

Dated 16 October 2015

STRICTLY PRIVATE AND CONFIDENTIAL
NOT FOR PUBLICATION

**COMPLAINANTS' RESPONSE TO THE REPORT
OF SIMON GOACHER DATED 5 AUGUST 2015**

AND

SUBMISSIONS TO THE ETHICS COMMITTEE

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CONTENTS

A.	INTRODUCTION AND SUMMARY
B.	DETAILED COMMENTS ON AREAS OF DISAGREEMENT WITH THE REPORT OF SIMON GOACHER DATED 5 AUGUST 2015
C.	CLAIMANTS' STATEMENT AS TO THE CORRECT CONCLUSIONS
D.	ADDITIONAL EVIDENCE
E.	ATTENDANCE AT ETHICS COMMITTEE HEARING
F.	SUBMISSIONS TO THE ETHICS COMMITTEE HEARING

A. INTRODUCTION AND SUMMARY

1. An Ethics Committee hearing has been convened to consider the Complaint detailed in the letter from Mishcon de Reya to the Monitoring Officer, Coventry City Council ("CCC") dated 12 May 2015 (the "Complaint Letter") as amplified in the interview with Ms Joy Seppala and Ms Laura Deering on 12 June 2015 (the "Complaint"). The Complaint was made on behalf of:
 - (i) Arvo Master Fund Limited ("Arvo");
 - (ii) SISU Capital Limited ("SISU");
 - (iii) Sky Blue Sports and Leisure Limited;
 - (iv) Otium Entertainment Group Limited (trading as Coventry City Football Club);
 - (v) Ms Joy Seppala; and
 - (vi) Ms Laura Deering, collectively (the "Complainants").

2. In broad terms, the Complaint relates to breaches of the CCC Member Code of Conduct, specifically Code Principles 2 and 3, by Councillors Ann Lucas and John Mutton in relation to:
 - (i) Conduct in meetings with Ms Seppala and Ms Deering (Councillor Mutton);
 - (ii) Failure to declare relevant interests, failure to make decisions in an objective and unbiased way, (both Councillor Mutton and Councillor Lucas);
 - (iii) Making public comments which are not appropriate for a Member to make and which are defamatory of and prejudicial to some or all of the Complainants (Councillor Mutton and Councillor Lucas); and

- (iv) Instigating and participating in a public smear campaign against our clients through the media (Councillor Mutton and Councillor Lucas).

We refer to the Complaint Letter (and enclosures) and the notes of the interview on 12 June 2015 which set out the Complaint in detail.

3. On receipt of the Complaint, the Monitoring Officer referred the matter to Mr Simon Goacher, Partner, Weightmans LLP, to conduct an independent investigation.
4. Mr Goacher confirmed receipt of the Complaint Letter and conducted an interview with Ms Seppala and Ms Deering at the offices of Mishcon de Reya on 12 June 2015. Also present at the interview were Ms Ramona Mehta (Partner) and Ms Fiona Laurence (Legal Director). During the interview the Complaint Letter was explained and amplified and further information and documents were provided. Mr Goacher had an unfettered opportunity to ask all and any questions of Ms Seppala and Ms Deering that he thought relevant and appropriate.
5. After the interview with Ms Seppala and Ms Deering, additional information was sent to Mr Goacher by email on 11, 14, 15 and 16 June 2015.
6. Mr Goacher subsequently conducted interviews with CCC Members and Officers and produced his Report dated 5 August 2015 ("the Report"). The Report was received by Mishcon de Reya on 6 August 2015 and copies of the notes of interviews on 13 August 2015.
7. The Complainants do not accept that the Complaint has been fully or properly investigated, and think it is something of a 'whitewash'. Accordingly the Complainants do not accept the findings in the Report. The Complainants urge the Ethics Committee to consider the Complaint and the notes of the interviews with Ms Seppala and Ms Deering without placing reliance on the Report. The Report cannot be relied upon because it does not reflect a full and fair investigation. The Report's conclusions are therefore unsound.

B. DETAILED COMMENTS ON AREAS OF DISAGREEMENT WITH THE REPORT OF SIMON GOACHER DATED 5 AUGUST 2015

Overview

8. In broad terms, the areas of disagreement with the Report (and the investigation) fall under the following categories:

- (i) Misunderstanding the basis of the Complaint
- (ii) Failure to conduct the investigation properly
- (iii) Failure to investigate the Complaint fully, including a failure to request that CCC provide all relevant documents
- (iv) Insufficient consideration and thought given to the relevant evidence
- (v) Introduction of and reliance on irrelevant evidence
- (vi) Failure to apply the relevant law properly
- (vii) Reaching incorrect or unsound conclusions

These matters are further detailed below by way of analysis of the Report, paragraph by paragraph. In summary, there has been no fair or reasonable investigation into the Complaint.

Executive Summary: paragraphs 1 – 5

9. Mr Goacher briefly outlines the Complaint in paragraph 3 and then purports to set out the Complaint in 5 parts, which, in paragraph 4 are said to be linked. These are said in paragraph 5 to "not be 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 the investigation." Of itself, this is an odd statement and an unsound approach to the Complaint.
10. Paragraphs 3 – 5 show a misunderstanding and mis-statement of the Complaint and a failure to understand the seriousness of the matters complained of. There is a failure to put any or sufficient emphasis on the two very serious matters at the heart of the Complaint, namely:
 - 10.1 The behaviour and conduct of Councillor Mutton in meetings, specifically his rudeness to Ms Seppala, detailed in Ms Seppala's statement dated 8 May 2015 and discussed in further detail at the interview. Councillor Mutton was openly antagonistic and clearly expressed his view that a hedge fund from London should not own CCFC; and

- 10.2 The public comments as detailed in the Schedule of Comments enclosed with the Complaint Letter.
11. These two aspects were highlighted in the Complaint Letter and discussed at length in the interview on 12 June 2015, when various aspects were emphasised, including the Weber Shandwick documents, redacted copies of which were provided, and in which numerous references to Ms Seppala were made. To list these aspects as paragraphs d. and e. without further detail or expansion, does not give sufficient prominence to these important aspects of the Complaint.
12. In paragraph 4.a. it is stated that CCC 'never' had any intention of doing a deal with SISU. This puts it too high and is not the basis of the Complaint. At some point a decision had been made by CCC not to do the deal, but CCC continued in discussions with SISU, in bad faith and effectively 'strung SISU along'. The behaviour of the Councillors in continuing to liaise with the Complainants despite having no intention to do the deal is significant when considering that SISU continued to pay significant funds whilst CCFC was forced into insolvency. This, coupled with Councillors' participation in a public smear campaign shows demonstrable bad faith.
13. The Complaint does not complain about the January 2013 decision of CCC per se – that is being examined in the Judicial Review. Whilst the Complainants firmly believe this was the wrong decision for CCC to make, that decision is being challenged by way of Judicial Review and it is accepted that the decision itself cannot be challenged in this forum. However, the behaviours that surrounded that decision and the press comments made at the relevant time can and should be challenged, and that is what the Complaint is about. It is a fundamental misconception to see the Complaint through the prism of the Judicial Review. This is discussed further below.

Relevant Legislation: paragraphs 6 – 8

14. The Complainants agree that these paragraphs are an accurate summary. However, the Complainants take issue with the way in which the investigation has been undertaken. This is discussed below.

Members' Official details: paragraphs 10 – 13

15. The Complainants have no comment on these paragraphs save to note that CCC adopted a new Code of Conduct with effect from July 2012. Councillor Mutton received training on the new Code on 26 July 2012, yet Councillor Lucas did not receive training until a year

later, on 11 June 2013. Some of the matters complained of, particularly comments to the Press, occurred prior to the adoption of the new Code. However, similar principles as to conduct will no doubt have been contained in the previous version of the Code and no doubt Councillors would have received training and therefore should be aware of the high standards of conduct required.

16. In any event, both Councillor Mutton and Councillor Lucas are long-serving and experienced Councillors who should be familiar with the standards of behaviour required of those in public life.

Summary of the Facts and Evidence Gathered: paragraphs 14 – 74

Background: paragraphs 14 – 25

17. The Complainants do not accept this is an accurate summary of the facts for the following reasons:-
 - 17.1 Paragraph 15 states that the Ricoh Arena is still owned by CCC and leased to ACL, albeit the lease terms have subsequently been varied. In relation to paragraph 17 of the Report, this is not an accurate summary. SISU wished to purchase a 50% ownership (or more) interest in ACL, with a lease extension to 125 years (i.e. longer than the pre-existing (at that time) 43 years). As part of the overall transaction that would see the lease extended, SISU would purchase and discharge the outstanding Yorkshire Bank debt, AEG would be brought in to run the entire operations and provide their concert/events content and experience, and no veto by CCC of the purchase by SISU of the Higgs 50% stake. This was what was agreed and signed under the Head of Terms.
 - 17.2 In relation to paragraph 18, again this is not an accurate summary and we refer you to the document (at SG3) for its full terms. Such a limited reference to what is set out in the document is misleading. It also clearly states that pumping funds into the club to maintain the status quo is unsustainable.
 - 17.3 The document also states, "We all acknowledge...the only viable pathway in the future is to link the football club to the operating environment and hence any relevant revenue flows of the Ricoh Arena." Also, this note had been prepared by Mr Martin Reeves in advance of the meeting, and he used this to start the meeting by walking through his key points. It was a CCC work product.

- 17.4 As a general comment, the Complainants' view is that Mr Goacher's interpretation and lack of questioning around this document is reflective of his entire attitude towards this investigation, which was conducted in an insufficiently rigorous way.
- 17.5 In relation to paragraph 19, to simply state that Councillor Mutton was 'rude' is an over simplification and seriously understates the Complaint. The Complaint is that Councillor Mutton was not only rude, but also unprofessional, unnecessarily and inappropriately argumentative, aggressive and appeared to be sexist as well – all conduct which is unbecoming of a Councillor and a breach of the Code of Conduct. We refer to paragraph 22 of the notes of the Interview, and specifically to the comment made by the independent witness, Mr Brian Kabatznick of AEG, that "he had never witnessed such a lack of respect as that showed by John Mutton to Ms Seppala. He stated Ms Seppala should not have to put up with it."
- 17.6 Given this is the view of the independent witnesses, and given that Mr Goacher did not seek to speak to Mr Brian Kabatznick or Mr Paul Barber despite being directed to do so, in the interests of fairness, and on a balance of probabilities, Mr Goacher should have found as a fact that Councillor Mutton was rude and disrespectful to Ms Seppala. It is perverse for him to conclude otherwise.
- 17.7 Even at a very early stage there were indications of the attitude of CCC and Councillor Mutton towards SISU. These were referred to by Ms Deering at the Interview (paragraph 22) and we attach a copy of the email from Mr Paul Barber to Ms Deering and Mr Fisher dated 24 April 2012 which confirms that these comments were communicated by Mr Chris West. We note that in relation to Mr West's appearing to be "quite proud of the Leader's behaviour at the last match-leading the "Sisu out" cries". Mr Paul Barber commented that he was "flabbergasted."
- 17.8 In relation to paragraph 20, the condition precedent is a lease extension, not a further lease.
- 17.9 In relation to paragraph 21, although the decision was actually formally made by CCC in January 2013, it is clear that CCC had decided by August 2012 that this was the decision they were going to make, although they had continued to have discussions with SISU, notwithstanding they had no intention of concluding a deal with them.
- 17.10 Paragraph 21 also demonstrates very clearly the misconceived basis on which much of this investigation has been carried out. The fact that the decision was challenged by way of Judicial Review, and the application for permission was rejected by Hickinbottom J as set

out in paragraph 21, is not a part of the background facts. The Judicial Review is not at all based on the premise of misfeasance or breach of the Code of Conduct. The challenge to the legality of the January 2013 decision was made subsequently to most of the facts and behaviours complained of. The Members and CCC employees who gave evidence seemed to be under the impression (not apparently corrected by Mr Goacher) that since the application for permission had been rejected it followed that there can be no justification for the Complaint. That is patently incorrect and shows that there has been a failure to distinguish and keep separate the challenge to the decision itself (by way of Judicial Review) and the surrounding behaviours and Press Comment which are properly the subject of the Complaint to the Monitoring Officer.

- 17.11 It should be noted that the Complaint did not refer to the Judicial Review and in fact it was Mr Goacher himself who introduced the Judicial Review and the Judgment of Hickinbottom J, not only at the interview with the Complainants, but also discussed it in interviews with Councillors and employees of CCC. The Complainants' view is that in so acting, Mr Goacher has introduced irrelevant material and has allowed himself to be side-tracked from the substance of the Complaint, thereby considering irrelevant material.
- 17.12 The discussion of the Judicial Review and the Judgment led to the interviews being skewed and unnecessarily hostile views being expressed, see for example the interview of Mr Chris West, and leading to the view that because CCC had been 'exonerated' by Hickinbottom J, there could be no further questions or criticism concerning the conduct in connection with the events leading up to that decision. That is incorrect and Mr Goacher did not dispel that misconception and it led to him failing to properly question the witnesses or challenge the evidence given. In any event, many of the Press comments complained of post-date the January 2013 decision.
- 17.13 However, without prejudice to the points made above, having introduced the Judicial Review and the Judgment of Hickinbottom J, it was incumbent on Mr Goacher to ensure that the true and up to date position was put to the witnesses and included in the Report. Mr Goacher refers in paragraph 23 to the fact that he understood that permission to appeal the Judicial Review Judgment had been given. A copy of the Judgment of the Court of Appeal (Civil Division) dated 8 July 2015 is attached. We refer you to paragraphs 10, 12 and 19 of the Judgment which indicate the basis on which the appeal was granted.
- 17.14 In relation to paragraph 22, this refers to the decision in the claim brought against SISU. Again, this was not referred to in the Complaint and we are at a loss to understand why this has been introduced. Again, irrelevant material has been introduced.

- 17.15 In relation to paragraph 24, the fact there was so much media interest simply highlights the significance to the Complainants of the comments reported in the media. It also wrongly implies that SISU also engaged with the media in the same way and to the same extent as CCC. This is incorrect and there is no evidence on which Mr Goacher can base this conclusion. SISU very rarely engaged with the media and then only in response to questions asked. If in making this statement Mr Goacher is in some way implying that there was a tit for tat media campaign, and therefore no complaint can be made, that is incorrect and wholly without foundation.

The evidence obtained: paragraphs 26 – 74

18. Paragraphs 26 - 28: We make no comments on these paragraphs, save to note that the Deputy Monitoring Officer, Ms Helen Lynch, was employed as an in-house lawyer CCC at the relevant time and involved in the negotiations/giving legal advice in relation to the matters which have given rise to the Complaint.

Evidence of Ms Joy Seppala and Ms Laura Deering; paragraphs 29 – 38

19. We refer the Ethics Committee to the full detailed note of Mr Goacher's interview with the Complainants and the documents supplied to Mr Goacher following the interview meeting. In paragraph 32 it is an oversimplification of the Complaint to say that the only complaint is about a media strategy to target Ms Seppala personally. This significantly underplays the media campaign which CCC (or ACL with the agreement and support of CCC) engaged in through Weber Shandwick which caused serious harm to all of the Complainants by targeting the Complainants on many fronts including a personal attack on Ms Seppala and a deliberate undermining of the Complainants' work to manage CCFC through the public smear campaign and 'SISU Out' campaign which was publically supported by Councillors Mutton and Lucas.
20. To say that CCC used the media in a way which they had not expected a public authority to do again demonstrates a misunderstanding of the seriousness of the complaints. The Complaint is not about expectation; it is about objective standards of behaviour and the behaviours, specifically the statements made to the media, which fell significantly short of those objective standards and were in breach of the Code of Conduct. Simply by way of example, on what basis can it ever be appropriate for a Councillor to state "SISU is a predator with greed running through its DNA"?
21. Paragraph 34 does not give sufficient weight to the Weber Shandwick documents. Ms Mehta spent nearly an hour going through these page by page in the interview and

highlighting the references to Ms Seppala in order that Mr Goacher was fully aware of the detail which is most relevant to the Complaint. We refer the Ethics Committee to these documents in full but draw attention to the specific extracts below which demonstrate the calculated strategy developed to cause maximum damage to our clients:

- 21.1 Email correspondence dated 11 October 2012: Email chain copied to CCC employees – **"the whole Joy Seppala gravy train is building momentum"** What is the gravy train? How is it appropriate for Councillors Mutton and Lucas to be involved in a PR campaign focussed on Ms Seppala?
- 21.2 Email correspondence dated 11 December 2012: Email chain between Weber Shandwick UK employees discussing strategy – **"they are keen on us building up a new timeline to set out a PR attack on Joy. So taking Friday as the earliest point at which they'd attack"** How is it appropriate for Councillors Mutton and Lucas to be involved in a PR campaign focussed on attacking Ms Seppala?
- 21.3 Email correspondence dated 13 December 2012: Email chain between Weber Shandwick UK employees discussing strategy – **"the way to get to Joy is through the financial pages"** How is it appropriate for Councillors Mutton and Lucas to be involved in a PR campaign which 'gets at' Ms Seppala?
- 21.4 Email correspondence dated 16 February 2013: Email chain between Weber Shandwick UK employees discussing strategy – **"Put them (Joy, in a corner and let them expose themselves" "Perhaps it's time the press got themselves down to London W8 – her address is on 192.com to anyone who wants to pay a small fee ... it will corner them even more tightly"** How is it appropriate for Councillors Mutton and Lucas to be involved in a PR strategy that encourages the press to doorstep Ms Seppala at her home and why did they feel the need to 'corner them more tightly'?
- 21.5 Email correspondence dated 20 February 2013: Email chain between Weber Shandwick UK employees discussing strategy – **"how hard we are going to push reporters...considering trying to doorstep Seppala without even being needed from me"** How is it appropriate for Councillors Mutton and Lucas to be involved in a PR strategy that involves pushing the press to doorstep Ms Seppala at her home?
- 21.6 Email correspondence 2 June 2013: Email chain between Weber Shandwick UK and CCC employees – **"SISU/Seppala ...way of accounting, which needs serious exposure"** How is it appropriate for Councillors Mutton and Lucas to be engaged in a PR campaign which attempts to discredit or undermine the Complainants' business?

- 21.7 Email correspondence 22 August 2013: Email chain between Weber Shandwick UK employees discussing strategy – **"the key is obviously to draw Seppala into the story as much as possible"** How is it appropriate for Councillors Mutton and Lucas to be involved in a PR campaign which is devised to ridicule Ms Seppala and develop public scorn against her personally?
- 21.8 Email correspondence 5 November 2013: Email chain between Weber Shandwick UK employees discussing strategy – **"Councillor [] needs to be seen to win the public mud-throwing argument with Joy Seppala"** How is it appropriate for either Councillor Mutton or Councillor Lucas to be taking instructions from a PR agency in respect of their public comments? How is it appropriate for either Councillor Mutton or Councillor Lucas to engage in a 'mud throwing argument' with Ms Seppala in public or in private?
- 21.9 Email correspondence 25 April 2014: Email chain – **"the job required was done on Seppala in the very early stages of the campaign"** What is the job? Why was a job required to be done on Ms Seppala? How is it appropriate for Councillors Mutton or Lucas to be engaged in a PR campaign that focusses on singling out Ms Seppala to cause serious reputation damage?
- 21.10 Email correspondence 30 August 2014: Email chain including CCC employees discussing strategy involving recent press and meeting. How is it appropriate for CCC employees and Councillors Mutton and Lucas to engage in a media strategy designed to cause serious reputation damage to the Complainants?
22. For the avoidance of doubt, the Complainants do not accept that this was a media campaign run by ACL, meaning that CCC can hide behind that and try to wash their hands of any responsibility for what was said in the media. CCC's involvement with the Weber Shandwick media campaign clearly demonstrates the prevailing attitude at CCC towards the Complainants, and the remarks made by Councillors in the Press are another expression of this attitude and serious breach of the Code of Conduct. We refer you to paragraph 4 of the enclosed Minutes of the Trustees' meeting held at the Ricoh Arena, 12 September 2012 which further confirms that the instruction of Weber Shandwick was on the basis of CCC and ACL to advance the objectives of each party.
23. Paragraph 35 again oversimplifies what was said in the interview and deliberately plays down what was said by Ms Seppala and Ms Deering about the way they were treated by Councillor Mutton. Councillor Mutton was openly antagonistic and made clear his intention

to remove the Complainants from dealings with CCFC. He drove the media frenzy and actively participated in the 'SISU Out' campaign. We refer you to the reference to the remarks made by Mr Brian Kabatnick set out above further demonstrating the inappropriate conduct of Councillor Mutton in breach of the Code of Conduct.

24. Paragraph 36 oversimplifies the Complaint and paragraph 37 mis-states the Complaint. The Complaint is fundamentally about unacceptable behaviours, engagement in a public smear campaign including inappropriate public comment and conflicts of interest which influenced behaviours.
25. As a general observation, it appears that Mr Goacher has largely let the witnesses air their views rather than being questioned in a focussed way. Consequently, the Complaint is not properly put and has not been properly investigated. Relevant documents were not requested and nor was evidence tested by challenge or in light of what other witnesses have said.

Evidence of Ms Lisa Commane: paragraphs 39 – 42

26. It is surprising that Mr Goacher failed to ask Ms Commane for a copy of her note of the meeting on 7 December 2012, particularly given the significant comment made in the email of the same day written following the meeting i.e. "Endorsement to have the media war and go on the attack with SISU". The interview with Ms Commane simply does not address this key issue and accordingly the Complaint has not been properly put to her by Mr Goacher.
27. We also note that in paragraph 9 of the interview Ms Commane refers to a "comms strategy in place focussed on protecting the Council's reputation". This should have been investigated. The reference in paragraph 10 to the Judgment of Hickinbottom J in the Judicial Review proceedings, and the statement of Ms Commane that 'this' was looked at in a lot of detail in those proceedings again shows the false basis on which this investigation has been conducted. Mr Goacher appears to have done nothing to rectify the misunderstanding that this Complaint raises different issues.
28. In paragraph 41 Mr Goacher refers to Ms Commane explaining that Mr Fisher, the Chief Executive of CCFC, had been reported in the Press and local radio shortly before the relevant meeting making comments about ACL and in light of that CCC was saying it needed to get its position known in the press. That may be the opinion of Ms Commane – but any press comment has to be made within the Code of Conduct. It should be noted that at the time the comments were made, the Complainants were spending millions of pounds on CCFC. It is remarkable for Ms Commane to say CCC never came close to being

in a position to recommend to Members that they do a deal with SISU. This supports the Complainants view that our clients were being strung along. Mr Goacher fails to deal with this comment.

Evidence of Mr Chris West: paragraphs 43 – 48

29. Mr West's view of the Complaint is irrelevant. It is for Mr Goacher to decide the merits of the Complaint having carried out a thorough investigation and for the Monitoring Officer and/or the Ethics Committee to make a final decision. The Complaint is not about robustness but about the Councillors' conduct and rudeness. Mr West cannot be seen as an objective judge of whether Councillor Mutton was rude and Mr Goacher places too much weight on his evidence (see paragraph 76 j of the Report). We are expressly instructed that Ms Seppala was not 'grumpy' and that she apologised for previous mistakes made by the Board which had been rectified.
30. In paragraph 45 Mr Goacher refers to Mr West not being able to recall the key email of 7 December 2012 because it was "not a stand out piece of evidence in the thousands of pages of evidence which had been filed in the JR proceedings". This remark clearly demonstrates that there has been a failure to distinguish that the Complaint is entirely separate and independent from the Judicial Review. The evidence filed in the Judicial Review proceedings is irrelevant. Mr Goacher should have explained the same to Mr West and questioned him more closely as to his recollection of this email, given he received it in the course of his employment (the relevant context) and not simply as a page of 'evidence'. This further demonstrates that Mr Goacher has allowed the Judicial Review proceedings to be wrongly interwoven with this Complaint.
31. Mr Goacher was fully aware that because of the constraints in the Civil Procedure Rules, we could only provide him with copies of documents which originated from CCC in the proceedings if they had been referred to in open Court. There was therefore a very heavy onus on Mr Goacher to ensure he had access to all relevant documents in order to complete his investigation, including requesting relevant documents from CCC, which he appears to have failed to do.
32. Paragraph 45 is a very good example of how the interests of CCC and ACL have become blurred. Is Mr West talking as an employee of CCC, an officer (Director) of ACL, or both? This is clear evidence to support the conclusion that the media 'war' was at least in part driven by CCC. It should be noted that Mr Fisher was the CEO of CCFC at the time and

had to deal with questions from the media regarding CCCFC. It cannot be said to be an attack by SISU. Mr Goacher should have probed this evidence.

33. In respect of paragraph 46, Mr Goacher should have requested the un-redacted versions of the Weber Shandwick emails. It seems disingenuous to say that ACL wanted to co-ordinate strategy with CCC as a major shareholder in ACL but the relationship with Weber Shandwick was managed by ACL. This is a recharacterisation of the facts which are that a smear campaign was designed and implemented by Weber Shandwick. The Councillors were involved in implementing this campaign.
34. It is very hard to square the remarks in paragraphs 46 - 48 about 'hell freezing over before CCC would do a deal with SISU', and the comments elsewhere in the Report about on-going negotiations. The evidence from CCC contradicts itself on this point. Mr Goacher did not get to the bottom of the issue about whether CCC were genuinely interested in doing a deal/and or when they decided not to do the deal and the associated course of behaviour of the Councillors. This is a further failing in the investigation and demonstrates Mr Goacher's failure to consider relevant issues to a sufficient standard.

Evidence of Ms Fran Collingham: paragraphs 49 – 54

35. Mr Goacher should have questioned Ms Collingham about CCC's media policy and the media training given to Councillors. However, what is complained about here are press comments made by individual Councillors. Councillor Mutton's remarks are said to be 'off the cuff'. We do not accept that characterisation of the remarks and in any event it does not excuse them.
36. There is no evidence that CCC's strategy was largely responsive and this is contradicted by the reference to what is said in the email of 7 December 2012 and the Weber Shandwick documents. Paragraph 52 is not consistent with paragraph 46. This contradiction in evidence should have been followed up by Mr Goacher. Whilst CCC may not have had a strategy of targeting Ms Seppala personally (although that is contradicted by the Weber Shandwick documents) that leaves open at least two questions; firstly, did they have a strategy of targeting SISU, and secondly, did individual Councillors deliberately target Ms Seppala?

Evidence of Councillor Duggins: paragraphs 55 – 57

37. Paragraph 57 is very telling. It demonstrates that Mr Goacher has simply taken his evidence at face value. It is absolutely not the case that all the issues have been dealt with in the

Judicial Review and Mr Goacher should have corrected this. The Judicial Review cannot determine questions as to whether the Code of Conduct has been breached. It also is a very clear demonstration of CCC's lack of objectivity when dealing with SISU.

38. Councillor Duggins comments that CCC never came close to doing a deal with SISU and that after August 2012 any chance of a deal was over. This is the complete opposite of Mr West and Councillor Lucas's comments that they would have done a deal with SISU if they could. If this was the case, why did CCC continue to provide due diligence information and allow SISU to finance the football club when they had made it clear to CCC that they were only financing as they were looking to do the wider deal with CCC? This is also in stark contrast with Ms Collingham's comment that it was only in December 2012 that the deal was over. These contradictions in the evidence should have been bottomed out by Mr Goacher as part of his investigation.

Evidence of Councillor Lucas: paragraphs 58 – 64

39. The Complainant provided the letters dated 28 August 2013 and 13 November 2013. As Ms Seppala stated in the interview, at the time she wrote these letters she was not aware of Councillor Lucas' involvement and attitude before she became Leader in May 2013 and therefore took her at face value, including her denial of any knowledge of the original Heads of Terms when she met Ms Seppala.
40. In paragraph 62 Mr Goacher refers to Councillor Lucas stating she begged Ms Seppala to come back to the table (i.e. CCFC returning to The Ricoh as a tenant). In any event asking CCFC to come back as a tenant has nothing to do with coming back to the table for a wider deal. It is the Complainants' view that CCC engaged with them for the purposes of stalling negotiations in the hope that CCFC would return to The Ricoh to play home games. These points were not sufficiently addressed by Mr Goacher.
41. Councillor Lucas states that all the comments attributed to her in the press had been made following advice and input from CCC's press office and legal officers. If this is the case, then CCC itself has endorsed the remarks of which complaint is made, which is a remarkable statement of affairs. Mr Goacher should have put this to Ms Collingham and obtained documentary evidence to support the giving of this advice but failed to do so. Mr Goacher should also have asked Councillor Mutton if he similarly obtained advice.
42. In paragraph 64 there is again confusion in relation to the Judicial Review.

Evidence of Councillor Mutton: paragraphs 65 – 74

43. The confusion in relation to the Judicial Review and the matters the subject of this Complaint is repeated in paragraph 66. The Complaint is not motivated by vindictiveness.
44. In relation to Councillor Mutton's rudeness, it is irrelevant what other people think about his dealings with other business people in Coventry. The meetings were productive because Ms Seppala is a professional business woman and she and Ms Deering ensured the meetings were productive notwithstanding the behaviours they had to deal with. The hug came at the end of the meeting when there appeared to be some traction and agreement for a deal, but that does not excuse or ameliorate the earlier behaviour.
45. In relation to Weber Shandwick, Mr Goacher should have asked Councillor Mutton to check his records as to meetings and should also have asked him if he was ever copied into any emails from Weber Shandwick. The reference in paragraph 69 that the Weber Shandwick and PR advice was that ACL and CCC had to fight their corner contradicts paragraph 46 and the fact that a PR strategy had been in existence since August/September 2012.
46. Whatever Councillor Mutton's view of the withholding of the rent payments does not justify the making of the comments. It is also not understood how he can have supported ACL in their taking of legal action to recover the rent if he had no formal role with ACL. In relation to Councillor Mutton's statement that when the decision was made at the full Council meeting on 15 January 2013 he declared an interest as a season ticket holder, this is not correct. The publicly available minutes (attached) do not record any such declaration. No evidence has been produced to support this statement, for example the minutes for the private part of the meeting. Mr Goacher should have requested the documentary evidence to support this and not taken the assertion at face value.
47. The letter of 6 December 2006 has not been produced. It is not the document at SG22.
48. In relation to paragraph 74, it is not the case that the remark about SISU being a predator and having greed running through its DNA was made in response to a fairly leading question about hedge funds and whether they should be involved in running football clubs. We refer you to the enclosed radio transcript of an interview on BBC CWR Breakfast Show between Councillor Mutton and Shane O'Connor at 7:26 on 13 March 2013 in confirmation. Again, Mr Goacher should have obtained documentary evidence rather than simply accepting this assertion. It is not accepted that the comments can be justified on any basis.

Findings of Fact: paragraphs 75 – 76

49. The failings in the investigative process mean the conclusions are not sound and should be rejected.
50. In paragraph 76 Mr Goacher refers to having made his findings on a balance of probabilities. We accept this is the correct test, but do not accept all the findings as the Complaint has not been fully or properly investigated. The findings are incomplete and in some instances contradicted by the evidence. Without prejudice to those general points:
51. Paragraph 76 a. is noted. However Mr Goacher should have grappled with when exactly the decision was made not to do the deal and addressed the contradictions in the evidence.
52. In respect of paragraph 76 b, there is no evidence to support this finding of fact and shows the failure to distinguish between the interests of CCFC and SISU.
53. In respect of paragraph 76 c, there is no evidence to support this finding of fact.
54. In respect of paragraph 76 d, it is not accepted that this was 'ultimately' conceded as this implies it was decided in January 2013, whereas it appears there was a decision in August/September 2012. Again, Mr Goacher has failed to properly grapple with the evidence.
55. Paragraph 76 e and f are noted.
56. In respect of 76 g, Mr Goacher should have considered the extent of the informal relationship.
57. Paragraph 76 h. and i are noted.
58. The finding of paragraph 76 j is at the heart of the Complaint and is rejected for the following reasons:
 - 58.1 Given the evidence of Ms Seppala and Ms Deering and the comments of Mr Kabatznick on the one hand, and the evidence of Councillors Duggins and Mutton, and Mr West, on the other, as to whether Councillor Mutton was rude, on the balance of probabilities Mr Goacher should have found that Councillor Mutton was rude. Had Mr Goacher had any

doubts about this he should have sought evidence from others present at the meeting, but particularly Mr Kabatznick. Given that this is a short but important point, it was necessary and proportionate to seek evidence from others present at the meetings. Given that the Complaint was being investigated, it is no justification for a failure to investigate fully to refer to the passage of time. Once an investigation was commenced, it was incumbent on Mr Goacher, in the interests of fairness, to investigate fully and not make findings based on an incomplete investigation.

- 58.2 There is no evidence on which Mr Goacher can conclude that it was legitimate for Councillor Mutton to raise with SISU the performance of CCFC on the pitch. The fact that such a finding is made indicates an acceptance that the interests of Councillor Mutton as a CCFC fan have become mixed up with his position as a Councillor.
59. 76 k. This finding is not sustainable on the evidence and is rejected. The remark was recorded on the note and this finding contradicts paragraph 22 of the note of interview with Mr West and the document itself.
60. 76 l. There is no evidence on which to base this finding of fact. The point should have been put to Mr West.
61. 76 m. This finding is not supported by the evidence. See the note of the interview with Ms Commane which indicates that Members were advised regularly on ACL, and specifically on the progress of "specialist external advisors".
62. 76 n. This finding is not accepted. It is in direct contradiction to the Weber Shandwick documents. It does not address the question of whether there was a strategy of attacking any of the other Complainants, particularly SISU. It is not clear what is meant by 'circumstances.' The Heads of Terms had been signed in August 2012 so why did CCC need to create a media strategy or a robust defence of their approach. It is unsupported by evidence.

Reasoning as to whether there is a breach of the Code: paragraphs 77 – 104

63. The Localism Act 2011 provides for local authorities to undertake independent investigations at their own discretion following their own criteria and process. However, CCC must promote and maintain high standards of conduct (Section 27 (1) The Localism Act 2011) and therefore the standards of investigation must meet the requirements of natural justice, independent scrutiny and fairness. If investigations of misconduct of CCC Members are not properly undertaken and findings are consequently incorrect, then CCC

fails to meet their statutory duty to promote and maintain high standards of conduct and in turn threatens public confidence and trust in local government.

64. As stated above, Mr Goacher's investigation is unsound and therefore the Monitoring Officer or Ethics Committee need to be very wary of taking his Report and investigation into consideration when making its decision on the Complaint.
65. Mr Goacher states in paragraph 78 that when deciding whether a breach of the Code of Conduct has occurred it is necessary for a decision maker to be aware of "all of the material facts and ignoring immaterial factors." As stated above, Mr Goacher has taken into account immaterial facts and has failed to seek out and/or consider material facts and documents. His reasoning is unsound because he has failed to carry out his investigation in a manner that meets the relevant test.
66. Mr Goacher's reasoning is skewed by the way in which the Complaint has been mischaracterised in Paragraph 4. He has focussed on the decisions made by CCC rather than the behaviour of the Councillors. He has therefore failed to appreciate the basis of the Complaint and has not undertaken sufficient analysis to make findings on the behaviours surrounding the decisions and the public comments.
67. In paragraph 80, Mr Goacher attempts to justify his finding that the Councillors' behaviour did not breach the Code of Conduct by applying *R (Island Farm Development Ltd) v Bridgend CBC* [2006] EWHC 2189 (Admin) finding that the Councillor's predisposition against the Complainants is understandable or acceptable and there has not been a breach of the Code of Conduct. The Complainants do not accept the finding that a predisposition against them is justified. Mr Goacher fails to consider whether the Councillors' course of conduct in dealing with the Complainants on the basis of such a 'predisposition' is fair and justified, whether it goes further than predisposition and in fact indicates that the Councillors had a closed mind against our clients in breach of the Code of Conduct.
68. Paragraphs 80 to 84 are an analysis of the decisions made by the Councillors which are subject to investigation in the Judicial Review proceedings. Mr Goacher's findings in this respect are irrelevant and demonstrate his failure to separate the Complaint from the Judicial Review proceedings. It demonstrates a fundamental misunderstanding of the Complaint and a disproportionate reliance on Hickinbottom J's judgment. Mr Goacher's inclusion of the Judicial Review as part of his reasoning for his findings indicates that the decision of Hickinbottom J has had an inappropriate influence on the conduct of his investigation and his findings. It is also revealing that, having failed to fully interrogate the

relevant parties and adduce the relevant evidence, he makes a finding in paragraph 81 that SISU had distressed ACL by not paying the rent due. It is clear that he has no basis on which to make this finding having not conducted an independent investigation into this matter. His inclusion of this statement is evidence of his consideration of irrelevant matters and his failure to consider relevant matters thus making his investigation and findings unsound.

69. Paragraph 87 of the Report confirms that Councillor Mutton's role as Trustee of the Alan Higgs Centre Trust should have been registered on the register of interests. Mr Goacher concludes in paragraph 91 that Councillor Mutton's failure to register is a technical breach of the Code of Conduct but he fails to recommend any sanction for the breach which demonstrates a failure to appreciate the requirements pursuant to the Code of Conduct and the underlying legislation, It cannot be fair or reasonable for Mr Goacher to ignore a breach and fail to recommend a remedy for the Councillor's failure to be transparent and honest, despite subsequent rectification of the breach. The Monitoring Officer has a duty to establish and maintain the register of interests of the members pursuant to Section 81 of the Local Government Act 2000. Mr Goacher should have dealt with this in his report which was commissioned for the purpose of advising the Monitoring Officer and the Ethics Committee on just such a breach.
70. Paragraphs 92 to 104 provide Mr Goacher's reasoning for his findings on comments made by Councillors Mutton and Lucas. There are several failings in his reasoning. He applies the case of *Patrick Heesom v The Public Services Ombudsman for Wales and The Welsh Ministers* [2014] EWHC 1504 (Admin) when considering how to approach the issues. He decides that there was no breach of the Code of Conduct because the comments are 'statements of the Council's policy position.' Mr Goacher fails to explain how each comment, and the comments as a whole, are statements of policy. In addition, in respect of his consideration of the second and third tests from *Heesom*, he has failed to properly consider the balance between Article 10 and the Complainants' rights. In paragraph 96, Mr Goacher correctly identifies that the right to freedom of expression is 'not completely unfettered'. He goes on to justify the comments made by Councillors Mutton and Lucas by identifying that a higher threshold is afforded to expression relating to political matters. Mr Goacher has failed to investigate and identify why Councillor Lucas or Councillor Mutton's comments fall within the acceptable degree and whether the comments were made properly in the political context.

71. Mr Goacher has also not indicated whether he considers the comments made by Councillors Lucas and Mutton to be true, untrue, fact based or not. All these considerations are identified in *Heesom* as relevant to whether the right to Freedom of Expression is proportionate.
72. Accordingly, the law has not been properly applied.

C. CLAIMANTS' STATEMENT AS TO THE CORRECT CONCLUSIONS

73. The Complainants have taken into consideration the evidence provided by CCC in response to the Complaints made in respect of Councillors Lucas and Mutton and the findings of Mr Goacher following his investigation. However, they remain of the view that Councillors Mutton and Lucas have breached the Code of Conduct.
74. Our clients reiterate the content of the Complaint as set out in the Complaint Letter, the subsequent interview with Mr Goacher and all relevant information and documentation submitted in support of the Complaint which they invite the Ethics Committee to consider and find that Councillors Lucas and Mutton have breached the Code of Conduct. They assert that such a finding would be in the interests of maintaining high standards of conduct in local government.

D. ADDITIONAL EVIDENCE

75. We enclose the following additional evidence:
- (i) The Judgment of the Court of Appeal dated 8 July 2015.
 - (ii) Transcript of radio interview on BBC CWR Breakfast Show between Councillor Mutton and Shane O'Connor at 7:26 on 13 March 2013.
 - (iii) The email from Mr Paul Barber to Tim Fisher and Laura Deering dated 24 April 2012.
 - (iv) The Minutes of the CCC full Council meeting on 13 January 2013.
 - (v) Draft Minutes of the Trustees' meeting held at the Ricoh Arena, 12 September 2012.

E. ATTENDANCE AT THE ETHICS COMMITTEE HEARING

Legal Representation

76. This Complaint raises serious issues. Given the comments set out above as to the misunderstanding of the Complaint, the failings in the way in which the Complaint has been investigated, and the Complainants disagreement with the findings of fact, the Complainants wish to be legally represented to ensure that the Complaint is fully considered by the Ethics Committee.

77. It is in the best interests of all of the parties, and the public, for these matters to be dealt with as fully as possible to ensure that the highest standards of conduct in local government are being maintained.

F. SUBMISSIONS TO THE ETHICS COMMITTEE HEARING

78. The Ethics Committee is asked to consider The Complaint Letter, the information and documentation provided to Mr Goacher as part of his investigation, the submissions, the documents enclosed above and the following summary points:
- 78.1 The Complainants take this matter very seriously. They have suffered loss, reputation damage and hurt feelings and distress as a result of the behaviour of the Councillors which was in breach of the Code of Conduct. It is fair, reasonable and proportionate for the Complaint to be investigated fully and for the Complainants to be properly compensated for the loss, damage and distress caused by the Councillors' breach of the Code of Conduct.
- 78.2 This is the proper forum for the Complaint to be addressed as it is based on the conduct of Councillors Mutton and Lucas in breach of the Code of Conduct.
- 78.3 The Complainants accept that the Complaint must be dealt with efficiently and proportionately. However, it is not fair or reasonable to fail to investigate these matters properly. CCC must support its scrutiny functions to challenge any failure to achieve high standards of conduct in order to maintain public confidence and trust in local government. It is in all the parties' best interests, and the best interests of the public for the Complaints to be upheld.
- 78.4 The test whether the Councillors have breached their duties is an objective test: would a reasonable person, taking into account all material facts and ignoring all immaterial facts consider that there has been a breach of the code?
- 78.5 The Ethics Committee is unable to perform the objective test based on the Report. As stated above, the Complainants feel that the investigation and Report is unsound for the following reasons:
- (i) Misunderstanding the basis of the Complaint
 - (ii) Failure to conduct the investigation properly
 - (iii) Failure to investigate the Complaint fully, including a failure to request that CCC provide all relevant documents

- (iv) Insufficient consideration and thought given to the relevant evidence
- (v) Introduction of and reliance on irrelevant evidence
- (vi) Failure to apply the relevant law properly
- (vii) Reaching incorrect or unsound conclusions

78.6 The Councillors have a duty to maintain high standards of conduct in order to maintain public confidence and trust in local government. The behaviour of the Councillors on the facts put forward by either the Complainants or CCC cannot be described as being of a high standard and falls short of what is required under the Code of Conduct and the Ethics Committee should make findings accordingly.

78.7 The evidence put forward by the Complainants to support their version of the facts is supported by documentary evidence and third party witnesses. The evidence put forward by CCC has not been properly tested and the relevant underlying documents have neither been produced nor considered and cannot be relied on.

78.8 The Complaint is made about Councillor Lucas and Councillor Mutton separately and their conduct should be considered separately as to whether there have been breaches of the Code of Conduct.

78.9 Each statement, decision and action made by each of the Councillors should be considered separately as to whether it is a breach of the Code of Conduct.

78.10 The Complainants submit that that Councillors Mutton and Lucas have breached the Code of Conduct by way of their:

- (i) Conduct in meetings with Ms Seppala and Ms Deering (Councillor Mutton);
- (ii) Failure to declare relevant interests, failure to make decisions in an objective and unbiased way, (both Councillor Mutton and Councillor Lucas);
- (iii) Making public comments which are not appropriate for a Member to make and which are defamatory of and prejudicial to some or all of the Complainants (Councillor Mutton and Councillor Lucas); and

- (iv) Instigating and participating in a public smear campaign against our clients through the media (Councillor Mutton and Councillor Lucas).

78.11 It is not disputed between the parties that Councillor Mutton failed to declare a relevant interest. This is a breach of the Code of Conduct. The Complainants request that there be a sanction for this breach.

78.12 The Ethics Committee should find that there have been breaches of the Code of Conduct following an independent, fair and reasonable investigation of the Complaint and impose appropriate sanctions.

78.13 We reserve our right to expand on these submissions at the hearing before the Ethics Committee.

Mishcon de Reya LLP

16 October 2015