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Our ref: 2016/11  
Date: 3 May 2017



**PRIVATE – ADDRESSEE ONLY**

Councillor N. Porter

Dear Councillor Porter,

**Complaint regarding Conduct (Ref 2016/11)**

I write as Deputy Monitoring Officer on behalf of the Panel to set out their detailed findings following the Hearing on 10 April 2017.

**Preliminary Matters:**

The Panel received legal advice from the Deputy Monitoring Officer on the following matters:

**Relevant Case law:**

- The Panel needed to keep in mind the balance between the right to freedom of Expression under Article 10 of the European convention on Human Rights
- The Panel needed to also keep in mind the fact that the expression of political opinion is afforded a greater degree of protection from interference through case law
- The Panel's attention was brought to the decision of the European Court of Human Rights in *Jerusalem v Austria* where the court states that politicians must display a greater degree of tolerance
- The Panel were also advised that case law (*Sanders v Kingston (2005)*) distinguished that the protection to the expression of political opinion did not extend to comments which are not an expression of political views but which were expression of personal anger and abuse.

**Hearing Process:**

The Panel would like to make clear that it considered your comments with regards to the Hearing arrangements, the subsequent advice of the Deputy Monitoring Officer and the response of the Monitoring Officer.

In relation to the standards hearing process in law, the starting point is within section 13 Local Government & Housing Act 1989, that all persons who are members of a *council committee* but who are not Elected Members, shall be non-voting. Independent Members are therefore permitted but when they sit on the main Standards Committee they are required to be non-voting. This is the case in the Council's arrangements.

Independent Members are, by combination of s.13 (3) and (4) and s.102(4) of the Local Government Act 1972, permitted to have voting rights where they are members of *advisory committees*. Our standards process of allows Independent Members sitting on the Standards Advisory Board or a Hearing Panel, to have voting rights as these bodies only provide advice to the formal Standards Committee. This was confirmed in the June 2012 Report to Full Council, setting-up the current arrangements, at para 1.2 where it stated that the Standards Committee's subcommittees would be *non-decision making, independently chaired* and would comprise a *majority of Independent Members*.

In light of the fact that the ultimate decision rests with the Standards Committee, and the advice received from the Deputy Monitoring Officer, the Panel confirms that it has no concerns regarding the appropriateness of the Panel's membership and its ability to consider the complaint.

### **Deliberation – breach of the Code of Conduct:**

The Panel confirm its findings and considerations as follows:

- a. The webcast viewed by the Panel is quite self explanatory, the statement was made and it was clear what was said by you to Councillor Thomas.
- b. Councillor Shelton offered some context to this, stating that there was always heckling at meetings and often within the parties too, not just cross party.
- c. It is noted that Councillor Thomas made a comment towards you. By your own admission during the Hearing you reacted to Councillor Thomas' heckling in anger. It is acknowledged that it would be difficult for you as a minority member in the chamber and that it's a challenging role, but it is agreed by the Panel that this does not excuse personal and offensive remarks being made.
- d. Having considered the meaning of political speech and heckling, which has its place in the political arena, it does not extend to personal abuse. This is a key point in the recommendation as, whilst there is a greater degree of protection of political speech and freedom of speech, it is considered right and appropriate to remove that protection in this case given the clear case of personal abuse.
- e. The comment to Councillor Thomas was personal and intended to be offensive by its very nature. Despite the heckling from Councillor Thomas, there can be no question that the response was a step too far and unacceptable as it amounts to a personal insult.
- f. Headlines of the press included the words 'personal jibes and insults' and therefore the public perception of the comments was that they were personal in nature.
- g. Through your comment you did not show respect to others in accordance with requirement (a) of the code of conduct as your comments were a personal insult towards Councillor Thomas and considered to be offensive given their

personal nature. By acting in this manner you did not set a good example or act in a way that preserves the public confidence in elected members. Given the public nature of the comments, the subsequent press coverage and comments it brought the Council in to disrepute by making the Council look ridiculous.

- h. When asked if you felt you had breach the code of conduct during the Hearing you stated that you had expressed regret at the comment in your representation to the Standards Advisory Board. Reviewing your written representations to that meeting in your email of the 6 November there was no clear expression of regret within there, or within any of the other correspondence on the complaint.
- i. There is a line with political debate and heckling which should not be crossed over. Despite being offered the opportunity to retract comments at the meeting and discuss after with the Lord Mayor, you declined to retract your comments and had yet to offer any apology.
- j. Following your comments during the Hearing that your suggestion to the Deputy Monitoring Officer that you offer an apology had not been detailed in the papers, the Deputy Monitoring Office clarified that you were advised that you ought to consider offering an apology but that it would not remove the requirement for the matter to progress to a Hearing Panel. At the date of the Hearing no apology had been made.

On the basis of the above, the papers, comments during the Hearing from you, the Monitoring Officer (as investigating officer) and the Independent Person, the decision of the Panel is unanimous that your comments towards Councillor Thomas at the meeting of full council on the 6<sup>th</sup> October did amount to a breach the code of conduct in relation to points (a), (f) and (i). This forms the basis of the Panels recommendation to the Standards Committee.

### **Deliberations – Sanctions:**

In relation to the consideration of sanctions for the breach of the Code of Conduct the Panel confirms as follows:

- a. The views of the Independent Person expressed in the Hearing with regards to possible sanctions were taken in to consideration.
- b. The Deputy Monitoring Officer clarified, upon request, the difference between a letter of reprimand and a letter of censure, both being a letter that expressed disapproval and disappointment in a formal letter. This is felt to be appropriate in this instance given the personal and offensive nature of the comments and the resulting public coverage of the meeting and the comments.
- c. Your exclusion from meetings is not considered appropriate in this case or proportionate given the generally high tensions at the meeting in question and the fact that the matter occurred at full council. Whilst members can be excluded from meetings of committees, this power does not extend to meetings of full council.
- d. Given the resulting publicity and the fact that the Hearing was held in public it is felt appropriate, and in the public interest, for the findings of the Standards Committee be published.
- e. It is felt that you should be required to formally apologise to Councillor Thomas for the personal comments made towards him.

- f. Given the fact that the Council has been brought in to disrepute and the negative press coverage of the incident, an apology to the meeting of full council is also considered appropriate, especially in light of the fact that you had opportunity to retract the comment at the meeting.

The Panel therefore agree that the recommendation to the Standards Committee should be that the three sanctions, as set out above, are applied in respect of the breach of the code of conduct.

The Panel therefore confirm unanimously that the following be recommended to the Standards Committee:

- 1) Due to the behaviour and comments made towards Councillor Thomas at the Council meeting of 6 October 2015, the Council's adopted Code of Conduct for Elected Members was breached in the following aspects:
  - a. Respect others and not bully or intimidate any person;
  - f. Uphold and promote the principles by leadership and by example, and act in a way that secures and preserves public confidence; and
  - l. Not conduct yourself in a manner which is likely to bring the authority into disrepute.
- 2) That the response to the heckle from Cllr Thomas was abusive, offensive and not an appropriate or political response. The comment demonstrated and constituted a lack of respect for a fellow Councillor, and you were not acting in a way that would preserve public confidence in the Council and, given the resulting press coverage, the actions brought the Council in to disrepute.
- 3) That the following sanctions be recommended to the Standards Committee:
  - i. That a letter of reprimand be issued;
  - ii. That the Standards you be required to apologise to Councillor Thomas and the Full Council for the comments leading to this complaint.

This is the full decision note of the Panel and has been confirmed by the Panel members. The matter will be taken to the Standards Committee for further determination at the next meeting, on a date to be arranged.

Yours sincerely,



Emma Horton  
(Deputy Monitoring Officer)  
for City Barrister & Head of Standards