

Appendix F

Comments on draft report submitted on behalf of Cllr Peter Yeo with comments on them made by Investigating Officer in red ink

Paragraph 5: Disrepute

Councillor Yeo disagrees with the Investigators' finding at page 12 of the report that he is in breach of paragraph 5 of the Code.

The Local Government Association Guidance on the Model Code of Conduct (LGA Guidance) is clear that a councillor's right to freedom of expression must be considered when making findings of disrepute. The draft report fails to appropriately address this as it does not engage with any of the authorities which map out how Article 10 should be considered.

1. Article 10 of the European Convention on Human Rights (ECHR) 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 national security, territorial integrity or 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

2. Freedom of expression is protected more strongly in the context of political speech. A wide degree of tolerance is accorded, and this enhanced protection applies to all levels of politics, including local government.

Jerusalem v Austria (2003) 37 EHHR 25

"In this respect the court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to its pre-occupations and defends its interests. Accordingly, interference with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the court."

3. Political expression is a broad concept.

Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504

"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.

...

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, 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. The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it."

4. There are three questions which should be considered when dealing with Article 10.

Sanders v Kingston (No.1) [2005] EWHC 1145 (Admin)

"1. Was the Case Tribunal entitled as a matter of fact to conclude that Councillor Sanders conduct was in breach of paragraph 2(b) [respect] and/or paragraph 4 [disrepute] of the Code of Conduct?

2. If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10?

3. If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?"

Councillor Yeo's comments on the Town Council proposals are political and therefore, they attract the higher protection afforded to political expression.

A finding of a breach of the Code of Conduct is an interference with Article 10 rights. Where an interference is not proportionate, it is a violation of Article 10. In *R (Robinson) v Buckinghamshire Council* [2021] EWHC 2014 (Admin), Councillor Robinson made comments at a public meeting *"which called into question and misrepresented the motivation, intentions and integrity of other parish councillors regarding development of Green Belt land in the parish"* which resulted in public backlash and the integrity of the Chair and Clerk being questioned. The Deputy Monitoring Officer concluded that he had brought the Parish Council and the role of Councillor into disrepute. However, the Court held that this finding was a breach of Councillor Robinson's Article 10 rights:

R (Robinson) v Buckinghamshire Council [2021] EWHC 2014 (Admin)

"In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive. Although no further action was pursued against the Claimant, beyond recommending that he apologise, it was a violation of Article 10 to subject the Claimant to the complaints procedure, and to find him guilty of a breach of the PC Code."

There are clear parallels between Councillor Robinson's case, and Councillor Yeo's. Councillor Yeo is entitled to scrutinise and express disagreement with the Town Council's proposals; it is fundamental to his role as an elected representative. The content of his comments is not a breach of the Code of Conduct on a proper application of his Article 10 rights.

We refer also to the former Adjudication Panel for England decision APE 0399 – Capon, which we consider to be analogous. 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 town's people who say that when they try to contact the town clerk, she is downright rude to them"*. The Panel 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. In this case, the comments were opinions of other individuals which the Councillor honestly believed to be true. The Councillor's conduct was not unfair, unreasonable or demeaning to the Town Clerk, and the comments were 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. The Panel decided that the threshold was not met.

With regards to the fact that Councillor Yeo allegedly engaged in conduct disruptive to the meeting separate to the content of his comments (i.e. interrupting other Councillors), the LGA Guidance is clear that *"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."* Councillor Yeo interrupting other Councillors and not sitting down cannot reasonably be said to have brought his role or the Town Council into disrepute. It does not have any bearing on the ability of Councillor Yeo, nor the Town Council, to fulfil their respective roles. It is conduct that can only reasonably be regarded as having a potential impact on Councillor Yeo's reputation as an individual, and it is clear that this is not sufficient for a finding of disrepute.

In formulating my conclusion in relation to the allegation that Cllr Yeo's conduct breached paragraph 5 of the Code I considered the impact of Article 10 of the ECHR and I read various source materials including the LGA Guidance on the Model Code of Conduct referred to above and the relevant case law. The Guidance acknowledges that councillors are given enhanced protection but also states that the right to freedom of expression is not unrestricted, and states that the rights of the individual must be balanced against the interests of society. I did not consider it necessary for the report to contain detailed analysis of the various cases, all of which as well as mentioning the applicable principles were decided on their specific facts, and it is noted too that the comments above do not refer to cases that were decided differently. Based on the matters set out in the section of the report headed 'Findings' I concluded that Cllr Yeo's behaviour went beyond conduct that could reasonably be afforded the enhanced protection of Article 10 and brought both his and his authority's roles into disrepute, and that remains my view. I am of the opinion that by speaking in the manner and making the allegations described in paragraphs 14.4 and 15.8 and 15.9 above,

including that some of his fellow councillors lacked integrity and that the Town Clerk had acted improperly (effectively allegations of misconduct in public office), the conduct both adversely affected the reputation of the Town Council's councillors and reduced public confidence in it being able to fulfil its functions and duties.

Paragraph 9: Declaration of Interests

Councillor Yeo disagrees with the Investigators' finding at page 14 of the report that he is in breach of paragraph 9 of the Code.

Appendix B of Shaftsbury Town Council's Code of Conduct states the following about declaring an other registrable interest (ORI):

"6. Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation." (Our emphasis).

For a matter to be directly related to an ORI, it must be specifically and immediately *about the interest itself*. This is distinct from the situation where a matter *affects* an ORI, and the LGA Guidance is clear on this point:

*"What is the difference between 'relates to' and 'affects'?
Something relates to your interest if it is directly about it.
'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest."*

The meaning of directly related is further demonstrated by the examples given in the LGA Guidance of situations in which an ORI would be directly related to a matter:

- Awarding/withdrawing grant funding to a body of which you are a member
- Granting planning permission to a body of which you are a member

In drawing the conclusion that Councillor Yeo has breached paragraph 9 of the Code of Conduct, the draft report demonstrates a fundamental misunderstanding of this important distinction, stating:

"the Town Council proposal and the CIO proposal are in opposition to one another; there is only one site for the Mampitts Hub project and one developer contribution funding payment – if one proposal goes ahead the other will not."

"Every decision taken by the Town Council to progress the Town Council proposal will inevitably relate to Cllr Yeo's other registerable interest (his being a trustee of the CIO) within the meaning of paragraph 6 of Appendix B of the Code, because constructing the community facility in accordance with the Town Council proposal will mean that the CIO proposal will not be brought to fruition."

Councillor Yeo's ORI is that he is a trustee of the Mampitts Lane Community Land Trust CIO. The matters discussed at the meetings were:

1. *"to receive an update on the Mampitts Hub Architect Tender process"*
2. *"to consider the appointment of the Mampitts Architect"*.

It is clear that neither matter was about the proposals of the CIO.

Whilst it is true that the Town Council's proposal and the CIO's proposal are in opposition to one another, the fact that progression of the Town Council's proposal prevents the fruition of the CIO's proposal and that Councillor Yeo has objections to the Town Council's proposals does not mean the matters discussed are directly related to the ORI on a proper construction of the phrase. Clearly Councillor Yeo's ORI is not *directly* related to the matters discussed at the two meetings; they merely *affect* it.

The provisions in the Code of Conduct which deal with the disclosure and declaration of matters affecting an interest are as follows:

"8. Where a matter arises at a meeting which affects –
a. your own financial interest or well-being;
b. a financial interest or well-being of a friend, relative, close associate; or
c. a body included in those you need to declare under Disclosable Pecuniary Interests
you must disclose the interest.

9. Where the matter affects the financial interest or well-being:
a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest
you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest."

It is evident that paragraphs 8a, 8b and 8c of Appendix B do not apply. An update on the tender process and the appointment of an architect are not matters which affect any interest which is Councillor Yeo's own financial interest or wellbeing, or that of a friend, relative or close associate, and the CIO is not a body needing to be declared under disclosable pecuniary interests.

Councillor Yeo therefore *cannot* be in breach of paragraph 9 of the Code of Conduct, contrary to the conclusion of the draft report. He has not failed to register his interest, nor has he failed to correctly declare it. He was not required to withdraw from the meetings or seek a dispensation for them because his ORI does not directly relate to the matters dealt with at the meetings in questions.

The Findings section of the report describes in some detail the events at the two meetings. At both meetings Cllr Yeo himself sought to extend the discussion about the Mampitts Hub project beyond the items that appeared on the agendas and it was

clear to me that he was trying to frustrate the progress of the Town Council proposal and advance the desirability of the CIO proposal. The conclusions section of the report contained a detailed analysis of the provisions of Appendix B of the Town Council's Code of Conduct and set out the reasons why it is considered that a dispensation was required to enable Cllr Yeo lawfully to participate in the discussion and vote. It is not disputed that Cllr Yeo had both registered his involvement with the CIO as an other registerable interest and declared it at both meetings. The comments made on behalf of Cllr Yeo fail to mention the part of the LGA Guidance (p.81) that follows the part quoted, namely that in construing the meaning of the phrase 'affects the financial interest or well-being' (paragraph 9 of Appendix B), an interest can be taken to directly relate to an outside body where the authority is taking a decision which directly relates to the wellbeing of that organisation. An example is given of a councillor who is also on the committee of the local village hall and an application for a licence for another venue in the village is made which if granted might take business away from the village hall – in that case a reasonable person would believe that the councillor's view would be likely to be affected. It seemed to me when considering the complaint that this part of the Guidance was informative. The conclusion referenced also the correspondence that had previously taken place between the Town Clerk, Cllr Yeo and the Monitoring Officer about declaring interests and seeking dispensations. I therefore believe that my conclusion is well-founded.

Investigating Officer's further conclusions

The Investigating Officer's further conclusions set out at paragraphs 1 – 3 on page 16 of the draft report are either the expression of her personal views or comments on matters outside the scope of the investigation. Those paragraphs should be removed in their entirety.

The comments did not refer to Cllr Yeo and they did not seek to introduce into the Conclusion section of the report starting on page 12 of it, any matters outside the scope of the investigation into the complaints particularised on page 2 of the report.

Mary Dolley
Legal Services
Dorset Council
28 January 2026