

CONDUCT COMMITTEE

7 FEBRUARY 2017 - 9.30AM



PRESENT: Councillor Miss Hoy (Chairman), Councillor Boden (Vice-Chairman), Councillor Humphrey, Councillor Mason, Councillor Skoulding, Councillor Donnelly, Tina Gambell and Claire Hawden-Beal

APOLOGIES: Councillor Russell

OFFICERS IN ATTENDANCE: Jane Bailey (Member Services and Governance), Jenny Harris (Legal Officer) and Carol Pilson (Monitoring Officer)

CND6/16 PREVIOUS MINUTES

The minutes of the meeting of 14 June 2016 were confirmed and signed.

CND7/16 DISPENSATIONS FOR COUNCIL TAX MATTERS

Councillor Miss Hoy presented the Dispensation for Council Tax Matters Report to renew the arrangements for the granting of dispensations for the setting of Council Tax and approval of schemes for related Benefits and Exemptions. She stated that a letter has been brought to her attention this morning by Councillor Boden from DCLG.

Councillor Boden stated that there had been a parliamentary debate on this issue, and he has discovered a letter that was sent to all local authorities on the 5 February 2012 from DCLG making it clear from their point of view that the liabilities to Council Tax and the arrangements for Council Tax Support are pecuniary interests but are not disclosable pecuniary interests. He added that he has brought this to the attention of officers today and they need time to consider this, therefore he asked that the item is deferred until the next meeting.

Councillor Miss Hoy stated that as the Council Tax will be set at the Council Meeting on 23 February, a further Conduct Meeting will need to be scheduled before that meeting.

Members AGREED to defer the Dispensation for Council Tax Matters.

CND8/16 INITIAL CONSIDERATIONS OF A MEMBER CONDUCT COMPLAINT - COUNCILLOR ALAN LAY

Councillor Miss Hoy made the following statement:

'In the pre-sift to this complaint I did not vote on this matter or encourage any others to vote in any particular way. That process was just to determine if a breach may have been within the scope of the code of conduct. I have acted in a fair and nonpartisan way throughout this process, however I feel that now that we are at the start of the judgement stage of this process as to the facts of the case, and because I was present at the meeting of Wisbech Town Council where the alleged breach occurred, I feel it would be appropriate for me to stand down for this item as I would not want there to be any perception of bias, however unfair that may be.'

Councillor Miss Hoy asked Councillor Boden to take over as Chairman for this item and left the table.

Councillor Boden presented the Report for the Initial Consideration of a Member Conduct Complaint - Councillor Alan Lay. He stated that since the publication of the agenda the Monitoring Officer has advised that there are 3 further complaints which have been received regarding the same matter. They are currently going through the informal process and he confirmed that the Independent Person has been consulted. As a result of this he proposed that the Committee defers consideration of this complaint to enable the other 3 complaints to go through the process so that all complaints relating to this one matter are considered at the same time.

This proposal was seconded by Councillor Donnelly. Carol Pilson reminded the Chairman that the proposal would need to be seconded by a voting member of the Committee.

Councillor Boden asked the voting members of the committee for a seconder to the proposal to defer; he stated that without a seconder for the proposal the Committee would proceed with the consideration of the matter today.

- Councillor Humphrey stated that it seems a shame to get this far with the process and not to continue with the consideration today. He added that presumably the other complaints have come in off the back of this complaint and asked if the Committee could have any further details of those complaints made. Carol Pilson confirmed that the 3 complaints are on the same matter, but because we are still in the informal stage of the process it would not be correct to reveal the details;
- Councillor Humphrey stated that he can see the logic in considering them altogether, but he is mindful that everyone is in attendance and the matter should be considered on the merits of what we have been presented with in the report today;
- Councillor Mason agreed, he stated that the public are here today and they have come a long way to listen to the consideration and the Committee are all in place so we should go ahead with the item;
- Tina Gambell stated that if this is dealt with today, the other complaints might be dismissed based on the outcome without any hearing at all. She added that she feels that this matter should be considered today but is mindful that there are 3 other people waiting for their voices to be heard;
- Councillor Skoulding stated that each complaint should be considered on its own merits, so any other complaints should be considered separately from this one. Tina Gambell asked if that would be prolonging the Councillors journey with complaints being heard one after the other;
- Councillor Boden reminded the Committee that it is always important to take into account the comments made by the independent person;
- Councillor Donnelly stated that if the further complaints are related to this original complaint, they should be heard as one episode as one might have a knock on effect of the other;
- Councillor Humphrey reiterated Tina Gambell's point that the outcome of this item may have some influence on the predetermination of the others, but that this is at an advanced stage and we should hear it today;
- Jenny Harris stated that her concern is that under the constitution you cannot debate a matter that has already been debated at a previous meeting. Without knowing the detail of the other complaints she would be concerned that at the next meeting when those matters were discussed you (the members) may find yourself unable to debate all of the matters on the basis that the matter had already been debated and resolved;
- Councillor Mason asked if Councillor Tierney (the complainant) is in attendance for this meeting. Councillor Boden confirmed that he is not present and we would not normally be expecting the person making the complaint or the person who the complaint is against to be present at this stage. The committee would be looking to make a determination based on the evidence presented. Councillor Mason stated that he was expecting to be able to question Councillor Tierney on this matter but he is not here. Carol Pilson stated that this is an initial determination hearing. This is the opportunity for the Committee to look at the

complaint and the response and if the committee feels they have sufficient information they can make a determination today. Alternatively if the committee feel that they need further information the complaint can be put forward for investigation;

- Councillor Mason stated that he had misunderstood, he felt that the initial consideration had taken place with the Independent Person and Chairman and that the matter would be taken forward today, he added that this is also the expectation of the public. Carol Pilson explained that we introduced a pre-screening process that involves the independent person, deputy independent person and the chairman; this is a non-public meeting which prevents any vexatious complaints coming forward into the public domain. The stage that we are at today is that there have been some efforts to resolve the complaint informally but unfortunately that has been unsuccessful. Therefore this goes forward to the pre-sift stage where the 3 members determine if a breach 'may' have occurred. On this occasion they did not feel that they could dismiss the complaint, they felt a breach 'may' have occurred. Therefore it is for the Conduct Committee to make that determination today. The options open to the Committee today are to consider the complaint based on the report or there is a proposal to defer to await the further information that may come through from the other complaints;
- Councillor Boden stated that there are 4 possible outcomes from today's meeting, reject the complaint based on the report, accept the complaint based on the report, determine that further investigation should take place and finally, to defer. Jenny Harris confirmed that these are the 4 outcomes;
- Councillor Humphrey asked the legal officer if she is suggesting it is better for us to defer and consider the complaints together or if it is okay to consider this as a standalone item. Jenny Harris stated that it is a matter for members to make the decision but reiterated that her concern is that if the matter is not deferred, at the following hearings for the other complaints, you may not be able to consider those complaints in detail having discussed the matters that are the subject of that complaint;
- Councillor Boden asked for clarification that it would mean that we would be prejudicing the future meetings. Jenny Harris confirmed this;
- Councillor Boden stated that it is for us to determine what we believe is fair and proper;
- Councillor Mason stated that he finds it hard to make a determination without knowing what the other complaints are about, he feels that the Committee need more transparency around the other complaints. Carol Pilson confirmed that they are in relation to exactly the same matter. She agreed that transparency is important but we have an informal process so that complaints do not come to the public domain if they can be resolved informally, by disclosing the details at a public meeting we are going against the principles of the process we have in place;
- Councillor Mason asked for clarification that the remainder of the procedures will be held with the public present. Carol Pilson confirmed that the other 3 complaints are still at the informal stage, so they are with the respective members for a response, following that it would be up to the complainants to decide if they wish to progress with those complaints, if they did we would move to the pre-screen process and again if those members felt a breach 'may' have occurred it would come to this committee;
- Councillor Boden asked if the other 3 complaints are identical to this complaint as if they are not there might be something different that we would need to take into account moving forward. Carol Pilson confirmed that 2 out of the 3 are identical and the third is regarding the same issue;
- Councillor Skoulding stated that he feels games are being played and that the complaint should be heard;
- Councillor Boden asked the voting members if they would like to proceed to consider the complaint. Members agreed. Councillor Boden stated that we have a clear steer from the voting members that we should continue to consider this complaint within the confines of the process that we operate under.

Councillor Boden reminded members that in considering this complaint it is very important that we take into account the information that has been provided to us, any other information that we may know or suspect about this particular case cannot be taken into account.

Members asked questions, made comments and received responses as follows:

- Councillor Boden referred to 2.7 of the report and asked members to consider these points when making a determination today;
- Councillor Humphrey stated that with regards to the points at 2.7, he feels that the latter 2 are the only that apply, these being 'Is the complaint too trivial to warrant further action?' and 'Does the complaint appear to be malicious or simply tit for tat?'
- Councillor Mason stated that at this stage the information we have been given does warrant further investigation, he feels that there are other factors in this case that going back in the history of these 2 Councillors that may actually influence this further;
- Councillor Humphrey stated that he disagrees with Councillor Mason's comment, the nature of the complaint, which is the use of a particular word, is trivial to the point that he is surprised that we are here considering it. He stated that he appreciates the process to determine that there 'may' have been a breach, but is struggling to understand why it would not have been dismissed at that stage;
- Councillor Mason agreed, he stated that this is very much a tit for tat case, there is a lot of personal animosity in this complaint and he feels it should be dismissed;
- Councillor Skoulding agreed and stated that everyone should respect the position of the Mayor but they do not have to respect the person who is the Mayor. He added that he was upset to read some of the comments in the report which came across as tit for tat. He stated that he knows Mr Lay works long and hard for his town. He stated that his father always told him 'if you have nothing good to say then say nothing at all'. This is just like an argument in the school playground and they are trying to score points against each other, he feels this should have been sorted out amongst themselves;
- Councillor Mason stated that the Committee need to ask themselves why Councillor Tierney has brought this complaint and not another member of the Council;
- Councillor Humphrey stated that there is sufficient information in the responses from the Councillor Tierney and Councillor Lay that explains the use of the word and stated that he does not feel it has brought the Mayor or the Town Council into disrepute. He added that in the final response from Councillor Tierney he uses the words 'felt threatened' and Councillor Lay gives an explanation of the context in which the word was used;
- Councillor Boden reminded the Committee that the purpose of this meeting is to consider the complaint by Councillor Tierney that the Town Council was brought into disrepute and he is entitled to make that complaint;
- Councillor Donnelly stated that there is obviously history and this appears to be tit for tat. He understands that it was advice that was given but it was seen by the other party as a threat;
- Tina Gambell stated that she does not know the history of the relationships between the 2 Councillors, however there has clearly been one; she added that it is hard to say that this is just tit for tat. She stated it has to be transparent to the public that Town Council meetings are not places where threats are made or that bullying takes place or where Councillors are not able to speak or feel intimidated in any way at all. That is why this case needed to be discussed, otherwise the Mayor was being perceived to be someone who was able to make threats to Councillors unhindered;
- Councillor Humphrey stated that the part of the code of conduct which was referred to was to bring this complaint forward is that 'you must not conduct yourself in a manner which can reasonably be regarded as bringing your office or authority into disrepute', he reiterated that he does not feel that the use of the word and the nature of the complaint in any way has brought that office into disrepute and on those grounds he recommended that the Committee dismiss the case;
- Councillor Boden stated that he has come to a similar conclusion but does not believe it is tit for tat, as there is no evidence provided that there have been previous interactions. When

we are talking about the right of Councillors to speak especially when they are speaking at a Council meeting, it is really important that as far as we can we have free speech and especially for a politician who is not part of the ruling party. It is important that we protect democratic free speech. That is not unlimited speech, and if a member is insulting, unduly rude or uses expressions that are insulting to other members of the community, that is not acceptable and that brings the organisation into disrepute. We must recognise the right to have robust disagreement between members on a council and would not want to dampen down the passion that is felt by individuals when they are speaking as a Councillor in a meeting. There are some expressions that are in common use that have no place in a Council meeting because they demean certain sections of the community. The word threatened in this case was not the best choice of words, but stated he would rather protect free speech than being censorious about what Councillors say at Council meetings. He stated that because it is uncertain he feels that there is no case to answer. He added that Councillor Lay is within the minority party in that Council and they have a particular need to be able to have their say within the limits of what is allowed, and he does not believe he has gone beyond those limits;

- Councillor Skoulding agreed;
- Councillor Mason stated that there is tit for tat in this case, going over the history of what has happened at Wisbech Town Council there are examples of tit for tat on Councillor Tierney's blog to which Councillor Lay did respond and was upset by what he called continual verbal abuse by Councillor Tierney. There was another occasion where Councillor Tierney tried to film Councillor Lay and after a discussion at Council he was asked to remove the device. Councillor Boden reminded Councillor Mason that we need to consider what has been presented to us in the report. Councillor Mason stated that he is trying to establish that there was tit for tat;
- Councillor Humphrey stated that he understands the point that Councillor Mason is trying to make but appreciates that we must consider this on the information that is before us and that information is not included. He added that the report says that Councillor Lay referred to the fact that the Mayor stood from his seat and pointed a finger at him and said 'be very careful about what you are going to say' and that is what he considered as a threat. That is a strange thing for a chairman or a Mayor to do, you would not expect that, so to that extent he could feel threatened, but the case should be dismissed.

Proposed by Councillor Skoulding, seconded by Councillor Humphrey and AGREED to dismiss the Member Conduct Complaint against Councillor Alan Lay.

(Councillor Miss Hoy declared a non-pecuniary interest in this item as she was present at the Wisbech Town Council meeting where the alleged breach occurred, and took no part in the discussion or vote on this decision)

10.07am

Chairman