

REPORT TO	ON
Standards Committee – Hearings Panel	26 July 2018



September 2017

TITLE	REPORT OF
Hearings Panel – Initial Assessment Hearing – Complaint against Cllr Hamilton by Cllr Mullineaux	Interim Monitoring Officer

This is a confidential report EXEMPT from publication under the following provision –

Information relating to any individual

1. PURPOSE OF THE REPORT

- 1.1 At a meeting on the 30th of August 2017 the Interim Monitoring Officer referred the initial assessment of complaints against two members namely Cllrs Foster and Hamilton to the Hearings Panel. These complaints were related to the leaking of the confidential interim report into taxi licensing carried out by Wilkin Chapman.
- 1.2 The complaints against Cllr Foster have been resolved by way of informal action (as recommended at a subsequent meeting of the Hearings Panel on the 21st of November).
- 1.3 The complaint against Cllr Hamilton has not been resolved. In accordance with the earlier decision the matter could now be referred to a formal investigation. Inevitably that will bring with it the incurring of potentially significant financial cost and it could be time consuming.
- 1.4 One of the fundamental issues last time for the Hearings Panel when discussing the case against Cllr Hamilton was that she had in no way had responded to any correspondence about the complaint. Cllr Hamilton has now provided a detailed response to the complaint. The Hearings Panel is thus being asked to consider again its assessment in the light of this new information.

2. RECOMMENDATIONS

2.1 That Members undertake a further assessment of the complaint against Cllr Hamilton in the light of the additional information submitted and determine the appropriate action to be taken.

3. CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Excellence and Financial Sustainability	X
Health and Wellbeing	
Place	

Projects relating to People in the Corporate Plan:

People	
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4. BACKGROUND TO THE REPORT

4.1 At Appendix B to this report Members will find a copy of the report that went to the Hearings Panel on the 30th of August 2017 together with copy appendices. Clearly there is no point in repeating everything that is set out in that earlier report but a brief summary is useful prior to setting out details of the response that has now been received by Cllr Hamilton.

4.2 Members will recall that in April 2016 the confidential interim report into taxi licensing carried out by Wilkin Chapman Solicitors was leaked to the press. In particular the New Day newspaper ran a story on the leaked report on 18 April 2016. On 12th April 2016 the council's PR Team had been informed by Grace McGaskill, reporter for the New Day (Daily Mirror) that she had been given the confidential Interim report and would be running a story on it in the next day or so. The story actually ran on the 18th April 2016. The leaked report was circulated to other media/press outlets during that day.

4.3 On 23rd October 2016 the Interim Monitoring Officer received an email from a member of the public - Lesley McGarry. Attached to this email was a recording of a telephone conversation between Lesley McGarry and Cllr Hamilton.

In the recording Cllr Hamilton says:-

- "it had to be leaked because otherwise people would never have known"
- "Yes, obviously me and Grace have great links, and everybody who has a brain cell can realise who leaked the report"

4.5 On 11th November 2016 Claire Hamilton tweeted the following:-

"In early April 2016, Labour Leader Paul Foster gave me the taxigate interim report and asked me to leak it to the media"

4.6 Subsequently the Interim Monitoring Officer instructed Weightmans to carry out an investigation into the leaking of the report. The purpose of this report was not just to look into what had happened and who had been involved but also to provide advice on how the council could improve its internal procedures moving forward. Cllr Hamilton chose not to cooperate with this investigation.

4.7 It is considered that the following comments from the report by the Weightmans' solicitor Simon Goacher are particular pertinent:

- Para 41 – "The interim report was leaked to a journalist by Councillor Claire Hamilton."
- Para 42 – "Councillor Hamilton was given a copy of the interim report by Councillor Foster."

- Para 44 – “Councillor Foster knew that Councillor Hamilton was going to share the report with others outside of the Council and knew that some of the people she may talk to were journalists.”
- Para 45 – “The only people who know exactly what was discussed between them regarding the interim report are Councillor Hamilton and Councillor Foster. Councillor Hamilton has chosen not to speak to me about this or answer any questions. Therefore, the only evidence I have of what took place is that provided by Councillor Foster. I accept his evidence that he did not instruct Councillor Hamilton to leak the report to the press. However, he clearly knew that there was a possibility that Councillor Hamilton would share the interim report with the press and he did nothing to stop her from doing so.”
- Para 47 – “The fact that Councillor Hamilton went straight to the press and did not apparently make any effort to raise her concerns with anyone within the Council or any external agency suggests that she was motivated as much if not more by political or personal purposes than by public interest considerations. She has chosen not to co-operate with my investigation so I have not been able to ask her why she went immediately to the press without following the requirements of the Council’s whistleblowing policy or code of conduct.”
- Para 48 - “It appears that there may have been failures to comply with the code of conduct for members by Councillors Hamilton and/or Foster. I understand that no complaint has been made to the Monitoring Officer against either Councillor pursuant to the arrangements the Council has adopted for considering such complaints under the Localism Act 2011. It is possible that a complaint may be made against one or both of these councillors. If such a complaint is made it should be processed in accordance with the Council’s arrangements.”

4.8 It was after the publication of the Weightmans’ report in the papers that went to Governance committee on the 28th of June that the complaints in question came in. There were three complaints against Cllr Foster and one complaint against both Cllr Foster and Cllr Hamilton. As already explained the complaints against Cllr Foster have already been resolved.

5 The Complaint under Consideration

5.1 Cllr Mullineaux submitted a formal complaint against both Cllr Foster and Hamilton. Please see **Appendix 10 attached to the original report**. Cllr Mullineaux states: “...it would appear it has clearly established that both Councillors Foster and Hamilton are in breach of our Member Code of Conduct which ultimately has caused this council no end of problems.” He further states: “As leader of the Council I felt it is important for members to understand just how much damage the action of the above councillors has caused this council and I therefore request that this matter be referred to our Standards Committee so that it can be dealt with in an open and transparent manner.”

6. Cllr Hamilton’s response

6.1 Cllr Hamilton’s full response to this complaint is set out in **Appendix A to this report**. In that response she sets out the series of events that she avers led to the report being leaked to the national press.

6.2 Key points in her submission are as follows:

- Cllr Hamilton held the role of Press and Campaign officer for the Labour party.

- Cllr Hamilton states that during March 2016 Cllr Foster had informed her that he had information about an ongoing licensing investigation and that there was an attempted “cover up” by three members of the then Cabinet.
- Cllr Hamilton states that Cllr Foster had claimed that there was high level corruption at the council that was putting the public at risk.
- Cllr Hamilton states that Cllr Foster had informed her that he could get hold of the confidential report saying “we” should expose the council for the cover up. He asked Cllr Hamilton about press contacts she had.
- Cllr Foster subsequently obtained a copy of the confidential report.
- Cllr Hamilton says that subsequently Cllr Foster telephoned her and said that he had concluded that he had to leak the report as it was clear to him that there was a cover up and the public were at risk.
- Cllr Foster gave Cllr Hamilton a copy of the report.
- Cllr Hamilton then spoke to a friend of hers who works at the Sunday Mirror about the report.
- Cllr Hamilton then sent her journalist friend a copy of the report.
- The article was subsequently printed on the front page of the Trinity Mirror group “New Day” newspaper and went online on the Mirror website.

7. Investigation and Hearings Procedure

7.1 The council’s approved **Investigation and Hearings Procedure is attached at Appendix 1 to the original report.** This sets out the procedure to be followed in the event that a complaint is received that a Member may have failed to comply with the Code of Conduct.

7.2 Members are aware that initial assessment of complaints are normally undertaken by the Interim Monitoring Officer in consultation with one of the Council’s Independent Persons.

7.3 Members are asked to note that the Hearing Panel will meet in private session and any decision reached will be based on the papers circulated in advance to the Panel.

8. Breach of the Code of Conduct

8.1 A copy of the Council’s Code of Conduct for Elected Members which was in force at the time is attached at **Appendix 12 to the original report.** (Members should note that subsequently the Seven Principles of Public Life were updated at the Council meeting in May 2017 to align with the national change to the principles).

8.2 The updated guidance on the Code which was also approved by Council in May is attached at **Appendix 13 to the original report.** Members should be aware that this enhanced guidance

would not have been available to members at the time of the conduct complained of. However, the new guidance is attached to assist members of the Panel generally in interpreting the Code.

8.3 In considering whether there may have been a breach of the Members' Code of Conduct by Councillor Hamilton the Panel should primarily consider compliance with the following part of the Code:

- Paragraph C 3 - You must not —
 - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the authority;

8.4 However, the following paragraphs may also be relevant to the complaints

Relevant Section & Number	Summary
A Introduction: 8	You should not do anything which you could not justify to the public or by law. Members conduct & what the public believes affects the reputation and credibility of Members & the Council as a whole
A Introduction: 9	You should always conduct yourself in a way to maintain & strengthen public trust & confidence in the integrity of the Council & do not undertake any action which bring it into disrepute
A Introduction: 10	Perception is important. You should avoid any occasion for suspicion or appearance of improper conduct
B The Seven Principles of Public Life	Integrity – you should not place yourself in situations where your honesty and integrity may be questioned. You should not behave improperly and should avoid the appearance of such behaviour

9. Assessment Criteria & Independent Person

9.1 Appendix 1 to the original report sets out the criteria which the Panel should have regard to in considering the complaint.

9.2 One of the Council's two Independent Persons will be present at the Panel's hearing and Members should note that he is present to provide an independent view which the Panel should consider. If the Panel decides to depart from his views then the reason should be recorded.

10. Decisions on this Complaint

10.1 As has already been stated the Hearings Panel considered the complaint against Cllr Hamilton on the 30th of August. The decision at the time was:

Councillor Hamilton, the panel felt that the appropriate action was by Informal Resolution; in that Councillor B be either:

i) requested to publicly apologise for their course of action at a meeting of the council (ideally that on 27 September 2017); or

ii) be requested to provide an written explanation of their conduct – following on from this the panel would meet again to consider the issue

iii) if the member in question failed to do either i) or ii) above within a period of two weeks the panel would have no alternative but to refer the matter for Formal Investigation.

10.2 Again as already stated one of the main issues for the Hearing Panel when it considered the complaint against Cllr Hamilton was that she had in no way responded to any correspondence about the complaint. She had failed in any way to avail herself of the situation to explain her conduct. This (albeit belatedly) she has now done. The Panel is thus asked to consider again its decision in the light of this information.

10.3 In accordance with the Council's Assessment Criteria the Panel has the option to make any of the following decisions on any complaint:

- that no further action be taken
- that the matter be referred to the Group Leader for Informal Action (*in the instance of the members complained of here this is obviously not an option*)
- that the matter is referred for Informal Resolution or other action
- that the matter is referred for Formal Investigation by an Investigator
- that the matter is referred to the Police or other relevant Regulatory Agency

10.4 In considering whether to refer any matter for Informal Resolution the Panel may wish to consider member development needs going forward.

10.5 If the Panel decides that it is appropriate to refer any of the issues before the Panel for formal investigation then Members are also asked to formally approve expenditure on an independent external investigator. The Panel will appreciate it is not possible, and also premature, to give any indications of the cost of an external investigation at the time of writing the report without having the benefit of knowing the extent of any investigation. However, as background information costs of external investigation to date on other independent investigations on inter related matters include:

- Wilkin Chapman Solicitors investigation into Licensing Function £54000 and Disciplinary issues £39000
- External support from LGA associate on the Scrutiny Review of the way in which the external licensing investigation was handled by SRBC £9000
- Independent Investigation into the allegations against the Council's Monitoring Officer £17600
- Weightmans' Investigation into the Leaking of Confidential Information £12000 approx.

11 Summary

The Panel are requested to consider again the complaint in the light of the new information submitted and determine the appropriate action to be taken.

12. BACKGROUND PAPERS

Appendix A – Response from Cllr Hamilton

Appendix B – Previous Report and appendices

**David Whelan
Monitoring Officer**

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