

Investigating Officer's comments re Councillor Hawker's response to report

1. Councillor Hawker's right to criticise.

Councillor Hawker has the right to criticise the actions of other people, and the right to express his opinions. This right is enshrined in paragraph 10(1) of the European Convention on Human Rights, Freedom of Expression. The Investigating Officer strongly supports this right. However, it is not an absolute right; paragraph 10(2) of the European Convention on Human Rights gives examples where the freedom of expression may be subject to restrictions.

2. Councillor Hawker's evidence

In his response Councillor Hawker has included 'My new evidence and my conclusions'. The new evidence consists of 3 email dialogues from John Parker, Mike Hawkins and Charlie Finbow.

In their dialogues Mr Hawkins and Mr Finbow say Mr Taylor claimed he could obtain grants and that he was the right man for the job (obtaining grants for the Laverton Project). They also both agree that no grants were obtained whilst Mr Taylor was in charge, or any forward progress made.

Councillor Hawker has also included an email dialogue from John Parker, to whom Councillor Hawker refers as an expert witness. Councillor Hawker states '*John Parker makes it clear that HLF grants – or other grants – could have been achieved if the project had been managed in the right way.*' This is Mr Parker's belief as held in his answers to Questions 10 and 15 in the email.

3. Justification of criticism

There are grounds and evidence that suggest Councillor Hawker was justified in some criticism of Mr Taylor's actions e.g. there is evidence to suggest Mr Taylor was introduced as, or said himself, he was the right person to apply for and obtain grants for the Laverton Project. However, Mr Taylor failed to obtain grants.

The Investigating Officer agrees Councillor Hawker had grounds for criticising Mr Taylor's actions.

4. Terms and phrases used by Councillor Hawker

Councillor Hawker has used the following terms in regard to Mr Taylor –

'Ian Taylor actually did destroy the project....' (Appendix E1, page 108)

'Pack of lies that Ian Taylor recently stated...'

'Ian Taylor is a bare faced liar and deceived the council....'

'Based on a string of lies and his own muddles and nonsense.....'

'...a string of deceptive manoeuvres...'

'Statements designed to confuse everyone...'(Appendix H1, page 146)

'It was clear to me that the committee was being hoodwinked by a fraudster.'

‘..it was all a series of manipulations and nonsense designed to cover his own errors and confuse the whole of the rest of the council...’(Appendix I2, page 150).

5. Evidence relating to the above claims

The evidence provided by Councillor Hawker and obtained during the course of the investigation does not show Mr Taylor lied, is a bare faced liar, was deceptive or deceived the council, that Mr Taylor hoodwinked anyone or was fraudulent. There is no evidence that Mr Taylor destroyed the project, or that he confused the council.

6. The Adjudication Panel Case, APE 0441, Councillor Whipp

Councillor Hawker believes the above case relates to the complaint and investigation made against him. It does not.

In the Councillor Whipp case there was evidence to suggest the people, whom Councillor Whipp called liars, had lied. Comments had been made in a leaflet regarding expenses claimed by another councillor. The comments had been investigated by the Police; it appears there had been an admission the comments were wrong; and the police had referred the case to the Crown Prosecution Service. The Adjudication Panel in paragraph 15 of their decision (Appendix B4, page 55) said the question that should have been explored was whether the persons responsible for the leaflet had deliberately and knowingly included false information in the leaflet, or whether it was simply a genuine error which could reasonably be explained. If the answer to the first part of the question was ‘yes’, then Councillor Whipp was not being disrespectful.

In the Councillor Hawker case there is no evidence that Mr Taylor deliberately and knowingly gave false information. Mr Taylor may have been introduced, or may have said himself, that he was the right person to apply for and obtain grants, and then failed to do so, but there is no evidence that he deliberately and knowingly gave false information, that he lied, hoodwinked, defrauded or deceived.

7. Unreasonable or excessive personal attack

The Standards for England guidance relating to the Code of Conduct paragraph 3(1) ‘You must treat others with respect’ includes *‘Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack.’*

The European Convention on Human Rights, Article 10 Freedom of expression (1) states *‘Everyone has the right to freedom of expression’.*

Article 10(2) includes - *‘The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society....for the protection of the reputation or rights of others.....’.*

Paragraph 10 of the European Convention on Human Rights allows freedom of expression and gives a higher level of protection to political statements. However part (2) allows interference with freedom of expression for the protection of the reputation or rights of others.

Page 15 of Councillor Hawker's response includes comments relating to paragraph 7.13.4 of the report. Councillor Hawker states '*Therefore, my political comments are protected by freedom of speech. This whole saga revolves around local politics and me telling the truth*'. Whilst political comments may be protected under both the Code of Conduct and the European Convention on Human Rights, the terms and phrases used by Councillor Hawker (see paragraph 4 above) are not political comments, or criticisms of ideas and policies, but are an unreasonable, excessive personal attack which sought to damage the reputation of Mr Taylor.

Specific points raised by Councillor Hawker in his response –

Page 8, points

6.11.1 – agreed

6.11.2 – agreed

6.11.3 – agreed

6.11.4 – agreed

Page 9 point 6.11.7 '*Her pseudonym of 'Indie' is basically reflecting her real role as an independent councillor*'. This is Councillor Hawker's opinion; it is not an opinion of the Tribunal and does not appear in the decision notice.

6.11.8 '*...neither the forum nor the thread in question refers to me by name....*' See the report, page 10, paragraph 6.11.6 and appendix E, page 108, a post from Mike Hawkins starts '*Thanks for this Russell....*'

Page 11 points 6.18.7 and 6.18.8 '*Notes (not minutes)...*' – agreed.

Page 17, paragraph 7.17.1

On the 24th November 2011 Councillor Hawker sent an email to the Westbury Town Clerk and the Assistant to the Town Clerk. Councillor Hawker states that his words can be justified. The email contains the phrases 'pack of lies', 'bare faced liar', 'deceived the council', 'string of lies', 'his own muddles and nonsense', 'deceptive manoeuvres'. Councillor Hawker has not shown justification for these phrases.

Councillor Hawker has further claimed the email was a private discussion between him and two council officers. It is my belief that when sending the email Councillor Hawker was acting in his capacity as councillor (see paragraphs 6.15.2 and 6.15.3, pages 12 and 13 of the report).

Also see Standards for England online case review which includes the following question regarding official capacity –

Q11: Do private discussions about authority business come under “official capacity”?

Standards for England is likely to view any private discussion of authority business, either with members or with the authority’s officers, as carrying out the business of the member’s office.

Only where there is very clear evidence that the conversation was not concerned with performing authority business will it fall outside paragraph 2(1) of the Code of Conduct.

Page 18

In his second to last paragraph on page 18, Councillor Hawker says *‘there is plenty of evidence available in the form of well known films that contain the phrase ‘I am such a fraud’*. However, Councillor Hawker fails to provide any examples of proof of this claim, and any such use would need to be considered in context of the situation, the dialogue, and the era in which the film was set or made.

Page 19 Point 7.13.3

Bullying

Councillor Hawker states *‘the guidance issued by Standards for England on the meaning of bullying is wrong’*.

The Standards for England definition of bullying (see appendix B3, page 51 of the report) aligns very closely with the ACAS (Advisory, Conciliation and Arbitration Service) definition of bullying as held in its advice leaflet ‘Bullying and harassment at work’.

‘How can bullying and harassment be recognised?’

There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient’.

On page 4 of his response, Councillor Hawker, in reference to paragraph 4.7 of the report and the Standards for England definition of bullying, includes the First Tier Tribunal decision in the Councillor Brookes case, LGS/2011/0537, paragraph 40. The First Tier Tribunal Panel decided they would not use the Standards for England guidance on bullying but instead the used narrower, Shorter Oxford dictionary definition – *‘to act the bully towards; to intimidate to overawe’*. The Councillor Brookes case was heard on the 15th August 2011, with a decision date of the 30th September 2011.

However, a subsequent First Tier Tribunal case did not to use the Shorter Oxford Dictionary definition, and instead used the Standards for England definition –

The First Tier Tribunal case reference LGS/2011/0572, Councillor Heath, Hearing date 22nd March 2012. Councillor Heath was alleged to have bullied Mr Wood, the Chairman of the Parish Council. Paragraph 4.2.2.1 of the decision quotes the Standards for England definition of bullying as held in the report, appendix B3 page 51-52.

The Tribunal in Paragraph 4.3.2.3 found Councillor Heath had breached the Code of Conduct, paragraph 3(2) You must not (b) bully any person.

Two other, subsequent, First Tier Tribunal cases appear to have used the Standards for England definition of bullying.

The First Tier Tribunal case reference LGS/2011/0562, Councillor Smith, hearing date 27th January 2012, decision date 7th February 2012. Councillor Smith was alleged to have bullied officers of the council in comments made on a Face Book site. The Tribunal decision in paragraph 48 said –

‘The Appellant used inappropriate language which was directed at identifiable officers of the Council. He called them liars, accused them of misleading consultees and rigging the outcome of the consultation, said that their reports and actions were criminal, accused them of waging war on the people of Prescot, said they were a disgrace and called for their resignations.....’

The Tribunal in paragraph 49 concluded that Councillor Smith had bullied staff.

The First Tier Tribunal case reference LGS/2011/0558, Councillor Nash, hearing date 16th – 18th January 2012, decision date 25th January 2012. Councillor Nash was alleged to have bullied the Clerk, Mrs Dury. The Tribunal stated –

144 Applying the objective test, the Tribunal reaches the same conclusion in the present case: ‘the words and writing of the Appellant amounted to no more than expressions of personal anger and personal abuse and did not constitute political expression which attracts the higher level of protection.’ In these circumstances, it is a proportionate interference with the Appellant’s freedom of expression to find that he has breached the Code of Conduct.

145 The Tribunal find that the Appellant, by his inappropriate and inexcusable behaviour, failed to treat Mrs Dury with respect and amounted to bullying. He is in breach of paragraphs 3(1) and 3(2)(b) of the Code of Conduct.

Appendix A Findings of Fact

Pages 19 - 20

19. Agreed

22. Councillor Hawker’s initial post was not in response to a question.

Councillor Hawker goes on to mention – the Laverton launch event and his speech, the organisation of the event, the actions of Bill Braid and Ian Taylor, the work carried out by John Parker, the appointment of a new marketing manager, Councillor

Andrew's actions as the previous Chair of the LITMC, and Councillor Hawker uses the term 'we' when describing the actions Westbury Town Council or the LITMC.

23. Although Councillor Hawker's footer states he is in his private capacity, the content of the posts suggests otherwise.

56. Councillor Hawker was not present at the LITMC meeting held on the 1st November 2006; the report does not say that he was.

57. The notes of the LITMC meeting held on the 1st November 2006 strongly suggest that it was not Mr Taylor who set the theme of the grant applications.