

**From:** Gibbons, Ian

**Sent:** 19 March 2013 08:42

**To:** F M; Williams, Christopher; Greenman, Howard; Caswill, Chris; Cain, Frank; Wiltshire, Roger; Denton, Pam; Caroline Maddocks; Russell Hawker; Ian Taylor; Colin Malcolm

**Subject:** RE: Standards Hearing Sub-Committee meeting - Wednesday, 20 March 2013 - Agenda Item 5 - WC 03/12 Standards Complaint - Preliminary hearing

Dear All,

Further to recent correspondence from Mr Morland on behalf of Councillor Hawker I attach a note of the preliminary issues which are to be considered at the preliminary hearing tomorrow.

Mr Morland has circulated his e-mail correspondence covering the points he wishes to raise, including his e-mail below.

Yours sincerely,

**Ian Gibbons**

Director of Law & Governance

and Monitoring Officer

Wiltshire Council

Tel. 01225 713052

PA. [joanna.smith@wiltshire.gov.uk](mailto:joanna.smith@wiltshire.gov.uk)

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**From:** francismorland

**Sent:** 18 March 2013 15:24

**To:** Gibbons, Ian

**Cc:** Williams, Christopher; Greenman, Howard; Caswill, Chris; Cain, Frank; Wiltshire, Roger; Denton, Pam; Caroline Maddocks; Democratic and Member Services; Russell Hawker

**Subject:** Standards Hearing Sub-Committee meeting - Wednesday, 20 March 2013 - Agenda Item 5 - WC 03/12 Standards Complaint - Preliminary hearing

Dear Monitoring Officer,

For the reasons set out in my e-mails below sent 27 February 2013 and 1 March 2013, I wish on behalf of the Subject Member to lodge a formal objection to the circulation with the Agenda for a meeting of the Standards Hearing Sub-Committee on Wednesday, 20 March 2013 of the Report dated 24 August 2012 (at pages 1 to 158).

Furthermore, the Monitoring Officer's Report on Agenda Item 5a (headed "Consideration of an investigator's report") fails to point out that all the powers referred to therein given to Wiltshire Council by the Local Government Act 2000 (including the 2007 Model Code of Conduct) were repealed on 1 July 2012 and have no on-going effect at all.

Accordingly, there was no power extant on 24 August 2012 to issue the Report of that date and there is no power to consider it further for any purpose whatever.

What is described in the Monitoring Officer's Report at [8] and what is said to be "required" of the Hearing Sub-Committee at [9] are outside the only remaining power of Wiltshire Council to consider and determine the complaint in question pursuant to Section 28(6) of the Localism Act 2011 and are therefore ultra vires.

For the same reasons, the Investigating Officer appointed by the Monitoring Officer under Section 82A of the Local Government Act 2000 became functus officio on 1 July 2012, but even if that had not been the case, he would have become functus officio once he issued the Report dated 24 August 2012.

Accordingly, the circulation of a document headed "Investigating Officer's comments re Councillor Hawker's response to report" with the Agenda (at pages 252 to 257) is improper.

In any event, it is also manifestly unfair (by reason of it raising fresh (or revised) allegations and putting forward additional evidence at the very last moment (see Agenda Item 5b at [2.14] on page 259), which the Subject Member has had no proper opportunity to consider or respond to).

I understand that the Independent Person appointed by Wiltshire Council (pursuant to Section 28(7) of the Localism Act 2011) to assist the Subject Member is unable to be present at the time stipulated for the meeting of the Standards Hearing Sub-Committee. In these circumstances, I do not see how she will be able lawfully and fairly to carry out her statutory duties referred to in the Arrangements for dealing with Code of Conduct Complaints under the Localism Act

2011 at [2.5] and [2.6] (see Agenda Item 5b at page 259), nor those stipulated at [8.12] and [8.16] of that document (at page 263).

These requirements appear to me to make the absence of the appointed Independent Person from any part of the Hearing as fatal to its lawful and proper functioning as the absence of any Member of the Hearing Sub-Committee itself.

Please advise.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: FM

To: [christopher.williams@wiltshire.gov.uk](mailto:christopher.williams@wiltshire.gov.uk); [howard.greenman@wiltshire.gov.uk](mailto:howard.greenman@wiltshire.gov.uk); [chris.caswill@wiltshire.gov.uk](mailto:chris.caswill@wiltshire.gov.uk); [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk); [frank.cain@wiltshire.gov.uk](mailto:frank.cain@wiltshire.gov.uk); [roger.wiltshire@wiltshire.gov.uk](mailto:roger.wiltshire@wiltshire.gov.uk); [pam.denton@wiltshire.gov.uk](mailto:pam.denton@wiltshire.gov.uk); Caroline Maddocks; [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)

CC:RH

Subject: Standards Hearing Sub-Committee meeting - Wednesday, 20 March 2013 - Agenda Item 5 - WC 03/12 Standards Complaint - Preliminary hearing

Date: Sat, 16 Mar 2013 16:15:33 +0000

Dear All,

For information, please find below a thread of e-mails relating to this matter, of which those sent 27 February 2013, 1 March 2013, 2 March 2013 and 6 March 2013 (two) respond to the Monitoring Officer's e-mail sent 22 February 2013 requesting details of the points the Subject Member wishes to be considered at the preliminary hearing.

Kind regards,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From :Francis Morland

To: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)

CC: Russell Hawker; [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)

Subject: WC 03/12 Standards Complaint

Date: Wed, 6 Mar 2013 18:28:46 +0000

Dear Mr Gibbons,

In your e-mail sent 08 February 2013 10.43, you said:

*I recognise that you wish to introduce evidence pre-dating the period covered by the complaint and the investigation report as part of your defence. The Hearing Sub-Committee will, therefore, be invited to consider this as a preliminary issue, along with any other preliminary issues that need to be determined in order to ensure that the hearing of this matter proceeds fairly and efficiently from here.*

and in a reply by e-mail sent the same day, the Member said:

*I think it would be best to have a **completely separate preliminary hearing** as soon as possible to deal only with procedural and fairness issues and also the central issue of whether it is relevant to consider the truth and the background history that I mentioned in my Laverton Re-Opening speech in relation to Freedom of Expression situations.*

In the Report dated 24 August 2012, under the headings 7 Reasoning and 7.1 Matters that fall to be considered in the investigation, is the following comment [7.1.1]:

*It is not the place of this investigation to make such a decision (namely "whether or not Mr Taylor, as per Councillor Hawkers allegations, had lied whilst a member or Chair of the Laverton Institute [Trust] Management Committee").*

It is well-established law that it is not the proper function or purpose of the 2007 Model Code of Conduct to give a complainant an alternative remedy to an action for defamation (see for example [11] of the First-Tier Tribunal decision

in the Brookes case LGS/2011/0537 made on 16 November 2011). Such an alternative remedy is not "necessary in a democratic society" and hence would be entirely contrary to the very high priority given to the protection of Freedom of expression rights by Article 10 (see [32] of the Jerusalem case and [83] of the Calver case).

However, that cannot deprive the Member of the defence of justification (ie demonstrating the truth of what is susceptible of proof and the Value Judgment status of what is not) to a written allegation that he has breached the 2007 Model Code of Conduct.

At [7.1.1] the Report not only rejects this entirely, but it is elsewhere not even neutral or even-handed on the matter and takes every opportunity to cast doubt on the truth of what the Member said (by way of example only and not exhaustively, see [7.2.4], [7.13.4], [7.14.4],[7.15.2], [7.17.6], [7.18.6], [7.19.1], [7.13.3] (on page 25), [8.2] and [8.3]), which of course utterly belies and undermines its assertion at [7.1.1] that the matter is properly outwith the scope of the investigation.

The failure of the Report to grapple with the truth issue has infected its whole text and deprives it of any underlying logic or intellectual rigour.

It should be noted that in the Calver case, the Adjudication Panel for Wales appears to have proceeded on the basis that what was said in the claimant's comments was true (see [72]), but it is open to question whether the Complainant in the present case would regard that as an acceptable approach for Wiltshire Council to adopt.

Alternatively, it would be open to you to decide that all or substantially all of what was the subject of the Complaint were Value Judgments which are not susceptible of proof, and thereby limit the scope of the further evidence required to establishing the truth of a small number of facts remaining at issue, the existence of which could then be demonstrated.

However, the Calver judgment comments (at [72]):

*It suffices to say that restrictions on publication of both matters which are factual in nature and are demonstrated to be true, and of value judgments are generally difficult to justify under Article 10(2).*

and at [79] points out that the statement given Article 10 protection in the Filipovic case was that the major was guilty of embezzlement, and in the Kwiecien case that the head of local authority carried out duties ineptly and in breach of the law.

It is unfortunate that for easier understanding the Report dated 24 August 2012 does not include a table setting out the chronology of the events in question (a requirement for matters before the Administrative Court), but it is nevertheless clear that at the first available opportunity, the Public Forum of the 7 November 2011 meeting of Westbury Town Council, the Complainant identified himself as one of the un-named persons referred to in the Member's speech at The Laverton Re-launch Event, and, according to the script displayed at F3 on page 121 and the article that was subsequently published in the 24 November 2011 issue of the White Horse News (G3 at page 140), said:

*Obviously, I found his remarks offensive and unnecessary. I thought his behaviour was inappropriate and loutish. Unfortunately that's nothing new. More importantly, his remarks were untrue.*

In substance, his response was that the Member was a habitual lout and a liar; hardly a measured response to the unattributed comments of the Member he subsequently complained about (see A1 at page 34).

Furthermore and to be fair to the Complainant, such behaviour is by no means confined to the Public Forum of meetings of Westbury Town Council. At the meeting of Wiltshire Council on Tuesday, 26 February 2013, the Leader of the Council, Councillor Jane Scott, accused Councillor Jon Hubbard, Leader of the Liberal Democrat group, of "telling lies", and he accused Councillor Fleur de Rhe-Philipe, Cabinet member for economic development and strategic planning of "being wholly wholly dishonest".

In his Updated Response dated 14 November 2012, the Member drew your attention to comments on the meaning of the word "bully" and to the scope of paragraph 3(2)(b) of the 2007 Model Code of Conduct at [40] of the First-Tier Tribunal decision in the Brookes case LGS/2011/0537 made on 16 November 2011. It is worth me adding that in order to be compatible with the requirement in Article 10(2), any restrictions on freedom of expression must be "necessary in a democratic society" and that exceptions must be construed strictly, and the need for any restrictions must be established convincingly (see [32] of the Jerusalem case and [41], [42] and [44] of the Calver case). Hence where general or ambiguous words are used, such as "bully" in paragraph 3(2)(b) (and indeed similarly with "respect" in paragraph 3(1) ), they must (contrary to the Standards for England guidance referred to at [4.7], [7.13.3] (on page 25) and B3 at pages 51 to 52 of the Report) be construed narrowly.

In many respects, all the witness statements supporting the Complaint (C1 at pages 67 to 69, C2 at pages 70 to 72, C3 at pages 73 to 74, C4 at pages 75 to 76 and C5 at pages 77 to 78) seem to follow a very similar pattern and bear a strong family resemblance to one another, and the copies of C4 and C5 in the Report are unsigned.

It will therefore be crucial at any hearing involving these witnesses to establish the full provenance of each of these statements, whether the witnesses co-operated with each other in their respective content, who drafted them, whether they were drawn from a common pro-forma, and if so what was its provenance. Ahead of that, please let me have copies of any recordings made of the interviews carried out with those witnesses, and of any notes made by them or the interviewer, contemporaneously or since, of what was said at those interviews. Please also let me have copies of any draft witness statements prepared and of any comments on them or changes to them made by the witnesses prior to their final form and content displayed in the Report.

I would also draw your attention to [26.3] of the Appeals Tribunal Decision of the Adjudication Panel for England in the Whipp case APE 0441 made on 14 September 2009 (see B4 at page 57).

Although the findings of fact in the Report are silent on the point (both those identified in the text of the Report in accordance with the explanation on page 8, and those in the Schedule of Finding of Fact in Appendix A at pages 27 to 29), it is suggested in the text of the Report (at [7.13.2]) that "Mr Taylor should be viewed as a member of the public". Nothing that the Member said in his speech at The Laverton Re-launch Event referred to any of the un-named persons in question "as a member of the public". The reasoning in support of this assertion is entirely inadequate and unsatisfactory.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: Francis Morland  
To: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)  
CC: Russell Hawker [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)  
Subject: WC 03/12 Standards Complaint  
Date: Wed, 6 Mar 2013 10:08:27 +0000

Dear Mr Gibbons,

Although submissions of law are not restricted to any particular time in the hearing process, it seems to me that without a firm grasp of the underlying principles of the relevant law, a great deal of time may be expended on particular aspects of this case which turn out not to be the crunch issues.

My three previous e-mails below sent 27 February 2013, 1 March 2013 and 2 March 2013 respectively address the issues that arise from this case in an order of priority which I believe will assist that process.

The comments which follow are therefore all subject to the caveats which have already been raised and in particular that the 2007 Model Code of Conduct has been wholly repealed and is therefore no longer relevant to this case.

Whilst the detailed and excellent Member's Updated Response dated 14 November 2012 does highlight some of the key issues of law which would arise if, contrary to my submissions, the 2007 Model Code of Conduct is still applicable, it is based almost entirely on reported decisions of the Adjudication Panel for England in 2009 (APE 0421 made on 10 May 2009, APE 0427 made on 24 July 2009 and APE 0441 made on 14 September 2009) and of the First-Tier Tribunal made on 16 November 2011 (LGS/2011/0537), because those are the only cases mentioned in the Report dated 24 August 2012.

It is disappointing that the Report does not itself refer to any judgments of higher courts on the correct approach to the various statutory provisions concerning the 2007 Model Code of Conduct, and instead appears to treat snippets of text said to have been drawn from the former Standards for England guidance as determinative of the relevant issues.

The Member was entitled to assume that the Report would draw to both his and the former Standards Committee's attention the most authoritative and recent case law; it signally failed to do so.

The most recent of these cases I am aware of are:-

MC v Standards Committee of LB Richmond [2011] UKUT 232 (AAC), a decision of Judge Ward on 14 June 2011 and Calver v Adjudication Panel for Wales [2012] EWHC 1172 (Admin), a judgment of Beatson J. on 3 May 2012.

Both these cases cite and rely on a wealth of earlier case law of the higher courts.

The MC case stipulates how the official capacity provisions of the 2007 Model Code of Conduct should have been applied. The correct approach is carefully analysed and set out at [33] to [42] of that decision, and in particular it emphasises (at [39]) the narrow and free-standing ambit of paragraph 2(1)(b).

On the basis of that case, the Westbury Town Forums entries (see E1 at pages 105 to 113) were clearly not made in an official capacity, even if the footer invariably shown had not been attached to all the relevant posts.

Equally, the e-mails sent 24 November 2011 (see H1 at page 146), 25 November 2011 (see I1 at pages 147 to 149) and 26 November 2011 (see I2 at pages 150 to 151) and the letters published in the 6 December 2011 issue of the White Horse News (see G4 at page 141) cannot, in my opinion, stand as made in an official capacity on the basis of the MC case either.

That leaves only the Laverton launch event (probably, but not certainly - see 12 and 13 of my e-mail below sent 2 March 2013) and the Westbury Town Council meetings on Monday, 7 November 2011 and on Monday, 9 January 2012 as falling within the official capacity definition.

In passing, I would draw attention to [50] of the MC case, indicating that previous decisions of the First-tier Tribunal or its statutory predecessor (the Adjudication Panel for England) were there considered at best "helpful illustrations of some factual situations that might be encountered and of possible approaches to dealing with them".

The Calver case reviews in detail the case law on Freedom of expression, both under English common law and under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated into English law by Sections 3 and 6 of the Human Rights Act 1998.

The interpretation of the Welsh equivalent of the 2007 Model Code of Conduct must be compatible with the requirement in Article 10 that any restrictions on freedom of expression "are necessary in a democratic society" and hence must be construed strictly.

There is a very large amount of case law made by the European Court of Human Rights at Strasbourg on Article 10, of which the Calver case draws particular attention to:-

Jerusalem v Austria [2001] ECHR 122 (27 February 2001)

Kwiecien v Poland [2007] ECHR 4 (9 January 2007) and

Filipovic v Serbia [2008] ECHR 1892 (27 February 2008)

which address the enhanced level of protection given to political expression and the corresponding requirement that politicians must display a greater degree of tolerance (or have "thicker skins", as it is more colloquially described at [58], [81] and [82] of the Calver judgment).

The case law also draws a crucial distinction between Statements of Fact, the existence of which can be demonstrated, and Value Judgments, the truth of which is not susceptible of proof.

It is my submission that all or substantially all of the allegations made against the Member are in respect of what on proper analysis amount to Value Judgments, which are entitled to the enhanced level of protection, even though not susceptible of proof.

None of these crucial issues is adequately addressed in the 24 August 2012 Report, which does little more than mention Article 10 (at [4.8]), give its text (see B3 at page 52) and dismiss it as irrelevant (at [7.13.4]).

The case law shows that, far from being irrelevant, freedom of expression is in fact at the heart of this case.

More to follow.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: Francis Morland

To: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)

CC: Russell Hawker; [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)

Subject: WC 03/12 Standards Complaint

Date: Sat, 2 Mar 2013 14:45:38 +0000

Dear Mr Gibbons,

I turn now to other problems with the content of the Report dated 24 August 2012.

I am unhappy that certain documents referred to in the text of the Report are either not listed at all in Appendix B (see pages 30 to 31) or are displayed in attachments to it which are either clearly incomplete or give the appearance of being incomplete. My list of these keeps increasing but currently stands as follows:-

[3.4] The document from which the advice of Frank Cain quoted is drawn is lacking.

[4.2] The Westbury Town Council adopted Code of Conduct from which Paragraph 2(1) is drawn is lacking.

[4.3] The Appeals Tribunal Decision displayed as B1 at pages 47 to 48 is clearly incomplete. So too is the First-Tier Tribunal Decision displayed as B2 at pages 49 to 50.

[4.4] The source of this is lacking.

[4.5] The document displayed as B3 at pages 51 to 52 is clearly not the Standards for England guidance document itself but an extract from it by an unknown hand which may or may not be complete and may or may not be the current edition. If it is to stand in the Report in place of the original documents it purports to represent, its full provenance needs to be disclosed.

[4.6] The source of this is lacking.

[4.7] As per [4.5] above.

[4.8] The document displayed as B3 at pages 51 to 52 is clearly not The European Convention on Human Rights document itself, so the same points as at [4.5] above apply.

[4.11] As per [4.3] above.

[6.11.7], [6.11.8], [6.17.2] and [7.3] As per [4.3] above.

[7.13.3] (at page 25) As per [4.5] above.

A6 at page 42 Incomplete.

D2 at page 98 Appears to be incomplete.

D7 at page 103 Incomplete.

F1 at pages 114 to 116 Incomplete.

F2 at pages 117 to 120 Incomplete.

F4 at page 122 Refers to Attachments 2 and 3 which are lacking.

J1 at pages 152 to 154 Incomplete.

A Schedule of Finding of Fact is displayed as Appendix A at pages 27 to 29. They are disputed as follows:-

12 and 13 Under Section 101 of the Local Government Act 1972, individual members of parish councils such as Westbury Town Council have no executive powers whatever, and for the avoidance of doubt, this applies just as much to the Mayor, and to chairman of committees, sub-committees and working groups (such as the Laverton Institute Trust Management Committee) as to any other member. Notwithstanding Finding 11 therefore, the only person capable of acting under the delegated authority of Westbury Town Council at the Laverton launch event was the Town Clerk.

14 The second part of this Finding is meaningless without a finding about precisely who present, or how many present, or what proportion of those present could so identify Mr Taylor, and by what means.

15 See Member's Updated Response dated 14 November 2012. Furthermore, this Finding is not justified in naming Mr Taylor without a finding of the exact words spoken, because the evidence indicates that Councillor Hawker's speech was critical of more than one person, none of whom were named. The Report does not analyse that evidence adequately.

16 This Finding is entirely unhelpful and unjustified. Before an audience of about 70-80 people, almost any speech by anyone of the length made by Councillor Hawker would cause upset to someone present. There is evidence that there was upset amongst some of those present at Councillor Hawker being permitted to make any speech at all (see

Findings 6, 7 and 27), and to its length and to other remarks in it which have no demonstrated connection whatever with the written allegation made by Mr Taylor.

17 to 23 Ultra vires.

19, 22 and 23 See Member's Updated Response dated 14 November 2012.

20 Inaccurately quoted (see E1 at pages 105 to 113).

25 This is only partially a finding of fact. The capacity in which Councillor Hawker attended is a finding of law.

31 For the avoidance of doubt, the evidence shows that the article in question was drawn entirely or almost entirely from material supplied to the White Horse News by Mr Taylor himself.

33 to 35 Ultra vires.

34 This is a finding of law, not a finding of fact (and in dispute).

39 This is a finding of law, not a finding of fact (and in dispute).

40 to 44 Ultra vires.

44 This is a finding of law, not a finding of fact (and in dispute).

45 to 49 Ultra vires.

47 This Finding appears to be directly contrary to the evidence (see G4 at page 141).

48 This is a finding of law, not a finding of fact (and in dispute).

51 This is only partially a finding of fact. The capacity in which Councillor Hawker attended is a finding of law.

54 A Finding about what the minutes show is not of much value.

55 This is not a proper finding of fact. The proper finding can only be that Councillor Hawker did not say what was alleged in the Complaint.

56 and 57 See Member's Updated Response dated 14 November 2012. Findings about what the minutes show are not of much value.

Bizarrely and confusingly, rather few of the Findings listed at Appendix A correspond exactly with the findings of fact italicised and underlined in the text of the Report itself (as stipulated at page 8), and in some cases the discrepancies are significant, substantial and may indeed even be crucial (by way of example only and not exhaustively see 13, 15, 23, 26, 27, 28, 35, 36, 39, 43, 44 and 52), and in one case, 57, there appears to be no corresponding finding of fact made in the text of the Report at all.

The Member is entitled to know precisely what are the findings of fact made in the Report dated 24 August 2012, and by reason of these discrepancies cannot do so.

More to follow.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: Francis Morland  
To: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)  
CC: Russell Hawker; [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)  
Subject: WC 03/12 Standards Complaint  
Date: Fri, 1 Mar 2013 13:01:42 +0000

Dear Mr Gibbons,

Even if, contrary to my submissions by e-mail sent 27 February 2013 below, all of Wiltshire Council's previous powers



over this matter were not repealed on 1 July 2012 (along with its Standards Committee as then constituted) by the Localism Act 2011, the Report dated 24 August 2012 has a plethora of other shortcomings which cumulatively would, in my submission, have rendered it unfit to form the basis for consideration by Wiltshire Council's former Standards Committee pursuant to Regulation 17 of the Standards Committee (England) Regulations 2008, or as the basis for a hearing by that body pursuant to Regulation 18.

In it there is a complete failure to recognise or abide by the limited scope of the investigation formerly imposed by Section 57A(2) of the Local Government Act 2000 and Regulation 14 of the Standards Committee (England) Regulations 2008, which only permitted the Monitoring Officer to "conduct an investigation into the matters referred". By Regulation 9, a "matter" is defined as meaning a written allegation made under Section 57A(1) of the Local Government Act 2000.

In this case, the written allegation is the Complaint Form (see A1 at pages 32 to 36) submitted to the Monitoring Officer by the Complainant on 23 January 2012. What is set out there in considerable detail constitutes the written allegation and stipulates four specific occasions on which the conduct of the Member is called into question by the Complainant, namely certain of his remarks at a Reception held at The Laverton, elsewhere described as The Laverton Re-launch Event (see D5 at page 101), his conduct at a meeting of Westbury Town Council on 7 November 2011, part of a sentence in his e-mail sent 25 November 2011 (see I1 at page 147 to 149) and his conduct at a meeting of Westbury Town Council on 9 January 2012.

The written allegation did not include any of the postings on the Westbury Town Forums displayed as E1 at pages 105 to 113, and referred to at [6.11.1] to [6.11.9] and [7.7.4] and [7.15.1] to [7.15.4] and, by cross reference, at [7.13.3] and included, it would seem, in the Findings at [8.1], [8.2] and [8.3] and in Appendix A (Schedule of Finding of Fact) as Findings 17 to 23 inclusive (see pages 27 to 29).

Nor did it include the Member's e-mail sent 24 November 2011 displayed as H1 at page 146, and referred to at [6.15.1] to [6.15.4] and [7.8.1] and [7.17.1] to [7.17.7] and, by cross reference, at [7.13.3] and included, it would seem, in the Findings at [8.1], [8.2] and [8.3] and in Appendix A (Schedule of Finding of Fact) as Findings 33 to 35 inclusive.

Nor did it include the Member's e-mail sent 26 November 2011 displayed as I2 at pages 150 to 151, and referred to at [6.16.12] to [6.16.16] and [7.9.1] to [7.9.2] and [7.18.4] to [7.18.7] and, by cross reference, at [7.13.3] and included, it would seem, in the Findings at [8.1], [8.2] and [8.3] and in Appendix A (Schedule of Finding of Fact) as Findings 40 to 44 inclusive.

Nor did it include either of the Member's letters to the White Horse News published on 6 December 2011 displayed as G4 at page 141, and referred to at [6.17.1] to [6.17.3] and [7.11.1] and [7.19.1] to [7.19.2] and included, it would seem, in the Findings at [8.1], [8.2] and [8.3] and in Appendix A (Schedule of Finding of Fact) as Findings 45 to 49 inclusive.

In the form that they appear, all these portions of the Report are therefore wholly or at least materially ultra vires and a nullity, and as far as they are based upon them, so too are the Findings at [8.1], [8.2] and [8.3] and in Appendix A (Schedule of Finding of Fact) and they cannot stand.

These portions of the Report form a substantial proportion of it, and in my opinion cannot be redacted without impairing the meaning of what remains.

It would be highly prejudicial to the Member's case to allow the unredacted Report to be considered at any hearing into the written allegation in question.

More to follow.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: Francis Morland  
To: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)  
CC: Russell Hawker; [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk)  
Subject: WC 03/12 Standards Complaint  
Date: Wed, 27 Feb 2013 18:57:33 +0000

Dear Mr Gibbons,

Thank you for your e-mail below sent 22 February 2013.



As you know from my comments at the Council meeting yesterday, I have not yet been able to devote as much time to a response on this matter as it undoubtedly warrants, and I would therefore ask you to treat this e-mail as a first stab at setting down on paper the myriad of difficult issues that appear to arise, and as reserving the right to amend and improve on what is said now and to raise additional points that become apparent as the detailed analysis of the paperwork proceeds.

At the very outset I am bound to challenge Wiltshire Council's jurisdiction to proceed to any hearing whatsoever on the basis of the Report dated 24 August 2012.

All powers to conduct investigations, make findings and prepare written reports of investigations pursuant to Sections 57A(2)(a) and 66 of the Local Government Act 2000 as amended and Regulation 14 of the Standards Committee (England) Regulations 2008 (SI 2008 No. 1085) were repealed entirely in England by Section 26 and Schedule 4 of the Localism Act 2011 on 1 July 2012, and hence the Report on Case Reference: WC 03/12 dated 24 August 2012 purporting to be made under those powers is ultra vires and a nullity.

Under the current statutory arrangements, the only power of Wiltshire Council to investigate allegations of failures to comply with codes of conduct (as defined in Section 28(9) of the Localism Act 2011) is that given by Section 28(6) of that Act, and Section 28(4) specifically prohibits Wiltshire Council from dealing with them otherwise than in accordance with Section 28(6).

The applicable code of conduct for these purposes is that adopted by Westbury Town Council pursuant to Section 27(2) of the Act, which by Section 28(1) is required to be consistent with the seven principles stated there.

The Model Code of Conduct stipulated in the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007 No. 1159) and said to have been adopted by Westbury Town Council on 14 May 2007 (see A6 at page 42) ceased to have effect on 1 July 2012 pursuant to paragraph 56 of Schedule 4 of the Localism Act 2011, and the Undertaking of the Member dated 14 May 2007 (see A5 at page 41) ceased to have effect on the same date pursuant to the same provisions.

There are no provisions in the current code of conduct adopted by Westbury Town Council equivalent to (or even similar to) paragraphs 3(1) or 3(2)(b) of the 2007 Model Code of Conduct, and the seven principles with which the current code of conduct is required by Section 28(1) of the Localism Act 2011 to be consistent does not include "Respect for Others" stipulated in the Schedule to the Relevant Authorities (General Principles) Order 2001 (SI 2001 No. 1401) as one of the ten principles with which the 2007 Model Code of Conduct was required to be consistent.

Although Section 37 of the Localism Act 2011 contains a power to make transitional provision by order, the only relevant such order made is the Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 (SI 2012 No. 1463), which by Article 7 stipulates that in the circumstances relevant to the Complaint (see A1 at pages 32 to 36) "the allegation or case shall be treated as having been made under Chapter 7 of Part 1 of the Act".

Chapter 7 of Part 1 of the Act comprises Sections 26 to 37, and includes Section 28(6) which contains the requirement to have in place arrangements by which allegations can be investigated and determined.

Accordingly, the allegations in question must now be treated as having been made after 1 July 2012 and considered in exactly the same way as any other allegations dealt with under Section 28(6) of the Localism Act 2011 (which may of course also relate back to conduct which occurred prior to 1 July 2012).

Much more to follow.

Yours sincerely,

Francis Morland

Dead Maids Close Chapmanslade Westbury Wilts. BA13 4AD

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From: [ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk)  
To: Russell Hawker  
CC: Francis Morland; [Pam.Denton@wiltshire.gov.uk](mailto:Pam.Denton@wiltshire.gov.uk)  
Subject: RE: WC 03/12 Standards Complaint  
Date: Fri, 22 Feb 2013 10:56:24 +0000

Dear Cllr Hawker,

Further to your e-mail and my acknowledgement I have discussed the position briefly with Mr Morland and have asked Mr Morland to write to me as soon as possible with details of the points that you wish to be considered at the preliminary hearing. I will review these and consult Mr Cain on behalf of the investigating officer on whether there are any issues he feels need to be addressed at that hearing. Once we are agreed on the issues to be determined we can go forward to the preliminary hearing. The provisional date of 5 March may be a little optimistic, we will have to see; much will depend on how soon you or Morland can get back to me. I am not looking for detailed argument at this stage, just an indication of the points you wish to raise at the preliminary hearing. I will then decide if it is necessary for us to meet to clarify the issues.

I would appreciate your response on this by no later than close of play on Wednesday 27 February.

Yours sincerely,

**Ian Gibbons**

Director of Law & Governance  
and Monitoring Officer  
Wiltshire Council  
Tel. 01225 713052  
PA. [joanna.smith@wiltshire.gov.uk](mailto:joanna.smith@wiltshire.gov.uk)

**From:** Russell Hawker  
**Sent:** 12 February 2013 21:30  
**To:** Gibbons, Ian  
**Cc:** 'Francis Morland'  
**Subject:** RE: WC 03/12 Standards Complaint

Dear Mr Gibbons

I confirm that my legal adviser in this matter is now Francis Morland.

Please continue to send relevant correspondence to me.

As we proceed forwards, I may decide to hand all communications to Francis and, if so, I will confirm this to you at the time.

I have received a message from Pam Denton that you would like to hold the preliminary hearing on Tuesday 5th March 2013.

I have discussed this with my legal adviser. Although we may both be available on 5th March, we strongly believe that there is first and urgently a need for an informal meeting of both of us with you and any other legal officer handling this case to discuss the appropriate issues that should come up within the preliminary hearing.

When we have discussed and clarified the appropriate issues for the preliminary hearing, we will then know how long we need to prepare for the preliminary hearing. Assuming we can meet with you soon to discuss this fully, we would hope to be in a position to accept 5th March for the preliminary hearing.

**Please confirm some dates / times when you would be available for an informal meeting ASAP** with myself, Francis and any other relevant council legal officer to explore, discuss and agree/ clarify the precise issues that should be looked at in the preliminary hearing.

Regards

Yours sincerely

**Russell Hawker**  
**Westbury Town Councillor.**

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**From:** Gibbons, Ian [<mailto:ian.gibbons@wiltshire.gov.uk>]  
**Sent:** 08 February 2013 19:00  
**To:** Russell Hawker  
**Subject:** RE: WC 03/12 Standards Complaint  
Dear Councillor Hawker,

Thank you for your e-mail.

Certainly what you are suggesting as the way forward is exactly what I had in mind. I agree that a separate preliminary hearing to deal with these preliminary procedural issues is appropriate and will determine how the case is to be dealt with at the substantive hearing. There will be no need for witnesses to attend the preliminary hearing.

I note that you wish to consult a legal adviser.

I would like to fix a date for the preliminary hearing as soon as possible, recognising that you will need to give your legal adviser sufficient time to read into the case. I have, therefore, asked Pam Denton to put this in hand and she will be in contact with you shortly to take details of your availability.

Kind regards.

Yours sincerely,

**Ian Gibbons**

Director of Law & Governance  
and Monitoring Officer  
Wiltshire Council  
Tel. 01225 713052  
PA. [joanna.smith@wiltshire.gov.uk](mailto:joanna.smith@wiltshire.gov.uk)

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**From:** Russell Hawker [<mailto:russell.hawker@talktalk.net>]

**Sent:** 08 February 2013 11:28

**To:** Gibbons, Ian

**Subject:** WC 03/12 Standards Complaint

**Importance:** High

Dear Mr Gibbons

Thank you for your email.

I note that you have avoided having to explain the deficiencies in the investigation by opting to pass this to a hearing.

I think it would be best to have **a completely separate preliminary hearing** as soon as possible to deal only with procedural and fairness issues and also the central issue of whether it is relevant to consider the truth and the background history that I mentioned in my Laverton Re-Opening speech in relation to Freedom of Expression situations.

On the basis of a proper preliminary hearing focused in the way mentioned above, I am prepared to delay going public with the clear corruption and incompetence that has been displayed in this investigation and the true facts about Ian Taylor. This is to give the preliminary panel a chance to come to a correct decision (ie. agreeing that truth is relevant and is a justification for saying what could be perceived as unpalatable).

We can discuss the date of any full hearing after the preliminary issues are cleared up (assuming they properly cleared up).

I will need to take advice from a legal adviser. Up to this point I have not needed any legal advice and have not involved anyone else, except for some very brief and specific points about a tribunal case I have referred to. My legal adviser will therefore need appropriate time to prepare a defence as this matter is very complex. Having said this, on the very specific technical points that would come up in a preliminary hearing (as I have described) I think my legal adviser would be in a position to prepare quite quickly, though I will only know the exact details about this when I actually ask him.

Up to this point, I had not expected any hearing at all. On the basis that we have a proper preliminary hearing focussed only on the issues mentioned above, I respect your decision.

I am assuming that I will not need witnesses at the preliminary hearing apart from my legal adviser. If we get into a situation where I need my witnesses, we will need to find a date that they can agree to.

At this stage, I need to tell you that Ian Taylor is known to be planning a comeback as a Conservative councillor by running against me in the unitary elections. You should not be in any doubt about the political motivations that lurk behind his complaints and the fact that his campaign depends on his false claims succeeding with a Conservative dominated standards committee.

On the point about clearing this whole matter up, I agree that it would be best to have the matter cleared up as soon as possible, but only if it is actually reasonable and possible to do it very quickly before the normal Purdah period. I will need to take advice on this point, but my preference would be to get this matter solved before the Purdah period occurs if possible. Otherwise, we must delay until after the elections.

Please acknowledge this email.

Yours sincerely

Russell Hawker  
Westbury Town Councillor

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**From:** Gibbons, Ian [<mailto:ian.gibbons@wiltshire.gov.uk>]  
**Sent:** 08 February 2013 10:42  
**To:** Russell Hawker  
**Subject:** [PROTECT]WC 03/12 Standards Complaint  
**Email classified as:** PROTECT

Dear Cllr Hawker,

I have now reviewed this matter in accordance with section 6 of the Council's Arrangements for Dealing with Complaints under the Code of Conduct.

I have decided that this case should proceed to a hearing in accordance with the procedure for the reasons summarised below. In reaching my decision I have taken into account the views of the parties and the independent persons assigned to this case, Caroline Maddocks consulted by yourself as subject member, and Colin Malcolm assisting me as Monitoring Officer.

My role at this stage is to satisfy myself that the investigation of this complaint has been conducted fairly and properly and that there is a case to answer which requires determination by a Hearing Sub-Committee. It is not my role to determine the issues in the case, nor in particular whether there has been any breach of the Code of Conduct. That is for the Hearing Sub-Committee to decide after taking into account all the written submissions and any oral evidence and submissions before them.

It is clear from the written material I have seen, including the investigating officer's report and the detailed additional submissions you have made, that there is a case to answer and that the allegations made in the complaint should be tested by a hearing before the Hearing Sub-Committee. I have noted the concerns you have raised regarding the adequacy of the investigation and the report and findings of the investigation. It is of course open to you to challenge the investigating officer's report and findings as part of your defence to this complaint and these are matters which the Hearing Sub-Committee will need to consider in due course. I am, however, satisfied that a reasonable and fair investigation has been carried out that is sufficient to enable this matter to proceed.

I recognise that you wish to introduce evidence pre-dating the period covered by the complaint and the investigation report as part of your defence. The Hearing Sub-Committee will, therefore, be invited to consider this as a preliminary issue, along with any other preliminary issues that need to be determined in order to ensure that the hearing of this matter proceeds fairly and efficiently from here.

It is unfortunate that this complaint has straddled the changes in the standards regime introduced by the Localism Act 2011 in July 2012, which has resulted in delay and the need to work to a new procedure. It is important that the matter proceeds to a swift conclusion from here and I will take all necessary steps to ensure that this happens.

I will be contacting you again shortly with details of the Hearing Sub-Committee.

Yours sincerely,

**Ian Gibbons**  
Director of Law & Governance  
and Monitoring Officer  
Wiltshire Council  
Tel. 01225 713052  
PA. [joanna.smith@wiltshire.gov.uk](mailto:joanna.smith@wiltshire.gov.uk)

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