

STANDARDS HEARING SUB-COMMITTEE DECISION NOTICE

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 30 JULY 2013 AT THE COUNCIL CHAMBER - CIVIC CENTRE, ST STEPHENS PLACE, TROWBRIDGE. BA14 8AH.

Present:

Cllr Desna Allen, John Noeken and Cllr Roy While

Also Present:

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

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

Kieran Elliott - Senior Democratic Services Officer

Sam Bath - Democratic Services Officer

Legal Assistant - Aimee Fuller, Trainee Solicitor

Witnesses in attendance:

Ian Taylor - Complainant
Stephen Andrews, Westbury Town Councillor
Keith Harvey, Clerk, Westbury Town Council
Gordon King, Westbury Town Councillor

1 **Election of Chairman**

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

Resolved:

To elect Councillor Roy While 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 hearing should be conducted in public or closed session.

The investigating officer, through Mr Cain, indicated that he took a neutral stance on this issue.

Cllr Hawker, as the subject member, was not concerned either way.

The Complainant said he preferred the matter being heard in public.

Having regard to these representations and advice from the Monitoring Officer the Sub-Committee decided in the interests of openness and transparency that the hearing should proceed in public.

5 **Minutes of the Sub-Committee on 10 April 2013**

The Sub-Committee

RESOLVED:

To accept the minutes.

6 **Standards Committee Hearing regarding the alleged conduct of Councillor Russell Hawker of Westbury Town Council**

Procedure

The Chairman confirmed that the hearing would be conducted in accordance with the Council's Arrangements for dealing with Code of Conduct Complaints, a copy of which had been circulated with the papers. The Chairman outlined the order of the hearing from paragraph 8 of the procedure.

Documents

The Chairman obtained confirmation from the parties that they had all the documentation that was before the Sub-Committee:

- (1) Agenda report and appendices;
- (2) Bundle A - Alleged Breaches, Chronology and Witness Statements
- (3) Bundle B – Index of Documentary Exhibits
- (4) Bundle C – Index of Legal Documents

Monitoring Officer's Report

The Chairman invited the Monitoring Officer to introduce the complaint. Mr Gibbons explained the complaint and relevant background, as set out in his report, including the outcome of the preliminary hearing on 20 March 2013 and the hearing on 10 April 2013.

Mr Gibbons confirmed that the hearing would proceed on the basis of the determinations made at the preliminary hearing on 20 March, in particular that the matters would be considered against the Town Council's former code of conduct but under the new arrangements. It was noted that in his email of 29 July 2013 to the Sub-Committee Members Cllr Hawker had withdrawn his objection in respect of the hearing proceeding to deal with the matter under the old code of conduct.

Mr Gibbons then outlined the approach he would be advising the Sub-Committee to take in making its decision on the matter.

Preliminary Issues

Cllr Hawker sought a further adjournment of a few weeks to enable him to prepare his case properly. He proposed that the case against him should be presented and witnesses called. The proceedings to that point should be written up and he should then be given the opportunity to respond.

Cllr Hawker set out the history of the case from his perspective and made submissions in support of his request for an adjournment. Mr Cain made

submissions in response whilst agreeing to abide by the decision of the Sub-Committee on this issue.

The Monitoring Officer drew the Sub-Committee's attention to the decision of the previous Sub-Committee on 10 April 2013 when Cllr Hawker had been granted an adjournment. The Sub-Committee had made it clear on that occasion that any further adjournment was highly unlikely to be granted.

Having considered the request and given their views, without retiring, the Sub-Committee felt that Cllr Hawker had been given sufficient time to prepare and had submitted a wealth of information in support of his case. They decided, therefore, that the hearing should proceed.

The Sub-Committee determined that all the witnesses to be called by the investigating officer, apart from the Complainant, should withdraw at the close of Mr Cain's opening statement to ensure that their evidence was not influenced by what they had heard from earlier witnesses.

Substantive Complaint

Mr Cain presented the case on behalf of the Investigating Officer. He outlined the relevant facts, law and guidance and then called the Complainant, Mr Taylor, as his first witness. The other witnesses, Mr Andrews, Mr Harvey and Mr King withdrew.

The Chairman confirmed that all statements would be taken as read, unless indicated otherwise.

Mr Cain took Mr Taylor through his evidence drawing his attention to material documents in the Documentary Exhibits Bundle.

The Complainant made an opening statement in accordance with paragraph 8.7 of the hearing procedure.

Following a brief adjournment at 1.15 pm Cllr Hawker was given the opportunity to ask questions of the Investigating Officer and the Complainant. Members of the Sub-Committee followed with their questions.

The hearing was adjourned for lunch at 1.45 pm and resumed at 2.10 pm.

Mr Andrews, Mr Harvey and Mr King subsequently gave their evidence and responded to questions from Cllr Hawker and members of the Sub-Committee.

The investigating officer's case concluded at 2.55 pm.

Cllr Hawker indicated that he was unsure how to proceed with the presentation of his case and was offered the opportunity to discuss this with Caroline Baynes, the Independent Person (Subject Member).

Mr Gibbons confirmed that the Sub-Committee would in any event be taking into account the detailed written submissions from Cllr Hawker e.g. his revised

submission of 14 November 2012, as well as his witness statements and all other material documents.

An adjournment was, therefore, given to enable Cllr Hawker to consult with the Independent Person.

Upon the hearing resuming at 3.25 pm the Complainant made a request to leave, but on advice from the Monitoring Officer and the Sub-Committee he agreed to stay.

Cllr Hawker made his opening statement during which he set out in detail his response to the complaint. He stood by the truth of what he said on the various occasions covered by the complaint and considered that he was justified in saying these things. Consequently he denied that he had breached the Code of Conduct.

Cllr Hawker handed up the four witness statements he had circulated previously by email of 29 July 2013 - Mr M. Hawkins; Mr.J. Parker; Mr. C. Finbow and Mr. D. Windess.

Cllr Hawker concluded his opening statement at 4.10 pm and then responded to questions from Mr. Cain and members of the Sub-Committee.

Following concluding statements from the Complainant, Mr Cain and Cllr Hawker the Sub-Committee retired at 6.15 pm to County Hall, Trowbridge for their deliberations. Both Independent Persons, the Monitoring Officer, Democratic Services Officers and Legal Assistant were also present during the deliberations. These concluded at 9.00 pm when the parties were called in for the announcement of the Sub-Committee's decision.

Independent Persons

The Sub-Committee consulted both Independent Persons during the course of their deliberations. Their views are summarised as follows:

Colin Malcolm (Monitoring Officer and Sub- Committee):

- The Sub-Committee had all the relevant documents before them and were briefed by the Monitoring Officer about the nature of the proceedings, how they might wish to receive statements and evidence from the parties, and how they might tackle the decision making process.
- The Chairman explained to all parties how the hearing would be conducted.
- The decision to proceed notwithstanding the Subject Member's request for a postponement was fair.
- The Subject Member was given timely and helpful advice about what to include and a structure for his evidence by the Monitoring Officer and the

Chairman of the Sub-Committee, who were notably accommodating in supporting the Subject Member's presentation of his views.

- With the assistance of the Monitoring Officer and Chairman of the Sub-Committee, the Subject Member's position and view of his and others' behaviour during the events in question, together with the nature of his regrets, were made perfectly clear and were carefully probed by the Sub-Committee. Notwithstanding the refusal to grant the Subject Member's request for a postponement, he clearly articulated his case and that, as a consequence, the hearing was a fair and balanced process throughout.
- In conclusion, Mr Malcolm was satisfied that the hearing was conducted in a fair and balanced manner and that, in their deliberations, the Sub-Committee paid due attention to all of the material placed before them in reaching their conclusions.

Caroline Baynes (Subject Member)

- The Monitoring Officer set out a very helpful introduction, which put the day's hearing into context and outlined the process to be followed, and the matters that needed to be determined. This included outlining the various legal tests that might come into play.
- In relation to the Subject Member's request for a postponement the Sub-Committee's views were given openly, transparently and with cogent reasons given. Caroline Baynes was satisfied that the application was properly and fairly considered.
- The members of the Sub-Committee showed considerable patience in dealing with an unrepresented and ill-prepared Subject Member. The Subject Member himself had a very difficult job to listen, question and summarise his defence and justification, which was of some complexity, however he competently articulated and explained the points he wished to raise. The Sub-Committee demonstrated that they fully understood the issues involved.
- Sufficient time was made available to Cllr Hawker throughout the day to allow him to collect his thoughts and for him to speak to Caroline Baynes confidentially.
- The adversarial approach adopted in questioning witnesses seemed to be counter-productive and added little to the hearing.
- The non-attendance of some witnesses meant that their evidence could not be tested, however this did not appear to be critical and did not affect

the outcome of the hearing.

- Unfortunately, the quasi-legal nature of Sub-Committee hearings can cause some difficulties when, as in this case, only one side is legally represented. Caroline Baynes was satisfied that all assistance was offered to the Subject Member, but the case took longer, and progress was slower because he was not represented. The Monitoring Officer outlining the process and the meticulous questioning by the Chairman and other members of the Sub-Committee mitigated any disadvantage that the Subject Member may have suffered in not being represented.
- In conclusion, Caroline Bayne's view was that the hearing was fair and that the Subject Member had the opportunity to present his case fully and that it was considered carefully by the Sub-Committee.

Decision

Having considered carefully all the written and oral evidence before them, the submissions made by and on behalf of the parties, the views of the Independent Persons, and advice from the Monitoring Officer on the relevant law and guidance, the Sub-Committee decided as follows:

The Sub-Committee rejected Cllr Hawker's submissions that the investigation was biased and unfair. They were satisfied that the investigation had been carried out thoroughly and fairly and thanked the investigating officer for his work on the case.

1. Allegation - Laverton launch event - 21 October 2011

That on the 21 October 2011 at Westbury Cllr Hawker failed to treat a member of the public (namely Mr John (Ian) Taylor) with respect by publicly criticising the member of the public in such a way that the member of the public was able to be identified at an invitation only event when the purpose of the meeting was to celebrate an event and therefore criticism was not expected and the member of the public had no opportunity to reply.

The Sub-Committee found that:

- The Laverton launch event held on the 21 October 2011 was an official event of Westbury Town Council.
- Cllr Hawker attended the Laverton launch event in his capacity as a Westbury Town Councillor and Chairman of the Laverton Institute Trust Management Committee (LITMC).
- Cllr Hawker addressed the Laverton launch event in his capacity as Chairman of the LITMC and a member of Westbury Town Council.

The Sub-Committee were therefore satisfied that Cllr Hawker was acting in his official capacity in accordance with paragraph 2(1) of the Code of Conduct and the Code applied.

The Sub-Committee found further that:

- During his speech Cllr Hawker did not refer to Mr Taylor by name, but Mr Taylor could be identified from Cllr Hawker's comments.
- Cllr Hawker's speech was critical of Mr Taylor and his actions in relation to the Laverton Project, alleging that he had applied for the wrong funding and had caused delay and disruption to the Project.
- Cllr Hawker's speech caused some upset.

The Sub-Committee took into account the context in which Cllr Hawker made his speech. Mr Taylor had been inactive from the Laverton Management Committee since 31 March 2009 when a serious illness had caused him to resign. At the time of the launch event, to which he had been cordially invited, he was still recovering from intensive treatment he had received for his illness. The Sub-Committee were satisfied that he was there as a member of the public.

The Sub-Committee concluded that in these circumstances, having regard particularly to the nature and purpose of the event, and the fact that Mr Taylor was not in a position to respond, Cllr Hawker's critical remarks were inappropriate and offensive. As the chairman on that occasion he should have known better. This amounted to a failure to treat Mr Taylor with respect.

The Sub-Committee considered Cllr Hawker's contention that he had not been disrespectful as he had been justified in saying what he did because it was the truth, which he had sought to establish in his case. The Sub-Committee determined that it was not necessary in the circumstances of this case to establish the truth or otherwise of the comments that were made. They were of the view that making such comments in these circumstances was inappropriate and disrespectful irrespective of whether they were true or not. The Sub-Committee were not satisfied in any event that Cllr Hawker had made out his case as to justification and truth as it was clear to them from the evidence that Mr Taylor was not solely responsible for the outcome of the Project.

The Sub-Committee went on to consider the effect of Article 10 of the European Convention on Human Rights. The Monitoring Officer advised them on the relevant law, including the decision of the High Court in *R (on the application of Calver) v Adjudication Panel for Wales*, which had been referred to during the hearing.

The Sub-Committee considered Cllr Hawker's submission that if he was acting in his official capacity the enhanced protection for political expression should apply, and further it was clear that the Laverton Project was business of the council which had been a matter of considerable political debate.

The Sub-Committee had regard to the nature and purpose of the event, which from Mr Taylor's perspective, as a member of the public, was a social, non-political function to which he had been cordially invited. Within this context the Sub-Committee concluded that the comments made by Cllr Hawker in his speech did not amount to political expression and the higher level of protection did not apply. The Sub-Committee further concluded on balance that interference with Cllr Hawker's right to freedom of expression by finding a breach of the Code of Conduct and imposing a sanction was necessary and proportionate in the circumstances of this case to protect the reputation and rights of the Complainant.

The Sub-Committee therefore determined that the allegation was substantiated and found:

Breach - failure to treat with respect - paragraph 3(1) of the Code of Conduct.

2. Allegation - Westbury Town Forum Postings - 22 October 2011

That on the 22 October 2011 at Westbury Cllr Hawker failed to treat a member of the public (namely Mr John (Ian) Taylor) with respect by posting on the Westbury forum a summary of events at the invitation only meeting including the comments *There was also a focus on those who did their best to kill off the project, just so that people remember who those brass necked individuals are (given that they had the brass neck to attend the event)* and within the chain of that publication identified the member of the public as the person being referred to.

The Sub-Committee noted that Cllr Hawker posted his comments on the Westbury Town Forum within 24 hours of the Laverton launch event and his comments were closely linked with that event. Taking the content of the posts overall the Sub-Committee concluded that Cllr Hawker gave the impression that he was acting as a representative of Westbury Town Council, and by virtue of paragraph 2(1)(b) of the Code was acting in his official capacity, notwithstanding the disclaimer at the foot of his posts. The Code therefore applied.

The comments made explicitly about Mr Taylor in the posts were highly offensive, given particularly that he had been invited to the event. They amounted to a personal attack on an individual member of the public and were disrespectful.

As the comments were so closely linked with the events of the previous day the Sub-Committee did not consider that it was necessary in these circumstances to determine the truth or otherwise of the statements nor whether Cllr Hawker was justified in making them. Even if they had considered it necessary they were not satisfied on a balance of probabilities that Cllr Hawker had established his case.

In relation to Article 10, given the nature and content of the posts and their close proximity to the Laverton event the Sub-Committee determined that these were not political expression and that interference with Cllr Hawker's right to freedom of expression by a finding of breach and sanction under the Code was necessary and proportionate.

The Sub-Committee therefore determined that the allegation was substantiated and found:

Breach - failure to treat with respect - paragraph 3(1) of the Code of Conduct.

3. Allegation - Town Council meeting - 7 November 2011

The Sub-Committee found the facts as set out in paragraph 6.12 of the investigation report and agreed with the investigating officer's finding that Cllr Hawker was acting in his official capacity but no breach of the Code of Conduct had occurred on this occasion.

No breach

4. Allegation - Email to Westbury Town Council staff - 24 November 2011

That on 24 November 2011 Cllr Hawker failed to treat a member of the public (namely Mr John (Ian) Taylor) with respect in that he published to staff at Westbury Town Council an email which he stated that the member of the public was "*a bare faced liar*", "*deceived the Council throughout his involvement in the Laverton project*". The email also claimed that the complainant had trashed the business plan by *a string of lies and his own muddles and nonsense*"

The Sub-Committee agreed that the Investigating Officer was entitled to include this allegation as part of the case to be met by the Subject Member even though it did not form part of the original complaint. It was a matter that came to light in the course of the investigation and related to the subject matter of the complaint.

The Sub-Committee accepted the Investigating Officer's reasoning and conclusion, as set out in paragraph 6.15 of his report, that Cllr Hawker was acting in his official capacity when he sent the email of 24 November 2011 to Mr Harvey.

The Sub-Committee considered that the content of the email in so far as it related to Mr Taylor was offensive and in the nature of an excessive personal attack upon his character. They did not consider that it was necessary in this instance to determine the truth or otherwise of the statement, though they were not in any event satisfied that these comments were justified. Further, the Sub-Committee did not regard them as political expression attracting the higher level of protection. However, while the comments were clearly inappropriate and unhelpful the Sub-Committee

took into account the fact that they were not intended for public consumption and on that basis decided that there was no breach of the Code in this instance.

No Breach

5. Allegation - Email to GIG - 25 and 26 November 2011

That on the 25 and 26 November 2011 Cllr Hawker failed to treat a member of the public (namely Mr John (Ian) Taylor) with respect in that he published a group email (GIG) which stated that the Committee “*was being hoodwinked by a fraudster*” in such a way that it was apparent to the recipients that he was referring to the member of the public as the fraudster.

The Sub-Committee accepted the Investigating Officer’s reasoning and conclusion in paragraph 6.16 of his report that Cllr Hawker was acting in his official capacity when he wrote the emails to the General Interest Group (GIG).

The Sub-Committee further agreed with the Investigating Officer’s conclusion in paragraph 7.18 of his report that the words used were a personal attack on Mr Taylor that were damaging to his reputation.

The Sub-Committee decided that it was not necessary for them to determine the truth or otherwise of the comments that were made. They were of the view that making such comments in these circumstances was inappropriate and disrespectful irrespective of whether they were true or not. However, the Sub-Committee were not satisfied in any event that Cllr Hawker was justified in making these comments.

The Sub-Committee agreed that the comments about Mr Taylor, when viewed in the context of this exchange of emails and particularly the nature and status of the GIG, did not constitute political expression and did not therefore attract the higher level of protection.

The Sub-Committee therefore concluded that this allegation was substantiated and that Cllr Hawker had been disrespectful in breach of the Code.

Breach - failure to treat with respect - paragraph 3(1) of the Code of Conduct.

6. Allegation - Letter to Editor, White Horse News - 6 December 2011

The Sub-Committee felt that the language in Cllr Hawker’s letter that was published in the newspaper was more temperate in tone and content and was written in response to material from Mr Taylor which had been published. The Sub-Committee found that there was no breach of the Code.

No breach.

7. Allegation - Westbury Town Council Meeting on 9 January 2012

The Sub-Committee accepted the conclusion of the Investigating Officer in paragraph 7.20 that there was no conclusive evidence that Cllr Hawker had stated in the meeting that Mr Taylor was lying and no breach of the Code.

No breach.

8. Allegation - Bullying - between 21 October 2011 to 9 January 2012

That between 21 October 2011 and 9 January 2012 behaved in such a way that it amounted to bullying towards Mr John (Ian) Taylor in that the behaviour taken overall is offensive, insulting and humiliating and reflect an attempt to undermine Mr Taylor.

The Sub-Committee firstly considered, on advice from the Monitoring Officer, the definition of bullying that should be applied. They had regard to the definition included in guidance from the former Standards Board for England (at page 52 of the Investigating Officer's report) but noted in particular the helpful comments of the First-Tier Tribunal in case reference LGS/2011/0537, set out at paragraph 4.7 of Cllr Hawker's revised written submission dated 14 November 2012 (A8 Tab 3 of Bundle A). There the Tribunal adopted the narrower Shorter Oxford dictionary definition of bullying as 'to act the bully towards; to intimidate or overawe' and stated that the threshold for a bullying relationship to be proven must be a high one.

On the Sub-Committee's analysis of the events over the period in question and based on their findings, as set out above, there were essentially two sets of inter-related events which had resulted in a finding of disrespect in breach of the Code - those on the 21 and 22 October 2011 and the correspondence with the GIG on 25 and 26 November 2011. Looking at both sets of events the Sub-Committee were satisfied that that there was no evidence of any clear intent on the part of Cllr Hawker to bully Mr Taylor and Mr Taylor was, in their view, capable of looking after himself. The Sub-Committee concluded that, overall, Cllr Hawker's conduct, whilst disrespectful, fell short of bullying.

No breach

Having determined the above breaches of the Code the Sub-Committee heard submissions from Mr Cain and Cllr Hawker on the question of sanctions and then withdrew to consider this part of the case.

Upon returning the Chairman announced that the Sub-Committee had

RESOLVED:

To recommend Westbury Town Council to consider imposing the following sanctions in respect of the breaches of the Code identified above:

- 1. Censure**
- 2. Suitable training and support for Cllr Hawker in connection with his obligations under the Code of Conduct.**

The Chairman concluded the hearing by thanking all parties for their attendance and contributions.

(Duration of meeting: 11.30 am to 9.25 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

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