



PRIVATE AND CONFIDENTIAL

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Leicestershire County Council, into allegations concerning **Councillor Charlesworth of Leicestershire County Council**.

Dated: 14<sup>th</sup> May 2018

# VOLUME 1 REPORT

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**1. Executive Summary**

- 1.1 Councillor Michael Charlesworth is a member of Leicestershire County Council (the Council) having been first elected in May 2005.
- 1.2 Complaints were made to the Council's Monitoring Officer by Councillor Richards and Councillor Dr Eynon following a meeting of the Council on 27 September 2017. The complainants stated that Councillor Charlesworth had breached the Council's Code of Conduct as he had failed to show respect and courtesy towards members of the Council's Independent Remuneration Panel.
- 1.3 The Independent Remuneration Panel was comprised of three individuals, Professor David Wilson, Jayne Kelly, and Michael Pearson all of whom were appointed by the Chief Executive. The Panel was established following the Council elections in May 2017. The purpose of the Panel was to review the Council's Members' Allowance Scheme and to make recommendations to the Council on the allowances paid to Members of the Council.
- 1.4 During the review the Panel was supported by Council officers who provided background information and administrative support. The Council's Political Group Leaders were consulted at various stages during the review, particularly on the composition of the Panel, the background information provided to the Panel and the Panel's draft report.
- 1.5 The Panel's report was circulated to all County Councillors with the agenda for a meeting of the Council held on 27 September 2017. The recommendations in the report were proposed and seconded for approval at that meeting. Councillor Charlesworth attended the meeting and read from what appeared to be a prepared statement. The meeting was recorded and a transcript of Councillor Charlesworth's statement was prepared.
- 1.6 In his statement to the Council Councillor Charlesworth questioned the independence of the individual members of the Panel. He named the three individuals, stating:-

*"The Panel members, David Wilson, Jane Kelly and Michael Pearson, I believe have not come to these recommendations independently. I feel they have been guided through this process and done what was expected of them."*

*"Independent: dictionary definition: free from control in action and judgement, autonomous, not dependent on anything else for function, not reliant on the support of others. That is the definition of independent. The report clearly shows that is not the case, even allowing for the deletion of the two cabinet posts the cost of the members allowance Scheme has increased. If you are happy to increase members allowances then by all means vote for these recommendations."*

- 1.7 The members of the Independent Remuneration Panel were not present at the meeting.

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1.8 We have concluded that:-

- (a) relevant legislation requires that members of Independent Remuneration Panels be independent to the extent that they are not members of the authority to which they make recommendations. There is no suggestion that the members of the Panel were not appointed in accordance with the requirements of relevant legislation;
- (b) there is no indication that the members of the Panel were not actually independent of the Council;
- (c) whilst Councillor Charlesworth did have some concerns about the way in which savings in the report were identified, his comments regarding the Panel members were unwarranted, unjustified and personalised;
- (d) Councillor Charlesworth did not treat the Panel members with respect and he thereby brought his office or authority into disrepute;
- (e) Though Councillor Charlesworth cannot be said to have failed to follow paragraph 2.1 of the Council's Code regarding leadership, he did fail to follow paragraph 3.1 (disrespect) and paragraph 3.5 (disrepute).

**CONFIDENTIAL REPORT****2. Official details**

- 2.1 Councillor Charlesworth is a member of Leicestershire County Council, having been first elected in May 2005.
- 2.2 He is a Liberal Democrat Councillor representing the East Wigston Electoral Division.
- 2.3 Councillor Charlesworth has not provided information on what training he may have received on the Council's Code of Conduct for Members.

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**3. Relevant legislation and protocols**

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

3.2 Section 28 (1) of the Act provides that the Council must secure that its code of conduct is, when viewed as a whole, consistent with the following principles:-

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Council adopted a Code of Conduct (attached at WC 1) in March 2013. The code includes the following:-

**“Part 1 – General Provisions****Scope**

1.5 *You must comply with this Code whenever you:*

1.5.1 *act in your capacity as a member or co-opted member of the Authority*

1.5.2 *conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed)*

**Part 2 – The principles**

2.1 In accordance with the requirements of the Localism Act 2011, you must have regard to the following principles and observe the following rules of behaviour:-

**Principle 1 – Selflessness**

*Holders of public office should act solely in terms of the public interest.*

**Principle 2 Integrity**

*Holders of public office must avoid placing themselves under any obligation to outside individuals or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or material benefits for*

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*themselves, their family or their friends. They must declare and resolve any interests and relationships.*

*Principle 3 Objectivity*

*Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.*

*Principle 4 Accountability*

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to the scrutiny necessary to ensure this.*

*Principle 5 Openness*

*Holders of public office should act and take decisions in an open and transparent manner.. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.*

*Principle 6 Honesty*

*Holds of public office should be truthful.*

*Principle 7 Leadership*

*Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.*

**Part 3 – General Obligations**

**Respect**

3.1 *You must treat others with respect.*

**Reputation of the Authority**

3.5 *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.”*



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**4. Evidence and facts***Our appointment*

- 4.1 The Council's arrangements for dealing with standards complaints provide that the Monitoring Officer of the Council, in consultation with the appointed Independent Person, shall decide whether or not to investigate a complaint.
- 4.2 Lauren Haslam, the Monitoring Officer (MO) of the Council, instructed Wilkin Chapman LLP on 9 January 2018 to carry out an investigation on his/her behalf of complaints submitted by Councillor Richards and Councillor Eynon.
- 4.3 Wilkin Chapman LLP is a solicitors firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Jonathan Goolden, Dave Hayward, Peter Bray and Alan Tasker.

*The investigation*

- 4.4 During the investigation, Mr Bray held face to face meetings with, and obtained signed statements from: -
- Councillor Dr Theresa Eynon – Complainant (interviewed 24 January 2018, statement signed 3 February 2018);
  - Councillor Nicholas Rushton - Complainant (interviewed 24 January 2018, statement signed 2 February 2018);
  - Councillor Janice Richards - Witness (interviewed 24 January 2018, statement signed 6 February 2018; and
  - Mohamed Seedat - Witness (interviewed 24 January 2018, statement signed 13 February 2018)
- 4.5 Councillor Charlesworth was invited to be interviewed but declined stating in an email dated 14 January 2018 that the evidence was all available on the Council's webcast.
- 4.6 Copies of the above, together with other relevant documents are annexed to this report and listed in a schedule of evidence at Appendix A.

*Councillor Dr Theresa Eynon - Complainant*

- 4.7 Councillor Dr Eynon submitted a complaint to the Monitoring Officer of the Council on 28 September 2017 (attached at WC 2).
- 4.8 Dr Eynon was interviewed by Mr Bray and a signed statement was obtained (attached at WC 3). She stated that: -
- (a) she was the Councillor for Coalville North of Leicestershire County Council, she was first elected in May 2013 and re-elected in May 2017. She represented the Labour Party and was the Group Leader on the Council. She was also a member of the Council's Scrutiny Committee;

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- (b) as the Labour Group Leader she considered it one of her duties to ensure that her members abide by the Council's Members' Code of Conduct.
- (c) following the elections in May 2017 Leicestershire County Council appointed an Independent Panel to review members' allowances. The Panel was non-political which it should be and was outside the influence and control of elected Council members. Members of the Independent Panel were selected by Senior Council Officials and authorised by the Chief Executive;
- (d) the Panel sat and were supplied with changes that had taken place since the last review. This was part of the necessary process for the Panel to consider all relevant information when discussing and deciding on their recommendations;
- (e) the process provided for Party Group Leaders to put forward any views and opinions before the Panel provided a draft paper back to the Group Leaders for any comments;
- (f) in this case the Labour and Liberal Democrats made comments on some issues however the Conservative group did not;
- (g) she attended a Council meeting on 27 September 2017 held in the Council Chamber, County Hall, Leicester. The meeting was a regular Council meeting attended by Councillors of all parties and Chaired by Councillor Mrs Janice Richards;
- (h) the Chief Executive of the Council and Lauren Haslam, the Council's Director of Law and Governance and Monitoring Officer were sat next to the Chair;
- (i) the meeting was an open meeting with the public and media allowed to be present. She was aware that the meeting was recorded live, via the Council's webcast allowing anyone to watch and listen to the debate as it happened. It was also recorded and down loaded on the Council's website to enable anyone access to the running and workings of debate and decision making of the Council;
- (j) the meeting was opened by the Chair and items on the agenda were debated and discussed as per normal Council business. The Independent Panel's paper was introduced by Councillor Rushton who moved that the Council accepted the recommendations. He made a number of comments thanking the Panel for the work they had done on behalf of the Council. The motion was seconded by Councillor Dr Feltham who spoke briefly and reserved his right to speak later;
- (k) the Chair then allowed Councillor Charlesworth to address the Chamber and he rose in order to speak. She could see that he read from a sheet of paper and continued without interruption;
- (l) since the Council meeting, she had viewed the webcast and read the transcript that was prepared from it. She confirmed that the transcript was correct to her knowledge and belief and a true reflection of what Councillor Charlesworth said;

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- (m) she recognised that the matter under discussion was sensitive. There was a need for Councillors who have strong views to be able to robustly challenge others' views and opinions through debate. She believed it was the duty of Councillors to do so. She believed, however, that on this occasion Councillor Charlesworth went far beyond the accepted line of behaviour expected of an elected Councillor;
- (n) she was particularly concerned in respect of the words used, "*The Panel members, David Wilson, Jane Kelly and Michael Pearson, I believe have not come to these recommendations independently. I feel they have been guided through this process and done what was expected of them*". Councillor Charlesworth continued "*Independent: dictionary definition: free from control in action and judgement, autonomous, not dependent on anything else for function, not reliant on the support of others. That is the definition of independent. The report clearly shows that is not the case, even allowing for the deletion of the two cabinet posts the cost of the members allowance Scheme has increased. If you are happy to increase members allowances then by all means vote for these recommendations*";
- (o) it was her view that Councillor Charlesworth's comments appeared to call into question the integrity of the members of the Independent Remuneration Panel. Not only was this insulting to the individuals, it also risked bringing the Council, its processes and all its elected members into disrepute.
- (p) she believed that Councillor Charlesworth's comments showed a lack of objectivity and were not those she wish to be associated with. She felt that they breached the Members' Code of Conduct which they, as Councillors, should strive to adhere to at all times;
- (q) at the time Councillor Charlesworth made the comments it was apparent that she was not alone with her views. There was noise of discontent from other members present as the comments were being presented;
- (r) the Chair asked Councillor Charlesworth if he would apologise for making personal comment. To which Councillor Charlesworth replied "No";
- (s) other speakers spoke on the subject and when they had presented the motion was put to a vote. It was carried;
- (t) on 28 September 2017, she handed a written letter of complaint to Lauren Haslam, the Monitoring Officer, in respect of the conduct of Councillor Charlesworth at the meeting, requesting that the issue be investigated under the Members' Code of Conduct.

*Councillor Nicholas Rushton - Complainant*

- 4.9 Councillor Rushton submitted a complaint to the Monitoring Officer of the Council on 28 September 2018 (attached at WC 4).
- 4.10 Councillor Rushton was interviewed by Mr Bray and a signed statement was obtained (attached at WC 5). He stated that:-

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- (a) he was the elected Conservative County Councillor for the Valley District of Leicestershire and had been so since 1989. I had been the elected Leader of Leicestershire County Council since 2012;
- (b) he was of the view that it was extremely important that elected members should, at all times, conduct themselves appropriately as representatives of their Party and of Leicestershire County Council;
- (c) as Leader of the Council one of his tasks was to Chair all Cabinet meetings;
- (d) in May 2017, following the County Council elections, an Independent Panel was set up by the Council to review the remuneration on Members' allowances. The panel was selected by Council Officers and approved by the Chief Executive, without any influence from Political Parties;
- (e) the Panel were supplied with any updates and changes that had taken place since the last review. This was to enable the Independent Panel to have all the necessary up to date information so it could make informed decisions and recommendations, to put before the Council for consideration;
- (f) the setting up of panel members was a matter for the Chief Executive. Group Leaders were informed of the members and the content of the information which was being given to the Panel and had the opportunity to make comments;
- (g) he was aware that the members were Professor David Wilson a former Deputy Vice-Chancellor, Jayne Kelly a former solicitor and a Michael Pearson a former Bursar and Finance Director and Monitoring Officer;
- (h) he and his Party were fully satisfied with the Panel and the skills which they brought to the review process;
- (i) the Panel sat and, with support from the Head of Democratic Services and Head of Member Services, produced their review and findings;
- (j) Group Leaders and Parties had sight of the report prior to its submission and could make comments if they wished. The Conservative Party did not wish to make any comments on the independent review. The Liberal Democrat and Labour Party did make comments;
- (k) the review paper was an agenda item at the Council meeting held on 27 September 2017. He presented the report and thanked the Panel for all their hard work and commitment. The item was seconded by Councillor Dr Feltham;
- (l) the Chair then allowed Councillor Charlesworth to speak. He had read the transcript prepared by a Council Officer and confirmed that it was a true reflection of what Councillor Charlesworth said. Councillor Charlesworth read from a sheet of paper;
- (m) the Chair then asked Councillor Charlesworth to apologise for making a personal comment to which Councillor Charlesworth replied "No";

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- (n) it was clear that Members were not content with what Councillor Charlesworth had said as there were rumblings;
- (o) he was appalled at the comments and felt that Councillor Charlesworth brought disrespect to the office of an elected Member and to the reputation of the County Council;
- (p) he accepted that it was an elected Member's right to challenge, sometimes robustly, during debate and it was a necessary part of the democratic process that takes place. He did, however, feel that Councillor Charlesworth's personal comments about the Independent Panel were both unjust and unfair and not in the manner in which any Councillor should conduct themselves;
- (q) the Chair, following the comments, asked Councillor Charlesworth if he wished to apologise for his comments which he declined. The Chair then asked for a record to be made;
- (r) the debate continued, and the motion was carried;
- (s) all Members were aware that the meeting was recorded and a live webcam was broadcast for anyone to view. The meetings were open to members of the public and media;
- (t) he was not satisfied by the comments and actions by Councillor Charlesworth and the next day handed a written complaint in respect of these and in his view the breach of the Code of Conduct and Nolan Principles to the Council's Monitoring Officer, Lauren Haslam.

*Councillor Janice Richards - Witness*

4.11 Councillor Richards was interviewed by Mr Bray and a signed statement was obtained (attached at WC 6). She stated that:-

- (a) she was the elected Conservative County Councillor for the Earl Shilton District of Leicestershire. She was first elected to Hinckley & Bosworth Borough Council in 2007 and elected to the County Council in 2009;
- (b) on 17 May 2017 she was elected Chairman of Leicestershire County Council. This post was voted on by all parties of the Council. It was expected that the holder of this office and as Chairman of the Council meetings acted in a non-political manner and maintained impartiality whilst chairing meetings, as well as when attending and representing the Council in the role of Chairman of the Council;
- (c) she endeavoured at all times to be impartial allowing elected members their democratic right to speak at Council meetings whilst maintaining order and making sure that the Council's business and work is able to flow in the correct, timely and appropriate manner that it should;
- (d) she also endeavoured to distance herself from any personal political opinion and political business whilst acting in her role as Chair of the Council;

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- (e) on Wednesday 27 September 2017 there was a meeting of the Council, she was Chair of that meeting. She was sat in the Chairman's seat and next to her was the Chief Executive, Mr John Sinnott and Lauren Haslam, Director of Law and Governance. The minutes were taken by Council officials from the Democratic Services Department. The meeting was also being recorded on the Council's Webcast, both visually and in sound. This was a live Webcast which allowed any member of the public or media to view the proceeding live;
- (f) the meeting was an open meeting which any member of the public and/or media can be present;
- (g) she opened the meeting as normal. There were a number of agenda items which were presented and dealt with in the normal manner, without incident;
- (h) the next item was to present the paper of the Independent Remuneration Panel on member allowances. Councillor Rushton presented the paper and thanked the Independent Panel for their work in coming to their views. She recalled Councillor Dr Feltham seconded the motion and reserved his right to speak at the end of the debate;
- (i) she then allowed Councillor Charlesworth to speak, who stood and read from a paper he held in his hand. At first there was no issue however she soon became concerned as to the content of his presentation;
- (j) she has read and viewed the webcam and read the transcript prepared from it, she confirmed that it was her view that the transcript prepared by Council Officers was correct and the same as her recollection of what Councillor Charlesworth said;
- (k) she was aware, due to some rumblings by Councillors in the Chamber, of what she took to be discontent with some of the content and words used by Councillor Charlesworth. This was in respect of the personal comments made about the independence of the Panel and the fact that he felt that they did not act in an independent way;
- (l) she also felt that this was not the behaviour which was expected of an elected Councillor, calling into question the integrity of Panel members who were neither present nor elected members of the Council;
- (m) she felt that this was not correct and following Councillor Charlesworth's presentation asked him to apologise for his personal comments. Councillor Charlesworth replied, "No". She then asked the officers from the Democratic Services Department and minute takers of the meeting to make of note of this;
- (n) as Chair of the Council she was very keen to allow fair, well thought out debate by all political sides and differing opinions. She was also very keen to allow all speakers the chance to have their say and allow free speech in debate. This must, however, be in line with the Members' Code of Conduct and protocol;
- (o) she believed that Councillor Charlesworth went beyond this in his statement by openly naming and criticising persons of an Independent Panel working on behalf of the Council;



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- (p) she then allowed further debate and presentation on the subject by Councillors following which the motion was voted upon and carried;
- (q) she did not take the matter further as she wished to remain independent. As Chair she felt that she had, by asking the minute taker to record proceedings and her request for an apology to be noted, acted in the best manner she could;
- (r) she became aware that complaints had been made to the Monitoring Officer in respect of Councillor Charlesworth's conduct.

*Mohamed Seedat - Witness*

4.12 Mohamed Seedat was interviewed by Mr Bray on 24<sup>th</sup> January 2018 and a signed statement was obtained (attached at WC 7). He stated that:-

- (a) he was employed by Leicestershire County Council in the role of Head of Democratic Services having been employed by the since September 1982;
- (b) as Head of Democratic Services he managed the Democratic Services Team supplying administrative support for all Committee meetings, subcommittee meetings and providing advice on reports to such bodies. He also supported the Monitoring Officer, Lauren Haslam in her role;
- (c) he was involved in the appointment of Independent Panels made up of members of the public who assist the Council on a number of matters from time to time. These panel members were selected for their independence, integrity, skills and ability to examine and review issues requested by the Council;
- (d) in May 2017 there was a need to review the members' allowances. This review was conducted after each election. Prior to the elections he made sure that the Council had qualified and appropriate panellists available who were willing and able to sit as the Independent Remunerations Panel;
- (e) the Panel members selected were Professor David Wilson, a former Deputy Vice Chancellor at De-Montfort University who had chaired the Panel for some years, Jayne Kelly, a former Local Government Solicitor and Michael Pearson, a former Bursar and Finance Director. Jayne Kelly and Michael Pearson had recently been appointed to serve as independent members to deal with Standards and Conduct matters;
- (f) he was satisfied that the members had many different skills which they would bring to an independent panel and that they were appropriately experienced to review the members' allowances. In line with the decision of the Constitution Committee at its meeting in March 2006, the Chief Executive exercised his delegated powers to approve the membership of the Independent Remuneration Panel;
- (g) the Panel was provided with information on changes that had taken place since the last review. This included details of the current governance arrangements, how the role of members had changed

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and the challenges now facing elected members in discharging their role. The Political Group Leaders were given a draft of the paper to be submitted to the Panel and were asked for any comments;

- (h) the comments made were reflected in a revised draft. John Sinnott (the Chief Executive and Graeme Wardle (Head of Member Services) and he discussed the revised draft with Professor David Wilson, Chairman of the Panel who asked for some additional information and clarification. This was done and the Leaders of the three political groups were advised of the changes and were asked for any further comments. None were received;
- (i) the Leaders were also made aware of the membership of the Panel and advised to submit comments as Political Groups if they so wished. The Labour and Liberal Democrat Leaders submitted written submissions and these were forwarded to members of the Panel. The Conservative Group chose not to make any comments;
- (j) the officers who attended the Panel meeting with him were John Sinnott and Graeme Wardle. No members attended the meeting. The Panel worked through the report asking questions and seeking clarification as appropriate before making their recommendations;
- (k) following the meeting he and Graeme Wardle produced a report based on the discussions at the Panel meeting. That draft was shared with Panel members who made comments and suggested changes which were incorporated in the final version;
- (l) given the political sensitivity around the issue of member allowances, the final report was given to the three Group Leaders a few days prior to its circulation to the Constitution Committee at which point it became a public document;
- (m) the final report was put to the Constitution Committee. The 3 Group Leaders served on this Committee and at the meeting the report was agreed for submission to the Council meeting for decision;
- (n) the Council meeting took place on Wednesday 27 September in the Chamber of County Hall. The Chairman of the meeting was Councillor Richards. Sat with her were John Sinnott, the Chief Executive and Lauren Haslam, the Monitoring Officer. He was sat below them with a member of his Section. They were responsible for the minutes of the meeting, the working of the webcast, order papers, notes and general assistance to the Chairman and Monitoring Officer in the correct running of the meeting;
- (o) the webcast was working correctly and both recording and relaying live to anyone who wished to view the Council meeting. He had viewed the webcast recording and transcript prepared from it and confirmed that both records were a true reflection of what took place at the meeting;
- (p) the recommendations in the report of the Independent Remuneration Panel were proposed by Councillor Rushton, the Leader of the Conservative Group and the Council and seconded by Councillor Feltham, a member of the Constitution Committee. The Chairman then allowed Councillor Charlesworth to speak;



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- (q) he noted that Councillor Charlesworth read from a piece of paper which he was holding. Having read the transcript of the meeting he confirmed that it was an accurate record of Councillor Charlesworth's words;
- (r) during the later part of the speech Members in the Chamber started to verbally challenge Councillor Charlesworth and there were rumblings of what he felt was discontent with the comments;
- (s) on conclusion of Councillor Charlesworth's comments the Chairman, Councillor Mrs Richards asked Councillor Charlesworth if he would apologise for making personal comments. Councillor Charlesworth replied 'no'. The Chairman then asked him to make a note of the reply and what had taken place. He did that and reflected that in the minutes which he later produced;
- (t) as an officer of the Council he was saddened and disappointed about the way in which Councillor Charlesworth spoke, openly criticising the members of the Independent Remuneration Panel. The Panel members were not present and even if they were they would have had no right of reply to these comments. The Panel members had given their time as a public service and he felt the comments made were inappropriate and reflected very badly on the Council;
- (u) he accepted that political debate could become heated between Councillors. However, these comments were personal and against independent people, and not Councillors;
- (v) the minutes of the meeting of 27 September 2017 were presented at the next Council meeting and signed as a true record.

*Councillor Charlesworth*

- 4.13 Councillor Charlesworth was invited to be interviewed but declined. After completing the interviews of the complainants and witnesses a letter dated 15 February 2018 was sent to Councillor Charlesworth with a number of questions (copy attached at WC 8) which he was invited to respond to. At the time of preparing this report no response had been received.

*Independent Remuneration Panels*

- 4.14 Regulation 20 of the Local Authorities (Members' Allowances) (England) Regulations 2003 require the Council to establish a panel of at least three independent members. None of these individuals can be a member of the Council, or its committees or subcommittees or be disqualified from being or becoming a member of the Council.
- 4.15 The functions of such a panel are set out in regulation 21 of the above regulations and are to make recommendations on matters including:-
- (a) as to the responsibilities or duties in respect of which the following should be available—
    - (i) special responsibility allowance;
    - (ii) travelling and subsistence allowance; and
    - (iii) co-optees' allowance;

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- (b) as to the amount of such allowances and as to the amount of basic allowance;
- (c) as to whether dependants' carers' allowance should be payable to members of the Council, and as to the amount of such an allowance;
- (d) as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated;
- (e) as to whether adjustments to the level of allowances may be determined according to an index;
- (f) as to which members of the Council might be entitled to pensions.

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**5. Summary of the material facts**

- 5.1 Councillor Charlesworth is a member of Leicestershire County Council and attended a meeting of the Council on 27 September 2017.
- 5.2 The Council meeting was recorded and was broadcast via webcam on the Council's website.
- 5.3 The agenda for the Council meeting included a report from the Council's Independent Remuneration Panel. The Panel comprised three individuals appointed by the Council to undertake a review of the Council's Members' Allowance Scheme. These individuals were Professor David Wilson, a former Deputy Vice Chancellor at De-Montfort University, Jayne Kelly, a former Local Government Solicitor and Michael Pearson, a former Bursar and Finance Director.
- 5.4 The members were appointed to the Panel by the Chief Executive in accordance with his delegated powers. The membership of the Panel was notified to the Political Groups on the Council who were given to opportunity to comment.
- 5.5 The report was prepared by the Panel with assistance from Council Officers who provided background information, supported the Panel at their meeting and drafted the report.
- 5.6 The Panel's draft report was circulated to the Political Groups for comment prior to finalisation. The Labour Group and Liberal Democrat Group submitted comments, the Conservative Group did not. The final report was presented to the Council at a meeting on 27 September 2017.
- 5.7 The three members of the Independent Remuneration Panel were not present at the meeting.
- 5.8 When the meeting considered the report of the Independent Remuneration Panel, the recommendations in the Panel's report were proposed and seconded by Councillors Rushton and Councillor Dr Feltham respectively. After Councillor Rushton had made the proposition and thanked the Panel for their work Councillor Charlesworth requested to speak.
- 5.9 Councillor Charlesworth stood and read from a prepared paper. The words used by Councillor Charlesworth are set out at paragraph 15 of the statement of Councillor Rushton at WC 5. Whilst Councillor Charlesworth was speaking it was evident some members had concerns about some of the comments he was making. This included the Chair of the meeting, Councillor Richards, who asked if he would apologise for the personal comments he had made. Councillor Charlesworth responded "no".
- 5.10 The particular comments which caused concern and are the subject of the complaints made were:-

*"With the Cabinet posts, Fire Authority appointments, Committee Chairs and now Deputy Chairs the Leader has effectively greased the palms of nearly all 36 tory members. Of course the Conservative Group did not make any recommendations to the Panel, they didn't need to; they knew what the outcome would be.*

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*The Panel members, David Wilson, Jane Kelly and Michael Pearson, I believe have not come to these recommendations independently. I feel they have been guided through this process and done what was expected of them.*

*Independent: dictionary definition: free from control in action and judgement, autonomous, not dependent on anything else for function, not reliant on the support of others. That is the definition of independent. The report clearly shows that is not the case, even allowing for the deletion of the two Cabinet posts the cost of Members' Allowances Scheme has increased. If you are happy to increase Members' Allowances then by all means vote for these recommendations."*

- 5.11 Councillor Richards requested that the minute taker record the comments. The minutes of the meeting state:-

*During the discussion on this matter, Mr Charlesworth made comments which questioned the independence of the members of the Remuneration Panel. The Chairman invited Mr Charlesworth to withdraw the remarks and apologise. Mr Charlesworth refused to do so.*

The minutes then record the detail of the decisions taken on the recommendations in the Panel's report.

- 5.12 Following the meeting Councillor Rushton and Councillor Dr Eynon submitted complaints to the Council's Monitoring Officer alleging that Councillor Charlesworth's comments were disrespectful towards the individual members of the Remuneration Panel and could bring the office of Councillor or the Council into disrepute.

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**6. Reasoning as to whether there have been failures***Official Capacity*

- 6.1 Section 28(2) of the Localism Act 2011 requires the Council to adopt a code of conduct dealing with the conduct that is expected of members of the Council “*when they are acting in that capacity*”.
- 6.2 The Council’s Code of Conduct reflects the requirement of section 28(2) of the Localism Act. The Code states:-

**Scope**

1.5 *You must comply with this Code whenever you:*

1.5.1 *act in your capacity as a member or co-opted member of the Authority*

1.5.2 *conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed)*

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

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

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

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

- 6.4 At the Council meeting on 27 September 20176 it is clear that Councillor Charlesworth was acting in his capacity as a Councillor. He was a member of the Council and at the meeting conducting the business of the Council and the business of his office of Councillor. We therefore conclude that on this occasion Councillor Charlesworth was acting in an official capacity and was subject to the Code of Conduct.

*Respect*

- 6.5 Paragraph 3.1 of the Code states:-

*You must treat others with respect.*

- 6.6 The term “respect” is not defined in the Code. However, the requirement to treat others with respect must be viewed objectively. Account should be taken of the member’s intent and how their behaviour would reasonably be perceived.

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- 6.7 The Standards Board for England Case Review 2010 (2011 Edition) provides guidance by indicating a ‘rule of thumb’ comparison. Q15 of the Case Review 2010 advises that:-

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

- 6.8 A rule of thumb is expressed in this comparison:

*“You’re talking drivell” is likely to be an acceptable expression of disagreement.*

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

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

- 6.9 Whilst some care must be taken in adopting wholesale a test applicable to a provision of the former national model code, it is the personalisation of comments that cause the user to breach the Code. The conduct must be unreasonable, unwarranted and personalised. In considering whether comments are disrespectful, regard must be had to the right to free speech in article 10 of the European Convention on Human Rights (see below regarding *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504).
- 6.10 We note the approach taken by the former Adjudication Panel in *Capon v Shepway District Council* [2008] APE 0399, conveniently summarised by the Case Review 2010 at page 32 as:-

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

- 6.11 The tribunal considered that the threshold for a failure to treat another with respect has to be set at a level that allows for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council. It should also be set within the context of who was involved in the exchange.
- 6.12 In that case, the comments were opinions of other individuals which the member honestly believed to be true. The member’s conduct was not unfair, unreasonable or demeaning to the Town Clerk and not made in a malicious or bullying manner. The Town Clerk was very experienced in her dealings with Councillors and given her seniority was entirely able to defend her position. Therefore, the tribunal decided that the threshold was not reached.
- 6.13 The Case Review 2010 confirms that members are able to criticize officers. It states on page 41, Q22 of the Guidance that:-

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

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

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

- 6.14 We have also had regard to the right to freedom of speech on political matters set out in Article 10 of the European Convention on Human Rights (ECHR) as considered in *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504, where it was held:-
- Article 10 of ECHR protects not only the substance of political comment but the form in which it is conveyed;
  - a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, non rational and aggressive is to be tolerated;
  - political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments;
  - whilst civil servants are open to criticism, there is a public interest that they are not subject to unwarranted comments that disenable them from performing public duties and undermines public confidence;
  - there is a need to weigh up the public interest in protecting civil servants against enhanced protection for political comment.
- 6.15 Clearly from the above guidance it is evident that it is part of the members' role to scrutinise and challenge the conduct and performance of officers. It also provides some indication of how this might be raised and in particular how it should not be done i.e. the seniority of the officer involved.
- 6.16 In determining whether Councillor Charlesworth's conduct at the Council meeting amounted to a failure to treat others with respect, as referred to in relevant guidance and case law, it is appropriate to carefully consider his comments and the surrounding circumstances.
- 6.17 Whilst Councillor Charlesworth has not engaged with us during our investigation it seems evident from the recording of the meeting, transcript of his speech and our reading of the Panel's report that he was critical of some of the content of the report. In particular he seemed to object to how savings



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on other functions have been incorporated into the Members' Allowance report in what he seemed to allege was an attempt to cover up additional expenditure on the allowances. We understand that this comment related to the financial implications of the review of the Members' Allowances Scheme which highlighted that the overall cost of democracy would reduce by £235,000 per annum.

- 6.18 However, having regard to the guidance and case law set out above we have to have regard to the manner in which Councillor Charlesworth articulated his concerns. In this case we consider the significant facts to be that Councillor Charlesworth accused the members of the Independent Remuneration Panel of not being independent. He named each individual in his speech even though they were not present at the meeting and had no opportunity to defend themselves or refute his allegations.
- 6.19 There is no suggestion that the appointment of the Panel members was not in accordance with the requirements of regulation 20 of the Local Authorities (Members' Allowances) (England) Regulations 2003. The Panel members were, in law, independent.
- 6.20 The evidence of Mr Seedat (WC 7) in particular is that the Panel members carried out their role in a proper and independent manner. In particular Mr Seedat refers to members of the Panel questioning officers, making comments on and suggesting changes to the report which was made to councillors.
- 6.21 The members of the Panel were not elected members of the Council nor were they Senior Officers both of whom might be expected to be subject to some robust scrutiny and challenge. Whilst they were not members of the public it is our opinion that they should be treated with similar courtesy and respect as a member of the public would be.
- 6.22 When Councillor Charlesworth said:-

*"With the Cabinet posts, Fire Authority appointments, Committee Chairs and now Deputy Chairs the Leader has effectively greased the palms of nearly all 36 tory members. Of course the Conservative Group did not make any recommendations to the Panel, they didn't need to; they knew what the outcome would be.*

*The Panel members, David Wilson, Jane Kelly and Michael Pearson, I believe have not come to these recommendations independently. I feel they have been guided through this process and done what was expected of them.*

*Independent: dictionary definition: free from control in action and judgement, autonomous, not dependent on anything else for function, not reliant on the support of others. That is the definition of independent. The report clearly shows that is not the case, even allowing for the deletion of the two Cabinet posts the cost of Members' Allowances Scheme has increased. If you are happy to increase Members' Allowances then by all means vote for these recommendations."*

We consider that by naming the Panel members his comments were personalised. We also consider that it was unwarranted to name the individuals and inappropriate to do so in a public meeting.



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- 6.23 *Capon* indicates that the threshold for finding a failure to treat others with respect must allow for the exercise of the passions and frustrations which often accompany political debate. Further, civil servants, particularly those with experience and seniority, are expected to be familiar with the arguably intemperate language used by members and able to defend their positions if challenged or criticized.
- 6.24 Councillor Charlesworth may have expressed his concerns and criticisms relating to the Independent Remuneration Panel's report in a more considerate manner or appropriate context. It is our conclusion that Councillor Charlesworth could, quite legitimately and in an appropriate manner, have expressed his concerns about the report without resorting to a personalised attack on the individual members of the Independent Remuneration Panel.
- 6.25 We have therefore concluded that Councillor Charlesworth's conduct did fall short of the standard required by the Council's Code of Conduct.

*Disrepute*

- 6.26 It is evident that the Council meeting was open to both public and members of the press. The meeting was also broadcast via webcam on the Council's website. The factual circumstances make it appropriate to consider whether or not Councillor Charlesworth's comments in this meeting had the potential of bringing his position as a councillor and/or the Council into disrepute.
- 6.27 Q43 on page 68 of the Case Review 2010 (2011 Edition) published by SfE advises that disrepute is:-

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

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

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

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

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

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

- 6.29 Q42 on page 68 of the Case Review 2010 indicates that:-

*"A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the*

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*member's office or Authority, as opposed simply to damaging the reputation of the individual concerned."*

- 6.30 By making unsubstantiated allegations that the members of the Remuneration Panel had not acted in an independent manner could lead listeners to believe that the Council or Councillors had exerted inappropriate influence on the Panel members. There was no evidence of such influence.
- 6.31 We have considered the context of Councillor Charlesworth's speech and his evident concerns regarding the Panel's report. Though he may have had concerns, these were not expressed in an appropriate manner.
- 6.32 On balance, we have concluded that Councillor Charlesworth's misconduct was sufficient to damage the reputation of the office of Councillor or the Authority and thus he failed to follow paragraph 3.5 of the Code.

### *Leadership*

- 6.33 Paragraph 2.1 of the Council's Code of Conduct requires members to have regard to a number of principles. Principle 7 is entitled Leadership and is described as follows:

*Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.*

- 6.34 Neither legislation nor case law provides further guidance on what constitutes 'leadership'. Leadership is therefore a broad principle and includes promoting and supporting high standards.
- 6.35 To "have regard" means to comply with unless there are very good reasons not to.
- 6.36 The principles referred to in Principle 7 ("*these principles*") appear to be those other Principles set out at paragraph 2.1 of the Code. These are:-

#### *Principle 1 – Selflessness*

*Holders of public office should act solely in terms of the public interest.*

#### *Principle 2 Integrity*

*Holders of public office must avoid placing themselves under any obligation to outside individuals or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.*

#### *Principle 3 Objectivity*

*Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.*

#### *Principle 4 Accountability*

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to the scrutiny necessary to ensure this.*

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Principle 5 Openness

*Holders of public office should act and take decisions in an open and transparent manner.. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.*

Principle 6 Honesty

*Holds of public office should be truthful.*

- 6.37 No one of these principles appear directly to address disrespect and disrepute. We have therefore concluded that Councillor Charlesworth did not fail to have regard to the principles and thus cannot be said to have failed to exhibit leadership in breach of paragraph 2.1 of the Code.

**7. Finding**

- 7.1 Our findings are that there has been a breach of the code of conduct of the authority concerned.

Wilkin Chapman LLP

**Investigating Solicitors**