

## DECISION NOTICE: REFER FOR INVESTIGATION

**Reference WC - ENQ00253**

**Subject Member**

Cllr Russell Hawker – Westbury Town Council

**Complainant**

Cllr Sheila Kimmins – Westbury Town Council

**Representative of the Monitoring Officer**

Mr Paul Taylor

**Independent Person**

Mr Stuart Middleton

**Review Sub-Committee**

Cllr Stuart Wheeler - Chairman

Cllr Ruth Hopkinson

Cllr Sue Evans

Mr Richard Baxter (non-voting)

Miss Pam Turner (non-voting)

**Issue Date**

14 September 2018

**Complaint**

That Cllr Hawker has sent emails to the complainant and other town councillors raising a proposal that certain co-opted members of the Council resign and then run for election to take advantage of an upcoming election and to get the Town Council in a position to be able to exercise the general power of competence. When the Complainant objected to the members discussing her role without first discussing the issue with the Complainant, the Subject Member alleged that she and others were deliberately, and for their own satisfaction, stopping the Town Council from applying to open a post office and in some of the emails copied in the media. The complainant alleges that by his

actions Cllr Hawker has brought the Town Council into disrepute and has breached the Westbury Town Council's Code of Conduct by:

1. Not treating others with Respect.
2. Not promoting equality by not discriminating.
3. behaving in a Bullying or intimidating way.
4. Disclosing information in breach of data protection principles.

## **Decision**

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee determined to refer the complaint for investigation.

## **Reasons for Decision**

### **Preamble**

The Sub-Committee were satisfied that the initial tests of the Assessment Criteria had been met, being that the member was and remains a member of Westbury Town Council, that the conduct related to their conduct as a member of that council, and that a copy of the relevant Code of Conduct was provided for the assessment.

The Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt it would be a breach, whether it still appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision, the Sub-Committee took into account the complaint and supporting documentation, the response of the Subject Member, the initial assessment of the Deputy Monitoring Officer to refer the matter for investigation, and the Subject Member's request for a review. The Sub-Committee also considered verbal statements from the Complainant and Subject Member at the review.

### **Conclusion**

The complaint related to a series of emails from the Subject Member to other members of Westbury Town Council, including the Complainant, regarding a proposal from the Subject Member that several members who had been co-opted onto the council resign and instigate a by-election. There was no suggestion that the proposal was motivated by malice on the part of the Subject Member, who had been aiming for the council to meet the requirements to gain the power of competency to take certain actions, which necessitated a certain proportion of members be formally elected.

The Sub-Committee agreed with the conclusion of the Deputy Monitoring Officer that it could not be a breach of the Code simply to call for the resignation of another member, even if that call was strongly made or seen by some as discourteous. Freedom of expression, particularly in the context of political speech, requires a high threshold

before any restriction is imposed, as would be the case if it were found that a breach had occurred and sanctions should be applied in this instance.

Nevertheless, the Sub-Committee also agreed with the conclusion of the Deputy Monitoring Officer that, in circulating the email chain of the discussion between the Subject Member and Complainant, among others, to a local media outlet, this represented an escalation of behaviour and, from the materials submitted by the parties, represented what appeared to be an attempt to intimidate and unduly pressurize the Complainant and others. The Sub-Committee agreed that this could therefore amount to an unreasonable or excessive attack on a person or a person's character, which they considered reasonably indicated, if proven, that there had been a failure to promote and support high standards of conduct as required by the relevant Code of Conduct.

It had been raised that the Subject Member subsequently withdrew his email and therefore any supposed intimidatory impact, which in any case was disputed by the Subject Member, had not taken place. However, the Sub-Committee considered that whether or not the email had been subsequently withdrawn, the question was whether there had been an attempt to put pressure on the complainant, not whether that attempt had been successful or had been abandoned.

It was therefore determined to refer the matter to the Monitoring Officer for investigation.

### **Additional Help**

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