

DECISION NOTICE

Standards Committee Panel Hearing COM 211-113, COM 223, 236

Subject Member: Councillor David Farry

Standards Committee members:

Chair: Councillor Bill Kellet

Member: Councillor Terry Batson

Member: Councillor David Stoker

Independent Person: John Dixon-Dawson

Preliminary Information

The Governance Solicitor considered complaints from Ms. Angela Devine, Miss. Simone Devine, Mr. Brian Gibson (COM 211-213), Councillor Carole Atkinson (COM 223) and Mr. Derek Snowball (COM 236) concerning the alleged conduct of Councillor David Farry of Ferryhill Town Council, in accordance with Durham County Council's Procedure for Local Assessment of Complaints ("the Procedure") and determined that the complaints should be referred for investigation.

COM 211-213 was referred for investigation on 3 January 2019. COM 223 was then referred for investigation to be considered jointly with COM 211-213 on 6 February 2019. On 13 March 2019 COM 236 was also referred to be considered as part of the joint investigation.

COM 211-213

Three allegations were made in relation to the Member's conduct at the Lighting of the Beacon of Hope Service at Ferryhill Town Hall which was held on 11 November 2018.

In COM 211 it was alleged that the Member attended the event under the influence of alcohol. It was alleged that the Member displayed unprofessional conduct and that he did not fully complete his Mayoral duties as detailed in the Order of Service nor was he wearing his Mayoral Chains of Office.

In COM 212 it was alleged that the Member displayed appalling behaviour during the service, it is alleged that the Member talked with his party and appeared under the influence of alcohol. The Complainant states that this behaviour was totally inappropriate and disgraceful, and that she would expect more of someone who holds public office. The Complainant notes that the Mayor or a representative of the Town Council featured in the Order of Service, but this duty was not fulfilled which she found to be unprofessional.

In respect of COM 213 it is accepted that the Complainant did not attend the Service but has reported the complaints made to him. He reports that the service began at 6:45pm, the Member had been asked to attend the Town Hall for 6:40pm. The Member arrived late at 6:50pm and it was reported that he was unsure of his feet and incapable of talking properly because of the excessive drinking. A member of staff leaned the member against the garden wall and asked the service to proceed. The photographer asked the Member where his Chain of Office was and was told it was in the car. The staff who were in attendance deemed it too dangerous to ask the Member to light the beacon and instead this was carried out by an officer. The Complainant finds the conduct totally unacceptable, that the Member showed a total lack of respect for the people of Ferryhill and brought the Council into disrepute.

COM 223

It was alleged that on 4 January 2019 the Complainant received a call from the Member, during the call he enquired why he had not been informed about the working arrangements of an Officer of the Council. The Complainant explained that it was not her responsibility to keep him informed about the arrangements, it alleged that the Member became very aggressive stating that he had been told that it was the Complainant's duty to keep him informed. It was alleged that the member continued to be very verbally aggressive and said that he would "make sure that the Complainant has no further contact with HR". The Complainant believes that the Member was implying that she was stupid. The Complainant ended the call and states that she was left shaken by the aggressive manner of the Member.

COM 236

The Complainant is the Clerk to the Town Council and the Member subject to the complaint is the Chairman and Mayor of the Town Council. The Complainant alleged that he has been subject to harassment, bullying, discrimination and victimisation by the Member. The Complainant reports that he feels there have been clear signs that the Member is out to destroy him as a person by making malicious and unjustified statements that have caused harm to his reputation. The Complainant states that the actions of the Member have caused him serious humiliation, harassment, disruption and at times he considers to be a form of bullying. The Complainant reports that the alleged behaviour has been witnessed at meetings of the Council by other Councillors, members of the public, press and officers of the Council.

The Code of Conduct for Ferryhill Town Council

The relevant paragraphs of the Member Code of Conduct for Ferryhill Town Council are as follows;

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:

- 1. He/she shall behave in such a way that a reasonable person would regard as respectful.*
- 2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*
- 6. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.*

Investigation

The Monitoring Officer appointed Mr Matthew Lewin of Cornerstone Barristers as the Investigating Officer. He concluded that a breach of the Code of Conduct had occurred in respect of all complaints (with the exception of COM213 as the complainant was not present at the Beacon Lighting Ceremony), made against Councillor Farry. A Hearing Panel of the Standards Committee met on 17 September 2019 to consider the complaints.

Hearing to be public or private

The Investigating Officer and Councillor Farry were invited to make representations on whether the Hearing should be heard in public or private. The Investigating Officer made no representation. Councillor Farry submitted that the Hearing should be heard in public. The Independent Person made no representation. The Monitoring Officer advised the Panel that Mr. Derek Snowball, the Complainant of COM 236, had previously indicated his view that the Hearing should be heard in public. The Panel therefore decided to hold the Hearing in public. The Monitoring Officer advised that some documents within the Hearing papers were sensitive and should remain confidential. The Panel might need to convene in private if the parties wished to make particular reference to them.

Investigating Officer's Report

The Chair invited the Investigating Officer to present his report and address the issue of whether there had been a breach of the Code of Conduct. The Investigating Officer confirmed that he had no witnesses to call. Instead he directed the Panel to his investigation report and highlighted the list of witnesses who he had interviewed as part of his investigation.

The Investigating Officer addressed issues raised in advance of the hearing by Councillor Farry regarding his report. The Investigating Officer explained his reasons for not interviewing the Acting Town Clerk as part of his investigation.

He also responded to a question from the Panel by assuring the Panel that his findings were not influenced by the emotions of the Complainants during his investigation. Mr Lewin also explained the professional standards that he is required to uphold as a barrister.

The Investigating Officer asserted that he did not believe any of the complaints to be politically motivated. In respect of COM 211-213, the Panel were reminded that some of the Complainants were members of the public and so no political gain could be attained from making the complaints. The Investigating Officer stated that he felt that the Complainants had good reason for making the complaints and that he believed their accounts to be honest and truthful. In relation to COM 213, the Investigating Officer confirmed that he did not place any weight on Mr. Gibson's evidence due to him not attending the Service and his evidence being third-hand. The Investigating Officer made no finding in relation to the allegation that Councillor Farry had talked through the event as the accounts of the complainants were contradictory on this point.

In respect of COM 223, the Investigating Officer again refuted the assertion that the complaint was politically motivated. He explained that in his opinion, Councillor Atkinson was not acting out of malice or bad faith when making the complaint. The Investigating Officer found that Councillor Farry did act disrespectfully towards Councillor Atkinson and whilst Councillor Farry may have had good reason for his belief that the proper procedure had not been followed, this could not justify behaving disrespectfully towards a fellow elected member. The Investigating Officer found Councillor Atkinson to be a sincere and honest witness. Those who spoke with Councillor Atkinson following the incident commented that she sounded uncharacteristically shaken. Additionally, the Investigating Officer found the allegation to be consistent with a follow-up email which Councillor Farry sent to Councillor Atkinson which the Investigating Officer found to be unnecessarily condescending in tone. The Investigating Officer did not accept Councillor Farry's version of the incident in which he claimed that Councillor Atkinson was shouting during the phone call and found this to be highly unlikely. As this was the only incident that was brought to the attention of the Investigating Officer, he could not conclude that there was a pattern of behaviour that amounted to bullying. However, the Investigating Officer was satisfied that Councillor Farry acted disrespectfully, resulting in a breach of paragraph 1 of the code.

Regarding COM 236, the Investigating Officer corrected a typing error within his report. The error appeared at paragraph 37 of the report. He confirmed that his stance in respect to COM 236 was that there was no evidence of bullying prior to July 2018. However, he was satisfied that after this date, Councillor Farry's conduct toward the Town Clerk was indeed bullying. The Panel questioned how robust behaviour could be distinguished from bullying. The Investigating Officer agreed that it was often difficult to distinguish between the two, however in this case, he considered that bullying took place. The Investigating Officer played a section of a recording of a meeting between Councillor Farry (accompanied by another Councillor) and the Town Clerk. This recording is referenced in the Investigating Officer's report. After the recording was played, the Investigating

Officer explained that in his opinion, the recording shows the Town Clerk being bullied. The Investigating Officer found that during this meeting, which lasted two hours, the two Councillors subjected the Town Clerk to a series of hostile questions and accusations, taunted him, cut him short when trying to speak and were unwilling to listen to his concerns about the lack of support he had received on his return to work. The Investigating Officer commented that his recording was perhaps the most revealing evidence of the relationship between Councillor Farry and the Town Clerk and showed clear evidence of bullying.

The Independent Person asked the Investigating Officer whether the meeting was private and whether it was normal procedure to record meetings such as this. The Investigating Officer explained that the meeting was indeed a private meeting. He was unsure as to whether it was standard procedure to record the meetings but commented that it is not unusual for meetings to be recorded. The Investigating Officer was unsure as to whether all parties had given consent for the meeting to be recorded. The Investigating Officer concluded by expressing the view that Councillor Farry had breached the Code of Conduct in respect of all complaints.

Response to the Investigating Officer's Report

The Standards Committee Panel then invited representations from Councillor Farry to address the elements of the Investigating Officers report which he disputed and to address the issue of whether there had been any breaches of the Code of Conduct.

In response to COM 211-213 a short statement was read to the Panel. Councillor Farry was not wearing his Mayoral chains and therefore he was not acting in his official capacity at the time and therefore not bound to adhere to the code of conduct. He referred to the Order of Service, which said that the "Mayor (or his representative) would make the speech" Therefore, there was no expectation that he would be making the speech. He also said that he had not agreed to light the Beacon. He had been shown what was involved and he would never have agreed to light it.

Councillor Farry explained that he had originally intended to attend the service, however due to personal circumstances his plans changed. Councillor Farry went on to explain that his plans changed again and that he attended towards the end of the service in what he described as his personal capacity. He stated that it was a cold dark night and that witnesses would not have been able to properly see him in these conditions. He stated that he had been drinking alcohol that day but was not drunk. He brought the Panel's attention to a medical note which explained why he may have appeared to have been unsteady on his feet and the witness statements submitted in support of his case that said he was not drunk.

The Independent Person questioned whether Councillor Farry thought that as Mayor, he should be held to a higher standard than other elected members.

Councillor Farry agreed with this.

Councillor Farry summarised the facts in relation COM 223 as he believed them to be. He refuted the allegations made by Councillor Atkinson and denied acting aggressively and disrespectfully towards her. Councillor Farry suggested that it was in fact Councillor Atkinson who was the aggressor and that he had been “unable to get a word in edgeways”. He said there was no evidence to support the allegations, which he considered to be politically motivated.

In respect of the third complaint, COM 236, Councillor Farry explained that the meeting featured on the recording was put in place to support the Town Clerk’s return to work. He went on to explain that it was recorded with the consent of all parties and for the purpose of the Town Clerk’s safeguarding.

The Panel asked Councillor Farry to describe his approach in that meeting. Councillor Farry said that he felt that he was supportive and compassionate during the meeting and refutes the allegation that bullying behaviour took place. Councillor Farry explained that prior to the meeting he had sought advice from Nereo on how to conduct the meeting. The Panel questioned why Councillor Farry conducted the meeting given that he was aware that the Town Clerk had accused him of bullying. Councillor Farry was asked whether he had any training on dealing with mental health and whether he was properly equipped to conduct the meeting. Councillor Farry explained that he had handled the meeting to the best of his ability and did not believe that any of his actions amounted to bullying.

The Independent Person questioned the purpose of the meeting. Councillor Farry explained that his intentions behind the meeting were to ensure that the Town Clerk was alright to return to work and to keep track of Council business. The Independent Person and the Panel then referred to a discussion that was heard on the recording about a mentor for the Town Clerk. Additionally, they questioned why Councillor Farry would not allow the Town Clerk to choose his own mentor. Councillor Farry responded by explaining that the idea of a mentor came from advice he had received from HR at Durham County Council. Additionally, he asserted that he would not have had a problem with the Town Clerk choosing his own mentor however he had made it clear to him that he did not want a mentor.

Representations from the Independent Person

The Independent Person explained that he considered that this had been a particularly difficult case to unravel and that he felt that the Investigating Officer had done a good job of disentangling the issues. He considered that the Investigating Officers report was thorough and addressed the relevant issues. He explained that he was considering the case as an objective outsider, applying a test of reasonableness and the balance of probabilities. He felt that although he had some sympathy for Councillor Farry, ultimately, he considered that there had been breaches to the code.

Regarding the allegations relating to the Lighting of the Beacon of Hope Service, he considered that as Mayor, Councillor Farry was held to a higher standard than other elected members. He felt that it would have been reasonable to expect Councillor Farry to participate in the event as Mayor. He recognised that there was a last-minute change in circumstances which meant that Councillor Farry's role changed. However, Councillor Farry should have ensured suitable alternative arrangements were in place to account for his absence which he did not do.

In relation to the allegations of disrespect and bullying, the Independent Person was concerned as to the basis for recording the meeting that they had listened to. One of his concerns was that it was unclear whether consent to the recording had been given. Additionally, he felt that the basis of meeting not clear. He commented that the meeting appeared initially to have been an update on Council business but moved on the Clerk's personal circumstances. The Independent Person had concerns regarding discussions concerning the Town Clerk's mental health in that environment.

Decision on whether there has been a breach on the Code of Conduct

The Standards Committee Hearing Panel having considered the papers before them and the representations made at the hearing, upheld the Investigating Officers findings and decided that Councillor Farry had breached Paragraphs 1, 2 and 6 of Ferryhill Town Council's Code of Conduct for Members.

In respect of COM 211-213, the Panel found Councillor Farry to have been acting in this official capacity as Mayor at the time of the incidents. Councillor Farry stated that he attended the service as a private individual. However, members of the public were aware of his position. The Order of Service and earlier press release created the expectation that the Mayor would be in attendance. It was therefore reasonable for people to assume that he was attending as Mayor. The Panel found that there was no evidence to suggest the complaint was politically motivated. It noted that at least two of the complaints were submitted by members of the public. There was no evidence that the complainants had conspired to bring the complaint.

The Panel also noted that there were inconsistencies in Councillor Farry's account. On the one hand, he was not drunk or unstable but on the other, he presented evidence as to why he was unstable. The Panel consider it of note that none of those organising the event were aware of the change of circumstances. The Panel found that on the balance of probabilities, Councillor Farry was drunk and that consequently paragraphs 1 and 6 of the Code of Conduct had been breached.

In respect of COM 223, the Panel did not accept Councillor Farry's account of the incident. They noted that in Cllr Farry's email to Cllr Atkinson following the phone call, he references the fact that Cllr Atkinson put the phone down on him, but he also thanks her for her time. This suggests that he was able to get his point across during the phone call. The Investigating Officer explained to the

Panel why he considered Cllr Atkinson's account to be plausible. A Council Officer described Councillor Atkinson to have been uncharacteristically shaken following the phone call.

The Panel also considered the tone of the email from Cllr Farry to Cllr Atkinson to be threatening and aggressive. Even if Cllr Atkinson had been acting without the relevant authority, the Panel do not think that this justifies the tone used in the email. Whilst Cllr Atkinson and Cllr Farry have differing political viewpoints, the Panel had not seen or heard any evidence to support Cllr Farry's assertion that this complaint is politically motivated. Therefore, having considered the accounts of the phone call together with the tone of the follow up email, the Panel found that Councillor Farry was disrespectful towards Cllr Atkinson and that paragraph 1 of the Code was breached.

In considering this complaint, the Panel placed the greatest weight on the extract of the meeting on 22 March 2019, which they listened to. Cllr Farry told the Panel that he thought his manner in the meeting was caring and compassionate. However, the Panel considered his approach to be persistent, leading to dominance. He talked over the Town Clerk repeatedly.

The Panel noted inconsistencies in Cllr Farry's account. He was asked why he had continued with the meeting at the point at which the Town Clerk raised concerns regarding the support given to him since his return to work. Cllr Farry told the Panel that there was no indication that the Town Clerk was struggling. He explained that the Town Clerk worked a shorter phased return to work than initially suggested and he was on top of his workload.

However, Councillor Farry also stated that there were concerns from Senior Council Officers and other Councillors regarding the Town Clerk's health. These concerns are also cited in the opening paragraph to his letter to the Town Clerk dated 22 March. That letter was handed to him at the meeting on 22 March so it must have been prepared in advance. The Panel noted that the letter was drafted by an Advisor to the Council. However, the Panel found that it was premature to conclude that the Town Clerk was not fit to work/require him not to attend work until an Occupational Health Report had been obtained.

The Panel found that Cllr Farry will also have been aware of the Town Clerk's position from his letter to the Monitoring Officer (which was copied to Cllr Farry as part of the complaints process) dated 14 February 2019. In any event, the Panel considered that having raised concerns and asking that the Town Clerk see an Occupational Health Specialist, it was inappropriate to continue with the meeting on 22 March 2019 which lasted for about 2 hours.

The Panel agreed with the Investigating Officer's assessment of the meeting at para 46 of his report. They agreed that the Town Clerk was subjected to a series of hostile questions and accusations. He was talked over, taunted, cut short and not listened to. Therefore, the Panel therefore found that Councillor Farry breached paragraph 2 of the Code.

Sanctions

The Monitoring Officer read to the Panel the sanctions that were available to them. In accordance with the Council's Local Determination Procedure, the Standards Committee Panel invited representations from the Investigating Officer, Councillor Farry and the Independent Person as to whether action should be taken and if so, what action should be taken.

The Investigating Officer made no representations in respect of sanctions.

Councillor Farry commented that he was disappointed with the outcome of the Hearing, but he understood the sanctions available to the Panel and would abide by those imposed.

The Independent Person felt that the sanctions should be proportionate to reflect the allegations of each complaint. He felt that in relation to COM 211-213, training for Councillor Farry may be beneficial. He considered that for COM 223 and COM 236, written apologies were required. He also commented that there were clearly some systematic problems within the Council and that a root and branch review of the Council's policies should be undertaken.

COM 211 – 213

The Panel determined that Cllr Farry should be censured by the Panel in relation to his conduct at the Beacon Lighting Event

COM – 223 & 236

Councillor Farry should complete training on the Code of Conduct and in particular Member/Officer relations

Councillor Farry should provide written apologies to the Cllr Atkinson and Mr Snowball (copied to the Monitoring Officer)

COM 236

The Panel recommend to Ferryhill Town Council, that if Cllr Farry remains a member of the Personnel Sub-Committee (or equivalent), he is removed from that Committee until such time the issues relating to the Town Clerk are resolved.

The Panel noted the Independent Person's recommendation that there is a root and branch review of all Town Council Policies and Procedures. The Hearing Panel cannot compel the Town Council to do this or impose it by way of sanction. However, the Panel asked the Monitoring Officer to refer the Independent Person's recommendations to the Town Clerk for consideration by the Council.

They also requested that the Monitoring Officer report to the next meeting of the Standards Committee on 17 December 2019 as to whether the sanctions have been complied with.

Right of Appeal

There is no right of appeal from this decision which is final

Councillor Bill Kellett

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Chair of the Standards Committee Panel

27 September 2019

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Date