

**APPEALS OF MR. NEIL McEVOY M.S.**

**REPORT  
OF  
HIS HONOUR NEIL BIDDER Q.C.**

**BY APPOINTMENT OF  
THE PRESIDING OFFICER**

## REPORT ON THE APPEALS OF MR. NEIL McEVOY M.S.

### His Honour Judge Bidder QC:

1. By letter of 23<sup>rd</sup> March 2021, I have been appointed, in accordance with paragraph 8.2 of the Procedure for dealing with complaints against Members of the Senedd, as an independent legally qualified person to determine the appeals of Neil McEvoy MS (“the Member”) who has appealed against the decisions in four reports of the Standards Committee (“the Committee”) of the Senedd, finding him in breach of the Senedd Members’ Code of Conduct (“the Code”).
2. The following are the relevant paragraphs of the National Assembly for Wales Procedure for Dealing with Complaints against Assembly Members (“the Procedure”) which set out the procedure for my consideration of the appeals, which procedure was approved by the Committee on Standards of Conduct on 9<sup>th</sup> July 2013. That procedure was made pursuant to the National Assembly of Wales Commissioner for Standards Measure 2009 (“the Measure”).

*“8.4 Appeals will only be considered on the following grounds:*

- i. that the Committee’s conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;*
- ii. that there had been procedural irregularities that prejudiced the Member’s right to a fair hearing.*

*8.5 The independent legally qualified person appointed to decide the appeal will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. That person will not conduct oral hearings or consider representations from any other source.*

*8.6 The person appointed to decide the appeal must prepare, and provide to the Member and to the Committee, a report of his or her consideration of the appeal and must either:*

- i. if the grounds of appeal are established, uphold the appeal and refer the complaint back to the Committee for further consideration;*
- or ii. dismiss the appeal.”*

3. I have, accordingly, considered the reports of the Acting Commissioner and the Committee together with the extensive documentation referred to in those

reports, comprising some 125 documents and 3 translations, totalling just under 1,700 pages. In addition, the reports of the Acting Commissioner in two of the appeals have annexes comprising in one case 22 documents and in another 14. All these documents I have read.

**THE SENEDD PROCEDURE FOR DEALING WITH COMPLAINTS**

4. The Commissioner or Acting Commissioner must, in the preliminary investigation stage, investigate and determine whether a complaint is admissible within the terms of paragraph 3 of the Procedure. While there does not appear to me from the Member's short appeal notices to be any dispute that each was admissible, I briefly confirm that each of the complaints was in writing, was about the conduct of the Member, was not anonymous and identified the complainant or complainants in a way which provided for further communication with him/her. The minor exception to the latter element of admissibility related to the complaint relating to the allegation that the Member had failed to declare an interest in relation to the petitions about the development of the Whitchurch Meadows site. 2 of the complainants did wish to remain anonymous but as their complaints were identical with the other 63 complainants their anonymity is of no practical significance.
5. Additionally, in order to be admissible, the complaint must clearly identify the Assembly Member complained of and must be made within one year from the date when the complainant could reasonably have become aware of the conduct complained about. Again, I confirm that in each case those requirements were satisfied. Finally, it must appear to the Commissioner/Acting Commissioner that there was enough evidence to suggest that the conduct complained about may have taken place and, if proved, might amount to a breach of any of the matters encompassed within Standing Order 22.2(i). It is clear that there was sufficient evidence to meet that requirement.
6. Following that preliminary sifting process, the Commissioner/Acting Commissioner must investigate the complaint with a view to establishing the facts in relation to whether the member concerned has committed the conduct complained of and reaching a conclusion as to whether there has been a breach of the matters set out in Standing Order 22.2(i). Once the investigation has been completed the Commissioner/Acting Commissioner must report to the Committee on Standards of Conduct, which report must include the matters set out in paragraph 4.2 of the Procedure.
7. In each of the cases the subject of appeal, the Acting Commissioner produced a report to the Committee complying with paragraph 4.2.
8. Before the report is made to the Committee the Member and Complainant must each have been given a copy of the draft report and an opportunity to comment on factual accuracy. Although such copies were given, that opportunity, though given, was not taken by the Member in these cases, save

in the broadest of senses, with the Member, in effect, responding to the Acting Commissioner's invitation to comment by saying he disagreed with the report. No detailed factual critique of any report was made by the Member though some criticisms were made by him.

9. The final report to the Committee must then be made available both to Member and Complainant at the same time as it was provided to the Committee. That was done in this case and the Member was then informed of his right to make both written and oral representations to the Committee.
10. The Committee must make an initial consideration of the complaint in private in accordance with paragraphs 7.1 to 7.4 of the Procedure and then must hold an oral hearing pursuant to 7.5 to 7.8. It is clear from paragraph 7.7 that, while the Committee may consider oral or written evidence from the Member or witnesses and may invite the Commissioner to give evidence, the Committee's functions are limited. The presumption is that the Committee will only ask questions of the Member or witnesses to "clarify matters of fact" and the Member or witnesses have the right to ask questions only about procedural or technical matters.
11. Thus, whether the Committee's conclusions are based on significant factual inaccuracies which, had they been known might have led to the Committee finding differently or whether there have been procedural irregularities that prejudiced the Member's right to a fair hearing will depend, not on the oral hearing before the Committee at which the Committee effectively consider whether there is any lack of clarity about the facts found by the Commissioner or whether there were any procedural or technical defects in the process conducted by the Commissioner, but on the adequacy and fairness or otherwise of the investigation and report by the Commissioner.
12. Indeed, that is made clear by paragraph 8.5 of the Procedure which states that I must consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant Member.

### **CONSIDERATION OF INDIVIDUAL APPEALS**

13. I shall consider each appeal individually but my assessment of whether there have in any case been procedural irregularities that have prejudiced the Member's right to a fair hearing will deal with matters which are common to all 4 appeals and it will be convenient to deal with that issue first in Appeal 1-21. It will be unnecessary to repeat, at length, common issues in the remaining appeals.

### **APPEAL 01-21 – PROCEDURE AND FAIRNESS OF HEARING**

14. Article 6 of the European Convention of Human Rights provides that:  
*"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*

*Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

15. It is, in my judgment, clear that these proceedings do not involve a criminal charge, the severity of penalties which are open to the Committee to recommend to the Senedd being insufficiently severe and, in particular, there being no possibility of imprisonment or fine.
16. “Civil rights” has an autonomous meaning under Convention law. These disciplinary proceedings carry with them the potential for exclusion from Senedd proceedings and the withdrawal of rights and privileges of membership of the Senedd. The right to participate in Senedd proceedings, is, of course, an immensely important right. *In Le Compte, Van Leuven and De Meyere v Belgium (1981) 4 EHRR 1*, a doctor’s right to practise medicine was suspended by a Belgian disciplinary council and the ECHR considered that in those circumstances article 6 was engaged. In *R. (Thompson) v Law Society [2004] EWCA Civ. 167*, the Court of Appeal determined that, in disciplinary proceedings against a solicitor, there was a distinction between proceedings leading to a reprimand and those leading to a suspension of the right to practise. Only in the latter case, would the proceedings determine civil rights and obligations to engage article 6.
17. In my judgment, particularly as the Committee’s report recommends suspension from the Senedd in this first appeal and that penalty is available to the Senedd in all the appeals, it is probable that article 6 is engaged.
18. The proceedings before the former Commissioner appear to me to have been conducted in public but there is insufficient evidence available to me to be sure about that. I have not contacted either the former Commissioner or the Acting Commissioner to clarify that matter. The Commissioner gave permission for persons other than the complainant and the Member to be present. It is not clear whether any member of the Press sought to be present. It is not clear to me whether the proceedings before the Acting Commissioner were public. There is no evidence of any member of the public or representative of the Press being excluded.
19. The oral hearing before the Conduct Committee appears to have been a private one. However, the Press would be entitled to be present at any final determination by the Senedd, where there would be a public pronouncement of whether the Senedd endorse the Committee’s recommendations, including its recommended penalties.
20. The Acting Commissioner’s reports are only confidential under the Procedure until the Committee has concluded its consideration of the complaint (rule 4.6). It is implicit in the rules that there would then be public access to the reports.

21. Additionally, there remains access to judicial review of the procedure by the High Court and a public hearing in that forum.
22. Thus, in my judgment, the hearings relating to these appeals satisfy the requirement of a public hearing and public pronouncement of judgment.
23. As the Measure makes clear, subject to any provisions in Standing Orders and the Procedure, it is for the Commissioner/Acting Commissioner to decide when and how to carry out an investigation and to report on its outcome.
24. Standing Orders make provision for the make-up and political balance of Senedd committees generally and the Member makes no general criticism of the make-up of the Standards Committee. He does, however, contend in his email to the Committee of the 9<sup>th</sup> of March 2021 that the members of the Committee were competitors in the forthcoming elections and all have an interest in damaging his reputation. It seems to me inevitable that a disciplinary process of and by the Senedd must involve Members who have different political views from the Member under investigation. The Procedure ensures, in my judgment, therefore, that the main investigation is in the hands of a Commissioner/Acting Commissioner who is independent of the Senedd and the Committee. As I have stated above, the power of the Committee is limited by the procedure to accepting or rejecting the Commissioner's report and to making a recommendation to the whole Senedd as to penalty.
25. The Member makes specific mention of two of the members of the Committee in his appeal notices. He contends that, in relation to the first named member, Andrew R.T. Davies M.S. that he provided the Committee with evidence of matters concerning that first named member who he says should have recused himself. He has not provided me with that evidence and, in any event, it seems to me that those must be matters for the Committee to deal with in accordance with Standing Orders. The member in question asked some relevant and, in my judgment, entirely reasonable questions in the hearing in relation to the first appeal and there was no appearance of bias at all.
26. As to the second member of the Committee named in the email, Rhun ap Iorwerth M.S., the Member contends that that member has a long-standing personal prejudice against him. Prior to the Committee's consideration of the report, Rhun ap Iorwerth MS very properly disclosed his involvement with the Member within Plaid Cymru. I have seen email correspondence from Rhun ap Iorwerth from 2017 relating to a suspension of the Member which was because of behaviour unrelated to the current matters under investigation.
27. The Member objected to Rhun ap Iorwerth's participation on the Committee and in paragraphs 8 and 9 of the Committee report, they consider the relevant paragraph of Standing Orders. In my judgment, they have correctly construed that paragraph. There is no evidence that Rhun ap Iorwerth acted in any way improperly during the Committee's consideration of the report and I am quite clear that his participation could in no way have rendered the overall hearing unfair. The Committee were not making a judgment about the credibility or reliability of the Member – that was the task, where necessary, of the Acting

Commissioner. The Committee's role was to consider and accept or reject the Acting Commissioner's report. It was also their task to recommend a penalty if they accepted the report but even there, they did not have the final say on penalty, which power was given to the Senedd generally. Thus, even if one or more members of the Committee bore an animus against the Member and were unable to set that aside to look objectively at the report, it would, in my judgment, not have rendered the overall process, which contained a number of checks and balances, unfair. There were, in my judgment, no proper grounds upon which the Committee could have rejected the Acting Commissioner's report or its recommendations.

28. The words "fair hearing" in the Procedure appear to me to import the common law concept of natural justice and Article 6 requires the hearing to be fair. However, the Measure and the Procedure allow considerable latitude to the Commissioner/Acting Commissioner on how to conduct the investigation and reach conclusions on the complaints.
29. The Member denies he has received a fair hearing and that he has had natural justice. Apart from one specific matter in the email already referred to, he is no more specific than that about the process. The specific criticism he makes is that the Acting Commissioner stated he was continuing the investigation of Sir Roderick Evans. That is factually correct. The Member says that there was no new investigation. That, too, is factually correct. The real issue is whether the decision to continue a hearing that had been substantially completed by the Commissioner has rendered the process unfair.
30. This case was not a criminal one and, as already stated, had more in common with a civil case although it was clearly not as formal as that conducted in the County or High Court. Proper respect needs to be given to the legislature setting up the process, which, in this case, allowed considerable flexibility and latitude to the Commissioner/Acting Commissioner.
31. In the first appeal, it is and was clear from the outset that there were several factual issues that were in dispute between the complainant and the Member. In those circumstances, it was right to hold an oral hearing and allow cross examination of the complainant and his witnesses by the Member and to allow the Member to give evidence and be cross examined in turn. It is less clear to me that it was necessary to follow an adversarial process, as Sir Roderick chose to do, although he was certainly entitled to do so.
32. In hindsight, one of the consequences of that choice was that the evidence was presented and challenged by 2 lay people who were unrepresented by lawyers. The result of that, in this case, when Sir Roderick took the scrupulously fair line that he did in rarely interrupting and allowing the parties considerable latitude in the evidence they presented and the answers they gave, was that the proceedings stretched out beyond what anyone had expected when the case began. The Member, in particular, had important public duties which made fixing dates for hearings difficult.

33. However, the process, which was recorded and transcribed, was virtually complete when it came to an unexpected and unfortunate premature end. The circumstances of that end are, to some extent, the subject of appeal 03-21 and were the subject of a criminal investigation.
34. Up to the point where the proceedings before Sir Roderick came to an end, they had, in my judgment, been conducted with complete fairness and even handedness by him.
35. He had ensured that proper notice of the complaints and of the hearings was given to the Member, who had been asked at the outset for his comments (see document 18).
36. The Member responded in detail in writing (document 49 and its schedule). In his response he accuses the complainant of dishonesty and, in those circumstances, oral exploration of dispute issues was likely to be necessary to achieve a fair hearing.
37. It was not, in my judgment, necessary to achieve a fair hearing, that the evidence should have been given under oath or affirmation but the decision both of the Commissioner and Acting Commissioner to insist on that was, in my judgment, plainly within their discretion and is permitted by the Measure.
38. Before the Committee, the Member has complained that staff assisting Sir Roderick, bore him ill will and should not have been involved in the process. As far as I can see, they merely acted as administrative assistants, ensuring proper documentation was available to him, assisting in arranging the hearing rooms, recordings and attendance of witnesses etc. There is no evidence at all that they influenced the course of the hearings in any way, let alone in a way adverse to the Member.
39. The Member was given a full opportunity to question the complainant and his witnesses and was allowed assistance from members of his staff. If anyone was disadvantaged by that approach, it was the complainant, for the assistance came from 2 members of the Member's staff who made unsworn statements which contradicted large parts of the complainant's case and who, ultimately, were not called by the Member to give evidence on oath or affirmation. The Member was prompted by both members of staff in a way that probably would not have been allowed in a court and which might be said to have hindered the presentation of his case by the complainant.
40. Sir Roderick intervened only rarely. He did so in order, first, to keep order. That was often because of verbal aggression, personal attacks or inappropriate interruptions by the Member. Sir Roderick also intervened to ensure only relevant evidence was given. As I have stated, he allowed considerable freedom to the parties when determining relevance. Finally, he intervened, exclusively helpfully, in my judgment, to clarify points which the lay parties were attempting to make.
41. I can see no evidence whatsoever in the transcripts of the hearings, which are extensive, of any bias or unfairness in Sir Roderick's approach. Very full



- discovery of documents was insisted on by him and the Member had every opportunity to see, understand and deal with the case before him.
42. The Member was allowed to make personal attacks which only tenuously, in my judgment, went to credibility, on the complainant and his witnesses, which attacks would almost certainly not have been allowed in a criminal or civil court.
  43. When the Member was cross examined, Sir Roderick showed exceptional patience. Many, perhaps a majority of, questions put by the complainant to the Member, were never directly answered but were evaded or were followed by what can only be described as speeches by the Member, ranging far from the issues raised by the complainant in his questions.
  44. Moreover, the Member himself withdrew from proceedings before his cross examination was finished and before the Commissioner could, himself, ask him any questions. He chose not to call any witnesses, including the 2 whose unsworn statements he had put before the Commissioner, thereby avoiding any cross examination of them by the complainant or any questions by the Commissioner.
  45. The reasons given by the Member explaining his withdrawal (document 36) do not bear close scrutiny. He complains of the length of time that the hearings had taken. The length of the evidence was due in part to the inability or unpreparedness of the Member to answer questions straightforwardly and his determination to introduce matters which were at best peripheral.
  46. He also contends that the Commissioner did not have the power to hold a trial. That is patently incorrect as the Procedure and the Measure permit the Commissioner to determine the form of the inquiry.
  47. Was the Acting Commissioner's decision to continue the inquiry begun by Sir Roderick instead of starting afresh and to take an inquisitorial rather than adversarial approach procedural irregularities and, if so, did they prejudice the Member's right to a fair hearing?
  48. The learned editor of *de Smith's Judicial Review*, 8<sup>th</sup> edition, at paragraph 7-068 says:

*“An oral hearing will not necessarily be conducted as though it was a hearing in court. In some cases, it will merely involve the right to deliver oral representations, untrammelled by rules of evidence or rights to produce or cross-examine witnesses. In other cases, an oral hearing will be afforded in the context of a fully judicialised procedure. Unless the proceedings are criminal it is unlikely the decision-maker will be bound by strict rules of evidence. Today, in civil proceedings, as result of the Civil Procedure Rules (Pts 1, 32 and 33) a judge, as long as no injustice is caused, has considerable discretion to control evidence, determine what evidence is called and decide how matters are to be proved.”*

49. To similar effect, Lord Bridge said in Lloyd *[1987] A.C. 625 at 702*:

*“the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.”*

50. This process was allowed by the Senedd to be less formal than a civil hearing. Disciplinary proceedings, particularly those where the penalties are as restricted as those available here, are clearly of a category of hearings in which the decision maker will not be trammelled by the rules of evidence that bind the criminal courts or even the County or High Court trying actions between parties.
51. Cross examination of an extensive nature was allowed by Sir Roderick and all aspects of the complaints were known in advance by the Member who had the fullest possible disclosure of documents, ample time to analyse them and assistance in asking questions. He did not allow the complainant the same privilege and, by his own actions, deprived Sir Roderick the opportunity of questioning him. The proceedings before Sir Roderick were recorded and transcribed and the Acting Commissioner read the transcripts and afforded the Member both the opportunity to access the transcripts and to draw to the Acting Commissioner’s attention any particular passages in the recordings that the Member wished him to listen to.
52. It is true that the Acting Commissioner did not have the benefit of seeing the complainant or his witnesses give evidence, but he clearly studied the transcripts of their evidence in great detail and he afforded the Member the opportunity of giving oral evidence to him, being careful to allow him the chance to say anything else that he wished to when the Acting Commissioner had finished asking his questions. In my judgment, the opportunity to see the complainant and his witnesses when they gave their evidence was, in a case where there was a considerable volume of documentary evidence supporting their oral evidence, a minor deficit (rather than being a procedural irregularity) and I am quite clear that it did not prejudice the Member’s right to a fair hearing.
53. The transcripts were, if this had been a criminal trial or trial in the civil courts, hearsay, but in the civil courts such evidence would, subject to very limited restriction, be admissible as of right with the fact finder obliged only to bear in mind the restrictions of such evidence and to give such weight to it as he or she should think fit.
54. When the Acting Commissioner interviewed the member (document 55) he told him that, at that stage, he had only transcribed the parts of the hearing before Sir Roderick that he considered were going to be helpful to the investigation. That appears to me to be a reasonable approach. He did,

- however, offer the Member the entire recordings if the Member wished to obtain a transcription. Again, that is clearly a reasonable and fair approach.
55. The contention by the Member that Sir Roderick was biased towards him is, in my judgment, irrelevant. He did not, ultimately, make any judgments on the evidence. Thus, even if the former Commissioner knew an important witness in the case, namely, Elin Tudur (and he carefully disclosed the extent, very limited, of his knowledge of her) it can have no bearing on the ultimate determination of the appeal (in document 55 at page 39 the Member complains of a meeting between Sir Roderick and Elin Tudur). There is no suggestion that the Acting Commissioner had any personal interest in the case or any improper knowledge of witnesses.
  56. The huge advantage of the approach of the Acting Commissioner in continuing the hearings and taking into account evidence given on oath or affirmation which was recorded and transcribed, is that the parties would not be put to the time and trouble of a re-run hearing and a very considerable public expense would be saved. Given the passage from *de Smith* I have quoted, and the large discretion afforded the Assistant Commissioner by the Senedd in the Measure and the Procedure, I am entirely satisfied his determination to continue the hearing begun by Sir Roderick and his reliance on recorded and transcribed evidence on oath or affirmation, being careful to allow the Member to give oral evidence to him and to say what more he wished, does not amount to a procedural irregularity, nor did it prejudice the Member's right to a fair trial.
  57. It should be added that the Acting Commissioner explained the approach he was taking to the Member's legal advisor. Neither the legal advisor nor the Member objected to the course being taken.
  58. The Acting Commissioner declined to take into account the unsworn statements from witnesses of the Member. The Member did not call them before Sir Roderick, nor did he ask the Acting Commissioner to interview them. Their evidence, which was highly contested, was never subject to testing. One of them very clearly acted most improperly in relation to the witness [REDACTED], who was an important witness for the complainant. That same witness for the Member continually prompted and interrupted during the hearings before Sir Roderick, despite several very moderate warnings and was eventually barred from the hearings. To take into account those witnesses' evidence would have been entirely unfair to the complainant. To refuse to take that evidence into account does not amount to a procedural irregularity.
  59. Because of the Covid 19 restrictions it was not possible for the Acting Commissioner to interview the complainant face to face, although the complainant had given full evidence and been cross examined at length before Sir Roderick. The Acting Commissioner clearly wished to clarify certain factual matters with the complainant and resolved to serve on him interrogatories the answers to which he required the complainant to confirm

the truth of by a signed declaration. Full answers in that form were given by the complainant and the use of those answers to interrogatories was a procedure which, in my judgment, the Acting Commissioner was entitled to use. The Member had access to those interrogatories and was given the opportunity to comment on them. Their use was not a procedural irregularity and did not affect the fairness of the hearing.

60. As far as I can see, neither the Measure nor the Procedure impose a particular standard of proof upon the Commissioner. As I have already stated, the proceedings are not criminal and, in my judgment, the criminal standard of proof beyond reasonable doubt, or, in its more appropriate modern formulation, that the fact finder should be satisfied so that she/he is sure, is unnecessarily high for these proceedings.
61. In document 65, the transcript of the hearing before Sir Roderick on 29<sup>th</sup> November 2018, Sir Roderick refers to being satisfied so that he was sure. However, at page 10 of document 71, the transcript of the hearing on 29<sup>th</sup> March 2019, Sir Roderick says that he has to conclude whether something was shown to his satisfaction “on the balance of probabilities”, the standard of proof required in the County and High Court in civil matters and in most if not all tribunals. It may very well be that the first reference was a slip of the tongue by Sir Roderick. The point is academic, given that Sir Roderick did not make findings in relation to the first appeal.
62. In his report to the Committee in the first appeal the Acting Commission refers to the “required standard” without specifying at that point in his report what standard was required and by what legislation or rule. However, I am clear, on reading his reports, that he was applying the civil standard of balance of probabilities and, in my judgment, he was right to do so. Article 6 requires no specific standard of proof.
63. Full and careful consideration was given by the Acting Commissioner to the evidence of and representations by the Member and he gave prompt and very detailed reasons for his decisions in each of the appeals.
64. The Member has contended he has not had sufficient time (2 weeks) to prepare notices of appeal from the Committee decisions. In my judgment, sufficient time has been allowed for the Member to prepare and serve proper notices of appeal from the decisions of the Committee.
65. **In relation to the first appeal, I find that there were no procedural irregularities and that the Member received an entirely fair hearing.**

**APPEAL 01-21 – FACTUAL ACCURACY OF THE COMMITTEE’S CONCLUSIONS**

66. There is no purpose in my reiterating the evidence which the Acting Commissioner has set out and referenced in his extremely detailed and careful report in this appeal. I confirm that I have considered the same evidence which

he has scrupulously cross referenced at all points in his report. What I propose to do is consider the various sections of his report and set out whether his references to evidence supporting his conclusions are accurate and comment generally on the adequacy of that evidence.

67. At section 4 of his final report the Acting Commissioner accurately sets out the relevant provisions of the Rules, Code and extant Guidance and directed his findings towards the appropriate regulatory background.
68. He summarised his factual findings in a very helpful and clear “GANTT” chart (document 1).
69. The section “Background” contains admitted or non-disputed facts. Points 14, 15, 18 and 19 are also undisputed.
70. Fact 16 is clearly supported by the referenced documents. Document 54 page 14 contains an admission by the Member of the fact of the deception and of the use of Senedd premises for patently party-political purposes. The finding of the Acting Commissioner of the necessity for the deception is an inference he was entitled to make though the Member contended that the deception was to hide the process from other parties.
71. The facts in point 17 are clearly established and are incontrovertible. The removal of the political newspapers is established by the complainant’s evidence supported by messages. The Acting Commissioner was entitled to draw the conclusion in the last sentence.
72. Facts 20 to 25, dealing with the use of the Regional Office ( [REDACTED] ) are supported by the evidence referenced and 4 meetings were admitted by the Member and justified by his saying that other members did the same. There was overwhelming evidence, both of the meetings and of the party-political nature of them, from oral evidence from the complainant, [REDACTED], with incontrovertible documentary support in the form of agendas and minutes.
73. As for use of rooms at the Senedd for party political/election meetings, point 26 has been dealt with above. Points 27 and 28 are established by the evidence of the complainant supported by messages.
74. As for use of the regional office to store and use equipment for party political and election campaign purposes and to print, store and distribute party political and election campaign documents, point 29 is established in the Deem interrogatories and, in my judgment, incontrovertibly, by an email exchange between [REDACTED] and the Member (document 27). As to point 30, the Acting Commissioner discusses the evidence at his paragraph 6.36. Positive evidence of this was given to Sir Roderick by the complainant and Miss Llwyd and when interviewed by the Acting Commissioner the Member effectively admitted the allegation.
75. The remaining points in this section are dealt with in more depth in the later “Consideration” parts of the Acting Commissioner’s report as are the next 2

- sections, the use of staff for party- political and/or election purposes and the use of Senedd ICT system and electricity for party political/election purposes.
76. In the “Consideration” section of his report, the Acting Commissioner reaches conclusions on all the alleged contraventions and discusses and resolves the conflicting accounts and evidence adduced by the complainant and the Member.
  77. He gives very detailed reasons for his findings and it is to be noted, when the overall fairness and even handedness of his inquiry and report is considered, that he explicitly treats the evidence both of the complainant and the Member with caution. He recognises that the complainant, as the office manager of the Member, shares considerable and knowing responsibility for breaches of the Code. He also has regard for the fact that he was dismissed by the member and recognises that the complaint was motivated to some extent by a desire for revenge.
  78. As for the Member, he notes at paragraph 6.4 the fact that he was dishonest in his early denial of all allegations, changing his line in later admissions. His analysis of the Member’s evidence at 6.5 is clear for anyone to see who reads the transcripts – evidence that was evasive, contradictory, sometimes absurd and sometimes, as the Acting Commissioner was entitled to find, untruthful. The Acting Commissioner not only read the transcripts and listened to the Member being questioned, he also interviewed him and was in an excellent position to judge the Member’s overall credibility. He was perfectly entitled to judge that credibility and to look for supporting evidence before taking the Member’s account, where challenged, at face value. Paragraphs 6.4 to 6.6 of his report are entirely based on the evidence, are accurate and, in my judgment, are justified on the basis of the material shown to me.
  79. Very significant evidence of breaches of the code was contained in message and email trails in which the Member actively participated. It is easy, as the Member does, to allege that those trails have been edited. However, the allegation could, if it were true, have been proved by the Member showing evidence from his own copies of these trails. A false allegation was made by the Member that the complainant had admitted editing the trails. The Acting Commissioner found no trace of such editing.
  80. The Acting Commissioner considers at 6.10 the likelihood that the Member was not, as he told Sir Roderick, fully aware of the Code provisions on use of Senedd resources until he read them on 16/3/17. He then accurately sets out the facts which makes that contention by the Member difficult to accept. His interpretation of the Member’s email (document 25) instructing the complainant to prevent any political activity at his regional office within hours of his becoming aware that ██████████ had been recorded on the CCTV in the office, to which CCTV recordings MBS had access, namely, that it was a cover up of political activity of which he was well aware, is an inference that he was not only entitled to make, but is the obvious inference in the context of the evidence in general.

81. As the Member has consistently alleged that the complaint is part of a politically motivated campaign against him, the Acting Commissioner points out that since his appointment he has had no contact with Sir Roderick, nor has he been lobbied one way or the other. My judgment is that he is quite obviously independent and unbiassed.
82. The Acting Commissioner then discusses the various complaints sequentially, explaining his reasoning with ample references to the documentation, including the transcripts of evidence under oath or affirmation.
83. As to head 1, it is a mark of the objectivity of the Acting Commissioner's approach that he notes at the outset the lack of adequate records. Moreover, he generously adopts Sir Roderick's working definition of political activity, making it clear that he has given the Member the benefit of the doubt where activity could be in the grey area where there is both an element which is Senedd connected and politically connected.
84. He was satisfied that on the 1<sup>st</sup> of November 2016 the Member caused or permitted the printing on the Senedd printer in his regional office of approximately 3000 election campaign leaflets for the Grangetown ward by-election on 3 November contrary to paragraph 12 of the Rules and paragraph 10 of the Code. His factual conclusions in paragraph 6.14 are entirely based on evidence, not merely that from the complainant but from messages (such as the damning document 28). He notes what he regards as an incredible explanation by the Member (with correct references to the Member's evidence before Sir Roderick) and he was then entitled to accept the complainant's positive evidence of this breach of the Rules and Code.
85. His conclusion in paragraph 6.15, that on 7 April 2017, less than one month before the Cardiff City Council elections, Mr McEvoy caused or permitted the printing of approximately 980 double sided election campaign leaflets for the Riverside ward on the Senedd printer at his regional office contrary to the Election Guidance, paragraph 12 of the Rules and paragraph 10 of the Code, is based on the evidence of the complainant but it is supported by the evidence of [REDACTED] and also an unambiguous message (document 31). The evidence of the Member and his explanation of the message was vague and indecisive. The conclusion is entirely justified.
86. In paragraph 6.16, he decides that on 9 April 2017, less than one month before the Cardiff City Council elections, Mr McEvoy caused or permitted the re-printing of approximately 980 double sided election campaign leaflets for the Riverside ward on the Senedd printer at his regional office contrary to the Election Guidance, paragraph 12 of the Rules and paragraph 10 of the Code. Again, while the Acting Commissioner would have been entitled to act solely on the evidence of the Complainant, he was consistent with his expressed approach and looked for confirmation which he found in the evidence of [REDACTED] [REDACTED] and the message of the 8<sup>th</sup> of April 2016 (document 32). It is clear he regarded the Member's reluctance to accept there would be a backlog of Senedd printing less than one month before the Cardiff Council elections as

- unlikely. The Acting Commissioner's conclusion was entirely appropriate and based on evidence which he has accurately referenced.
87. In paragraph 6.17 the Acting Commissioner decided that on 27 April 2017, less than two weeks before the Cardiff City Council elections, Mr McEvoy caused or permitted the printing of approximately 2000 election campaign leaflets for the Riverside ward on the Senedd printer at his regional office contrary to the Election Guidance, paragraph 12 of the Rules and paragraph 10 of the Code. The evidence of [REDACTED] and Mr Deem is supported again by several screenshot messages and a copy of the leaflet in question, all documents being properly referenced. The Member's evidence has been properly and fairly analysed and his unlikely explanation rejected.
  88. The Acting Commissioner makes a reasonable estimate of the cost of the printing paid by the Senedd.
  89. The objective and fair nature of the Acting Commissioner's assessment of the evidence is amply demonstrated by his rejection of heads 2,3 and 4 of the complaints as being insufficiently evidenced.
  90. Under head 5 and at paragraph 6.23 the Acting Commissioner finds that on 17 November 2016, 14 December 2016, 12 January 2017 and 31 January 2017 Mr McEvoy caused or permitted his regional office to be used for formal meetings of the Plaid Cymru Cardiff Campaign Group contrary to paragraph 12 of the Rules and paragraph 10 of the Code. This finding is supported by an admission by the Member.
  91. The finding at paragraph 6.24, namely, that on 22 May 2017, 18 days before the Parliamentary General Election, Mr McEvoy caused or permitted his regional office to be used for a meeting with his AMSS attended by [REDACTED] [REDACTED], at which election campaign matters were discussed contrary to the General Election Guidance, paragraph 12 of the Rules and paragraph 10 of the Code, is supported by [REDACTED]'s evidence and a clear message (document 26). It was initially accepted by the Member but after a short break in the evidence he changed his evidence and the Acting Commissioner was entitled to reject the changed evidence and prefer [REDACTED]'s account.
  92. The finding at 6.25 is supported by [REDACTED] and Mr. Deem's evidence, which the Acting Commissioner was entitled to prefer to the Member's evidence. In fact, the Member did not challenge their evidence in cross examination but rather chose to call them liars in his interview with the Acting Commissioner. In the circumstances it is hardly surprising the Acting Commissioner found the complaint proved.
  93. The finding at 6.26 was admitted by the Member as well as being supported by [REDACTED]. The Acting Commissioner was entitled to find the Member was aware that he was breaking the Code and to reject his mitigation. The finding at 6.27 is properly referenced and supported by oral and documentary evidence and is admitted by the Member.



94. Heads 6 and 7, namely, that the Member employed 3 temporary members of staff for the sole purpose of campaigning for the election of Plaid Cymru candidates to Cardiff Council and regularly delegated further tasks to his 3 permanent members of staff which were highly political in nature was supported first, by the clear evidence of [REDACTED], who was employed by the Member on a temporary basis as a member of his AMSS to carry out translation work of party political and election campaign nature during hours for which [REDACTED] was being paid by the Senedd Commission to do Senedd related work. [REDACTED] denied the work was carried out in her spare time and on a voluntary basis. [REDACTED] account was supported by the oral evidence of Mr Deem and [REDACTED] and the Acting Commissioner was entitled to prefer that entirely credible and consistent body of evidence despite largely irrelevant personal attacks on [REDACTED] by the Member. It was entirely reasonable of the Acting Commissioner to take fully into account the complete failure of the Member to produce even a single example of Senedd related translation carried out by [REDACTED].
95. The finding at 6.29, that between 1 January 2017 and 8 June 2017 Mr McEvoy caused or permitted Michael Deem, one of his AMSS, to carry out work of a party political and election campaign nature during hours for which he was being paid by the Senedd Commission to undertake Senedd related work contrary to paragraph 12 of the Rules and paragraph 10 of the Code again shows the objectivity and scrupulous fairness of the Commissioner because he rejects as insufficiently evidenced that similar work was carried out by [REDACTED] because he concludes they may have balanced the work they did on political matters within office hours with Senedd work outside office hours. He was entitled to accept Mr Deem's evidence in preference to the Member's. The finding is properly and accurately referenced as is the finding at 6.35 which, in substance, has already been dealt with by me.
96. The finding at 6.36 is supported by the evidence of Mr Deem supported by [REDACTED] and the Acting Commissioner was entitled to take account of the fact that their evidence was not challenged by the Member.
97. The finding at 6.37 is supported by Mr Deem's evidence and a screenshot (document 20) which not only confirms Mr Deem's evidence but also shows the Member's knowledge of the wrongdoing and his asking members of staff to cover up that wrongdoing.
98. 6.38 was proved by [REDACTED]'s evidence and several properly referenced documents.
99. 6.39 and 6.40 are evidenced by Mr Deem's evidence supported by a number of clear documents which are properly referenced.
100. Finally Head 8, namely, that the Member used Senedd ICT systems to produce, edit and upload political campaign videos to social media was a finding that inevitably followed the acceptance by the member that printing or folding of party-political, or election campaign documents took place at his

regional office and, again, the Acting Commissioner fairly assesses the loss to public funds as not significant.

101. The assessment of the value of the total cost to the Senedd Commission of the breaches found by the Acting Commissioner is reasonable. I need make no comment on the matters of principle outlined by the Acting Commissioner.
102. **In conclusion, therefore, in relation to appeal 01-21, I find that the conclusions of the Committee, founded, effectively, on the report of the Acting Commissioner, are not based on any significant factual inaccuracies. Indeed, I have found the Acting Commissioner's report to be careful, properly and accurately referenced and fair.**
103. **I therefore dismiss the Member's appeal.**

### **APPEAL 02-21 – PROCEDURE AND FAIRNESS OF HEARING**

104. This appeal appears to have complied with the Procedure. The complaints were admissible and in time and otherwise complied with paragraph 3.1. I have already dealt with the anonymity of two of the complainants. That had no material impact on the fairness of the procedure.
105. The inquiry by the Acting Commissioner was in private as was the consideration of the Acting Commissioner's report. However, as I concluded above, the final determination by the Senedd would be public, including public pronouncement of endorsement of the Committee's recommendations and I infer the Acting Commissioner's report would then be accessible to public and Press. There would be public access to any judicial review proceedings.
106. I thus conclude again that the hearing in this appeal satisfies the requirement of a public hearing and public pronouncement of judgment.
107. The Member makes the same complaints about Andrew R. T. Davies and Rhun ap Iorwerth. Again, there appeared to me to be nothing said or done in the open Committee proceedings to which reasonable objection could be taken and I need not repeat what I have said above about this aspect of the conduct hearings.
108. In this appeal, the Acting Commissioner determined to embark on his investigation by serving interrogatories, requiring written answers supported by a signed declaration of truth by the Member. I judge that he determined that there was unlikely to be any substantial issue of fact arising in the proceedings. Had such an issue arisen requiring oral evidence, I have no doubt he would have interviewed the Member and any relevant witness. However, the Member did not avail himself of the opportunity of answering the relevant and straightforward interrogatories. His email of 30/10/20 (document 7) was not an answer to those interrogatories at all, though it gave

information which might have answered one or more of those interrogatories. It was not an answer supported by a signed declaration of truth, an important omission by the Member.

109. Proper notice of the complaints and of the ambit and form of the Acting Commissioner's inquiry were given to the member and he was given full disclosure of all relevant documents and video evidence.
110. The Member objected to two members of staff who had previously assisted the Acting Commissioner. The Commissioner promptly answered that complaint and assured the Member that neither would play or had played any significant part in the inquiry.
111. The Acting Commissioner served a copy of the draft report on the Member and invited his comments. He made amendments to the draft report as a result.
112. The Committee allowed the Member an oral hearing at which the Acting Commissioner attended. They considered his representations and determined there had been a factual error made by the Acting Commissioner, an error accepted by him and noted by the Committee in its report, namely, that there had been only one relevant video posted by the Member. Had the Member cooperated with the interrogatories process, it is likely that that error would not have been made.
113. In his appeal notice the Member refers to his right to freedom of expression guaranteed by article 10 of the ECHR. That is directed as criticism to the width of the relevant Standing Orders and of the Code, in particular, of paragraph 9 of the Code. The scope of those Standing Order and the Code and the width of the phrase "interest, financial or otherwise" in paragraph 9, of which the Member makes perfectly reasonable criticism before the Standards Committee, is a matter for the Senedd to consider and not for me, given the restricted nature of my part of the Procedure.
114. In paragraph 5.2 the Acting Commissioner notes that the Member has alleged direct and indirect discrimination against him by the Acting Commissioner and the entire Standards Process and makes various allegations against the Acting Commissioner and his office. Nothing I have seen in the materials provided to me in relation to this appeal or any of the other appeals remotely supports such allegations, which, in any event, are the subject of a complaint by the Member to the Commission for Equality and Human Rights. In relation to this appeal where, effectively, the Member failed properly to cooperate with the enquiry and where the facts are, in the main, undisputed, it is impossible to see any scope for the alleged or any discrimination.
115. **In summary, I do not find that there have been any procedural irregularities in the inquiry by the Acting Commissioner or before the Standards Committee. The Member had a fair hearing.**

**APPEAL 02-21 – FACTUAL ACCURACY OF THE COMMITTEE'S CONCLUSIONS**

116. I have already dealt above with the error about how many videos posted by the Member were relevant to the complaint. It is clear that the Committee accepted the Member's evidence that there was only one. That factual inaccuracy in the Acting Commissioner's report had, therefore, no bearing on the Committee's finding.
117. Apart from that the Committee accepted the Acting Commissioner's report.
118. At paragraph 4.1 of his report the Acting Commissioner made a number of findings. Findings (i) and (ii) are not in issue. I have seen both the minutes of the Petitions Committee, its agenda and have watched the video recording of the relevant proceedings on the Senedd TV. Item 1 on the agenda enabled any interests to be declared. Neither at that stage nor at discussion of the petitions relating to the building of the new hospital did the Member disclose an interest. He is correct in what he said to the Committee that he made it quite clear he was entirely in favour of a new cancer hospital but had reservations about the type of hospital, its cost and its method of financing and, most relevant to the subject matter of the complaint, whether it should be built on a greenfield site such as the Whitchurch Meadows or whether a brownfield site should, instead, be used.
119. Finding (iii) is not in issue – it is clear from the proceedings before the Petitions Committee. Finding (iv), the establishment and aims of the two groups, is established by the screenshots of their Facebook home pages.
120. Finding (v) , namely, that for several months before that Committee meeting Mr McEvoy was shown as a member on the Facebook pages of both these campaign groups, is not, it seems to me, challenged by the Member (being shown as a member of the group's Facebook page is properly distinguishable from being, for example, a paid up member of a member's group) and is proved by the members pages on Facebook of each of the groups, screenshots of which have been provided to me.
121. I do not believe that item (vi) is challenged. There is a video taken by the Member which proves that fact. Item (vii) is correct save that only one video was taken while attending that event. Items (viii) and (ix) relating to the letter to the Ministers are proved by the screenshot made available to me. Items (x), (xi) and (xii) are proved by the referenced video and screenshots all of which have been provided to me (all these items are annexed to the Acting Commissioner's report).
122. Item (xiii) is an accurate quotation from the email by the Member to the Acting Commissioner. The Acting Commissioner does not question that the Member was being truthful when he said that he did not feel he had an interest to declare so did not declare one. Neither did the Committee explicitly find that the Member realised he had an "interest" within the meaning of the Code but deliberately did not declare it.

123. Item (xiv) is clearly correct. The Member never did answer the interrogatories and his email of 30<sup>th</sup> October 2020 is not an answer to interrogatories although, as the Acting Commissioner notes, it may be regarded as a partial answer (not in the proper form) to two of the interrogatories.

124. The Acting Commissioner correctly quotes Standing Order 17.24A, namely that:

*“Before taking part in any committee proceedings, a Member must declare any interest, financial or otherwise, that the Member, or to their knowledge, a family member, has or is expecting to have which is relevant to those proceedings, and might reasonably be thought by others to influence the Member’s contribution.”*

125. Paragraph 9 of the Code is framed in virtually identical terms.

126. Paragraph 4 of that Code provides, amongst other matters that:

*“Members of the Senedd should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:*

*b. Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*

*Members of the Senedd should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Senedd and refrain from any action which would bring the Senedd, or its Members generally, into disrepute. Members should not ask Senedd Commission or Welsh Government staff to act in any way which would compromise the political impartiality of the Civil Service and/or Senedd Commission staff or conflict with the Civil Service Code and/or the Senedd Commission Staff Code of Conduct*

*(g) Leadership: Holders of public office should promote and support these principles by leadership and example.”*

127. The Acting Commissioner finds as a fact that the Member had a relevant interest in the matters which were the subject of the two petitions before the Petitions Committee. The Member quoted to him paragraph 103 of the then extant guidance, namely:

*“Standing Orders 13.8A and 17.24A provide Members with discretion to decide whether an interest which the Member or family member has or is expecting to have is a 'relevant interest'. As with expected future interests therefore, candour from Members is essential in deciding whether a declaration is required under this Standing Order or not.”*

128. Under the procedure, I am not empowered to determine appeals from the Committee’s decisions on matters of pure law. What amounts to an “interest” within the Standing Order and Code, appears to me, however, to be an issue of mixed fact and law. The Standing Order and Code themselves limit to some extent a term which would otherwise be extremely wide (it remains very widely defined and the Member, perhaps with some justification, argues that the effect of the very wideness of the definition might cause difficulties for many members – that, however, is not for me but for the Standards Committee and the Senedd generally to consider). A declarable interest is one, in this case, which is relevant to the discussion of the petitions and which might reasonably be thought by others to influence the Member’s contribution. While the guidance suggests there is an element of discretion in the Member, in my judgment, applying the words of the Code and the Standing Order, the Acting Commissioner was right to find that a reasonable person would conclude that the clearly expressed public opposition by the Member to the development, particularly in the light of his membership of the Facebook pages of the 2 groups, was both relevant to the petitions and might influence his contribution. Thus, the Acting Commissioner was right to find as a fact that the Member had an interest which should have been declared.
129. Of course, had he declared that interest, the likelihood is that his contribution to the debate on the petitions would have been exactly the same.
130. In the circumstances, the Acting Commissioner was then entitled on the evidence to find that the Member breached the integrity and leadership principles in the code.
131. The Committee accepts the conclusions of the Acting Commissioner although it expressly finds that the Member gained no financial advantage from participation in the Petition Committee’s proceedings.
132. **In conclusion, therefore, I do not find that the Committee’s conclusions were based on any significant factual inaccuracies and I do not believe that either the Acting Commissioner or the Committee could have come to any different conclusion on the facts.**
133. **I therefore dismiss the Member’s appeal 02-21.**

**APPEAL 03-21 – PROCEDURE AND FAIRNESS OF HEARING**

134. This appeal appears to have complied with the Procedure. It complied with paragraph 3.1 of the Procedure and was an admissible complaint.
135. For similar reasons which I set out in relation to the first 2 appeals I again find that, overall, the procedure in this appeal satisfies the requirement of a public hearing and public pronouncement of judgment.
136. In relation to the Standards Committee hearing, the Member makes the same complaints to which I have referred above about Andrew R. T. Davies and Rhun ap Iorwerth. Again, there appeared to me to be nothing said or done in the open Committee proceedings to which reasonable objection could be

taken and I need not repeat what I have said above about this aspect of the conduct hearings.

137. The Acting Commissioner again determined to conduct much of his inquiry by serving interrogatories on witnesses and on the Member. This is again an appeal in which the basic facts are not in dispute and that procedure appears to me to be entirely fair. The Member did not answer the interrogatories. Initially, that was (overtly) because a police investigation was being conducted into the Member's allegation that Sir Roderick and members of his staff had committed criminal offences. The Acting Commissioner deliberately delayed his investigation to avoid prejudicing the police investigation. When the police told the Acting Commissioner the complaint had been withdrawn he restarted his inquiry and provided the Member with a copy of the complaint and invited him to make representations as to its admissibility. He determined it was admissible and then began his evidence gathering. However, he again suspended his investigation when the police told him they had told the Member not to disclose anything to the Acting Commissioner until a decision on whether to investigate the criminal allegations had been made. On 30<sup>th</sup> October 2020 he was told by the police that there would be no police investigation of the criminal charges and he resumed his investigation and set new deadlines for the interrogatories. The Member contended the Acting Commissioner should not resume the consideration of the complaint until he decided whether or not to review the police decision not to proceed with the charges. The Acting Commissioner, correctly in my judgment, determined to proceed and reminded the Member of his deadline for the interrogatories. The Member has never answered what are sensible, fair and comprehensive interrogatories. There was and is no justification for that.
138. Had the Member completed the interrogatories and it appeared to the Acting Commissioner that there was any significant dispute of fact, it would have been open to the Acting Commissioner to hear oral evidence or to interview the Member. As the interrogatories were not answered the issue does not arise.
139. The Member was given full notice of the complaint and full disclosure of the evidence. He was invited to make representations to the Acting Commissioner but chose not to. was afforded an oral hearing before the Standards Committee. At that hearing he did not challenge any of the facts found by the Acting Commissioner but sought to excuse his behaviour.
140. **In my judgment, there were no procedural irregularities in the hearing the subject of this appeal and the Member had an entirely fair hearing.**

**APPEAL 03-21 – FACTUAL ACCURACY OF THE COMMITTEE’S CONCLUSIONS**

141. The provisions of the Code and the Measure which were relevant to the complaint (in short, standards of personal conduct, integrity, openness and leadership) and the duties of Members in relation to the Commissioner for Standards and the Standards Committee are set out by the Acting Commissioner in paragraph 3 of his final report and were correctly considered by the Standards Committee. They need not be re-stated by me.
142. The determination of whether the conduct of the Member in covertly recording the former Commissioner and his staff and his failure to cooperate with the former Commissioner’s investigation and with the current investigation of the Acting Commissioner, by failing to complete and return the interrogatories is for the Acting Commissioner and the Committee to determine. It is they who judge whether the facts found by the Acting Commissioner amount to breaches of the Code/Standing Orders and that is not a matter that I may rule on under paragraph 8.4 of the Procedure.
143. All I must do is to determine whether the Committee’s conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently.
144. The main thrust of the complaint of the Llywydd relates to the covert recording by the Member of conversations between Sir Roderick Evans and his staff. That fact is clearly proved and is not in dispute. I have read the report of the Member of the circumstances of those recordings made on his mobile phone, watched his press conference and read the transcript. It is clear he admits he made the recordings. It is not for me to comment on his expressed justification for doing so.
145. The facts set out under paragraph 4.1 of the Acting Commissioner’s report are a matter of record and are all accurate. I have seen the relevant email correspondence with the Head of Legal Services who confirms the fact found in (v). Facts (vi) and (vii) are established by the Member’s report and his press conference. A number of Senedd Members and staff confirm the matters found in (viii) and (ix) and the Acting Commissioner was entitled to accept the contents of their interrogatories. One Member (Mark Reckless) was supportive of the Member’s behaviour.
146. In his appeal notice, the Member states, in relation to the Committee’s report:

*“The report was factually inaccurate to state:*

*21. Neil McEvoy MS did not pursue any of these courses of action open to him. Rather, he covertly recorded private conversations and released those recordings 5 Standing order 22.2(i) 6 Standards of Conduct Committee report,*



*SO22 01-21 Report 02-20 under Standing Order 22.2 10 to the press. The Committee firmly believes that these actions were wholly inappropriate.*

*I did in fact pursue avenues of complaint about the behaviour of the Commissioner. I was advised that I needed evidence and that ultimately there was nothing I could do, other than to bring a vote of no confidence in the Standards Commissioner. Given that I am a single member and not a group, the confidence avenue was closed to me. I also raised concerns about the Commissioner with the Standards Committee, but to no avail.”*

147. Paragraph 20 of the Committee’s report is necessary to understand the point which the Committee was making:

*“The Committee recognises that a Member in Mr McEvoy’s position would not unreasonably have felt compelled to take action. However, the Committee does not consider the approach taken by Neil McEvoy MS to have been an appropriate response. There were a number of legitimate routes for Mr McEvoy to have raised his concerns about the private comments recorded on the transcript. For example, concerns could have been raised with the former Commissioner, the Chief Executive and Clerk, the Llywydd, or the Member could have sought to bring forward a motion seeking the removal of the Commissioner for Standards from office (Standing Order 10.7-10.8).”*

148. The Chief Executive and Clerk of the Senedd was asked about any meeting between her and the Member and replied that there had been a short meeting on the 25<sup>th</sup> of September 2019 and told the Acting Commissioner:

*“My recollection is that Mr McEvoy asked for advice about how the Standards Commissioner could be removed from office. The three of us present gave advice that this would require a motion in the Senedd.”*

149. The Chief Executive also confirmed that the Member had not mentioned covert recordings in that meeting.

150. In my judgment, paragraph 21 of the Committee report is not entirely accurate given the meeting on the 25<sup>th</sup> of September but the inaccuracy was not, in context, significant and, had it been known to the Committee, would have gone only marginally to mitigation and I do not consider that it might have led the Committee to finding differently.

151. There is no doubt the Member did not cooperate with the Acting Commissioner and he had no excuse for doing so. The possibility of a review of the police decision did not prevent his cooperation.

152. The conclusions at 5.4, 5.7, 5.14, 5.18 and 5.20 were for the Acting Commissioner to determine and all I need say that the facts underlying them were accurately found by him. The Committee also reached those conclusions.
153. **In my judgment, having considered all the documentation relating to this appeal, I am satisfied that the Committee’s conclusions were not based on any significant factual inaccuracies. The Acting Commissioner’s report was accurate and full and the Committee were entitled to rely on it and accept it.**
154. **I dismiss the Member’s appeal 03-21.**

**APPEAL 04-21 – PROCEDURE AND FAIRNESS OF HEARING**

155. This appeal has again complied with the Procedure. The complaint was admissible and in time and otherwise complied with paragraph 3.1. The appeal procedure is sufficiently public to comply with article 6.
156. At the hearing before the Standards Committee the Member submitted that Andrew R. T. Davies and Rhun ap Iorwerth should recuse themselves and the Committee dealt with the matter in an identical fashion in its report. Again, there appeared to me to be nothing said or done in the open Committee proceedings to which reasonable objection could be taken and I need not repeat what I have said above about this aspect of the conduct hearings.
157. The Member complained at the Committee hearing about the access which the Acting Commissioner had gained to his emails, contending that he was the Data Controller for his email account and that he had not given permission for access to be gained.
158. Section 11 (1) of the Measure provides that:

*“The Commissioner may, in accordance with section 12, require any person-*

*.....*

*(b) to produce to the Commissioner documents in the possession or under the control of that person,*

*concerning any matter relevant to an investigation which the Commissioner is carrying out under this measure.”*

159. “Document” is widely defined in the measure as meaning “anything in which information is recorded in any form” and would, plainly, extend to emails, their headings and their addresses.
160. The Acting Commissioner did, therefore, have power granted to him by a Senedd measure to require details of the Member’s emails from whoever had control of them and did not need to ask permission of the Member.

161. If the person who had control of the emails (and more than one person did have control of them) refused to hand over or disclose details of the emails, the Acting Commissioner would have had to comply with the notice provisions of section 12 of the Measure.

162. As it was not clear to me how the details in the 2 spreadsheets were obtained (and they do not contain the contents of the emails, but merely the subject heading, sender's and recipient's email address and the relevant dates of the emails) I requested that information from the Acting Commissioner. The information was as follows:

*“It should be noted that I neither requested nor received copies of all Mr McEvoy’s emails relevant to my investigation. Rather I received a report showing the date, addressee(s) and subject/title of emails sent from his Cardiff Council email address to his Senedd email address. These were provided by the Council on a voluntary basis – I did not use my powers under section 11 of the 2009 Measure. I attach copies of my request for the information and the reply received from the Council.*

*The information on emails sent from Mr McEvoy’s Senedd email address to Cardiff Council email addresses was provided by Senedd Commission ICT staff in response to an informal request. I did not use the section 11 powers.”*

163. The email containing that information and the request and response to the Acting Commissioner's email may be disclosed to the Member should he wish to see them.

164. In my judgment, whether or not the obtaining of the information contained in the spreadsheets was obtained in breach of the General Data Protection Regulation, as the Member appears to be alleging, is not relevant. Even if evidence is unlawfully obtained (and the obtaining of this particular evidence is far from that), in my judgment, that would not prevent the Acting Commissioner and the Committee relying on it.

165. In the current, 19<sup>th</sup> edition of *Phipson on Evidence* at paragraph 39-34 the learned editor states, in relation to civil hearings:

“There is no general discretion to exclude evidence on the ground that it was unlawfully obtained.”

166. The power to control evidence given to the civil courts under the Civil Procedure Rules, CPR 32.1 does not apply here. The issue for the Acting Commissioner and the Committee here was relevance not admissibility.

167. In any event, the material contained in the spreadsheets was voluntarily given to the Acting Commissioner by those who had control of it and the Acting Commissioner could, had his request for the material been refused, have exercised the powers in the Measure to compel its production. It is

relevant information and there is no reason to believe it is inaccurate. I do not consider that this was a procedural irregularity.

168. The Member also contends that his suspension from the Senedd at the time of service of the interrogatories on him in this case by the Acting Commissioner prevented him from answering those interrogatories. Again, I sought the terms of the suspension and was provided with them. That suspension prevented the Member's taking part in proceedings of the Senedd or its committees and from gaining access to Ty Hywel or the Senedd during the period of suspension and also prevented his receiving his salary during that period. It did not prevent his answering the interrogatories.

169. Once again, it appears to me that there were very limited facts which needed to be established in the investigation the subject of this appeal. Thus, I conclude that the inquiry method adopted by the Acting Commissioner, that is, to serve interrogatories on the Member, was a fair one. If it appeared that there was any significant issue of fact in the case, the Acting Commissioner could interview the Member or hear evidence from witnesses. Unfortunately, as has been the case in other appeals the subject of this report, the Member declined to cooperate. The Acting Commissioner therefore had no option but to conclude his investigation and report on the documentary evidence he had obtained.

170. He gave appropriate written notice of the complaint to the member and, at the appropriate time, provided him with full particulars of that complaint and of the evidence he had obtained. The interrogatories were fair, relevant and gave the Member a full opportunity to say whatever he wanted about the complaint. The Acting Commissioner considered objectively all the information and contentions provided (other than in interrogatory form) by the Member.

171. The Member was given an oral hearing before the Standards Committee. He raised procedural matters which I have dealt with above but, otherwise, did not challenge the facts found by the Acting Commissioner.

172. **In my judgment, there have been no procedural irregularities in the Acting Commissioner's investigation or in the hearing before the Standards Committee. The Member has had a fair hearing.**

**APPEAL 03-21 – FACTUAL ACCURACY OF THE COMMITTEE'S CONCLUSIONS**

173. The Committee accepted the report of the Acting Commissioner and it is, thus, to that report to which I again turn to consider the factual accuracy of the Committee's conclusions.

174. Documents 8 and 9 establish the facts set out in items I and II of paragraph 4.1 of the Acting Commissioner's report and document 12 establishes his suspension from Cardiff Council as set out in item III. The

number of emails sent during the dates specified in item IV to the Senedd email address and the purpose of the emails can be seen from the first of the spreadsheets derived from the emails, document 11 in the documents annexed to the Acting Commissioner's report. The subject matter of the emails appears to justify the conclusion reached by the Acting Commissioner in V. The second spreadsheet (document 13 in the annexe) supports the conclusions in VI and VII. Item VIII must follow from the preceding items. There is no doubt that the Member failed to complete and return the interrogatories (original and revised) as set out in IX. Indeed, in document 6 in the annexe his refusal to complete them is, effectively, set out and he justifies (incorrectly) that refusal before the Standards Committee.

175. Effectively, the Member has not disputed the factual basis of the Acting Commissioner's report on which the Committee based its conclusions that he had breached paragraphs 10 and 15 of the Code.
176. **There are no significant factual inaccuracies in the report relied on by the Committee. Their conclusion as to breach was inevitable given the facts set out in the report.**
177. **I therefore dismiss this appeal.**

**CONCLUSION**

178. **In none of the 4 appeals which I have been asked to consider have I found procedural irregularities. In each the Member has had a fair hearing. In none have the Committee's conclusions been based on significant factual inaccuracies. Therefore, in accordance with paragraph 8.4 of the Procedure, I dismiss all 4 appeals. I will provide a copy of this report to the Member and to the Committee in compliance with paragraph 8.6 of the Procedure.**

**His Honour Neil Bidder QC**

**7<sup>th</sup> May 2021**