or authorising the use by others of the resources of your council—*
 - (a) act in accordance with your council's reasonable requirements;*
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and*
- (3) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.*

3.9 Paragraph 6 of the Code states:-

- (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by-*
 - (a) your council's chief finance officer; or*
 - (b) your council's monitoring officer,*
where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your council.*

4. Evidence and facts

Our appointment

- 4.1 The Monitoring Officer of Suffolk Coastal District Council, in consultation with the Independent Person identified potential breaches of the Code of Conduct and referred the complaints against Councillor Gillard to Wilkin Chapman LLP Solicitors for investigation on 3 October 2018.
- 4.2 Work in respect of this matter was undertaken by Jonathan Goolden and Alan Tasker.
- 4.3 Mr Goolden is a solicitor and partner of Wilkin Chapman. Mr Tasker is a consultant (non solicitor) and was formerly a local authority Monitoring Officer. Both have significant experience of the investigation of local authority code of conduct cases.
- 4.4 We wish to record our thanks for the co-operation and courtesy shown to us by all those we had cause to contact during the investigation.

The complaints

- 4.5 During 2018 the Monitoring Officer received a number of complaints regarding the conduct of five Members of Woodbridge Town Council. These were referred to us for investigation including four complaints against Councillor Gillard.
- 4.6 These four complaints can be summarised as his alleged conduct towards the Town Council's staff, being disrespectful towards other Town Councillors, disclosing confidential information, misuse of his position in the conduct of an election and failing to have regard to advice..
- 4.7 Copies of the complaints, together with other relevant documents are annexed to this report and listed in a schedule of evidence at Appendix A.

The Investigation

- 4.8 During the investigation Mr Tasker conducted face to face interviews with the complainants, Councillors Lady Blois, Perkins, Mortimer and Rawlings from which statements were produced. Mr Tasker also conducted a face to face interview with the Town Clerk, Ms Lacey, from which a statement was produced and signed.
- 4.9 Mr Tasker conducted a face to face taped interview with Councillor Gillard from which a transcript was prepared. Councillor Gillard was given an opportunity to comment on the transcript of the interview.
- 4.10 Two former members of staff at Woodbridge Town Council were invited to comment on matters relating to their reasons for leaving the Council's employment.

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Background

- 4.11 In July 2018 the Monitoring Officer received four complaints alleging that Councillor Gillard had breached the Woodbridge Town Council's Code of Conduct. The complaints were submitted by other Woodbridge Town Councillors, these were Councillors Lady Blois, Mortimer, Perkins, and Rawlings.
- 4.12 The substance of the complaints were broadly similar in that they covered the areas of the Code of Conduct that dealt with respect, bullying, confidentiality, disrepute, misuse of position and having regard to advice. Copies of Councillor Gillard's response to the complaints are attached within WC 2.
- 4.13 In particular the complaints were in response to issues raised in articles published in the East Anglian Daily Times in June 2018. These were about matters the Town Council was dealing with. One was the deletion of information from the Council's computer system and the other was an order for signs placed by the Town Council. Both of these matters were identified as of some concern by the new Town Clerk who commenced employment with the Council in April 2018.

Councillor Lady Caroline Blois' complaint

- 4.14 Councillor Lady Blois submitted a complaint by email dated 3 July 2018 (attached at WC 2).
- 4.15 Councillor Lady Blois stated that Councillor Gillard had breached confidentiality by going to the press with information discussed at private meeting of the Town Council.

Councillor Lady Blois

- 4.16 Councillor Lady Blois was interviewed by Mr Tasker on 1 November 2018 and a signed statement was obtained (attached at WC 3). With regard to Councillor Gillard Councillor Lady Blois said:-
- (a) she had been a member of Woodbridge Town Council since 2011. Most of her working life had been in public service. She became a member of the Health Authority in 1983 and served on the Appointments Committee of the Peterborough Health Authority. In 1987 she was appointed as the Chairman of St Audrey's Hospital. In 1992 she became a member of the Tribunal Service, a position she held for 23 years;
 - (b) her complaint about Councillor Gillard related to various aspects of his recent behaviour;
 - (c) in an article in the East Anglia Daily Times, published on 16 June 2018, Councillor Gillard and another Councillor were photographed by Katy Sandals, a reporter for that newspaper. The article was headed "Thousands of pounds worth of undelivered signs in Woodbridge". This subject was debated in camera with no press there and they broke silence and their word not to discuss it publicly;

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- (d) in the article the two Councillors claimed that they discovered the problems with the signs. This was not correct as it was the new Town Clerk that identified the problems and with her they investigated them;
- (e) on 4 July 2018 another article by Katy Sandals in the East Anglia Daily Times said Woodbridge Town Council was forced to defend itself after data loss. This was accompanied by photographs of Councillor Gillard and another Councillor again about a subject that for the time being was confidential and discussed in camera. They broke silence and their word not to discuss it publicly;
- (f) her reference to bullying was on behalf of the staff who could not answer back. The new Town Clerk had complained to her about Councillor Gillard's bullying manner and the way the staff were all spoken to when an issue was taking time to resolve. She had seen this at Council meetings in the way he approach his questioning of the Town Clerk. An example of this was when the new Town Clerk was questioned in a public meeting knowing that she might not have the answer immediately;
- (g) she had training from SALC (Suffolk Association of Local Councils) in how to deal with bullies in a Council meeting situation because of the bullying manner of certain Councillors. She just wanted them to realise they were unpaid public servants and the public deserved to be spoken to and the staff dealt with in a proper manner;
- (h) the way Councillor Gillard had used the media politically caused immense lack of trust in the Council as a whole. For example, regarding the signage issue which was still ongoing, at the Amenities Committee meeting in October she had to say that the last item on the agenda was to be held in camera. She did not know whether the members of the Committee with political persuasions other than Conservative would obey the rules. This had been happening ever since Councilor Gillard and the other Councillor had previously broken silence. No one trusted anyone any longer and Council work was based on trust a lot of the time. The Council was no longer a non-political Council, it was split most certainly into them and us which it should not be according to the rules as she understood them;
- (i) Councillor Gillard wrote an email to all Councillors saying that at their forthcoming training they needed to make sure the Nolan principles of Councillors were included and he listed them. By this implication he meant that members were not behaving correctly and to be told that she needed training in integrity after 35 years public service including 23 years with the Tribunal Service made her seriously angry. She decided to stand up and be counted and complain about his behaviour. This could also be called bullying by insinuation and cause upset to any one of the people receiving it as they could feel inadequate and self doubting of their performance doing their job. The Town Clerk organised training for councillors which Councillor Gillard did not attend;
- (j) she had been on the Town Council since 2011. In that time the only incorrect behaviour she had seen had been bullying of Councillors, including herself, and usually because of arguments. The bullying took

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the form of the volume and length and speed of speech when a Councillor wanted to be heard all the time. This was why she asked for training from SALC, as she had never come across it before in 35 years of being a paid and unpaid public servant;

- (k) she provided the investigating officer with a copy of the email received from Councillor Gillard regarding the training and his comment about the Nolan Principles.

Councillor Clare Perkins' complaint

- 4.17 Councillor Perkins submitted a complaint by email dated 5 July 2018 (attached at WC 4).
- 4.18 Councillor Perkins alleged that Council Councillor Gillard had shown disrespect towards the Council's officers, disclosed confidential information discussed in confidence, breached the code of conduct for political gain, bullied the Town Clerk by subjecting her to unnecessary phone calls and emails and questioned the integrity of the Town Councillors.

Councillor Perkins

- 4.19 Councillor Perkins was interviewed by Mr Tasker on 1 November 2018 from which a statement was prepared (attached at WC 5); at the time of preparing this report the statement had not been signed. With regard to Councillor Gillard Councillor Perkins said:-
 - (a) she had been a member of Woodbridge Town Council since May 2015 She was elected as a Conservative Councillor and was the Mayor during the 2017/18 municipal year;
 - (b) whilst she was the Mayor the Town Councillors got on very well together working for the benefit of the town. She felt they worked as a very cohesive unit;
 - (c) since the recent problems which were the reason for her complaint against Councillor Gillard the atmosphere had changed. At times she did not know who was right but it was very uncomfortable being in the middle of the disputes;
 - (d) she had witnessed unacceptable conduct from two Councillors [one of them being Councillor Gillard] that she considered to be bullying and disrespectful towards the Council's staff. She had been in the Council's office with both the former Town Clerk and the current one when they had received telephone calls or emails from these Councillors. It was evident from the effect on the staff that the contact with these Councillors had caused them distress;
 - (e) neither of the Councillors listened to advice when they had been provided with information;
 - (f) their approach was very clever in that they hid behind a facade of what they were doing was for the electorate. She believed they were aware that they were needling the staff by repeatedly asking the same questions;

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- (g) she believed Councillor Gillard had exhibited bullying and disrespectful behaviour towards the Council's employees, in particular the former Clerk and more recently the new Clerk;
- (h) her complaint against Councillor Gillard and the other Councillor also referred to articles in the local press which clearly identified the disclosure of confidential information. In the first instance they were quoted in an article about the deletion of emails from the Council's computer. This was first identified by the new Clerk around the time of the Council's Annual General Meeting this year. She met Councillor Gillard as she was leaving the Clerk's office and mentioned to him that some of the emails appeared to be missing;
- (i) the Council immediately took action to recover any missing emails and other files. The matter was discussed at Council and Committee meetings as the issue was being dealt with. These discussions were in the confidential part of the meetings. When the two Councillors spoke to the press they made statements to the effect that the Council had lost data. She believed this was intended to discredit the Council by implying that sensitive data had been lost rather than the deletion of routine emails;
- (j) the second incident related to some signs that had been ordered by the Council. This was first raised after a meeting when confidential information had been considered. At the end of the meeting the Chairman, Councillor Sylvester, informed the Councillors that some issues had come to light. He clearly stated that this was a private discussion and would be reported to a future meeting. It was immediately following this that the two Councillors were pictured and quoted in the local press in an article which reported on the issues relating to the signs;
- (k) she believed these incidents were politically motivated as the two Councillors were trying to discredit the Council. Their actions were supported by the local County Councillor, who was the wife of Councillor Gillard. She is often reported as making derogatory comments about the Town Council;
- (l) she provided the investigating officer with a number of documents which evidenced the conduct referred to in her complaint. These included copies of emails between various Councillors.

Councillor David Mortimer's complaint

- 4.20 Councillor Mortimer submitted a complaint by email dated 2 July 2018 (attached at WC 6).
- 4.21 Councillor Mortimer alleged that Councillor Gillard had not been following the rules and had made the Town Council look foolish and corrupt, had disclosed information to the press which was discussed in confidence and caused stress to the Council's staff.

Councillor Mortimer

- 4.22 Councillor Mortimer was interviewed by Mr Tasker on 1 November 2018 and a signed statement was obtained (attached at WC 7). With regard to Councillor Gillard Councillor Mortimer said:-

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- (a) he had been a Woodbridge Town Councillor since May 2015. He was the current Mayor and Chairman of the Council for the 2018/19 municipal year;
- (b) his complaint about Councillor Gillard related to a blatant breach of the Council's Code of Conduct. In particular breaches of confidentiality and conduct towards the Council's staff and other Councillors which was disrespectful and bullying in nature;
- (c) the first breach of confidentiality related to an article in the local press about new signage being purchased by the Council. This was discussed in confidential session at an Extraordinary General Meeting of the Town Council. At the meeting it was agreed that the matter would be considered by the Finance and Staffing Committee. Councillor Gillard and another Councillor disclosed to the press information about the signage and were quoted as saying the Council was refusing to do anything about it;
- (d) the second issue related to an incident when the previous Clerk left the Council following which it was identified that she had deleted a lot of the Council's records from the computer system;
- (e) he understood that the reason the previous Clerk left was due to the upset caused to her by Councillor Gillard and another Councillor. He believed she was very unhappy when she left. He was not aware of what had been going on, this only came to light after she had left the Council's employment;
- (f) in view of the articles in the press he believed it was his duty as the Town Mayor and Chairman of the Council to submit a complaint to the Monitoring Officer about their conduct;
- (g) he was aware that other Councillors were concerned about the situation and that some had made separate complaints. Councillor Rawlings, who was a member of the Liberal Democrats with Councillor Gillard, was so concerned she resigned from the party and now sat on the Council as an Independent;
- (h) a new Town Clerk was employed commencing in June this year. Already she was feeling under pressure from all that was going on. He understood that on several occasions she had been on the point of resigning due to the conduct of the two Councillors;
- (i) the Town Council was now operating under an air of mistrust and tension;
- (j) the new Town Clerk had reviewed the Council's policies and procedures and through the Council introduced new safeguards to protect the Council, its assets and the Council's officers;
- (k) he was aware that some time ago the previous Clerk made allegations of bullying which were never really resolved by the Council;

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(l) the bullying of the staff appeared to take the form of physiological warfare and had been ongoing for some time. He understood that whilst the staff had expressed concern there had been a reluctance to make an issue of it;

(m) he believed that prior to the recent events the relationship between the Town Councilors had been very good.

Councillor Sheena Rawlings' complaint

4.23 Councillor Rawlings submitted a complaint by email dated 10 July 2018 (attached at WC 8).

4.24 Councillor Rawlings alleged that Council Councillor Gillard had no respect for any Councillors, bullied the Council staff, phoned her at home to persuade her to tell lies about other Councillors, released information to the press from a confidential meeting, lied to the public, brought the Council into disrepute and misused his position in a by-election by backing a candidate to improperly confer an advantage.

Councillor Rawlings

4.25 Councillor Rawlings was interviewed by Mr Tasker on 31 October 2018 and a signed statement was obtained (attached at WC 9). With regard to Councillor Gillard Councillor Rawlings said:-

(a) she had been a member of Woodbridge Town Council since 2015 having been elected as a Liberal Democrat. She resigned from the Liberal Democrat Party when she had concerns about the conduct of one of the Councillors representing the Party. She was now an Independent member of the Town Council;

(b) her concerns related to two Councillors, Councillor Gillard and another Councillor who she believed were working against the Council. Her belief was based on the fact that they constantly argued against any proposal put forward by other Councillors. Their manner was disrespectful and aggressive which caused her great concern;

(c) the conduct of the two Councillors had led to the Clerk suffering stress as the Councillors wanted to ignore the rules. She believed their conduct resulted in the previous Town Clerk resigning from the Council. On reflection she believed the Council let the previous Clerk down by not providing adequate support to her;

(d) she was aware that the two Councillors were constantly making demands of the new Clerk which was impacting on her already busy workload. Councillor Gillard regularly telephoned the Clerk requesting information;

(e) both Councillors had been pictured in the local press in relation to articles making allegations about the Town Council. These were in connection with matters discussed at confidential meetings. One item related to an order for new signage which had been placed by the Town Council. In the article the two Councillors were reported to have made false or misleading allegations that the Town Council was refusing to pursue the matter and seek a refund for payments made against goods that had not been

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delivered. This was discussed at a meeting in confidential session, the two Councillors had a reporter from the local press outside the meeting to whom they provided confidential information that was then published;

- (f) the other press article which was attributed to Councillor Gillard and the other Councillor involved the deletion of a number of emails and files from the Council's computer system. The article inaccurately alleged that the Council had lost data. This implied that it was sensitive data that had been lost when in fact it was routine business documents that had been deleted;
- (g) she believed the articles and comments attributed to Councillor Gillard and the other Councillor were deliberately misleading to damage the reputation and public's image of the Town Council;
- (h) further instances of them attempting to discredit the Council were evidenced by their support for a Labour candidate at a recent by-election. The candidate was pictured with Councillor Gillard and his wife under the heading "Let's change Woodbridge Council and give Kyson and Woodbridge what they deserve".

Ms Kate Lacey

4.26 Ms Lacey was interviewed by Mr Tasker on 31 October 2018 and a signed statement was obtained (attached at WC 10). With regard to Councillor Gillard Ms Lacey said:-

- (a) she was the Town Clerk for Woodbridge Town Council having taken up the position on 3 April 2018. She had previously served in the Royal Air Force, been employed in the private sector, undertaken consultancy work for the National Health Service and most recently employed by Suffolk County Council;
- (b) she commenced employment with Woodbridge Town Council after the former Clerk had left the Council, therefore there was no formal handover. She spent about two hours with the former Clerk prior to commencing employment with the Council although this was just a brief discussion about the Council's staff rather than the work involved;
- (c) soon after commencing employment she realised there was a problem as she could not find any files or documentation relating to various aspects of the Council's functions. She also realised that there were no records of email communication and other routine documentation. The Council's IT supplier was immediately contacted and a backup of the previous 90 day's files was secured;
- (d) during the second week of her employment with the Council the then Mayor, Councillor Perkins, mentioned to Councillor Gillard that there was a problem with deleted emails. Councillor Gillard then forced his way into her office demanding to know what the situation was. It was soon very evident that his concern was not for the interest of the Council but was to get at the former Clerk;

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- (e) this incident was followed by a statement made by Councillor Gillard about the deletion of the emails. He said words to the effect “all emails belong to the employer and staff are not allowed to delete them”;
- (f) at this stage it was evident that none of the emails deleted or files removed contained sensitive information. All minutes of meetings, legal documents and other such information had been retained;
- (g) despite none of the information that was deleted being sensitive data Councillor Gillard and another Councillor reported the matter to the Information Commissioner’s Office via their erroneous statements in the press. She was interviewed by someone from the Information Commissioner’s Office. Following their investigation, the Council was informed that there was no case to answer;
- (h) prior to the previous Clerk’s departure, the Council engaged a company who advised on the General Data Protection Regulations (GDPR). The outcome of their review of the Council showed that the Council was in a good position. She prepared a data retention policy which was adopted by the Council. Also, as a result of the GDPR requirements other measures were put in place to improve security of information and the Council’s assets. This included the installation of a security system for the door to the Council’s offices. This required visitors to the office, including Councillors, to ring a bell to gain access;
- (i) other policies introduced recently included a Member/Officer Protocol to identify the respective roles and what Councillors and officers could expect from each other. One of the provisions in the Protocol was that Councillors should make an appointment to see an officer of the Council. This was continually ignored. On the evening of a recent Finance and Staffing meeting Councillor Gillard walked straight in to her office;
- (j) despite the new and updated policies and procedures being approved and adopted by the Council, one of the Liberal Democrat Councillors referred to them, at a Town Council meeting, as “Kate’s stupid rules”;
- (k) if the former Town Clerk received the same treatment from these two Councillors as she had during the first seven months of her employment with the Council it was no surprise that she went off with stress. She considered herself to be quite robust when it came to dealing with difficult situations. Despite this, she had recently been prescribed anti-depressants by her doctor as the doctor said she was clearly under stress;
- (l) some of the causes of the stress was the direct confrontational conduct referred to above and other conduct that was more subtle. For example, regularly at meetings Councillor Gillard and another Councillor sat staring at her. If she was speaking they would yawn at each other, clearly indicating that they found her boring. Other Councillors had noticed and commented on this;
- (m) another issue which had caused concern related to a number of signs ordered by the former Clerk. When she commenced employment it came to light that there were problems with the signs both in the quality of the

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product and that some had not been delivered. The Council was in contact with the company producing the signs to rectify the issue;

- (n) the matter was discussed at a meeting on 16 June 2018. The item was determined to be confidential as the Council did not wish to identify a local company whilst negotiations were ongoing as it may have prejudiced both the negotiations and the company's reputation. Despite the matter being discussed in private and in camera, straight after the meeting Councillor Gillard and another Councillor met with a reporter from the local press. They were then pictured and quoted in the newspaper in an article about the signs. It should be noted that in the article they stated that the Council was not doing anything about the issue, which was untrue. Their statement is then contradicted in the article where it states it would be considered at a meeting of one of the Council's Committees;
- (o) a further article appeared in the newspaper on 28 June 2018. This covered what was termed in the newspaper as the loss of data by the Council. Again, Councillor Gillard and the other Councillor were quoted as the source of the information provided to the reporter, the same reporter who the signage article was attributed to;
- (p) this disclosure of confidential information did not follow a meeting where it was discussed. The matter had been ongoing for some time. She believed the motivation for the story was to discredit the Council in the run up to a by-election;
- (q) an article was published in the newspaper some time later, after several attempts by the Council to put its side of the story. The article was based on a press release issued by Councillor Mortimer in his position as Mayor;
- (r) some of the inappropriate conduct had moderated since the code of conduct complaints were submitted. The two Councillors still stared at her during meetings;
- (s) she was still working in an extremely stressful environment and was having to work longer hours to deal with the issues being raised;
- (t) she provided the investigator with copies of emails and other relevant documents which highlight some of the issues raised in the complaints against Councillor Gillard.

Councillor Gillard

4.27 Councillor Gillard was interviewed by Mr Tasker on 31 October 2018. The interview was recorded and a transcript prepared (attached at WC 11). In the interview Councillor Gillard said:-

- (a) he had been a member of the Town Council since 2014 having been elected at a by-election then re-elected in May 2015;
- (b) he was aware of the complaints made by Councillor Blois, Perkins, Mortimer and Rawlings and had submitted a written response to the Monitoring Officer regarding the complaints;

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- (c) he completely rejected the complaints that had been made. He was particularly surprised by the allegations of bullying because he had been working in education for the last five years and quite well knew what was bullying people and he made sure that his communication, written or spoken or other because he worked with or worked for, people who work for him, he treated them with respect. He didn't think you should do anything else;
- (d) he had very little contact with the previous Town Clerk because he was working as a primary teacher and didn't have much time. He would have spoken a few words, he was not sure if he ever phoned the previous Town Clerk, and a small number of emails. With the current Town Clerk, he thought that he had about ten exchanges of emails over a period of several months. It seemed like a very appropriate level given that they had just discovered that all of the previous Town Clerk's emails had been deleted. There was quite a lot to write about but his emails were by no means excessive;
- (e) in the first week after they discovered the missing data, he and another Councillor, tried their very best to help the new Town Clerk with the rotten situation she inherited because both had computer backgrounds so knew quite a lot about data retention and data deletion and how you could find it. So, trying to be helpful, you might find that was the busiest week;
- (f) since then, he thought the level of emails had been completely appropriate and its funny but its coming from people who weren't the recipient of the emails. As though they knew how many there were. They could do a straight count but the thing was, it was not even coming from the Town Clerk so he was not sure how much the Clerk had to do with this;
- (g) the emails were asking to find out for example what kind of back ups they had, whether they had been able to check if they could get any of the emails back. Mainly asking for information, passing on things that he knew. He didn't think anything was demanding at all;
- (h) there was a mention of other staff but he couldn't remember that he ever emailed the other staff they've referred to. One of the secretaries had just left, a few months ago, and there was very little communication at all;
- (i) the Council office was open most of the day. He thought the number of times that he had visited the office over that period, during working hours, would be the fingers on one hand. That kind of amount, he would call in if there was things he needed to find out so it was a very small number of visits;
- (j) he attended Council and Committee meetings which were always in the evening. Usually either the Town Clerk or the Deputy Town Clerk attended and did the minute taking. At the Town meetings he thought they also had one of the secretaries sometimes taking notes but there was usually one or two of the staff at those meetings. He might ask for information or clarification within a meeting but beyond that, no contact;

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- (k) the meetings were formal with the Chair and they're done with the Town Clerk to provide information to the Chair and sometimes a Councillor would need to ask the Town Clerk for information that the Chair wouldn't have had so they're done on a formal structure;
- (l) once the meeting's finished people stay and have a little chat but they tend to move off pretty quickly afterwards. The staff go fairly quickly. There was a meeting last night in fact and the Town Clerk was the last one out but it was literally only five or ten minutes after the end of the meeting they all went;
- (m) he couldn't think of anything that they were referring to about stress. He knew that at the point that the new Clerk took over and found out how much email and paper information had been deleted it was a stressful environment because they had to retrieve and make up new folders and files and respond to things where they didn't know what had been said in the Council's name, so yes it was stressful but that wasn't any of it coming from him. It was coming from the circumstances that they had been placed in;
- (n) the meetings were not usually confrontational. There had been a couple of instances that he'd seen over the last six months, after the lost data and after these issues came up where there has been some fairly flinty confrontations coming from other councillors. He saw two meetings where the county councillor, who happened to be his wife, was given very rude treatment by some of the councillors in meetings but it was not a general thing. They all spoke frankly if there were issues they didn't agree on but usually people were, he thought, within the normal terms of what a council meeting should be;
- (o) there were two specific issues that he went to talk to the press about and he went, together in both cases, with another councillor on the Town Council. The first one was in relation to certain signage which had been ordered in the months prior to the departure of the previous Town Clerk and the second issue was in relation to the huge data loss so, signage and data loss were the appropriate names of the two. Both of those matters had been discussed for several weeks within the Council before he decided that this was going to be completely hidden and in fact the reason he went to the papers was he didn't feel that the voters of the town deserved to not know what had been done in their name. It felt as though it was embarrassing for them and the Council, or the majority of the councillors, felt that that embarrassment was a good enough reason to never talk about it. Whatever they said now, he had an email from the Mayor saying "I am drawing a line under this";
- (p) nothing had been announced obviously at that point. It had been discussed in four meetings. In fact the very first point at which the data loss became known was after the Town Council meeting session had finished and the Mayor at the time said that "she's deleted everything. Its all gone" and he thought, who's done what? And then they asked and she said that the Town Clerk had deleted everything and it turned out to be true;
- (q) it was shocking but it wasn't within any of the meetings, there was no indication that that information was confidential;

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- (r) his first reaction was to see if he could help the Town Clerk and find out, because he knew that these things were very time sensitive, sometimes data backups disappear in short times. Another reason that he wanted to find out quickly and help quickly was two years previously he asked about data backups because he thought they hadn't been thinking securely or safely about that and he sent an email to the then Mayor and Deputy who were Councillors Attwell and Perkins about this and its clear nothing was ever really done to fix it. So he wasn't very confident that this was going to be an easy one to fix and he wanted to try and help as much as he could;
- (s) he thought it was a major issue. It was his urge to get it sorted, but there was no indication that it was confidential. Embarrassing certainly, but not confidential;
- (t) the signs were ordered under the regime of the previous Clerk he was aware when it was raised within one of their meetings, he thought it was a Town Council meeting. He couldn't remember if it was done in confidential session but he thought it was as a report from the Clerk;
- (u) several other councillors were aware of it. Councillor Blois, Councillor Yule because they were on the Amenities Committee they had been worrying for a while about what was happening and then he believed it was when the new Town Clerk gave a report to say these were the issues with signage and she unpicked quite a lot of the embarrassment;
- (v) he believed that was first put out in a meeting and then they discussed it at that meeting and at later meetings and tried to work out. He couldn't remember if the meetings were confidential. Certainly some of the later meetings had confidential sessions, as in camera sessions. It was certainly first delivered as a report that summarised what the new Clerk had found out which was lots of things had not come right;
- (w) he thought after, this was a couple of months after the issue was first raised, was that the trajectory they had seen within in all the meetings to discuss it had, no one had suggested that they were ever going to tell the town about this and they had signed off the budget for the year in which all that money had been spent so said everything was fine. But he thought, well that's an unusual thing to have done. It was clear to him from discussions that this was never going to go out and he felt that the people of the town deserved to know. The people of the town should know and also, you might handle it more seriously if the people of the town did know. Even though it might cause some embarrassment;
- (x) he thought in both cases, in both the signage and in the data loss, everything that he heard within meetings made him surer and surer each time that this was going to be kept quiet and if at all possible silent and he didn't feel that that was transparency in local government and he felt there was a public interest defence for his actions, even though he understood that many councillors would be upset by this;
- (y) he felt that the balance of transparency balanced out the confidentiality;

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- (z) he didn't understand the allegation regarding misuse of his position for political gain. His party, the Liberal Democrats didn't have a candidate at the by-election;
- (aa) the by election that they were referring to was the one in which Sue was elected on the Labour Party. She was not involved in any of this before and he can see no party gain that he had made by his actions;
- (bb) he would have to have an explanation of what they mean by not listening to advice because as far as he could see it referred to advice from the Town Clerk, advice from SALC (Suffolk Association of Local Councils) and they gave advice and had always taken it because it helped you to make better decisions. If there was anything more that was behind that then they were going to have to explain;
- (cc) if it could be substantiated it would be easier to respond but the only indication he had of what they mean by not taking advice, was there's a phrase in Clare Perkins and what she expects from her complaints that the Councillors will be made to toe the line and he thought, that's not actually a democratic process toeing the line, agreeing with us sounds like what it means and he didn't know if that's what they refer to as advice;
- (dd) in her complaint Councillor Rawlings said he had phoned her up to persuade her to tell lies about other councillors which he didn't do. Its not a respectful or proper thing to say. It wouldn't be even if it was just a member of the public but to say it about a fellow councillor, he was quite shocked by that and people could disagree about their interpretation of things but they couldn't disagree about whether you've persuaded somebody to lie. Which he didn't do. That's a really bad allegation to say that you've phoned up somebody else to make them tell a lie about another councillor. He was very saddened by that;
- (ee) he thought he had made about two phone calls to Sheena about the issues in the Council over the time period we're talking about. And the call that he made, he didn't think its referred to much within the complaints but there was another councillor had been, as it turned out, slandered in a meeting because someone said that he had asked for the Town Clerk's contract of employment, the previous Town Clerk before she left. The other Councillor hadn't done that but it was passed on to other people as though true and it made everybody clearly feel that this was a bad person. It turned out that wasn't true, he knew the people involved had actually apologised to the other Councillor in private but didn't do this in public but that behaviour, the reason that he wrote an email, a public email or an open email to all councillors about it was that briefing about somebody in private for the purpose of making them toe your line is not the way a councillor should behave;
- (ff) the purpose of the call was he wanted to make sure that she knew what was behind his actions when he sent that email out. And explain what he knew;
- (gg) he thought that the body of what all the complaints were about was questioning people's integrity which he supposed had led to respect. He never had questioned councillors' integrity. He just questioned their

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actions and said should we do them a different way. Should we make sure that we're transparent in our dealings more than we're intending to be. He didn't think that's questioning integrity, its just questioning what we're doing. Which is part of the way a council is run;

Former Town Clerk

- 4.28 The former Town Clerk was contacted by letter dated 13 November 2018, requesting any information she wished to be considered about the allegations in particular her reasons for leaving the Council's employment. At the time of preparing this report no response had been received.

Former Secretary Debbie Tonkin

- 4.29 The former Secretary, Debbie Tonkin, was contacted by letter date 13 November 2018, requesting any information she wished to be considered about the allegations in particular her reasons for leaving the Council's employment. Whilst she did not wish to be interviewed in relation to the complaints she did consent to her response to our letter being included in this report.

- 4.30 By email dated 16 November Debbie Tonkin responded:-

"I am writing with reference to a letter received from Mr Hayward regarding the investigation into a complaint about the Code of Conduct of Woodbridge Town Council and my resignation.

I can confirm that although the in-fighting, accusations and general toxic atmosphere of the Council during the last 1-2 years of my employment were very unpleasant and did hasten my letter of resignation, I cannot put this down to two councillors, therefore I do not believe I can assist you in this matter."

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5. Summary of the material facts

- 5.1 Councillor Patrick Gillard is a member of Woodbridge Town Council.
- 5.2 The Council appointed a new Town Clerk who commenced employment with the Council on 3 April 2018.
- 5.3 Shortly after taking up the position the new Town Clerk identified that a number of documents and emails had been deleted from the Council's computer. There was some question about the reason for the files and emails being deleted, it may have been part of the preparation for the implementation of the new GDPR requirements. Alternatively, it could have been a deliberate act of the former Clerk. For the purposes of this investigation it was not necessary to establish the reason.
- 5.4 Councillor Gillard was made aware of the deletion of the information by the then Mayor, Councillor Perkins. Councillor Gillard attempted to assist the Clerk with the recovery of the data.
- 5.5 After the new Clerk commenced employment it became apparent that there were issues relating to an order placed by the Town Council for a number of new signs. This related to the quality of the signs and that some of the order had not been fulfilled. This was discussed at a meeting in June 2018. The item was determined to be confidential due to ongoing negotiations with the supplier which was a local company.
- 5.6 On 16 June 2018 an article was published in the East Anglian Daily Times in which Councillor Gillard, and another Councillor, was quoted a number of times. The article was accompanied by a photograph of the two Councillors alongside what was referred to as one of the incorrect signs (copy of article attached at WC 12).
- 5.7 On 28 June 2018 a further article (copy attached at WC 13) was published in the East Anglian Daily Times. In this article Councillor Gillard and another Councillor are referred to as revealing to the of the paper 'a loss of data at Woodbridge Town Council'. The picture accompanying the article appears to be the same photograph of the two Councillors as that used in the 16 June edition with the sign cropped out.
- 5.8 The Town Council issued three press releases in response to the articles in the newspaper. An article was published on 6 July 2018 (copy attached at WC 14) under the headline 'Mayor accuses councillors of breaking code of conduct'. The article appears to be based on the last of the three press releases (copy attached at WC 15). This was issued on 29 June under the Mayor's name, the article is accompanied by a photograph of the Mayor, Councillor Mortimer.
- 5.9 During June and July Councillor Gillard sent a number of emails to other Town Councillors and/or the Town Clerk regarding these matters (copies attached at WC 16).

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6. Councillor Gillard's and the complainants' additional submissions

- 6.1 The following comments were received from Councillor Blois on the draft version of this report by email on 1 February 2019:-

"Dear Mr. Hayward, Thank you for your letter and for the reports. Using the world challenging covers a multitude of sins and it is the degree of the sin that counts and your tribunal was not there to see and observe it. However I do think it is appropriate that the Councillor apologises for his breaking of the code of conduct publicly and in the press. Recently one of these two councillors in question has shown that there is one rule for him and another for us and I believe at last that the Chairman is getting to grips with the matter but it has taken time. As far as I am concerned the matter is over and done with and I hope you insist the councillors concerned apologise. Yours sincerely, Lady Caroline Blois. WTC councillor."

- 6.2 The following comments were received from Councillor Perkins on the draft version of this report by email on 4 February 2019:-

"Dear Gill,

My thanks for sending through the draft reports of your findings.

I am satisfied that you find the code of conduct has indeed been breached by the two councilors, [REDACTED] Councillor Gillard in the publication of the press articles. A public apology for this breach should be given [REDACTED] and I very hope that this will be done .

However, with regard to finding these councilors 'challenging behaviour' not to be out of order is questionable and disappointing . You weren't there to witness it at the time , and therefore to understand the magnanimity of what occurred is, I understand , difficult. So be it . We have to move on, but I am worried that it will give these councilors license to carry on as before.

Regards

Cllr. Clare Perkins"

- 6.3 The following comments were received from Councillor Mortimer on the draft version of this report by email on 5 February 2019:-

"Hello Gill thanks for the reports.

I must admit that after reading them [REDACTED] Gillard seem to have got off very lightly. They have caused a huge amount of bad feeling between the councillors on the town council and i believe these findings will embolden them to become even more aggressive towards councillors and employees at the shire hall.

I hope they do not. I must admit i have decided not to stand again in the forthcoming elections in May as I would not be able to stand another 4 years of their petty behaviour.

Many thanks once again

David Mortimer"

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- 6.4 The following comments were received from Councillor Rawlings on the draft version of this report by email on 7 February 2019:-

“Thank you for sending this report to me.

I do understand that you have decided to to act on my complaint against Councillor Gillard, I have also learned that if I ever have to complain again I will need more precise information.

I am pleased that he has been found guilty of the breach of the code of conduct and hope he will dealt with fully.

I am however, disappointed that he will have nothing to answer to for the bullying. I feel he will now believe he has licience to continue this bad behaviour, and indeed, it shows no sign of abating. I hope it doesn't cost us another Town Clerk but fear it might.

I do thank you for all the hard work you have put in to this case and making it as least stressful for us as you could.

*Regards
Sheena Rawlings”*

- 6.5 The following comments were received from councillor Gillard on the draft version of this report by email on 8 February 2019:-

“Dear Mr Hayward,

Thank you for the two thorough draft reports which I have now read through. These are my observations and comments:

[REDACTED]

[REDACTED]

2. Complaints against me by Councillors Rawlings, Blois, Perkins and Mortimer:

You summarised the allegations against me as:

- (i) breach of confidentiality by going to the press with information relating to the deletion of information form the Council's computer and matters relating to a contract for the supply of signs to the Council;*
- (ii) bullying of the former and current Town Clerk;*
- (iii) not treating the Council's employees with respect;*
- (iv) attempting to persuade a fellow Councillor to tell lies about other Councillors;*
- (v) misuse of position;*
- (vi) bringing the Council in to disrepute; and*
- (vii) not having regard to advice provided by officers.*

I am very glad, but not surprised, that you have found numbers ii) to vii) to be unfounded. On the allegations which you have dismissed I would like to state

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that I feel the entire purpose and tenor of the complaints is addressed by your paragraph 7.77:

7.77: We consider the Council needs to recognise that Councillors have a right to legitimately challenge decisions. If necessary appropriate procedures should be adopted and followed to facilitate legitimate questioning.

I believe the complainant councillors have been trying to use inappropriate procedures to restrict legitimate discussion of the council's actions. I am glad that this has not succeeded, and I hope future debate will be open and effective.

On the one complaint in which you find I have breached the code of conduct (i) breach of confidentiality by going to the press with information relating to a contract for the supply of signs to the Council) I would like to reassert that the purpose of releasing this information into the public arena was because I had become concerned that this information, like the data loss information, was going to be 'swept under the carpet' because of the embarrassment it caused to the council (and specifically to those councillors whose role had been to directly line-manage the outgoing Town Clerk).

I still feel that without releasing the information I did, it is highly likely that Woodbridge Town Electors would not have known about the signage problem and the clear mismanagement that allowed the signage problem to occur. It is no coincidence that all the emails relating to this episode were deleted in our 'data loss' episode. The fact that the council had to ask the suppliers for the emails instructing them to do the work must raise alarm bells for all councillors and voters, yet I believe there was no intention to release information about either issue to our electors.

I think it is likely that my actions may in fact be covered by the Whistleblower policy of East Suffolk Council, which protects workers and volunteers (which I believe councillors to be) from suffering loss (even if that loss is just the sanction of a Code Violation) if they believe there is a legitimate 'public interest' in the information that they are revealing. The whistleblower code specifically mentions that concerns could be raised by a whistleblower if they think that:

- a. a criminal offence that has been, is being, or is likely to be committed;*
- b. a person that has failed, or is failing or is likely to fail to comply with a legal obligation to which he is subject;*
- c. a miscarriage of justice that has occurred, is occurring or is likely to occur;*
- d. the health or safety of any individual that has been, is being or is likely to be endangered;*
- e. the environment that has been, is being, or is likely to be endangered; or*
- f. information concerning any of the above matters that has been, is being or is likely to be deliberately concealed.*

My concerns were b. (failing to follow our own financial regulations, for example by payment before delivery and deletion of contract communications) and f. (attempting to conceal what had happened).

I would like to ask you to consider whether the Whistleblower protection is relevant in this case.

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Other points:

*Some of the extra information you have sent me does make me want to add a little more comment. There are, for example, several interesting assertions in the **statement from the Town Clerk, Ms Lacey, (section 4.26 in your document)**. Amongst other points, she asserts that I twice 'forced my way into her office' which would be disgraceful, had it ever happened. But of course it did not, and I am amazed at the allegation. She also says that none of the missing emails were sensitive, but as the missing ones included all of the emails sent to a company which we are now suing, I cannot see how that statement can be true. They do sound sensitive to a layman. Finally, I am surprised and a bit worried by the way that the Clerk perceives people to be looking at her and behaving towards her in meetings (staring, yawning etc.) I have never noticed any behaviour such as she seems to see and would not be so childish as to indulge in it (I teach children after all - the last thing I want to do is behave like one!). It is also peculiar that she only seems to see this behaviour as coming from those councillors who are not in the majority party.*

The other interesting extra information you provide is about the communication I had with our Auditors, when trying to find out if information we had been given in council by the Clerk was correct. We were finally informed of a challenge to our Annual Governance and Accountability Return (AGAR) in a council meeting on Oct 9th at which we were told that we could not restate our AGAR. As I was not certain that this could be true, I phoned and emailed our auditors to check, making clear that I was a councillor. The very helpful auditor confirmed quickly that yes we could restate our AGAR and that the charge would be minimal. This was finally confirmed by the Town Clerk in minutes of a Town Council meeting which were confirmed only last month. I am unhappy that my attempts to get correct information have been so misrepresented and misused by the person who presented incorrect information in the first place. (and I am naturally happy to provide all documents relating to this)

Regards,

Patrick Gillard"

Response to comments

- 6.6 The comments from the complainant Councillors regarding challenging behaviour have been noted. However, no specific evidence was presented to our investigator on which to judge Councillor Gillard's behaviour. Allegations were made of excessive and inappropriate communication with the Clerk, we were not able to establish the extent and/or tone of this from the information or documentation we were provided with.
- 6.7 The information we had available is considered in our reasoning in the following paragraphs.
- 6.8 Councillor Gillard makes a number of points which are not directly related to the allegations made by the complainants, in particular comments in the Town Clerk's statement. As these have not had any bearing on our finding that Councillor Gillard breached the code his comments have been noted. Similarly, Councillor Gillard's justification for approaching the Council's Auditor are noted.

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- 6.9 We note Councillor Gillard's justification for disclosing confidential information to the press as a 'Whistleblower'. However, whilst he believed the Council had reasons, other than those we have set out in this report, for not making public the information we do not consider whistleblowing to the press was an appropriate course of action at that stage. The Council minutes show that the matter was to be considered by a Committee. We are also minded that negotiations were still ongoing with the supplier at that stage.
- 6.10 We have considered all the comments and have concluded that these have not changed our reasoning and conclusions in the report.

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7. Reasoning as to whether there have been failures

- 7.1 The allegations referred for investigation relate to the conduct of Councillor Gillard towards other Town Councillors and the Town Clerk. The allegations also relate to the disclosure of confidential information.

Capacity

- 7.2 Section 27(2) of the Localism Act 2011 requires the Authority to adopt a code of conduct "dealing with the conduct that is expected of members ... when they are acting in that capacity". The Authority's code is expressed to apply whenever a member is acting in their capacity as a member of the Council. We therefore first have to consider whether Councillor Gillard was acting in an official capacity at the time of the alleged incidents.

- 7.3 Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC) is a helpful distillation of the previous High Court cases on capacity – *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 and *R(Mullaney) v Adjudication Panel for England* [2009] EWHC 72. The principles stated in *MC* are:-

- (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.

- 7.4 In this case the allegations relate to Councillor Gillard's alleged conduct in respect of activity outside of formal meetings.

- 7.5 There is no doubt that some of the alleged activity related to functions of the authority, that is the alleged contact with the Council's staff and the disclosure of information to the press. This is because the issues related directly to the business of the Council. In particular when considering the articles in the press the information was clearly obtained by Councillor Gillard in his capacity as a Councillor as the information was not in the public domain at the time. In those instances Councillor Gillard was acting in his capacity as a Member of the Town Council and was therefore acting in an official capacity.

- 7.6 There is some doubt whether Councillor Gillard contacted Councillor Rawlings in his capacity as a Councillor or as a fellow member of the Liberal Democrat Party. Whilst the nature of the telephone calls related to another Councillor and his dealings with the Council they were not necessarily directly related to Councillor Gillard's official functions as a Town Councillor. We have therefore concluded that on those occasions Councillor Gillard was not acting in an official capacity.

- 7.7 We have concluded that Councillor Gillard was acting in an official capacity as a member of the Town Council in relation to most of the allegations made by the four Town Councillors.

Respect

7.8 The Authority's Code states:-

"You must treat others with respect."

7.9 The term "respect" is not defined in the Code, however the requirement to treat others with respect must be viewed objectively. Account should be taken of the member's intent and how their behaviour would reasonably be perceived. Unwarranted criticism of Officers should be avoided particularly when they cannot respond on equal terms such as at formal meetings of the Authority or committees.

7.10 The Standards Board for England Case Review 2010 provides guidance by indicating a 'rule of thumb' comparison. Q15 on page 25 of the Case Review 2010 advises that:-

"A very clear line has to be drawn between the Code of Conduct's requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other."

7.11 A rule of thumb is expressed in this comparison:

"You're talking drivell" is likely to be an acceptable expression of disagreement.

Calling someone an "incompetent moron", on the other hand, is more likely to be a failure to comply with paragraph 3(1).

We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics".

7.12 Whilst some care must be taken in adopting wholesale a test applicable to a provision of the former national model code, it is the personalisation of comments that cause the user to breach the Code. The conduct must be unreasonable, unwarranted and personalised. In considering whether comments are disrespectful, regard must be had to the right to free speech in article 10 of the European Convention on Human Rights.

7.13 We note the approach taken by the former Adjudication Panel in *Capon v Shepway District Council* [2008] APE 0399, conveniently summarised by the Standards Board's Case Review 2010 (2011 edition) at page 32 as:-

"A tribunal considered the threshold for a failure to treat others with respect. The councillor made comments about the town clerk at a parish meeting saying that an officer found her "difficult to get on with". The councillor added that "this is also the view of many towns' people who say that when they try to contact the town clerk, she is downright rude to them".

7.14 The Tribunal considered that the threshold for a failure to treat another with respect has to be set at a level that allows for the passion and frustration that

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often accompanies political debate and the discussion of the efficient running of a council. It should also be set within the context of who was involved in the exchange.

- 7.15 In that case, the comments were opinions of other individuals which the member honestly believed to be true. The member's conduct was not unfair, unreasonable or demeaning to the town clerk and not made in a malicious or bullying manner. The town clerk was very experienced in her dealings with councillors and given her seniority was entirely able to defend her position. Therefore, the tribunal decided that the threshold was not reached.
- 7.16 The allegations made by the four complainants relating to treating others with respect can be summarised as:-
- Showing disrespect towards the Council's officers resulting in the resignation of two members of staff;
 - Implying the Councillors had no integrity by stating in an email that the Councillors should attend training;
 - Subjecting the Town Clerk to unnecessary phone calls and emails causing her distress.
- 7.17 In this case it appears that the allegations of not treating the Council's employees with respect is primarily around asking questions, demanding information and the content and tone of email communication.
- 7.18 In considering the above, we have had regard to the decision of the now former Adjudication Panel for England in Pinfold, London Borough of Sutton (2007) APE 0378. A Councillor's rude email to the chief executive was found not to be disrespectful given that he held a senior position and there was no direct personal attack on the officer. The tribunal did find that disrespect had been shown to a senior police officer who the Councillor had repeatedly referred to without apology by his surname only in correspondence copied to a range of other council and police officers.
- 7.19 With regard to Councillor Gillard's contact with the Council's employees we have studied the various emails provided to us during the investigation. Whilst it could be argued that on occasion Councillor Gillard was persistent with his questions and requests for information we have not found any content that could be considered disrespectful. We consider in detail below whether the emails could be considered bullying.
- 7.20 With regard to treating other councillors respectfully we have considered the email sent on 30 June 2018 in which Councillor Gillard refers to training that had been organised for the Councillors. His email concludes with a reference to the Nolan Principles, in particular Leadership and states "This is what Councillor O'Nolan and I are doing. I urge you to support us".
- 7.21 It is evident that it is this statement that was referred to in the allegation that Councillor Gillard had implied the Town Councillors had no integrity. Whilst we can understand that the Councillors might consider Councillor Gillard's advice to be condescending and inappropriate we do not consider this to reach the threshold of not treating others with respect.

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7.22 We have considered all the evidence provided and gathered during our investigation and have concluded that whilst Councillor Gillard may have been demanding and persistent in his requests for information his conduct did not fall short of that required by the Code of Conduct.

7.23 We have therefore concluded that Councillor Gillard did not breach that part of the Code of conduct that requires Councillors to treat others with respect.

Disrepute

7.24 The Authority's code states:-

"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or council into disrepute."

This is in the spirit of the relevant provision of the previous 2007 model code of conduct which deals with 'disrepute' and perceptions of both the Authority as a body and the office of member.

7.25 As such it is relevant to consider guidance issued by the then Standards Board for England (SfE). Question 43 on page 66 of the Case Review 2010 (2011 Edition) published by SfE advises that disrepute is:-

"...a lack of good reputation or respectability.

In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:

- 1) Reducing the public's confidence in that member being able to fulfil their role; or*
- 2) Adversely affecting the reputation of members generally, in being able to fulfil their role."*

7.26 Q44 on the next page of the Case Review 2010 advises that:-

"An officer carrying out an investigation...does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of the authority...the test is whether or not a members' conduct "could reasonably be regarded" as having these effects.

The test is objective and does not rely on any one individual's perception. There will be a range of opinions that a reasonable person could have towards the conduct in question."

7.27 Q42 on page 66 of the Case Review indicates that:-

"A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned."

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- 7.28 In applying the Code to the circumstances of an alleged breach of affecting trust and confidence in the integrity of the Authority, it is established that it is not necessary for the member's actions to have actually diminished public confidence or harmed the reputation of the authority. The test is whether or not the conduct could 'reasonably be regarded' as having these effects. However, the conduct must be sufficient to damage the reputation of the member's office or the Authority, not just the reputation of Councillor Gillard as an individual.
- 7.29 What must be considered here is to gauge an objective view. That is, whether the actions of Councillor Gillard were such that a member of the public, knowing all the relevant facts, would reasonably think that his actions were so significant that it would impact on the Council's ability to properly carry out its functions.
- 7.30 In this case it is partly Councillor Gillard's questioning of matters relating to the conduct of the authority and his alleged disrespect towards others that has led to the complaints. It is our opinion that there might be public support for the challenges if it was thought this was justified. We do not consider Councillor Gillard's persistence in this matter would bring the Authority into disrepute. On the second point, for the reasons set out in the above paragraph on disrespect we do not consider the comments made by Councillor Gillard to be likely to lessen the public's confidence in the ability of the Authority to carry out its functions.
- 7.31 The final consideration in this respect is the alleged disclosure of confidential information. This is considered in detail below. However, with regard to bringing the Council into disrepute we do not consider the information disclosed to the press was such that a reasonable person knowing the facts would consider the impact would prevent the Council from properly carrying out its functions.
- 7.32 Article 10 of the European Convention on Human Rights needs to be considered in relation to disrepute in the same way for disrespect under the code. We have concluded for the reasons set out above that these comments would be afforded some protection under that provision.
- 7.33 For those reasons we conclude that Councillor Gillard's conduct did not bring his office or the Authority into disrepute therefore Councillor Gillard did not breach that part of the code of conduct which relates to disrepute.

Bullying

- 7.34 The Authority's code states:

"You must - not bully any person."

- 7.35 The term bullying is not defined within the code however bullying and intimidation is referred to in the Standards Board Guidance on the Code issued in May 2007. It states on page 9 of the Guidance that:-

"Bullying may be characterized as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence."

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Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health."

7.36 This can be contrasted with legitimate challenges which a member can make in challenging policy or scrutinizing performance.

7.37 The definition of bullying used by the Arbitration, Conciliation and Advice Service (ACAS), as set out in their advice leaflet – Bulling and harassment at work: Guidance for employees, ACAS March 2014, is:-

"Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Bullying or harassment may be by an individual against an individual (perhaps someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual."

7.38 Both definitions have some similarities and refer to offensive, intimidating, malicious, insulting or humiliating behaviour associated with a relationship between the two individuals where the bully is in a position of influence or authority.

7.39 At Q22 on the same page, the Standards board advised that members could criticise officers:-

"In some cases officers have been known to reject reasonable criticism appropriately made and describe it as bullying. The Government did not intend the Code of Conduct to constrain members involvement in local governance, including the role of members to challenge performance. Members are able to question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that members may have disagreements with officers from time to time.

This paragraph does not mean that members cannot express disagreement with officers. This disagreement might, in the appropriate content, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that members raise poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published article in the media"

7.40 From this it is evident the code of conduct was not intended to prevent members raising concerns in a proper manner. We therefore considered whether Councillor Gillard's conduct, when raising concerns, was improper.

7.41 It is evident from the information provide to us that Councillor Gillard has questioned and challenged the Council's officers including the Clerk. Much of this has been in the form of email communication containing questions and making, what was considered by others, unreasonable demands.

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- 7.42 The specific incidents referred to in the complaints relate to persistent and unnecessary email and telephone calls to the Council's employees. From the evidence provided we have not found an unreasonable volume of emails nor any evidence of a significant amount of telephone calls. As set out above we have found some of the emails to be somewhat demanding but not to such an extent that they could be reasonably considered to be bullying.
- 7.43 We have also considered comments made about Councillor Gillard's conduct at meetings of the Council. Whilst we acknowledge that this has caused some concern to other Councillors and the Town Clerk we have not found any specific conduct that is so unreasonable to be considered bullying in the context of the definitions set out above.
- 7.44 In reaching our conclusion on this particular issue we have also had regard to the statement made by a former employee when she said *"I can confirm that although the in-fighting, accusations and general toxic atmosphere of the Council during the last 1-2 years of my employment were very unpleasant and did hasten my letter of resignation, I cannot put this down to two councillors, therefore I do not believe I can assist you in this matter."*
- 7.45 Whilst we acknowledge that Councillor Gillard has raised issues that have caused concern we have not found any conduct that could be considered bullying in the matters referred to us for investigation. We conclude that Councillor Gillard's conduct was within the range of proper challenge to the officers involved and was not a breach of that part of the code relating to bullying.

Confidentiality

- 7.46 The Council's Code states:

"You must not-

- (1) *disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware is of a confidential nature, except where-*
 - (a) *you have the consent of a person authorised to give it;*
 - (b) *you are required by law to do so;*
 - (c) *the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or*
 - (d) *the disclosure is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the council; or*
- (3) *prevent another person from gaining access to information to which that person is entitled by law"*

- 7.47 The term confidential is not defined. It is alleged that the deletion of files and emails from the Council's computer was confidential and that the information relating to the signs was confidential.

- 7.48 Information is a broad term. It includes facts, advice and opinions. It covers written material, including tapes, videos, CDs, DVDs and other electronic

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media. It covers material in unwritten form, including intellectual property. We consider that the details of the deletion of information from the Council's computer and of the Council's contract with the supplier of the signs was information.

- 7.49 Information can only be confidential if all of the following apply:-
- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
 - it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
 - disclosure of it would be detrimental to the party wishing to keep it confidential.
- 7.50 In this case there are two disclosures which have been referred as breaches of confidential information. First the disclosure to the press of information relating to the provision of new signs. Secondly the disclosure of information relating to the deletion of information from the Council's computer.
- 7.51 The deletion of information from the Council's computer was first identified sometime prior to 16 April 2018. Councillor Gillard became aware of the fact when Councillor Perkins mentioned it to him after a meeting of the Council on that day. The matter was reported to the Council in May in a report entitled "POSITION STATEMENT Report on Data and Information Loss". The report was watermarked "CONFIDENTIAL". There is no indication in the report why the content was classified as confidential although there were two paragraphs in the report on Legal Action and Criminal Charges. No legal action or criminal charges were recommended to be taken.
- 7.52 Having considered the content of the newspaper article and the information disclosed to the press by Councillor Gillard it is our conclusion that there was no justification to classify the information about the deletion of files from the computer as being confidential. Furthermore we are mindful that the fact that the information was missing was first disclosed to Councillor Gillard by Councillor Perkins after a meeting of the Council. It is likely that at that stage Councillor Gillard was asked to keep the fact to himself until action had been taken to recover the information. It is difficult to see why some two months later the deletion of the information would justify being confidential. We recognise that the Council may have found the situation embarrassing but do not consider that sufficient justification to designate it as confidential.
- 7.53 In the confidential report on the loss of data and information considered by the Council in May there was reference to Signage. The report stated that some signs had been delivered and that the spend on these had previously been approved by the Council. There was no mention of any problems with the signs or why this information was included in the report.
- 7.54 Problems with the quality and delivery of the signs was reported to the Council in June 2018. At this stage negotiation was taking place with the supplier to rectify the problems. The matter was considered in confidential session due to the ongoing negotiations with a local company who the Council did not wish to identify.

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- 7.55 Councillor Gillard recognised that the information had been designated as confidential by the Council but considered it was in the public interest that the matter be disclosed to the press. We have considered the public interest test and have concluded that whilst negotiations were ongoing the Council was justified in its judgement that not disclosing the information outweighed the public interest.
- 7.56 Having considered the facts we believe that whilst negotiations were ongoing with the supplier it was reasonable for the Council to determine that the information be confidential. Councillor Gillard was fully aware of that and the facts relating to the designation as confidential. We therefore conclude that Councillor Gillard did breach the Code of Conduct when he disclosed to the press the information relating to the signage as portrayed in the article published in the East Anglian Daily Times on 16 June 2018.

Improper use of position

- 7.57 The Council's Code states:

You-

- (1) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and*
- (2) must when using or authorising the use by others of the resources of your council-*
 - (i) act in accordance with your council's reasonable requirements;*
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and*
- (3) must have regard to any applicable Code of Recommended Practice on Local Authority Publicity made under the Local Government Act 1986.*

- 7.58 The relevant paragraph of the code states you must not use or attempt to use your position improperly to the advantage or disadvantage of yourself or anyone else. This provision is in essence the same as that in the Model Code of Conduct introduced under the Local Government Act 2000 and which the then Standards Board for England provided guidance on.
- 7.59 The guidance issued by the Standards Board in 2007 provides very little clarification on this part of the code. It merely states "your behaviour would be improper if you sought to further your own private interest through your position as a member."
- 7.60 Similarly, the Case Review 2007 has scant reference to this area of the code. Question 46 on page 61 sets out where it will be proper for a member to seek an advantage. It also highlights the fact that the term "improperly" is not defined in the code thus ensuring that the scope of the provision is not unnecessarily limited. The most relevant section states:-

"A member's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public

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interest. Any conduct that unfairly uses a member's public position to promote private interests over public interest will be improper."

- 7.61 There are two factors which would determine whether Councillor Gillard's conduct was improper. First, if he had an interest in the matter which he should have declared then any involvement in an official capacity might be judged to be improper. There is no suggestion or evidence found that would indicate that Councillor Gillard had any declarable interest in relation to the candidate for the by-election.
- 7.62 We therefore must consider whether there were any other factors involved that might have motivated Councillor Gillard to support a particular candidate at a by-election which would be improper.
- 7.63 First, we are mindful of the fact that Councillor Gillard is a member of the Liberal Democrat Party and that the candidate he was alleged to have supported stood as a Labour Party candidate. If Councillor Gillard did support the Labour Party candidate, and there is some doubt about that, then it is clear there would be no benefit to Councillor Gillard or his Party if the Labour Party candidate was successful.
- 7.64 We understand there was an inference that Councillor Gillard supported that candidate as the other candidate was a Conservative. The Conservatives being the largest Party represented on the Council. This fact if correct would make no difference to our conclusions.
- 7.65 If supporting a candidate of any political persuasion was deemed to be improper then it would follow that any support for a candidate by any Councillor would be an improper use of a Councillor's position.
- 7.66 In this case we have not found any evidence that Councillor Gillard improperly used his position to obtain an advantage or disadvantage for any individual involved in the by-election.

Decision making

- 7.67 The Council's Code states:-
- (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by-*
(a) your council's chief finance officer; or
(b) your council's monitoring officer,
where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your council.*
- 7.68 In this case one complainant states that Councillor Gillard failed to follow the advice from SALC, the Town Clerk and the Finance and Staffing Committee. First, the requirement of the Code is to have regard to any relevant advice of the chief finance officer or monitoring officer. For the purposes of this report we have concluded that would include the Town Clerk as the Council's finance officer.

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- 7.69 The Standards Board for England dealt with having regard to advice in the Case Review Volume 1, on page 63, Q34, it states:-

“Does the advice given by a chief finance officer or monitoring officer have to be followed?”

Members are under no obligation to follow advice by a chief finance officer or monitoring officer. However, a member is required to have regard to such advice. If a member discounts the advice of principal officers without lawful reason, this disregard is likely to constitute a failure to comply with the Code..... The Standards Board for England anticipates that if an authority or committee were proven to have disregarded such a report without lawful reason, The Ethical Standards Officer would be likely to find that all members involved in the decision to disregard the report failed to comply with paragraph 6.1(a) of the Code.”

- 7.70 From the allegation and the evidence provided it is not entirely clear what decision Councillor Gillard is alleged to have made contrary to any advice provided to him. It appears the allegation relates to advice from SALC presented to the Council, and Councillor Gillard, regarding an individual Councillors right to access the Council's computer. Whilst Councillor Gillard questioned the advice there is no evidence that he persisted with any unlawful action. Nor is there any evidence that Councillor Gillard made any decision contrary to any advice he had been given.
- 7.71 We have therefore concluded that Councillor Gillard did not breach that part of the Code dealing with having regard to the advice of the Council's Chief Finance Officer or Monitoring Officer.

Other considerations

- 7.72 We have considered all the other information provided to us during our investigation which was relevant to the complaints referred to us. From these we have not found any evidence of a breach of the Code of Conduct other than that set out in the above paragraphs.
- 7.73 However, since the commencement of our investigation we have been provided with further email correspondence received by the Town Clerk from Councillor Gillard (copies attached at WC??). Whilst this is outside the scope of the complaints referred for investigation we have considered these emails.
- 7.74 It is evident that Councillor Gillard raised questions with the Council's Auditor regarding the Annual Governance and Accountability Return. Of most significance is an email from the Auditor (Rebecca Plane) to the Town Clerk dated 6 November 2018. This states:-

I spoke to Councillor Gillard a couple of weeks ago, he said he was contacting us on behalf of the council and that the council had been informed that the objections would be dropped if the Council made some amendments to the Annual Governance Statement, which they were considering, and that he just wanted to check the process for doing so.

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I've attached all the email correspondence below. Clearly, he never mentioned the fact that he is married to the objector! That being said, the information that I provided is general information that would be provided to anyone who proposed those queries.

I have heard nothing yet from Cllr Page to indicate that she is withdrawing her objection."

- 7.75 We have not investigated the detail or background to these emails although the claim that Councillor Gillard was contacting the Auditor on behalf of the Council when it appears he had no such authority does cause some concern.
- 7.76 It is evident that the Council's employees appear to be working under some degree of stress. This is evidenced by the new Town Clerk's statement that she is under medication for stress diagnosed by her doctor. Also the former employee who responded to our request for evidence referred to the infighting and toxic atmosphere at the Council as being a contributory factor for her resignation.
- 7.77 We consider the Council needs to recognise that Councillors have a right to legitimately challenge decisions. If necessary appropriate procedures should be adopted and followed to facilitate legitimate questioning. We note that the new Town Clerk has begun to review and update the Council's procedures which if accepted and implemented by all the Town Councillors should ensure a more effective governance of the Council.

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8. Conclusion

- 8.1 Our conclusion is that there has been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP Solicitors

15 February 2019