

CONFIDENTIAL REPORT



PRIVATE AND CONFIDENTIAL

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

Dated: 15 February 2019

VOLUME 1 REPORT

wilkin chapman llp
solicitors

Cartergate House
26 Chantry Lane
Grimsby
DN31 2LJ

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1. Executive Summary

- 1.1 Councillor Eamonn O’Nolan is a Member of Woodbridge Town Council having been first elected in May 2015.
- 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 was identified.
- 1.4 When the deletion of the information from the Council’s computer was identified Councillor O’Nolan offered 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 those which had been paid for but were still outstanding. This was discussed by the Councillors at a meeting held 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 included a photograph of Councillor O’Nolan 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 O’Nolan and another Councillor and attributed quotations to them.
- 1.10 Complaints were made by four Town Councillors regarding Councillor O’Nolan’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) misuse of position;

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- (v) bringing the Council in to disrepute, and
- (vi) not having regard to the advice of officers.

1.11 We have concluded that:-

- (a) Councillor O’Nolan was acting in an official capacity in relation to some of the conduct alleged to have occurred;
- (b) Councillor O’Nolan was not acting in an official capacity when he was quoted in an article in the San Francisco Chronical;
- (c) whilst challenging, Councillor O’Nolan’s conduct towards other Councillors and the Council’s employees was not disrespectful or bullying and did not constitute a breach of the Code of Conduct;
- (d) Councillor O’Nolan did not bring his office or the authority in to disrepute;
- (e) Councillor O’Nolan did not breach that part of the Code of Conduct which deals with having regard to the advice of officers;
- (f) however, Councillor O’Nolan did disclose confidential information to the press 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 O’Nolan.

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2. Councillor O’Nolan’s official details

- 2.1 Councillor O’Nolan was first elected to Woodbridge Town Council (The Council) in May 2015.
- 2.2 Councillor O’Nolan signed a declaration of acceptance of office most recently on 12 May 2015.
- 2.3 We are not aware whether Councillor O’Nolan 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) 1n 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 O’Nolan 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 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 O’Nolan.
- 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, failing to have regard to advice and bringing the Council into disrepute.
- 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 and signed. 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 telephone interview with Councillor O’Nolan from which notes were prepared. Councillor O’Nolan was given an opportunity to comment on the notes 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 O’Nolan 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, having regard to advice and disrepute. Copies of Councillor O’Nolan’s response to the complaints are attached within WC2.
- 4.13 In particular the issues raised related to 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 O’Nolan had breached confidentiality by going to the press with information discussed at private meeting of the Town Council, bullied the Council’s staff and stated in an interview that he wanted to cause upset.

Councillor Lady Blois

- 4.16 Councillor Blois was interviewed by Mr Tasker on 1 November 2018 and a signed statement was obtained (attached at WC 3). With regard to Councillor O’Nolan 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 O’Nolan related to various aspects of his recent behaviour;
 - (c) in an article in the East Anglia Daily Times, published on 16 June 2018, Councillor O’Nolan 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 O'Nolan 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) in an article seen on Facebook, which was published in the San Francisco Chronicle on 22 August 2017, Councillor O'Nolan discussed his life and his UK politics being a Green Party member. In his words he is quoted as saying "*we are interested in upsetting the apple cart. I am not a hippie I am an anarchist*". This was subsequently removed from Facebook. He had upset the apple cart by breaking silence when an agenda item was agreed to be heard in camera;
- (g) her reference to bullying was on behalf of the staff who could not answer back. She walked into the office when the previous Town Clerk was in tears due to the way Councillor O'Nolan bullied her. This was on record. Now the new Town Clerk had also complained to her about Councillor O'Nolan'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 approached 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;
- (h) 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 want 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;
- (i) the way Councillor O'Nolan 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 O'Nolan 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;
- (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 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

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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 article published in the San Francisco Chronicle.

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 Councillor O'Nolan had shown disrespect towards the Council's officers, lied and tried to cause upset between Councillors, disclosed confidential information discussed in confidence, breached the code of conduct for political gain and bullied the Town Clerk by subjecting her to unnecessary phone calls and emails.

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/councillor Perkins has confirmed her agreement with the statement by email of . With regard to Councillor O'Nolan 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 O'Nolan 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 O'Nolan] 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) an example of the problems experienced by the Town Clerks had been times when Councillor O’Nolan had been present at meetings of the Council or a Committee. He was often very quiet at the meetings, having little to contribute. However, after the meeting he would enter into an email exchange with the Town Clerk. This usually involved challenging decisions that had been made or demanding further information;
- (h) she believed both of these Councillors had exhibited bullying and disrespectful behaviour towards the Council’s employees, in particular the former Clerk and more recently the new Clerk;
- (i) a further example of inappropriate behaviour by Councillor O’Nolan related to a complaint made by him against her during her mayoral year. He alleged that she had been party to lies made about him regarding him requesting information about the former Town Clerk’s contract of employment. He denied asking for the contract. After making enquires she was led to believe that what the former Town Clerk had told her was incorrect. She gave a written apology to Councillor O’Nolan and he withdrew the complaint. She had since seen an email from Councillor O’Nolan to the new Town Clerk that clearly requested a copy of the former Town Clerk’s contract of employment;
- (j) her complaint against Councillor O’Nolan 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;
- (k) 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;
- (l) 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;
- (m) 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 one of the Councillors. The County Councillor was often reported as making

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derogatory comments about the Town Council;

- (n) 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 Council Councillor O'Nolan 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 O'Nolan Councillor Mortimer said:-
 - (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 O'Nolan related to his 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 O'Nolan 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 O'Nolan 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;

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- (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, 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) Councillor O'Nolan visited the Council's offices demanding information. It was evident that he was gunning for the former Town Clerk;
- (k) 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;
- (l) he was aware that some time ago the previous Clerk made allegations of bullying which were never really resolved by the Council;
- (m) 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;
- (n) 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 O'Nolan had no respect for any Councillors, bullied the Council staff, released information to the press from a confidential meeting, lied to the public, brought the Council into disrepute, misused his position in a by-election by backing a candidate to improperly confer an advantage and failed to have regard to advice and to give reasons for his decisions.

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 O'Nolan 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;

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- (b) her concerns related to two Councillors, Councillors O'Nolan 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 O'Nolan had on occasion been into the Council's offices and banged on the Clerk's office door making demands;
- (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 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 O'Nolan 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 O'Nolan and the other Councillor were deliberately misleading to damage the reputation and public 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;
- (i) Councillor O'Nolan had also been quoted in the press in San Francisco as saying he is an anarchist and was quite interested in upsetting the applecart back in England.

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 O'Nolan Ms Lacey said:-

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- (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 a Councillor that there was a problem with deleted emails. Councillor O'Nolan visited her office demanding access to passwords for the Council's computer and various files and/or systems. She took advice from SALC regarding this who confirmed that Councillors should not be provided with such information. A copy of the email containing the advice was provided to the investigator. The current Mayor, Councillor Mortimer, emailed Councillor O'Nolan asking that he desist from pestering the Clerk;
- (e) 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;
- (f) despite none of the information that was deleted being sensitive data Councillor O'Nolan 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;
- (g) 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. Councillor O'Nolan refused to use the bell, instead he tried to force the door open to prove a point;
- (h) 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

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Councillors should make an appointment to see an officer of the Council. This was continually ignored;

- (i) 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”;
- (j) 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;
- (k) 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 O’Nolan 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;
- (l) 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 product and that some had not been delivered. The Council was in contact with the company producing the signs to rectify the issue;
- (m) 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 O’Nolan 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 was then contradicted in the article where it stated it would be considered at a meeting of one of the Council’s Committees;
- (n) 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 O’Nolan 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;
- (o) 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;
- (p) 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

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was based on a press release issued by Councillor Mortimer in his position as Mayor;

- (q) some of the inappropriate conduct had moderated since the code of conduct complaints were submitted. The two Councillors still stared at her during meetings;
- (r) she was still working in an extremely stressful environment and was having to work longer hours to deal with the issues being raised;
- (s) she provided the investigator with copies of emails and other relevant documents which highlight some of the issues raised in the complaints against Councillor O’Nolan.

Councillor O’Nolan

4.27 Councillor O’Nolan was interviewed by Mr Tasker on 31 October 2018. The interview was conducted by telephone as Councillor O’Nolan was out of the country. Following the interview notes were prepared (attached at WC 11). In the interview Councillor O’Nolan said:-

- (a) he was aware of four complaints submitted to the Monitoring Officer of Suffolk Coastal District Council and that these covered a number of areas of the Code of Conduct. He pointed out that he had provided full written responses to the allegations made. He was informed that these would be referred to in the final report and would be appended to that report;
- (b) that the interview could be recorded however due to the poor quality of the telephone link this was not possible;
- (c) he believed that the motivation for the complaints, which he considered were orchestrated, was to put him in a bad light with the other Town Councillors;
- (d) issues first materialised some 4 or 5 months prior to the current complaints. He submitted a complaint to the Monitoring Officer regarding Councillor Perkins’ conduct towards him. He considered that Councillor Perkins had made false statements about him by claiming that he had asked the Council’s staff for a copy of the then Town Clerk’s contract of employment. When challenged on the matter Councillor Perkins established the true facts and provided him with a written apology for making the allegations. On the basis of this apology he withdrew the complaint;
- (e) at about the same time as the above complaint the then Town Clerk resigned. This resulted in a Committee being formed to oversee the recruitment of a new Town Clerk. He had reason to believe the procedure for establishing the Committee was contrary to the requirements of the Council’s Standing Orders. In addition, the ‘Committee’ consisted only of Conservative members. This was symptomatic of the culture of the Town Council which was being run by the majority group of Conservative Councillors without any challenge;

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- (f) on about 3 April or 4 April 2018 the new Town Clerk discovered that the Council's email account had been deleted from the server by the previous Clerk. She also found that financial information had also been deleted. This information was not shared with all the Councillors until about 10 days later;
- (g) it was after a meeting of the Council that the Mayor announced that "it had all gone" referring to the Council's files and emails held on the server. As he had some significant experience and knowledge of IT systems he was asked by the Chair of Finance & Staffing Committee if he could have a look to see what was missing. He found that no backups had been made of the files. He was aware that if action had been taken within 14 days the files and emails could have been recovered. However, the fact that the files had been deleted was not shared with all the Councillors until it was too late. He did not think this was a deliberate delay;
- (h) he thought it was unlikely that the initial deletion of the emails was an error. This was because to delete any email the system always required confirmation that the operator's intention was to delete. Additionally, he found that the Clerk had deleted all emails within the various sub-directories, yet left the sub-directories there. This showed that a methodical approach had been taken, further indicating that it could not have been unintentional. He therefore thought this was a deliberate act that should be investigated;
- (i) when he raised this he was informed that the new Town Clerk had had words with a tame Police Superintendent. Whilst he acknowledged that he did not know what had been discussed he did not consider that an informal discussion with the Police was an appropriate response to what he considered a potentially serious issue. His informal legal advice was that the matter could warrant a complaint to the Police. As far as he was aware the Town Council had not formally referred the matter to the Police for their opinion;
- (j) when he discussed this matter with a reporter from the local newspaper he was of the opinion that the matter was not confidential. He had been present when it was discussed after a meeting of the Council, not during a confidential meeting. He also considered that there was no detriment to the Council if the matter was made public. He did think that if the Council did not disclose to the public that the files had been deleted or lost and it subsequently became public knowledge then the public might think the Council had been trying to cover the matter up. That would have been detrimental to the Council's image and reputation;
- (k) similarly, the issue of the problem with new signs was in the public interest, for three reasons:
- The former Town Clerk had been authorised to spend £3,500 with the supplier, but had spent a further £5,000 without authorisation.
 - The former Town Clerk had arranged for the supplier to be paid in excess of £8,200 a) in advance of delivery, and b) without having those payments authorised. Two of these payments were in excess

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of her sign-off authority, so there can be no argument that she did this accidentally.

- The former Town Clerk had ordered a number of signs from a local supplier. It became evident when the new Town Clerk looked into the matter that correct procedures had not been followed and that mistakes had been made. He had contacted the supplier and was informed that the first batch of signs had been produced three times. The first time when the signs were inspected it was noticed the Town Clerk had failed to include the Council's contact details; address, telephone number etc. This was rectified with details provided by the Clerk. When these were produced for the second time it was then noticed that the telephone number provided by the Clerk was incorrect. None of this had been reported to the Councillors.
- (l) he was concerned that if the supplier was challenged over the problems with the production of the signs the Council would have some difficulty;
- (m) he was surprised at the allegation of bullying and not respecting the Council's employees. He was not aware of any occasion when he had spoken aggressively to any of the staff or other Councillors. In the absence of any specific instances being identified in the complaints he found it difficult to respond to these allegations. He would be happy to consider any information or evidence put forward by the complainants or the staff;
- (n) he had almost no contact with the Council's staff, what contact he did have was mainly with the Deputy Clerk. As far as he was aware the Deputy Clerk had not reported any problems regarding their relationship. He believed that he had got on well with the Secretary who had left. Since the new Clerk had started he could not recall having had any significant amount of contact with her other than a couple of emails;
- (o) with regard to the suggestion that the two employees who had recently resigned had done so due to his conduct he pointed out that for about three months prior to their leaving he had not been in the country;
- (p) he thought that the Town Council was very political and was run by a cohort of Councillors. As the only Councillor representing the Green Party he acted very much independently. He was mystified by the allegation that he had acted in an inappropriate and political manner by supporting a candidate at the recent by-election. The candidate in question, as he understood it, was a Labour candidate. His Party rules precluded him from supporting another political party's candidate. He did not campaign for the Labour Party candidate nor do anything to support the candidate at the by-election. He did say at some stage that he thought the candidate was a suitable individual to represent the electorate;
- (q) he was not aware of any action by him that could be considered to bring his office or the Council into disrepute. He did think it was questionable the way the Council had dealt with the issues referred to

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in the complaints against him. The public's confidence in the Council might be affected if it was fully aware of the facts.

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 Eamonn O’Nolan is a member of Woodbridge Town Council.
- 5.2 On 23 August 2017 an article was published in the San Francisco Chronical about Councillor O’Nolan and his wife. The article was about how they met and, since marrying, were traveling in a restored boat from Canada to the Mediterranean. Councillor O’Nolan is quoted in the article as saying:-

We’re quite interested in upsetting the applecart back in England, I’m not a hippie; I’m an anarchist”

The article refers to Councillor O’Nolan being an active member of the Green Party; there is no reference to Woodbridge Town Council nor him being a Councillor.

- 5.3 The Council appointed a new Town Clerk who commenced employment with the Council on 3 April 2018.
- 5.4 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.
- 5.5 When he became aware of the loss of the information Councillor O’Nolan attempted to assist the Clerk with the recovery of the data.
- 5.6 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.
- 5.7 On 16 June 2018 an article was published in the East Anglian Daily Times in which Councillor O’Nolan, 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 attached at WC 12).
- 5.8 On 28 June 2018 a further article was published in the East Anglian Daily Times (copy attached at WC 13). In this article Councillor O’Nolan and another Councillor are referred to as revealing to the reporter ‘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.
- 5.9 The Town Council issued three press releases in response to the articles in the newspaper. An article was published on 6 July 2018 under the headline ‘Mayor accuses councillors of breaking code of conduct’ (attached at WC 14).

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The article appears to be based on the last of the three press releases (copy attached at WC???). This was issued on 29 June under the Mayor's name, the article is accompanied by a photograph of the Mayor, Councillor Mortimer.

- 5.10 During the period covered by the complaints Councillor O'Nolan sent a number of emails to other Town Councillors and/or the Town Clerk regarding these matters.

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6. Councillor O’Nolan’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, Councillor O’Nolan [REDACTED] 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] ONolan [REDACTED] 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.

Firstly, I am pleased that a breach of the code of conduct has been proved. I hope it will be dealt with fully.

Secondly, I am disappointed that the bullying behaviour has not been dealt with. I am afraid it will now continue.

May I say that the statement from the Sanfrancisco Times was just intended to be an illustration of the councillor's attitude and not part of the complaint.

Thank you again for making this whole procedure as easy as possible and all the hard work you have put in.

*Regards,
Sheena Rawlings”*

- 6.5 No comments were received from Councillor O’Nolan on the draft version of this report.

Response to comments

- 6.6 The comments from the Councillors regarding challenging behaviour have been noted. However, no specific evidence was presented to our investigator on which to judge Councillor O’Nolan’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. Having considered the comments these have not changed our reasoning or 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 O’Nolan towards other Town Councillors and the Town Clerk. The allegations also relate to the disclosure of confidential information and inappropriate comments reported in the San Francisco Chronical.

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 O’Nolan 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 O’Nolan’s alleged conduct outside of formal meetings of the Council.

- 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 O’Nolan in his capacity as a Councillor as the information was not in the public domain at the time. In those instances Councillor O’Nolan was acting in his capacity as a Member of the Town Council and was therefore acting in an official capacity.

- 7.6 The article in the San Francisco Chronical is about Councillor O’Nolan’s private life detailing his meeting with his wife, their subsequent marriage and the trip they were undertaking in a boat. Whilst being interviewed by the reporter there is no doubt that Councillor O’Nolan was acting in a private capacity and was not undertaking the duties of a Councillor. We therefore conclude that the interview and subsequent article in the press was not covered by the Code of Conduct.

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- 7.7 We have concluded that Councillor O’Nolan 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”.

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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 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;
 - Lied and tried to cause upset between Councillors;
 - 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 O’Nolan’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 O’Nolan 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 not treating other Councillors respectfully we have considered the emails sent by Councillor O’Nolan and have not found any evidence of unwarranted personal comments that could be considered disrespectful.

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- 7.21 We have also considered the allegation that Councillor O’Nolan lied and tried to cause upset between Councillors. This relates to an allegation that Councillor O’Nolan asked for sight of the former Town Clerk’s contract of employment, which Councillor O’Nolan denied. At the time this resulted in a complaint to the Monitoring Officer by Councillor O’Nolan which was withdrawn when the complainant could not substantiate the allegation in the complaint. Whilst we are mindful of the fact that Councillor O’Nolan did ask to see the contract of employment at a later date there is no evidence of an earlier request. We have not been able to obtain any evidence that Councillor O’Nolan lied to cause upset between Councillors.
- 7.22 There appears to be some substance in the allegation that Councillor O’Nolan’s conduct has caused some upset to other Councillors bourn out by the complaints received. However this in itself is not sufficient to constitute not treating other Councillors with respect.
- 7.23 We have considered all the evidence provided and gathered during our investigation and have concluded that whilst Councillor O’Nolan 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.
- 7.24 We have therefore concluded that Councillor O’Nolan did not breach that part of the Code of conduct that requires Councillors to treat others with respect.

Disrepute

- 7.25 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.

- 7.26 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.”*

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7.27 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.”

7.28 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.”

7.29 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 O’Nolan as an individual.

7.30 What must be considered here is to gauge an objective view. That is, whether the actions of Councillor O’Nolan 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.

7.31 In this case it is primarily Councillor O’Nolan’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 O’Nolan’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 O’Nolan to be likely to lessen the public’s confidence in the ability of the Authority to carry out its functions.

7.32 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.

7.33 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

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code. We have concluded for the reasons set out above that these comments would be afforded some protection under that provision.

- 7.34 For those reasons we conclude that Councillor O’Nolan’s conduct did not bring his office or the Authority into disrepute therefore Councillor O’Nolan did not breach that part of the code of conduct which relates to disrepute.

Bullying

- 7.35 The Authority’s code states:

“You must - not bully any person.”

- 7.36 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. 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.”

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

- 7.38 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”

- 7.39 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.

- 7.40 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

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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

- 7.41 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 O’Nolan’s conduct, when raising concerns, was improper.
- 7.42 It is evident from the information provide to us that Councillor O’Nolan has questioned and challenged the Council’s officers including the Clerk. This has been in the form of email communication containing questions and making, what was considered by others, unreasonable demands.
- 7.43 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.
- 7.44 In reaching our conclusion on this particular issue we have 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 O’Nolan 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 O’Nolan’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;*

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- (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 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 instances which have been referred as disclosure 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 O'Nolan became aware of the fact. 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 are 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 O'Nolan 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 another Councillor by Councillor Perkins after a meeting of the Council. It is likely that at that stage the other Councillor 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.

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- 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.
- 7.55 Councillor O’Nolan 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 out weighed 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 O’Nolan was fully aware of that and the facts relating to the designation as confidential. We therefore conclude that Councillor O’Nolan 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

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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 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 O’Nolan’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 O’Nolan had any declarable interest in relation to the candidate for the by-election.
- 7.62 We therefore have to consider whether there were any other factors involved that might have motivated Councillor O’Nolan to support a particular candidate at a by-election which would be improper.
- 7.63 First, we are mindful of the fact that Councillor O’Nolan is a member of the Green Party and that the candidate he was alleged to have supported stood as a Labour Party candidate. If Councillor O’Nolan did support the Labour Party candidate, and there is some doubt about that, then it is clear there would be no benefit to Councillor O’Nolan or his Party if the Labour Party candidate was successful.
- 7.64 We understand there was an inference that Councillor O’Nolan 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 would be an improper use of a Councillor’s position.
- 7.66 In this case we have not found any evidence that Councillor O’Nolan 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.

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(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 O’Nolan 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.

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 O’Nolan 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 O’Nolan, regarding an individual Councillors right to access the Council’s computer. Whilst Councillor O’Nolan questioned the advice there is no evidence that he persisted with any unlawful action.

7.71 We have therefore concluded that Councillor O’Nolan 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 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.

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- 7.74 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. 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