



Leicester
City Council

Minutes of the Meeting of the
STANDARDS HEARING SUB-COMMITTEE

Held: MONDAY, 10 APRIL 2017 at 6.00pm

P R E S E N T :

Fiona Barber - Independent Member – Chair
Alison Lockley – Independent Member
Councillor Shelton

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1. ELECTION OF CHAIR

Fiona Barber was confirmed as Chair for the meeting.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

Members were asked to declare any interests they may have in the business on the agenda.

There were no declarations of interest.

4. HEARING PROCEDURE

The Deputy Monitoring Officer circulated an amended hearing procedure which sought to condense the procedure taking into account that facts had already been established in this case due to the publicly available evidence.

RESOLVED:

That the amended hearing procedure be approved.

5. ANY OTHER ITEMS OF URGENT BUSINESS

There were no items of urgent business.

6. PRIVATE SESSION

The Deputy Monitoring Officer outlined the reasons for proposing that the meeting be considered in private, as outlined on the agenda papers: *(i) information relating to any individual; (ii) information which is likely to reveal the identity of an individual; (iii) information which is subject to any obligation of confidentiality and the (iv) deliberations of a Standards Committee.* She also, however, noted that there had been significant coverage of the incident in the media and there was wider public interest more generally in demonstrating that elected representatives are held to account for their behaviour. The Sub-Committee were recommended that it was in the public interest to hold the Sub-Committee in public, but the choice remained their own.

It was further noted that there were elements of the agenda papers which contained personal correspondence for which there would be a reasonable expectation of confidentiality. Therefore it was recommended that it was not in the public interest for these to be made public, but some elements of the papers, such as the investigator's report could be made public following the meeting.

RESOLVED:

- 1) That the press and public be allowed to remain in the meeting for consideration of the complaint against a councillor.
- 2) That the papers for the meeting remain private as they are deemed to contain 'exempt' information as defined in the provisions of Section 100A(4) of the Local Government Act 1972, as amended. Specifically:

Paragraph 7

Information which is subject to any obligation of confidentiality.

7. POINTS OF ORDER

The appellant, Councillor Nigel Porter entered the meeting at this point.

He raised a number of points in relation to the convening and structure of the meeting:

- The membership of the Sub-Committee was queried, in particular why there were only three members, only one of whom was an elected Member.
- The appointment of the Chair was queried.
- The role and legitimacy of independent members was queried, as it was felt that the Localism Act 2011 had meant that Standards Committees should be elected Member led.
- The Localism Act 2011 Standards regime was meant to avoid considering

low level complaints in order to avoid the over bureaucratic nature of the previous regime.

- Hearings Committees should be convened as full Standards Committees.
- It was alleged that Councillor Shelton was biased against Councillor Porter as he had previously heckled Councillor Porter at Council meetings and had, whilst Chair of the Planning and Development Control Committee, delayed consideration of an item which Councillor Porter had attended the meeting to speak on.

The Chair clarified that Councillor Shelton was an elected member of the Council and sitting as part of the panel and that she had been confirmed as chair by both of her fellow panel members.

The Deputy Monitoring Officer confirmed that the Standards regime did change in 2011 to abolish the previous arrangements from the Local Government Act 2000. However, local authorities were given freedoms to develop their own systems and there was no specific prohibition on the appointment of Independent Members. She also noted that the Sub-Committee's role would be to make recommendations to the Standards Committee, not take any decisions themselves.

The Monitoring Officer commented further, as he oversaw the transition to the new Standards regime. He disputed the assertions made by Councillor Porter regarding the lack of legitimacy of the Sub-Committee. To get into the level of detail required to discuss the matters he raised would be time consuming and be overly detailed. It was noted that Councillor Porter had not given any prior indication of wishing to make fundamental challenges to the legitimacy of proceedings. He confirmed that the full Council had approved the standards arrangements regarding complaints and he assured the meeting that an Independent Member led Hearing Sub-Committee was lawful. Any jurisdictional points should properly be considered out of the meeting but would nonetheless be dealt with when Councillor Porter was written to after the Sub-Committee hearing.

The Sub-Committee, taking into account the points raised by Councillor Porter and the responses by the Deputy Monitoring Officer and the Monitoring Officer were assured that the process to be followed was set up correctly according to the law and Council policy.

The Chair went through the procedure for the remainder of the hearing again for the benefit of Councillor Porter.

Councillor Porter was granted some time to familiarise himself with the amended meeting procedure.

8. COMPLAINT AGAINST A COUNCILLOR: TO CONSIDER THE INVESTIGATOR'S FINDINGS

The Deputy Monitoring Officer presented the report outlining details of the incident which led to the complaint and gave details of the Standards process so far which led to a Hearing Sub-Committee to take place.

Councillor Porter made some challenges to points in the report:-

At 3.2 of the report, he felt that this indicates a hasty decision on the part of the Monitoring Officer and the Independent person to determine the process for the complaint.

He felt that the rationale for not undertaking a formal investigation was not explained in the initial letter sent to him by the Monitoring Officer.

He noted that he was in ongoing correspondence with the Monitoring Officer but felt that he had received criticism for delaying the process.

The Chair interjected at this point and requested that the Sub-Committee view the webcast film of the incident which the complaint related to. This was done.

The Sub-Committee were invited to raise any questions on the facts of the case as outlined in the report, associated documents and the webcast. There were no questions.

Councillor Porter raised further points:

The normal process for a Standards investigation wasn't followed because an investigation wasn't commissioned.

The biased view of newspaper reporters was incorrectly taken as fact in the meeting's papers.

No independent view was sought in relation to the interpretation of the comments that he had made.

Councillor Porter did not consider the comment he made to Councillor Thomas to be offensive, as it was innuendo and a joke.

Another issue in relation to a far more offensive comment about mental health made at the same council meeting was treated as being less severe and similar processes were not followed.

It was felt that Councillor Thomas must have a 'thin skin' if he was offended by the comment.

Councillor Thomas was a regular heckler of Councillor Porter and this was a humorous response to one of his heckles.

The Chair thanked Councillor Porter for his views.

The Sub-Committee were asked if they had any questions for Councillor Porter.

There were no questions at this point.

Councillor Porter raised a further point with regard to the meeting papers. He felt that the minutes of the Standards Advisory Board were misleading as it indicated that they were told that an informal resolution was not an option for them. He felt this was incorrect because no formal investigation had been commissioned.

The Monitoring Officer commented on the points which Councillor Porter had made.

In terms of the timeline for consideration of the complaint, he picked up the complaint following the 6th October Council meeting on 10th October. The Independent Person, Mr. Lindley was contacted and responded that day, both were in agreement that the incident wasn't trivial and required more work.

The issue had been covered by local and national media and an opportunity to apologise to Councillor Thomas had not been taken.

The Monitoring Officer wrote to Councillor Porter and Thomas on 12/10/16 saying that the matter would be referred for investigation which would comprise of consideration of existing materials which were in the public domain, including the webcast film and typed up transcript. Councillor Porter was given an opportunity at this point to provide an explanation from his point of view, as this was the only piece of evidence that was missing.

The Monitoring Officer and Mr. Lindley were able to confer early on about the facts of what happened due to the publicly available evidence. It wouldn't have been proportionate to engage the services of an investigator to undertake this work.

The Monitoring Officer further noted that most complaints are dealt with to completion by him and Independent Person at an early stage. On average only one case per year is progressed to the 'investigation' stage. He acknowledged that this was the first such complaint which wasn't investigated externally, but he was happy to defend this position and that it did not indicate a breach of procedure or suggest evidence of bias, it simply reflected the fact that there was evidence immediately available. Furthermore, the published 'Arrangements' did not require that investigations must be commissioned externally.

Even if an external investigator was commissioned, any report would only be giving an opinion to the Standards Advisory Board, and the subject member would not have a right of reply to the report and therefore there was no prejudice to Councillor Porter by not having a third person review the complaint.

Further, he was satisfied that there had been no prejudice in terms of the investigation process, no opinions had been expressed about whether a breach had occurred by the Monitoring Officer or the Independent Person.

The Monitoring Officer noted that it wasn't unusual to determine the route of an investigation at an early stage; this was in order to avoid delay and uncertainty.

In respect of the point made about the Standards Advisory Board being mis-advised, he was clear that the informal route was not open at this stage because the investigative stage had been commenced. The informal option was removed for later stages of the process in order to avoid subject Members delaying making an apology until the very last stages as the whole point of a multi-tier complaints system was to allow informal resolution early on, but where a certain stage was triggered the inability to withdraw from it on the basis of an apology was both proportionate and fair.

David Lindley, the Independent Person was invited to give his advice in relation to the facts of the case. He noted that the Monitoring Officer had delegated authority to determine appropriate arrangements for each complaint and depart from the Standards regime wherever effective and fair consideration of a complaint required it. Considerable discussion had taken place between himself and the Monitoring Officer to determine the most appropriate way forward, which dealt with the case fairly expeditiously. He confirmed that he approached the complaint with no bias or pre-determined view. He felt from an early stage that the facts pointed to a breach of the code as there was sufficient evidence, of which press reports were valid sources. He had some views on possible sanctions which were determined in good faith and weren't rushed in judgement.

Councillor Porter made further comments in relation to the advice of the Monitoring Officer and the Independent Person:

The claim that there was no rush to judgement on the complaint was felt to be open to debate.

It was felt that the Monitoring Office departed from Council policy in not commissioning an investigation.

An investigation could have been carried out internally by someone other than the Monitoring Officer, as this would have been fairer.

The Standards Assessment Sub-Committee was misled because it was advised that an informal resolution option was not available.

What happened at the meeting was not being disputed, but an investigation would have given proper consideration to whether the words used by Councillor Porter at the Council meeting were actually inappropriate.

Councillor Thomas was considered, in the opinion of Councillor Porter, to be a bully, he received a response to his heckling at the meeting.

It was queried why insults around mental health were considered acceptable.

The Monitoring Officer responded further:

The decision that he and the Independent Person took on 10th October related to the process route that the complaint should take. No views had been made by the Monitoring Officer on the outcome of the complaint.

The issue regarding the Standards Advisory Board had already been responded to.

He found it surprising that Councillor Porter could not understand why the words he used would cause complaint. He felt it was obvious what had caused offence in his comments and it was explained in the complaint made by Councillor Thomas. It wouldn't have been proportionate to pay someone to determine what was offensive by the statement.

Councillor Porter had not taken the opportunity to explain what he meant by the comment or explained why. There had been no apology or contrition expressed by Councillor Porter.

It was the Sub-Committee's decision to make recommendations based on whether they thought the comments made by Councillor Porter were offensive.

Other complaints were irrelevant to this case and the other case referred to was different due to the compliant and contrite nature of the other Councillor involved.

The Chair asked if there were any different issues to raise?

Councillor Porter made some further comments.

He reiterated points regarding his comment being off the cuff in response to a heckle and that inappropriate comments were often made at full Council.

He also reiterated points about the intention of the Localism Act to not deal with petty allegations, which is what he saw this as being.

He felt that he was a victim of a party political motivated effort to antagonise him.

He felt that this was the first time he had responded to what he saw as Councillor Thomas' ongoing heckles.

The Chair asked Councillor Porter if he felt that he had breached the code of conduct. In response he made comparisons to other comments referring to mental health and how that was dealt with differently in his opinion. He made reference to the difficulties he had being in such a minority in a political environment. Referring to the minutes of the Standards Advisory Board, he said it was incorrect to say that he had expressed no regret, as he had said that he regretted reacting to the comments made by Councillor Thomas. He further said that if he said he had breached the code he would be agreeing with

people in the room who said it was offensive. He further commented that there was no reference in the papers to the fact that he suggested to the Deputy Monitoring Officer that he make an apology to Councillor Thomas, or his long dialogue with the Monitoring Officer. He felt that he had attempted to co-operate but unlike Councillor Connelly (who made comments about mental health), he wasn't given an opportunity to consider the complaint and provide an apology.

The Chair asked Councillor Porter to briefly sum up what he wanted the Sub-Committee to be aware of. Councillor Porter commented that people had made comments to him that this Sub-Committee meeting would be a 'kangaroo court.' He felt that if he was a Labour Party councillor he wouldn't be in this position. He reiterated his point about the Code of Conduct not having the purpose of considering these sorts of issues.

Members of the Sub-Committee made points / asked questions to Councillor Porter.

It was acknowledged that the comments relating to mental health were wrong, but did he agree that there was a difference between heckling and abuse? Councillor Porter felt that the heckling from Councillor Thomas was specifically aimed at him and usually he didn't respond. It was difficult to be in such a minority in the Council Chamber, trying to put questions and dealing with heckles. He further commented that he had not had an apology put forward to him from Councillor Connelly. He felt that he had received abusive heckling and he was called a coward and he responded.

It was accepted that he was in a difficult position, but it was queried whether Councillor Porter's expression of regret was an admittance that he had breached the code. He responded by reiterating his point that to agree to having breached the code would give people the power to do what they wanted to him, which he felt would be to remove him from council meetings.

It was suggested to Councillor Porter that he had the opportunity to apologise after the meeting. He responded by saying that the Lord Mayor had refused to intervene when he faced heckling, this was an example of bias against him. He commented that he'd heard the Labour Group had meetings to discuss him as they wanted to 'gag' him and not have him at Council meetings.

The Chair thanked Councillor Porter for his responses.

The Independent Person, David Lindley was invited to make suggestions as to possible sanctions that the Sub-Committee could consider.

Mr. Lindley expressed frustration that there was no acceptance that the words used by Councillor Porter were offensive. It was therefore his view that he had breached the code in a number of instances. If he'd had some humility to realise that he had caused offence, the issue could have been dealt with more promptly in late 2016.

He suggested the following sanctions for the Sub-Committee to consider:

- A written reprimand by letter.
- A press release of the decision.
- Councillor Porter should offer an apology to Councillor Thomas and to full Council in light of the offence cause and the effect on how the Council was held in public regard.

Members of the Sub-Committee accompanied by the Deputy Monitoring Officer left the meeting at 7.45pm to give private consideration to the making of any recommendations.

The Sub-Committee returned to the meeting at 8.27pm.

The Chair commented that the Sub-Committee had fully discussed the issues and had listened to the points made by Councillor Porter, and had reached a unanimous verdict.

RESOLVED:

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) The Sub-Committee recognised that the role held by Councillor Porter was challenging and that there was, rightly, an element of political heckling. In this instance, however, the Panel felt 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 Councillor Porter was 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) The Sub-Committee recommend the following sanctions to Standards Committee:
 - i. That a letter of reprimand be issued;
 - ii. That the Standards Committee publish the findings; and
 - iii. That Councillor Porter be required to apologise to Councillor Thomas and the Full Council for the comments

leading to this complaint.

- 4) The Sub-Committee noted that, despite having being offered the opportunity to withdraw his comments at the meeting and then having the opportunity to do so informally with the Lord Mayor after the meeting, Councillor Porter declined and was yet to apologise or retract his comments.
- 5) The Sub-Committee confirmed that, following comments from Councillor Porter during the hearing and the response of the Monitoring Officer and Independent Person, it felt that the correct investigative procedure was followed.