

## Standards Hearing Sub-Committee

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**MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 2 OCTOBER 2024 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.**

**Present:**

Cllr Trevor Carbin, Cllr Dr Nick Murry and Cllr Mike Sankey

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**11 Election of Chairman**

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

**Resolved:**

**To elect Councillor Trevor Carbin as Chairman for this meeting only.**

**12 Declarations of Interest**

There were no declarations of interest.

**13 Meeting Procedure**

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

**14 Exclusion of the Press and Public**

After seeking views from the Investigating Officer, Subject Member and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

**15 Determination of a Code of Conduct Complaint COC151643 in respect of Cllr Kevin Daley of Wiltshire Council**

The Hearing was in relation to complaint COC151643 made by Mr Robin Hibberd (The Complainant), regarding the alleged conduct of Councillor Kevin Daley (The Subject Member), of Wiltshire Council.

The Sub-Committee had received prior notification from the Investigating Officer and the Subject Member confirming their attendance at the Hearing in person.

The Complainant was not in attendance and had not provided an additional written statement.

#### Investigating Officer (IO) Representations

The Investigating Officer, Marion Stammers, presented their Report and confirmed that no witnesses would be called.

It was alleged that following an invitation from the Complainant to meet and discuss matters relating to the Complainants planning application, the Subject Member, in his emailed reply on 21 March 2024, made defamatory, bullying, and false statements that directly attacked the Complainant and his business, and showed no respect or professional integrity.

In doing so it was alleged that the Subject Member breached the following sections of the Wiltshire Council's Code of Conduct:

#### 1. Respect

1.1 I treat other Councillors and members of the public with respect.

#### 2. Bullying, harassment, and discrimination

2.1 I do not bully any person.

2.2 I do not harass any person.

#### 3. Impartiality of officers of the council

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

#### 5. Disrepute

5.1 I do not bring my role or local authority into disrepute.

#### 6. Use of position

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

In doing so it was alleged that the Subject Member breached sections of the Wiltshire Council Code of Conduct.

The Investigating Officer noted that at the conclusion of their report, that on a balance of probabilities, they had found a breach of the code of conduct in two provisions, these were:

#### *Respect*

*1.1 I treat other Councillors and members of the public with respect.*

#### *Bullying, harassment and discrimination*

*2.1 I do not bully any person.*

No breach was found in the remaining provisions of the code of conduct, as alleged by the Complainant.

#### Statement of the Complainant

The Complainant was not in attendance and no additional written statement was provided.

#### Questions of the Investigating Officer

In accordance with the procedure the Sub-Committee then had the opportunity to ask questions of the Investigating Officer, supported by the Independent Person.

In accordance with the procedure the Subject Member then had the opportunity to ask questions of the Investigating Officer, where it was clarified that the Investigating Officer did not know why the Complainant wanted their planning application to be called in to committee for consideration.

#### Statement of the Subject Member

The Sub-Committee noted the additional materials which had been provided by the Subject Member and circulated at the meeting. These were in the form of background emails and responses to information requests made by the Subject Member. With agreement of the Investigating Officer, the Sub-Committee agreed to receive the additional materials.

In accordance with the procedure the Sub-Committee received a verbal statement from the Subject Member as evidence and to make representations regarding the incident, whilst providing context to mitigating factors he believed to have been in place.

The Subject Member sought clarity on why emails sent prior to 7 March 2024 (outside of the 20-day deadline period) had been included within the Investigation report.

The Subject Member drew attention to an email referenced in the Complaint, dated 29 March 2022, between himself and the Economic Development Service Manager, which had been to clarify some factual points in relation to a previous planning application made by the Complainant. It was noted that this email had been acquired through a RSAR and was from 2022, some two years prior to the current planning application and therefore considered was not relevant.

The Monitoring Officer explained that the emails in question, among others, had been included to provide background information for the Sub-Committee on events leading up to the exchanges where it was alleged the Code may have been breached.

The Investigating Officer further clarified that the emails prior to 7 March 2024 had not formed part of the evidence used when evaluating the findings of the investigation, as set out in paragraph 4.9 of the Investigation Report.

The Subject Member drew attention to the initial email he received from the Complainant dated 6 February 2024 and advised that the email had been sent to him following the refusal of the Complainants Planning Application. The Subject Member went on to state that prior to receiving the email, he had never met the Complainant or been in contact with him. The Subject Member also highlighted that the email had not been sent to him alone, but that six email recipients had also been copied in by the Complainant.

The Subject Member believed that the Complainant had personally attacked him in the email, with no grounds to do so, considering he had no connection to the refusal of the Complainants planning application. In addition the Subject Member believed that information the Complainant had stated in one of the email trails, regarding the Complainants business, was not factual.

The Subject Member confirmed that he had taken offence at the accusations and assumptions the Complainant had made against his character and his actions as an elected member, particularly as the Complainant had chosen to copy the message to six additional recipients.

The Subject Member questioned the reasoning to why the Complainant had included the chosen recipients to the email trail, suggesting that the recipients, which included other elected members and an MP, may be personal acquaintances of the Complainant.

The Subject Member clarified his role as a substitute to the Southern Area Planning Committee, noting that he had only attended as a substitute committee member on one occasion, and that had not involved any planning application of the Complainant.

The Subject Member had raised a series of requests for information under FoI, through Democratic Services and DSAR, noting that he had not been provided all the information he had sought, due to what he felt was an imposed restriction against him.

The Subject Member also sought clarification from the Monitoring Officer on why the original complaint had not been dismissed under Section 4.6 of the relevant version of Protocol 11, on the grounds of being trivial, vexatious, malicious, politically motivated or 'tit for tat', and not in the public interest, including particularly the efficient use of resources, as he believed it should have been

In response, the Monitoring Officer stated that on initial assessment, he had taken a different view and had progressed the Complaint to the Standards Assessment Sub-Committee, for Assessment as was its function, and that Sub-Committee could have dismissed the complaint on those grounds had they agreed with the position of the Subject Member.

The Subject Member accepted that as councillors were public figures, in hindsight he should have used different wording when responding to the email sent by the Complainant and acknowledged that as an elected member he also

had the right to refrain from further correspondence with a member of the public should he believe the encounter to be vexatious or malicious.

The Subject Member concluded that he did not believe his response in the email to the Complainant to be defamatory or of a bullying nature, but did in hindsight agree that as an elected member he could have refrained from responding as he did, despite his belief that there had been a lack of respect by the Complainant in terms of the accusations against his character and how he carried out his functions as a Councillor.

No witnesses were called by the Subject Member.

#### Questions of the Sub-Committee to the Subject Member

The Subject Member when asked for clarification noted that the Complainant had sent the first email in the line of correspondence between them, regarding the Complainant's most recent planning application and that the email had requested a meeting between the two parties.

#### Questions of the Investigating Officer to the Subject Member

There were no questions.

#### Concluding Statement of the Investigating Officer

The Investigating Officer concluded that the incident arose from a request by the Complainant to meet with the Subject Member to clarify any misunderstandings regarding the planning application. The Complainant had felt that the response had been delivered in a way which was unnecessarily aggressive.

The Investigating Officer clarified that the IG request had not formed part of the investigation.

#### Concluding Statement of the Subject Member

In accordance with the procedure the Subject Member made a concluding statement in which they stated that they had found the initial email from the Complainant to be aggressive in tone and that when he had refused to meet with the Complainant, as a way of discrediting him, the Complainant had then submitted the complaint against him.

The Subject Member expressed the great strain the process had had on himself and his family.

#### Deliberations

Following the concluding statements, the Sub-Committee withdrew into private session at 12:50pm, together with the Independent Person, the Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and his contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 1:30pm at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

**Decision:**

**Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers, the additional materials provided by the Subject Member circulated at the meeting and the verbal statements during the Hearing the Sub-Committee concluded on the balance of probabilities that Councillor Kevin Daley of Wiltshire Council breached Wiltshire Council's Code of Conduct under the following provision:**

**1.1 I treat other councillors and members of the public with respect.**

**Specifically the comments made regarding 'throwing money around' and 'about people rethinking their relationship with the complainant'**

**The Sub-Committee did not agree there was evidence to support a breach in relation to 2.1 I do not bully any person.**

**Sanctions:**

**The Sub-Committee agreed the following Sanctions be implemented by Wiltshire Council:**

- 1. To instruct the Monitoring Officer to arrange appropriate training in relation to dealing with these matters better in the future.***

**Background**

The Subject Member is an elected member of Wiltshire Council.

The Subject Member in his role as a Councillor has signed a declaration in agreement to abide by the Wiltshire Council's Code of Conduct.

The Subject Member used his official Council email address during the email exchanges. The Subject Member had also not refuted that he was acting in his official capacity when sending the emails. The matters discussed in the emails related to the refusal of a planning application and therefore represented the transacting of council business.

The Sub-Committee agreed with the Investigating Officer's conclusion that at the time of the incident in question, the Subject Member's actions would give the impression to a reasonable member of the public with knowledge of all the facts that he was acting in his official capacity and that, consequently, the Code was in force.

## Respect

Wiltshire Council's code includes the following definition of respect:

*1.1 I treat other Councillors and members of the public with respect. Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. However, you should not subject individuals, groups of people or organisations to personal attack.*

*In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in Members.*

The Sub-Committee noted the findings of the Investigating Officer, in that the Subject Member's choice of language in some of the email extracts did reach the threshold of representing a breach of paragraph 1.1 of the Code in that, by making the two statements as set out below, he had subjected the Complainant to personal attack and inappropriate, rude and offensive language:

*"I work for my residents not people who wave money around"*

*"you have sunk to a new low and may be some of the people who you copy all these emails into might want to think about their relationship with you"*

The Sub-Committee, on considering all of the evidence, on a balance of probabilities agreed with the Investigating Officers findings that a breach of paragraph 1.1 of Wiltshire Council's Code of Conduct was established.

## Bullying, harassment and discrimination

Wiltshire Council's Code includes a definition of bullying, which states:

*2.1 The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as; offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others"*

The Sub-Committee considered the evidence produced by the Investigating Officer relating to the interview with the Complainant, where it was noted, the Complainant had stated that he had felt disrespected and bullied by the Subject Member.

The Sub-Committee focused on the content of the initial email sent by the Complainant to the Subject Member and noted that whilst the Subject Member had used a poor choice of words in his response, the tone set by the

Complainant in the email was reflected by the Subject Member in what could be considered as tit for tat.

The Sub-Committee also considered the intention of the Complainant copying in the additional recipients, noting the Subject Member comments that at the time, he felt it had opened up the personal attack made on him to external circulation.

The Sub Committee considered the Investigating Officers findings and whilst it was agreed that bullying could occur as a result of a single email, in this instance the Sub-Committee did not agree that the actions of the Subject Member rose to the level of bullying as set out in the definition, and as such the Sub-Committee agreed that on balance of probabilities a breach of the Code's had not occurred.

### Harassment

The Guidance on the LGA Model Councillor s Code of Conduct states:

*2.2 Harassment: I do not harass any person.*

*The Protection from Harassment Act 1997 states that harassment includes behaviour which alarms or causes a person distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.*

The Sub-Committee considered the findings of the Investigation in that there was no indication in the evidence that the email response sent by the Subject Member was likely to have been intended to cause the Complainant alarm or fear of violence, and as such the Sub-Committee agreed that on balance of probabilities a breach of the Code's had not occurred.

### Equality and Discrimination

Wiltshire Council's Code states:

*2.3 I promote equality and do not discriminate unlawfully against any person.*

*4.4.3 Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.*

*4.4.4 The Equality Act 2010 places specific duties on local authorities. Members have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.*



The Sub-Committee considered the findings of the Investigation in that there was no indication in the evidence that the Complainant has a protected characteristic which the Subject Member was aware of and for which the Complainant could have been discriminated against.

The Sub-Committee agreed that none of the other comments made by the Subject Member appear to represent unlawful discrimination against the Complainant or a specific failure on the Subject Member's part to promote equalities, and as such the Sub-Committee agreed that on balance of probabilities a breach of the Code's had not occurred.

#### Impartiality of Officer of the Council

Wiltshire Council's Code states:

*3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.*

The Sub-Committee considered and agreed with the findings of the Investigation in that the Subject Member's email to the Economic Services Development Manager on 29 March 2022 was sent out of the relevant time period, and therefore did not form part of the Investigation, and as such the Sub-Committee agreed that a breach of the Code's had not occurred.

#### Disrepute

The Guidance on the LGA Model Councillor Code of Conduct states:

*5.1 I do not bring my role or local authority into disrepute.*

*In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either:*

- 1. reducing the public's confidence in them being able to fulfil their role; or*
- 2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.*

The Sub-Committee considered and agreed with the findings of the Investigation in that whilst the actions of the Subject Member had breached a requirement under the Codes, it was not considered that the instance of misconduct fell within the definitions of bringing his role, or his authorities, into disrepute, and as such the Sub-Committee agreed that on balance of probabilities a breach of the Code's had not occurred.

#### Use of Position

Wiltshire Council's Code states:

*6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.*

*Your position as a councillor provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.*

The Sub-Committee considered and agreed with the findings of the Investigation in that there was no requirement under the Constitution for Members to call in a planning application for consideration at Committee and that there was no evidence that the Subject Member had used his position to further his own or others' private interests or personal gain, and as such the Sub-Committee agreed that on balance of probabilities a breach of the Code's had not occurred.

### Conclusions

The Sub-Committee considered the additional materials provided by the Complainant and the Subject Member as relevant in providing additional background context to the incident. However its determination of what did or did not constitute a breach of the Code was restricted specifically to those emails between the Complainant and the Subject Member, which fell within the 20-day timeline.

The Sub-Committee considered the actions of the Subject Member in his decision not to call in the Complainants planning application to Committee and agreed that he was within his right to do so, due to there being no requirement within the Constitution for Members to call applications in when requested by either the applicant or another interested party.

The Sub-Committee furthermore considered the enquiry made by the Subject Member to officer's for information regarding the planning application and agreed that it was common practice for Members to liaise with officers to obtain information and a better understanding of planning applications within their division area, and that in doing so, this did not necessarily require them to take any further action in terms of a call in request to Committee.

The Sub-Committee considered the Investigation Officer's comments in relation to the Complainant's belief that if the application had been considered at Committee, it would have been approved, and that following refusal the Complainant had made a DSAR for information which had included the email from the Subject Member to the Economic Development Service Manager dated 29 March 2022.

The Sub-Committee further considered the Subject Member's statement regarding not having met or communicated with the Complainant prior to the Complainants first email to him on 6 February 2024 and noted that the initial email appeared to have been triggered by the discovery of the Subject

Member's enquiry on a previous planning application and not in relation to any current activity.

When considering the language used by the Subject Member in his reply to the Complainant's initial email, the Sub-Committee agreed that sections of it had been inappropriate for an elected member when responding to council business.

The Sub-Committee considered the Subject Members statement at the meeting in which he had agreed that his choice of words was not appropriate and that he had responded whilst still hurt by the aggressive tone of the Complainant's email, which he felt had tried to discredit him personally and in the capacity of the work he carried out as an elected member, which he felt strongly about.

The Sub-Committee agreed that elected members should expect to receive some level of criticism and occasional abrupt correspondence from members of the public when concerning emotive matters such as planning applications, and that members of the public were not bound by a Code of Conduct. However, Members were entitled to refrain from responding when situations such as these arise and should hold themselves to a higher standard in terms of the language they use and how they communicate with the public, when dealing with council business.

The Sub-Committee agreed that the Subject Member would benefit from some refresher training on positive conduct by elected members, to enable him to communicate more effectively in a positive manner moving forward.

On balance, the Sub-Committee was satisfied that the Subject Member had breached the following sections of the Wiltshire Council's Code of Conduct:

*1.1 I treat other councillors and members of the public with respect.*

### Sanctions

The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.

The Sub-Committee sought the view of the Subject Member in relation to recommendation of any sanction. The Subject Member made no comment.

The Sub-Committee after consulting the Independent Person resolved to recommend that Wiltshire Council impose the sanctions as set out above, as a result of a breach of the Code of Conduct.

(Duration of meeting: 11.15 am - 1.35 pm)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line 01225 718504, e-mail [lisa.alexander@wiltshire.gov.uk](mailto:lisa.alexander@wiltshire.gov.uk)

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