

WEST WILTSHIRE DISTRICT COUNCIL

MINUTES

Minutes of the: **STANDARDS SUB-COMMITTEE**

Held on: **THURSDAY 18 MAY 2006
(RECONVENED FROM 16 MARCH 2006)**

Held in: **THE COUNCIL CHAMBER, BRADLEY ROAD
TROWBRIDGE**

Present:

District Council Representative: Cllr Ernie Clark

External Representatives: Tony Frost (Chairman), Dr Kurt Paulus and Keith West

Town Representative: Mary Stacey

Officers: Solicitor (GC), Corporate Director (TD) in his capacity as Monitoring Officer and Member Support Team Leader (YR)

Members: Cllrs Finbow and Pearce

Witnesses: Mrs Pearce, Jo Howes (Scrutiny Support Officer, WCC)

Complainant: Dr Biggs

To consider the following allegations made against Cllrs Finbow and Pearce of Westbury Town Council:

At a West Wiltshire Primary Care Trust meeting in the Neeld Hall, Chippenham on 15 September 2005, Councillors Finbow and Pearce shouted abuse and disrupted the meeting. In doing so, Councillors Finbow and Pearce behaved in a way that failed to treat others with respect and brought into disrepute their office and their authority. This is contrary to Sections 2A and 4 of the Parish Council Code of Conduct.

Welcome

The Chairman welcomed all those present to the Hearing. He explained that as the last Hearing (16 March 2006) had not progressed beyond establishing that Cllrs Finbow and Pearce were now disputing the facts, he would recommence the Hearing from the beginning.

3. Declarations of Interest

No declarations of interest were made.

3. Hearing Procedure

The Chairman drew attention to the Hearing Procedure that would be used for this Hearing, details of which had been included in the agenda.

The Chairman explained that the Hearing would deal with the issues of the allegation made and not the merits or otherwise of the closure of health facilities.

4. Local Determination

The Chairman explained that the purpose of the Hearing was to investigate the allegations made and arrive at a decision and if appropriate decide on the level of sanctions to be made.

The Chairman asked Cllrs Finbow and Pearce to confirm whether or not they would be disputing the facts as contained in the Investigating Officer's Report.

Cllrs Finbow and Pearce both advised that he would like to question the facts.

The Chairman asked each Member to raise any issues they would like the Hearing to take into account, starting with Cllr Pearce.

Cllr Pearce said that he was disappointed that those making the allegations had not been present at the last Hearing on 16 March 2006, he was saddened that Carol Clark had in his opinion dismissed the issues and was again not present at this Hearing. (Note: Carol Clark had been asked to attend this Hearing as a witness but had tendered her apology for the meeting). He thanked Jo Howes and Dr Biggs for their attendance.

Cllr Pearce continued by referring to the PCT's decision to close Westbury Hospital. The Chairman once again asked the Members to refrain from matters concerning the closure of the Hospital.

Cllr Pearce considered that he and Cllr Finbow were being used as scapegoats to scare people to stop people challenging such decisions.

Cllr Pearce referred to his attendance at Wiltshire County Council's Health Overview and Scrutiny Committee held the previous day.

Cllr Finbow explained that he had struggled to understand parts of the complaint submitted by Dr Biggs. He asked Dr Biggs to confirm who in his opinion had actually made the offending remarks.

Dr Biggs said that it was probably Cllr Pearce but it was unclear due to the confusion at the meeting. It was a confused situation, made worse by trying to recall it some 6 – 8 weeks after the event.

Cllr Finbow said that initially Dr Biggs' accusations related to using foul and offensive language but now he was saying they 'probably' did.

Dr Biggs responded by saying that the 'probably' was only in reference to whether it was Cllr Pearce or Finbow. He continued that in his opinion, Cllr Finbow was loud and aggressive. Dr Biggs said that he was quoting Cllr Clark when responding to the Town Council letter. The Town Council had passed a vote of no confidence in the PCT Board. Carol Clark had not actually stated which of the councillors had used the foul and offensive language only that it had been used. There had been rather a lot of confusion at the meeting.

Cllr Finbow took exception to the reference that he and Cllr Pearce had 'gate crashed' the meeting. He had told the reception that he had not in fact been invited to the meeting. He was asked if he wanted to be included on the mailing list in respect of future meetings. He had referred to Carol Clark as 'Maam' which he did not think was disrespectful. He also quoted Carol Clark's letter when referring to Dr Biggs as being 'incandescent with rage'.

Dr Biggs explained that the quote referred to how he had felt after both interventions by the councillors. He was incandescent with rage as both councillors had in his view broken the Town Council's rules. He felt that both councillors were there as town councillors and not just ordinary individuals. Dr Biggs confirmed that the rage he had felt was because in his opinion the behaviour of both councillors had been unacceptable and this corresponded with the findings in the Investigator's Report. The interventions were made in a very aggressive and confrontational manner. He believed that Carol Clark was scared, the public were shouting and were angry after the second intervention. Dr Biggs felt that he was being represented by both those councillors and that their behaviour was not befitting that of town councillors.

Cllr Finbow made the point that when questioning someone as he was questioning Dr Biggs now, you would be confronting that person, therefore it could be argued that Cllr Finbow was now being confrontational.

Dr Biggs said that it was the way the confrontation was made that mattered. One could ask a question, but he had not so much asked a question, but made a loud and aggressive statement.

Cllr Finbow said that as he was leaving the PCT meeting, Carol Clark said that 'this is the sort of moronic person I have to deal with on a daily basis'. He had attended that meeting in order to ask the MP why the PCT was acting contrary to the

relevant section of the Social Care Act. Cllr Finbow added that he had not responded to this remark which could have been taken as inflammatory.

Dr Biggs explained that Wiltshire County Council had examined the legal implications of whether or not closure of the Bradford on Avon and Westbury Hospitals would constitute a breach of the Act. The Committee's conclusion was that there was no breach.

The Chairman asked the Members if they wished to call any witnesses. Cllr Finbow asked to call Mrs Pearce and asked for her recollection of the incident.

Mrs Pearce considered there were inaccuracies in the comments from Dr Biggs and Ms Howes. She referred to page 13 of the Investigator's Report where it stated that the meeting had started orderly and that both Members jumped up and made their way through packed tables.

Her recollection of events was that Cllr Finbow had asked if he could read a letter from the MP. Delegates started to slow-clap him and hurl abuse at him. He then left the room with no swearing whatsoever. He left the meeting with Mrs Pearce and he had not pointed his finger at anyone.

She also added that her husband (Cllr Pearce) did not use foul language.

Cllr Pearce explained that he was very appreciative of the services provided by the Health Service. He asked whether Carol Clark and the PCT would be taken to task over their news coverage which used the word 'voyeur'.

The Chairman did not allow that question to be answered.

Cllr Pearce referred to the demeanour of Carol Clark at a meeting of the Health Overview and Scrutiny Committee which he felt to be inappropriate given the subject matter that was under discussion at the time.

Cllr Pearce said that a Wiltshire County Councillor had taken up the point that members of the public had not been allowed to speak. He did not consider that he and Cllr Finbow had gate crashed the meeting as they had been told about the meeting by that County Councillor.

Cllr Pearce admitted that he did shout at the meeting, but just to be heard as he did not have use of a microphone. He had got up to leave the meeting with Cllr Finbow. He returned to collect his jacket. A member of the public shouted 'they've closed the bloody Westbury Hospital, leave it alone'. Cllr Pearce felt that anyone else would have sworn back in his position.

Cllr Clark sought clarification that the Hearing was dealing with one allegation from Dr Biggs.

GC read out the allegation.

Cllr Clark sought confirmation that the complaint had originated solely from Dr Biggs.

The Monitoring Officer confirmed this to be the case. He explained that during the course of processing the complaint, Cllr Cox had also made the same complaint as referred to in his report. Therefore, technically there were two complaints with effectively, one allegation.

Cllr Clark said that the Hearing had been told that there were 140 people present at the PCT meeting and asked how many of these were elected representatives.

Dr Biggs said that there had been perhaps a dozen, between 6 – 10 service users who had concerns over health issues.

Cllr Clark asked for the name of the female County Councillor had allegedly said that if Dr Biggs had not taken the complaint up with the Standards Board then she would have done.

Dr Biggs was not sure of her name, although he would recognise her by sight.

Cllr Clark asked for confirmation of the actual offending words used.

GC advised that the Monitoring Officer had not relied on the precise words used, but the behaviour of the councillors concerned.

The Chairman then invited the Monitoring Officer to present his Investigating Report.

The Monitoring Officer summarised the findings from his investigation and reiterated the allegation being made.

He explained how the allegation had come before the District Council for determination as a local hearing and reiterated the point that this was not about the rights or wrongs of closing hospitals.

In his role as Investigating Officer, he had tried to ascertain the facts from witnesses. He had started the investigation from scratch instead of relying on information from the Standards Board for England. He had concentrated on the behaviour of the councillors concerned at the meeting and summarised the comments from Cllrs Finbow and Pearce and from witnesses.

The witness statements collected had shown a large degree of consistency on what had happened although there were different interpretations.

Findings of the Monitoring Officer

The Monitoring Officer explained that he had concluded that Cllr Finbow had shouted, was abusive and rude, his address was personalised and he had disrupted the meetings.

In respect of Cllr Pearce, he had concluded that he had shouted, was abusive and rude, his address was personalised, he was aggressive and swore and that he disrupted the meeting.

He considered that the actions and behaviour of both Cllrs Finbow and Pearce failed to treat Carol Clark with respect and therefore breached the Code of Conduct.

From the witness statements collected, it was evident that Carol Clark was shocked and felt threatened. Other people present at that meeting had described her as being visibly shaken. There had been calls for both councillors to leave the meeting, they were given a slow hand clap. He considered this went beyond reasonable behaviour, was not acceptable and therefore a breach of paragraph 4 of the Code of Conduct.

The Chairman asked if anyone had any further questions on the Monitoring Officer's findings.

Cllr Finbow questioned whether or not the Monitoring Officer had used 'second hand quotes' when these had been used by the Standards Board for England.

The Monitoring Officer explained that the point being considered was whether or not the behaviour of Cllrs Finbow and Pearce had treated Carol Clark with respect, the actual words being used were not relevant. Councillors should not conduct themselves in such a way that would bring their office or authority into disrepute.

Cllr Finbow considered that the trigger for the Standards Board for England to refer the matter for local determination and therefore not dismissing the complaint was the statements and quotes from the complainant, yet the Monitoring Officer had chosen to disregard them.

The Monitoring Officer explained that that was the trigger for the Standards Board for England to investigate further and remit to the Council for local determination. However, he had started the investigation afresh and collected first hand witness comments.

Cllr Clark considered that it was the original statements and quotes that were relied upon by the Standard Board for England to investigate the complaint further.

GC referred to the letter from Dr Biggs on page 36 of the agenda to the Standards Board for England which refer to the quotes of foul language. The Standards Board for England considered that the matter was worthy of investigation. Having crossed that threshold of being worthy of investigation, it then became not just about the language allegedly being used, but about the behaviour. GC also commented that it was up to the Monitoring Officer on how to conduct an investigation. He made the point that someone can be disrespectful to someone else without necessarily using bad language.

Cllr Finbow asked GC if he considered the evidence to the Standards Board for England was insecure and would this stand up in law.

GC reiterated that the Standards Board for England had asked for details of the complaint. The Board had determined that it had crossed the threshold to be worthy of investigation. That investigation was carried out by this Council's Monitoring Officer.

When questioned further by Cllr Clark, GC responded that he agreed that the allegations at the time of making the complaint to the Board were unsubstantiated, but that did not mean that the allegation did not happen. The nub of the complaint was viewed as being worthy of consideration and therefore referred to this Council for local determination. The Monitoring Officer had not wanted to rely on second hand witness statements and therefore proceeded to collect witness statements to ascertain the facts. His conclusion was that there had indeed been a breach of the Code of Conduct.

The Monitoring Officer asked Dr Biggs to confirm that he had indeed made the original complaint to the Board.

Dr Biggs explained that as a resident of Westbury, he expected his local councillors to behave in a manner befitting a town councillor. He felt that the behaviour of Cllrs Finbow and Pearce was not befitting a town councillor and that they had caused a hiatus at the start of the PCT meeting. He considered their behaviour was inappropriate and that they had disrupted the meeting.

When asked by the Monitoring Officer if in his opinion he thought they had disrupted the meeting, Dr Biggs replied that they had.

The Monitoring Officer asked Dr Biggs to describe the behaviour of Cllr Pearce.

Dr Biggs said he would try to recollect it given that it was back in September. He said that both Cllrs Finbow and Pearce were sat at the same table. Some members present were surprised they were there given that they had not attended the previous meeting. During the input from Carol Clark, Cllr Finbow jumped up and attempted to read a letter. In his opinion and others present Cllr Finbow was aggressive, he had not asked a question but made a statement. The way it was done had upset the meeting and he was asked to leave. Almost immediately, Cllr Pearce jumped through and was abusive to Carol Clark and other PCT directors at the table. Dr Biggs said he was shocked and could not believe what Cllr Pearce was doing. He had been extremely abusive to Carol Clark and those there. The gathered assembly of people was cross made worse by the fact that he ran to the front. There was a lot of shouting and swearing and people shouted at him as he was leaving. When he wrote to the Board with his complaint he did not know what information they needed.

The Monitoring Officer recapped that in Dr Biggs' opinion he thought Cllr Pearce's behaviour was disruptive, abusive and shocking.

Dr Biggs explained that Cllr Finbow had remained at his table, but he could not recall exactly what he had said. Cllr Pearce ran forward and shouted at Carol Clark and other directors 'who do you think you are?'

The Monitoring Officer asked Dr Biggs if he thought Carol Clark was treated with respect to which Dr Biggs replied 'absolutely not'.

The Monitoring Officer asked if the behaviour of Cllrs Finbow and Pearce was befitting a town councillor. Dr Biggs replied that it was not, hence his reporting the matter to the Standards Board. He felt that both councillors represented him as a citizen of Westbury. He considered their behaviour to be inappropriate as he understood the role of councillors to be.

The Monitoring Officer asked Dr Biggs if he considered either or both councillors had breached the Code of Conduct.

Dr Biggs replied that he did.

The Monitoring Officer asked Jo Howes (JH) to explain her role as a Scrutiny Officer and posed a similar line of questioning to her.

JH explained her role in supporting Wiltshire County Council's Health Overview and Scrutiny Committee and the role of that Committee.

When asked by the Monitoring Officer, JH confirmed that she took a neutral role.

The Monitoring Officer summarised JH's account of the events concerning the allegation as presented in the report.

JH confirmed that she was happy with that account.

The Monitoring Officer asked JH about how in her opinion Carol Clark was treated by both councillors.

JH explained that the Carol Clark had welcomed everyone to the meeting and explained the purpose of the meeting to look at the future of the health issues. The closure of Westbury Hospital had not been on the agenda for discussion at that meeting.

The meeting was held in a small room which was packed with people. She agreed with Dr Biggs that both Cllrs Finbow and Pearce had stood up and raised their voices and did not treat Carol Clark with respect. JH added that Carol Clark was only doing her job which was a difficult job at that and was not shown respect.

The Monitoring Officer asked JH if she considered the behaviour of Cllrs Finbow and Pearce was that befitting elected representatives.

JH replied that she did not think it befitting of their positions as councillors as they had a duty to respect their area. Much had been said about the closure of the hospital, but that was not what the PCT meeting was about and therefore their behaviour was inappropriate.

Cllr Pearce said that there was an agenda item for 'important questions' and Carol Clark had responded to a question from a member of the public. In his opinion when Cllr Finbow stood up to ask his question, he was not treated in the same way as the previous questioner.

JH explained that the meeting was not about Westbury Hospital. It was about the Pathways for Change consultation.

Cllr Finbow did not feel that he had offended Carol Clark and had he felt he had, he would have sent her a bunch of flowers as an apology. He felt that there had been a deliberate attempt to discredit both himself and Cllr Pearce as leading campaigners fighting against the closure of the hospital. He felt they had been treated as scapegoats. He did not feel that he had disrespected Carol Clark. He added that if he could turn back the clock he would have acted in exactly the same way. He had waited for the question and answer session and asked his question.

Cllr Pearce asked if Dr Biggs considered that some people present at that meeting had since had a crisis of conscience and felt they should have supported both him and Cllr Finbow.

The Chairman gave an opportunity for the Hearing Panel to ask questions after which they would retire to form an opinion on the evidence they had heard.

Cllr Clark considered they had to make a decision on what was presented before them. He referred to areas where he thought there were discrepancies ie where the two councillors were seated. In some cases, comments had been made that they were seated at separate tables and in other cases, that they had been seated at the same table.

Dr Biggs confirmed that they had been seated at the same table. Carol Clark could not have known who they were.

Cllr Clark referred to the comments from Dr Biggs that both councillors had been abusive to Carol Clark and sought clarification as to what exactly had been said.

Dr Biggs considered this to be irrelevant.

Cllr Clark concluded that Dr Biggs therefore did not know exactly what had been said. He asked Dr Biggs what he would have considered to be appropriate behaviour.

Dr Biggs considered that they should have waited for the question and answer session, to await the microphone to be brought to them and asked their question. Cllr Finbow had not asked a question, but made a statement. Cllr Pearce had asked a question as he ran forward.

JH when asked, confirmed that the events happened so quickly. There was shouting and an attempt to put posters up, aggressive language towards Carol Clark was used. She thought that either one stood up and one rushed through or

both of them rushed through. If other evidence supports that only one rushed through, she would accept this version of events as everything happened so quickly.

Cllr Clark referred to JH statement that she felt Carol Clark was visibly shaken and close to tears and asked whether this had been in anger or as the result of being upset.

JH said that she was positioned quite close to Carol Clark and she felt that it had been a bit of both. She was sure that Carol Clark was feeling vulnerable as it had been a difficult few weeks.

The meeting then adjourned and members of the Hearing retired to consider their opinion based on the evidence and witness statements before them.

The meeting then reconvened.

The Chairman read out the sub-Committee's conclusions as follows:

In respect of **Cllr Finbow**

- He had raised his voice in an attempt to be heard
- He had disrupted the meeting

The Sub-Committee was of the opinion that he had not shouted, he had not been abusive and rude, and that his address had not been personalised.

In respect of **Cllr Pearce**

- He had shouted
- He had been rude
- He had been aggressive
- He had disrupted the meeting

The Sub-Committee was of the opinion that whilst he had been rude, he had not been abusive, his address had not been personalised and whilst it considered he had been aggressive, it concluded that he had not sworn.

The Chairman then asked Cllrs Finbow and Pearce to explain why the above behaviour should not be regarded as a breach of the Code of Conduct.

Cllr Finbow said that should the situation be repeated, he would do exactly the same thing again. He did not feel that he brought his office into disrepute.

Cllr Pearce said that he had apologised to the people of Westbury, although he did not feel he could apologise to Carol Clark.

The Chairman then asked the Monitoring Officer to comment. The Monitoring Officer explained that the first potential breach of the Code was failure to treat others with respect in this case, Carol Clark.

He considered that one would need to take into account the actions of the councillors and the reaction and impact on Carol Clark. He considered that their behaviour did not constitute treating others with respect and therefore they had breached the Code of Conduct.

As far as bringing their office into disrepute was concerned he said that one would need to consider the issues around the manner in which the councillors behaved and interacted in the meeting. In this case, he considered that they had breached the Code of Conduct.

Dr Paulus asked the Monitoring Officer whether in drawing the above conclusions, he had taken into account the Sub-Committee's conclusions, particularly the fact that the Sub-Committee had concluded that the councillors' address had not been personalised.

The Monitoring Officer said in his view, the comments had been personalised and gave examples of witness statements that supported this conclusion.

Cllr Finbow felt that Carol Clark should be used to 'taking on the world' and him asking a question should not have caused her much distress.

The meeting adjourned.

The meeting then reconvened and the Chairman delivered the findings of the Sub-Committee as follows:

Findings of Sub-Committee

In respect of Cllr Finbow

Having considered all the evidence, Cllr Finbow's representations and the information available from witnesses it was concluded that he had not been disrespectful nor had he brought his office or authority into disrepute.

In respect of Cllr Pearce

Having considered all the evidence, Cllr Pearce's representations and the information available from witnesses, the Sub-Committee concluded that he had failed to treat others with respect and had brought his office into disrepute.

The Chairman sought the views of the Monitoring Officer on the sanctions to be imposed on Cllr Pearce.

The Monitoring Officer referred to the range of sanctions which could be imposed. He suggested that the Sub-Committee should consider censuring him for his actions and require him to apologise to Carol Clark.

On seeking clarification, GC explained to Cllr Pearce and the Sub-Committee that 'censure' meant being 'told off', told that their behaviour was not acceptable.

The meeting adjourned to allow the Sub-Committee to consider what sanctions should be imposed.

The meeting reconvened and the Chairman explained the sanctions to be imposed by the Sub-Committee as follows:

The Sub Committee determined that Cllr Pearce should be censured due to his conduct as a Councillor.

The Sub-Committee also determined that Westbury Town Council should be advised to remind its members that parts of the Code of Conduct were applicable at all times and that a Councillor cannot decide that he can act as a private individual and thereby not be subject to those parts of the Code of Conduct.

When asked, both councillors confirmed that they would like the Sub-Committee's decisions in respect of both of them to be published.

RESOLVED:

Having considered all the evidence, the representations from Cllrs Finbow and Pearce and the information available from witnesses, the Sub-Committee resolved as follows:

In respect of **Cllr Finbow**

- He had raised his voice in an attempt to be heard
- He had disrupted the meeting

He had not shouted, he had not been abusive and rude, and his address had not been personalised.

He had not been disrespectful nor had he brought his office or authority into disrepute.

That the above decision be published.

In respect of **Cllr Pearce**

- He had shouted
- He had been rude
- He had been aggressive
- He had disrupted the meeting

Whilst he had been rude, he had not been abusive, his address had not been personalised and whilst it considered he had been aggressive, he had not sworn.

He had failed to treat others with respect and had brought his office and authority into disrepute.

Sanction:

That Cllr Pearce be censured due to his conduct as a Councillor.

That Westbury Town Council be advised to remind its members that the Code of Conduct is applicable at all times and that a Councillor cannot decide that he can act as a private individual and thereby not be subject to the Code of Conduct.

That Cllr Pearce be asked to consider sending a letter of apology to the Primary Care Trust and that if he did send such a letter, to send a copy for information to the Chairman of the Standards Committee.

That the above decision be published.

(9.30am – 12.32pm)

These minutes were prepared by Yamina Rhouati, Member Support Team Leader
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