

## **DECISION NOTICE: NO FURTHER ACTION**

**Reference COC122208**

### **Subject Member**

Mr Russell Hawker – (formerly) Westbury Town Council

### **Complainant**

Mrs Sheila Kimmins – Westbury Town Council

### **Representative of the Monitoring Officer**

Mr Paul Taylor

### **Independent Person**

Mr Tony Drew

### **Review Sub-Committee**

Cllr Peter Hutton - Chairman

Cllr Trevor Carbin

Cllr Bob Jones MBE

### **Decision Date**

17 January 2020

### **Issue Date**

22 January 2020

### **Complaint**

On 29 May 2018 the Complainant, Mrs. Sheila Kimmins, submitted a complaint about the conduct of Mr. Russell Hawker, who was at that time a member of Westbury Town Council.

In her complaint, Mrs. Kimmins, who was also a member of the Town Council, stated that Mr. Hawker had alleged in correspondence to her and others that she had deliberately, and for her own satisfaction, prevented the Town Council from applying to open a post office in the town. Some of this correspondence had been copied to the local media.

Mrs. Kimmins believed that, by his actions, Mr. Hawker had breached 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 take no further action in respect of the complaint.

## **Reasons for Decision**

### Background

The complaint was initially assessed by the Deputy Monitoring Officer on 17 July 2018 with a decision issued on 6 August 2018 to refer the complaint for investigation. A Review Sub-Committee was convened at the request of the Subject Member on 10 September 2018, which issued a decision on 14 November 2018 to uphold that initial assessment decision.

Subsequent to that decision being made the Subject Member informed all parties he had resigned from Westbury Town Council. Under the assessment criteria for complaints in reflection of relevant law, no longer being an elected member was not in itself an automatic reason for not proceeding with an investigation. The Monitoring Officer therefore requested another Review Sub-Committee to consider whether or not an investigation into the allegations should go ahead. On 14 November 2018 another Review Sub-Committee resolved that the matter should proceed to investigation, notwithstanding the resignation of the Subject Member from the Town Council.

The Subject Member was and remains a Member of Wiltshire Council.

The investigation was undertaken by Chai Associates who recommended that no further action be taken on this complaint. That conclusion was endorsed by the Monitoring Officer. The Complainant then requested a review of that decision.

### Meeting

In reaching its decision, the Sub-Committee took into account the original complaint and supporting documentation, the response of the Subject Member, the initial assessment of the Deputy Monitoring Officer to refer the matter for investigation, the Subject Member's request for a review, the decisions of Review Sub-Committees on 14 September 2018 and 14 November 2018 to refer the matter for investigation, the Investigating Officer's report, the Monitoring Officer decision notice to uphold the recommendation of the Investigating Officer to take no further action, and the request for a review of that decision by the Complainant.

The Sub-Committee also considered verbal statements from the Complainant and the Subject Member at the Review Sub-Committee meeting on 17 January 2020. The Subject Member had also sent a number of emails to the Sub-Committee in advance of the meeting on 17 January 2020, including requesting a deferral of the meeting.

### Preamble

The Sub-Committee, considering all of the above information and the statements made, noted that the Investigating Officer had been very critical of the Subject Member's comments and behaviour toward the Complainant, but that on balance had concluded those comments and behaviour did not rise to the level of a breach of the Westbury Town Council Code of Conduct. The Complainant considered that the decision of the Monitoring Officer to uphold the Investigating Officer's report had not properly considered some town council policies, that legal cases had not been properly interpreted in the context of the complaint against the Subject Member, and that the conclusion of the Investigating Officer was as a result incorrect. For their part, the Subject Member objected to assessment of the issues as being finely balanced, as well as aspects of legal interpretation and other procedural matters.

The Sub-Committee took account that following three separate decision notices resolving to refer the original complaint for investigation, a detailed investigation by an external and experienced investigator had concluded that, though the Subject Member's behaviour had been at times rude and intimidatory, escalating an argument to the point where offence and upset had been caused, the higher threshold for protection of statements made in a political context meant that the matter had not risen to the level of a breach of the Code of Conduct.

The Sub-Committee noted that the Monitoring Officer was satisfied that the investigation had been properly carried out and that the report and findings of that investigation were sound. The Sub-Committee considered that the objections raised to that report by the Complainant were not sufficient to overturn that decision.

### Conclusion

The Sub-Committee agreed Person that this case required the rights of the Subject Member to freedom of expression to be balanced against the impact of those comments on the Complainant. The issue was whether those comments had crossed the line into bullying and harassment. The Sub-Committee accepted that the behaviour of the Subject Member had caused considerable upset to the Complainant.

The Sub-Committee felt the Investigating Officer's report had been correct both in considering the context of the remarks to be part of a political discussion which had then escalated, and that the Subject Member's status as a Member of Wiltshire Council was irrelevant. A discussion between town councillors regarding town council business was by definition a matter of local politics, notwithstanding the fact that some members did not consider themselves political in nature. Additionally, during such a discussion between the parties involved it was clear that the Subject Member had been acting in a capacity as a town councillor, and not in any other capacity. The Council noted the existence of council policies relating to 'Dignity at Work – Bullying and Harassment', however under the Standards regime examined matters in relation to a Code of Conduct.

Both Complainant and Subject Member had referred to a number of legal cases and their interpretations in their submissions. The Sub-Committee was nevertheless satisfied, as had been the Monitoring Officer, with the legal analysis of the issues by the Investigating Officer.

In conclusion, therefore, the Sub-Committee, whilst not condoning the actions of the Subject Member which had caused upset to the Complainant, upheld the decision of the Monitoring Officer that no further action be taken in respect of the complaint.

The Sub-Committee noted that the Subject Member was no longer a Member of Westbury Town Council. However, it did consider that in general any council should consider whether to provide training on matters of respect and bullying if it did not already do so, in an effort to prevent disagreements between any parties from escalating to the point where a breach of a Code might occur.

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