

Appendix A

Standards Committee Hearing –6 September 2021

Complaint Against – Cllr Barrie Yates

Committee Decision

The Standards Committee convened on 6 September 2021 to consider a complaint brought by Cllr Mick Titherington into the conduct of Cllr Barrie Yates. The complaint alleged that Cllr Yates had at the Planning Committee on 17 December 2020

- threatened and bullied other members,
- disregarded and disputed offer advice and
- generally brought the Council into disrepute.

The full background is contained in the investigators report.

Full details of the hearing can be accessed through the following link

<https://youtu.be/qcIM0yVeUf8>

and the discussions will not be reproduced here.

Preliminary Issue

Mr Hind, assisting Cllr Yates, raised a preliminary point which was considered prior to the commencement of the Hearing proper. In accordance with paragraph 5 of the Hearing Procedure, Cllr Yates contended he was not happy to proceed on 3 bases.

1. Members of the Committee, due to their consideration at full council on 27 January 2021 of a motion to remove Cllr Yates from the Planning Committee based on his alleged conduct on 17 December 2020, had pre-determined the issue before the committee by deciding to impose a sanction prior to the consideration of the standards complaint;
2. The Members of the Committee due to their consideration at full council on 27 January of a motion to remove Cllr Yates, would be biased against or have the perception of bias against Cllr Yates through the decision of the council to impose a sanction prior to the consideration of the standards complaint;
3. The Chair of the Committee, as a member of the Penwortham Town Council, would be biased, or have the perception of bias against Cllr Yates due to her dual hatted role.

Mr Hind on behalf of Cllr Yates made submissions in support of this position addressing the concept of bias and predetermination, providing the statutory definition and the definition of bias adopted in by tribunals.

The Monitoring Officer provided advice to the Committee.

The Independent Person expressed a view.

Findings on Preliminary Issue

Predetermination

1. Members accepted and agreed that for this to apply the definition of predetermination would be that they would have acted in such a way as to have had a closed mind.
2. The definition of closed mind was agreed to be such that nothing would change their predetermined view.
3. Members distinguished the matter before them from the decision of Council of the 27 January as this was a hearing based on a detailed investigation report, whereas the decision of full council was based on the motion presented and the apologies made by Cllr Yates which acknowledged the behaviour complained of.

Based upon the above findings members rejected the argument that as a group they had pre-determined the complaint.

Bias of Committee

1. Members accepted the definition of bias and also that they must consider the public perception of bias.
2. Members did not find that voting a certain way on a matter is evidence in itself of bias, but should be a consequence of informed decision making.
3. Members noted that perception must be “informed” with the perception being maintained if the member of the public is in possession of all relevant facts, not just of the decision.
4. Members agreed that the decision at full council from 27 January could be distinguished from the consideration of this complaint as there was on this occasion a detailed report to inform the decision.
5. Members also considered the public perception of the council were the standards proceedings to be discontinued, noting that should this argument be accepted, then no councillors would be able to sit on the committee. Members concluded it could not be right nor in the public interest to discontinue the proceedings.
6. Members noted the similarity with the predetermination tests.

Based upon the above findings, members rejected the argument that as a group they were disqualified from considering this complaint through bias.

Bias of the Chair

1. Members of the Committee concluded that the matter for their consideration was as standards complaint relating to the behaviour of Cllr Yates. It was co-incidental that it concerned an application by that Town Council and that the outcome of the process would have no impact for the Town Council.

Based upon the above finding the members rejected the argument that the chair of the committee was disqualified from considering this complaint through bias.

Cllr Wooldridge, on advice, concluded that she had no bias on this matter.

The Substantive Complaint

The Committee considered a request by Cllr Yates for the hearing to be held in public session but resolved to exclude press and public.

The investigating officer presented his report and was questioned on its content by Mr Hind on behalf of Cllr Yates, the Committee and the independent person.

Cllr Yates agreed to take questions from the Committee and the independent person.

Mr Hind, made closing submissions on behalf of Cllr Yates.

The Facts

There was substantial agreement between the investigating officer and Cllr Yates as to what happened at the Planning Committee on 17 December 2020 and the link to the recording of the meeting had been provided.

The points in dispute were

1. Cllr Yates was very clear it was his intention to protect both the Councillors who held dual positions with SRBC and PTC and the integrity of the decision making of SRBC;
2. Whether Cllrs Flannery, Adams and Hancock had both personal and prejudicial interests in the decision of the Planning Committee.
3. The tone of the challenge brought by Cllr Yates to the Councillors and to the Head of Legal.
4. The action and/or suggestion of telephoning the police was done as a joke to make a point

Findings

1. It is appropriate and indeed should be welcomed that members raise issues of interests with each other. But this should be done appropriately. Members are there to support each other and advise but should not stray into directing the conduct of others as compliance with the code of conduct is personal to each member.
2. Cllrs Flannery, Adams and Hancock had a personal interest in the Planning Committee agenda item, namely, their Membership of Penwortham Town Council.
3. It does not matter for the purposes of the consideration of this matter whether Cllrs Flannery, Adams and Hancock had a prejudicial interest in the matter, the committee being concerned not with whether Cllr Yates was correct in his assertion but his later conduct and behaviour.
4. Members made no findings in relation to Cllr Yates' beliefs or state of mind, whatever his intentions the Committee found they were to assess the behaviour of Cllr Yates and so his intentions are not relevant to these considerations.
5. Cllrs Flannery, Adams and Hancock did not have a Disclosable Pecuniary Interest in the planning application. As such they would not have committed a criminal offence as alleged by Cllr Yates during the meeting.
6. When assessing whether behaviour amounts to bullying members are obliged to consider not just the intention of the member but also the way the behaviour is interpreted by those to whom it has been directed.
7. Members found that Cllr Yates' forceful behaviour and tone generally was intended to place undue and inappropriate pressure on other members, specifically members found -

- a. that Cllr Flannery took seriously the statement by Cllr Yates that he intended to call the police.
- b. Cllr Hancock decided not to vote as a result of Cllr Yates behaviour
- c. that the behaviour of Cllr Yates was addressed to Cllr Flannery, Cllr Hancock and Cllr Adams

Members found that Cllr Hancock chose not to participate in the voting on this item as a result of Cllr Yates' conduct and thereby Cllr Yates wrongfully influenced the decision.

8. The action of even pretending to telephone the emergency services, particularly where there is no justification, to enhance a threat is not responsible or acceptable behaviour.
9. Members found that the initial discussion with the Head of Legal was not inappropriate behaviour.
10. Members found that the continuing challenge of the Head of Legal by Cllr Yates was not appropriate behaviour though it did not amount to a breach of the Code.

Identified Breaches

1. The committee considered part A paragraph 10 of the Code of Conduct. This states

“It is not enough to avoid impropriety; perception is also important. Members should at all times avoid any occasion for suspicion and any appearance of improper conduct.”

Even had members accepted Cllr Yates’s intentions as being a valid consideration, the public perception of his behaviour would have overcome them.

2. Cllr Yates breached Part C paragraph 1 of the code of conduct (general obligations) by failing to treat Cllr Flannery with respect.

Reason – The behaviour was primarily contained in his exchange with and directed to Cllr Flannery.

3. Cllr Yates breached Part C paragraph 2(b) of the Code of Conduct (General Obligations) by bullying other persons namely Cllr Flannery, Cllr Adams and Cllr Hancock.

Reason – the behaviour was intended to prevent the participation of Cllr Flannery, Cllr Adams and Cllr Hancock and was found to have placed undue and inappropriate pressure on them. It was also noted that the behaviour succeeded in discouraging Cllr Hancock from participating.

4. Cllr Yates breached Part A paragraph 9 of the Code of Conduct by bringing the Council into disrepute

Reason – the finding that Cllr Hancock did not participate in a decision-making process undermines the both the integrity of that decision and the public's confidence in the council. and

The action of mimicking placing a call to the emergency services where there is no justification for doing so undermines the public perception of members of the council.

5. The Committee elected to make no findings in relation to the conduct towards the Head of Legal and acknowledged that the apology already provided would have resolved that matter in any event.

Sanctions

Having identified the breaches above members moved on to consider the proper level of sanction to be imposed.

Members considered the following as mitigating factors

1. Cllr Yates had initially apologised, and restated those apologies at the Hearing; and
2. Cllr Yates had been removed from the Planning Committee for a period of over 3 months.

Members considered the following as aggravating factors

1. Cllr Yates had defended these proceedings which undermined the sincerity of the apologies;
2. Whilst Cllr Yates stated that he intended to protect other Members and the Council through his conduct, as he was concerned that their participation could lead to sanctions against them and challenge against the Council, he failed to appreciate the consequences of his own actions. The Committee noted that the consequence of the identified bullying conduct was to prevent a councillor from participating in a vote, that in itself could be a ground for the Judicial Review of that decision. Cllr Yates being directly responsible for an outcome he states he was seeking to avoid. And
3. Cllr Yates is an experienced Councillor and stated throughout he is very familiar with the requirements of the code of conduct. He had a fundamental misunderstanding of the difference between a Disclosable Pecuniary Interest and a personal interest which under the local code would prevent participation in a meeting. This misunderstanding continued into this hearing.

Sanction

Arising from the findings of breach the Committee request

1. **That the outcome of this hearing be reported to full Council in public session.**

Reason – the incident took place during a public meeting and it is important that the public see and understand its resolution.

2. **The Monitoring Officer is instructed to arrange one to one training for Cllr Yates such arrangements to be made within 2 weeks of this hearing.**

Reason – training is necessary to ensure Cllr Yates has a full understanding of the requirements of the code of conduct.

Members also wish to make the following observation. Whilst the removal of Cllr Yates from the Planning Committee was seen as a mitigating factor, the Committee wish to be clear that they view the behaviours of Cllr Yates as so serious, particularly the finding of the breach of code relating to bullying, that they would have considered making a recommendation to full council seeking his removal from the Planning Committee.

Further Recommendations

- 1. That the Standards Committee direct the monitoring officer to lead on a review of the Local Code of Conduct, guidance note and procedure document. The review to concentrate on**
 - a. Simplifying the code and aligning with legislation and the recommendations of the Office for Standards in Public Life**
 - b. Consideration of standardising the code of conduct and procedure for complaints across South Ribble BC and Chorley BC.**

View of the Independent Person

The Independent Person was involved in all stages of the debate, discussion and consideration by the members of the Committee. The matters upon which the Committee resolved and the decisions which it made were the product of such debate, discussion and consideration. The Independent Person was not at variance with any of those matters and decisions.