

CONFIDENTIAL - NOT FOR PUBLICATION - Contains exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972.

STANDARDS HEARING SUB-COMMITTEE

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 20 MARCH 2013 AT CIVIC CENTRE, ST STEPHENS PLACE, TROWBRIDGE, BA14 8AH.

Present:

Cllr Chris Caswill, Cllr Howard Greenman, Cllr Christopher Williams

Also Present:

Mr Colin Malcolm - Independent Person (Monitoring Officer and Sub-Committee)
Caroline Baynes - Independent Person (Subject Member) - from 3.00 pm

Ian Gibbons - Monitoring Officer and Legal Adviser to the Sub-Committee

Frank Cain, Head of Legal - representing the Investigating Officer
Roger Wiltshire - Investigating Officer

Mr Ian Taylor - Complainant

Cllr Russell Hawker - Subject Member
Mr Francis Morland - representing the Subject Member

1 Election of Chairman

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

Resolved:

To elect Councillor Christopher Williams as Chairman.

2 Chairman's Welcome, Introduction and Announcements

The Chairman welcomed the parties to the meeting, explained the purpose of the meeting and asked those present to introduce themselves.

3 **Declarations of Interest**

There were no declarations of interest.

4 **Exclusion of the Press and Public**

The Chairman invited representations from the parties on whether the preliminary hearing should be conducted in public or closed session.

The complainant had no objection to the matter being heard in public.

The investigating officer, through Mr Cain, indicated that he had no objection to the matter being heard in public, subject to the redaction of third party personal details in accordance with the Council's data protection obligations, before release of documentation into the public domain.

Mr Morland, on behalf of the subject member, objected to the matter being dealt with in the public domain on the grounds that the process and investigation report were deeply flawed and prejudicial to the subject member and publication in these circumstances would not be fair.

Having regard to these representations and advice from the Monitoring Officer the Sub-Committee concluded, on balance, that the preliminary hearing should proceed in the absence of the public at this stage. The Sub-Committee were, however, mindful of the need for openness and transparency in these matters and noted that the position would be reviewed further at any substantive hearing. The Sub-Committee, therefore,

Resolved:

In accordance with section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in item 5 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

After consulting the parties, the Chairman agreed that Councillor Newbury should be permitted to remain in the hearing as a Wiltshire Councillor.

5 Complaint regarding the alleged conduct of Councillor Russell Hawker of Westbury Town Council

Alternative Resolution

The Chairman opened this part of the meeting by inviting the parties to indicate whether there was any possibility of a resolution being reached that would avoid the need for a full hearing. A short adjournment followed to enable the parties to explore, on a without prejudice basis, the possibility of reaching a compromise, facilitated by the Monitoring Officer.

The meeting resumed at 11.45 am when the Sub-Committee were advised that there was no prospect of a compromise being reached between the parties.

Documents

The Chairman confirmed that, in addition to the papers circulated with the agenda, the Sub-Committee had received Mr Morland's e-mails to the Monitoring Officer dated 27 February 2013; 1 March 2013; 2 March 2013; 6 March 2013 (2); and 18 March 2013.

Independent Person (Subject Member)

Mr Morland sought an adjournment on the basis of the objection he had raised in his e-mail to the Monitoring Officer dated 18 March 2013 regarding the hearing proceeding in the absence of Caroline Baynes, the independent person allocated for consultation by the subject member. Caroline Baynes had advised that she would be unable to attend the meeting before 1.00 pm due to a prior unavoidable commitment. Mr Morland contended that it would be unlawful for the Sub-Committee to proceed in her absence.

Following representations in response from Mr Cain and advice from the Monitoring Officer, the Sub-Committee determined:

1. Whilst it was clearly desirable that both independent persons were present throughout the preliminary hearing the Sub-Committee did not accept that this was required as a matter of law.
2. In order to avoid the delay that would result from an adjournment the Sub-Committee were minded to proceed to hear submissions from the parties on the preliminary matters before them, but to reserve making any decision on them until the subject member had had the opportunity to consult with the independent person (subject member) following her arrival at the meeting.
3. The subject member was represented and there was no material prejudice to him in proceeding on this basis.

Mr Morland asked for his objection to this ruling to be recorded.

Jurisdiction

The Sub-Committee heard submissions from Mr Morland and Mr Cain on the question of jurisdiction and, in particular, the effect of the transitional provisions set out in the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 (the 'transitional regulations').

The meeting was then adjourned from 12.30 pm until 1.40 pm for lunch.

Upon resuming the meeting the Sub-Committee noted Mr Morland's continuing objection to the preliminary hearing proceeding in the absence of the independent person (subject member) who had not yet arrived.

Investigating Officer's Report

The Sub-Committee went on to hear submissions from Mr Morland and Mr Cain on the content of the investigation report and the nature and extent of the evidence that should be considered at any substantive hearing. The following points were covered:

- The inclusion of material submitted by Cllr Hawker in his Updated Response to the Investigation Report dated 14 November 2012 notwithstanding that this referred to matters which preceded the period covered by the investigation;
- Whether the investigating officer had exceeded the scope of his authority by including matters in his report which were not specified in the complaint, and, if so, whether the report was legally unsound in part or as a whole;
- Bias / prejudice on the part of the investigator, as alleged in the Updated Response of the subject member; the subject member indicated that he was not relying on bias at this stage.
- The relevant law and proper treatment of evidence in relation to the subject member seeking to demonstrate that he was justified in making the comments he is alleged to have made, and, in particular, the effect of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Witnesses required for any substantive hearing; Mr Morland confirmed that he wished to cross examine all of the witnesses who had been interviewed as part of the investigation and they should therefore be required to attend any hearing. Mr Cain confirmed he would arrange for the attendance of the witnesses over and above those he intended to

call, but he pointed out there may be adverse criticism if their attendance is found to be unwarranted.

In view of the arrival of the independent person (subject member) at approximately 3.00 pm the Sub-Committee adjourned the meeting to give Cllr Hawker (and Mr Morland) the opportunity to consult Caroline Baynes. The meeting then resumed at 3.20 pm.

Independent Persons

The independent persons were invited to give their views on any matters they wished the Sub-Committee to take into account. Caroline Baynes indicated that whilst she was now present and available to the subject member she felt unable to make any substantial comment on the earlier proceedings. Colin Malcolm made observations on the question of jurisdiction and which code of conduct should apply.

Further discussions took place regarding witnesses, documentation and the identification of agreed and disputed facts.

Decision

Having considered all matters before them and after receiving advice from the Monitoring Officer the Sub-Committee **RESOLVED** as follows:

- 1. The issue of jurisdiction and which code of conduct should apply in respect of the investigation and determination of this complaint turned on the interpretation of the transitional regulations, and, in particular, article 7 and the wording the allegation or case shall be treated as having been made under [the new legislation].**
- 2. On the basis of the reasoning submitted by Mr Cain, which was accepted, the correct approach according to the law was to determine the complaint on the basis of the former code of conduct adopted by Westbury Town Council but under the new procedure adopted by Wiltshire Council from 1 July 2012. This was consistent with the approach taken by the Council in previous matters.**
- 3. The material submitted by the subject member in his Updated Response of 14 November 2013 would be included as part of the evidence to ensure that the subject member is able to put his defence to the complaint and the Sub-Committee have all the relevant facts and background on which to reach a decision.**

4. **The matter should proceed to a substantive hearing. The subject member's challenges regarding the fairness and legitimacy of the investigating officer's report will be considered in the light of all the relevant law and evidence at the substantive hearing.**
5. **The following witnesses will be called to give evidence at the hearing:**
 - **Mr Taylor - complainant**
 - **Councillor Andrews**
 - **Mr Harvey - Westbury Town Clerk**
 - **Mrs Mantle - Assistant to the Town Clerk**
 - **Councillor Windess**
 - **Mr Eatwell**

In addition to himself Cllr Hawker wished to call:

- **John Parker**
- **Michael Hawkins**
- **Charles Finbow**

Having regard to Mr Taylor's representations the investigating officer should also consider calling the following as witnesses:

- **Mrs Pam Cox-Maidment – Mayor**
- **Mr H. Prickett**
- **Mr G. King**

6. **The Investigating Officer, in consultation with the other parties, should prepare the following for circulation to the Sub-Committee and all parties:**
 - **A table setting out relevant details in summary form, including agreed and disputed facts;**
 - **Agreed documentation taking account of Mr Morland's e-mail correspondence, in particular, his e-mail of 2 March 2013.**
 - **Agreed witness list.**
7. **The substantive hearing to take place on 10 and 11 April 2013 at a venue to be confirmed.**

(Duration of meeting: 10.30 am to 4.30 pm)

The Officer who has produced these minutes is Ian Gibbons, Solicitor to the Council and Monitoring Officer direct line 01225 713052, e-mail ian.gibbons@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115