



Coimisiún um Chaighdeán in Oifigí Poiblí **Standards in Public Office Commission**

Investigation by the Standards in Public Office Commission of Alleged
Contraventions of the Ethics in Public Office Act 1995 and 2001 and Part 15 of the
Local Government Act 2001

Mr Tom Enright
Chief Executive of Wexford County Council

8 December 2021

Report under Section 24 of the Ethics in Public Office Act 1995, as amended by the
Standards in Public Office Act 2001 and as applied by the Local Government Act
2001

Foreword

The Standards in Public Office Commission (the Commission), in accordance with section 23 of the Ethics in Public Office Act 1995 (the Ethics Act) as amended by the Standards in Public Office Act 2001 (the Standards Act), has carried out an investigation to determine whether Mr Tom Enright, Chief Executive of Wexford County Council, has contravened Part 15 of the Local Government Act 2001 (the Local Government Act). The Commission, in accordance with section 24 of the Ethics Act, has prepared the following report of the result of that investigation. In accordance with section 24(1) of the Ethics Act and section 180(3) of the Local Government Act, copies of the report are being furnished to

- Mr Tom Enright
- Mr Karl Fitzpatrick
- Councillor Barbara-Anne Murphy, Cathaoirleach, Wexford County Council, and
- the Minister for Public Expenditure and Reform.

Mr Justice Garrett Sheehan
Chairperson

Mr Seamus McCarthy
Comptroller and Auditor General

Mr Peter Tyndall
Ombudsman

Mr Peter Finnegan
Clerk of Dáil Éireann

Mr Martin Groves
Clerk of Seanad Éireann

Ms Geraldine Feeney
Former member of Seanad Éireann

8 December 2021

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1 Introduction

1.1 The Commission was established by section 21 of the Ethics Act, as amended by section 2 of the Standards Act, which was brought into operation by the Standards in Public Office Act 2001 (Commencement) Order 2001. The members of the Commission for the purposes of this investigation are

Mr Justice Garrett Sheehan (Chairperson)
Mr Seamus McCarthy, Comptroller and Auditor General
Mr Peter Tyndall, Ombudsman
Mr Peter Finnegan, Clerk of Dáil Éireann
Mr Martin Groves, Clerk of Seanad Éireann
Ms Geraldine Feeney, former member of Seanad Éireann

1.2 In brief, the Commission's role is: to supervise the operation of the Ethics Acts in so far as they concern office holders, an Attorney General who is not a member of a House of the Oireachtas, ministerial special advisers, designated directors and employees of specified public bodies and certain civil servants; to provide guidance and advice on the applicability of the Ethics Acts; and to carry out investigations into possible contraventions of the Ethics Acts and/or Part 15 of the Local Government Act.

1.3 The investigative function of the Commission is a formalised procedure giving its Chairperson statutory powers that include the power to compel the attendance of witnesses and to procure documents or other material. The Ethics Acts oblige the Commission to hold hearings for the purpose of investigations. The procedure determined by the Commission for the conduct of investigations is available at Appendix A of this report.

1.4 Having carried out an investigation hearing under section 23 of the Ethics Act to determine whether there has been a contravention of the Ethics Acts or of Part 15 of the Local Government Act, the Commission, pursuant to section 24 of the Ethics Act and section 180 of the Local Government Act, is required to prepare a report and to furnish a copy of the report

- to the person the subject of the investigation
- to the person who made the complaint
- where a report relates to the Cathaoirleach of a local authority, to the Leas-Cathaoirleach and the Chief Executive of the authority
- where a report relates to any other member of a local authority, to the Cathaoirleach and the Chief Executive of the authority and
- to the Minister for Public Expenditure and Reform.

- 1.5 In addition, section 24(2) of the Ethics Act provides that, where the Commission is of the opinion that a person the subject of an investigation may have committed an offence relating to the performance of his or her functions, it shall prepare a report in writing in relation to the matter and furnish it to the Director of Public Prosecutions.
- 1.6 This report, under section 24 of the Ethics Act, sets out the findings of the Commission together with its determinations in relation to the following matters
- a. whether there has been a contravention of Part 15 of the Local Government Act, and whether the contravention is continuing,
 - b. in case the determination is that there has been a contravention of Part 15 -
 1. if the determination is that the contravention is continuing, the steps required to be taken to secure compliance with Part 15, and the period of time within which such steps should be taken,
 2. whether the contravention was committed inadvertently, negligently, recklessly or intentionally,
 3. whether the contravention was, in all the circumstances, a serious or a minor matter, and
 4. whether the person being investigated acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by the Commission under section 25 of the Ethics Act.
 - c. in case the determination is that there has not been a contravention of Part 15, whether the Commission is of the opinion that the complaint made was frivolous or vexatious or that there were no reasonable grounds for it.
- 1.7 The Commission must be satisfied to the civil standard of proof, i.e. satisfied on the balance of probabilities, in finding that a contravention was committed or a 'specified act' was done.

2. Background

- 2.1 Mr Tom Enright is the Chief Executive of Wexford County Council.
- 2.2 The complainant, Mr Karl Fitzpatrick, is a businessman based in Wexford and presents a weekly business programme on South East Radio called *Business Matters*.
- 2.3 Mr Fitzpatrick claimed that he was invited on to the *Morning Mix* programme on South East Radio as a contributor on 5 March 2019. During the show, he discussed various matters relating to Wexford County Council. Mr Enright sent a statement to South East Radio challenging some of the views expressed by Mr Fitzpatrick on the basis that they were unfairly critical of the Council and omitted relevant facts. The statement was read out on the *Morning Mix* programme on 6 March 2019. Mr Fitzpatrick submitted a replying statement, parts of which were read out on the *Morning Mix* programme on 7 March 2019.
- 2.4 Mr Enright engaged with the managing director of South East Radio, Mr Eamon Buttle, by email and in person thereafter. In addition to taking issue with Mr Fitzpatrick's comments on the radio programme, Mr Enright complained that a recording of the 6 March 2019 programme, containing his statement, was not uploaded as a podcast to the station's website. In relation to the latter issue, Mr Buttle explained that there had been a technical issue with a third party which had led to 12 hours of airtime, including that particular programme, not being recorded. This explanation was accepted by Mr Enright. Mr Buttle and Mr Enright met in a local hotel on 13 March 2019 to discuss Mr Enright's complaint and, arising from their conversation, and a text message received from Mr Enright following the conversation, Mr Buttle considered the matter closed.
- 2.5 However, exchanges of correspondence between Mr Enright and Mr Fitzpatrick continued. In an email dated 14 June 2019, Mr Fitzpatrick informed Mr Enright that he had been advised that Mr Enright's conduct had contravened the Ethics Act, the Standards Act, the Local Government Act and the *Code of Conduct for Employees* of local authorities. He went on to inform Mr Enright that he intended making a complaint to the Ethics Registrar of Wexford County Council.
- 2.6 In August 2019, Mr Enright complained to South East Radio that two interviews on *Business Matters* broadcasts on separate dates that month had been edited to remove favourable coverage of the Council.
- 2.7 On 29 August 2019, Mr Enright emailed the station's general manager, copied to Mr Buttle, stating that the Council was "*reviewing [its] commercial relationship with*" the station and complaining that the station was facilitating inaccurate and damaging commentary on Council initiatives. He went on to state that the Council

- did not wish to continue supporting a station that was allowing *“individuals... to promote their own personal agenda”*, particularly in circumstances where he had been threatened with legal action for standing up to the station’s reporting.
- 2.8 The station’s marketing director replied the same day expressing surprise that the matter had arisen again given that it had been resolved at the meeting between Mr Enright and Mr Buttle in March. He went on to refute the allegations in relation to the station’s broadcast content.
- 2.9 Mr Enright responded by email the following day, 30 August 2019, questioning how the matter could be considered resolved when he was *“threatened with legal action, intimidation tactics, censoring of podcasts and biased editing of interviews which should have reflected well on the Council”*, which arose *“because of a personal vendetta by your reporter against me and the Council”*. He went on to refer to the *“inaccurate and damaging commentary”*, *“the attack on the Council’s economic strategy by your reporter last March”*, the August interviews and the legal *“threat by your reporter”* which *“refers to legislation that deals with corruption in public office”*. The letter concluded by stating that, as a result, *“It is with regret that we must cease our commercial relationship with you”*.
- 2.10 On the same day, 30 August 2019, Mr Buttle responded to Mr Enright in relation to the August emails, offering to have the Director of Programmes request the unedited interviews from Mr Fitzpatrick. Mr Enright replied the following day, 31 August 2019, accepting that offer and complaining further about unfair treatment of the council in the broadcast output. He concluded that *“it is unfortunate... that we have arrived at this situation but our patience has run out”*.
- 2.11 Mr Buttle responded on 2 September 2019 refuting the allegations but stating that the station treated it as a very serious matter which had to be resolved. He went on to state that *“[t]he only credible way to do this at this point is to involve our regulator, The Broadcasting Authority of Ireland and to appoint a credible independent expert to investigate”*. He concluded by stating that this would be put in train later that week. Mr Enright responded the following day, 3 September 2019, welcoming the suggestion and confirming that the Council would fully co-operate with the process. He went on to state that *“[s]ubject to funding and value for money, we will continue our current commercial arrangement with you and review after the outcome of the BAI investigation”*.
- 2.12 By letter dated 9 October 2019, Mr Fitzpatrick made a complaint to the Standards Commission against Mr Enright, alleging contraventions under sections 168, 169 and 170 of the Local Government Act and section 4 of the Standards Act.
- 2.13 Having considered the matter, the Commission appointed an Inquiry Officer on 29 November 2019 under section 6 of the Standards Act. The Inquiry Officer’s role was to conduct a preliminary inquiry into the complaint, to prepare a report of the

inquiry, to furnish any statements made by the persons complained of and any other relevant persons, along with any relevant documents. The Commission also requested the Inquiry Officer to express an opinion as to whether there was *prima facie* evidence to sustain the complaint. The Inquiry Officer presented the report to the Commission in March 2021, along with relevant statements and documents. The Inquiry Officer expressed the opinion that there was *prima facie* evidence to sustain an investigation of the complaint that Mr Enright contravened Part 15 of the Local Government Act and was in breach of the *Code of Conduct for Employees of local authorities*.

2.14 Having examined the relevant provisions of the Ethics Acts and of the Local Government Act and having taken account of the report of the Inquiry Officer, the Commission decided on 19 April 2021 that it was appropriate to hold an investigation hearing under section 23 of the Ethics Acts to determine whether Mr Enright had contravened Part 15 of the Local Government Act. The statement of alleged contraventions was furnished to Mr Enright on 7 October 2021. A copy of the statement of alleged contraventions is included at Appendix B to this report.

2.15 The alleged contraventions in respect of Mr Enright relate to sections 168 and 169(3) of the Local Government Act.

2.16 Section 168 of the Local Government Act provides:

“In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest.”

2.17 Section 169 of the Local Government Act provides that the Minister with responsibility for Local Government may, after consultation with the Commission and the Minister for Finance, *“issue codes of conduct for the guidance of members of local authorities and of employees of local authorities”*. In 2007, the Minister issued a *Code of Conduct for Employees*. Section 169(3)(b) of the Local Government Act provides:

“Each employee shall, in so far as the code of conduct applies to that employee, have regard to and be guided by the code of conduct in the exercise of his or her functions.”

2.18 The object of the *Code of Conduct for Employees* is *“to set out principles and standards of conduct and integrity for local authority employees, to inform the public of the conduct it is entitled to expect and to uphold public confidence in local government”*. In paragraph 1.1, it states that *“[t]he public is entitled to expect conduct of the highest standards from all those involved in the local government service...”*.

2.19 Section 2 of the *Code of Conduct for Employees* deals with general conduct and behaviour. Section 2.1 provides:

“The general conduct and behaviour of local government employees in carrying out their work is an important yardstick by which the honesty, integrity, impartiality and performance of the local government service is judged and public trust maintained. It is important therefore that these core values underpin the many day to day transactions of local authority business.”

2.20 Section 2.2 of the *Code of Conduct for Employees* provides *inter alia*:

“Local authority employees should abide by this Code and must -

maintain the highest standards of integrity by:-

- avoiding conflicts of interest and never seeking to use improper influence;*
- acting in a way which enhances public trust and confidence;*
- not using their official position or resources of the local authority for personal gain;*
- ensuring that their conduct does not bring the integrity of their position or of local government into disrepute.*

maintain public confidence in performing their work by:-

- serving their local authority conscientiously, honestly and impartially;*
- performing their duties with diligence, efficiency and courtesy;*
- making impartial decisions based on examination of the facts, merits and law relating to each case and not taking account of their personal considerations.*

observe appropriate behaviour at work by:-

- treating their colleagues and councillors with courtesy and respect;*
- dealing with the public courteously, fairly and promptly;*
- promoting equality and avoiding bias in their dealings with the public.”*

2.21 Appendix C contains Part 15 of the Local Government Act and the *Code of Conduct for Employees*.

3. Investigation hearing of the Commission

3.1 The hearing of the Commission took place on Friday 12 November 2021. The transcript of the investigation hearing is included at Appendix D to this report. Mr Enright was represented by Mr Conor Power SC (instructed by Ensor O'Connor solicitors). The Commission was represented by Mr Brian Gageby BL (instructed by Mr Gary Fitzgerald, Legal Adviser to the Commission).

Preliminary applications

3.2 The date, time and place of the Commission hearing were notified in advance to the legal advisers of Mr Enright. Mr Enright's legal advisers were also informed of the right to make any preliminary application at the beginning of the hearing and to provide details of same in writing prior to the hearing. By letter dated 10 November 2021, Mr Enright's solicitors gave notice that he intended to make a preliminary application challenging the jurisdiction of the Commission on two grounds which were detailed in the letter.

3.3 At the outset of the hearing on 12 November 2021, counsel for the Commission made opening submissions. Counsel for Mr Enright then made a preliminary application objecting to the Commission proceeding with its investigation on a number of grounds. In reply, counsel for the Commission submitted that Mr Enright had not identified any valid basis for not proceeding with the hearing of the evidence.

3.4 Having heard detailed submissions from both sides and considered the application, the Commission concluded that it should proceed with its investigation hearing and dismissed the application. The Commission delivered a ruling in respect of the preliminary application (see pages 46 to 51 of the transcript).

3.5 Firstly, it was argued that the Commission should not proceed with its hearing in circumstances where the complaint had been made directly to the Commission rather than first going to the Ethics Registrar of Wexford County Council.

3.6 The Commission noted that, under paragraph 19 of the *Procedures of the Standards in Public Office Commission in respect of its Complaints Process*, “[s]ubject to exceptional circumstances, it is the procedure of the Commission that a local authority complaint may not be considered by the Commission until the complainant has first made the complaint to the Ethics Registrar of the relevant local authority”.

3.7 By email dated 23 September 2019, the Commission had requested Mr Fitzpatrick to outline the exceptional circumstances relied upon in making his complaint directly to the Commission. At its meeting of 25 November 2019, the Commission

considered the three exceptional circumstances put forward by Mr Fitzpatrick in his replying letter of 9 October 2019, and determined that there were exceptional circumstances warranting the making of the complaint directly to the Commission. The Commission ruled that it was satisfied that the exceptional circumstances raised, as well as the fact that the complaint was against the Chief Executive Officer of a local authority, justified the making of a direct complaint.

- 3.8 Secondly, Mr Enright's counsel argued that the Commission had been wrong to form the opinion under s. 23(1A) of the Ethics Act that the matter (if proved) fell within s. 4(1)(a) of the Standards Act. In particular, it was submitted that the matter was not "*one of significant public importance*", as required by s. 4(1)(a). The Commission ruled that, pursuant to s. 23(1A), it had formed the opinion, at its meeting on 19 April 2021, that "*there was sufficient evidence to establish a prima facie case... that, if it was in fact done, [the alleged specified act] is an act falling within [s. 4(1)(a)]*". Having considered the submissions of Mr Enright's counsel, the Commission ruled that the matter correctly proceeded to hearing.
- 3.9 In addition to the above two jurisdictional challenges, which had been flagged in correspondence, Mr Enright's counsel raised a number of other issues arising from the background facts and correspondence. The Commission ruled that those matters went to the substantive issue, rather than affecting jurisdiction.
- 3.10 For these reasons, the Commission dismissed the preliminary application and indicated that it would proceed with the hearing.

Evidence presented

- 3.11 The Commission first heard evidence from the Inquiry Officer, Ms Rachael Lord. Ms Lord gave evidence in respect of her Inquiry Report dated March 2021 in which she had concluded that there was *prima facie* evidence to sustain an investigation of the complaint that Mr Enright contravened Part 15 of the Local Government Act and was in breach of the *Code of Conduct for Employees*.
- 3.12 The Commission then heard evidence from Mr Eamon Buttle, the managing director of South East Radio.
- 3.13 Mr Enright did not give evidence or call any witnesses to give evidence on his behalf.
- 3.14 Counsel for the Commission then made submissions in relation to the evidence and the nature of the contraventions which were alleged against Mr Enright.
- 3.15 Counsel for Mr Enright made oral submissions in response. The hearing then concluded.

4. The alleged contraventions

- 4.1 The issues to be determined by the Commission are whether Mr Enright contravened Part 15 of the Local Government Act by engaging in the conduct set out in the Statement of Alleged Contraventions at Appendix B of this report.
- 4.2 The Statement of Alleged Contraventions sets out detailed particulars of three alleged contraventions of the following provisions of the Local Government Act:
- section 168 - failing to maintain proper standards of integrity, conduct and concern for the public interest;
 - section 169(3) - failing to have regard to and be guided by the *Code of Conduct for Employees*.
- 4.3 All three contraventions relate to Mr Enright's emails of 29 and 30 August 2019 and the second and third contraventions are premised on the contention that the emails amounted to "*putting pressure on the station to alter their broadcasting practices by threatening to withdraw funding from the station*".

Emails of 29 and 30 August 2019

- 4.4 The primary evidence relied upon in respect of the alleged contraventions of sections 168 and 169(3) of the Local Government Act was the emails from Mr Enright to South East Radio dated 29 and 30 August 2019. Given their importance, it is appropriate to set out their contents in full, as well as the intervening email from South East Radio.
- 4.5 Mr Enright's email of 29 August 2019 states as follows:

"Wexford County Council is currently reviewing our commercial relationship with you. We have spent over €160K with SE Radio in the past 18 months.

A lot of money to a radio station that facilitates inaccurate and damaging commentary on positive initiatives that the Council and others are trying to achieve in order to make Wexford a better place. I have to tell you that many people are disgusted by this and have said that to me. And I do not use that word lightly. Too many good people are working very hard – some on a voluntary basis - to help make Wexford stronger and to attract jobs and investment here so that we don't continue to export our young talented people. It is so disappointing to see a local radio station that appears set on damaging this.

[Redacted] – you and [redacted] just do not get how much trouble has been caused. I can tell you it has caused a lot and put good initiatives that took a lot of hard work in jeopardy. As proud Wexford men – I would have expected better and can only convey my disappointment. I fully acknowledge that there are many good people working in Southeast radio. More the pity.

I do not expect a local radio station to support us. As stated before I fully welcome proper, constructive criticism. However, a station that allows individuals, who are strongly connected to its owner, to promote their own personal agenda against others and to discuss our projects live on air negatively – projects that they know little or nothing about – and to do so in a cowardly manner without a chance for us to defend, is not one the Council wishes to continue to support. Particularly, as I understand you are aware, I then get threatened with legal action for standing up to this unprofessional, damaging and inaccurate reporting.

The inaccurate and damaging reporting has been proven to have had no substance with the announcement of 250 IDA jobs since March, the largest number of such jobs in Wexford in many, many years. The inaccurately reported predicted ‘decline’ in Financial Services jobs has also been shown to be wrong with 2 new companies setting up in Wexford. However, none of this has been corrected by your radio station.

Well done with developing the Hospitality Awards. I wish you success with them in the future.

I suggest a local highly profitable business, who offered to give [redacted] away in a unprofessional publicity stunt aided and abetted by your station last December, as a suitable new sponsor for the hospitality awards. This money ‘offered’ would cover your sponsorship for the next 3 years. The owner of the company appears to crave self publicity – which you are only too happy to facilitate. They seem to get endless advertisement with your station in any case for which I am sure they pay a lot less than the Council! ”

- 4.6 The replying email from South East Radio on 30 August 2019 states, *inter alia*, as follows:

“According to [redacted] you met with him in the Ferrycarrig Hotel on Wednesday 12th March to discuss the March radio coverage involving yourself and [redacted]. You emailed [redacted] on 13th March thanking him for the meeting saying the matter was resolved / closed. Can you please explain to us what has happened since March 13th to have re-ignited this issue? You accuse South East Radio of facilitating inaccurate and damaging commentary and say

that we appear set on damaging Council initiatives. We totally refute this and would ask you to substantiate it.

Who are the individuals you speak of? I have obviously been working under an illusion that our (South East Radio's) relationship with Wexford County Council was very healthy, respectful and constructive. Clearly from your point of view this is not the case. It saddens and upsets me to read your comments re. of our coverage when clearly I believed that we were all working for the betterment of our County.

Re Pod Casts/Coverage etc., as explained, I can only give you what we record from broadcast and this I have done. I have explained clearly how & what content we retain. I have no specific knowledge of the legal issue you refer to, no knowledge of any €30K unprofessional stunt.

If South East Radio is anyway at fault in any scenario it has always been our policy to act honestly and responsibly and quite frankly I have no idea how or why this storm has blown up. Withdrawing County Council support for the Hospitality Awards to penalise us for something... what I don't know is a serious blow for our Company. However, we have no choice but to respect your decision. I can only hope that by year end matters might have improved and that you might revisit this with us."

4.7 The email of 30 August from Mr Enright states as follows:

"Once again you fail to acknowledge or deal with the important matters raised.

I am not sure if you are unwilling or unable to do so.

How is the matter 'resolved' when I am threatened with legal action, intimidation tactics, censoring of podcasts and biased editing of interviews which should have reflected well on the Council. All it would appear because of a personal vendetta by your reporter against me and the Council. I am totally unsure what I or the Council have done to deserve this. So the matter is clearly not resolved.

How can we have a healthy or any relationship while this continues?

I can fully substantiate how your inaccurate and damaging commentary is impacting on the betterment of the county. Listen back to the attack on the Council's economic strategy by your reporter last March. Potential investors who heard this inaccurate, and I believe purposely damaging statements, have questioned whether they should invest in Wexford. This is hugely damaging. People often believe what they hear on the radio as being accurate – particularly when they don't know the person making the negative comments.

We were never given a chance to defend ourselves – this was broadcasting of the lowest form. Listen to the full unedited interviews for the BM programmes – where I am informed that positive comments about what the Council is doing to develop the county were edited out – not I believe for editorial or timing purposes – but in a clear effort to make sure the Council is not given the deserved credit for important initiatives. Your refusal to provide the unedited interviews is concerning. How can you as Manager of the radio station have any editing control or quality assurance over what is broadcast if you do not have access to the unedited interviews – surely this flies against any proper broadcasting standards.

Why were the podcasts of the 2 interviews not put up on your website? You still have not answered this. I would have thought after the ‘technical error’ that failed to record the Council’s defence on the Morning Mix programme last March that there would not be a repeat of this ‘censorship’. The BM podcasts of the 10th August and 24th August were put up – but not the 17th. The podcast for the 24th was for an entirely different show. Was the fact that both shows were not podcast an attempt to again censor and to try to hide the fact that interviews were edited to the disadvantage of the Council? A reasonable person could well come to the conclusion that it was. The announcement of 100 jobs for Enniscorthy is huge positive news for the county – yet the interview with the CEO of the new company was not podcast – why?

You deny you know the legal issue I refer to. [Redacted] met you and told you about the legal threat I received and he informed me that he showed you the email. Why do you deny this? [Redacted] was circulated with the threat by your reporter. The threat refers to legislation that deals with corruption in public office. I find this sickening. I have an unblemished record and have stood up to corruption throughout my career and have clear evidence on the public record to prove this. I have instructed our solicitors to deal with this matter and they will be following this up very soon.

You deny knowledge of the €30K publicity stunt. Again why do you deny this? Last December when Sam McCauleys decided to leave Wexford a local recruitment company went on your radio station to publically (sic) offer €30K in recruitment fees to encourage them to stay. This publicity stunt ran for some time on your station. You must be aware of this. This was after Sam McCauleys had admitted that the real reason for them leaving Wexford was not because they could not recruit suitably qualified staff – it was because all senior management were based around Dublin and did not want to commute to Wexford. As I suggest this €30K could fund your Hospitality Awards!

It is with regret that we must cease our commercial relationship with you. We have given this much consideration and every chance to you to address the

concerns raised. However, as you can see from the above – any other examples – we cannot continue to financially support a radio station that behaves in this manner. I restate again what I have said so many times before, we do not expect a radio station to endorse and support us. All we ask for is fairness and responsible and accurate reporting – that is clearly not the case.

We will be putting our limited resources into other more cost effective and broader media solutions to get our message out.

I am sorry that we have arrived at this situation. As stated I do not know what we have done to bring all this upon us. I do know that I can have no confidence that it will cease – in fact I expect it will continue as it is not being addressed.

Should your station continue to do down the Council, we will have no option but to release a public statement outlining the reasons why we have ceased our commercial relationship with you. We will continue to defend our good name and use every tool, including recourse to legal action and formal complaint to the BAI to stand against [illegible].

I have a lot more things to be doing with my time and do not wish to be regularly having to deal with this matter.”

Evidence of Ms Lord

4.8 Counsel for the Commission took Ms Lord briefly through her report and the opinion she arrived at. In cross-examination by Mr Enright’s counsel, the propositions put to Ms Lord included that —

- any person advertising with a radio station would expect the station to comply with its broadcasting obligations in relation to the treatment of current affairs, including its obligations under s. 39 of the Broadcasting Act 2009,
- Mr Fitzpatrick was on the show as presenter of another show on the station, having been introduced in that capacity,
- the Broadcasting Authority of Ireland had issued a compliance notice to South East Radio concerning the failure to record the Morning Mix show on 6 March 2019,
- a person advertising with a radio station was entitled to cease its commercial relationship with the station if the station breached broadcasting rules,
- one of the functions of the Chief Executive of Wexford County Council is to make sure that the council is treated fairly by its commercial partners,
- the complaints in the emails of 29 and 30 August 2019 related to the broadcasting practices of the station,
- there is nothing wrong with seeking to influence broadcasting output to make it compliant with the relevant rules,

- South East Radio responded to the complaints made in the emails of 29 and 30 August 2019 in Mr Buttle's email of 2 September 2019 wherein he offered to have the matter investigated by the regulator and an independent investigator, and
 - Mr Enright was satisfied with that approach and the commercial relationship was back on track by his email of 3 September 2019, thus the threat in the emails of 29 and 30 August 2019 completely dissipated within a couple of days.
- 4.9 In re-examination, counsel for the Commission put it to Ms Lord that there was no mention of section 39 of the Broadcasting Act 2009 in the emails of 29 and 30 August 2019 and that she had found in her report that there was a *prima facie* case that Mr Enright was using the issue of Mr Fitzpatrick's proposed complaint to the Commission to penalise South East Radio.
- 4.10 The Commission found Ms Lord to be a truthful and credible witness.

Evidence of Mr Buttle

- 4.11 Mr Buttle gave evidence as to his interaction with Mr Fitzpatrick in March 2019 and how he had considered the matter closed following their meeting on 12 March 2019, which he said was confirmed to him in a text from Mr Enright the following day. Mr Buttle stressed the importance of the station's relationship with the Council, stating that it was "*very important to our survival*".
- 4.12 Mr Buttle stated that he understood the emails of 29 and 30 August 2019 to clearly refer to Mr Fitzpatrick, whom he regarded as having a personal dispute with Mr Enright, and that the reference to "*legal action*" was to Mr Fitzpatrick's proposed complaint to the Commission. Mr Buttle stated that, insofar as the emails also dealt with what was perceived to be unfair coverage of the Council by the station, he could not understand Mr Enright's issue, but took the allegation seriously. He took from the emails that the Council's commercial relationship with the station was being terminated due to the perceived unfair coverage of the Council by the station and the conduct of Mr Fitzpatrick, including his threatened legal action.
- 4.13 Mr Buttle gave evidence that the complaint to the Broadcasting Authority of Ireland dealt solely with the issue of the failure to record the *Morning Mix* show broadcast on 6 March 2019.
- 4.14 In cross-examination, Mr Buttle accepted that the station was obliged to comply with s. 39 of the Broadcasting Act 2009 in its current affairs coverage. He further accepted that the Council was entitled to choose not to advertise with the station. He accepted that, while Mr Fitzpatrick was not in fact an employee of the station, a listener might reasonably assume that that was the case. He agreed that Mr

Fitzpatrick should not have been introduced on the 5 March 2019 show as the presenter of another show on the station, but rather as a businessman expressing his personal views.

- 4.15 Mr Buttle accepted that the station had breached its broadcasting obligations by failing to ensure that the *Morning Mix* programme on 6 March 2019 was recorded, but stated that the reasons for this had been fully explained to Mr Enright and that Mr Enright had accepted the explanation on 12 March 2019.
- 4.16 Counsel for Mr Enright put to Mr Buttle that the emails of 29 and 30 August 2019 concerned the interviews earlier that month that Mr Enright had taken issue with on the basis of an apprehension that statements complimentary of the Council had been edited out. Mr Buttle accepted that Mr Enright thought at the time that the interviews had been doctored, but that he regarded them as complimentary of the Council and could not understand where Mr Enright was coming from. An email exchange of 28 August 2019 (on which Mr Buttle was copied), in which Mr Enright sought from the general manager of the station a copy of the unedited interview from 17 August 2019, was put to Mr Buttle. Also, an email from Mr Buttle dated 30 August 2019 dealing with the issue was opened and a piece from one of the interviews was played.
- 4.17 Counsel then put to Mr Buttle the emails of 2 and 3 September 2019, wherein it was agreed between him and Mr Enright that the matter would be referred to the Broadcasting Authority of Ireland and an independent expert for investigation. Mr Buttle responded that the station was confident that *“there was no case to answer”* but it *“had nowhere else to go”* to *“bring the whole matter to a conclusion”*. It was put to Mr Buttle that the issue was resolved at that point and the commercial relationship got back on track. Mr Buttle responded that he believed that the relationship suffered and the station did not receive as much advertising revenue thereafter from the Council as he would have expected.
- 4.18 On re-examination by counsel for the Commission, Mr Buttle was asked whether he felt under pressure coming up to 2 September 2019. He answered that it was *“a very serious situation”*, the likes of which he had not faced in 35 years in the media business. In the course of answering questions from the Commission he referred to an email of 31 August 2019 in which Mr Enright stated that it was *“disappointing that another radio station based in a different county, Beat FM, who get no funding from Wexford County Council, gave as much if not more profile to the recent announcement of 100 quality jobs in Enniscorthy than our own ‘media partner’ SE Radio”*.
- 4.19 On further questioning by the Commission, Mr Buttle gave evidence that the Council had spent approximately €63,000 on advertising with the station in 2019 and that this had dropped to €46,000 in 2020. He speculated that the Covid-19 pandemic ought to have led to an increase in Council advertising in 2020, as opposed to a

reduction. He stated that he believed that the reduction was due to the dispute with Mr Enright, as opposed to the pandemic. He further stated that the Council was the station's number one advertiser.

- 4.20 Finally, Mr Buttle was asked if the station would normally deal with the Chief Executive of the Council in relation to advertising. He responded that, in the past, it would have dealt with the head of the relevant department within the Council.

Submissions on behalf of Commission

- 4.21 Counsel for the Commission made a number of concluding submissions.
- 4.22 First, it was submitted that, on the basis of the evidence, there was clearly a personal dispute between Mr Fitzpatrick and Mr Enright, and that it was not for the Commission to resolve that dispute. Nor was it for the Commission to consider the allegations raised by Mr Enright in respect of compliance with broadcasting rules. Rather, counsel submitted that the Commission's task was to consider the emails of 29 and 30 August from Mr Enright.
- 4.23 Counsel rejected the suggestion that the emails only related to Mr Enright's concerns as to compliance with broadcasting rules. He pointed out that neither email mentioned the Broadcasting Act 2009, nor any broadcasting code of practice. Rather, it was submitted that the issues raised concerned negative coverage of the Council, in particular Mr Fitzpatrick's coverage, and Mr Fitzpatrick's threatened complaint under the Ethics Acts.
- 4.24 Counsel submitted that the appropriate response on Mr Enright's part to the threatened Ethics Act complaint would have been to robustly defend himself in the process, and that it was not appropriate to email the station and threaten to cut it off financially. It was further submitted that, on the evidence, the emails put Mr Buttle and the station under a great deal of pressure. Counsel submitted that, contrary to what was put to Mr Buttle, the matter was not resolved by the agreement to refer the matter to the Broadcasting Authority of Ireland.
- 4.25 Finally, counsel briefly opened s. 168 of the Local Government Act and parts of section 2.2 of the *Code of Conduct for Employees*. He concluded by suggesting that the emails of 29 and 30 August 2019, in reality, involved someone venting their personal dispute with one of the station's contributors by threatening to discontinue the Council's commercial relationship with the station.

Submissions on behalf of Mr Enright

- 4.26 Counsel for Mr Enright submitted that the emails of 29 and 30 August 2019 must be looked at in the overall context. He argued that those emails did not relate to the

threat by Mr Fitzpatrick to bring his complaint under the Ethics Acts, but rather to the issue of the station complying with its broadcasting obligations. He rejected the suggestion of a personal dispute between Mr Fitzpatrick and Mr Enright, arguing that there was no evidence of that and that any issues between them concerned the broadcasts in March and August 2019.

- 4.27 Counsel submitted that any effect of the threat to cease commercial relations in the 29 and 30 August 2019 emails lasted no more than a couple of days due to the resolution reached in the email of 3 September 2019. It was submitted that if that resolution meant anything it was that the issues between the Council and the station concerned broadcasting compliance, not any personal dispute between Mr Enright and Mr Fitzpatrick, which formed no part of the resolution. Counsel stressed that Mr Buttle had accepted that it was the August broadcasts which had re-ignited the issue.
- 4.28 It was submitted that, while the emails did not reference the Broadcasting Act 2009, the issue of broadcasting practices was all over the emails. Counsel went on to submit that one should not be impugned for trying to positively influence broadcasting content to make sure that it is fair, and argued that, rather than seeking more favourable coverage for the Council, Mr Enright was simply seeking fairness.
- 4.29 Counsel argued that the *Code of Conduct for Employees* did not apply in circumstances where Mr Enright was not dealing with the public, but rather with an entity which was in a commercial relationship with the Council. It was further submitted that the Council was entitled to cease that commercial relationship.
- 4.30 Counsel submitted that Mr Enright had at all times been seeking to protect the public interest in terms of how the Council was treated and, rather than seeking to control the station, he had been seeking to ensure that the station was compliant and fair. Counsel rejected the suggestion that Mr Buttle felt exasperated following the receipt of the emails and pointed out that Mr Buttle had given no evidence of any actions taken before the email of 2 September 2019 to address Mr Enright's concerns.

5. Findings

- 5.1 The *Code of Conduct for Employees* issued under Part 15 of the Local Government Act plays an important role in ensuring the public trust in in local government.
- 5.2 The Commission has had regard to the evidence presented to it in the form of documents, statements and recordings adduced at the investigation hearing. The Commission has also had regard to the submissions made to it on behalf of the Commission and on behalf of Mr Enright.
- 5.3 The Commission's findings in relation to each of the alleged contraventions are stated below. The Commission is required by section 24 of the Ethics Acts to determine whether the alleged contraventions were committed, and if so, whether they were committed inadvertently, negligently, recklessly or intentionally. The Commission considers a determination that an act was committed intentionally to be at the highest end of the spectrum, with acts committed inadvertently at the lowest end. A determination of acting intentionally arises where an act was done consciously with a view to achieving a specific result. In determining the manner in which Mr Enright acted, the Commission has had regard to the nature of the contraventions and acts as appears from the evidence before it.

Alleged contravention 1

"That being an employee of a local authority you contravened the provisions of Section 168 of the Local Government Act 2001 and failed to maintain proper standards of integrity, conduct and concern for the public interest on 29 and 30 August 2019 in your emails to South East Radio".

- 5.4 It is important to note at the outset that, while it is obviously important to understand the background facts and context, this contravention concerns the emails of 29 and 30 August 2019. It is Mr Enright's conduct in sending those emails, and choosing the content of those emails, that is the focus.
- 5.5 The phrase *"proper standards of integrity, conduct and concern for the public interest"*, as used in s. 168 of the Local Government Act, is not defined in that Act. However, s. 169 of the Local Government Act goes on to provide for the issuing of *"codes of conduct for the guidance of members of local authorities and of employees of local authorities"* which *"shall deal with the conduct and standards of integrity of members and employees in performing their functions"*. Thus, while it is not determinative of the standards expected, a code of conduct issued by the Minister provides guidance to employees and may be considered by the Commission in assessing whether an employee has behaved appropriately.

- 5.6 As detailed above, section 2.2 of the *Code of Conduct for Employees* sets out the manner in which employees must maintain proper standards of integrity, public confidence and appropriate behaviour.

Decision in respect of alleged contravention 1

- 5.7 In his role as Chief Executive, Mr Enright has a right, and indeed an obligation, to defend the reputation of the Council, and has a personal right to defend his own reputation. However, a person in his position must react in a proportionate and level-headed manner if he is to protect the integrity of his position and maintain public trust in the Council. If Mr Enright considered that the coverage of the Council was unfair or imbalanced, there were formal routes through which he could pursue that issue. The emails of 29 and 30 August 2019 were not the appropriate recourse and amounted to an over-reaction and inappropriate conflation of issues on Mr Enright's part. They fell below what is expected of someone in his position, in terms of content, tone, style and language.
- 5.8 The Commission found the second email – in which Mr Enright accused the station of “*censorship*”, described Mr Fitzpatrick as having a “*personal vendetta*” against him and described the threatened complaint under the Ethics Acts as “*sickening*” – to be particularly emotive and unbecoming of a person in such a senior role.
- 5.9 There is no doubting Mr Enright's passion and drive for Wexford. He has clearly worked hard to get to his senior position and expended considerable time and effort, with evident success, for the betterment of the county. However, it is incumbent on someone in his position to maintain appropriate standards when his work record is challenged. On this occasion, the Commission considers that Mr Enright's conduct fell below the required standard, bringing the position of Chief Executive and Wexford County Council into disrepute.
- 5.10 The Commission finds that the emails amounted to an inappropriate conflation of the issues of, on the one hand, the coverage of the Council on South East Radio and Mr Enright's dispute with Mr Fitzpatrick, and on the other hand, the Council's commercial relationship with the station. In this way, Mr Enright misused the Council's position as the station's primary advertiser, in effect ‘throwing around the weight’ of the Council's purse.
- 5.11 The Commission was particularly impressed by the evidence of Mr Buttle and considered that he made clear the serious implications of the station being told by its principal customer for advertising that “*we must cease our commercial relationship with you*”. Mr Buttle felt intense pressure on receipt of the emails. Mr Enright must have anticipated this and should not have used his position as Chief Executive of the station's principal advertiser to exert such unwarranted pressure on the station. The Council's deployment of advertising expenditure should primarily be based on the effectiveness and value for money available from their advertising

partners, and should not be influenced by personal agendas and intemperate email messages.

- 5.12 There is no suggestion of corruption or deception in Mr Enright's conduct. Indeed, Mr Buttle stated that he considers Mr Enright to be "*an honourable man*". Furthermore, the Commission accepts that Mr Enright was motivated by a fervent desire to promote and defend himself and the county. However, on this occasion, the manner in which he went about that task was disproportionate and inappropriate and lacking in courtesy and respect, thereby bringing disrepute upon his position and the Council.
- 5.13 Following consideration of the evidence, the Commission finds that Mr Enright breached s. 168 of the Local Government Act by failing to maintain proper standards of integrity, conduct and concern for the public interest in his emails of 29 and 30 August 2019.
- 5.14 The Commission is satisfied on the balance of probabilities that the contravention was committed recklessly. On the basis of the evidence, and given his seniority and experience, Mr Enright must have foreseen the risk that sending the emails would represent a failure to maintain proper standards of integrity, conduct and concern for the public interest, but proceeded to send them nonetheless.
- 5.15 The Commission further finds that Mr Enright's conduct in this regard was a serious contravention of the statutory provision. In addition, the Commission finds that Mr Enright did not act in good faith, nor in the belief that his actions were in accordance with guidelines published or advice given in writing under s. 12 or s. 25 of the Ethics Act.

Alleged contravention 2

"That being an employee of a local authority you contravened Section 169(3) of the Local Government Act 2001 in that you failed to have regard to and be guided by the Code of Conduct for Employees insofar as you sent emails on 29 and 30 August 2019 to South East Radio putting pressure on the station to alter their broadcasting practices by threatening to withdraw funding from the station. In so doing you breached Section 2.2 of the Code of Conduct by failing to ensure that your conduct did not bring the integrity of your position or of local government into disrepute".

- 5.16 Again, the focus in this contravention is on the emails of 29 and 30 August 2019. There are two issues for the Commission to consider: (1) whether, in sending those emails, Mr Enright put pressure on the station to alter its broadcasting practices by threatening to withdraw funding from the station and (2) whether, in so doing, he breached s. 169(3) of the Local Government Act and, in particular, the obligation

under the *Code of Conduct for Employees* to ensure that his conduct “does not bring the integrity of their position or of local government into disrepute”.

Decision in respect of alleged contravention 2

- 5.17 In respect of the first such issue, having considered the evidence, in particular that of Mr Buttle, the Commission is satisfied, on the balance of probabilities, that the emails did put pressure on the station to alter its broadcasting practices by threatening to withdraw funding from the station.
- 5.18 In respect of the second issue, for the same reasons as outlined above in relation to contravention 1, the Commission finds that, in sending emails having that effect, Mr Enright failed to ensure that his conduct did not bring the integrity of his position or of Wexford County Council into disrepute.
- 5.19 The Commission considers that Mr Enright let his standards slip when sending the emails, allowing the ongoing issues of his dispute with Mr Fitzpatrick and his perception that the Council was being unfairly treated in Mr Fitzpatrick’s radio output, and the notification of an intention to lodge an Ethics Acts complaint, to cloud his judgment. In using emotive and threatening language, and inappropriately tying those issues to a matter of public procurement, Mr Enright failed to protect and maintain the integrity of his position and of the Council.
- 5.20 Following consideration of the evidence, the Commission finds that Mr Enright contravened s. 169(3) of the Local Government Act in the manner alleged.
- 5.21 The Commission is satisfied on the balance of probabilities that the contravention was committed recklessly. On the basis of the evidence, and given his seniority and experience, Mr Enright must have foreseen the risk that sending the emails would put pressure on the station to alter its broadcasting practices and amount to a failure to ensure that his conduct did not bring the integrity of his position or the Council into disrepute. However, he proceeded to send the emails nonetheless.
- 5.22 The Commission further finds that the contravention was, in all the circumstances, a serious matter. In addition, the Commission finds that Mr Enright did not act in good faith, nor in the belief that his actions were in accordance with guidelines published or advice given in writing under s. 12 or s. 25 of the Ethics Act.

Alleged contravention 3

“That being an employee of a local authority you contravened Section 169(3) of the Local Government Act 2001 in that you failed to have regard to and be guided by the Code of Conduct for Employees insofar as you sent emails on 29 and 30 August 2019 to South East Radio putting pressure on the station to alter their broadcasting

practices by threatening to withdraw funding from the station. In so doing you breached Section 2.2 of the Code of Conduct by failing to deal with the public courteously, fairly and promptly”.

- 5.23 As stated above, the Commission is satisfied on the evidence that the emails of 29 and 30 August 2019 had the effect of putting unwarranted pressure on the station to alter its broadcasting practices.
- 5.24 The Commission further finds that, in sending the emails, Mr Enright failed to deal with the station and its personnel in a courteous and fair manner. In that regard, the Commission considers that a commercial supplier of services such as the station is a member of the “*public*” for these purposes. It is incumbent on the council’s employees, especially its Chief Executive, to deal with its suppliers in the same manner as it would deal with an individual resident in the county. The way in which a supplier of services to the Council is seen to be treated can also have an effect on suppliers of other goods and services to the Council.
- 5.25 For the same reasons as outlined above in the context of the first contravention, the Commission finds that the emails were lacking in courtesy and fairness in the manner in which they were worded, the inappropriately emotive and threatening tone adopted, and the way in which Mr Enright conflated separate and distinct issues to achieve his ends.
- 5.26 Following consideration of the evidence, the Commission finds that Mr Enright contravened s. 169(3) of the Local Government Act in the manner alleged.
- 5.27 The Commission is satisfied on the balance of probabilities that the contravention was committed recklessly. On the basis of the evidence, and given his seniority and experience, Mr Enright must have foreseen the risk that sending the emails would put pressure on the station to alter its broadcasting practices and amount to a failure to treat a supplier of services fairly and courteously. However, he proceeded to send the emails nonetheless.
- 5.28 The Commission further finds that the contravention was, in all the circumstances, a serious matter. In addition, the Commission finds that Mr Enright did not act in good faith, nor in the belief that his actions were in accordance with guidelines published or advice given in writing under s. 12 or s. 25 of the Ethics Act.

Other findings

- 5.29 By their nature, the Commission finds that the contraventions are not continuing.

Appendices

- A. *Procedures of the Standards in Public Office Commission in respect of its Complaints Process* (revised and updated March 2021)
- B. Statement of alleged contraventions
- C. Relevant extracts from legislation and the *Code of Conduct for Employees*
- D. Transcript of investigation hearing on 12 November 2021