

AGENDA SUPPLEMENT (1)

Meeting: Standards Committee
Place: Council Chamber - Council Offices, Browfort, Devizes
Date: Wednesday 23 November 2011
Time: 2.00 pm

The Agenda for the above meeting was published on 15 November 2011 and indicated that the reports detailed below would be to follow. These are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Pam Denton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718371 or email pam.denton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

11. **Outcome of two Standards Hearing Sub Committees** *(Pages 1 - 26)*
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DATE OF PUBLICATION: 18 November 2011

Wiltshire Council

Standards Committee

23 November 2011

Outcome of Standards Hearing Sub Committee - Case reference WC08/05

Purpose of Report

1. To report the outcome of the Standards Hearing Sub-Committee held on 17 March 2011 to consider an allegation of breaches of the Code of Conduct for Members.

Background

2. On 14 October 2008 the Monitoring Officer for Kennet District Council received a complaint from Councillor Dobson concerning the alleged conduct of Councillor Dow, a member of Marlborough Town Council.
3. The complaint alleged that Councillor Dow's behaviour over a period of time breached paragraph 3(1) and paragraph 3(2) (b) of the Code of Conduct namely:
 - 3(1)-treating others with respect
 - 3(2)You must not (b) - bully any person
4. The complaint was assessed by the Standards Assessment Sub-Committee of Kennet District Council on 24 November 2008 and it was decided that no further action should be taken.
5. The Monitoring Officer of Kennet District Council received an appeal on the 23rd December 2008, made by Councillor Dobson against the decision to take no further action. The appeal was not considered by Kennet District Council's Standards Committee before its responsibilities were transferred to Wiltshire Council on the 1st April 2009.
6. Under the provisions of the Local Government (Structural Changes)(Further Transitional and Supplementary Provisions and Miscellaneous Amendments) Regulations 2009 the appeal was considered by a Standards Review Sub-Committee of Wiltshire Council on the 23rd June 2009. The Sub-Committee allowed the appeal and decided to pass the complaint to Wiltshire Council's Monitoring Officer for investigation.

7. On 5 August 2009 the Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000.
8. The investigator's report dated 15 November 2010 found -
 - That there had been a breach of paragraph 3(1) of the Code of Conduct, (failure to treat with respect).
 - That there had been a breach of paragraph 3(2)(b) of the Code of Conduct, (there had been bullying behaviour)
9. The Consideration Sub-Committee of the Standards Committee of Wiltshire Council met on 14 December 2010 and having considered the Investigating Officer's report and findings, in accordance with Regulation 17 (1) (b) of the Standards Committee (England) Regulations 2008, decided to refer the allegations above to the Hearing Sub-Committee of the Standards Committee for determination. The Consideration Sub-Committee was satisfied that the matter was suitable for local determination.
10. The Hearing Sub-Committee of the Standards Committee of Wiltshire Council met on the 17th March 2011 and their decision is attached as appendix A.
11. The Chairman and members of the Sub-Committee may wish to comment on the hearing at the meeting.

Main considerations for the Committee.

12. This case was referred for investigation on 23 June 2009 and the final report was issued on 15 November 2010. There was initial delay as a result of establishing the new Governance team following local government reorganisation. Further delay was due to the fact that the investigation was complex, involving allegations covering a series of meetings and consideration as to whether a course of conduct over time amounted to a breach.
13. The Standards Committee has since set a target time of 6 months from the Assessment Sub Committee's referral of a complaint for investigation to the completion of the investigation and issuing a final report. It is acknowledged that the delay in this case was unacceptable.
14. The final report was issued on 15 November 2010 and the Standards Hearing Sub Committee met on 17 March 2011. The Standards Committee has since set a target of three months from the issuing of the final report to the conclusion of a determination Sub Committee hearing.

15. The pre-hearing process that has to be undertaken within the three month target leaves little room for delay and difficulties may arise when arranging the hearing date e.g. availability of a suitable venue, availability of staff, committee members, the subject member and any witnesses. This was particularly relevant in this case where the member indicated that she would be bringing a number of witnesses and also raised two preliminary points for which legal advice was required.
16. The two preliminary points raised by the member were:
- a. The validity of the Review Sub-Committee's decision to refer this matter to the Monitoring Officer for investigation.
 - b. The subject member's right to a fair and public hearing within a reasonable time under Article 6 of the Human Rights Act.
17. The Hearings Sub-Committee considered these two preliminary points prior to commencing a full hearing because if the member was successful in her submissions on either ground then to proceed to a hearing would have been unlawful and capable of successful challenge.
18. After taking legal advice the Sub-Committee determined that the decision of the Review Sub-Committee was valid. However the Sub-Committee determined on the second point that having regard to the substantial delay between the complaint being made and the hearing the continuation of the hearing would be a breach of the member's Article 6 right to a fair and public hearing within a reasonable time.

Proposals

19. The Standards Committee is asked to note the outcome of this matter.

Ian Gibbons

Monitoring Officer

Report author:

Frank Cain
Head of Legal Services and Deputy Monitoring Officer

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DECISION NOTICE

TAKE NO FURTHER ACTION

Wiltshire Council Reference No: WC 20/09

Date of Determination 17 March 2011

Subject Member

Councillor Peggy Dow, Wiltshire Council and Marlborough Town Council.

Complainant

Councillor Stewart Dobson

Hearing Sub-Committee Membership

Mr Stuart Middleton – Chairman (Independent Co-Opted Member)

Councillor Julian Johnson (Wiltshire Council Member)

His Honour David MacLaren-Webster (Town / Parish Co-Opted Member)

Monitoring Officer / Legal Adviser

Mr Frank Cain

Investigating Officer

Mr R Wiltshire

Clerk

Ms P Denton

Complaint

The Hearing Sub-Committee of Wiltshire Council's Standards Committee met to consider an investigation report on a complaint that Councillor Peggy Dow had failed to comply with the Model Code of Conduct for Members, adopted by the Marlborough Town Council.

1. The complaint alleges that Councillor Dow's behaviour breached paragraph 3(1) and paragraph 3(2) (b) of the Code of Conduct.
 - 3(1)-You must treat others with respect
 - 3(2)You must not (b) – bully any person

The complaint was assessed by the Standards Assessment Sub-Committee of Kennet District Council on 24th November 2008 and it was decided that no further action should be taken.

The Monitoring Officer of Kennet District Council received an appeal on the 23rd December 2008, made by Councillor Dobson against the decision to take no further action. The appeal was not considered by Kennet District Council's

Standards Committee before its responsibilities were transferred to Wiltshire Council, on the 1st April 2009.

Under the provisions of the Local Government (Structural Changes)(Further Transitional and Supplementary Provisions and Miscellaneous Amendments) Regulations 2009 the appeal was considered by a Standards Review Sub-Committee of Wiltshire Council on the 23rd June 2009. The Sub-Committee allowed the appeal and decided to pass the complaint to Wiltshire Council's Monitoring Officer for investigation.

The Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000. A copy of the letter of instruction is included in the report.

A hearing of the Hearing Sub-Committee was convened on 17 March 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.

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

Preliminary Issues

The Sub-Committee considered submissions from the parties on whether the hearing should be open to the public. They also received advice from the Legal adviser on the legal position and statutory guidance from Standards for England.

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. However, they did exclude from disclosure to the public material contained on page 29 of the agenda.

Preliminary Issues for Consideration

The Sub-Committee considered the following preliminary issues:

- Timing of the process since the complaint was made in November 2008
- Article 6 Human Rights Act

The Sub-Committee adjourned the meeting to consider these preliminary issues. The Clerk and the Legal Adviser remained with the Sub-Committee to record their decision and provide advice on matters of law and procedure.

Decision

Following due consideration and legal advice, the Chair announced that having carefully considered the representations made on behalf of Councillor Dow in respect to the time delays concerning Councillor Dobson's complaint and also the further representations made in respect of the Human Rights Act, the sub-committee decided unanimously that, in the circumstances, it would be in breach of Article 6 of the Human Rights Act 1998 to continue with the hearing.

Therefore under Section 57A (2)(c) of the Local Government Act 2000, the sub-committee determined that no further action should be taken in respect of the allegations.

This Decision Notice is prepared pursuant to s57A (4) of the Local Government Act 2000.

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Wiltshire Council

Standards Committee

23 November 2011

Outcome of Standards Hearing Sub Committee - Case reference WC 45/09 and WC 43/09

Purpose of Report

1. To report the outcome of the Standards Hearing Sub-Committee held on 2 September 2011 to consider allegations of breaches of the Code of Conduct for Members.

Background

2. On 3 November 2009 the Monitoring Officer received a complaint from Mrs Elizabeth Conway concerning the alleged conduct of Councillor David Gardiner, formerly a member of Winsley Parish Council. On the 5 November 2009 the Monitoring Officer received a further complaint about Councillor Gardiner from Mr John Barnes. Both complaints related to substantially similar issues.
3. The complaints alleged that Councillor Gardiner's behaviour breached paragraphs 3(1), 3(2)(b), 5 and 6(a) of the Code of Conduct: -
 - 3(1)-treating others with respect
 - 3(2)You must not (b) - bully any person
 - 5- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
 - 6(a) You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.
4. The complaints were assessed by the Standards Assessment Sub-Committee on 2 December 2009. They decided to refer both complaints to the Monitoring Officer for investigation.
5. The Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000.

6. The investigator's final reports dated 6 June 2011 found in both cases that there had been a breach of paragraph 3(1), 3(2)(b) and 5 of the Code of Conduct.
7. With regard to the complaint by Mrs Conway the Investigating Officer also found that there had been a breach of paragraph 3 (2) (c) of the Code (the member had intimidated or attempted to intimidate a person who was or who was likely to be a complainant in relation to an allegation that the Code had been breached).
8. The Consideration Sub-Committee of the Standards Committee of Wiltshire Council met on 30th June 2011 to consider the Investigating Officer's report and findings. They accepted the finding of no breach of paragraph 6(a) of the Code and decided to refer the rest of the allegations to the Hearing Sub-Committee of the Standards Committee for determination.
9. The Hearing Sub-Committee met on the 2 September 2011 and considered both complaints. Their decisions are attached as appendices A and B.
10. The Chairman and members of the Sub-Committee may wish to comment on the hearing at the meeting.

Main considerations for the Committee.

11. This case was referred for investigation on 2 December 2009 and the final report was issued on 6 June 2011.
12. Councillor Gardiner complained to the Monitoring Officer about delays in completing the investigation. The Head of Governance wrote to Councillor Gardiner in response to his complaint on 21 July 2011. His complaint about the delay was upheld and an unreserved apology made.
13. The Standards Committee has since set a target time of 6 months from the Assessment Sub Committee's referral of a complaint for investigation to the completion of the investigation and issuing a final report. It is acknowledged that the delay in this case was unacceptable.
14. The final report was issued on 6 June 2011 and the Standards Hearing Sub Committee met on 2 September 2011. This was just inside the Standards Committee's target of three months from the issuing of the final report to the conclusion of a determination Sub Committee hearing.

Proposals

15. The Standards Committee is asked to note the outcome of this matter.

Ian Gibbons

Monitoring Officer

Report author:

Nina Wilton
Head of Governance and Deputy Monitoring Officer

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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

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DECISION NOTICE

NO BREACH OF THE CODE OF CONDUCT

Wiltshire Council Reference No: WC 45/09

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

Mr John Barnes

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 Councillor David Gardiner had failed to comply with the Model Code of Conduct for Members, adopted by the 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. 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 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 Mrs Conway, 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 no 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 Wiltshire Council representative and Mr Goater was an employee 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.

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.

REASONS

At 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.

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