

CONFIDENTIAL

Oldham Council

Weightmans reference: SIG/433873/97

**Report of an investigation into allegations concerning the conduct of
Councillors Louie Hamblett, Mark Kenyon, David Murphy and Howard Sykes**

The logo for Weightmans, featuring the word "Weightmans" in white text on a dark teal rectangular background with a wavy top edge.

Weightmans

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Contents

Summary	Page 3
Relevant law/guidance	Pages 3–31
Members' official details	Pages 31–32
Background	Pages 32–38
Summary of the evidence gathered	Pages 38–55
Findings of fact	Pages 55–56
Reasoning as to whether there is a breach of the Code of Conduct	Pages 56–61
Other issues	Pages 61–62
Findings	Page 62
Comments on the draft report	Pages 63–74
Schedule of evidence	Page 75

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Summary

1. A complaint was made by Cllr Arooj Shah (“the Complainant”), the Leader of Oldham Council (“the Council”), that Cllrs Louie Hamblett, Mark Kenyon, David Murphy and Howard Sykes, members of the Council, failed to comply with the Council’s Code of Conduct (“the Code”).
2. The Complainant alleges that Cllr Kenyon failed to comply with the Code in secretly recording a private meeting between her officers and other councillors which took place in her office on Monday 20 May 2024. The Complainant alleges that Cllrs Hamblett, Murphy and Sykes must have been aware of Cllr Kenyon’s actions as they were present in the Liberal Democrat room at the time and Cllr Kenyon went in and out of that room a number of times whilst he was carrying out the recording and that they did nothing to prevent him from recording the meeting.
3. I have investigated these complaints and concluded that there **has been a failure** on the part of Cllr Kenyon to comply with the Code. The reasons are set out in this report.
4. I have also concluded that there **has not been a failure** on the part of Cllrs Hamblett, Murphy and Sykes to comply with the Code in respect of their actions regarding the recording by Cllr Kenyon. However, I have concluded that there **has been a failure** to comply with the Code with them as they have not co-operated with the investigation process. The reasons are set out in this report.

Relevant Law/Guidance

5. The Localism Act 2011 (“the 2011 Act”) governs standards of conduct for members of relevant authorities in England with effect from July 2012. Under the 2011 Act, the Council:
 - a. is under a duty to promote and maintain high standards of conduct;
 - b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity,

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objectivity, accountability, openness, honesty and leadership;

6. The 2011 Act requires a principal authority to have in place arrangements for investigating allegations of failure to comply with the Code, and taking decisions about them, including appointing one or more independent persons, one of whose views must be sought before a decision is made, and one of whose views may be sought by the member against whom an allegation is made.
7. The Council adopted a Code of Conduct ("the Code") (SG1) and arrangements for dealing with allegations that a member of the Council has failed to comply with the Code (SG2).
8. So far as material, the Code provides as follows:

General principles of Councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, Councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of Councillor. In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty*
- I act lawfully*
- I treat all persons fairly and with respect; and*
- I lead by example and act in a way that secures public confidence in the role of Councillor.*

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community*

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- *I do not improperly seek to confer an advantage, or disadvantage, on any person*
- *I avoid conflicts of interest*
- *I exercise reasonable care and diligence; and*
- *I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.*

As a Councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone*
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless*
 - i. I have received the consent of a person authorised to give it;*
 - ii. I am required by law to do so;*
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or*
 - iv. the disclosure is:*
 - 1. reasonable and in the public interest; and*
 - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and*
 - 3. I have consulted the Monitoring Officer prior to its release.*

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse

impact on you, other Councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow Councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

As a Councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and*
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.*

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a Councillor.

Examples include:

- office support*
- stationery*
- equipment such as phones, and computers*
- transport*
- access and use of local authority buildings and rooms.*

These are given to you to help you carry out your role as a Councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the

purpose for which they have been provided and the local authority's own policies regarding their use.

As a Councillor:

8.2 I cooperate with any Code of Conduct investigation and/or determination.

9. Section 27 of the 2011 Act provides that a local authority's code of conduct shall apply to members "when they are acting in that capacity."
10. The meaning of and extent of "official capacity" was considered by the courts in the cases of *(R) Mullaney v The Adjudication Panel for England [2009] EWHC 72 (Admin)* ("the Mullaney case") and *Livingstone v APE [2006] EWHC 2533 (Admin)* ("the Livingstone case"). These cases were considered under the Local Government Act 2000 which set out the legal framework governing member conduct in England prior to its repeal by the Act. However, the principles set out in the decisions in those cases remain relevant to the current law.
11. In the Mullaney case, Charles J recognised that applying the term, "is inevitably fact sensitive and whether or not a person is so acting inevitably calls for informed judgment by reference to the facts of the given case." In that case the councillor trespassed on premises and made a video to highlight alleged breaches of planning law and named and shamed the owner. The Council stated that he was not acting in his capacity as a councillor. However, the court did not accept this. Charles J stated:

I acknowledge that there would be advantage in certainty as to where the line is to be drawn between these activities and thus as to when the Code applies and when it does not. But to do that the language of the Code would have to be explained and thus added to, paraphrased or qualified and it seems to me that given that it uses ordinary English words (and is based on ordinary English words used in the statute, namely "in performing his functions" see s. 52(2)) this would be

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inappropriate and would potentially lead to the error being made of applying guidance as to the application of a test as if it was itself such a test.

12. Charles J further stated:

in my view magnetic or core factors in it, which found my view that the Appeals Committee is plainly right, are that the taking and publication of the video was a continuum of steps taken in respect of the property by the Claimant on behalf of a constituent as (and identifying himself as) a Councillor by making "Councillor Enquiries", his membership of the Planning Committee, his legitimate and keen interest in the building as a Councillor (who is interested in planning matters) and his identification of himself as a Councillor on the video and in its publication.

13. In the Livingstone case, Collins J stated, "official capacity will include anything done in dealing with staff, when representing the Council, in dealing with constituents' problems and so on." In the Livingstone case the then Mayor of London had attended an official engagement in his capacity as the mayor. As he was leaving the function he was confronted by a journalist. Mr Livingstone likened the journalist to a concentration camp guard. The Court held that the comments were not made by Mr Livingstone in his capacity. Collins J stated:

The Tribunal correctly decided that the appellant was not in his official capacity when he made the remarks in question. It is not in my view even arguable that when making them he was performing his functions as Mayor.

14. Any allegation of a failure to comply with the Code must also be carefully considered in the light of the Articles of the European Convention on Human Rights as embodied into UK law by the Human Rights Act 1998. Article 10 of the Convention states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and

impart information and ideas without interference by public authority and regardless of frontiers...

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...*

15. The way in which Article 10 rights should be considered in relation to code of conduct allegations was dealt with in the case of *Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)* (“the Heesom case”). It is recognised that enhanced protection is given to “political expression.” In the Heesom case it was stated:

While freedom of expression is important to everyone, Strasbourg has recognised the importance of expression in the political sphere. It has long-recognised that what is said by elected politicians is subject to enhanced protection”, i.e. a higher level of protection, under article 10.

16. In the Heesom case the judge reviewed the previous case law on Article 10 and derived the following principles:

- i) *The enhanced protection applies to all levels of politics, including local (Jerusalem, especially at [36]).*
- ii) *Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated (see, e.g. de Haes at [46]–[48], and Mamère at [25]: see also Calver at [55] and the academic references referred to therein). Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements*

which the publisher knows to be false (R (Woolas) v Parliamentary Election Court [2012] EWHC 3169 at [105])

iii) Politicians have enhanced protection as to what they say in the political arena; but Strasbourg also recognises that, because they are public servants engaged in politics, who voluntarily enter that arena and have the right and ability to respond to commentators (any response, too, having the advantage of enhanced protection), politicians are subject to “wider limits of acceptable criticism” (see, e.g., Janowski at [33]; but it is a phrase used in many of the cases). They are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens.

iv) Enhanced protection therefore applies, not only to politicians, but also to those who comment upon politics and politicians, notably the press; because the right protects, more broadly, the public interest in a democracy of open discussion of matters of public concern (see, e.g., Janowski at [33]). Thus, so far as freedom of speech is concerned, many of the cases concern the protection of, not a politician's right, but the right of those who criticise politicians (e.g. Janowski, Wabl and Jerusalem). Castells, of course, was both; the senator criticising politicians within the Spanish Government through the press.

v) The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views (Calver at [79]), but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others (Thorgeirson at [64]: see also Calver at [64] and the academic references referred to therein). The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it.

vi) The cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of

proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis (e.g. Lombardo at [58], Jerusalem at [42] and following, and Morel at [36]). What amounts to a value judgment as opposed to fact will be generously construed in favour of the former (see, e.g., Morel at [41]); and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said (Lombardo at [59]).

vii) As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. In most instances, where the State seeks to impose a restriction on the right under article 10(2), the determinative question is whether the restriction is “necessary in a democratic society”. This requires the restriction to respond to a “pressing social need”, for relevant and sufficient reasons; and to be proportionate to the legitimate aim pursued by the State.

viii) As with all Convention rights that are not absolute, the State has a margin of appreciation in how it protects the right of freedom of expression and how it restricts that right. However, that margin must be construed narrowly in this context: “There is little scope under article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest” (see, e.g., Lombardo at [55]–[56], Monnat at [56]).

ix) Similarly, because of the importance of freedom of expression in the political arena, any interference with that right (either of politicians or in criticism of them) calls for the closest scrutiny by the court (Lombardo at [53]).

17. In the Heesom case, the court endorsed a three stage approach to dealing with Article 10 in code of conduct cases as follows:

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- i. Does the conduct alleged amount to a breach of the Code, putting aside Article 10 considerations?
- ii. If so, does this finding in itself or the imposition of a sanction prima facie a breach of Article 10?
- iii. If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?

18. The LGA has issued guidance on its model code of conduct. In respect of when the Code applies it states:

When does the Code apply?

S27(2) of the Localism Act 2011 says that a local authority must adopt 'a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.'

The term 'capacity' is not further defined in the Act. However, the Model Code states that:

The Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *you misuse your position as a councillor*
- *your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.*

This means it applies when you are carrying out your official duties, for example when you are considering or discussing local authority business, either as a councillor or representing the local authority on an outside body.

There is no formal description of what the role of a councillor is, but aside from formal local authority business it would include promoting and representing the local authority in the local community and acting as a bridge between the community and the local authority. The LGA's Guidance for new councillors is a helpful reference point.

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The code does not, therefore, apply solely when you are in local authority meetings or on local authority premises.

The code applies to all forms of communication and interaction, including:

- *at face-to-face meetings*
- *at online or telephone meetings*
- *in written communication*
- *in verbal communication*
- *in non-verbal communications*
- *in electronic and social media communication, posts, statements, and comments.*

This includes interactions with the public as well as with fellow councillors and local authority officers.

Acting as a private individual

For something to fall within the code there must be a clear link to a local authority function or your role as a councillor. For example, an argument with a neighbour which does not relate to local authority business would not engage the code, even if your neighbour happens to know you are a councillor and therefore complains to the local authority about being treated disrespectfully.

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therefore complains to the local authority about being treated disrespectfully.

It is not always immediately apparent in which capacity you are acting, therefore in situations where there may be ambiguity it may be helpful if you can make clear to people in which capacity you are engaging with them.

While the Code does not apply to your non-councillor roles, what you do as a councillor could impact on your position in those other roles.

Political party or group rules may also require you as a councillor to demonstrate certain behaviours as a private individual and failure to do so can result in sanctions from political groups.

Under the Local Government Act 1972 and the Local Government (Disqualification) Act 2022 councillors can be disqualified from being a councillor due to matters in their private life, such as being subject to a bankruptcy order, receiving a custodial sentence of three months or longer (whether or not suspended) or being subject to a sexual offences order.

In what circumstances might I give the impression to a reasonable member of the public that I was engaged on local authority business?

When you use or attempt to use your position as a councillor to seek to gain an advantage for yourself or someone close to you or to disadvantage someone this is an attempt to misuse your position and therefore falls within the scope of the Code of Conduct.

A number of factors will need to be taken into account to determine whether or not you had used or attempted to use your position as a councillor.

For example:

writing to someone on local authority headed paper or using a local authority email address may lead someone to assume you were writing in your capacity as a councillor
handing out a business card where you describe yourself as a councillor may also lead to that assumption
wearing official local authority regalia.

Examples

Attempting to misuse your position as a councillor would include if you threaten to use your position improperly to block someone's planning, licence or grant application. In effect you would be doing something that only a councillor could do even if as a matter of fact, you did not have the power to do so. That may include an assumption, for example, that you would put inappropriate pressure on officers or fellow councillors or lobby behind the scenes for a particular outcome. It should not be up to a member of the public to have to work out whether you are in fact on a planning committee.

Another example would be disclosing confidential information improperly you had received because of your role as a councillor.

A councillor returning from a party got into an argument with a taxi driver. When he arrived home, he refused to pay the fare and when he spoke to the manager of the taxi company, he said that he was a councillor and would make sure that the taxi driver's licence was withdrawn by the council. While he was entitled to dispute the payment if he was dissatisfied with the service he had received he was found to have breached the code by invoking his office and seeking to misuse his position to intimidate the manager and driver and to seek to gain an advantage for himself, notwithstanding the fact that he did not in reality have the ability to carry out his threat.

19. In respect of the general principles the LGA guidance states:

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The Seven Principles of Public Life (also known as the Nolan Principles) outline the ethical standards those working in the public sector are expected to adhere to. The principles apply to all public office holders at all levels including ministers, civil servants, councillors, and local authority officers, as well as private and voluntary organisations delivering services paid for by public funds. The principles are set out in Appendix 2 below.

These principles underpin the standards that councillors should uphold and form the basis for the Code of Conduct, where the principles have been translated into a series of clear rules. While fundamental to the Code of Conduct, the principles are not part of the rules of the code and should be used for guidance and interpretation only.

20. In respect of confidential information the LGA guidance states:

While local authority business is by law generally open and local authorities should always operate as transparently as possible, there will be times – for example, when discussing a named individual, confidential HR matters or commercially sensitive information – when it is appropriate for local authority business to be kept confidential or treated as exempt information.

In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:

- *you have the consent of the person authorised to give it*
- *you are required by law to do so*
- *the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person*
- *the disclosure is in the public interest*
- *Disclosure in the public interest*

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Disclosure 'in the public interest' is only justified in limited circumstances, when all the following four requirements are met:

- *the disclosure must be reasonable*
- *the disclosure must be in the public interest*
- *the disclosure must be made in good faith*
- *the disclosure must be made in compliance with any reasonable requirements of your authority*

In relation to the disclosure of confidential information in the public interest, the four requirements are outlined in more detail below.

The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- *Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.*
- *Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.*
- *The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.*
- *The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.*
- *The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.*
- *The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be*

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reasonable than if the matter is continuing or is likely to reoccur.

- *Whether the disclosure involves your authority failing in a duty of confidence owed to another person.*

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- *a criminal offence is committed.*
- *your local authority or some other person fails to comply with any legal obligation to which they are subject.*
- *a miscarriage of justice occurs.*
- *the health or safety of any individual is in danger.*
- *the environment is likely to be damaged.*
- *that information tending to show any matter falling within the above is deliberately concealed.*

3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party-political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your local authority, means that before making the disclosure you must comply with your local authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful

consequences of its disclosure, and on any factors, which may justify its disclosure despite these potential consequences. If in doubt you should always seek advice from the monitoring officer. Always keep a note of the reason for your decision.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

Circumstances in which a local authority can treat information as confidential

The presumption under local government law is that local authority business is open unless it falls within a specific category of confidential or exempt information as set out in legislation. These categories are:

- 1. information given to the local authority by a Government Department on terms which forbid its public disclosure or*
- 2. information the disclosure of which to the public is prohibited by or under another Act or by Court Order.*

Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

Exempt information means information falling within the following categories (subject to any condition):

- 1. relating to any individual.*
- 2. which is likely to reveal the identity of an individual.*
- 3. relating to the financial or business affairs of any particular person (including the authority holding that information).*
- 4. relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the*

authority or a Minister of the Crown and employees of, or officer-holders under the authority.

- 5. in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*
- 6. which reveals that the authority proposes:*
 - 6.1 to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or*
 - 6.2 to make an order or direction under any enactment*
- 7. relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.*

Where information is legally classified as 'confidential' under the above categories the public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

Where an officer recommends that a report to a decision-making committee should be treated as exempt information under the above categories the committee must still agree that the matter should be heard in a closed session. The committee may disagree with any recommendation and decide that those legal tests have not been met; or they may agree that those tests have been met but nevertheless it is in the public interest that the matter be considered in an open session. Again, you should keep a record of the rationale for the decision.

Once the local authority has agreed that the matter be treated as exempt, public access to relevant reports, background papers and minutes will also be excluded and an individual councillor must abide by that collective decision or risk breaching the code if they disclose that information (papers and content of discussion) without lawful excuse.

Does confidentiality under the code apply only to information which is classified as confidential or exempt by law?

No. The code goes wider than matters simply considered in a formal local authority setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:-

- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);*
- it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);*
- disclosure of it would be detrimental to the party wishing to keep it confidential.*

For example, you may be told confidential information by a constituent in the course of your duties. That is why the code is written broadly to cover information classed as confidential which you may come across in your duties.

You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.

Examples

A councillor was assisting a resident in an adoption process, which the resident decided to subsequently withdraw from. The resident's estranged parent contacted the councillor for information as to what was happening with the case and the councillor inadvertently shared confidential information as she had not realised that father and son were estranged. This was found to be a breach of the code.

A councillor circulated information about an officer's medical condition to other councillors and a local headteacher with whom he was acquainted. He was found to have disclosed information which should reasonably be regarded as being of a confidential nature and without the officer's consent in breach of the Code of Conduct.

What does consent by the person authorised to give it mean?

If somebody, for example a constituent, has told you something in confidence – for example in the line of casework – you may later want to put that in the public domain as part of pursuing that case. You should always check with the individual before you disclose something you believe is confidential to ensure that they are comfortable with that information being disclosed. You should also be clear with them as to how you may use the information, they give you to help resolve their issue.

In what circumstances am I required to disclose confidential information by law?

This would be where a law enforcement or regulatory agency or the courts required disclosure of information.

In what way could I use information I have obtained to advance myself or others?

As a councillor you will often receive commercially sensitive or other confidential information. You must not use that information to your own advantage. For example, if you know the local authority is considering the purchase of a piece of land, you should not use that information in your private dealings to seek to purchase the land.

How does this relate to the Data Protection Act?

As part of their role councillors will receive personal information. They should seek to ensure they are familiar with

how the Data Protection Act applies to their role in handling such information through training, and if they are not sure to seek advice from an appropriate officer in the council.

Although councillors are not required to register as a data controller, they will receive personal information from residents in their area. They should only use it for the purpose for which it has been given and must ensure this information is held securely and only share with others that are entitled to it.

In contrast, the local authority is responsible for information they provide to councillors and ensuring they know how it can be used.

21. In respect of disrepute the LGA guidance states:

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public's confidence in your ability to discharge your functions as a councillor or your local authority's ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:

- 1) reducing the public's confidence in them being able to fulfil their role; or*
- 2) adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.*

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Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute.

For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute.

Questions:

What distinguishes disrepute to "your role or local authority" from disrepute to you as a person?

The misconduct will need to be sufficient to damage the reputation of the councillor's role or local authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of conduct may damage the reputation of an individual but will rarely be capable of damaging the reputation of the role of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the role of councillor or to the authority in particular cases:

- 1) Situations where councillors have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their role. For example, councillors using their position to secure a secret personal profit.*
- 2) Similarly, situations where a councillor defies important and well-established rules of the authority for private gain.*

- 3) *Where a councillor engages in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider.*

22. In relation to misuse of resources the LGA guidance states:

You may be provided with resources and facilities by your local authority to assist you in carrying out your duties as a councillor.

Examples include:

- *office support*
- *stationery*
- *equipment such as phones, and computers*
- *transport*
- *access and use of local authority buildings and rooms*

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986.

The recommended code of practice for local authority publicity published by Ministry of Housing, Communities & Local Government provides guidance on the content, style, distribution, and cost of local authority publicity.

You must be familiar with the rules applying to the use of resources made available to you by your local authority. Failure

to comply with the local authority's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your local authority's resources, you must take care to ensure that this is allowed by the local authority's rules.

You should never use local authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

However, your authority may authorise you to use its resources and facilities for legitimate political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct. Where you are part of a formally-recognised political group, your local authority is also allowed to give you such resources as you need for local authority business, for example use of a room for group meetings.

You should never use local authority resources purely for private purposes, for example using a photocopier to print off flyers for your business unless your local authority's procedures allow for you to repay any costs accrued.

What are the "resources of the local authority"?

The resources of the local authority include services and facilities as well as the financial resources of the authority.

Resources could include any land or premises, equipment, computers, and materials. The time, skills, and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.

What constitutes using resources “improperly for political purposes”?

The code acknowledges that party politics has a proper role to play, both in the conduct of authority business and in the way that councillors carry out their duties.

There will be times when it is acceptable for political groups to use the resources of the local authority, for example, to hold meetings in authority premises. Often it is impractical to separate a councillor’s political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.

However, councillors and monitoring officers will need to exercise considerable care to ensure that this provision is not abused. You must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only improper use of resources will be a breach of the Code of Conduct.

This part of the code complements Section 2 of the Local Government Act 1986, which prevents the publication of material “designed to affect public support for a political party”. The code, however, goes further than the Code of Recommended Practice on Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party-political interests.

You must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the Local Government Act 1986. Publicity is defined as “any communication, in whatever form, addressed to the public at large or to a section of the public”. It will cover meetings, websites, and social media postings as well as printed and other written material.

You should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using the local authority's resources in these circumstances, you should not appear to be seeking to influence public opinion in favour of you, your party colleagues, or your party.

How do you know what the authority's requirements for the use of resources are?

Your local authority should have a protocol dealing with use of authority resources. A typical protocol would cover the following topics:

- *use of authority premises*
- *councillor-officer relationships including use of officer time*
- *information technology, for example computer equipment and the use of associated software, including the use of such equipment at home*
- *telephones*
- *photocopying*
- *use of stationery and headed notepaper*
- *postage*
- *use of authority transport*
- *allowances and expenses*

Your local authority may also have a separate protocol on the use of social media which would also be relevant.

The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party-political purposes.

It is worth noting that where you authorise someone such as a family member to use the authority's resources, you must check whether the authority's rules allow this.

Examples

The complaint alleged a councillor used his computer equipment provided by his local authority for private purposes by downloading inappropriate adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. He was found to have misused the local authority's equipment in breach of the code and had brought his office into disrepute.

A councillor used local authority notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was also found by his local authority to have breached this paragraph of the code.

23. In relation to cooperation with investigations the LGA guidance states:

8.2 I cooperate with any Code of Conduct investigation and/or determination.

The Code of Conduct is a cornerstone of good governance. It is important for public trust that it is seen to be taken seriously by individual councillors as well as the local authority as a whole.

While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code.

It is equally important if you have made a complaint which the local authority has decided merits investigation that you

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continue to cooperate. Complaints made simply to damage the reputation of an individual through inferences but which you are not willing to support through your cooperation will damage relationships and will also damage the reputation of you and your local authority.

If you are asked to assist the investigator as a potential witness it is again important that you do so to allow as fully rounded a picture as possible to be drawn so that any determination on a case has as much evidence as necessary in order to reach the correct decision. You should let the investigator know if you need any reasonable adjustments made.

24. The LGA has also issued guidance to local authorities who find themselves after elections with no party in overall control and councillors of such local authorities. This can be viewed at <https://www.local.gov.uk/publications/supporting-transition-no-overall-control-30-step-framework> It states:

Chief executive roles

The section below sets out the key roles that chief executives can undertake supporting effective NOC transition and operations. While these roles are familiar to all chief executives, many are given greater currency, immediacy and emphasis when transitioning to NOC. And NOC working often provides a very specific context for undertaking these roles, requiring different approaches and styles of working. It is important to state that each council is unique and this is general guidance which would always require tailoring to specific circumstances.

Politics and politicians

- *understanding the political landscape of the local authority, its political geography and the key players*
- *facilitating and brokering where necessary communication between political groups*
- *anticipating, where possible, potential political change...*

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chief executive may act as a broker and facilitator between different groups

Member's official details

25. Cllr Hamblett has been a member of the Council since 2019. He holds the following committee/outside body roles:

- Adults Social Care and Health Scrutiny Board
- Appeals Committee
- Joint Health Overview and Scrutiny Committee for Northern Care Alliance
- Licensing Committee
- Licensing Driver Panel
- Place, Economic Growth and Environment Scrutiny Board (Substitute)
- MioCare and Support
- Pennine Acute Hospitals NHS Trust- Joint Health Overview & Scrutiny Committee
- Pennine Care NHS Trust - Joint Mental Health Overview & Scrutiny Committee

26. Cllr Kenyon has been a member of the Council since 2021. He holds the following committee roles:

- Governance, Strategy and Resources Scrutiny Board (Substitute)
- Highway Regulation Committee (Substitute)
- Petitioners' Panel (Substitute)
- Planning Committee (Substitute)

27. Cllr Murphy has been a member of the Council for 12 years. He holds the following committee/outside body roles:

- Highway Regulation Committee
- Petitioners' Panel
- Place, Economic Growth and Environment Scrutiny Board
- Planning Committee (Substitute)

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28. Cllr Sykes has been a member of the Council for over 30 years. He is the Leader of the Liberal Democrat Group on the Council and holds the following committee/outside body roles:

- Appointments Committee
- Audit Committee
- Health and Well Being Board
- Oldham Community Leisure
- Oldham Property Partnership
- Bee Committee (TfGM)

Background

29. On 2 May 2024 local elections took place for the Council. 20 of the 60 seats on the Council were contested. Following the elections the Council moved from having a majority of Labour Councillors (31) to no party having overall control. The Council's website currently shows the political make up as being as follows;

Labour	27
Liberal Democrats	9
Conservative	5
Independent	19

30. On Monday 20 May 2024 Cllr Shah met with two independent councillors, Cllrs Hince and Navesey, in her office with the then Chief Executive and Assistant Chief Executive. That night audio clips of the meeting were leaked.

31. CCTV from 20 May 2024 of the corridor outside Cllr Shah's office shows Cllr Kenyon arriving and entering the Liberal Democrat room with Cllrs Murphy and Diane Williamson. He is then seen, having left the Liberal Democrat room, having apparently visited the toilet, apparently placing something outside of Cllr Shah's office. It also shows him entering the Liberal Democrat group room which is along the corridor from Cllr Shah's office on three occasions.

32. The CCTV also shows Cllrs Hamblett, Murphy and Sykes enter the Liberal Democrat room before Cllr Kenyon appears to start recording.
33. An audio recording of the meeting between Cllr Shah and the independent councillors was then placed on social media by people who are not councillors.
34. The Complainant submitted complaints against all four councillors. Her complaint against Cllr Kenyon stated:

The behaviour on display here is shocking, it cannot be normalised. I have not – nor would I ever – consider bugging my opponents office under any circumstances. My other concern here is that people do tend to get caught out undertaking this type of behaviour on their first attempt. The very fact that Cllr Kenyon had sophisticated spyware on his persons readily available to record a private meeting he did not know was happening is incredibly unsettling.

The five councillors in question know the attacks I've had to deal with at the hands of both individuals that this audio was leaked to, this personal toll this took on me last week was immense. I was unable to sleep that night due to the stress and the paranoia this incident caused.

The leak itself has also caused significant abuse to both myself and Cllrs Hince & Navesey after the fact, abuse which continues to date and shows no sign of ramping down because members of the Liberal Democrat Group chose to leak it to the individuals in question.

I expect serious action as a result of this brazen behaviour, it cannot be allowed to stand. If spying on your political opponents was a serious enough incident to bring down a President of the United States of America it cannot be tolerated in local government.

35. The Complainant's complaint against the other councillors stated:

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the CCTV also shows that Cllr Louie Hamblett was in the Liberal Democrat Group Room on the Members Corridor whilst this spying was taking place.

Cllr Kenyon can clearly be seen listening to whatever device he has placed outside my office whilst he walks in and out of the Group Room where Cllr Hamblett is. There is no conceivable explanation where Cllr Hamblett does not know what Cllr Kenyon is doing and made no effort to prevent it happening...

the CCTV also shows that Cllr Dave Murphy was in the Liberal Democrat Group Room on the Members Corridor whilst this spying was taking place.

Cllr Kenyon can clearly be seen listening to whatever device he has placed outside my office whilst he walks in and out of the Group Room where Cllr Murphy is. There is no conceivable explanation where Cllr Murphy does not know what Cllr Kenyon is doing and made no effort to prevent it happening...

the CCTV also shows that Cllr Howard Sykes was in the Liberal Democrat Group Room on the Members Corridor whilst this spying was taking place.

Cllr Kenyon can clearly be seen listening to whatever device he has placed outside my office whilst he walks in and out of the Group Room where Cllr Sykes is. There is no conceivable explanation where Cllr Sykes does not know what Cllr Kenyon is doing and made no effort to prevent it happening.

36. Cllr Kenyon in his response to the Monitoring Officer stated:

I write in response to the complaints made against me regarding the events of Monday 20th May 2024.

Firstly I offer a sincere and unreserved apology to all those who were involved and attended the meeting on that date. Upon reflection, I recognise that I should not have used my phone to

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record the events in the heat of the moment and I really regret doing so – if I could turn back the clock, I absolutely would do.

I would be tremendously grateful if you would pass on my apology to the complainants and others present at the meeting.

I also apologise to the Council and recognise that this is not the standard of conduct that should be expected of a councillor.

For clarity, no special listening device was used. I could clearly hear what was being said in the room when standing in the corridor. Mindful of all the intensity of discussions around the council administration following the elections in May, what the various parties meeting in that room had publicly said or written about each other and my belief about the role of the Chief Executive in these discussions I decided in the spur of the moment to record what I could clearly hear in the corridor and then share them believing it would be likely to be shared further. I absolutely recognise that this was the wrong action to have taken.

37. Cllr Hamblett in his response to the Monitoring Officer stated:

Regarding the OMBC Standards complaint,

Councillor Louie M Hamblett, Crompton Ward.

I have been an elected member of Oldham Metropolitan Borough Council since 2019

I am surprised by the allegations made against me. They have no foundation and no evidence is provided to support them. The complainant offers no evidence for what they allege with regard to me, therefore there is no case against myself.

The facts are I attended a meeting, went to our group room, went to the kitchen, returned, completed some tasks, and then went home.

38. The Monitoring Officer indicated that Cllr Hamblett did not respond when the Monitoring Officer asked him whether he was aware of the recording when it was made.

39. Cllr Murphy in his response to the Monitoring Officer stated:

Thank you for giving me the opportunity to respond to the complaint from Cllr Arooj Shah.

I completely deny and refute the accusations made in the complaint.

The evidence provided by the complainant and included with this complaint – a video recording which shows me on a corridor I am entitled to be on, going into a room I am entitled to go in and several links does not support the accusation.

*I completely deny any involvement of a recording and put it to the Labour Leader Arooj Shah that no evidence has been supplied to back up the complaint she makes against me.
Thank you for taking the time to read this response.*

40. After he received Cllr Murphy's response he wrote to him again in 24 July 2024. In his email the Monitoring Officer stated:

I write further to your response on this matter. Myself and the independent person have considered the complaint and your response and some further information is sought from you – at the time that the meeting in the Leader's office was being recorded, were you aware that the recording was taking place ?

41. The Monitoring Officer chased Cllr Murphy for a response to this email on 9 August 2024. Cllr Murphy responded on 14 August 2024 stating:

Further to your email please see below.

I feel I have already responded to the complaint; I completely deny and refute the accusations made in the complaint. I deny any involvement of a recording taking place.

Complaint ref Standards Board

Thank you for giving me the opportunity to respond to the complaint from Cllr Arooj Shah.

I completely deny and refute the accusations made in the complaint.

The evidence provided by the complainant and included with this complaint – a video recording which shows me on a corridor I am entitled to be on, going into a room I am entitled to go in and several links does not support the accusation.

I completely deny any involvement of a recording and put it to the Labour Leader Arooj Shah that no evidence has been supplied to back up the complaint she makes against me.

Thank you for taking the time to read this response.

42. Cllr Sykes in his response to the Monitoring Officer stated:

Response:

Thank you for a copy of the unfounded complaint submitted by Cllr Shah and received by me on 3 June.

For clarity, I completely reject the allegations.

The complainant has provided no evidence to support their allegations. Instead, they rely on commentary, which is clearly opinion and supposition, with no basis in fact.

The allegations are, I believe, a clear attempt to discredit me. The factual evidence for this is the media release by the Labour

Party issued, which the complaint clearly facilitated, calling for my resignation. The media release was issued shortly after the complaint was submitted, and clearly prepared in advance.

I believe the very act of issuing a media release relating to a submitted Standards Complaint both indicates the vexatious nature of the allegations and, in itself, is a potential breach of several aspects of the Members Code of Conduct.

Response submitted 16 June 24.

43. The Monitoring Officer requested further information from Cllr Sykes after receiving the response. He emailed Cllr Sykes on 23 July 2024, stating:

I write further to your response on this matter. Myself and the independent person have considered the complaint and your response and some further information is sought from you – at the time that the meeting in the Leader's office was being recorded, were you aware that the recording was taking place ?

44. The Monitoring Officer wrote to Cllr Sykes again on 9 August 2024 chasing a response to his email. Cllr Sykes responded on 12 August 2024 stating:

Thank you for your further email regarding this matter.

I responded to the complaint which has no merit, and the complainant provides no evidence to support.

My response fully refuted the allegations made.

Summary of the Evidence Gathered

45. The following witnesses were interviewed during the investigation:

The Complainant (SG3)
Cllr Hince (SG4)
Cllr Navesey (SG5)

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Cllr Hamblett (SG6)

Cllr Kenyon (SG7)

Cllr Murphy (SG8)

Cllr Sykes (SG9)

46. All witnesses have approved a written record of their interviews.
47. The Council's Monitoring Officer described the process leading to my instructions and supplied me with relevant documentation, including the complaints and responses from the councillors complained about (SG10).
48. Cllr Hince provided me with screenshots of examples of comments made on social media following the publication of the recording.

Evidence of the Complainant

49. The Complainant confirmed that she had submitted the complaints, that she wished them to proceed and the contents were true to the best of her knowledge and belief.
50. She confirmed that she is a member of the Council. She explained that she was first elected in 2012, she then lost her seat in 2016, she was elected again in 2018 and then lost her seat again in 2022 before being elected again in 2023. She confirmed that she is the leader of the Council and has been since being re-elected in 2023. She explained that she had also been leader in 2021–22.
51. Cllr Shah stated that she had never experienced an opposition as toxic as it is at the moment on the Council. She stated that usually the Liberal Democrats are quite sensible but, in her view, unfortunately they had begun to peddle and echo a hateful and misleading narrative recently. She referred to issues which she had faced in her personal life where she had to involve the police which caused a lot of distress. 'She explained that this incident and the abuse which had followed brought back a lot of distress.
52. She stated that this had been very unnerving. She stated that the audio of her meeting which Cllr Kenyon had recorded was released

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whilst AS was still in the meeting. She stated that she looked at the independent councillors with suspicion.

53. Cllr Shah stated that to this date the councillors had not apologised. She stated that if a member of her group had done this she would have apologised straight away.
54. I stated that in her complaint Cllr Shah had stated that Cllr Williamson was also in the Liberal Democrats room when Cllr Kenyon had made the recording but she was not included in the complaints. I asked if this was correct. Cllr Shah stated that it was. She stated that because of personal issues Cllr Williamson had which she was aware of, she had not complained about her.
55. I asked Cllr Shah about her comment in the complaints that she and the independent councillors had significant abuse directed at them as a result and asked if she could give some examples. 'She stated that some members of the Asian community could not handle having a female Council Leader and some members of the white community could not handle having a Muslim as Leader of the Council. She stated that there were also some far-right people who accuse her of taking brown envelopes and of having criminal connections because her brother went to prison.
56. Cllr Shah stated that she had received racist abuse on social media. She stated that someone had said that she needed to be "finished off".
57. Cllr Shah stated that at one point Cllr Kenyon had his ear at the door of her room. She stated that it was freaky.
58. Cllr Shah stated that the national Liberal Democrat party had not been able to formalise a panel to investigate despite complaining to them about this six months ago.
59. I asked Cllr Shah if she had any evidence other than the contents of the video to support the contention that the other councillors knew what Cllr Kenyon was doing. She stated that she did not. She stated

that at one stage on the video Cllr Hamblett can be seen in the corridor with Cllr Kenyon listening to his phone.

Evidence of Cllr Hince

60. Cllr Hince confirmed that he is a member of the Council and has been for two years. He explained that in May 2024, after the elections the Council fell into no overall control. He stated that where that happens the process is that the different groups try to form a majority. He stated that he is the Leader of the Independent Group on the Council and he met with the other independent groups but they could not find any common ground to form a coalition.
61. Cllr Hince stated that he was invited to meet with Cllr Shah, the Leader of the Council, to discuss an informal arrangement. He stated that he had made an election pledge that he would not enter a coalition with the Labour Group.
62. Cllr Hince stated that he was aware that Cllr Shah had also met with the Liberal Democrat Group leader Cllr Sykes.
63. He stated that he and Cllr Navesy met with Cllr Shah to discuss a working agreement.
64. Cllr Hince stated that the meeting with Cllr Shah was secretly recorded by Cllr Kenyon and selected snippets of the recording were placed on social media to make them look bad.
65. Cllr Hince stated that after that happened his life, "went to shit." He stated that he was subjected to horrendous vile abuse online, including death threats. He stated that his children could not go to school. He stated that abuse was left on his mother's grave.
66. Cllr Hince stated that the Council put CCTV and other security measures in his house as a result. He stated that he lost his job because of the negative publicity.
67. He stated that Cllr Kenyon also gave him abuse when he left the meeting with Cllr Shah.

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68. Cllr Hince stated that he does not do politics and he had not known what a cesspit these people operate in when he became a councillor.
69. Cllr Hince stated that it was the worst moment of his life and has had a significant impact on him as set out in the confidential appendix.
70. Cllr Hince stated that he was appalled by the Liberal Democrat party. He stated that he has not been told directly by the Liberal Democrat party what the outcome of their investigation had been. He stated that he had made a complaint but was told that, as the Council had already complained, it was an ongoing investigation and he could not make one.
71. Cllr Hince stated that the behaviour was malicious and was an orchestrated load of ferocious abuse. He confirmed that he had reported the issues to the police but they had not been very helpful. He stated that some of the comments had maybe not crossed the criminal threshold.
72. Cllr Hince stated that it was a private conversation. He stated that they had gone to discuss a working relationship for the benefit of they represent. He stated that they have achieved things as a result, for example the CSE inquiry and standing against the development of the Green Belt has happened as a result of their involvement.
73. I asked Cllr Hince why he had not submitted a complaint himself. He stated that he had been told by the Chief Executive of the Council that the Council would handle the complaint and also make complaints to the police and the Liberal Democrat party. He stated that he was not of a mind to make a complaint himself because of that state of mind he was in. He stated that he does intend to take his own private legal action once this complaint is finished.
74. Cllr Hince stated that he was perplexed about the time taken for the investigation and had been chasing the outcome. He stated that he had not been kept up to date. He stated that he had not raised the

complaint but he was a victim and believed he was owed a duty of care to include him in the investigation.

75. Cllr Hince stated that there may be no direct connection between Cllr Kenyon and the death threats but people sharing the recording was what led to the threats and Cllr Kenyon is responsible for that. He stated that he did not think that Cllr Kenyon could claim the consequences were not his responsibility. He stated that it only would have taken one person to take the matter further and put a knife in him. He stated that someone had found out where his mother was buried so they could find out where he lived. He stated that there had been no remorse for what happened.,
76. Cllr Hince stated that Cllr Kenyon's actions beggared belief. He stated that Cllr Kenyon had been campaigning in his ward. He stated that he is disappointed by the way the Liberal Democrat party had dealt with things. He stated that there had been no decency to reach out and apologise. He stated that he is still waiting for the Council to tell him what the outcome of the complaint to the Liberal Democrat party was.

Evidence of Cllr Navesey

77. Cllr Navesey confirmed that she is a member of the Council and has been since May 2024. She explained that she had been elected at the start of May and they had not known that the Labour administration would lose its majority on the Council in the elections. She stated that for the next three weeks after that as the Council was now in no overall control, it was difficult to say who would be the administration after Annual Council.
78. Cllr Navesey stated that she started getting messages from residents in Shaw, saying that she should not prop up Labour.
79. She stated that she and Cllr Hince were invited to meet with other Councillors to see if they wanted to join up with them. She stated that they were invited to meet Cllr Shah. She stated that there had been two meetings with Cllr Shah and she had not attended the first one but had attended the second one.

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80. Cllr Navesey stated that she was worried as a new councillor and just sat and listened. She stated that when she and Cllr Hince left and were walking down the corridor Cllr Kenyon had appeared from a room and approached them holding a mobile phone videoing them. She stated that Cllr Kenyon said, "this is going everywhere." She stated that Cllr Kenyon laughed.
81. Cllr Navesey explained that she is a member of the Shaw Independents group but on the ballot paper it said that she was an independent. She stated that Cllr Hince, who is the leader of the group, had already been a member of the Council for 12 months before she was elected and she, Cllr Hince and other members of Shaw Independents had been members of the Town Council for a while.
82. Cllr Navesey stated that the recording of the meeting had been shared on social media and a woman she had known well commented calling her a traitor and scum. She stated that the recording had been posted all over social media.
83. She stated that they had agreed to have a working agreement with Labour and then she had gone away on holiday. She stated that it had been a holiday from hell because of the abuse she had received over social media and in texts. She stated that she did not think that she had done anything wrong. She stated that the recording had incited hatred against her and she was still receiving abuse now.
84. I asked Cllr Navesey why she had not made a complaint herself. She stated that immediately after it happened she went on holiday. She stated that she had been appalled. She stated that she could not do anything when she was away. She stated that she thought that the Council would deal with it itself as it happened in a Council building. She stated that she had not had any discussion with Council officers about the process for dealing with complaints.
85. I asked Cllr Navesey how she was aware of the investigation. She stated that she had been liaising with Cllr Hince about it.

86. Cllr Navesey stated that she just wanted to explain how Cllr Kenyon's actions had affected her and her family. She explained that her children are in their 20s and 30s and had been subjected to vile comments about her and her family. She stated that there was a man on a blog who kept making comments, including accusing her of reporting her nephew to the police for murder which is not true. She stated that she is seeing someone in the Council about getting extra security because of all of this. She stated that she should not have to live in fear because of someone's silly actions.

Evidence of Cllr Hamblett

87. Cllr Hamblett explained that he has been a member of the Council since 2019 and had become a parish councillor in 2015. He confirmed that he had received training on the code of conduct three times. He confirmed that he was aware of the need to comply with the code when acting as a councillor.
88. Cllr Hamblett confirmed that he had been in the Council's offices when Cllr Kenyon had recorded a meeting taking place between Cllr Shah, two independent councillors and the then Chief Executive.
89. Cllr Hamblett stated that he was not aware what Cllr Kenyon was doing. He stated that he only became aware of it a few hours later when the recording appeared on Facebook.
90. I asked Cllr Hamblett what he discussed with Cllr Kenyon when he is seen on the CCTV recording talking to him. Cllr Hamblett stated that he had been heading towards the kitchen as he was going to wash his cup and make a cup of tea. He stated that he offered Cllr Kenyon a brew, he stated that he said that he was going to boil a kettle and asked Cllr Kenyon if he wanted a brew. He stated that Cllr Kenyon had said no, so he replied fine and went and made himself a drink.
91. Cllr Hamblett stated that he did not think to ask Cllr Kenyon what he was doing. He stated that the corridor can be quite a busy place and people come and go. He stated that he had no knowledge whatsoever of what Cllr Kenyon was doing. He stated that he did not see or hear anything outside of Cllr Shah's room. He stated that he

can be quite oblivious sometimes. He stated that with the kettle boiling and the dishwasher going it was quite loud so couldn't hear anything.

92. Cllr Hamblett stated that he left with Cllrs Murphy and Williamson. He explained that he does not drive and one of them probably gave him a lift.
93. He explained that the Liberal Democrat room is just one large room with a big table and several desks in it. He stated that he went in just to do some case work, print some documents and do some notes and things.
94. Cllr Hamblett stated that he wasn't aware of Cllr Kenyon's recording until later when it appeared on social media. He stated that he was quite shocked at first. He stated that he was more amazed that he was not aware about what had taken place.
95. I asked Cllr Hamblett why, when the Monitoring Officer asked him if was aware of the recording at the time, he did not answer. He stated that he was surprised that a complaint had been made about him. He stated that he had not taken any part in the recording. He stated that it was quite a strong allegation against him and his character. He stated that he and Cllr Shah had a relationship of trust. He stated that he felt that he had nothing to answer for. He stated that he felt that he had not done anything to offend or upset Cllr Shah and cause this complaint from her.
96. Cllr Hamblett stated that he had not done anything to cause this. He stated that he was quite saddened by the whole thing. He stated that there had been a segregation of nearly half the councillors away from officers as a result of this. He stated that he felt it had been dealt with in an undue manner by Cllr Shah.

Evidence of Cllr Kenyon

97. Cllr Kenyon explained that he has been a member of the Council since 2021. He confirmed that he had received training on the Code

of Conduct and that he was aware of the requirement to comply with the Code when acting as a councillor.

98. Cllr Kenyon confirmed that he did record a meeting which had taken place between Cllr Shah, two independent councillors and the then Chief Executive and Deputy Chief Executive of the Council. He stated that he took exception to the use of the word "covert" to describe it. He stated that he could clearly hear what was happening in the meeting in the corridor outside. He stated that he did not use any covert listening equipment. He stated that he simply used the standard voice recording memo app on his phone. Cllr Kenyon stated that the recording took place outside the room and no device was placed in the room. I asked Cllr Kenyon if he had the consent of the people in the room to record their meeting. He stated that he did not. I asked if they were aware that he was recording at the time. Cllr Kenyon stated that they were not.
99. I asked Cllr Kenyon what he did with the recording. He stated that he listened to it to check the quality and then he shared it. Cllr Kenyon stated that he made the recording in the public interest. He stated that he could not believe that the parties were in the room together despite the comments that they had made about each other in the past.
100. Cllr Kenyon stated that he knew what he was doing was wrong but he considered that he was doing it for the right reason; people deserved to know what was happening; not only were the Shaw independents and labour considering sharing power but that the chief executive was brokering the deal. He stated that Oldham is a grim place to operate as a politician and a lot of things happen which people do not believe. He stated that it is a morass of lies and untruths and in that split second he made the decision to record the meeting. He explained that he did this because he did not believe what he was hearing and he knew that if he reported it his word would not be sufficient because it would be denied.
101. Cllr Kenyon stated that you only need to look back at Council meetings over the last two years to see vitriol and disbelief that there is in Oldham. He stated that a councillor's word means not

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very much. He stated that he made the decision not to go to the bathroom but stop and record the meeting. He explained that he had been on his way to the toilet, which is opposite Cllr Shah's office when he heard the meeting.

102. I asked Cllr Kenyon who he shared the recording with. Cllr Kenyon stated that he did not believe that it was relevant who he had shared it with. Cllr Kenyon explained that he did not share it publicly himself because he did not want it to be tainted with a political bent. He stated that he wanted people to hear it without the taint of political bias. He stated that he shared it with someone who would not be tainted by this bias. He stated that he knew it was going to be shared by the person he shared it with.

103. I asked Cllr Kenyon what he was doing in the Council's offices at the time. He stated that he is allowed to be.

104. I stated that the complaint also cited Cllr Hamblett, Murphy and Sykes, who the complainant alleges were in the Liberal Democrat office at the time. Cllr Kenyon stated that it is fairly clear from the video who was in the office. I asked if those councillors were aware of what he was doing. Cllr Kenyon stated that they were not aware.

105. I stated that Cllr Kenyon could be seen on the video talking to Cllr Hamblett. I asked Cllr Kenyon if they discussed what Cllr Kenyon was doing. Cllr Kenyon stated that they did not. Cllr Kenyon stated that if I knew Cllr Hamblett he would understand that. Cllr Kenyon stated that he could not remember exactly what Cllr Hamblett had said. He stated that he prepared a note of what had happened a few days after the events, so it was nearly contemporaneous. He stated that the note said the Cllr Hamblett had said something like, "do you want a brew? I'm going to the kitchen" He stated that this was consistent with what he remembered. I asked Cllr Kenyon if he could provide him with a copy of the note. Cllr Kenyon said that he would not, saying that they were private notes.

106. Cllr Kenyon stated that there had been no discussion with any of the other councillors about what he was doing. I said it seemed surprising given the nature of the meeting and Cllr Kenyon's

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thoughts about it that he would go in and out of the group room over the course of around an hour and not mention what he had heard. Cllr Kenyon stated that he had not and none of the members in the room had been aware what he was doing. He stated that the first time those members had become aware of what he had done was when the recording was made public.

107. I stated that in his response to the Monitoring Officer Cllr Kenyon had apologised for what he did and asked the Monitoring Officer to pass on his apology. Cllr Kenyon confirmed that he had done so. I asked if he had apologised directly to those in the meeting. Cllr Kenyon stated that he had not. He stated that the code of conduct process had started fairly soon after the incident had happened and he did not want to circumvent the process. He stated that he would apologise directly to Cllr Shah. He stated that he had defended Cllr Shah in the past.

108. Cllr Kenyon stated that, apart from the flights of fancy in Labour press releases about spies and covert devices, for him the facts are largely not in dispute. He stated that it was about his state of mind at the time. He stated that he accepted that what he had done was wrong but he had absolutely done it in the public interest. He stated that the people in the room had called each other out in the past and said horrendous things about each other. He stated that he was appalled that the then Chief Executive had been persuading the participants in the room and campaigning for Labour and the Shaw Independents to come together to form an administration. Cllr Kenyon stated that the then Chief Executive's conduct was clearly a political act and he believed that the then Chief Executive had acted improperly. He stated that the independent councillors had campaigned and been elected as being anti-Labour and Cllr Shah had long complained about bullying and abuse online which the Shaw Independent councillors have taken part in and benefitted from. Cllr Kenyon stated that because of all this, he believed that it had been in the public interest for people to know what was happening.

Evidence of Cllr Murphy

109. Cllr Murphy explained that he has been a member of the Council for 12 years. He confirmed that he had received training on the code of conduct and was aware of the requirement to comply with the code when acting as a councillor and that was something he always tried to do.

110. Cllr Murphy stated that he accepted that he was present in the Council's offices in the Liberal Democrat room when Cllr Kenyon had recorded a meeting between Cllr Shah, two independent councillors and the Chief Executive. He stated that he was in a room which he was entitled to be in. He stated that the Liberal Democrat councillors conduct a lot of their business in that room.

111. I asked Cllr Murphy if, as well as him, and Cllr Kenyon, Cllrs Hamblett, Sykes and Diane Williamson were also there. Cllr Murphy stated that accorded with his recollection of who had been there. Cllr Murphy stated that he now knows that Cllr Kenyon was recording the meeting but he was not aware at the time that Cllr Kenyon was doing it.

112. Cllr Murphy stated that he was surprised when the Monitoring Officer said that the complaint was moving forward. He stated that he was just in a room. He explained that he was supporting Cllr Williamson. He stated that because he happened to be in the same room he was being tarred with something he had absolutely nothing to do with.

113. He stated that it feels like Cllr Shah just wants heads to roll and he is being accused of guilt by association. He stated that this has made him fall out of love with being a councillor. He stated that the only evidence against him is a video of him going down a corridor.

114. Cllr Murphy stated that he knew nothing about the recording. He stated that he had no discussions with Cllr Kenyon about what was taking place.

115. Cllr Murphy stated that there was a discussion about independent councillors being in Cllr Shah's office. He stated that they were quite loud and could be heard in the corridor. He stated that he could not remember who said it but someone said something like, "I wonder if they are doing a deal." He stated that there was no discussion about recording the conversation or documenting it; it was just a discussion. He stated that it was just a discussion like you would have in the street. He stated that other than that they had just been talking in general and that was it.

116. Cllr Murphy stated that he did not know exactly who had been in Cllr Shah's office. He stated that all he knew was that the independent councillors were in there. He stated that he did not know the Chief Executive was in there until Cllr Kenyon said that he had done the recording.

117. Cllr Murphy stated that Cllr Kenyon told them that he had made the recording when they were in the room. He stated that they were all in shock that the Chief Executive had been in the room. Cllr Murphy stated that Cllr Kenyon played a snippet of his recording to them in the room. He stated that they were all in shock that the Chief Executive had been brokering a deal.

118. Cllr Murphy stated that at that point Cllr Sykes asked everyone to leave except for him and Cllr Kenyon. He stated that they then all left to leave just Cllr Sykes and Cllr Kenyon in the room; Cllr Murphy stated that he was unaware as to what they discussed after he left but he was aware they were due to have a meeting with opposition councillors from another party imminently.

119. Cllr Murphy stated that he did not have any other discussions about the recording after that with anyone. He stated that he was shocked as everyone else when he heard it on social media.

120. I asked Cllr Murphy if he thought what Cllr Kenyon did was wrong. Cllr Murphy stated that at the time he was more in shock that the Chief Executive could be heard brokering a deal.

121. Cllr Murphy stated that there was a suspicion that the then Chief Executive was too friendly with the Labour administration and his actions were too top heavy and not politically neutral and heavy handed. He stated that he was more shocked by that; it was horrendous.

122. Cllr Murphy stated that he did not say to Cllr Kenyon that he had been out of order. He stated that it had happened so quickly. He stated that Cllr Kenyon had only played a snippet of the conversation. He stated that the whole thing was only a couple of minutes which was not long enough to call out any alleged inappropriate behaviour.

123. I asked Cllr Murphy what Cllr Kenyon used to record the conversation. Cllr Murphy stated that he thought Cllr Kenyon had used his phone.

124. Cllr Murphy stated that within seconds of hearing the part of the recording Cllr Sykes asked them to leave.

125. Cllr Murphy stated that he and the other councillors have not spoken about the complaint. He stated that they have been deliberately quiet about it. He stated that Cllr Williamson said that she had been cleared. He stated that they had no discussions about what they would say.

126. I asked Cllr Murphy why when the Monitoring Officer had asked him if he knew of the recording at the time he had not answered him. Cllr Murphy stated that he wished he had now. He stated that he wished the Monitoring Officer had rung him rather than sent him a formal email. He stated that he wished he had told the Monitoring Officer that he had no knowledge at the time. He stated that he felt that he had already responded to the Monitoring Officer, so that was why he had replied as he did.

127. Cllr Murphy stated that by the time the Monitoring Officer wrote to him the recording had been very well circulated on social media and Cllr Shah had brought it up at full council in May. He stated that everyone was aware of it by then.

128. Cllr Murphy stated that a leaflet and the CCTV video had been circulated on social media containing confidential information about the investigation. He stated that the leaflet with stills from the video had been circulated to a number of houses in Shaw and Crompton.

129. Cllr Murphy stated that it felt like because he was being quiet and not making public statements his guilt had already been decided.

130. Cllr Murphy stated that he had been in the wrong place at the wrong time. He stated that he felt that the complaint was politically motivated and named anyone who happened to be in the room. He stated that he understood the complaint about Cllr Kenyon but he could not understand how just being in the room could be evidence. He stated that he genuinely feels that he had done nothing wrong.

Evidence of Cllr Sykes

131. Cllr Sykes explained that he has been a member of the Council for over 30 years. He confirmed that he had received training on the code of conduct and knew that he was required to comply with the code when acting as a councillor.

132. Cllr Sykes confirmed that he was in the Council's offices in the Liberal Democrat room at the time when Cllr Kenyon recorded a meeting which was taking place between Cllr Shah, two independent councillors and the then Chief Executive.

133. Cllr Sykes stated that he was in the Council's offices to have a meeting with colleagues in other groups about the potential for an administration at the annual council meeting. He explained that this was one or two days later.

134. Cllr Sykes stated that he did not know that Cllr Shah was in her office with the others. He stated that he did not know that Cllr Kenyon was recording the meeting.

135. Cllr Sykes stated that when Cllr Kenyon came back into the group room he mentioned that he had heard a meeting. He stated that Cllr

Kenyon waved his phone around and said that he had managed to record part of it. Cllr Sykes stated that there had been a lot going on but his recollection was that Cllr Kenyon had said this but he could not remember if that was the first, second or third time he came back into the room.

136. Cllr Sykes stated that he said that everyone else needed to leave apart from him and Cllr Kenyon as they needed to prepare for the meeting they were having. He stated that the others were talking and he and Cllr Kenyon needed to prepare for the meeting. He stated that there was no discussion with Cllr Kenyon about the recording, they talked about the meeting they were there to have.

137. He stated that he was not paying much attention to the recording as he was focussed on the negotiations they were there to have. He stated that Cllr Kenyon did not discuss with him what he intended to do with the recording. He stated that, if Cllr Kenyon had told him what he was doing, he would have told him to stop. He stated that he did not do anything afterwards about what Cllr Kenyon had done; he stated that there was no point as Cllr Kenyon had done it. After the interview Cllr Sykes stated that when he realised what Cllr Kenyon had done, he asked him to report himself to the standards committee (which he did). He stated that he was also reported to the party. He stated that by the time that the Council had responded to Cllr Kenyon's report to say he could not report himself, the complaints process was already in process, so they did not put in a second standards complaint against him.

138. Cllr Sykes stated that he only found out that Cllr Kenyon intended to put the recording in the public domain after he had done it. He stated that from memory that was the first time he had heard the recording in its entirety. He stated that he was shocked and surprised.

139. Cllr Sykes stated that he was focussed on the meeting he was there for. He stated that it did not cross his mind that he could or should do something about what Cllr Kenyon had done. He stated that they had discussed the recording at a group meeting but it had been a brief discussion.

140. I asked Cllr Sykes why, when the Monitoring Officer asked him if he knew at the time that Cllr Kenyon was recording the meeting, he did not answer the question. Cllr Sykes stated that he was not having trial by email. He stated that he had made it clear to the Monitoring Officer formally and informally that there was no merit in the complaint.

141. Cllr Sykes stated that he was being accused of something because he happened to be in a room at the same time. He stated that another colleague who had been in the room as well had the complaint against her dismissed.

142. Cllr Sykes stated that Cllr Shah was wanting to get media publicity about him. He stated that she and other councillors had referred to this in the Annual Council meeting and at other subsequent council meetings, despite clear advice that she should not refer to this matter as it was subject to an investigation. He stated that people should not do that. He stated that the CCTV coverage had been shared with political opponents. He stated that this included a still from the video which had been printed and distributed in the area.

143. Cllr Sykes stated that if he had known what Cllr Kenyon was doing he would have told him to stop.

144. Cllr Sykes stated that the officers' involvement in the meeting with Cllr Shah was quite shocking and that encouraged Cllr Kenyon to record it because he could not believe it. He stated that he would have told Cllr Kenyon not to record it but he could understand why he did, as he would not have believed Cllr Kenyon if he had told him what had happened without the recording.

Findings of fact

145. The following facts relevant to the complaint in the case are not in dispute. Cllr Kenyon accepts that he recorded the meeting in Cllr Shah's office and that he did not have permission to record the meeting nor were the people in the meeting aware that he was recording it. He also accepts that he supplied the audio recording of

the meeting to an unnamed third party and that the recording was then placed on social media.

146. In respect of the facts in dispute, my findings on the balance of probabilities, are:

- (a) Cllr Kenyon placed a device immediately outside Cllr Shah's office which he used to record the meeting;
- (b) Cllrs Hamblett, Murphy and Sykes were aware immediately after Cllr Kenyon made the recording and before he passed it to anyone else that he had made the recording;
- (c) Cllrs Hamblett, Murphy and Sykes were not aware that Cllr Kenyon was recording the meeting until he had done it;
- (d) When asked directly by the Monitoring Officer if they were aware of the recording being made by Cllr Kenyon at the time, Cllrs Hamblett, Murphy and Sykes did not answer the question.

147. The reasons for my findings are:

- (a) This is clearly seen on the CCTV recording. Cllr Kenyon can be seen kneeling down outside the room and placing something on the floor and retrieving it later. As he walks away from whatever he has placed he is listening on his phone. His suggestion that he merely used his phone to record the meeting is not consistent with the CCTV evidence;
- (b) The evidence of the councillors is inconsistent. Cllr Kenyon states that he did not tell the others about the recording and they only became aware of it when it was published on social media. Cllr Hamblett also stated that. However, both Cllr Murphy and Cllr Sykes stated that Cllr Kenyon played them a snippet of the recording. On balance I believe the evidence of Cllrs Murphy and Sykes. It is not in their interests to lie about this and the evidence of Cllr Kenyon and Hamblett is not credible. This was such a significant

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issue in terms of what was happening at the Council that Cllr Kenyon decided to secretly record what was happening and pass it to someone, presumably in the knowledge it would be published. It is inconceivable that he would not have mentioned it to his close colleagues;

- (c) They all deny being aware of this. They were in the Liberal Democrat room throughout the time Cllr Kenyon was recording, apart from Cllr Hamblett, who left to make a cup of tea. He spoke to Cllr Kenyon but the CCTV has no audio so there is no evidence of what was said apart from their evidence which is consistent and cannot be contradicted by what is in the recording;
- (d) This is clear from all of their responses.

Reasoning as to whether there is a breach of the Code.

148. The relevant parts of the Code which I have considered during my investigation are paragraphs 4.1, 5.1, 7.1 and 8.1.

149. The test in deciding whether or not there has been a breach of the code is objective: would a reasonable person be aware of all the material facts and ignoring all immaterial factors consider that there has been a breach of the code?

150. The Code only applies to the conduct of a member acting as a councillor and not at any other time. I have considered whether the councillors were acting in his capacity as a councillor when they acted as they did. In my view they clearly were and they have not sought to deny that. They were on council premises, accessing facilities provided to them by the Council to carry out their council duties.

151. I have considered whether in acting as he did the councillors failed to comply with the Code. The position regarding Cllr Kenyon is clearly different to that of the others. Therefore, I shall consider his position first and separately from the others.

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152. Cllr Kenyon accepted in his response to the Monitoring Officer that he should not have done what he did and apologised, asking for that apology to be forwarded to those present at the meeting.
153. His actions were entirely wrong, as he recognises, and a misuse of Council facilities offered to him and his group. It is fundamental that groups have facilities and the ability to use those facilities discuss confidential issues in a safe space without anyone secretly recording them. This amounted to a breach of paragraph 7.1 of the Code.
154. In acting as he did Cllr Kenyon breached paragraphs 4.1 by disclosing confidential information which he had obtained without authorisation or consent.
155. Cllr Kenyon also brought his office and the Council into disrepute. The public are entitled to expect that councillors will act fairly and will not secretly record private meetings taking place between other councillors or officers. The action of doing so undermines trust in councillors and their integrity and thus brings the Council into disrepute.
156. Cllr Kenyon also referred to a note which he had prepared shortly after the events, as evidence that Cllr Hamblett did not know about the recording. He refused to provide a copy of the notes saying that they were "private." It is difficult to see how notes prepared by Cllr Kenyon himself could be private. The only conclusions I can draw from his refusal to supply them was because they contained information he wanted to withhold from the investigation. I also asked Cllr Kenyon to whom he passed his audio recording and he refused to tell me. In these actions Cllr Kenyon failed to co-operate with my investigation in breach of paragraph 8.1 of the Code.
157. Although Cllr Kenyon has accepted that what he did was wrong and apologised (though not directly to the people affected) he has and continues to seek to justify his actions by stating that they were in the public interest. There is no justification for the actions he took and it is disappointing that he still seeks to excuse and minimise his actions.

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158. Cllr Kenyon cites as the justification what he did the public interest in people being aware that councillors were having discussions with other groups when they had told the electorate in campaigning they would not do so and in the Chief Executive being involved in the discussions.

159. It is a fact of politics that if a Council moves into no overall control then groups will consider whether arrangements can be made to achieve a grouping which will enable a majority to be formed to enable clear decisions to be made. This could be in the nature of a formal coalition or a working arrangement and it was inevitable following the elections in May 2024 that this would happen in Oldham. It is not unusual that groups who may have disagreed quite strongly and criticised each other in the past and in the election campaign speak about the possibility of working together.

160. Cllrs Kenyon and Sykes were in the Council building on 20 May 2024 to have discussions with another group about working together. The LGA guidance on councils moving into no overall control states:

Often, chief executives will help broker and facilitate deals between different political groups.

161. The LGA Guidance for councillors on Councils with no overall control states:

Ask your chief executive for advice and information: during the discussion stage, your chief executive will become as involved as you want them to be. They, and other officers, can help with practical measures such as arranging meeting rooms, providing information and facilitating discussions, and of course can offer impartial and confidential advice.

162. Whilst it is important that Chief Executives remain politically neutral this does not prevent them from supporting and facilitating discussions between political groups after elections. There is nothing to suggest that what the chief executive at the time did went beyond what is suggested in the LGA guidance as appropriate action in facilitating and brokering discussion.

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163. Cllr Kenyon took exception to the suggestion that he used a covert recording device to record the meeting and stated that he simply used his phone. The CCTV evidence shows him placing something outside the room and then listening to his phone as he walks along the corridor. It also shows him retrieving whatever that device was before he goes into the Liberal Democrat room for the final time that day.

164. Only Cllr Kenyon knows exactly what device he used. I cannot say whether it was, as the Complainant suggests, "sophisticated spyware". It may be that he has two phones. In any event it is not relevant to my investigation or finding the exact device which Cllr Kenyon used to record the meeting, the breach of the Code arises from the fact he recorded the meeting secretly without the knowledge or consent of those involved.

165. Given the nature of the breaches of the Code there is no impact on Cllr Kenyon's Article 10 rights which arise from the finding of breach or any sanctions which might be imposed.

166. In relation to the other councillors the complaint against them is based on the assertion that they must have known what Cllr Kenyon was doing and did nothing about it. On the evidence my finding is that they were not aware of what he was doing until after he had made the recording, albeit they were made aware immediately afterwards and before they left the building. The Code does not require them to report another councillor who has breached the Code nor to take specific steps when they become aware of misconduct of another councillor.

167. The response of the councillors, including Cllr Sykes as group leader, in apparently doing nothing to admonish Cllr Kenyon on his actions or advise him to delete the recording or at least not publish it or arrange for it to be published is disappointing but it is not a breach of the Code.

168. Cllr Sykes points out that he did report Cllr Kenyon to his party and also suggested Cllr Kenyon refer himself to the Standards

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Committee which he did, so some action was taken, albeit this was after the recording had been made public.

169. Cllrs Hamblett, Murphy and Sykes all refused to answer a simple question from the Monitoring Officer when he asked them if they were aware that the recording was being made at the time. This was a simple question and highly pertinent to the complaints being made against them. They have given no satisfactory explanation of why they did not answer this straightforward question. In my view their failure to answer a straightforward question with an answer amounts to a failure to co-operate with a code of conduct investigation on breach of paragraph 8.1 of the Code. Although this was a question asked by the Monitoring Officer at the initial assessment stage it was part of the overall process and in my view the term co-operate with the any investigation and/or determination includes the whole complaints process.

Other Issues

170. I wrote to all of the councillors who are the subject of complaints inviting them to be interviewed via Teams or Zoom. This has been my practice since March 2020 with all standards investigations for all complainants, witnesses and subject members. In that time, I have carried out a significant number of investigations and it is extremely rare for anyone to ask for interviews to be held in person. As far as I can recall only one member has insisted that they would only be interviewed in person.

171. In this case all of the subject members responded asking for their interviews to be in person. In my view this makes it highly probable, in fact almost certain, that their responses were co-ordinated. As I have indicated it is extremely rare for anyone to respond to a request for a virtual interview by asking for a personal meeting. For four parties in the same case to respond in exactly the same way it is highly unlikely that they have done this independently. In my opinion the chances that they have independently decided to do this with no co-ordination is virtually nil.

172. In the cases of Cllrs Murphy and Sykes, they did eventually agree to meet virtually. I agreed to meet with Cllr Hamblett in person as a result of the reasons he gave to me for wishing to do so.

173. I advised Cllr Kenyon that meeting in person was not necessary and would increase costs for the Council. I asked him if there was any reason why the interview needed to be in person. He responded stating:

The request for further investigation was not made by me so I'm not responsible for any of these costs.

I'd feel happier doing this in person and don't feel the need to explain any further. I will not be available via Teams.

174. Cllr Kenyon's preference to hold the meeting in person resulted in an additional cost to the Council of approximately £650 plus VAT entirely unnecessarily. The approach taken by Cllr Kenyon to this as a councillor is both surprising and disappointing. I would have expected a councillor who did not have a specific and valid reason for needing an interview to be in person to recognise the imperative to reduce the spending of council tax payers money unnecessarily and to act accordingly.

Finding

175. My finding is that there:

- i. **has been a failure** to comply with paragraphs 4.1, 5.1, 7.1 and 8.2 of the Council's Code of Conduct by Cllr Kenyon;
- ii. **has been a failure** to comply with paragraph 8.2 of the Council's Code of Conduct by Cllrs Hamblett, Murphy and Sykes.

176. I will be sending a copy of my final report to the Monitoring Officer of the Council.

Comments on the Draft Report

177. I sent a draft of my report to the Complainant and Cllrs Hamblett, Kenyon, Murphy and Sykes for their comments. I received comments from each of them and these are summarised below together with my views on them.

178. The Complainant suggested some clarifications to points which she had raised in her evidence. These resulted in some minor amendments being made to that part of my report but these had no impact on my findings.

179. Cllr Hamblett sent a response (SG11). He indicated that the details of his committee memberships was wrong and this has been amended. He also made comments about the political makeup of the Council which has been amended (see below). There were no other changes made as a result of Cllr Hamblett's comments.

180. Cllr Kenyon sent me a response (SG12). He also referred to the political makeup of the Council which I have changed. Cllr Kenyon stated that the date of his apology should be included. The offer of an apology was made in Cllr Kenyon's response to the Monitoring Officer about the complaint against him. This was sent on 19 July 2024.

181. Cllr Kenyon makes comments on evidence provided by some of the evidence raised by the other witnesses. He is entitled to disagree with what they have said but the evidence recorded is what they have said.

182. Cllr Kenyon stated:

Para 147 a) You claim that the CCTV is inconsistent with my statement about using my phone to record the meeting. In what way? I placed my phone on the ground, and moved away. I then retrieved my phone. This is exactly what is shown on the CCTV. Your conclusions are unsupported opinion and undermines my statement without any evidence.

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183. The recording shows Cllr Kenyon placing something by the door. After having placed it he is seen listening to his phone or some other device further down the corridor. The evidence shows two devices were being used. As I have indicated regardless of how he recorded the meeting he breached the code. It is also not the case that he simply stood in the corridor and recorded what he could hear openly he placed a recording device whether it be his phone or something else directly outside the room and left it there.

184. In respect of paragraph 156 Cllr Kenyon stated:

my notes are private. Nowhere in the standards process does it say that personal notes must be handed over to the standards process. Your conclusions are complete supposition and without basis. You have equated privacy with guilt and completely ignored the potential for abuse that releasing these notes to you could have. This whole standards enquiry has suffered leaks, news stories, facebook posts, speeches in the chamber and also release of excerpts of your own draft report. Why would I release private notes to a process that could very easily be published on Facebook soon after?

185. Cllr Kenyon sought in his evidence to me and in his comments on the draft report to state that his evidence was supported by contemporaneous notes but he refused to share those notes. If those notes relate to issues connected with a standards complaint then he should share them with the process. He cannot have his cake and eat it, saying my evidence is right because it is supported by contemporaneous notes but I am not going to provide those notes to do this because they are "private".

186. Cllr Kenyon also stated:

there is absolutely no evidence of "sophisticated spyware" (this phrase in itself is loaded and biased as it is lifted straight from the ex chief exec's complaint and subsequent Labour press release). If there is evidence to challenge my own account that merely my own phone was used, then you should include it in

your report eg a screengrab from cctv. All the available evidence is completely supportive of me using my only phone, as I stated. Why are you repeating an allegation which has no evidence, merit or support, and denying a statement of facts without any evidence?

187. It is somewhat difficult to say that I do not have the evidence to support an allegation without saying what the allegation is. This paragraph makes it clear that I cannot make any findings on this point and that it is a breach of the Code whatever device(s) was used.

188. Cllr Kenyon also stated in relation to paragraph 171;

- I sought advice as I was recommended to. Any consistencies in the accounts of my colleagues is not evidence of collusion. I'd also add that your argument is not impartial and is fallacious; on one hand you argue that consistency is evidence of collusion (eg about face-to-face meetings), on the other hand you argue that an inconsistent account is evidence that someone is not telling the truth. Your claim of (in)consistency cannot be used to support two opposing arguments.

189. Cllr Kenyon does not specify who the advice was from. He is conflating two different issues. An assessment of the evidence is part of the investigation process. This is fact specific and inconsistencies are relevant in determine, on the balance of probabilities was likely to have happened. The comments in paragraph 171 about collusion did not relate to the member's evidence about what happened but to the way in which the councillors responded to and cooperated with the investigation process. This is a different issue.

190. Cllr Kenyon further stated:

I was asked to be interviewed six months after I had already acknowledged my error, and apologised for it. There is no evidenced conclusion in this report which goes beyond my statement and apology. Any costs that have been incurred at

this point are caused by the failure of the monitoring officer to follow process, and pass on the apology and acknowledgement.

Further, the complainant and the witnesses to the incident have repeatedly breached the confidentiality of the complaints process, in direct violation of instructions from the monitoring officer. Ensuring that I did the most I could to ensure that I was confident in this part of the process seems not just justified, but essential.

191. The Monitoring Officer considered Cllr Kenyon's offer of an apology and considered that the complaint was sufficiently serious, nevertheless, to warrant investigation and a formal conclusion. That is a decision he was entitled to make. He is not required to accept a proposal for informal resolution if he does not believe that is appropriate.

192. If other members have breached the Code, then Cllr Kenyon should raise that with the Monitoring Officer and that would need to be dealt with through the Council's procedures. It is not within the remit of my investigation.

193. Cllr Kenyon also stated:

I'd also like to address your comment on my own defence of public's right to know. You have no evidence to conclude that my own motivations are not what I have stated ie public right to know. You might not be happy with the reasons I have provided, but without any evidence to the contrary you are happy to state that my motivation of the public's right to know is false. This is unfair and has no merit.

194. Only Cllr Kenyon knows what his motives were for doing what he did. I am clear that as a matter of law he could not justify doing what he did based on a "public interest" test, as set out in the Code and the law.

195. Cllr Kenyon stated:

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To give an example of what I think the public should know is the chief executive can be clearly heard in the recording to state that he would only give "the full picture" to groups who were part of the agreement, and that they would help them "make a narrative" to explain things to people. This goes considerably beyond "facilitating and brokering discussion" and in my opinion is the supposedly politically neutral most senior officer engaging in political campaigning

I enclose a complete transcript of the recordings below for inclusion in your report.

Recording 1

?? It's a league. It's gone off on it because, you know, and in general terms, every council meeting is nearly spoilt by it.

AroojSHah: "Yeah."

?? And then it goes out it doesn't go right.

HarryCatherall "They should ...

?? it'll get worse and worse and worse.

AS: "You can bring it in to the next full council."

HC: "You can mention it almost immediately, but it will go to July Council meeting.

?? Right.

HC: "If you've done the work about it to turn it around, and then it's away isn't it."

AS: "And the difference here is, Mark, and this is really, really important, you know. Like you said before, you will have officer support, so everything will be right, everything will be checked

out, everything will make ... The officers will make sure it is solid because ..."

Recording 2

MarcHince: Two streets where they are not bothered.

?? Correct yeah, but the guidance for people.

MH: Have you got one?

AS: What you have got to understand in this is Marc, what you've got to understand is that it is in my interest for me to make this work.

MH: Yeah.

AS: So there's no there's nothing about it, you know? So once we get the briefing done the whole purpose of them briefings [...] as well. is that we are all averse. And so we know exactly what we saying. how we sign a statement around IX Wireless and stuff like that. It's just not significant enough to be included

MH: No, no, no, I understand that.

HC: And also, what we do in the private room is, this is this factually is where we are, we share with you a full picture.

MH: Yeah.

HC: So you don't go fighting something that you're desperately going to lose.

MH: Yeah.

HC: Nobody wants to do that. Yeah. If we spell out the law to you, and update it, most people, as Marc said, don't want to listen. don't want to believe it. We'll spell it out to you. And then

actually you take a position, a very plain narrative. So know you're not setting yourself up to fail.

MH: Yeah.

HC: It's dead easy to set yourself up to fail in some of these contexts.

[...]

AS: I've got emails that I sent to IX Wireless it was everything I fought for But it was just not good enough. And I my personal view is that Lewis was in her head.

MH He is now. He's trying to use. He's trying to use. Because I said to him today, I said, we need to come using this to try to use emotive subjects like Palestine, IX, whatever it might be, you know, generate this "Labour out" at all costs. [...]

AS: Time and actions will prove stuff.

MH: I'm signing this?

AS: Yeah. [...] whatever you want?

MH: No, are we in agreement? [...] Lee?

[...]

196. Cllr Kenyon's interpretation of the comments made by the chief executive in that meeting do not justify the covert recording of the meeting nor the sharing of it for publication.

197. Cllr Murphy sent me a response to the draft report (SG13) stated that the outcome of my investigation had been published by the Shaw and Crompton independents. I confirmed that my report had only been sent to the Monitoring Officer and the parties and on terms of confidentiality.

198. Cllr Murphy also stated:

I am grateful for your conclusion that there has not been a failure on my part in the code of conduct in relation to the recording.

I am however extremely disappointed in your report which says (4) there has been a failure to comply with the Code with them (me) as they (I) have not co-operated with the investigation process...

I find this an unfair assessment, and untrue I have fully co-operated with the investigation and have done so in a timely manner, I have been fully open and co-operative, the further question asked of the then Borough Solicitor I believed I had already provided a satisfactory answer. No involvement means no involvement. Your "view of none co-operation" is not fact the facts are the aforementioned.

If I had not co-operated at all then I could accept the conclusion, at worst, it is a misunderstanding of what the exactly the Borough Solicitor required. I did respond to him and I thought the answer was clear on both occasions...

199. I set out my rationale for my finding. Cllr Murphy was asked a very specific and direct question which he did not answer. I believe this was part of a deliberate strategy not to be clear on what had happened at the event in question and not to engage openly and clearly with the investigation. I believe that this finding is amply supported by a simple reading of the correspondence and even in stating "I thought the answer was clear". He does not state that he answered the specific question which he had been asked, it is obvious from a simple reading of the correspondence that he did not do so. The failure to answer this explicit and clear question appears to have been a deliberate strategy. Had he and the other members answered that question at that stage it may not have been necessary to incur the expense of an investigation, given my findings.

200.Cllr Murphy further stated:

I would like to address (170 – 171) it feels like you are suggesting some sort of pre-discussion. On your written instruction I sort (sic) advice, that advice was if possible, to avoid an online meeting, and to request a face to face meeting the rationale being in the toxic world I now find myself in at Oldham Council who else is in the room behind the camera? But more importantly I want the investigator to look me in the whites of my eyes and see for themselves that I am fully co-operating, open, honest and respectful of the investigation.

201.Cllr Murphy does not state who that advice was from. As I indicate in my report the use of virtual platforms for interviews for these type of investigations has been the norm since the pandemic. It is very rare for a member or other party to request a face to face meeting in these investigations and to have all four in one case to do so cannot be co-incidence. The only reasonable inference which can be drawn is collusion between them, especially when added to the obvious failure to answer a very simple and straightforward question from the Monitoring Officer with a straight answer by three of the members (all that were asked that specific question.).

202.Cllr Murphy also stated:

(54) Cllr Shah did make formal complaints about Cllr Diane Williamson to both the Liberal Democrat National Party and to Oldham Councils Standards Committee. Cllr Williamson was cleared by the National Party and Oldham Council's monitoring Officer who both decided no case to answer.

203.I do not know how Cllr Murphy would know the details of other confidential complaints but the evidence of Cllr Shah was that she made no complaint to the Monitoring Officer about Cllr Williamson. I was also told this was the case by the Monitoring Officer. Even if it were correct that a different decision was made by the Monitoring Officer in respect of a separate complaint that may have been perfectly justified, all complaints are considered on their own facts and merits.

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204.Cllr Murphy also stated that the details for his memberships of bodies in paragraph 27 was incorrect. I took these from the Council website but have amended them to reflect Cllr Murphy's comments.

205.Cllr Murphy made comments about information relating to the complaints being published by other councillors. These are not within my remit and I understand that they have been referred to the Monitoring Officer for separate consideration.

206.Cllr Sykes made comments on the draft report (SG14). He stated:

It is wrong to say that I failed to comply with the Code. I did respond. That is a fact. I also clarified that and the reasons for my response during my interview. It might have not been the response the then Monitoring Officer wanted but I did respond. It is important to note that this was during the 'informal' process, before the decision to investigate was taken.

207.Cllr Sykes did respond to the Monitoring Officer but he did not reply to a very clear, simple and straightforward question. The initial assessment stage is part of the process and an important one and the Code does not limit co-operation to the investigation or any other stage.

208.Cllr Sykes also raised concerns about alleged breaches of confidentiality of the process by others. This is not part of the remit of my investigation and I have referred these to the Monitoring Officer.

209.Cllr Sykes also stated that the details of his membership of bodies was incorrect. As with all councillors I took these from the Council's website and I apologise if there was an error on my report in copying them.

210.Cllr Sykes also stated that the political makeup of the Council included in my draft report was incorrect. He provided me with some figures though they differ from what is included on the Council's website. I have included the figure on the council's website. The key

point is that after the election the Labour group no longer had a majority on the Council.

211. Cllr Sykes made a number of points about the summary of evidence of others which he disagreed with or felt should be presented differently. This was a summary of the evidence which was given by people to me so I cannot change it. Cllr Sykes stated that the comments about the Liberal Democrat complaints process were wrong. He states that they are not part of the standards process. I agree that they are of limited relevance but Cllrs Shah and Hince both indicated their belief was that that appropriate action had not been taken by the Liberal Democrat group nationally and that exacerbated their concerns. That is a view they are entitled to hold and express.

212. Cllr Sykes states that he has viewed the CCTV recording and he does not believe that this supports my finding. I find this comment difficult to understand as it is extremely clear to me on viewing the recording that Cllr Kenyon bends down outside the room and places an object.

213. Cllr Sykes states that my opinion expressed about the actions taken by him and others is unfair and should not be included. I disagree I believe that as an investigator I am fully entitled to express my views on matters connected with the complaint. I have also not applied a higher standard to Cllr Sykes than to other members of the council, reflected in the fact that my findings in respect of each of them is consistent. Any leader of a group will have expectations of leadership and will have more levers of control over discipline and behaviour of members of their group than other members.

214. In relation to paragraph 161 Cllr Sykes states:

Councillors subject to a Standards complaint may, if they wish, seek advice and it has been the case throughout this process that we were advised to get and take advice. Bearing in mind the nature of and language used in the complaints and the subsequent leaks and commentary to the media, we did seek advice.

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It is therefore quite understandable that there is some commonality in our responses.

'Highly probable' and 'in fact almost certain' are again your subjective opinions and they should have no place in the report. The fact you have never come across requests for personal meetings simply reflects that you have not been asked previously in other matters you have been engaged upon and not that it is wrong for a councillor subject of a complaint to ask to meet face-to-face.

215. Cllr Sykes does not say who advice was sought from. I asked Cllr Kenyon if there were any reasons why he needed the meeting to be face to face. Not only did he not do so he made it clear that was purely his preference. Nevertheless he insisted that the meeting take place face to face. That was entirely unnecessary and he was aware that it would add costs to the investigation. Part of my role is to evaluate evidence and reach conclusions. Based on the evidence I believe that my conclusions were more than justified by the evidence and the actions of the councillors.

216. Cllr Sykes makes reference to Cllr Kenyon making an apology to the Monitoring Officer and the Council choosing not to pass that on. The fact that Cllr Kenyon is clearly set out in the report.

Simon Goacher, Partner
Weightmans LLP
Date: 23 June 2025

Schedule of evidence

SG1	Oldham Council Code of Conduct applicable at the time
SG2	Oldham Council arrangements for dealing with complaints about members
SG3	Record of Interview of the Complainant
SG4	Record of Interview of Cllr Hince
SG5	Record of Interview of Cllr Navesey
SG6	Record of Interview of Cllr Hamblett
SG7	Record of Interview of Cllr Kenyon
SG8	Record of Interview of Cllr Murphy
SG9	Record of Interview of Cllr Sykes
SG10	Complaint forms and associated information provided by the Monitoring Officer, including responses from Cllrs Hamblett, Kenyon, Murphy and Sykes
SG11	Cllr Hamblett response to the draft report
SG12	Cllr Kenyon response to the draft report
SG13	Cllr Murphy response to the draft report
SG14	Cllr Sykes response to the draft report