

STANDARDS HEARING SUB-COMMITTEE

MINUTES of the STANDARDS HEARING SUB-COMMITTEE

MARLBOROUGH TOWN HALL : COUNCIL CHAMBER -
5 HIGH ST, MARLBOROUGH, SN8 1AA

Monday, 11 March 2013.

PRESENT:

Wiltshire Council Members

Cllr Trevor Carbin
Cllr Peter Fuller
Cllr Howard Greenman

1 Election of Chairman

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Howard Greenman as Chairman for this meeting only.

2 Chairman's Welcome, Introduction and Announcements

The Chairman welcomed everyone to the meeting and introduced the sub-committee members and others present at the meeting.

3 Declarations of Interest

No declarations of interest were made by the sub-committee.

4 Exclusion of the Press and Public

There were no objections made by the interested parties to hearing the matter in public, and the sub-committee agreed that in the interests of transparency and fairness, the hearing would be conducted as a part 1 item.

5 **Standards Committee Hearing Complaint regarding the Alleged Conduct of Mr Roger Durie of Great Bedwyn Parish Council**

The Chairman opened the hearing, and confirmed the focus would follow from the agreed direction of the sub-committee pre hearing. The chairman summarised the following;

On 23rd March 2012 the Monitoring Officer of Wiltshire Council received a complaint from Ms Jan Thornton regarding the alleged conduct of Roger Durie, a member of Great Bedwyn Parish Council.

The allegation was that Mr Durie failed to show respect to Mrs Thornton:

(a) by permitting a motion about the application of the Parish Council's Vexatious Complaints Policy to be taken as a Part 1 agenda item; and

(b) by referring to The Knapp Tenants' Association as the 'purported' Knapp Tenants' Association.

The complaint is included within the Investigator's report (pages 23 to 34 of the Schedule of Evidence).

On 17th April 2012 the Standards Assessment Sub-Committee of Wiltshire Council considered the complaint regarding Mr Durie. In accordance with section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-Committee decided that the complaint should be referred to the Monitoring Officer for investigation. They considered that if proven, the behaviour giving rise to the complaint may be capable of breaching the following paragraphs of the Code:

3(1) – You must treat others with respect.

5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

The Chairman invited the investigating Officer, Marie Lindsay to provide a summary of the investigating officer's report, and reminded the committee that the questions that required an answer in order to determine a breach were therefore: -

1. Whether the motion should have been accepted as a motion from the floor.
2. If it was should it have been determined as a Part 1 item.

3. If the answer to either issue 1 or 2 is no then did the subject member (as chairperson of the meeting) breach the relevant code of conduct by his failure to ensure correct procedures were followed within the meeting.

The Investigating Officer opened by confirming the relevant points from the agreed schedule of findings of fact (Appendix A). These were:-

1. Mr Durie was at the relevant time, a member of Great Bedwyn Parish Council
2. Mrs Thornton is the Secretary of The Knapps Tenants' Association
19. On 8th February 2012 Great Bedwyn Parish Council adopted a Vexatious Complaints Policy
24. At the Parish Council meeting on March 14th 2012 (Parish) Councillor Raff proposed a Motion to identify Mrs Thornton and the Knapp Tenants Association as vexatious and to inform Mrs Thornton of this decision in accordance with the Council's Vexatious Complaints Policy.
25. The Motion was taken as a Part 1 agenda item and the press and public had not been excluded from the meeting.
26. The Motion was carried with seven votes and one abstention.
28. Over 30 people attended the Parish Council meeting on 15th March 2012. A considerable number of people were still present at the meeting when the Motion was proposed and discussed, including a member of the press, Val Compton.
32. At the Parish Council meeting on 9th May 2012 the implementation of the Vexatious Complaints Policy in respect of Mrs Thornton was discussed as a confidential item on the agenda.
33. Minutes of Great Bedwyn Parish are displayed on two village notice boards and they are available to view and download via the online parish document store. They are also included in the Parish News magazine but not always in their entirety.

It was confirmed that of the relevant facts, Mr Durie had opposed only finding of fact number 28, and this was in dispute of the number of people present at the point which the Motion was proposed and discussed.

The Investigating Officers report stated that *"Councillor Raff had done a lot of research in respect of the Vexatious Complaints Policy and that he was keen to put it into practice. Regardless of the desire to utilise the policy, Mr Durie should have taken the necessary steps to implement it in accordance with the procedures contained within it. By not doing so, I believe that his actions could*

reasonably be regarded as reducing the public's confidence in him being able to fulfil his role".

The Investigating Officer confirmed Mr Durie's submission that he contested para's. 7.20 and 7.29 of the Investigating officers report stating:

"I contest the suggestion that taking the 'vexatious' motion in public reduced the public's confidence in me and brought the council into disrepute. I believe that the opposite is true and that the public welcomed the motion and the adoption of it. However, I do admit to being technically wrong by not excluding the public from this part of the meeting".

"... [in reference to the statement that] the implementation of the Vexatious Complaints Policy is considered an unreasonable and excessive personal attack on Mrs Thornton –I consider this to be inappropriate and believe that most members of our community and the other members of the Parish Council saw this as a defence mechanism against future harassment by Mrs Thornton".

The Investigating Officer completed the summary to the committee.

The Chairman then invited questions from the Panel, to which there were none. The Chairman then invited the Subject Member to comment on the Investigating Officers findings.

Mr Durie admitted to the committee that it was technically incorrect for him to allow the motion as a Part 1 item. He then added that he had been taken aback by the proposal at the meeting, and was unaware that at the point in the meeting, he could still exclude the press and public. Mr Durie stated that at Great Bedwyn Parish Council meetings, the press and public traditionally leave, and that only recently the Council had been conducting matters in a closed forum. Mr Durie then stated that he believed he was not able to prevent Councillor Raff from raising the Motion at the meeting.

The Chairman then invited the interested party to submit any comments to the committee.

Mrs Thornton stated that she was aware of the work that had gone into the vexatious complaints policy, but that 4 people had been named before it had been approved. Mrs Thornton reiterated that being named as vexatious in public was very damaging. Mrs Thornton stated that Mr Durie allowed the Motion to arise, and did nothing to oppose it, nor correct the procedural deviation. The vote was taken in front of a room of people, with press present and found the actions of the Parish Council, and Mr Durie to be humiliating, inappropriate and excessive.

The committee then invited any other persons present at the meeting to comment.

Mr Stone was Chairman of Great Bedwyn Parish Council and had held the position for 20 years. Mr Stone stated that the Parish Council always had operated in an open and transparent manner, with respect shown to all members of the public and councillors. He confirmed that Jan Thornton had been given the opportunity to speak on matters at hearings, and that she had been shown respect by the Parish Council. Mr Stone then added that he would have allowed Councillor Raff to raise the motion had he been Chairman at the time.

The Sub Committee Chairman then reaffirmed that the issue was not if Mrs Thornton was in fact vexatious, but on whether the motion should have been allowed.

Councillor Fuller then stated to Councillor Durie that by allowing the Motion as Chairman, he was in fact opposing the policy that had been agreed. Procedurally, the Chairman should have referred the Clerk to contact the vexatious persons, and should have at first instance issued a warning. In addition Councillor Fuller stated that the issue should have been deferred to the next meeting anyway, and as a result deviated from the agreed procedure.

Cllr Wheeler was present at the meeting and stated that he was unclear as to why he was not interviewed as part of the Investigating Officers report. The Investigating Officer responded by stating that enough documentary evidence had been collected.

Cllr Wheeler then stated that he felt Councillor Durie was under pressure from the Parish Council to carry the Motion, and that the Clerk was relatively inexperienced. It was his belief that the Motion caught Councillor Durie by surprise and that his understanding was that retrospectively speaking Councillor Durie would have acted differently and will in future act differently. He also added that the Parish Clerk has changed and that Councillor Raff has since resigned from the Parish Council and relocated away from the area.

Councillor Carbin stated to the Committee that he believed the standard action for a Chairman would have been to defer the item to another meeting.

A question was raised from the committee around the validity period of the Vexatious Complaints Policy and the review period for it.

Councillor Durie confirmed that the Vexatious Policy notice had lapsed, and that it was no longer in use.

The Committee then took direction from the Deputy Monitoring Officer who cited the First Tier Tribunal Appeal case LGS/2009/0465-0468 – Cllrs Hollis, Clark and Fawcett – v – Durham County Council. This was a standards hearing appeal that provided guidance on the constitution of a breach of the Code of Conduct paragraph 3(1) – you must treat others with respect.

Paragraph 60 of the judgement states that:- *failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.*

Paragraph 79 provides guidance on hearing matters under Part 1 or Part 2. The judgement in the case states that it was unfair for a Councillor to raise the referral of a disciplinary hearing of an individual, whilst in public session. It was stated that such matters should have been dealt with and referred only in private session, and that such responsibility for ensuring matters are not inappropriately raised is an issue for all Councillors present at the meeting, not just the Chairperson.

The case also refers to the effect on an individual who is subjected to disrespect as a result of a procedural oversight.

The Chairman then asked for the concluding statements from parties.

The Investigating Officer stated that the evidence collected, and presented to the sub-committee, was proof that procedure was not followed. It was added that by failing to adhere to the procedure, Mrs Thornton was shown a level of disrespect, whilst it was likely that by deviating from procedure, the Parish Council would be brought into disrepute. It was added that the disputed number of people at the meeting was irrelevant as the Motion was heard as a public matter, and was later circulated in newsletters and bulletins.

The Investigating Officer stated that Mrs Thornton was shown disrespect under paragraph 3(1) as she was named as vexatious in a public meeting with no right to reply. Secondly, the Investigating Officer stated that the actions of Mr Durie had brought the Council into disrepute, as by failing to control Councillor Raff, and allowing the Motion, and by failing to adhere to the agreed policy, the public's confidence in the conduct of the Parish Council would be diminished.

Councillor Durie stated that he had made a mistake in allowing the Motion and naming Mrs Thornton as vexatious in a public forum, but stated that "we all make mistakes". Councillor Durie referred to Wiltshire Council mistakenly sending an incorrect decision notice for the original hearing stating that there was 'no breach'. It was added that the public are very supportive of the Parish Council and its decisions and believed that they agreed with the decision to name Mrs Thornton as vexatious in the meeting.

Mrs Thornton stated that she has challenged the Parish Council over its actions, but that the actions they have taken cannot be justified. It was stated that residents of the Knapp are intimidated by the Parish Council.

The Chairman reaffirmed to the sub-committee that the focus of the decision would be made on the criteria expressed earlier and detailed page 128 of the Agenda Pack. The sub-committee withdrew at 3pm to make a decision.

DECISION:

The Hearing reconvened at 3.30pm to deliver the decision of the sub-committee. This was;

The sub-committee find as a fact, that a motion declaring the complainant, amongst others, as vexatious was proposed under matters arising.

1. The motion was contrary to the vexatious complaints policy adopted earlier by Great Bedwyn Parish Council
2. The motion was not part of the agenda and to accept the motion was contrary to Great Bedwyn Parish Council's standing orders.
3. The motion should not have been accepted as a valid motion.
4. The Chairperson as Chair of the meeting has an obligation to ensure the meeting is conducted by way of the required procedures. By failing to do so the meeting was conducted in a way whereby a member of the public was subjected to adverse comments without any opportunity for reply and was not availed of due process under the Parish Council's vexatious complaint policy.

Consequently the sub-committee found that Councillor Durie to have;

Breach - paragraph 3(1) – You must treat others with respect.

Breach - paragraph 5 – You must not conduct yourself in a manner which could reasonably regarded as bringing your office or authority into disrepute.

The following sanction will apply:

Sanctions

It is recommended that the Monitoring Officer for Wiltshire Council will conduct a training session for all members of Great Bedwyn Parish Council.

It was also suggested that Councillor Durie may wish to provide Mrs Thornton with an apology, although this would not form part of the recommendation to Great Bedwyn Parish Council as it is not one of the permitted sanctions that can be recommended.

No further comments were made, and the meeting was closed at 3.40pm

The Officer who has produced these minutes is Samuel Bath, of Democratic & Members' Services, direct line (01225) 718211, e-mail samuel.bath@wiltshire.gov.uk

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