

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/002/2017-018/CT

REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Former Councillor Dr Stuart Anderson

RELEVANT AUTHORITY: Conwy County Borough Council

1. INTRODUCTION

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

1.2 A hearing was held by the Case Tribunal at 10 am on 9 and 10 January 2018 at Mold Law Courts. The hearing was open to the public.

1.3 Former Cllr Dr Anderson (“Dr Anderson”) did not attend. The Tribunal were informed by Gamlins Solicitors that they were representing Dr Anderson, but were not instructed to attend the hearing.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 31 July 2017, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman” or “PSOW”) in relation to allegations made against Dr Anderson. The allegations were that Dr Anderson had breached the Code of Conduct of Conwy County Borough Council (“CCBC”) by making a number of unfounded allegations against staff, involving himself in an issue in which he had a prejudicial interest, widely circulating personal comments about a senior officer, attempting to compromise the impartiality of an officer and sharing information which should reasonably have been regarded as confidential.

2.1.2 The complaint had been made to the Ombudsman by the Strategic Leadership Team and the Executive of CCBC, with supplemental complaints by the Chief Executive and the Head of Law and Governance. The entity who brought these proceedings to the Case Tribunal was the Ombudsman, whose staff attended the hearing and was represented by Ms Ginwalla.

2.1.3 The background to this case starts with a letter sent to Mr Barry Griffiths on 9th of March 2016 in the name of Ms Delyth Jones, the Head of Law and Governance, though this letter was drafted by Ms Janet Hughes, a legal officer for CCBC. This letter saw Mr Griffiths threatened with his removal from the governing body of a school (as a local authority governor) for a variety of reasons, including disclosing confidential information to Dr Anderson (who was not serving on the same governing body).

2.1.4 Dr Anderson was unhappy that he had been named in the letter without his consent. As a result of the existence of this letter, Dr Anderson undertook a course of conduct which involved making allegations against Ms Hughes, making allegations about a senior officer in CCBC (referred to as Officer X) and his fitness to be employed in his role, widely disclosing confidential information about Officer X and a member of the public to be referred to as Mrs A, making a series of representations on behalf of Mr Griffiths, and allegedly pressurising a council official to take action under his instructions.

2.2 The Councillor's Written Response to the Reference

2.2.1 Dr Anderson refused to complete the form sent to him by the Registrar of the Adjudication Panel for Wales for the purposes of enabling him to respond. During the course of these proceedings, Dr Anderson and later his solicitors did send a number of documents which the Tribunal elected to treat as both a response and submissions.

2.2.2 In an email dated 10 September 2017, Dr Anderson suggested that the complaint and reference should be withdrawn on the basis that he was no longer an elected member. He asked to be addressed as Dr Anderson and attached a report he had sent to his medical defence union regarding the matter. Within this report, Dr Anderson suggests that as a retired doctor he had a "duty to warn" CCBC and fellow members about his concerns regarding Officer X. He also suggested that the use of his name in the letter to Mr Griffiths entitled him to take action to investigate matters widely. Dr Anderson in that report had nothing further to say in relation to the other allegations, but wondered if a pre-hearing review might be of assistance.

2.2.3 In the listing direction, the Case Tribunal permitted Dr Anderson to submit any other statements he wished to be considered by 8 December 2017, provided such documents focused on the issues to be considered at the hearing. Notwithstanding his later instruction of solicitors and sending of lengthy emails, no such document was received by the deadline. On 4 January 2018, a typed personal statement was submitted which the Tribunal elected to treat as akin to a witness statement, despite not being supported by a statement of truth.

2.3 The Ombudsman's Written Representations

2.3.1 In a form dated 26 September 2017, the PSOW made further observations in response to Dr Anderson's email of 10 September 2017 and its

attachments. The Ombudsman confirmed his understanding that Dr Anderson had stood for election to CCBC in May 2017 but was not elected. He also noted the comments made by Dr Anderson regarding Officer X, which Dr Anderson acknowledged were made without any access to medical or human resource records. The Ombudsman was concerned that Dr Anderson's statements about employees with disabilities were contrary to the law and referred to irrelevant issues.

2.4 Listing Direction

2.4.1 The members of the Case Tribunal considered the above and on 1 November 2017 issued its listing direction. The reasons set out by the Case Tribunal for the directions and decisions made are fully detailed within the listing direction. In summary, the Case Tribunal determined that a pre-hearing review would not facilitate its final adjudication. It noted that it had no power to dismiss a reference from the Ombudsman once made; it pointed out that if a party wished to challenge a decision made by a public body, it was open to that party to seek a judicial review from the High Court.

2.4.2 The Case Tribunal noted that Dr Anderson had failed to submit a response which complied with Regulation 3 of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended). It also noted that Dr Anderson suggested that he intended to attend the hearing and disputed the report submitted by the PSOW, but had failed to set out which facts were disputed or whether he accepted there had been a breach of the Code of Conduct. Dr Anderson's application for an extension of time to submit a response was declined on the basis that Dr Anderson had been able to submit his response within the time allowed but had refused to do so, but the Case Tribunal considered that it was in the interests of justice to allow Dr Anderson to submit a document focusing on the issues to be considered at the hearing by 8 December 2017.

2.4.3 Within the listing direction, the Case Tribunal ordered that an oral hearing took place and that documents which were not relevant to the issues to be determined at the final hearing should be removed from the hearing bundle. It also asked Dr Anderson to confirm a number of points in order to avoid witnesses being requested to attend unnecessarily, and directed that the name of two individuals would be anonymised in order to protect their rights to privacy.

2.5 Applications prior to the hearing

2.5.1 On 15 November 2017, Dr Anderson emailed the Registrar to the Adjudication Panel for Wales and asked for the hearing to be postponed for at least the next 15 months due to the ill-health of a close relative. He explained that he would not be able to attend any hearing for the foreseeable future and repeated his view that the hearing should be stayed generally. Dr Anderson said that he had accused an individual of "*being capable to varied degrees of psychopathic behaviour*".

2.5.2 Dr Anderson wanted the Case Tribunal to view a web cast of a full council meeting on 4 March 2016, which he said formed the basis of his initial concerns regarding Officer X. Dr Anderson also required the attendance of approximately 15 individuals to give evidence to the hearing, including those who had already been requested to attend, and for one particular witness to be subjected to questioning by another witness. Dr Anderson's email also made a number of irrelevant submissions.

2.5.2 In response to his email, the Registrar asked Dr Anderson to provide medical evidence explaining why he would not be able to attend the hearing as listed and warning that it was unlikely the hearing would be postponed for a year. Upon receipt of confirmation from Gamlins Solicitors that they were now acting on behalf of Dr Anderson, the Registrar repeated his request for medical evidence on two occasions. As of the time of the final hearing, no such medical evidence had been provided. The PSOW was asked to comment and said that he would support whatever decision the Tribunal considered to be appropriate.

2.5.3 The decision of the Case Tribunal dated 8 December 2017 set out in detail its conclusions in relation to the applications. In summary, it declined to adjourn the hearing on the basis that Dr Anderson and his legal representatives had failed to provide any independent medical evidence demonstrating that Dr Anderson would be unable to attend the hearing as listed. It commented that it would not be in the interests of justice or fair to adjourn for at least a year as hearings should take place while the memories of witnesses were able to be relied upon.

2.5.4 The Case Tribunal also reiterated its refusal to impose a general stay. It declined to view the web cast requested by Dr Anderson on the basis that it was not relevant evidence, given the issues to be determined. The Case Tribunal judged that the additional witnesses requested by Dr Anderson were unable to give evidence as to the facts regarding the issues it needed to determine, though indicated it may be willing to hear from character witnesses if the third stage of the hearing was reached. It noted that Dr Anderson wanted Mr Redgrave and Mrs A to attend the hearing, but reasons were only given in respect of Mr Redgrave. The Case Tribunal determined to request the attendance of Mr Redgrave to the final hearing. Given Dr Anderson's previous acceptance that he did not have the consent of Mrs A to forward her letter to those to whom he sent it, the Case Tribunal concluded that her oral evidence would not assist the determination of the issues before it.

.2.6 Applications dealt with during the public hearing

2.6.1 At the start of the hearing the Case Tribunal considered whether it was fair to proceed in the absence of Dr Anderson or his representative. It first satisfied itself as to whether proper service under the regulations had been carried out by the Adjudication Panel for Wales; it concluded that service had been properly performed and it was clear from the correspondence that Dr Anderson was well aware of the date and location of the hearing.

2.6.2 The Case Tribunal considered that it should follow the guidance set out in R v Jones [2002] UKHL 5. It reminded itself that it was required to ensure that a fair hearing took place and should only proceed with the utmost care and caution. Fairness to both parties was required, and there was also a public interest in dealing with the matter in a timely way - a culture of adjournment was to be deprecated. Ms Ginwalla submitted that it would be fair to proceed as Dr Anderson chose not to attend or to send a representative, was clearly aware of the hearing and arguably had waived his right to attend by saying that he was pleased that the hearing would take place in his absence. The PSOW noted that Dr Anderson had submitted information to be considered by the Case Tribunal and therefore was not subject to a disadvantage due to his non-attendance.

2.6.3 The Tribunal noted that Dr Anderson's non-attendance followed previous applications for the hearing to be adjourned or stayed generally. As can be seen above in paragraph 2.5.2, Dr Anderson and his solicitors failed to provide any medical evidence supporting his contention that he was unable to attend the hearing due to the medical condition of a close relative. In addition, Dr Anderson had been seeking a postponement of over a year which in the judgment of the tribunal was inappropriate and would unduly delay justice. It was also unclear as to why Dr Anderson was unable to instruct his representatives to attend on his behalf, given that he was clearly able to send lengthy emails and had instructed a firm of solicitors. As the precedents make clear, lack of money is not generally regarded as a sufficient reason not to attend the proceedings.

2.6.4 In any event, it was clear that Dr Anderson was not only aware of the hearing, but had waived his right to attend. He had stated in correspondence that he was grateful the hearing would proceed in his absence. The Tribunal was unable to conclude that an adjournment was likely to lead to the later attendance of Dr Anderson, given his failure to attend today's hearing, provide the medical evidence requested on several occasions, or instruct his solicitor to attend.

2.6.5 The Tribunal concluded that it would be able to make a fair decision on the merits of the case without the attendance of Dr Anderson or his representative. It would test the evidence provided and expose any weaknesses in the case put forward by the PSOW. The Tribunal would do this by not only asking its own questions to the witnesses who attend, but by bearing in mind all the relevant responses and submissions made by Dr Anderson and his solicitors to date, and where appropriate raising the points made by Dr Anderson with the witnesses. The Tribunal would not be able to cross-examine witnesses, but that did not mean it could not raise points emanating from the responses from Dr Anderson. It also noted that if Dr Anderson had confirmed earlier his non-attendance, the Tribunal at the listing stage may have decided to proceed with the hearing on the papers on the basis of the papers alone.

2.6.6 The Tribunal judged that it would be fair to proceed in the absence of Dr Anderson or his representative in all the circumstances of the case.

2.6.7 Ms Delyth Jones was requested by the Case Tribunal to attend as it appeared Dr Anderson wished to challenge her evidence at a public hearing. Unfortunately, Ms Jones was ill with influenza while the hearing was taking place; this was confirmed by the Monitoring Officer's representative Mr Brown, who said he was aware a medical certificate had been submitted to CCBC making it clear that Ms Jones could not attend.

2.6.8 The Case Tribunal proposed in the circumstances to hear from the other witnesses of fact who had attended the hearing, and then consider whether it was fair and necessary to adjourn the hearing in order to receive Ms Jones's oral evidence. Ms Ginwalla confirmed this proposal was acceptable to the PSOW. After hearing from the other witnesses as to fact, Ms Ginwalla confirmed that the evidence which the PSOW would have sought to obtain from Ms Jones orally had been delivered by Mr Iwan Davies. The Tribunal considered that it had no questions for Ms Jones having heard from the other witnesses. As Dr Anderson had not attended the hearing or sent a representative, there was no one to put questions to Ms Jones on his behalf. The tribunal concluded that it would be fair to proceed in the absence of Ms Jones.

2.6.9 On its own initiative, the Case Tribunal amended the annex to the listing direction, namely agreed fact 1.2. It was now confirmed by all the parties that Dr Anderson was no longer a member of Towyn and Kinmel Bay Community Council. Agreed fact 1.2 was amended to state that "Former Councillor Dr Anderson is no longer a member of Towyn and Kinmel Bay Community Council."

2.6.10 In the days immediately preceding the public hearing, it was made clear to the Case Tribunal that Dr Anderson no longer wished to attend the public hearing, nor send a representative. Notwithstanding this, Dr Anderson wanted the Tribunal to call character witnesses to give evidence on his behalf. The Registrar in correspondence made it clear that it was a matter for the discretion of the Tribunal whether to hear from such witnesses, particularly given the absence of Dr Anderson and his representative. The Registrar also explained that it was for Dr Anderson or his representatives to arrange for the attendance of character witnesses.

2.6.11 When the Case Tribunal reached the point at which it would normally hear from character witnesses, and in the absence of any objection from the PSOW, it concluded that it would be fair to hear from those individuals who had attended the hearing wishing to give evidence about Dr Anderson's character. Only one individual was present and willing to give such evidence, Councillor William Darwin. In the absence of anyone to put questions to Councillor Darwin on behalf of Dr Anderson, with the consent of the PSOW the chair asked questions to elicit Councillor Darwin's evidence, followed by the normal questioning undertaken by a panel in the circumstances.

3. ORAL SUBMISSIONS

3.1. The Case Tribunal considered the contents of the hearing bundle, and heard oral evidence and submissions as follows:

Public Services Ombudsman for Wales - submissions

3.2 Ms Ginwalla briefly presented the report of the Ombudsman into this matter. She submitted that the Case Tribunal should make the findings of fact suggested within that report.

3.3 The Case Tribunal clarified the Ombudsman's position in relation to the allegation regarding Ms Hughes. It noted that the emails of March 2016 in which Dr Anderson made a number of comments regarding Ms Hughes, such as finding her "*in flagrante*", were according to the report of the Ombudsman made in the heat of the moment and could be overlooked. The report seemed to be more concerned about an email of 6 April 2016; the Tribunal was unclear as to exactly what within that email was relevant to the allegation regarding Ms Hughes. Ms Ginwalla confirmed that it was the phrase "*honest moral principles*" which concerned the Ombudsman as it suggested that Ms Hughes had been acting in a manner contrary to such principles.

Dr Anderson's submissions

3.4 As Dr Anderson was not in attendance and had not sent a representative, no oral submissions were made on behalf of Dr Anderson. The Case Tribunal had regard to the correspondence and documents previously submitted by Dr Anderson, and noted that he disagreed with the contents of the Ombudsman's report. As stated within the listing direction, Dr Anderson had not been precise about exactly which facts he still disputed or whether he accepted any part of the Code of Conduct had been breached. With the exception of the agreed facts (apart from a dispute over whether the word "psychopath" or phrase "psychopathic tendencies" was used) which had been prepared following an analysis of the bundle of evidence available at the listing stage, including a transcript of an interview with Dr Anderson with the PSOW, the Case Tribunal considered the only fair view of Dr Anderson's position was that he disputed everything.

Mr Iwan Davies

3.5 Mr Davies is the chief executive of CCBC. His evidence was that there is a protocol for issues to be raised by members regarding officers (and vice versa), but the protocol was not used by Dr Anderson when raising his concerns about either Officer X or Ms Hughes. Mr Davies said that if there was a concern about a senior officer, usually the member would come and talk to him or a director and have a quiet word. He said that Dr Anderson was first elected in May 1999, and not in 1996 as he had initially thought.

3.6 Mr Davies explained that following the letter sent to Mr Griffiths in March 2016, two meetings with Dr Anderson took place with council officers -

one on 29 March 2016 and the second on 3 May 2016. Mr Davies attended the second meeting, which he described as slightly awkward but not confrontational. His evidence was that it was explained to Dr Anderson that the comments that he had made regarding Officer X and Ms Hughes concerned the strategic leadership team. Dr Anderson was asked to consider his position and was told that Mr Davies was willing to act as a conduit to assist Dr Anderson with whatever action he thought was appropriate to take in the circumstances. Mr Davies said that Dr Anderson appeared to understand in the meeting that his actions had caused hurt in respect of Officer X, but his later emails were disappointing and then aggressive. Mr Davies' firm belief was that the assertions of Dr Anderson caused Officer X to retire early, and that his colleagues were of the same view.

3.7 Mr Davies explained that he had described Barry Griffiths as a friend of Dr Anderson as he was aware that there were many years of connection between them due to a concern about flooding. By the time that Mr Davies (with others) made the complaint to the PSOW, he was aware that Mr Griffiths had attended Dr Anderson's 70th birthday party in Scotland.

3.8 Mr Davies outlined his recollection of a conversation with Dr Anderson on 14 July 2016 at Llanrwst, where he had attended an event run by the Wales Audit Office. He said that he was alarmed when Dr Anderson told him that the headteacher at the school of which Mr Griffiths had been a governor was a psychopath. Mr Davies had a very clear memory of Dr Anderson using the word "psychopath", and that Dr Anderson followed this comment up by saying Mr Davies should check the reference from her former headteacher as it contained clues about her condition. Mr Davies's evidence was that he was cross and told Dr Anderson that what he said was not acceptable.

3.9 Mr Davies confirmed that it would not be normal for elected members to see medical records regarding an employee. His evidence was that the only time members would see personnel records would be during a recruitment process. Mr Davies confirmed there was a quasi-employer relationship between members and council employees, but ultimately as chief executive he is the employer. He viewed the request by Dr Anderson to see confidential information about Officer X as interfering with the employer/employee relationship and was inappropriate. It was not normal for members to expect to see the occupational health records of senior officers when asking for an independent investigation into a complaint in the view of Mr Davies.

3.10 Mr Davies' view was that if Dr Anderson was still unsatisfied following the two meetings that took place, he could have triggered the use of the officer-member protocol, or asked the Head of Law and Governance to consider disciplinary action against Ms Hughes. Instead, Dr Anderson chose to send numerous emails, some of which he described as outrageous and wholly inappropriate. Mr Davies explained as the chief executive, it was not unusual for people to ask him to get involved in disputes, such as the one between Mr Griffiths and CCBC regarding his removal as a governor. Mr Davies' view was that it was better for him not to get involved as there was a procedure to be followed, but noted that Dr Anderson and Mr Griffiths had repeatedly asked to

meet him. Mr Davies believed that to be the only example of preferential treatment sought in respect of Mr Griffiths. He also noted that Dr Anderson had emailed the members of the scrutiny committee and made representations on behalf of Mr Griffiths, but without at that point declaring his prejudicial interest.

3.11 Mr Davies also commented that Dr Anderson was a long serving councillor who had served as Council chair from 2012 to 2014. This role had required him to deal with the final stage of the complaint process, and therefore in the view of Mr Davies, Dr Anderson was well aware of how the process operated.

Ms Jaci Doran

3.12 Ms Doran was the personal assistant to Mr Davies on 18 July 2016. Her oral evidence was on that day she received a call fairly early and before 9am from Dr Anderson. Her recollection was that he was agitated and keen for her to assist him. Ms Doran said that Dr Anderson said that she had to do something for him and it was very important. Her evidence was that he told her that he had spoken to Mr Davies and expressed concerns about a headteacher who he said was a psychopath. He wanted Mr Davies to contact the headteacher's previous employer, and said he had emailed Mr Davies about the matter. Ms Doran said that Dr Anderson was very clear that she should persuade Mr Davies to take action, and if she did not do so, the local education authority would be "called in".

3.13 Ms Doran went on to say that Dr Anderson told her to look at Mr Davies' emails. Her evidence to the Tribunal was that she had only accessed Mr Davies' emails on his instructions and she had never been asked by a member to do so before. Ms Doran explained she had been a personal assistant to the chief executive of the council for about 10 to 11 years. She said that the whole conversation with Dr Anderson made her feel very uncomfortable, and that he used strong language, which she challenged. Ms Doran stated that she felt the need to immediately email Mr Davies about the conversation, which was unusual.

Mr Tim Redgrave

3.14 Mr Redgrave is the headteacher of a school which used to employ the teacher whom Mr Davies and Mr Doran said was described as a psychopath by Dr Anderson. In his interview with the PSOW, Dr Anderson said that he had spoken to Mr Redgrave about the headteacher about whom he was concerned. In the period prior to the hearing, Mr Redgrave submitted to the Adjudication Panel for Wales a copy of the letter he had received from Dr Anderson which he said showed that he had never spoken to Dr Anderson.

3.15 In his oral evidence, Mr Redgrave said that he had never met nor spoken to Dr Anderson. He also said that he was unaware of any calls made to him which he had not taken and that no messages had been left for him by Dr Anderson at his school as far as he was aware.

3.16 Mr Redgrave went on to explain that Mr Griffiths was the grandparent of pupils at his school. He recalled a conversation in the school yard where a number of his colleagues were present and there was a general chat about the headteacher about whom Mr Griffiths and Dr Anderson was concerned. Mr Redgrave said that he did not offer an opinion but that some of his colleagues were not “*big fans*” of the headteacher in question. He also said that he was surprised to receive the letter from Dr Anderson dated 10 April 2017 and had shared it with the headteacher about whom Dr Anderson had made comments.

Dr Stuart Anderson

3.17 Dr Anderson did not attend the hearing and therefore did not give oral evidence on his behalf. However, he submitted a personal statement through his solicitors on 4 January 2018, which was not supported by a statement of truth. The Case Tribunal judged it fair to treat this as a witness statement, although the weight that could be placed on such a statement without a supporting statement of truth and which has not been subjected to questioning at the hearing was lower than that placed on those witnesses who have supplied witness statements supported by a statement of truth or who have attended the final hearing for questioning.

3.18 Dr Anderson said that the meeting that took place on 29 March 2016 was chaired by the monitoring officer and attended by himself, Ms Hughes, and Councillors Edwards and Ellis-Jones. He said that it was amicable and he received an apology for not having been told in advance of the allegation. Dr Anderson said that he was entitled to be angry about the fabrication of evidence.

3.19 Dr Anderson in his statement went on to thank the Case Tribunal for going ahead without his presence in person. He made a number of irrelevant statements, but confirmed he was no longer serving as councillor. There was little within the statement regarding facts to be determined by the Tribunal or whether there had been a breach of the Code of Conduct.

Mr Barry Griffiths

3.20 Mr Griffiths confirmed that he had known Dr Anderson for a number of years as he was originally his local general practitioner. Mr Griffiths said that his community was flooded in 1990 so he estimated he could date his relationship with Dr Anderson to this date. Mr Griffiths explained that it was not until 2004/2005 that his relationship with Dr Anderson developed beyond the doctor-patient relationship.

3.21 Mr Griffiths explained that following the flood, he became a local flood warden. Dr Anderson was also interested in flood protection, which was how they got to know each other better. Mr Griffiths also explained that in his role as a family doctor, he had found Dr Anderson to be very compassionate and someone who went the extra mile. He explained that they organised together a conference about flooding approximately three years ago. Mr Griffiths said that generally his relationship with Dr Anderson was not a “*close social relationship*”

but their circles touched in areas such as flood prevention, climate change and community service. Mr Griffiths thought perhaps they had served on the same governing body for one meeting. While Dr Anderson's evidence was that he had nominated Mr Griffiths to be the local education authority governor for a school, Mr Griffiths was not confident that this in fact was correct.

3.22 Mr Griffiths described Dr Anderson as eccentric, and said that there were other people that he was closer to. However, they had taken trips together and recently had spent the day at Electric Mountain. Some of the trips had been organised by the county. Mr Griffiths said he did attend Dr Anderson's 70th birthday party in Scotland (and commented that Dr Anderson was on holiday in Scotland while the hearing was proceeding), and said there were about 40 or so of Dr Anderson's relatives and friends present. Mr Griffiths was not aware of any other councillors or acquaintances from governing bodies in attendance at the party, and explained that he mainly attended in order to spend time with a relative who lived in the area.

3.23 Mr Griffiths accepted that he did give a dossier of information he collected regarding the school of which he was once a governor to Dr Anderson. He said that he had done this because Dr Anderson had been named in the letter initially suggesting that he was going to be removed as governor and to enable Dr Anderson could complain of the mistreatment. Mr Griffiths said that he expected Dr Anderson to read the dossier so that he was briefed, but did not expect him to do anything to help as there was nothing that he could do. Mr Griffiths observed that Dr Anderson was desperate to clear his name and felt that whoever had written the letter of 9 March 2016 did not know who Dr Anderson was. Mr Griffiths denied telling Dr Anderson about the situation before giving him the dossier.

3.24 Mr Griffiths gave an account of a conversation he said that he had with Mr Redgrave. He said in about January or February 2016 he arranged to meet Mr Redgrave at his school. Mr Griffiths said Mr Redgrave had told him that the headteacher about whom Mr Griffiths and Dr Anderson was concerned had frequently bullied and reduced staff to tears. Mr Griffiths stated that Mr Redgrave claimed one member of staff developed an eating disorder as a result. Mr Griffiths said he did not place much weight on the comments and would have criticised Mr Redgrave's management. He also said that there was no discussion of the reference given to the headteacher in question but he had passed on the comments to Dr Anderson. Mr Griffiths said that Dr Anderson told him that he had telephoned Mr Redgrave.

3.25 Mr Griffiths denied that the word "psychopath" had been used by Mr Redgrave during their conversation. He suggested that Mr Redgrave had "*forgotten*" their conversation. Mr Griffiths also denied having a conversation with Mrs A that was later joined by Dr Anderson where confidential information about the school was discussed. Mr Griffiths accepted that he had passed on a letter from Mrs A addressed to a third-party to Dr Anderson. His evidence was that he viewed this letter as a plea for help and did not know who better could advise him than Dr Anderson.

The Case Tribunal's assessment of the witnesses

3.26 The Case Tribunal found all the witnesses who attended to give evidence orally appeared to be credible and reliable. Largely, the evidence given orally was consistent with the contemporaneous documents in the hearing bundle. However, it was obvious that there was a significant difference between the evidence given by Mr Redgrave and Mr Griffiths. Mr Redgrave's evidence suggested that there was no meeting with Mr Griffiths, but merely a conversation in the playground between Mr Redgrave's colleagues and Mr Griffiths at which Mr Redgrave was simply an observer. Mr Griffiths' evidence was that there was a long conversation between himself and Mr Redgrave in Mr Redgrave's office, where much was said by Mr Redgrave which was negative regarding the headteacher about whom Dr Anderson was concerned, but the word "psychopath" was not used.

3.27 Ultimately, the Tribunal concluded that it was not appropriate or necessary for it to resolve the evidential dispute between Mr Redgrave and Mr Griffiths. The Tribunal is required to find facts in relation to Dr Anderson and his actions. It is noteworthy that Mr Griffiths gave no account of this conversation with Mr Redgrave in his witness statement, and that Dr Anderson in his interview with the PSOW said that he had spoken to Mr Redgrave on the telephone, when his own letter to Mr Redgrave said that he was given the information about what Mr Redgrave allegedly said by Mr Griffiths. However, making a determination as to whose evidence is more likely than not to be correct in relation to this conflict of evidence will not assist the Tribunal to determine the outstanding disputed facts.

3.28 The Tribunal did not have the benefit of hearing oral evidence from Dr Anderson. It found that it was not able to place much weight on his personal statement as it largely consisted of irrelevant comments and poetry, was not supported by a statement of truth, and had not been tested in the hearing through questioning. The Tribunal reminded itself that it did have a transcript of the interview of Dr Anderson by the PSOW, as well as his many emails and letters. Regrettably, the Tribunal concluded that there was little actual evidence that would assist its determinations received from Dr Anderson, but found the contemporaneous evidence within the hearing bundle to be of great assistance. The Tribunal also had regard to the witness statements obtained by the PSOW from Officer X, Mrs A, Ms Hughes, Mr Davies, Ms Delyth Jones, Mr Griffiths, Councillor Ellis Jones, Councillor Goronwy Edwards, Councillor Dillwyn Roberts, Ms Jenny Williams (director of social care and education), Ms Doran, and Mr Redgrave.

4. FINDINGS OF FACT

4.1 The Case Tribunal found the following **undisputed** material facts:

4.1.1 At the relevant time Former Cllr Dr Anderson was a member of Conwy County Borough Council.

- 4.1.2 Former Councillor Dr Anderson is no longer a member of Towyn and Kinmel Bay Community Council.
- 4.1.3 On the 4 May 2012 Former Cllr Dr Anderson signed a declaration to confirm he agreed to observe the Code of Conduct of Conwy County Borough Council.
- 4.1.4 On 4 March 2016, there was a council meeting at which Officer X spoke.
- 4.1.5 On 9 March 2016, Former Cllr Dr Anderson's name was mentioned in a letter sent to Mr Barry Griffiths regarding his proposed removal as a school governor.
- 4.1.6 On 11 March 2016 and 4 May 2016, Former Cllr Dr Anderson made written representations on behalf of Mr Barry Griffiths, stating that his "prime purpose was to seek a route for justice for Mr Griffiths".
- 4.1.7 Former Cllr Dr Anderson challenged the integrity of Janet Hughes, the Legal Services Manager, in emails 11 March 2016, 14 March 2016 and 6 April 2016, and referred to Ms Hughes as being found "in flagrante".
- 4.1.8 On 6 April 2016, Former Cllr Dr Anderson sent an email to the relevant authority's monitoring officer, copied to a number of councillors, the Director of Education, a cook, and an AM, stating that Officer X "*might well now be suffering from early dementia, and hence now be unfit.*"
- 4.1.9 On 8 April 2016, Former Cllr Dr Anderson was told that he had sent the email of 6 April 2016 to a cook in the Education Department, but took no action.
- 4.1.10 On 20 April 2016, Former Cllr Dr Anderson "called in" the decision to remove Mr Barry Griffiths as a school governor to be considered by the Scrutiny Committee with the support of two other councillors.
- 4.1.11 Mr Barry Griffiths attended Former Cllr Dr Anderson's 70th birthday party in Scotland on 23 April 2016.
- 4.1.12 On 10 May 2016, Former Cllr Dr Anderson emailed the councillors of the relevant authority, including information about Officer X's diagnosis.
- 4.1.13 On 13 May 2016, Former Cllr Dr Anderson emailed councillors of the relevant authority again about Officer X.
- 4.1.14 On 16 May 2016, Former Cllr Dr Anderson recused himself from the Scrutiny Committee meeting considering the issue of Mr Barry Griffiths, declaring that he had a prejudicial interest due to his close personal association with Mr Griffiths.

- 4.1.15 On 14 July 2016, Former Cllr Dr Anderson told Mr Iwan Evans, the Chief Executive of the relevant authority, that the head teacher was a psychopath according to her former colleagues.
- 4.1.16 Former Cllr Dr Anderson contacted Jaci Doran, the PA of the Chief Executive of the relevant authority, told her that the head teacher was a psychopath and that someone should investigate further, and asked her to look at the Chief Executive's emails.
- 4.1.17 On 18 July 2016, Former Cllr Dr Anderson sent to Ms Jaci Doran and the Director of Education a copy of a letter from Mrs A sent to a third party without her permission, together with a dossier of information prepared by Mr Barry Griffiths containing confidential information about a school without express permission of those to whom the information related.
- 4.1.18 In August 2016, Officer X retired on ill health grounds.
- 4.1.19 On 1 September 2016, Former Cllr Dr Anderson sent to the Director of Education another copy of a letter/email by Mrs A without her permission, together with a dossier of information prepared by Mr Barry Griffiths containing confidential information about a school without express permission of those to whom the information related.
- 4.1.20 Former Cllr Dr Anderson in writing described Mrs A as vulnerable and asked the Director of Education to intervene and involve children's services.
- 4.1.21 Mr Barry Griffiths was the individual who passed to Former Cllr Dr Anderson the dossier of confidential information and the letter from Mrs A.
- 4.2 The Case Tribunal found the following **disputed** material facts:
- 4.2.1 In April 2016, Former Cllr Dr Anderson did not seek to obtain confidential personnel information about a Head Teacher from Mr Tim Redgrave.
- 4.2.2 Former Cllr Dr Anderson told the personal assistant to the Chief Executive Officer of Conwy County Borough Council, Ms Jaci Doran, that she should persuade the Chief Executive to meet with him.
- 4.2.3 Mr Barry Griffiths was at the relevant time a close personal associate of Former Cllr Dr Anderson.
- 4.2.4 The length of service of Former Cllr Dr Anderson.
- 4.2.5 The meaning of the phrase "*in flagrante*" when used in the email about Janet Hughes by Former Cllr Dr Anderson.

4.2.6 Former Cllr Dr Anderson asked the relevant authority to treat Mr Griffiths' complaint preferentially.

4.3 The Case Tribunal found the following in respect of the disputed facts:

4.3.1 In April 2016, whether Former Cllr Dr Anderson sought to obtain confidential personnel information about a Head Teacher from Mr Tim Redgrave – the Case Tribunal found that this had not been proved.

The Case Tribunal was willing to accept that if Dr Anderson had contacted Mr Redgrave direct seeking personnel information about the headteacher about whom he and Mr Griffiths was concerned, including asking to see the reference Mr Redgrave gave, this would constitute the action of seeking to obtain confidential information. However, Mr Redgrave had given oral evidence denying meeting or speaking to Dr Anderson and saying that he was unaware of any messages being left for him by Dr Anderson. Mr Griffiths gave an account of his alleged meeting with Mr Redgrave, which he said he had given to Dr Anderson. Dr Anderson in his interview with the PSOW said that he had spoken to Mr Redgrave, but in a private letter to Mr Redgrave Dr Anderson admitted that he had got his information from Mr Griffiths. Given all the evidence before the tribunal, the Case Tribunal concluded that it was more likely than not that Dr Anderson did not contact Mr Redgrave (other than sending the personal letter referred to above), and therefore did not seek to obtain confidential information from him.

4.3.2 Whether Former Cllr Dr Anderson told the personal assistant to the Chief Executive Officer of Conwy County Borough Council, Ms Jaci Doran, that she should persuade the Chief Executive to meet with him – the Case Tribunal found that this had been found proved.

The Case Tribunal accepted in full the evidence received from Ms Doran, both in her witness statement and orally. Her account was clear, consistent and matched the contemporaneous evidence. The Tribunal was unable to accept Dr Anderson's account as given in his interview with the PSOW where it disagreed with Ms Doran's evidence. Indeed, this was the same interview in which Dr Anderson claimed that he had spoken to Mr Redgrave which the Tribunal has already found not to be correct; this called into question Dr Anderson's credibility.

The weight that could be placed on Dr Anderson's evidence was lower as he had not supplied a witness statement supported by a statement of truth or attended the hearing to give oral evidence. It was also relevant that in Ms Doran's evidence she said the word "psychopath" was used by Dr Anderson within the telephone call in describing the headteacher about whom he was concerned, which was consistent with Mr Davies' evidence of an earlier conversation with Dr Anderson, he said that where the same word was used about the same person.

- 4.3.3 Whether Mr Barry Griffiths was at the relevant time a close personal associate of Former Cllr Dr Anderson - the Case Tribunal found that this had been found proved.

The Case Tribunal considered the following evidence as relevant to its conclusion that it was more likely than not Mr Griffiths was a close personal associate of Dr Anderson in 2016. First, Dr Anderson at the scrutiny committee meeting considering the issue of the removal of Mr Griffiths from his role as local authority governor of a school declared that he was suffering from a prejudicial interest due to his relationship with Mr Griffiths. Dr Anderson in his own evidence said that he had nominated Mr Griffiths to be a local authority school governor, though Mr Griffiths' evidence was that he did not believe this to be correct. In both the comments of Dr Anderson and the oral evidence of Mr Griffiths, the phrases "*close friends*", "*strong friends*", and "*proud*" (in relation to feeling pride in being friends with each other) featured. It was evident that Dr Anderson and Mr Griffiths admired each other.

Further, the attendance of Mr Griffiths at the 70th birthday party of Dr Anderson held in Scotland (a location far from Conwy) showed that the relationship was more than just that of casual acquaintance. According to the evidence of Mr Griffiths, about 40 or so people attended and he was not aware of any other councillors or governors who attended. While the Tribunal was perfectly willing to accept that the trip was much more attractive to Mr Griffiths and his wife due to family living nearby, that did not negate the fact that the invitation was proffered and accepted.

The Tribunal had regard to the Code of Conduct guidance published by the PSOW, which said that a close associate can be a close friend, but not a casual acquaintance. It further noted that throughout the hearing bundle it was evident that Dr Anderson was passionately defending Mr Griffiths to all and sundry; there appeared to be no objective analysis of the situation and based on the emails sent by Dr Anderson, he appeared to believe that everything Mr Griffiths said was correct. The Tribunal also bore in mind that it was to Dr Anderson that Mr Griffiths turned regarding the contents of the dossier he prepared, even though Dr Anderson was not involved in any way in the situation that had developed within the school.

- 4.3.4 The length of service of Former Cllr Dr Anderson – the Case Tribunal found that Dr Anderson had served from 1999 to 2016. This matched the comments made by Dr Anderson and was confirmed in Mr Davies' oral evidence.
- 4.3.5 The meaning of the phrase "*in flagrante*" when used in the email about Janet Hughes by Former Cllr Dr Anderson –in the judgment of the Tribunal did not refer to sexual impropriety. The Tribunal had regard to the views of Ms Hughes and Councillor Ellis-Jones as set out in their witness statements, who took the view that the phrase referred to being

“caught in the act” of wrongdoing. Dr Anderson took the same view in his comments. The Tribunal also took an objective view of the words used in the email, and concluded that the natural interpretation of the phrase in the circumstances was that Dr Anderson was suggesting he had caught Ms Hughes in the carrying out an act of wrong doing.

4.3.6 Whether Former Cllr Dr Anderson asked the relevant authority to treat Mr Griffiths’ complaint preferentially – the Case Tribunal found that this had been proved.

In a number of emails sent by Dr Anderson, he made the following demands at a very early stage of the process to have Mr Griffiths removed as a local authority governor:

- A personal meeting with Mr Davies, the chief executive officer, either with Dr Anderson or Mr Griffiths, to discuss the situation;
- An occupational health assessment to be carried out on Officer X (notwithstanding that Officer X was not obviously involved in the proposed removal of Mr Griffiths);
- the elevation of the status of Mr Griffiths as a complainant as equal to that of the Welsh Government;
- That an investigation was carried out by a neighbouring authority;
- That an unqualified apology was given.

Mr Davies in his oral evidence confirmed the existence of a complaints process was available to Dr Anderson. He did not avail himself of this process, but instead demanded special treatment for Mr Griffiths. It was also clear that a formal process was underway in respect of Mr Griffiths. Officer X was not the prime mover in relation to the removal of Mr Griffiths, so the demand that he underwent occupational health assessment was an extraordinary suggestion. The health of Officer X had no relevance to the removal of Mr Griffiths as a governor.

In the judgment of the Tribunal, the treatment sought by Dr Anderson on behalf of Mr Griffiths was preferential (in that the usual process and steps were not to be followed in the view of Dr Anderson and he clearly wished Mr Griffiths to be given special treatment) and unjustified in all the circumstances. As a long serving councilor and former Chair of the Council, it is more likely than not that Dr Anderson knew about the complaints process and how to operate it. It is evident that Dr Anderson knew about the removal process as he arranged for the decision to be called in to be considered by the scrutiny committee, with the support of two other colleagues.

5. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

5.1 The Ombudsman's Submissions

5.1.1 Ms Ginwalla submitted on behalf of the PSOW that the evidence in this case was voluminous and showed a number of breaches had taken place. She pointed out that in relation to the first allegation concerning the claims made regarding the fitness of Officer X, the council meeting which Dr Anderson said triggered the expression of his concerns about Officer X occurred on 4 March 2016. A month passed before Dr Anderson sent an email on 6 April 2016 to the monitoring officer, copied to a number of councillors, the director of social care and education, a cook, and an assembly member, stating that Officer X "*might well now be suffering from early dementia, and hence now be unfit.*"

5.1.2 Ms Ginwalla questioned the motive of Dr Anderson in sending that email, and suggested that it was the letter to Mr Griffiths on 9 March 2016 proposing his removal as a governor that really triggered Dr Anderson's allegations against Officer X. She pointed out that he admitted that he had no knowledge of Officer X's medical history, but had shared his thoughts about his health with members, officers and third parties, while reminding recipients that he was a retired doctor. In Dr Anderson's interview with the PSOW, he said that he did not truly believe that Officer X had dementia and if he had known Officer X's actual medical diagnosis, he would have acted differently. Despite being a retired doctor, at page B124 of the hearing bundle Dr Anderson threatened a freedom of information request to see Officer X's private medical information. Ms Ginwalla referred the Tribunal to Officer X's witness statement where he set out the impact that Dr Anderson's allegations had upon him, and explained that as a sufferer from Parkinson's disease, the stress had led to his early retirement.

5.1.3 Ms Ginwalla submitted that Dr Anderson's conduct concerning Officer X demonstrated a failure to show respect and consideration, particularly as he could have raised it in a different and appropriate manner as an experienced member aware of the officer-member protocol. She accepted that Officer X was senior and therefore should be expected have a thick skin in respect of criticism but Dr Anderson's allegations went far beyond criticism and could be described as reckless behaviour. Ms Ginwalla pointed out that on 9th May 2016 Dr Anderson not only repeated his actions, but widely circulated his email to others and breached Officer X's confidential information. She also regarded Dr Anderson's activities towards Officer X as bullying and harassing. Ms Ginwalla submitted that Dr Anderson ignored Officer X's right to privacy by telling people about his diagnosis of Parkinson's disease, despite Officer X only telling those who need to know that information. The information was not for an elected member, was clearly confidential and Dr Anderson ignored this.

5.1.4 The Case Tribunal on its own initiative raised its concern that a paragraph within the Code of Conduct which appeared to be relevant to the first allegation had not been the subject of submissions by the parties to date. Paragraph 4(a) states that councillors acting in their role must carry out their

duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of the gender, race, disability, sexual orientation, age or religion. The Tribunal considered that this paragraph was relevant when considering the allegations surrounding Officer X. Ms Ginwalla agreed and accepted that the Tribunal had an inquisitorial role. The Tribunal considered whether it could consider this paragraph in the absence of Dr Anderson or his representative. It judged that it was in the interests of justice to do so as he had waived his right to attend the hearing, despite comments in his report to his medical defence union which showed Dr Anderson understood that the Tribunal had an inquisitorial role. The Tribunal raised the issue at the submission stage to enable the parties to make comments; if Dr Anderson or his representative had been present, they would have been given an opportunity to respond.

5.1.5 Ms Ginwalla moved onto the second allegation and said that Dr Anderson's conduct to Ms Doran and the headteacher whom he described as a psychopath demonstrably failed to show respect and consideration to these individuals. She also submitted that the improper pressure upon Ms Doran was a breach of paragraph 4(d) in that Dr Anderson attempted to compromise the impartiality of Ms Doran by giving her instructions.

5.1.6 In relation to the third allegation, Ms Ginwalla submitted that the PSOW was more concerned about the allegation that Ms Hughes had acted without "honest moral principles" in an email by Dr Anderson on 6 April 2016. She said that this failed to show respect and consideration to Ms Hughes, a legal officer, and sharing these comments with other members brought the role of member into disrepute.

5.1.7 Ms Ginwalla submitted in relation to the fourth allegation that as the Tribunal had found Mr Griffiths was a close personal associate of Dr Anderson, the Code of Conduct had been breached in numerous respects regarding the declaration of personal and prejudicial interests. Dr Anderson did not declare a prejudicial interest in respect of Mr Griffiths until the scrutiny committee meeting on 16 May 2016. Ms Ginwalla invited the Tribunal to consider if there had been breaches of paragraphs 11(1), 11(2)(a) and 11(2)(b), in addition to paragraph 14(1)(e). She pointed out that there were at least 12 emails (which should be treated as written representations on behalf of Mr Griffiths), two meetings (with council officials) and one telephone call (with Ms Doran). Ms Ginwalla noted that a prejudicial interest exists if in the eyes of an objective observer as so significant that it was likely to prejudice a member's judgement of the public interest. She pointed out that the Tribunal had already found that Dr Anderson had sought to obtain preferential treatment from Mr Griffiths and may conclude that he had conducted himself in a manner to use his position as councillor to improperly obtain an advantage for Mr Griffiths.

5.1.8 In relation to the fifth allegation, Ms Ginwalla said that it was clear that Dr Anderson did disclose confidential information about Mrs A without her consent. Dr Anderson admitted forwarding a copy of her letter to a third party to the director of social care and education, elected members and the chief executive, despite the letter containing confidential information about her

health. This was a breach of paragraph 5(a) regarding not disclosing confidential information. Dr Anderson again disclosed confidential information when he forwarded the dossier prepared by Mr Griffiths which contained confidential information about staff at a school without the consent of those named within the dossier, and in relation to Officer X's medical condition.

5.1.9 Finally, Ms Ginwalla submitted that the overall conduct by Dr Anderson brought both the role of member and the relevant authority itself into disrepute. His actions damaged Officer X, and when combined with the disclosure of confidential information, was conduct unbecoming of a councillor and breached the Code of Conduct.

5.2 The Respondent's Submissions

5.2.1 In the absence of Dr Anderson or his legal representative, no oral submissions were made. No specific written submissions had been received that clearly addressed this point. The Tribunal considered it fair to presume Dr Anderson's position was that there was no breach of the Code of Conduct and that he was entitled to act in the manner in which he had acted.

5.3 Case Tribunal's Decision

5.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that Dr Anderson had been acting throughout in his role as a councillor and there was a failure to comply with the Code of Conduct of CCBC as follows:

5.3.2 Paragraph 4(a) of the code of conduct states that [You must] carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion.

5.3.3 The Case Tribunal found that Dr Anderson breached this paragraph in his treatment of Officer X. In numerous emails sent to a variety of persons, Dr Anderson challenged Officer X's capacity to fulfil his role on the ground that he showed signs of "*early dementia*" and, later due to his disability without any objective evidence regarding his medical condition or internal personnel information held by CCBC. Dr Anderson relied on his status as a retired doctor to justify his own speculation about Officer X and his health, and disclosed confidential medical information about Officer X's diagnosis again to a variety of persons, including members of the public. It was clear that Dr Anderson's view was that Officer X should not be employed in his role due to his disability as he was "*unfit*". He suggested that Officer X's colleagues might be covering his "*mental deficit by quite subtle means that nevertheless put most the onus on others to cover for [him]*".

5.3.4 Combined with Dr Anderson's demand that Officer X underwent an occupational health assessment (notwithstanding that the contents of such an assessment would not be disclosed to a member and there were no grounds for Dr Anderson to assume that no such occupational health assessment existed),

the failure to understand and appreciate Officer X's right to privacy, and the wide dissemination of private medical information regarding Officer X, together with speculation about the progression of his condition, the Tribunal concluded that Dr Anderson demonstrably had ignored the principle that there should be equality of opportunity for all people regardless of their disability. As Mr Davies set out in his oral evidence, it was Mr Davies who was ultimately the employer of Officer X, and it was him and his team who needed to know information about his health. The fact that a councillor is a quasi-employer of a council official does not mean that members are entitled to confidential information about council employees. Further, the wide dissemination by Dr Anderson of his comments, within which he reminded people that he was a retired doctor and sent to those not in the employ of CCBC, had the effect of damaging Officer X's reputation and contributed to his early retirement, as shown by the witness statements of Officer X of his colleagues and the oral evidence of Mr Davies.

5.3.5 Paragraph 4(b) of the Code of Conduct states that [You must] show respect and consideration for others. The Case Tribunal had no difficulty in finding that Dr Anderson had failed to show respect and consideration to number of individuals named within the allegations, but not all.

5.3.6 In relation to Officer X, the assertion that he showed signs of early dementia on the basis of little or no evidence failed to show respect and consideration. The fact that Dr Anderson chose to send his comments to several individuals, including a cook and an assembly member (making no effort to ensure that the data was not further disclosed), compounded his disrespect and lack of consideration for Officer X. As the evidence shows, it was open to Dr Anderson to speak to Mr Davies or Officer X's line manager, or indeed trigger the officer-member protocol; he failed to do so.

5.3.7 Dr Anderson compounded the disrespect and lack of consideration towards Officer X by circulating details of his actual diagnosis of Parkinson's disease without his consent. For a former practicing doctor to fail to recognise the confidential nature of the diagnosis in the judgment of the Tribunal was surprising but demonstrated Dr Anderson's attitude towards Officer X. Dr Anderson in some of his responses talked about the "*duty to warn*", but chose to circulate widely his allegations about Officer X's health, rather than use the mechanisms available to him to raise any concerns that he might have. Dr Anderson's allegations about Officer X was not criticism which a senior officer could reasonably be expected to accept, but rather fell into the category of abuse or insult. To publicly describe someone as suffering from the signs of early dementia (something which Dr Anderson himself later said was not what he truly thought), with no independent evidence to support such a view, is disrespectful and offensive. His conduct in relation to Officer X showed a lack of respect and consideration, even after he was warned by council officers to cease circulating assertions about his health.

5.3.8 In relation to Ms Doran, the Case Tribunal did not find that Dr Anderson had behaved towards her in a manner that failed to show respect and

consideration. In Ms Doran's own account of the telephone call, she was clear that he was not abusive, but that he made her feel uncomfortable.

5.3.9 In relation to Ms Hughes, the Tribunal took a different view to that of the PSOW. While the PSOW felt that Dr Anderson's email of 6 April 2016 showed a lack of respect and consideration to Ms Hughes, the Tribunal concluded that the reference to acting without "*honest moral principles*" referred to more than one person. In addition, while a legal officer may not necessarily be a senior officer, nonetheless it is reasonable to expect a legal officer to be robust in facing criticism.

5.3.10 The Case Tribunal was more concerned about Dr Anderson's email of 14 March 2016, despite the PSOW's conclusion that it had been written in the heat of the moment. Within that email, Dr Anderson referred to catching Ms Hughes and Councillor Ellis Jones "*in flagrante*", and further asserted that Ms Hughes had been party to the "*fabrication*" of evidence. The Tribunal has already concluded that the reference to "*in flagrante*" referred to catching Ms Hughes in an act of wrongdoing. These are serious allegations to make against a legal officer. The Tribunal was unable to find that these allegations of collusion and fabrication of evidence were made in the heat of the moment as Dr Anderson later repeated these allegations. The basis of these allegations was the naming of Dr Anderson in the letter sent to Mr Griffiths regarding his proposed removal as a governor. The Tribunal noted that Mr Griffiths was entitled to know the reasons why it was proposed that he may be removed; naming Dr Anderson did not equate to the fabrication of evidence.

5.3.11 Dr Anderson has failed to provide any evidence supporting his allegations against Ms Hughes. Despite the fact that she is a legal officer, the allegation that she colluded or fabricated evidence is too serious an allegation to be overlooked, particularly as it was circulated to third parties. It directly related to her professional standing as a lawyer. Dr Anderson failed to take advantage of the officer-member protocol to make a formal complaint about the alleged fabrication of evidence by Ms Hughes. In all the circumstances, the Tribunal concluded that Dr Anderson failed to show respect and consideration to Ms Hughes in making such a serious allegation without any basis and circulating it.

5.3.12 The Case Tribunal then considered the use of the word "*psychopath*" by Dr Anderson in respect of the headteacher about whom both himself and Mr Griffiths was concerned. Dr Anderson challenged the statement within the agreed facts that he had used the word psychopath, saying that he had used the phrase "*psychopathic tendencies*". While the Tribunal accepted that the term "*psychopath*" was a medical condition which could be identified by psychiatrists using a number of criteria, it considered that the use of the word psychopath or indeed the phrase psychopathic tendencies in the manner described by both Mr Davies and Ms Doran was a derogatory term. Dr Anderson accepted that he had described the headteacher in a manner connected to psychopathy. He further accepted that he did so based on comments made to him by Mr Griffiths in a letter he sent to Mr Redgrave, and not based on a conversation directly with Mr Redgrave.

5.3.13 The Case Tribunal considered the description of a professional person on two occasions as a psychopath by Dr Anderson was a failure to show respect and consideration. The comment appeared to be based on nothing more than possible gossip passed on to him by Mr Griffiths, and made without the benefit of seeing any medical records. The derogatory term was used on more than one occasion, and clearly was an attack upon the professional standing of the headteacher.

5.3.14 Paragraph 4(c) of the Code of Conduct states that [You must] not use bullying behaviour or harass any person. The Case Tribunal considered this paragraph in relation to Officer X only.

5.3.14 The senior courts have made it clear that senior council officers, such as directors or chief executives, should be robust in their dealings with councillors and tolerate a level of expression which might otherwise be unacceptable in order to ensure elected representatives can fully exercise their Article 10 rights. Officer X was not a director or chief executive, but nonetheless was a senior council official.

5.3.15 The Tribunal referred to the decision of Mr Justice Hickinbottom sitting in the High Court in the case of *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), and in particular paragraph 42:

“Civil servants are, of course, open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them. As well as in their own private interests in terms of honour, dignity and reputation, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration.”

5.3.16 The Case Tribunal also noted the observation in paragraph 85 of the same judgment that *“there is a mutual bond of trust and confidence between councillors and their officers. Indeed, local government in this country could not sensibly function without it.”*

5.3.17 Dr Anderson, in writing and circulated to a wide number of people, repeatedly suggested that Officer X was not fit to carry out his role. Dr Anderson said initially that Officer X was demonstrating the signs of early dementia. When informed Officer X suffered from Parkinson’s disease, Dr Anderson chose to disseminate that information widely while still challenging Officer X’s right to be so employed, despite senior council officers asking him to reflect and stop doing so.

5.3.18 The Tribunal applied both subjective and objective tests to Dr Anderson’s conduct towards Officer X. It concluded that Dr Anderson did not intend to bully or harass Officer X, but equally it was clear that Officer X

strongly felt that the allegations were “*derogatory and libelous*”. In Officer X’s witness statement, he went on to say he felt that Dr Anderson’s comments “*wiped out or eclipsed 33 years of dedicated service*” and made him feel “*like packing it in*” and “*question whether I should maintain my status as an employee of CCBC*”. The evidence of Officer X’s colleagues, including Mr Davies who also gave oral evidence to this effect, was that they believed Dr Anderson’s behaviour affected Officer X’s confidence and contributed to his early retirement. Many observed that Dr Anderson in linking his views to his former role as a general practitioner gave extra weight to what he was saying about Officer X, despite having no access to his medical or personnel records. In the objective judgment of the Tribunal, the repeated and widely circulated assertions made by Dr Anderson about Officer X’s health was reckless and was pure speculation dressed up as fact.

5.3.19 The accepted definition of bullying is offensive, intimidating, malicious, insulting or humiliating behaviour. It is an attempt to undermine the individual, can be detrimental to the victim’s confidence and capability, and may adversely affect their health. Given the evidence and all the circumstances, the Tribunal concluded that Dr Anderson did bully Officer X; his allegation of early dementia was offensive, insulting and humiliating; the later circulation and comments about Officer X’s actual diagnosis was also insulting and humiliating for Officer X. It was patently an attempt to undermine Officer X as Dr Anderson made it clear that he did not think Officer X should remain in his role. It is evident that Officer X’s confidence was affected, as was his health. Dr Anderson should have known about the impact of stress upon a sufferer of Parkinson’s disease, not only because he was a retired doctor, but because he circulated widely information about Parkinson’s disease. The Tribunal concluded that it was more likely than not that Dr Anderson’s activities against Officer X contributed to his early retirement.

5.3.20 The definition of harassment used in these proceedings is repeatedly upsetting or annoying people. There can be no doubt in light of the evidence before the tribunal that Dr Anderson’s repeated and widely circulated allegations about Officer X both upset and annoyed him and equated to harassment. In the judgment of the Tribunal, it was reasonable for Officer X to feel this way, particularly as Dr Anderson was seeking to remove Officer X from his role.

5.3.21 The Tribunal will later set out in detail its conclusions regarding whether Dr Anderson’s comments constituted political expression and therefore is entitled to receive an enhanced level of protection under article 10 of the European Convention of Human Rights (“article 10”). However, there was nothing in the assertions that Officer X suffered from early dementia, or the later disclosure of his actual medical condition, or the allegations that he was not fit to carry out his role due to his health that constituted the expression of a political argument. Officer X had his own right to privacy under the European Convention of Human Rights, and a private interest in not being subjected to such comments by a councillor.

5.3.22 Paragraph 4(d) of the Code of Conduct states that [You must] not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority. The Tribunal considered this paragraph in relation to the telephone conversation between Dr Anderson and Ms Doran.

5.3.23 The Tribunal accepted Ms Doran's evidence that Dr Anderson put her under pressure to persuade Mr Davies to do as Dr Anderson wished, and further to access Mr Davies' emails without his express instruction. Dr Anderson's own account suggested strongly that he was attempting to persuade Ms Doran to take action on his behalf. Ms Doran's description of Dr Anderson's conduct during that telephone call was that he was agitated, behaving in an unusual manner, and using strong language (but not swearing). It accepted her account that Dr Anderson told Ms Doran that if she did not do as Dr Anderson asked, it could result in the local education authority being "called in" - the Tribunal concluded that this was a veiled threat designed to get Ms Doran to take the action Dr Anderson required.

5.3.24 Ms Doran was a relatively junior officer whose role was to take instructions from Mr Davies, the chief executive, only. Her evidence was that she had never before had such a request from an elected member, despite her long service in her role. She was sufficiently disturbed after the telephone conversation to immediately report by email what had happened.

5.3.25 In the judgment of the Case Tribunal, Dr Anderson did improperly attempt to compromise the impartiality of Ms Doran by passionately insisting that she used her influence with Mr Davies to persuade him to take the action Dr Anderson required and attempting to persuade her to access Mr Davies' emails without the permission of the chief executive. The conversation with Ms Doran clearly went beyond making a request due to the combination of the vehemence in which Dr Anderson made his demands, combined with the veiled threat that if Ms Doran did not take the action required the local education authority might be "called in".

5.3.26 Paragraph 5(a) of the Code of Conduct states that you must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so. The Tribunal considered this paragraph in relation to three disclosures made by Dr Anderson.

5.3.27 The first disclosure made by Dr Anderson was the wide circulation of Officer X's diagnosis as suffering from Parkinson's disease on 9 May 2016 to all the councillors within CCBC, Mr Griffiths and the headteacher of a school within the local education authority. Dr Anderson reminded the recipients that he was a retired general practitioner, but overlooked the fact that medical information is confidential. It can be no justification for copying into this email his friend Mr Griffiths or a random headteacher. Indeed, as shown in page B401 of the hearing bundle, Dr Anderson told the PSOW that he regarded it as legitimate to share confidential information if that would sort a matter out. Dr Anderson

continued to send emails to a wide variety of persons about Officer X's medical condition, despite being informed by the monitoring officer that this was completely inappropriate.

5.3.28 Dr Anderson, in the judgment of the Tribunal, disclosed information about Officer X's health which should reasonably be regarded as being of a confidential nature and without the consent of Officer X. Dr Anderson regarded himself as being under a "*duty to warn*" but ignored the duty of confidentiality owed to Officer X in his capacity as a quasi-employer and the fact that it was not necessary to so widely circulate his discovery to include members of the public. Dr Anderson was not required by law to widely circulate Officer X's medical diagnosis.

5.3.29 The second disclosure made by Dr Anderson was in respect of a confidential dossier put together by Mr Griffiths regarding employment issues at a school of which he was formerly a governor. Dr Anderson forwarded this dossier by email on 1 September 2016 to several individuals including Mr Davies, various councillors, Mr Griffiths, and the director of social care and education. The dossier contained information about the resignation of staff, grievances raised and complaints. The dossier contained information which in the view of the Tribunal was information which should reasonably be regarded as being of a confidential nature. There was no evidence that anyone named in the dossier consented to Dr Anderson disclosing the contents, nor that the disclosure was required by law. If sent simply to the director of social care and education, the Tribunal may have concluded Dr Anderson acted reasonably.

5.3.30 The third disclosure made by Dr Anderson was his circulation of a private letter from Mrs A to a third party by email on a number of occasions, including 18 July 2016 to Ms Doran amongst others, and on 1 September 2016 to various individuals including the director of social care and education, councillors, and Mr Griffiths. Within this letter was information about Mrs A's mental health and confidential information about the governance of a school. Mrs A confirmed in her witness statement (as did Dr Anderson in his interview with the PSOW) that he did not have the consent to circulate her letter.

5.3.31 Dr Anderson justified his disclosure on the basis that he thought the letter showed that Mrs A was a vulnerable adult entitled to the protection of vulnerable adults legislation ("POVA"). However, Dr Anderson did not limit his disclosure simply to the director of social care and education but also sent Mrs A's letter to individuals with no need or right to see the letter, such as Ms Doran and councillors. Furthermore, the Case Tribunal had before it the witness statement of the director of social care and education, an individual who can reasonably be regarded as an expert in this area. The director of social care and education was adamant that the POVA legislation did not apply to Mrs A, and that her letter did not disclose any information that could give grounds to such an assertion. She described the assertion that POVA applied to Mrs A as "*bizarre*" and said Dr Anderson should have known from his safeguarding training that it did not apply. The Case Tribunal itself carefully read Mrs A's letter and reached the same conclusion that nothing within that letter came close to reaching the threshold requiring the use of the POVA legislation.

5.3.32 As a result of its conclusions, the Case Tribunal judged that the disclosure of the letter by Dr Anderson was not required by law. That said, if Dr Anderson had limited his disclosure only to the director of social care and education, the Tribunal may have regarded that as a potentially reasonable step if Dr Anderson was truly concerned about Mrs A and wanted expert advice. However, given its wide dissemination by Dr Anderson and the fact that the contents of the letter did not support the view that Mrs A was at risk, the Case Tribunal concluded that Dr Anderson had breached paragraph 5(a) in relation to all three disclosures.

5.3.33 Paragraph 6.1(a) of the Code of Conduct states that you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. The Tribunal considered this paragraph in relation to Dr Anderson's conduct towards Officer X, his allegations against Ms Hughes, the seeking of preferential treatment for his close personal associate Mr Griffiths and the calling in a decision to remove Mr Griffiths from his role on a school governing body when he had a prejudicial interest, making numerous written and oral representations on behalf of Mr Griffiths when Dr Anderson had a prejudicial interest, and his overall conduct. As the PSOW had not raised the issue of Dr Anderson's treatment of Mrs A in relation to this paragraph, the Tribunal considered it would be unfair for it to deal with the matter during submissions. However, it observed that there was an arguable point to be made that Dr Anderson's disclosure of her private letter to a third party brought the role of member into disrepute.

5.3.34 In relation to Dr Anderson's conduct towards Officer X, the Tribunal concluded that it was disgraceful and unbecoming for a member. It considered that its previous findings clearly demonstrated the seriousness in which the Tribunal viewed Dr Anderson's behaviour. Dr Anderson's wide circulation of his speculation about Officer X's ability to carry out his role due to his health/disability, expressly linked to his professional knowledge, has already been found to be bullying, harassing and a failure to show respect and consideration. Dr Anderson was found to have brought the role of member into disrepute.

5.3.35 Dr Anderson in widely circulating allegations about Ms Hughes circumvented both the established protocol and procedures for dealing with disputes between officers and members. In the judgement of the Tribunal, it appeared that a long serving member had chosen to use email to further his own ends, rather than raise a genuine concern supported by evidence. The Tribunal concluded that in doing so, Dr Anderson brought the role of member into disrepute.

5.3.36 The repeated description by Dr Anderson of a headteacher as a psychopath is already been found to be showing a lack of respect and consideration by this Tribunal. The term was used in a derogatory manner about a council employee, only evidenced by the comments of his friend Mr Griffiths; Dr Anderson was a quasi-employer of the headteacher. The Tribunal

concluded that this unsubstantiated allegation brought the role of member into disrepute.

5.3.37 The Tribunal has already found that Dr Anderson sought to obtain preferential treatment for his friend Mr Griffiths. In addition, he called in the decision to remove Mr Griffiths for scrutiny, but then declared himself as unable to vote during the meeting due to his close personal association with Mr Griffiths. It was evident from the numerous emails sent by Dr Anderson on behalf of Mr Griffiths that he was passionately defending his friend while taking no objective view of the position, and widely circulating confidential information in an attempt to help his friend. It was noteworthy that at least one councillor responded at the time that he was “*staggered*” by the conduct of Dr Anderson. The Tribunal will later in this judgment explain why it concluded that Dr Anderson had a prejudicial interest in respect of Mr Griffiths, but decided that Dr Anderson’s actions defending his friend brought the role of member into disrepute. This was partly because he was seeking an advantage for a close personal associate, and partly because he chose to do so by attacking council officials by making unsubstantiated allegations.

5.3.38 The Case Tribunal then considered Dr Anderson’s conduct overall, which included the breaches of confidence found, and concluded that he had brought the role of member into disrepute.

5.3.39 The Tribunal concluded that Dr Anderson’s conduct generally did not bring CCBC into disrepute. This was because most of the damage had been contained within the authority and did not appear to be generally known by the public. Furthermore, the evidence showed that both council officials and other members tried to persuade Dr Anderson to desist and made it clear that they did not countenance or support his activities.

5.3.40 Paragraph 7(a) of the Code of Conduct states that you must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage. The Tribunal considered this paragraph in relation to Dr Anderson’s activities behalf of Mr Griffiths.

5.3.41 It was abundantly clear from all the evidence before the Tribunal that Dr Anderson undertook a campaign to seek justice for Mr Griffiths, seeking preferential treatment for him and seeking to circumvent the official processes to deal with the issue. The Case Tribunal judged Dr Anderson to have failed to recognise the fact that his prejudicial interest in Mr Griffiths meant that it was improper to actively campaign on his behalf, particularly when his personal and prejudicial interest had not been declared (except on one occasion at the scrutiny committee meeting). Dr Anderson ignored the established process of dealing with the matter, and instead chose to make unsubstantiated allegations about council officials and council employees. The Tribunal concluded that Dr Anderson did this in order to advantage Mr Griffiths and his actions were improper.

5.3.42 Paragraph 10 of the Code of Conduct states that members must consider whether they have a personal interest in matters being considered by the authority. Paragraph 10(2)(c)(i) says that there is a personal interest if the decision might reasonably be regarded as affecting a person with whom you have a close personal association. Given the Tribunal's finding that Dr Anderson was a close personal associate of Mr Griffiths, it had no difficulty in identifying that Dr Anderson had a personal interest in matters affecting Mr Griffiths.

5.3.43 Paragraph 11 of the Code of Conduct states that members must disclose when they have a personal interest in any business of the authority when attending meetings where that business is considered, making written representations or making oral representations. With the exception of Dr Anderson's declaration at the meeting the scrutiny committee on 16 May 2016, in none of his emails (which constitutes written representations), meetings of council officials or the telephone call with Ms Doran did Dr Anderson declare his personal interest.

5.3.44 Paragraph 12 of the Code of Conduct states that when a member has personal interest in any business of authority, that interest will be prejudicial if *"the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest"*. The Tribunal concluded that Dr Anderson had a prejudicial interest in respect of the matters affecting his friend Mr Griffiths. It was relevant that Dr Anderson and Mr Griffiths were close personal associates, who worked together in the fields of flood prevention, climate change and community service. Furthermore, other relevant facts were that Dr Anderson was named in the initial letter proposing that Mr Griffiths be removed from the office of governor, and that the removal was contentious. It is evident from Dr Anderson's emails and his call to Ms Doran that he was deeply agitated about the proposed removal of his friend. Finally, it is relevant that Dr Anderson himself declared that he had a prejudicial interest at the scrutiny committee meeting.

5.3.45 Paragraph 14(1)(c) of the Code of Conduct states that where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee, not seek to influence a decision about that business. Paragraph 14(1)(d) of the Code of Conduct states that where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee, not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business.

5.3.46 Dr Anderson provided no evidence of any dispensation to seek to influence decisions affecting Mr Griffiths, but sent numerous emails in 2016 about his proposed removal, including to all the members of the scrutiny committee. He also spoke to council officers about the matter on more than one occasion. These constitute written and oral representations, and in the

judgment of the Case Tribunal the evidence clearly supports the conclusion that Dr Anderson sought to influence the authority's decision.

5.3.47 The Case Tribunal stepped back and looked overall whether any of the allegations, claims and representations made by Dr Anderson and complained of by the PSOW constituted political expression. The balancing exercise was carried out separately for each alleged breach of the Code of Conduct. The Case Tribunal applied the three stage approach recommended by Mr Justice Wilkie in the case of *Sanders v Kingston (No 1)* [2005] EWHC 1145. The Case Tribunal concluded that it was justified to restrict Dr Anderson's freedom of expression. While it had found numerous breaches of the Code of Conduct, the exercise of the right to freedom of expression "carries with it duties and responsibilities, [and] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others..." (Article 10(2)).

5.3.48 In Dr Anderson's case, he made repeated unsubstantiated allegations about council officers and employees, disclosed information which could reasonably be regarded as confidential, sought to impair the impartiality of a council employee, sought to gain an advantage for his close personal associate, and sought to influence a decision and made a series of representations in a matter in which he had a prejudicial interest. Dr Anderson failed to consider the equality of opportunity for disabled employees and failed to show due respect and consideration to several persons. Standards are in place for members as they are regarded as necessary in a democratic society and protect the rights of others, such as Officer X. Dr Anderson's actions were divorced from any political debate (despite Dr Anderson claiming they were linked to the wider educational issues faced by CCBC), and in the judgment of the Tribunal were done to help his friend, not to advance a political cause. Had they been made in the context of political debate, the actions were so outrageous that the Tribunal concluded that the interference with the Article 10 rights would still have been lawful and justified.

6. SUBMISSIONS ON ACTION TO BE TAKEN

6.1 Character evidence

6.1.1 As outlined above, the Case Tribunal elected to hear from character witnesses, notwithstanding the absence of Dr Anderson and his representative. Only Cllr Darwin was present at the relevant stage and willing to give such evidence. The Tribunal also concluded that it would be fair to consider the evidence already before it from Dr Anderson and Mr Griffiths where relevant.

6.1.2 Cllr Darwin described Dr Anderson as a "*very caring and truthful person*", and said that his actions were "*out of character*". In Cllr Darwin's view, the naming of Dr Anderson in the letter sent to Mr Griffiths in March 2016 "*unsettled him mentally*" and was the cause of Dr Anderson's conduct. Cllr Darwin said that this was the first time Dr Anderson's integrity had been called into question. He accepted that Dr Anderson was eccentric, but said everyone

knew that. Cllr Darwin also accepted that Dr Anderson's behavior had been extreme, and while he was not seeking preferential treatment, he did expect to influence people. Cllr Darwin believed that Dr Anderson was trying to help children but accepted under questioning by the Tribunal that Dr Anderson had been unable to "*see the wood for the trees*" or recognise what had happened. He was of the view that Dr Anderson was suffering from stress.

6.2 Evidence of previous conduct

6.2.1 The Registrar to the Adjudication Panel for Wales confirmed that in July 2001 Dr Anderson had been suspended by the relevant authority's standards committee from sitting on any policy panel or committee for three months. Mr Brown on behalf of the monitoring officer explained that Dr Anderson had become involved in a case involving someone known to him personally. He had alleged that a legal officer had shown a lack of integrity and had acted maliciously, and was found to have behaved in a manner that was abusive and intemperate. Mr Brown observed that Dr Anderson had widely disseminated his allegations against the legal officer in 2001.

6.3 The Ombudsman's submissions

6.3.1 Ms Ginwalla submitted that it was a matter for the Tribunal what sanction, if any, to impose upon Dr Anderson. She however made a number of observations based on the sanctions guidance published by the Adjudication Panel for Wales.

6.3.2 Ms Ginwalla was conscious that Dr Anderson was not present or represented and felt it was only fair to highlight the mitigating factors as far as the PSOW was concerned. She noted that there were suggestions that Dr Anderson's health had been affected, but said there was no evidence available supporting that; that he was a long serving member with only one previous breach of the Code of Conduct; and that both Councillor Darwin and Mr Griffiths had given evidence about Dr Anderson's community-driven focus and good works.

6.3.3 Ms Ginwalla observed that in 2001 standards committees were only able to suspend members from particular committees, rather from their duties generally, and commented on the similarity of the behaviour in 2001 and 2016. She also highlighted a series of aggravating factors in this case, including the seeking of preferential treatment from Mr Griffiths, the finding that Dr Anderson had brought the role of member into disrepute; that serious breaches of the Code of Conduct had been found by the Tribunal, and that Dr Anderson continued to deny that he had committed any wrongdoing, even when asked to reflect on his behaviour.

6.3.4 The PSOW's representative also submitted that Dr Anderson had been shown to be dishonest in that he had incorrectly stated in his interview with the PSOW that he had spoken to Mr Redgrave. She noted that he had challenged both the investigation by the PSOW and the Adjudication Panel for Wales' ability to consider the reference by the PSOW. Ms Ginwalla said that Dr

Anderson had mostly sought to blame others and attacked both council officials and the headteacher about whom he was concerned. He continued to do so despite receiving advice and warnings from council officers to stop, and arguably had an intention to harm as he persisted in his behaviour. Ms Ginwalla suggested that Dr Anderson had been unable to recognise the inappropriate nature of his actions and had failed to consider the impact that he had caused to Officer X in particular. She submitted that the evidence showed that if Dr Anderson had a personal connection to an issue, he lost his objectivity and attacked others.

6.3.5 Ms Ginwalla accepted that the only options available to the Case Tribunal were to either take no action or to disqualify Dr Anderson from being a member of any relevant authority. Given the significant number of breaches of the Code of Conduct found by the Case Tribunal, she submitted that disqualification was appropriate in any event. It would also have the effect of ensuring that the public continued to have confidence in local government and would discourage non-compliance by both Dr Anderson and other members with the requirements of the Code of Conduct.

6.4 The Respondent's Submissions

6.4.1 In the absence of Dr Anderson or his legal representative, no oral submissions were made. No specific written submissions had been received that clearly addressed this point. The Tribunal considered it fair to presume Dr Anderson's position would be that no action should be taken.

6.5 The Case Tribunal's Decision

6.5.1 The Case Tribunal considered all the facts of the case, including its earlier findings. It was not persuaded no action should be taken. There were no exceptional circumstances that justified taking no action. The Case Tribunal did not accept Dr Anderson had inadvertently breached the Code of Conduct. It could not find that there was no risk of repetition as Dr Anderson displayed little insight into his behaviour and its impropriety. There had been numerous and serious breaches of the Code of Conduct and action was required. As Dr Anderson was no longer a councillor, suspension from office was not available as a sanction. The Tribunal concluded that a sanction of disqualification was appropriate, even if suspension had been an available option.

6.5.2 The Case Tribunal had regard to the following mitigating factors:

- It noted Councillor Darwin's evidence about the stress that he believed Dr Anderson was suffering, both in 2016 and now, and his very real concerns about Dr Anderson's mental health. It is also noted that within the hearing bundle was a copy of the note from Dr Anderson's general practitioner mentioning that he was suffering from stress;
- it was evident that Dr Anderson was involved in many community causes, including flood prevention, climate change, service upon governing bodies of schools, and acts of individual charity;

- in the view of the tribunal it was clear that Dr Anderson was actively trying to do good for his community;
- there was no financial, personal or obvious political gain for Dr Anderson as a result of his actions.

6.5.3 The Case Tribunal found the following aggravating features:

- The actions of Dr Anderson had a huge impact upon Officer X and contributed to the end of his career in public service;
- the disclosure of Mrs A's letter potentially could have had a serious impact upon both her and her family, and Dr Anderson's choice to widely disseminate that letter was reckless;
- Dr Anderson was trying to gain an advantage for his friend Mr Griffiths;
- Dr Anderson had repeatedly breached the Code of Conduct;
- Dr Anderson had breached numerous paragraphs of the Code of Conduct;
- Dr Anderson had behaved in a similar manner in 2001 as both in 2001 and in 2016 he made allegations (which he widely disseminated) that legal officers were behaving in a manner that demonstrated a lack of integrity but without any evidence supporting that allegation;
- Dr Anderson's actions in relation to Officer X were both reckless and deliberate;
- Dr Anderson was given an opportunity to acknowledge and adjust his behaviour, particularly in respect of Officer X, but failed to take advantage of that opportunity;
- while the Tribunal took the view that it was reasonable for accused councillors to challenge the PSOW and put forward their own views of the matter, and took no exception to Dr Anderson's failure to attend the hearing or send a representative, it was a matter of fact that Dr Anderson had repeatedly failed to follow the processes of the Adjudication Panel for Wales. He had refused to submit a formal response and breached several directions specified in the listing direction;
- Dr Anderson demonstrated no insight into either the inappropriateness of his actions and the impact. In May 2016 there was possibly a moment where he realised that what he had done had the capacity to hurt in respect of Officer X, but he then proceeded to repeat his allegations and then disclose information widely about Officer X's medical condition;
- Dr Anderson's repeated descriptions of a headteacher as a psychopath was a wholly inappropriate attack upon a professional person carrying out her professional duties, and who was a council employee;
- it was evident that Dr Anderson sought to blame others for his own actions and was unable to accept responsibility;
- as a retired general practitioner, it was reasonable to expect Dr Anderson to understand the need for confidentiality in relation to health matters. Instead, he relied upon his status as a retired doctor

- in an attempt to lend weight to his speculations made in the absence of sight of Officer X's medical and personnel records;
- as a long serving member, Dr Anderson was aware of the correct way in which to raise concerns about council officials and chose not to use the processes available to him.

6.5.4 The Case Tribunal was moved to conclude that it was more likely than not that Ms Ginwalla's analysis of Dr Anderson was correct. When something affected him or those to whom he is closely connected to personally, it would appear that Dr Anderson loses all sense of perspective, his judgement becomes clouded and he loses the ability to consider the matter objectively. It is of course for this reason that members should not involve themselves in matters of which they have a prejudicial interest as they are required to take an objective view of what is in the public interest.

6.5.5 The Case Tribunal concluded by unanimous decision that Dr Anderson should be disqualified from acting as a member of any relevant authority for a period of eighteen months. This period marks the severity of the misconduct by Dr Anderson, and is designed to ensure such behaviour is not repeated by him or any other member. The sanction is also intended to uphold the confidence of the public in local government, and mark the Tribunal's concern about the abuse of the quasi-employer status by Dr Anderson and his disclosure of information which could reasonably be regarded as confidential.

6.5.6 Conwy County Borough Council and its Standards Committee are notified accordingly.

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

Signed



Date: 6 February 2018

Claire Sharp
Chairperson of the Case Tribunal

Juliet Morris
Panel Member

Sian Jones
Panel Member