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Coventry City Council

Weightmans reference: SG/62030/6

Report of an investigation into an allegation concerning the conduct of
Councillors Ann Lucas and John Mutton



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CONFIDENTIAL

Contents

Executive summary	Pages 3–4
Relevant legislation	Pages 4–7
Members’ official details	Pages 7–8
Summary of the facts and the evidence gathered	Pages 8–10
The evidence obtained	Page 10
Evidence of Joy Seppala and Laura Deering	Pages 11–13
Evidence of Lisa Commane	Pages 13–14
Evidence of Chris West	Pages 14–16
Evidence of Fran Collingham	Pages 16–17
Evidence of Councillor Duggins	Page 17
Evidence of Councillor Lucas	Pages 17–19
Evidence of Councillor Mutton	Pages 19–21
Findings of fact	Pages 21–23
Reasoning as to whether there is a breach of the Code of Conduct	Pages 23–30
Finding	Page 30
Schedule of evidence	Pages 31–32

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CONFIDENTIAL

Executive Summary

1. An allegation was made by Mishcon De Reya, solicitors for the complainants that Councillors Ann Lucas and John Mutton, members of Coventry City Council (“the Council”), failed to comply with the Council’s Code of Conduct (“the Code”) by their actions in their dealings with the complainants, their decision making and in comments made in the press about Joy Seppala and SISU.
2. The complainants are Arvo Master Fund Limited, SISU Capital Limited, Sky Blue Sports and Leisure Limited, Otium Entertainment Limited (trading as Coventry City Football Club), Joy Seppala and Laura Deering. For ease of reference I will refer to the Limited Companies collectively as SISU.
3. The complaint was made in a letter by Mishcon de Reya dated 12 May 2015. The complaint stated that in summary Councillors Lucas and Mutton had failed to comply with the code in that they had failed *to secure better social, economic and environmental outcomes for all*. It further stated that they had failed to *behave in a manner that is consistent with the ... principles to achieve best value for ... residents and maintain public confidence in the Council*.
4. The complaint essentially falls into five parts which are linked. The allegations are:
 - a. The Council, whilst it was negotiations with SISU, never had any intention of doing a deal with it – the councillors were saying one thing in private but doing another and as the Leaders of the Council in the relevant period Councillors Lucas and Mutton were responsible for this approach.
 - b. The decision made by the Council was wrong and not in the best interests of the Council or the council tax payers of Coventry – the Council should have done a deal with SISU – again as the Leaders of the Council in the relevant period Councillors Lucas and Mutton were responsible for this approach.

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- c. There was a failure to deal appropriately with interests. Councillor Mutton was a Trustee of the Alan Higgs Centre Trust, the complaint expressed concerns about whether this was appropriately registered and dealt with at meetings. A further issue was raised about whether the fact that Councillors Lucas and Mutton were lifelong supporters of Coventry City Football Club had an inappropriate influence on decision making
 - d. That there was an orchestrated media campaign to target SISU and Joy Seppala in particular and that the comments in the media attributed to Councillors Lucas and Mutton were inappropriate and showed a lack of respect (a schedule of comments was attached to the complaint).
 - e. That Councillor Mutton in particular was rude to Joy Seppala at meetings which she had with him in 2012 and showed her and other attendees a lack of respect.
5. The aspects of the complaint set out in paragraph 4 are not taken from the complaint or the way in which the complainants or their solicitors have set out the complaint to me but I believe these headings summarise and reflect the issues which they have raised in the course of the complaint and my investigation.

Relevant Legislation

6. The Localism Act 2011 repealed and replaced the old legislation governing standards of conduct for elected members with effect from July 2012. Under the 2011 Act, the Council:
 - a. is under a duty to promote and maintain high standards of conduct; and
 - b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
7. The 2011 Act requires the Council to have in place arrangements for investigating allegations of failure to comply with the Code, and taking decisions about them, including appointing one or more

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independent persons, one of whose views must be sought before a decision is made, and one of whose views may be sought by the member against whom an allegation is made.

8. The Council adopted a new Code of Conduct (“the Code”) with effect from July 2012 (SG1). The Council also adopted arrangements for dealing with allegations that a member had failed to comply with the Code (SG2).

9. So far as material, the Code provides as follows:

1. I will represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

2. As a holder of public office and as required by law, I will behave in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in the Council:....

c. OBJECTIVITY: I will make choices on merit, in carrying out public business, including when making public appointments, awarding contracts, or recommending individuals for rewards and benefits.

d. ACCOUNTABILITY: I am accountable for my decisions and actions to the public and must submit myself to whatever scrutiny is appropriate to my office.

e. OPENNESS: I will be as open as possible about all the decisions and actions I take. I will give reasons for my decisions and restrict information only when the wider public interest or the law clearly demands.

3. As a Member of Coventry City Council I will act in accordance with the principles in paragraph 2 and, in particular, I will ...

(b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.

CONFIDENTIAL

- (d) Exercise independent judgement and not compromise my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member/Co-opted Member of this Authority.*
- (e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit.*
- (f) Be accountable for my decisions and cooperate when scrutinised internally and externally, including by local residents.*
- (g) Contribute to making the City Council's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding me and other Members to account but restricting access to information when the wider public interest or the law requires it.*
- (j) Always treat people with respect, including the organisations and public I engage with and those I work alongside.*

5.1 I will:

- a. register and, where appropriate, disclose those disclosable pecuniary interests that I am obliged to declare under the Localism Act and associated regulations; and*
- b. register details of my membership of any organisation or body whose rules or requirements of membership could be regarded as suggesting a degree of loyalty to that organisation or body. I acknowledge that this could arise by reason of an organisation having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance or support to that organisation or body. I understand that such organisations or bodies may or may not be charitable concerns and they may also have a local, regional, national or international aspect.*

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8.1. I understand that I have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting) where:

- a. a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of me or a member of my family or a person with whom I have a close association, or an organisation or body under paragraph 5.1.b or 5.1.c above, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which I have been elected or otherwise of the authority's administrative area; and*
- b. the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest*

Members' official details

10. Councillor Lucas has been a member of the Council since 2000. She was also a councillor from 1995–1999. She is currently the Leader of the Council and has been Leader since May 2013, prior to that she was a member of the Cabinet.

11. Councillor Mutton has been a member of the Council since 1984. He is currently Chair of the Finance and Corporate Services Scrutiny Board and a member of the Licensing and Regulatory Committee and the Scrutiny Co-ordination Committee. He was Leader of the Council in 2003–2004 and 2010–2013.

12. Councillor Lucas told me that she has received training on the Code whilst she has been a member of the Council. The Council has told me that Councillor Lucas received training on the Code on 11 June 2013.

13. Councillor Mutton told me that he has received training on the Code whilst he has been a member of the Council. The Council has told

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me that Councillor Mutton received training on the Code on 26 July 2012.

Summary of the Facts and Evidence Gathered

Background

14. Councillor Mutton was the leader of the Council from May 2010 to May 2013. Councillor Lucas became the Leader of the Council in May 2013 and remains the Leader of the Council to date.
15. The complaint relates to events which occurred in the main between 2012 and 2015. This concerned SISU's ownership of Coventry City Football Club ("CCFC"). CCFC's home games were played for most of that period at the Ricoh Arena ("RA"). The freehold of the RA was owned by the Council but it was leased during the relevant time to Arena Coventry Limited ("ACL"). ACL was owned by the Council, which owned 50% of the shares and the Alan Higgs Charity Trust ("AEHC") which owned the other 50%.
16. There were two Directors of ACL who were appointed by the Council, Martin Reeves, the Chief Executive of the Council and Chris West, the Director of Resources of the Council. Councillors Lucas and Mutton were not Directors of ACL.
17. SISU wished to acquire the RA, either by obtaining the freehold or a long leasehold interest or by obtaining at least a 50% share in ACL. SISU negotiated with AEHC to purchase its share in ACL. Any sale by AEHC of its share to SISU would have required the consent of the Council. SISU proposed that it would buy out the debt which ACL owed to its bank, Yorkshire Bank and write that off.
18. There were a series of meetings attended by representatives of the Council and SISU which took place between March and July 2012. After one of these meetings which took place on 19 April 2012 a document entitled "Areas of agreement" was produced (SG3). This stated amongst other things, "We all acknowledge that the football club has been extremely poorly managed in the recent past..."

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19. There were meetings which took place on 1 May, 18 May and 24 July 2012 which were attended by Councillor Mutton and SISU and others. It is at these meetings that SISU allege that Councillor Mutton was rude to Ms Seppala.
20. The Council agreed Heads of Terms (SG4) with SISU on 2 August 2012 for the progression of a grant of a further lease to ACL and for SISU to progress the purchase of the shares in ACL owned by AEHC. The Heads of Terms contained a number of conditions precedent.
21. The Council decided in January 2013 to provide a loan to ACL of £14.4 million to enable it to discharge its debt to the Yorkshire Bank. The decision was made by full Council. This decision was the subject of a challenge by way of judicial review ("JR") brought by SISU. The application was rejected by the Court in the judgment of Hickinbotham J which is reported at, *Sky Blue Sports & Leisure Ltd & Ors, R (On the Application Of) v Coventry City Council* [2014] EWHC 2089.
22. The negotiations between SISU and the AEHC for the purchase of its share of ACL had broken down earlier and AEHC brought proceedings against SISU for its costs. The claim was determined by Leggatt J and his judgment is reported at, *Marilyn Freda Knatchbull-Hugessen and Others as Trustees of the Alan Edward Higgs Charity v SISU Capital Limited* [2014] EWHC 1195 (Comm).
23. We understand that permission to appeal the JR judgment has been granted by the Court of Appeal.
24. The issues surrounding CCFC were clearly of great interest to the people of Coventry, fans of CCFC and people interested in football more broadly. There was a great deal of media interest in events. The Council, SISU and ACL all engaged with the media at various stages. The complainants attached to their complaint a sample of comments made in the media by Councillors Lucas and Mutton and others (SG5)
25. A short chronology of the events, provided by the complainants is set out below.

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Date	Event
2008	SISU Group purchased CCFC
March 2012	ACL CCFC rent agreement
21.04.12	CCFC relegated from the Championship to League One
August 2012	Heads of Terms between CCC and SISU signed
15.01.13	CCC decision to lend £14.4m to ACL which manages Ricoh Arena
13.03.13	ACL made application to put CC Limited into administration for non-payment of rent and licence fees due to ACL
21.03.13	Arvo put CCFC into administration
3.04.13	CCC publish press release on Council meeting decision
08.07.13	CCFC move to Northampton Town
21.08.14	CCFC return to Ricoh Arena
19.09.14	CT 'exclusively' reveals secret WASPS talks
7.10.14	CCC renegotiate loan
8.10.14	WASPS acquire 50% ACL
14.11.14	WASPS acquire 100% ACL

The evidence obtained

26. The following witnesses were interviewed during the investigation:

Joy Seppala and Laura Deering (SG6)
Lisa Commane (SG7)
Chris West (SG8)
Fran Collingham (SG9)
Councillor George Duggins (SG10)
Councillor Ann Lucas (SG11)
Councillor John Mutton (SG12)

27. All have signed written records of their interviews.

28. The Council's Deputy Monitoring Officer, Helen Lynch, described the process leading to my instructions and supplied me with relevant documentation, including the following:

- The letter of complaint (SG13)
- Councillor Mutton's declaration of interest form (SG14)

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Evidence of Joy Seppala/Laura Deering

29. Ms Seppala and Ms Deering made the complaint on behalf of themselves and SISU. Ms Seppala is the founder and Chief Executive of SISU Capital Limited and Ms Deering is an Investment Manager for SISU Capital Limited. The interview with Ms Seppala and Ms Deering was also attended by Fiona Laurence and Rahmona Mehta of Mishcon De Reya.

30. Prior to the interview Mishcon De Reya supplied me with a number of documents:

- a) Email exchanges emanating from Weber Shandwick, a PR company employed by ACL (SG15). The emails had been supplied to Mishcon De Reya in response to a subject access request made behalf of Ms Seppala.
- b) An email from Lisa Commane, Assistant Director Special Projects Finance for the Council to Chris West, Director of Resources for the Council and Christine Ford, the Council's Monitoring Officer dated 7 December 2012 (SG16).
- c) Letter from Yorkshire Bank to ACL dated 17 December 2012 (SG17).
- d) Slides from a presentation to the Labour Group of the Council dated 13 August 2012 (SG18).
- e) An article from the Coventry Telegraph dated 13 May 2015 about the complaint (SG19).

31. Ms Seppala confirmed that the contents of the statement by her which was appended to the complaint (SG20) were true to the best of her knowledge and belief.

32. Ms Seppala and Ms Deering highlighted the conduct of the Council and the councillors. They stated that the Council had used the media in a way which they had not expected a public authority to. They highlighted the comments which were quoted in the document attached to the complaint (SG5). They stated that these showed a deliberate strategy to target Ms Seppala personally.

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33. Ms Seppala and Ms Deering particularly highlighted comments made by Councillor Mutton on 23 April 2012 that, "When the fans were chanting "SISU out" I was on my feet singing it with them." They also highlighted Councillor Mutton's comments on 13 March 2013 that, "it is absolutely true that SISU [is] a predator with greed running through its DNA."
34. Ms Seppala highlighted the extracts from the Weber Shandwick emails which made several comments about her personally and also made suggestions about how to locate her home address.
35. Ms Seppala and Ms Deering also referred to meetings which had taken place attended by Councillor Mutton and the then Deputy Leader of the Council, Councillor Duggins in 2012. They stated that the councillors had been very rude and had spent much of the meeting berating them for the performance of CCFC.
36. Ms Seppala and Ms Deering stated that they believe that Councillor Mutton confused his role as a trustee of the Alan Higgs Centre Trust. They stated that at one point in one of the meetings he stated that CCFC/SISU should be paying for a new pitch at the centre. She stated that CCFC did not own the Centre but merely used some facilities there. Ms Seppala and Ms Deering also stated that they felt that the Councillors had a conflict of interest as a result of being lifelong fans of CCFC which had an impact on their dealings with SISU.
37. Ms Seppala stated that in conclusion their complaint was that the Council officers and members had pursued an agenda in which they had clear conflicts of interest, that they had never been open to doing a deal with SISU and that whilst they negotiated with SISU they were pursuing an alternative agenda. She stated that the Council had acted in a way which was not open, transparent or accountable and that as the Leaders of the Council over the relevant period Councillors Mutton and Lucas were responsible for this.
38. After the meeting Ms Deering and Ms Seppala supplied me with the following further documents:

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- a) Notes taken by Ms Deering of meetings of 1 and 18 May and 24 July 2012 (SG21)
- b) The note of agreement dated 19 April 2012 (SG3).
- c) The Heads of Terms dated 2 August 2012 (SG4).
- d) Letter from Ann Lucas to Joy Seppala dated 28 August 2013 (SG22).
- e) Letter from Speechly Bircham to Councillor Lucas dated 30 August 2013 (SG23)
- f) Second Letter from Speechly Bircham to Councillor Lucas dated 30 August 2013 (SG24)

Evidence of Lisa Commane

39. Ms Commane explained that she is employed by the Council as Assistant Director for ICT, Transformation and Customer Services. LC explained that she moved into her current role recently as a result of a restructure within the Council. She explained that she was previously the Assistant Director for Special Projects Finance which was a post she had held since 2009 and in that role she had been the lead finance representative for major projects, regeneration schemes and the companies owned by the Council. She explained that as part of that role she provided strategic advice and was the lead finance advisor on the projects. She stated that she originally began working for the Council in 2006 as a Finance Manager.

40. I met with her principally to discuss the email which she had sent to Chris West, Director of Resources for the Council and Christine Ford, the Council's Monitoring Officer dated 7 December 2012 (SG16) in which she referred to "endorsement to have the media war and go on the attack with SISU." She stated that she could not remember exactly the context of the meeting but it was at a critical time as Chris West was due to meet with Yorkshire Bank the following week.

41. She explained that Tim Fisher, the Chief Executive of CCFC, had been reported in the local press and on the radio shortly before that meeting making comments about ACL. It was in that context that the Council was saying that it needed to get its position known in the press.

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42. Ms Commane stated that the Council had signed Heads of Terms with SISU in August 2012. She stated that it was becoming very clear by December 2012 that SISU were not going to be able to meet the conditions precedent set out in the Heads of Terms. She stated that SISU had not agreed terms with the AEHC to purchase its share of ACL and had not agreed a deal with ACL on the rent and SISU had not produced a credible, funded business plan for CCFC and ACL as required. She stated that the Council did a lot of due diligence and they never came close to being in a position to recommend to members that they should do a deal with SISU. She stated that the Council were open to doing a deal with SISU but it had become clear by December 2012 that this was very unlikely to happen.

Evidence of Chris West

43. Mr West explained that he is the Council's Director of Resources. He is also a Director of ACL. He stated that he felt that the complaint was very weak.

44. Mr West stated that Councillor Mutton is a very robust individual. He stated that he attended the meetings which Councillor Mutton attended with Ms Seppala. He stated that there were some fairly grumpy exchanges but that was on both sides. He stated that at the second meeting Ms Seppala embraced Councillor Mutton. He stated that he did not believe that Councillor Mutton was rude to Ms Seppala at these meetings.

45. I asked Mr West about the email which Lisa Commane had sent to him on 7 December 2012. He stated that he had no recollection of receiving the email. He stated that he would have read it at the time but he could not remember it. He said that it was not a stand out piece of evidence in the thousands of pages of evidence which had been filed in the JR proceedings. He stated that the email needed to be understood in context. He stated that the media response resulted from the attack on ACL by Tim Fisher. He said that with the benefit of hindsight using the word "war" was maybe not a good word to use but there had been an attack on ACL by SISU and there was agreement that there needed to be a response.

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46. I asked Mr West about the extracts from the subject access request which had been made to Weber Shandwick, the PR advisers to ACL. He stated that this was a partial lift from the email exchanges. He explained that Weber Shandwick was monitoring a blog called Skyblue Talk for ACL. He said that this was a way to monitor opinion amongst CCFC fans. He said that a lot of what was in the emails was Weber Shandwick summarising what was on Skyblue Talk. He said that the contract with Weber Shandwick was co-ordinated and managed by the ACL board. He said that they would want to co-ordinate PR strategy with the Council as a major shareholder in ACL but the relationship with Weber Shandwick was managed by ACL. He said that he did not believe that there was a suggestion that elected members had been copied in to emails. He said that he could not categorically state that elected members had never met with Weber Shandwick but he did not believe that they had. He stated that only some of the emails were copied to council email addresses sometimes there were two council email addresses and there were never more than three. He said that he believed that those council email addresses would have been his and those of Martin Reeves (the Council's Chief Executive and also a director of ACL) and Fran Collingham, the Council's Head of Communications.

47. I asked Mr West about the presentation to the Labour Group in August 2012 and the handwritten notes on the copy of the slides. He confirmed that the notes were written by him. He stated that in relation to the note that hell would freeze over before dealing with SISU. Councillor Lucas did say that otherwise he would not have written it down but he could not recall the context in which she had said it. He stated that he could not remember whether she had said that it was her view that hell would freeze over before she agreed to deal with SISU or whether she was saying that was what other people were saying to her.

48. Mr West stated that the Council was willing to continue talking to SISU but it was becoming increasingly clear in the course of 2012 that relations were breaking down probably irrevocably – particularly on the key issue of SISU agreeing a price to buy the AEHC shares in ACL. CW stated that the Council would have done a deal with SISU if it had been possible. He stated that he did not take the hell freezes

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over comment literally. He said that the decision at the end of the meeting was to continue talking. He said that Council were always prepared to a deal with SISU on the right terms.

Evidence of Fran Collingham

49. Ms Collingham explained that she is employed by the Council as its Head of Communications. She stated that she had been employed in that role since September 2003. She explained that in her role she is responsible for internal and external communications and marketing, council publications and digital and social media.

50. She stated that the Council's strategy was largely responsive, responding to issues as and when they were raised and responding to requests for interviews rather than proactively issuing media releases. She stated that they had issued press releases at various key points such as after the Council meeting in January 2013 which agreed to provide a loan to ACL but generally they reacted to events.

51. She stated that the Council's approach to communications is to be honest, upfront and transparent. She explained that the Council was seeking to explain what had happened and what it was doing. She stated that there was no extra campaigning and they were merely responding to media queries on what was a high profile issue.

52. She explained that Weber Shandwick was engaged by ACL as PR consultants. She stated that the Council do not use PR consultants. She explained that she was kept updated on what Weber Shandwick were doing and she talked to them and met them a couple of times. She stated that they had not issued any joint media releases or done any joint publicity. She stated that she did not believe that Weber Shandwick would have had any direct contact with elected members.

53. Ms Collingham stated that Councillor John Mutton was comfortable talking to the media. She stated that some of his comments are made off the cuff in interviews and the majority of those quoted in the schedule to the complaint fall into this category.

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54. Ms Collinghan stated that the Council categorically did not have a strategy of targeting Ms Seppala personally in the media. She stated that was absolutely not the way that the Council did things. She stated that she was hurt and taken aback that SISU could even imply that the Council would do such a thing. She stated that honesty and transparency within the context of commerciality is what they are all about.

Evidence of Councillor Duggins

55. Councillor Duggins explained that he is an elected member of the Council and has been for 22 years. He stated that he was Deputy Leader of the Council between 2003–2004 and 2010–2013.

56. Councillor Duggins stated that he had attended meetings with Councillor Mutton and SISU in 2012. He stated that he did not believe that Councillor Mutton had been rude to Ms Seppala at the meetings he attended. He stated that at one meeting Ms Seppala had embraced Councillor Mutton.

57. He stated that all of the issues were dealt with in the JR. He stated that the Council had every reason to be sceptical about SISU. He said that the Council never came close to doing a deal with SISU over the Ricoh Arena. He said that after SISU's attempt to buy the Alan Higgs Charity Trust in ACL failed in August 2012 any chance of a deal was over.

Evidence of Councillor Lucas

58. Councillor Lucas explained that she is a member of the Council and has been the Leader of the Council since May 2013.

59. Councillor Lucas provided me with correspondence between her and Ms Seppala between July and November 2013 (SG25). This correspondence related to a meeting to explore possible solutions to issues affecting CCFC and the RA at that time. Councillor Lucas referred me to the letter from JS of 13 November 2013 which stated, "It was a pleasure to meet and to cut through the media hype. I do believe that you genuinely want to the best for the city of

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Coventry...” Councillor Lucas stated that if the situation was as set out in the complaint Ms Seppala would not have written to her in those terms after they had met. Councillor Lucas stated that the letters show a very different situation to that described in the complaint. She stated that they showed that exchanges were courteous and cordial.

60. Councillor Lucas stated that a lot had been said about her comment that “hell would freeze over” before a deal would be done with SISU. She stated that this comment was highlighted in the judgment of the JR claim brought against the Council. She stated that it came from a handwritten note which Mr West had made on the presentation hand out for a Labour Group meeting. She explained that Mr West was taking a number of questions and he was writing down the questions as he went along to remind himself and then answering a number at a time. She explained that she is a lifelong fan of CCFC and speaks to a lot of other fans. She stated that part of her role as a councillor was to report back the views of the public on issues. She stated that she told Mr West at the meeting that there was a strong feeling against SISU amongst CCFC fans and many were saying to her that hell would freeze over before the Council should do a deal with SISU. She stated that the note was not setting out her views but her question to Mr West when she had referred to the views of the CCFC fans generally.

61. Councillor Lucas stated that there was also reference in the JR judgement that she had asked whether SISU could sell on to, “another shyster.” She stated that she did not say that and in any case that is not the sort of thing which she would say.

62. Councillor Lucas stated that the decision which was made at the end of that Labour Group meeting was that the Council should continue to talking to SISU. She stated that it was never her view that hell would freeze over before the Council should deal with SISU. She stated that she had begged Ms Seppala to, “come back to the table” to discuss the situation when CCFC were playing at Northampton because she wanted what was best for CCFC and the city of Coventry.

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63. Councillor Lucas looked through the comments in the media attributed to her in the schedule attached to the complaint. She stated that she accepted that she said all of those things. She stated that she stood by the comments and all of them had been made following advice and input from the Council's press office and legal officers.
64. Councillor Lucas stated that the complaint was "balderdash". She stated that if the Council could have found any way within reason to stop CCFC moving away from the city then they would have found it. She said that if they could have found a solution with SISU they would have done. She referred to the judgment in the JR which found that SISU's solution was never achievable or realistic.

Evidence of Councillor Mutton

65. Councillor Mutton explained that he is a member of the Council and has been since 1984. He stated that he was leader of the Council between 2003–2004 and 2010–2013.
66. He stated that he believed that the complaint against him was motivated purely by vindictiveness. He stated that there have been a series of legal cases brought by SISU. He referred to comments made in the judgement of Hickinbotham J in the JR case. He stated that the judgment made it clear that the judge agreed with the Council that SISU had been intent on getting their hands on the Ricoh Arena at a rock bottom price by getting ACL wound up.
67. Councillor Mutton stated that he had quite liked Ms Seppala when he first met her and was amazed that she claimed that he had been rude to her. He stated that if you speak to any business person in Coventry they would say that even if he disagreed with them he would always be civil. He stated that he believed that others who attended the meetings he had with Ms Seppala would say that it was productive. He stated that at the end of the meeting she had said to him, "come and give me a hug." He stated that she would not have done that if she felt that he had been rude to her.

CONFIDENTIAL

68. Councillor Mutton stated that as far as he could recall he had never met with Weber Shandwick.
69. Councillor Mutton stated that he did not recall there being an endorsement to having a “media war” with SISU at a cabinet briefing. He explained that he did recall discussing the need to keep the people of Coventry informed because a lot of things were being said by SISU/CCFC which had been left unchallenged and this gave a one sided view of things. He stated that he was aware of Weber Shandwick and the PR advice was that ACL and the Council had to, “fight their corner.”
70. Councillor Mutton told me that he had looked through the schedule of comments in the media which had been attached to the complaint. He stated that there was nothing in that schedule which he would deny having said. He stated that the comments were made in the context of CCFC illegally withholding rent payments. He explained that he had supported ACL in taking legal action to recover the rent.
71. Councillor Mutton stated that he has been a lifelong CCFC fan but he liked to think that this did not have an impact on the decisions which he made as a councillor over the Ricoh Arena and ACL. He stated that he always took appropriate legal and financial advice. He stated that when the decision was made at the full council meeting on 15 January 2013 to make the loan to ACL he declared an interest as a season ticket holder.
72. Councillor Mutton stated that he completed his declaration of interest form every year. He stated that for some reason his position as a trustee of the AEHC was not included on the previous year’s form but it should have been. He stated that because the Alan Higgs Centre Trust was entirely separate from the AEHC which owned 50% of ACL. He told me that he did not believe that his role as a trustee of the Alan Higgs Centre Trust had any effect on the decision to make a loan to ACL. He stated that he sought legal advice on this.

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73. He produced a letter dated 6 December 2006 (SG22). The letter signed by P.W. Knatchbull-Hugessen, a Trustee. It stated that the trustees of the AEHC, “have no government over the Trustees [of the Alan Higgs Centre Trust]. There are no commitments between the two charities [save for a loan made by AEHC to the Alan Higgs Centre Trust to construct the centre].” Councillor Mutton explained that he has been very careful to identify the correct position regarding his role as a trustee of the Alan Higgs Centre Trust.

74. Councillor Mutton told me that the comments he made on 13 March 2013 on BBC Radio Coventry and Warwickshire about SISU being a predator and having greed running through its DNA were made in response to a fairly leading question about the nature of hedge funds and whether they should be involved in running football clubs. He stated that he felt that the comments were justified giving the dealings which he had with SISU.

Findings of fact

75. There is a complicated history to this issue. It is unnecessary for me to carry out a detailed analysis of all the facts given the relatively limited scope of the issues which I have to consider.

76. So far as they are material I find on the balance of probabilities;

- a. The Council and the Councillors were open to “doing a deal” with SISU so long as it was in the commercial interests of the Council and the council tax payers of Coventry for it to do so;
- b. The Council and councillors were wary of SISU and relations throughout the period were strained. The prevailing view of the Council’s officers and members accorded with that of the majority of CCFC supporters, that CCFC had been badly mismanaged and as owners SISU bore the responsibility for that state of affairs;
- c. The Council became increasingly frustrated in 2012 by what it saw as SISU’s failure to make progress on the conditions precedent set out in the Heads of Terms agreed in August 2012;

CONFIDENTIAL

- d. The Council ultimately concluded that its commercial interests were best served by making a loan to ACL to discharge its debt to the Yorkshire Bank;
- e. Councillors Mutton and Lucas made the comments in the press as set out in the schedule attached to the complaint;
- f. At all material times Councillor Mutton was a trustee of The Alan Higgs Centre Trust;
- g. There was no formal relationship between the AEHC (which owned 50% of ACL) and the Alan Higgs Centre Trust;
- h. Councillor Mutton's role as a Trustee of the Alan Higgs Centre Trust was not declared on his register of interest form submitted on 19 July 2012;
- i. Councillor Mutton's role as a Trustee of the Alan Higgs Centre Trust was declared on his register of interest form he submitted which was published on the Council's website on 8 June 2015;
- j. There were robust exchanges between Councillor Mutton and SISU at meetings in May 2012. I find that Councillor Mutton was not rude. It was legitimate for him to raise with SISU, issues about the performance of CCFC at those meetings. I have considered the evidence of those present at the meeting. I do not consider that it is necessary or proportionate to seek to interview others who were at those meetings. I have taken into account the fact that those meetings took place three years before the complaint was submitted and no complaint was made at the time or in the intervening period;
- k. Councillor Lucas made a comment at a Labour Group meeting about people in the city saying that the Council should not deal with SISU until "hell freezes over" in doing so she was not expressing her own view but that of others which she had been told. I did not consider it necessary or proportionate to interview others present at that meeting, given that it took place nearly three

CONFIDENTIAL

years ago it is unlikely that they would have had a clear memory of exactly what was said;

- l. At the same Labour Group meeting another member asked a question about whether SISU could sell on to another “shyster”. I find that neither, Councillor Lucas or Councillor Mutton made that comment;
- m. Councillors Lucas and Mutton were not routinely briefed in person or via email by Weber Shandwick. Weber Shandwick were appointed by ACL and whilst the communications strategies of ACL and the Council (as a significant shareholder in ACL) were linked they were separate;
- n. I find that there was not any strategy of targeting Ms Seppala personally in the press. I find that the Council considered that there was a need to adopt a robust defence of their approach in the press but that was a legitimate approach to take in the circumstances.

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

77. The relevant paragraphs of the Code which I have considered during my investigation are 2, 3, 5 and 8.
78. The test in deciding whether or not there has been a breach of the code is objective: would a reasonable person aware of all the material facts and ignoring all immaterial factors consider that there has been a breach of the code?
79. The code of conduct only applies to the conduct of a member acting in an official capacity and not at any other time. I have considered whether Councillors Mutton and Lucas were acting in an official capacity at the relevant times. I consider that they were.
80. As a result of my findings at paragraphs 76 a–c it follows that I do not believe that any argument that there was a failure to comply with the Code based on the allegation that the Council was saying one thing to SISU whilst always secretly doing everything that it could to

CONFIDENTIAL

frustrate SISU's plans can succeed. It is clear that the councillors had strong views about CCFC and SISU. This is understandable, Councillors are human beings and usually ones who are passionate about what happens in their local communities. It has long been recognised that councillors bring to their roles the benefit of local knowledge and their own convictions and beliefs. It is accepted that they will be predisposed to believing in certain actions but that will not prevent them from participating in decision making (see *R. (on the application of Island Farm Development Ltd) v Bridgend CBC* 2006] EWHC 2189 (Admin)).

81. The relationship between SISU and the Council and the councillors was difficult but that was shaped by experiences. The Council believed that SISU was embarking on a deliberate strategy of distressing ACL by not paying the rent due. In the JR proceedings Hickinbotham J found that was what SISU had done. That decision is the subject of the appeal. However, it seems clear that SISU was doing exactly that and it was causing significant difficulties for ACL, a Company in which the Council was a major shareholder.
82. The Code is about Councillors' Conduct and not the quality of their decision making. There may be circumstances where decision making could be so unsound that it becomes a breach of the Code. For example, where a decision is motivated purely by personal or political factors. However, generally the mere fact that a decision is not one which the complainant believes the council should have made is never grounds for a complaint for the Code. Even where a decision is found on JR to have been unlawful it will be rare that this will amount to a failure to comply with the Code, so long as the decision is honestly made.
83. In this case I believe that the Councillors including Councillors Lucas and Mutton made the decision which they did because they honestly believed, on professional advice, that it was in the best interests of the Council and the council tax payers and there are no grounds for concluding that they failed to comply with the Code in reaching that decision.

CONFIDENTIAL

84. It follows from my findings of fact and comments in paragraphs 80–83 that I do not believe that there is any failure to comply with the Code on the part of Councillors Lucas and Mutton in respect of those parts of the complaint set out in paragraph 4 (a) and (b) above.
85. Councillor Mutton was at all material times a Trustee of the Alan Higgs Centre Trust. Councillor Mutton told me that this Trust is entirely separate from the AEHC. Councillor Mutton provided me with a letter from the clerk to the Alan Higgs Centre Trust explaining that there was no formal link between the two organisations save for a loan and grants made to build the centre.
86. The letter also stated that there is absolutely no connection between the Alan Higgs Centre Trust and ACL.
87. Councillor Mutton’s role as a trustee does not meet the criteria in the legislation to amount to a disclosable pecuniary interest. However, pursuant to paragraph 5 of the Code it should have been registered in his register of interests. For a period it appears that it was not included in his register, though that was rectified by 8 June 2015.
88. Paragraph 8 (1) of the Code would require Councillor Mutton to declare an interest and not participate in a vote in a matter where a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of an organisation or body covered by 5.1.b or 5.1.c (which would include the Alan Higgs Centre) to a greater extent than it would affect the majority of the council tax payers and the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice his judgement of the public interest.
89. The decisions Councillor Mutton was involved in which are the subject of the complaint related to the loaning of money to ACL. It is evident that this would have had a benefit to the AEHC as it was a part owner of ACL. It could then be argued that this would have an indirect financial benefit to the Alan Higgs Centre Trust (assuming that there were still financial liabilities outstanding between the

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CONFIDENTIAL

Centre and the AEHC). However, in my view any such effect of the decision on the Alan Higgs Centre Trust would be so indirect that a member of public with the knowledge of the relevant facts would not consider it likely that the interest would prejudice Councillor Mutton's judgement of the public interest. Therefore, in my view Councillor Mutton was not required by the Code to declare his interest as a trustee in the Alan Higgs Centre Trust when the decision to make a loan to ACL was considered by the Council on 15 January 2013 and when the issue was considered in other meetings at which he was present.

90. The issue of the councillors association with CCFC was also mentioned by the complainant. This is not something which would be an interest under the Code and nor would the fact that the councillors were involved in decision affecting CCFC whilst being fans of CCFC amount to a failure to comply with the Code. Therefore, in respect of these issues identified in paragraph 4(c) above I find that there has not been a failure to comply with the Code by Councillors Lucas or Mutton.
91. However, it follows from what I have said that there has been a failure on the part of Councillor Mutton to comply with the Code in that the register of interest he completed in July 2012 failed to identify his role with the Alan Higgs Centre Trust. This failure has now been rectified. This was not a disclosable pecuniary interest but the Council's Code does require such an interest to be registered. In my view this is a technical breach which had no impact upon the role of Councillor Mutton in the decisions made by the Council in respect of ACL.
92. I have considered carefully the comments made in the press attached to the complaint and whether the aspects of the complaint set out in paragraph 4 (d) are made out. I have found that there was not an orchestrated media campaign to target Ms Seppala. I have also considered whether the comments of themselves amount to a failure to comply with the code on the part of Councillors Lucas or Mutton. In my view they do not amount to a breach of the Code. Many of them are simply statements of the Council's policy position at the time. Whilst SISU clearly disagree with what the councillors

CONFIDENTIAL

were saying that does not mean that in making them the councillors were failing to comply with the code.

93. Councillor Mutton expressed himself on a number of occasions in very strident terms, in particular his comments on 23 April 2012 that, "When the fans were chanting "SISU out" I was on my feet singing it with them." The complainants also highlighted Councillor Mutton's comments on 13 March 2013 that, "it is absolutely true that SISU [is] a predator with greed running through its DNA."

94. I understand that these comments were made in response to questions rather than as part of planned media releases. Councillor Mutton clearly prides himself on being a straight talking man and believes no doubt correctly that the public respect him for that. As the Leader of the Council he will have been expected to speak for the people of the city on an issue which many felt passionately about as he did. These comments need to be seen in that context.

95. It also needs to be considered that Ms Seppala is clearly a very successful business woman operating in a competitive industry. Whilst she is entitled to be afforded the same protection as anyone else she is no doubt used to being on the receiving end of robust comments being made when difficult commercial negotiations are taking place.

96. I have no doubt that the two comments made by Councillor Mutton which I have highlighted are not ones which the Council would have included in a press release but in my view they do not amount to a failure to comply with the Code. Elected representatives have a right to freedom of expression under Article 10 of the European Convention on Human Rights which is an important part of our democracy. Members need to feel free to speak openly and passionately on issues of local and national importance. Whilst this right is not completely unfettered any restriction upon it must be considered very carefully. In this instance I do not believe that the comments amount to a failure to comply with the code. Whilst they are perhaps close to the borderline where they would amount to failure to show respect to SISU, in the context in which they were made, I do not think that the comments amount to a lack of respect,

CONFIDENTIAL

they are the expression of genuinely held belief about the way in which SISU was operating CCFC at the time. It is also notable that these comments were made a considerable time ago but were not the subject of a complaint for three and two years after they were made respectively.

97. Although I have only highlighted two specific comments made by Councillor Mutton I have considered each comment set out in the schedule.

98. In considering whether there has been a failure to comply with paragraph 2 and 3 of the Code, I have had regard to Article 10 of the European Convention on Human Rights which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

“(2) The exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ... the protection of the reputation or rights of others,”

99. The right to freedom of expression is a crucially important right in a democratic society and may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. If the comments amount to political expression then enhanced protection will apply.

100. The correct approach to considering the issue of freedom of expression in the context of a complaint of failure to comply with the Code was recently considered by the Administrative Court in the case of *Patrick Heesom v The Public Services Ombudsman for Wales and The Welsh Ministers* [2014] EWHC 1504 (Admin) (“the Heesom case”). This case related to the member conduct regime in Wales which is different from that in England. However, the analysis of the Court of the approach to dealing with Article 10 applies equally to the regime in England.

CONFIDENTIAL

101. In the Heesom case the court confirmed that the correct approach to adopt is to assess the issue in three stages, firstly, leaving aside Article 10 and any similar common law considerations, was there a failure to comply with of the Code of Conduct? Secondly, if so, would such a finding on the face of it amount a breach of Article 10? And thirdly if so, was the restriction involved in the finding justified under Article 10 (2) as “necessary in a democratic society” responding to a “pressing social need” and proportionate to a legitimate aim pursued by the state? If the enhanced protection applies, the threshold for the justification will be significantly higher.
102. In relation to the first stage I have already stated that I do not believe that the comments amount to a failure to comply with the Code.
103. Strictly speaking there is no need for me then to go on to consider the other stages of the test. However, I will briefly consider the Article 10 implications. In my view if I had found that the comments (or some of them) amounted to a failure on the part of Councillors Lucas and Mutton to comply with the Code would amount to a breach of their rights under Article 10. Therefore, it would then have been necessary to consider whether or not concluding that there has been a failure to comply with the Code would impair their right to freedom of expression more than is necessary to accomplish the legislative objective of the Code. In my view it would have so impaired their rights. It is important that elected politicians are able to comment on issues of local concern, this is particularly important when the politician is the Leader of the Council and it relates to an issue of significant public interest as was the case here. The right to freedom of expression is not without limits but members must be able to express their opinions in a forthright manner without fear that they will be the subject of a complaint under the Code.
104. In relation to the part of the complaint set out at paragraph 4 (e) as I have found that Councillor Mutton was not rude to Ms Seppala and others at the meetings concerned it follows that there was no failure on his part to comply with the code in respect of this.

CONFIDENTIAL

Finding

105. My finding is that there has not been any failure to comply with the Council's Code of Conduct by Councillor Lucas or by Councillor Mutton save for a technical failure on the part of Councillor Mutton arising from his failure to register his interest as a trustee of the Alan Higgs Centre Trust between July 2012 and June 2015.
106. I am sending a copy of this report to Helen Lynch, the Deputy Monitoring Officer of the Council.

**Simon Goacher, Partner
Weightmans LLP
5 August 2015**

CONFIDENTIAL

Schedule of evidence

SG1	Coventry City Council Code of Conduct
SG2	Coventry City Council arrangements for dealing with complaints about members
SG3	Areas of agreement, 19 April 2012
SG4	Heads of Terms, 2 August 2012
SG5	Schedule of media comments
SG6	Record of Interview of Joy Seppala and Laura Deering
SG7	Record of Interview of Lisa Commane
SG8	Record of Interview of Chris West
SG9	Record of Interview of Fran Collingham
SG10	Record of Interview of Councillor George Duggins
SG11	Record of interview of Councillor Ann Lucas
SG12	Record of Interview of Councillor John Mutton
SG13	Letter of complaint
SG 14	Councillor Mutton's Declaration of Interest Forms
SG15	Extracts from Weber Shandwick emails
SG16	E-mail from Lisa Commane to Chris West and Christine Ford dated 7 December 2012
SG17	Letter from Yorkshire Bank to ACL dated 17 December 2012

CONFIDENTIAL

- SG18 Slides from a presentation to the Labour Group of the Council dated 13 August 2012
- SG19 Article from the Coventry Telegraph dated 13 May 2015 about the complaint
- SG 20 Statement of Joy Seppala dated 8 May 2015
- SG21 Notes taken by Laura Deering of meetings of 1 and 18 May and 24 July 2012
- SG22 Letter from Ann Lucas to Joy Seppala dated 28 August 2013
- SG23 Letter from Speechly Bircham to Councillor Lucas dated 30 August 2013
- SG24 Second letter from Speechly Bircham to Councillor Lucas dated 30 August 2013
- SG25 Correspondence between Councillor Lucas and Ms Seppala between July and November 2013