

DECISION NOTICE

NO BREACH OF THE CODE OF CONDUCT

Wiltshire Council Reference No: WC 43/09

Date of Determination 2 September 2011

Subject Member

Mr David Gardiner, formerly a member and chairman of Winsley Parish Council.

Represented by Mr Ian Kieschke

Complainant

Mrs Elizabeth Conway

Hearing Sub-Committee Membership

Mr Gerry Robson, OBE - Chairman (Independent Co-Opted Member)

Councillor Julian Johnson (Wiltshire Council Member)

Miss Pam Turner (Town / Parish Co-Opted Member)

Monitoring Officer / Legal Adviser

Mr Ian Gibbons

Investigating Officer

Mr Roger Wiltshire

Clerk

Ms Pam Denton

Complaint

The Hearing Sub-Committee of Wiltshire Council's Standards Committee met to consider an investigation report on a complaint that Mr. David Gardiner had failed to comply with the Model Code of Conduct for Members, adopted by Winsley Parish Council.

The complaint concerned allegations that Mr Gardiner had breached the Code of Conduct by his conduct as chairman at a meeting of Winsley Parish Council on 1 September 2009 and by sending a letter dated 6 October 2009 to Mrs Conway refusing her requests for information and warning her of legal action. It was alleged that these actions amounted to a breach of the following provisions of the Code:

Paragraph 3(1) You must treat others with respect;

Paragraph 3(2)(b) You must not bully any person;

Paragraph 3(2) (c) You must not intimidate or attempt to intimidate any person who is or is likely to be:

- i. a complainant
- ii. a witness, or
- iii. involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including the subject member) has failed to comply with his or her authority's code of conduct

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

The complaint was assessed by the Standards Assessment Sub-Committee of Wiltshire Council on 2 December 2009, and was referred to the Monitoring Officer for investigation.

The Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Investigating Officer, pursuant to section 82A of the Local Government Act 2000.

The Standards Consideration Sub-Committee considered the Investigating Officer's report on 30th June 2011 and decided that the above allegations should be referred to the Standards Hearing Sub-Committee for determination.

A hearing was, therefore, conducted by the Hearing Sub-Committee on 2 September 2011 in accordance with Regulations 18 and 19 of the Standards Committee (England) Regulations 2008 and the Council's Procedure for Determination of Complaints.

The Chairman introduced those present and explained the purpose and process for the hearing. The Chairman confirmed that the matter would be heard together with a complaint from Mr Barnes, as agreed by the parties.

There were no declarations of interest by the members of the Sub-Committee.

Summary of Evidence Considered and Representations Made

The Sub-Committee considered the following evidence and representations:

1. The written complaints;
2. The Investigator's reports dated 6 June 2011, amended on 18 August 2011, which contained evidence from interviews conducted with the Subject Member, the Complainants, and others, as well as copies of relevant documents.

3. Pre-Hearing Process Summary, including Supplementary information submitted by the Subject Member dated 27 July 2011.
4. Representations at each stage from the Subject Member, his representative and the Investigating Officer.
5. Oral evidence from the Subject Member.

The Sub-Committee adjourned the meeting and withdrew to consider its decision at each stage of the process. The Clerk and the Legal Adviser remained with the Sub-Committee to record their decision and provide advice on matters of law and procedure.

Preliminary Issue

The Sub-Committee considered submissions from the parties on whether the hearing should be open to the public. All parties confirmed that they were content for the matter to be heard in public.

The Sub-Committee decided not to exclude the public from the hearing as they considered that the public interest in openness and transparency outweighed the public interest in preserving confidentiality.

Background

The background to this case was a dispute or disagreement between Winsley Parish Council and Dorothy House over the renewal of the lease of a field owned by Dorothy House and leased to the Parish Council as a playing field. The lease was due for renewal and Dorothy House wished to amend the terms of the lease to allow them to use the playing field as a car park on a number of days each year. This was unacceptable to the Parish Council and a "campaign" was started by the Parish Council, and some individuals on the Parish Council acting in a private capacity, to have the lease renewed on the original terms. The campaign raised an increased level of interest which was shown by leaflet distribution and correspondence and articles in the local newspaper.

It is no surprise that a number of the residents of Winsley took an interest in what their Parish Council were doing on this issue and inevitably took sides on the matter. It is against this background that a number of people decided to attend the Parish Council meeting on 1 September 2009 at which the matter of the lease was to be discussed.

Before the meeting Mr Gardiner spoke to some of the attendees asking why they were there and reminding them of Winsley Parish Council protocols on the involvement of the public in meetings of the Parish Council. The meeting

was always going to have a raised level of interest, reflected in the number of people who attended the meeting, normally only one or two people would attend meetings. Perhaps the tone was set by the Chairman's comments to the public attendees before the meeting, and the temperature rose during the adjournment in which the members of the public are allowed to address the Parish Council. As the meeting continued the public became more restless and vocal. (Many people may be unused to the conduct of members during meetings and debates, whether in council at local or county level or indeed parliament, where there can appear to be a lack of attention to the speaker, this often interpreted to be disinterest or rudeness to the speaker). Whatever, the public became more restless and the chairman warned them on 3 occasions before, after an abusive interruption, he decided to clear the public gallery. The Chairman's actions at the meeting resulted in two complaints where the individuals genuinely felt that the Chairman had breached the Council's Code of Conduct.

Again, against this background, and in an attempt to get information one of the complainants (**prior** to making a complaint - this is important) sought to enter into correspondence with the Parish Council through the clerk to clarify 4 issues. She chased up her request both in writing and verbally, before receiving a reply from the Chairman some 8 weeks after her original letter. The response was written in legalistic terms and refused to provide answers to the questions and threatened legal action against the correspondent.

It is against this background that the complaints were made and the Sub Committee accepted that these were genuine and the complainants were fully entitled to bring them.

Based on the evidence provided the Sub-Committee made the following findings of fact:

FINDINGS OF FACT (Stage 1)

1. Councillor Gardiner was co-opted to office on 25 April 2006
2. Councillor Gardiner served as Chair of Winsley Parish Council between May 2006 and March 2010.
3. Councillor Gardiner resigned as Chair and as a councillor on 30 March 2010
4. The Winsley Parish Council meeting scheduled for 25 August 2009 did not take place as only 3 councillors (Councillors Gardiner, Allison and Kieschke) attended the meeting, making the meeting inquorate.
5. A meeting of Winsley Parish Council was arranged for the following week, 1 September 2009.

6. Thirteen members of the public including Katie Fielding of the Wiltshire Association of Local Councils, as well as Wiltshire Councillor Mrs Conley and Mr Goater, an employee of Winsley Parish Council, attended the re-arranged meeting held on 1 September 2009.
7. Councillor Gardiner approached members of the public prior to the meeting on 1 September 2009 asking why they were there and advising them to abide by Council protocol and procedures.
8. The public had participated during the adjournment.
9. Feelings were running high and the meeting was subject to a series of interruptions, including an abusive interruption, from the members of the public.
10. Councillor Gardiner issued 3 warnings to the public that they were not able to speak during council business, only during the adjournment.
11. Councillor Gardiner, after his warnings and when behaviour did not improve, excluded all members of the public.
12. No resolution to exclude the public was passed.
13. Councillor Conley was not removed because she is accepted as a Wiltshire Council representative and Mr Goater was an employee of Winsley Parish Council who regularly had an agenda item.
14. After the public had left, the Council resumed the meeting and a new lease for the playing field was signed.
15. On 17 July 2009 Mrs Conway received Councillor Kieschke's flier that was critical of the Hospice.
16. Mrs Conway attended the Winsley Parish Council meeting held on 28 July 2009. During public question time Mrs Conway commented on Councillor Kieschke's flier.
17. An article that appeared in the Wiltshire Times on 31 July 2009 concerning the lease of the playing field led to Mrs Conway writing to Winsley Parish Council, the letter being hand delivered to the Parish Clerk on 11 August 2009.
18. On 17 August 2009 Mrs Conway received a response from the Parish Clerk.
19. Mrs Conway attended the Winsley Parish Council meeting held on 1 September 2009 and made a statement in the adjournment for public statements. Mrs Conway left the meeting when Councillor Gardiner cleared the public gallery.

20. On 10 September 2009 Mrs Conway wrote to the Parish Clerk asking for a reply by 14 September 2009.

21. On 28 September 2009 Mrs Conway spoke to the Parish Clerk regarding her letter.

22. On 5 October 2009 Mrs Conway spoke to the Parish Clerk regarding her letter.

23. On 6 October 2009 Mrs Conway received the letter from Councillor Gardiner.

24. Mrs Conway felt intimidated by the letter from Councillor Gardiner dated 6 October 2009.

25. Councillor Gardiner viewed correspondence from Mrs Conway as vexatious and sought legal advice.

On the basis of these findings of fact the Sub-Committee went on to Stage 2 to consider whether Mr Gardiner's actions amounted to a breach of the Code of Conduct.

DECISION ON A POSSIBLE BREACH OF THE CODE OF CONDUCT (Stage 2)

After hearing representations from the parties and after careful consideration the Sub-Committee concluded as follows:

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

No breach.

Paragraph 3(2) (b) You must not bully any person.

No breach

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

No breach.

Paragraph 3(2) (c) You must not intimidate or attempt to intimidate any person who is or is likely to be:

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct

No breach.

REASONS

In relation to the meeting on 1 September 2011 Councillor Gardiner was exercising his role as chairman of the Parish Council under difficult circumstances in which feelings were running high. The public were allowed to participate in the meeting at the appropriate point and had been warned about their behaviour. The Chairman was justified in his actions.

In relation to the letter of 6 October 2011 the Sub-Committee acknowledged that Mrs Conway felt intimidated, but at the time of the letter Councillor Gardiner could not have concluded that she was likely to be a complainant or witness to a complaint under the Code of Conduct.

The letter was ill-advised and should have responded to the points raised but did not amount to a breach of paragraphs 3 (1), 3 (2)(b) or (c) or 5.

The Sub-committee noted that this complaint had taken longer than normal to resolve and understood that Wiltshire Council had offered an unreserved apology to Mr Gardiner

In accordance with paragraph 20(2) of the Standards Committee (England) Regulations 2008 Councillor Gardiner confirmed that he consented to the publication of a summary of the Decision Notice.

This Decision Notice is sent to the Complainant, the Subject Member, Winsley Parish Council and Standards for England.

Chairman