

Thursday, 5 May 2022

**STANDARDS HEARING SUB-COMMITTEE**

A meeting of **Standards Hearing Sub-Committee** will be held on

**Friday, 13 May 2022**

commencing at **10.00 am**

The meeting will be held in the Board Room, Town Hall, Castle Circus, Torquay  
TQ1 3DR

**Members of the Committee**

Councillor Atiya-Alla  
Councillor Barbara Lewis

Councillor Mills

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# STANDARDS HEARING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**

To elect a Chairman/woman for the meeting.

2. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

3. **Declarations of interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

4. **Allegation of a Breach of the Member Code of Conduct**

(Pages 3 - 25)

To consider a report and determine what action, if any, should be taken in respect of allegations made against a Member of Torbay Council in accordance with the Local Protocol for Assessment and Determination of Allegations of Breaches of the Members Code of Conduct.

In doing so the Standards Hearing Sub-Committee will consider the following:

- a) Preliminary Procedural Issues;
- b) Any significant disagreements about the findings of fact contained within the Investigators Report;
- c) Whether the Subject Member has failed to follow the Members Code of Conduct and what if any sanctions are appropriate where there is a finding.

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C A Jones & Associates Ltd

Torbay Council

Investigation  
Report

Complaints against Councillor David Thomas

April 2022

Investigation Report

Torbay Council

Complaints against Councillor David Thomas

**1. Introduction**

1.1. I was appointed by Amanda Barlow, in her capacity as Monitoring Officer for Torbay Council, to investigate complaints made against Councillor David Thomas.

There were 2 complaints covering the same incident, the first made by 6 Torbay Councillors and the second being made by an officer of Torbay Council.

1.2. The complainants are the following:

Councillor Margaret Douglas Dunbar  
Councillor Karen Kennedy  
Councillor Cat Johns  
Councillor Christine Carter  
Councillor Cordelia Law  
Councillor Swithin Long  
Kevin Mowat – Director of Place

All officers and Members contacted as part of the investigation fully cooperated and their assistance is greatly appreciated.

1.3. The Complaint

1.3.1. The complaint pack which was submitted jointly by the above-named councillors relate to the conduct of Councillor Thomas whilst attending the meeting of Torbay's Housing Crisis Review Panel on 27<sup>th</sup> September 2021. The complainants have quoted directly from Torbay's Code of Conduct and have identified the following sections of the constitution within their complaint:

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### 4.2 General Conduct:

You must:

- (a) treat others with respect
- (b) be truthful
- (c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.

### 4.3 As a Member: You must not:

- (b) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
- (c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council:
- (d) misuse Council resources or when using the resources of the Council ensure that such resources are not used improperly for political purposes (including party political purposes), business or personal gain and that any use is in accordance with the Council's reasonable requirements and in accordance with its Policies.
- (e) do anything which may cause the Council to breach a statutory duty or any of the equalities enactments.
- (h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

1.3.2. The complaint submitted by Kevin Mowat, covered the same meeting as that identified and highlighted the following extracts from the Code of Conduct:

### 4.2 General Conduct: You must:

- (a) treat others with respect

### 4.3 As a Member: You must not:

- (a) bully or harass any person.
- (c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council

1.3.3. On the 26<sup>th</sup> October 2021, The Monitoring Officer wrote to Councillor Thomas, outlining the details of both complaints.

## **2. Summary of Findings**

Both the complaint from the Councillors and from Kevin Mowat outline similar views on the conduct of Councillor Thomas.

In order to summarise my findings, I have therefore used the areas of the constitution which were identified within the complaint received from the 6 Councillors and by Kevin Mowat.

2.1. In relation to the allegations listed at 1.3.1 and 1.3.2:

2.1.1. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.2 You must:

(a) treat others with respect

2.1.2. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.2 You must:

(b) be truthful

2.1.3. I have found Councillor **Thomas has not breached the code** in relation to:

4.2 You must:

(c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.

2.1.4. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.3 You must not:

(a) bully or harass a person

2.1.5. I find evidence of **Councillor Thomas having breached the Code** in relation to: 4.3 You must not

(b) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

2.1.6. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.3 You must not

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council

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2.1.7. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.3 You must not

(d) misuse Council resources or when using the resources of the Council ensure that such resources are not used improperly for political purposes (including party political purposes), business or personal gain and that any use is in accordance with the Council's reasonable requirements and in accordance with its Policies.

2.1.8. I have found that **Councillor Thomas has not breached the Code** in relation to: 4.3 You must not

(e) do anything which may cause the Council to breach a statutory duty or any of the equality enactments.

2.1.9. I find evidence of **Councillor Thomas having breached the Code** in relation to: 4.3 You must not

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute

### 3. Context and Key Considerations

3.1. *Under section 27(2) of the Localism Act 2011 a relevant authority "must in particular, 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". Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the code; a link to that person's membership of their authority and specifically their role as a councillor is needed. Some activities clearly have no link with the Council such as a purely domestic matter or something that a member may do while employed in work completely unrelated to the Council. Councillors must actually be engaged on Council business or commenting on Council business or acting as a representative of the Authority to be deemed "within capacity". The first point to be established therefore is whether Cllr Thomas was acting in capacity at the time of the incident*

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3.2. On the evening of 27<sup>th</sup> September 2021 Councillor Thomas attended the meeting of Torbay's Housing Crisis Review Panel which was chaired by Councillor Foster. There is no question as to whether Councillor Thomas was acting in the capacity of a Councillor and the focus of this report is therefore on the matter of conduct during this meeting.

The meeting was live streamed via Zoom and a copy of the recording of the meeting was made available by Torbay Council, in order to assist the investigation.

Although as part of the investigation process a number of Councillors and Officers have been interviewed (details provided at section 4 of this report), the main evidence is the recording of the meeting, with the interviews having assisted in setting the scene and having aided the understanding of the working environment and relationships at Torbay Council.

3.3. In assessing the conduct issues, it was necessary to review the Council's Code of Conduct and to assess the complaints against that code. The Council adopted a local code on 12<sup>th</sup> July 2012 and adopted a revised code at its meeting on 25<sup>th</sup> February 2021. The Members Code of Conduct is contained under Part 5 of its Constitution.

3.4. The Council's website [www.torbay.gov.uk](http://www.torbay.gov.uk) provides a link to the Code under the heading Behavior, interests, and standards with the following introduction:

"We recognise the importance of high standards of conduct and ethics from its politicians and officers. We strive to ensure that our politicians and officers maintain these standards when representing us and the people of Torbay.

We have a 'local' code of conduct which explains what is expected of members and co-opted members of the authority when they are acting in that capacity and that such code makes appropriate provision for the registration by members of pecuniary and other interests of members.

The Code of Conduct ensures high standards and sets out the rules for how members should carry out their duties. It also covers areas of individual behaviour and makes sure members do not abuse their position or the Council's resources"

3.5. Councillor Thomas is a long-standing Member of Torbay Council and is the Leader of the Conservative Group (Councillor Foster is a member of the Conservative Group). Councillor Thomas comes across as a very experienced Councillor.



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The area of contention at the 27<sup>th</sup> September meeting was who was a member of the Panel. The issue of who was a member of the panel arose almost immediately at the start of the meeting and was the focus of the discussion for almost an hour. Throughout the meeting, Councillor Foster appeared focused on and determined to take a vote on membership of the panel. Councillor Thomas was clearly in support of the approach being taken by Councillor Foster. The meeting was at times heated and this is what led to the complaints. During the meeting of 27<sup>th</sup> September 2021, Councillor Thomas spoke 8 times. I have summarised these instances in the below table:

| Timing (Minutes /seconds) | Summary of Comments  |
|---------------------------|--|
| 2:45                      | To confirm that he had another meeting to go to and would be leaving in approximately 25 minutes.  |
| 7:40                      | Stated that the panel is already formulised by the printed paper being issued and reminding the Chair that there was a proposal on the table.  |
| 13:30                     | Stated that there appeared to be some confusion as to who could vote at the meeting and suggesting that all that could be done at that stage was to go to the actual published paperwork where it stated who the committee was. Councillor Thomas stated that this was the published position. |
| 25.58                     | Councillor Thomas stated that if the Clerk was having difficulties that she passes to Kevin Mowat as co-host to carry on with the vote.  |
| 26.50                     | Councillor Thomas repeats his previous comment and suggests that the co-host continues.  |
| 32.24                     | Councillor Thomas interrupts to state that he has never known so much debate in the middle of a vote and that it is just unbelievable. He went on to state that he has never known or seen an officer break off from the vote halfway through.   |
| 47:55                     | At this point, Councillor Thomas spoke for over 3 minutes, confirming his understanding of how panel memberships are decided (outlining 2 options) and making it clear that he did not agree with the approach now being taken (responding to the Chief Executive's interjection)              |

#### 4. Approach taken to the Investigation

- 4.1. An initial conversation took place with Amanda Barlow in her capacity as Monitoring Officer at Torbay Council. Ongoing contact was maintained throughout the investigation.
- 4.2. The submitted complaints were reviewed.
- 4.3. The letters dated 26<sup>th</sup> and 27<sup>th</sup> October 2021 issued by the Monitoring Officer to Councillor Thomas were considered. (The letters confirmed the details of the complaints to Councillor Thomas)

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4.4. The following individuals were interviewed:

Councillor Margaret Douglas Dunbar  
Councillor Karen Kennedy  
Councillor Cat Johns  
Councillor Christine Carter  
Councillor Cordelia Law  
Councillor Swithin Long  
Kevin Mowat – Director of Place  
Teresa Buckley – Clerk to the meeting  
Councillor David Thomas  
Councillor Hazel Foster

These interviews were all conducted via Zoom calls.

4.5. Brief notes of the interviews detailed at 4.4 were shared with and reviewed by the individuals concerned.

4.6. The Code of Conduct was considered in conjunction with the comments made within the complaints.

4.7. The recording of the meeting was reviewed

4.8. E mails to Councillor Thomas were considered

## **5. Comments on the Report**

5.1. The draft report has been peer reviewed by Hoey Ainscough Associates Ltd who are nationally recognised experts in Code of Conduct-related matters to ensure consistency of standard with other such reports nationally

5.2. The draft report has also been shared with the Monitoring Officer to ensure that it was of the required standard.

5.3. Both the Complainants and the Subject Member were given the opportunity to review the draft report and commented as follows:

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| Name of respondent      | Response  |
|-------------------------|---|
| Councillor Cordelia Law | <p><b>6.2</b></p> <p>I am struggling with the definition of truthful that has been applied.</p> <p>The report acknowledges that Cllr D Thomas failed on several occasions when asked, to acknowledge receipt of the email. Had he done so then the meeting could not have continued in the vain it was and it would have clarified the membership without ambiguity, thus showing Cllr Foster and Thomas’ behaviour to be dishonest as they were aware what they were doing was contrary to what had been previously stipulated.</p> <p>Most reasonable people should think that if you are failing to be truthful when asked a direct question, you are lying by omission. Whilst Cllr D Thomas doesn’t directly utter a lie, his behaviour and avoidance is deceitful in this instance.</p> <p>Please clarify the difference between deceitful behaviour and omitting the truth and not being truthful.</p> <p><b>6.3.</b></p> <p>I have to say that I find this a strange response. Is Teresa Buckley’s email of 23<sup>rd</sup> September not considered a notification of the formal decision made by the O&amp;S coordinator?</p> <p>I also find Cllr Thomas’ excuse that he was on holiday very strange. On checking his diary and that of his wife, he is not marked down as on holiday, no notification of holiday was sent out by Governance and Cllr Thomas was able to respond to Teresa Buckley’s of 27<sup>th</sup>. Cllr Thomas’ diary does state that he is not available, however he also has several meetings listed during this period. Holiday that wasn’t notified seems a rather convenient excuse to me and actually bears no relevance as he was able to respond to Teresa Buckley’s email on 27<sup>th</sup> and if he had not read the email, he could have simply stated this which suggests that the holiday is not an excuse. It should be a simple matter to confirm when emails were accessed through our IT department.</p> |

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|  |   |
|--|---|
|  | <p><b>6.4.</b></p> <p>My apologies but I do not find it acceptable to dismiss rude, intimidating and bullying behaviour as being “blunt” or “Northern” and find such stereotyping offensive. It is a little like calling violence, passion.</p> <p>I absolutely believe that Cllr Thomas’ statements and tone were intended to undermine the officers and therefore should be considered under the LGA/ACAS definition.</p> <p>Every bully in the world claims they are “just” blunt, plain speaking, telling the truth. The fact that Cllr Thomas is not aware of his demeanour does not excuse the impact of his words, tone, demeanour or behaviour. To belittle and dismiss visible distress as “having difficulties” is not being blunt it is belittling.</p> <p>For information, the dictionary definition of the word denigrate as used in the LGA/ACAS is “to treat or represent as lacking in value or importance. Synonym: belittle”.</p> <p>It is not about how the accused person perceives their own behaviour, but the impact on others that their behaviour has. I absolutely refute that this behaviour is due to being a “blunt northern gentleman”, furthermore I find it an insult and racial stereotyping of my friends and family that hail from the north of Britain, that such behaviour would be deemed acceptable by them because of geography and urge you to reconsider.</p> <p><b>6.6.1</b></p> <p>The report states:</p> |
|--|---|

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“Officers ... clearly communicated with each other to ensure that senior and experienced officers were made available to assist.

When it became clear the Teresa Buckley was



upset and crying, I felt incredibly uncomfortable at what was happening and it was me who messaged the Chief Executive at 17.02 saying asking Anne-Marie Bond to telephone Teresa. I was so shocked and shaky that my text was very brief. As Mrs Bond was in a meeting, she replied that she had asked June Gurry to join the meeting. I have Mrs Bond's permission to share a screenshot of this brief conversation.

It was when it became apparent that Mrs Gurry was making no headway that I believe she contacted Mrs Bond. Initially however, more other officers joined as a result of my distress at what I was witnessing and my request for help for Teresa.

Our Code of Conduct states “or is likely to compromise” and therefore I perceive that the actual outcome is irrelevant and the intention is important.

I contacted Mrs Bond because Teresa had in my opinion been bullied into crying in an attempt to bully her into a course of action designed to confer advantage on the Conservative Group and therefore had Mrs Foster and Cllr D Thomas succeeded, would have compromised the impartiality of officers.

Therefore I ask you to reconsider this as I consider their behaviour was likely to compromise, although it wasn't successful, the

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|                         |  |
|-------------------------|--|
|                         | <p>intention was there. Intention is just as damning regardless of outcome.</p> <p><b>6.8.2</b><br/>I find it interesting that although the women making this complaint perceived Cllr Thomas' remarks and soliloquies sexist in tone, it has not been considered to be so. I find this position interesting given the recent moves to have this sort of behaviour deemed a hate crime.</p> <p>I also find it interesting that the report suggests that Cllr Thomas and the council may "wish to consider how they ensure that such perceptions are not evident in the future." Surely it is the perception of a person's behaviour that is most important, not how the person themselves thinks they might sound. If there has been no breach, why would the council or Cllr Thomas wish to consider behaviour. I'm afraid this section just doesn't make sense to me and appears to hold two conflicting opinions of the behaviour simultaneously.</p> |
| Councillor Swithin Long | Thank you for the report – I am happy with it.   |
| Councillor David Thomas | <p>Thank you for your report and findings. My only comment would be, which I would have expected to see in the report, the dates of my holiday.</p> <p>You will recall from your notes, I was away on holiday from Thursday 23<sup>rd</sup> September returning to Torbay on the morning of Monday 27<sup>th</sup> September. In reality I left the Bay at 7:00am on the Thursday and got back into the Bay at approx. 12 noon on the Monday, where I returned our caravan to its storage pitch and upon my return home, started to look through a long list of emails that I needed to address, having been away.</p> <p>I have been advised on many occasions, from senior officers, that my work/life balance is seriously out of kilter; and that when I go away I should refrain from taking my electronic device and have some 'me' time away from the office. You will note that</p>  |

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|                             |  |
|-----------------------------|--|
|                             | <p>Teresa's email was sent on 27<sup>th</sup>, when I didn't have a chance to respond and when I returned, I sent a very quick 'holding' reply – to her second email, as I had simply not had time to do anything different. This was explained in our interview, but has not made it to the report. I believe this is a 'material consideration' in the findings and as such I make a request that reference to my holidays and the time span could be added.</p> |
| Councillor Karen Kennedy    | <p>Although I don't entirely agree with some of the findings relating to Councillor Thomas, I do respect your findings and look forward to this matter coming to a close.</p>  |
| Councillor Christine Carter | <p>I have read through the reports and am happy with the draft report.</p>   |

### 6. Details of specific aspects of the complaint and conclusions

Each of the aspects of the complaints have been taken in turn below:

#### 6.1. In relation to the Code of Conduct: 4.2 You must:

##### (a) treat others with respect.

6.1.1. The complaints highlight the conduct at the meeting of Councillor Thomas throughout the meeting and his support of the Chair, Councillor Foster in her approach.

6.1.2. It is clear from the recording of the meeting, that Councillor Thomas supported Councillor Foster in taking a vote on the membership of the panel and that the vote should be taken by all members present at the meeting. Councillor Thomas was adamant that the published papers were the key factor in how the membership of the meeting should be considered.

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6.1.3. In concluding if there was a breach with this regard, I have looked at the LGA guidance in relation to respect published to accompany their 2021 model Code of Conduct which states:

“failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect...any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour...Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context, but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.”

6.1.4. During a number of the interviews conducted as part of this investigation, Councillor Thomas has been described as follows:

“ He never listens to what others are saying”

“His approach can sometimes come across as aggressive”

“Has a large voice and can be seen as intimidating”

“He is a large man with a booming voice. Often belittling towards people in a subtle way”

“Robust, loud individual and needs to be more aware of his impact”

These descriptions relate to how Councillor Thomas is seen generally rather than in this particular meeting but from viewing the recording, I would consider that these comments do generally and reasonably represent what I observed as being the case on 27<sup>th</sup> September 2021.



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6.1.5. Taking all of the above into account and observations from the recording, I am of the opinion that Councillor Thomas acted in a blunt, straight-talking manner (he described himself during the interview as a “blunt northern gentleman”), as is clearly his way. This approach might be difficult to accept at times (and he might wish to consider how his approach comes across to others) though this of itself would not make it a breach of the Code. Each interaction would need to be looked at on its merits rather than someone’s overall tone amounting automatically to a breach of the Code.

6.1.6. As per the guidance detailed at 6.1.3, my consideration here is ‘would the behaviour shown by Councillor Thomas during this meeting be likely to influence the willingness of fellow councillors, officers or members of the public to speak up or interact with him because they expect the encounter will be unpleasant or highly uncomfortable.’

6.1.7. Although Councillor Thomas’ style can be blunt, people are familiar with his style and there is nothing in any of his individual remarks during the meeting of 27<sup>th</sup> September that I would regard as crossing the line between plain speaking and being disrespectful.

On balance, I do not consider that in this instance that this behaviour resulted in a breach in the Code of Conduct.

### 6.2. In relation to the Code of Conduct: 4.2      **You Must:**

#### **(b) be truthful**

6.2.1. The complaint against Councillor Thomas comments on his role at the meeting as a Group Leader and although I fully understand the expectations of the complainants here, I am not aware of any formally recognised protocol whereby the Leader of a political group has specific expectations over and above those of other members in relation to such a meeting.

6.2.2. The complaint pack also correctly identifies that the Chief Executive asked Councillor Thomas to confirm if he had received an e mail regarding membership of the group. Councillor Thomas did in his response talk at length regarding other matters. Although Councillor Thomas did not

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answer the question regarding the e mail, he did not actually deny receiving it.

6.2.3. Taking the above into account, I am not able to conclude that there was a breach of the Code of Conduct in this instance.

### 6.3. In relation to the Code of Conduct: 4.2 You Must:

**(c) when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the council.**

6.3.1. When reviewing the recording of the meeting, it is clear that Councillor Thomas did not want to accept the opinion of the officers present and voiced his view very clearly and firmly. This is particularly apparent in his response to the Chief Executive after 47 minutes and 55 seconds of the meeting, where he talked for a number of minutes regarding how scrutiny panels have been run previously.

There was also a sequence of e- mails prior to the meeting between Teresa Buckley and Councillor Thomas. These were as follows:

On 23<sup>rd</sup> September, Teresa Buckley wrote:

*Dear David, following tonight's overview and scrutiny briefing Councillor Douglas-Dunbar, as Overview and Scrutiny Co-ordinator has taken the decision to apply political balance to the above Review Panel. This is unprecedented to receive such high numbers of interest where normally we would receive five or six. This means the Panel will have 8 Members with the following political balance.*

*3 Conservatives (including Hazel as Chairwoman as she is Scrutiny Lead for Corporate and Community Services, where Housing sits)*

*3 Liberal Democrat's*

*2 Independents*

*All members will be able to take part in the review but any voting on recommendations would be down to the 8 members of the Panel.*

*For future reviews we will ensure that political balance will be applied based on the numbers of expressions of interest with a maximum number of 8 on the Panel.*

*Please can you let me know which three members of your Group including Cllr Foster you wish to be Members of the Panel **by 3pm on Monday, 27 September***

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*2021 so that I can report this to the meeting under the first item apologies and confirmation of membership. Those who expressed an interest are:*

*Foster – Chair*

*Barnby*

*Bye*

*Barbara Lewis*

*Chris Lewis*

*O'Dwyer*

*David Thomas*

*Jackie Thomas*

When there was not a reply, Ms Buckley again e-mailed on 27<sup>th</sup> September, asking if there had been an update.

In reply, Councillor Thomas wrote:

*No update Teressa*

6.3.2. When questioned on these e mails, Councillor Thomas explained that he had been on holiday and only returned on 27<sup>th</sup> September when he picked up his e- mails and that his reply was brief due to having returned from holiday and that he was going into a meeting

6.3.3. It is clear to me that Councillor Thomas was at best, avoiding answering the question by the Chief Executive and providing a more complete answer in his e mail to Teresa Buckley to avoid appointing 3 members of his group to the panel. It is, however, my view that this part of the code applies to formal decision making which binds the council through formal business rather than expressing an opinion.

I therefore conclude that there has not been a breach in the code of conduct.

**6.4. In relation to the Code of Conduct: 4.3      You must not:**

**(a) bully or harass a person**

6.4.1. When reviewing the recording of the meeting, Councillor Thomas keeps his comments general rather than specifically aiming them directly at individuals.

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6.4.2. Although Councillor Thomas' wording around Teresa Buckley and her "having difficulties" and other comments around officers interrupting the vote were perhaps blunt, I see these as his attempt to state what he saw as the situation although he probably could have chosen his wording more carefully.

6.4.3. In considering the accusation that these and other instances throughout the meeting are bullying, I have used The Independent Advisory, Conciliation and Arbitration Service (Acas) definition of bullying which is often used in employment tribunal cases and has been used in the LGA guidance referred to above and is as follows:

**"Offensive, intimidating, malicious or insulting behaviour**, involving an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient."

In watching the recording of the instances listed within this section (and others), I do not consider that they fall within that above definition of bullying.

I therefore conclude that this part of the code has not been breached.

### 6.5. In relation to the Code of Conduct: 4.3      **You must not:**

**(b) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage**

6.5.1. I do not consider that Councillor Thomas was the decision maker at the meeting and the responsibility for running the meeting sat firmly with Councillor Foster as the Chair. However, Councillor Thomas had a responsibility as Conservative Group Leader to respond to the request to provide 3 names from the Conservative Group to sit on the panel (and to conform with the request for political proportionality). Councillor Thomas failed to do that, either before or during the meeting.

6.5.2. I have no doubt that Councillor Thomas was fully aware of the impact of not having selected 3 Conservative Members to sit on the panel and that he was also aware that his support of the Chair in the approach that she took at the meeting could lead to the Conservative Group having the majority of membership on that panel.

I consider that this is the advantage that Councillor Thomas was attempting to secure for himself and for the other attending members of the Conservative Group. By implication, this could have disadvantaged

## **Private & Confidential**

members of other parties.

6.5.3. I therefore do consider that this is a breach of this section of the Code of Conduct.

### **6.6. In relation to the Code of Conduct: 4.3      You must not:**

(c) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council

6.6.1. The complainants state “Councillor Foster was putting Officers in a position where they were forced to carry out the wishes of the Conservative Group”. By supporting this approach, the suggestion of the complainants is that Councillor Thomas is also in breach of the code of conduct with this respect.

It is evident from the recording of the meeting that this was not the final outcome. Officers were very robust in ensuring that every opportunity was taken to challenge the approach being taken and clearly communicated with each other to ensure that senior and experienced officers were made available to assist. Without this approach by officers, the outcome for the Council may well have been very different.

6.6.2. I therefore conclude that Councillor Thomas did not breach the Code in this instance.

### **6.7. In relation to the Code of Conduct: 4.3      You must not:**

(d) misuse Council resources or when using the resources of the Council ensure that such resources are not used improperly for political purposes (including party political purposes), business or personal gain and that any use is in accordance with the Council’s reasonable requirements and in accordance with its Policies

6.7.1. The complainants consider that the first hour of the meeting on 27<sup>th</sup> September 2021 was “political grandstanding” and that the approach taken necessitated the need for senior officers to join the meeting out of normal working hours.

6.7.2. I am not to conclude that officers joining a meeting to provide clarity on matters constitutes a breach of the Code of Conduct by those involved and to draw such a conclusion could in the future reduce debate by Members or indeed be seen to encourage officers not to join meetings and offer support when challenges arise. Officers are there to give advice and it is not in my view a misuse of resources for them to have to attend the

## **Private & Confidential**

meeting, no matter how long the matter was dragged out.

6.7.3. I therefore conclude that Cllr Thomas did not breach the Code with regard to misuse of council resources.

### **6.8. In relation to the Code of Conduct: 4.3      You must not:**

(e) do anything which may cause the Council to breach a statutory duty or any of the equality enactments.

6.8.1. The complainants state "Cllr Thomas' comments on the Clerk's distress and upset, saying "if the clerk is having difficulties." was perceived by many people as belittling and chauvinistic". The complaint went on to describe the lengthy response to the Chief Executive as "mansplaining" and stated that most women listening found this offensive.

6.8.2. It is difficult to conclude that the actions of Councillor Thomas in this instance would cause the Council to breach a statutory duty as required within the code. I understand the strong feelings of a number of female members who attended the meeting and have commented of the general behaviour and approach taken by Councillor Thomas (not isolated to this particular meeting). Under the Equality Act 2010, an authority is made liable for any discriminatory acts which a councillor commits. This will apply where they say or do something in their official capacity in a discriminatory manner. However, this needs to be balanced against the rights to freedom of expression and simply acting 'in a belittling and chauvinistic manner' would not in my view cross the high bar set towards breaching duties under the Equality Act.

Councillor Thomas and the Council might, however, wish to consider how they might ensure that such perceptions are not evident in the future.

I conclude that there is not a breach of the Code in this instance.

### **6.9. In relation to the Code of Conduct: 4.3      You must not:**

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute

6.9.1. I have no doubt that an onlooker would be surprised to see how the meeting was run and for the continued support that Councillor Thomas gave to the approach being taken by Councillor Foster in her capacity as Chair of the meeting. This support continued even though officers and

## Private & Confidential

other members had clearly explained the requirement for political proportionality. Councillor Thomas considers that as there was a motion on the table, (to vote for membership of the panel), that the vote should have continued no matter what.

6.9.2. In concluding that there was a breach with this regard, I have again looked at the LGA guidance in relation to disrepute published to accompany their 2021 model Code of Conduct which 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.

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.

6.9.3. Radio Exe Devon, picked up on the meeting :

<https://www.radioexe.co.uk/news-and-features/local-news/torbay-council-verbal-punch-up-leave-clerk-distressed/>

The article makes comments such as:

A Torbay Council meeting descended into disarray this week as councillors took an hour to decide not to have a vote.

In a meeting which had echoes of the famous 'Jackie Weaver' incident at Handforth Parish Council that went viral earlier this year, Torbay members engaged in a fierce hour-long debate over who could or could not be a member of a new group

At one point, a council clerk, who is not allowed to be involved in political debates, was put

## Private & Confidential

in the crossfire when she was asked to weigh in. After being placed in an impossible position, the clerk became visibly distressed

6.9.4. Following the e mail from Teresa Buckley on 23<sup>rd</sup> September 2021, Councillor Thomas could have discussed his concerns over the political proportionality arrangements and the fact that the invitation had gone out to more Members than were entitled to be on the panel, directly, and in detail, with the Clerk. However, he chose to approach this by supporting the Chair of the meeting and bringing the matter to a vote in the public meeting of 27<sup>th</sup> September 2021. This ultimately resulted in the conduct at the meeting and the press interest in the matter.

6.9.5. Taking the above into account, the conduct of Councillor Thomas at this meeting would, in my opinion, would give a reasonable person the impression that he has brought his office and the Council into disrepute and as per the guidance, would reduce the public's confidence in Councillor Thomas being able to fulfil his role and has adversely affected the reputation of the authority's councillors, in being able to fulfil their role .This is supported by the above article from Radio Exe Devon, which highlights some of the impression given to an onlooker and shows the impact that the conduct displayed at the meeting has had on the reputation of the Council.

I therefore find a breach of the Code of Conduct in this instance



### **Report of the Independent Person on the investigations into complaints made against Councillors Hazel Foster and David Thomas.**

As an Independent Person appointed by Torbay Council, it is my role to review a report of an investigation into alleged breaches of the Members Code of Conduct. In reviewing the investigation report I must be satisfied that the investigation is of an acceptable standard and met the scope of the complaint.

I recognise that there were separate complaints submitted about behaviour at the same meeting and that two separate investigations were undertaken into the alleged behaviour of Councillors Foster and Thomas. I believe, however, that the opinion I would make can be applied to both cases and therefore provide the following comments with regards to both Investigation Reports.

I have received a draft copy of the Investigator's report which looked at complaints that alleged Councillor Foster and Councillor Thomas had breached the Members Code of Conduct. I note, however, that the meeting to which the complaints refer was recorded, providing a valuable primary source of evidence. I also note that the Investigator undertook a number of interviews, which I am sure took considerable time but were none the less important in establishing the facts of the case, I personally have not reviewed the recording or any interview transcripts, but I have considered the complaints and the investigation report. Additionally, the Investigation Report provides detailed consideration of all aspects of the complaints made. I do not believe that my role is to comment on whether I would have formed the same conclusion regarding potential breaches of the Members Code of Conduct, if I had done so. I am, in accordance with the remit of my role, of the opinion that the investigation has covered the scope and matters raised by the complainants.

Having concluded that the investigation has met the scope of the complaint, I also consider the investigation to be of an acceptable standard and will leave any final determination of whether Councillors Foster and Thomas have breached the Members Code of Conduct for the Hearing of a Sub-Committee.

Peter Styler – Independent Person for Torbay Council