

STANDARDS COMMITTEE

27 OCTOBER 2021

REPORT OF THE DEPUTY MONITORING OFFICER

A.1 OUTCOME OF INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT

(Report prepared by Linda Trembath)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

In accordance with the District Council's Complaints Procedure, the Deputy Monitoring Officer is required to refer the outcome of an investigation to the Standards Committee, where an informal resolution is not appropriate, and the Councillor has failed to engage and to give an apology.

EXECUTIVE SUMMARY

A complaint was received in January 2021 from the Council's Monitoring Officer, Lisa Hastings regarding the conduct of District Councillor Peter Cawthron under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

The complaint related to Cllr P Cawthron's behaviour at Full Council in November 2020, a formal, recorded and publicly available meeting, when Cllr Cawthron used a word that is both unacceptable and an obscenity, and in so doing had conducted himself in such a way as to bring his office or the Authority into disrepute, contrary to paragraph 3.4 (a) and (c) of the Member Code of Conduct.

It is also alleged that Cllr P Cawthron did not have regard for one of the Seven Principles of Public Life:

- **Accountability** – Holders of Public Office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

As will have been noted, this complaint was made by the Council's Monitoring Officer. Following that complaint, and in accordance with the Monitoring Officer Protocol, specifically paragraph 1(k), and to ensure that no conflict of interest might arise, then in these circumstances the Deputy Monitoring Officer is authorised to receive and investigate the matter, taking action as appropriate.

On the 9th March 2021, the Deputy Monitoring Officer, having read the papers provided to her and noted the response from Cllr Cawthron, decided that it was reasonable and appropriate that the complaint merited further investigation. The parties were informed of this decision and that an external investigator would be appointed. Section 5 of the Complaints Procedure (Appendix 1) sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence

supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

Mr John Austin was appointed as external investigator and following an investigation concluded that there was sufficient evidence to show that Councillor Cawthron breached Paragraph 3.4(a) of the Council's Code of Conduct, by conducting himself in a manner that could reasonably be regarded as bringing his office or the Authority into disrepute.

Further, the investigator also found that Councillor Cawthron failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally, and has since failed to co-operate with the Investigator at any stage during the investigation. As part of Members compliance with the Code of Conduct they are required to co-operate with the investigation process.

As a result of Councillor Cawthron's failure to contact or respond to the Investigator, the Investigator has found that Councillor Cawthron has failed to comply with the Nolan Principle of Accountability by avoiding and ignoring communications with the Council's Statutory Officer, i.e. the Monitoring Officer, and has also failed to engage with the Investigator instructed by, and acting on behalf of the Deputy Monitoring Officer.

Paragraph 3.4(c) of the Council's Code of Conduct requires a Councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with their respective powers, and Councillor Cawthron's failure to engage has led to the Investigator finding the Councillor is in breach of Paragraph 3.4(c) of the Code of Conduct.

All parties have had the opportunity to comment on the investigation report (Appendix 2) and the findings contained therein. The investigation report was finalised on 30 September 2021.

In this case no consultation has been undertaken with any Independent Person as part of the investigation process but their subsequent comments are included within this report to the Committee.

If an investigation concludes that there is evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provides the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, without the need for a hearing by the Standards Committee. However, if the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Committee which will conducting a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Deputy Monitoring Officer, has considered the Investigator's report following which she has also spoken with one of the Council's Independent Persons, who is in agreement that this matter should be referred to the Standards Committee for that Committee to decide on the appropriate and proportionate response to the breach.

RECOMMENDATION

That the Standards Committee:

- (a) Notes the outcome of the investigation undertaken by Mr Austin on behalf of the Deputy Monitoring Officer in respect of Councillor Cawthron;**
- (b) Decides whether Councillor Cawthron has failed to comply with the Code of Conduct, and if they find there was no failure, then to dismiss the Complaint; or**
- (c) if the Committee concludes that Councillor Cawthron has failed to comply with the Code of Conduct then to consider what action, if any, the Committee should take as a result of that failure which might be.**

BACKGROUND & SUMMARY OF THE INVESTIGATOR'S CONCLUSIONS:

Paragraph 3.4 of the Member's Code of Conduct states:

"Members must:

- (a) not conduct them self in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute;*
- (b) not make vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, the Authority;*
- (c) comply with any request of the Authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.*

In response to the allegation the external Investigator has provided a Summary of Findings in conclusion to the investigation:

- By his actions during and after the Council meeting, I find sufficient evidence to show that Councillor Cawthron conducted himself in a manner that could reasonably be regarding as bringing his office or the Authority into disrepute. He is therefore in my opinion in breach of paragraph 3.4(a) of the Council's Code of Conduct.
- Councillor Cawthron failed to co-operate with the Monitoring Officer in her attempts to resolve the matter informally. He also failed to engage with me during my investigation. In doing so, Councillor Cawthron has failed in my opinion to comply with the Nolan Principle of Accountability. I find that he is in breach of paragraph 3.4(c) of the Council's Code of Conduct, which requires a councillor to comply with any request of the Monitoring Officer in connection with an investigation conducted in accordance with her respective powers. In doing so, he has caused the Council to expend valuable resources both in officer time and the cost of my investigation.

Principles of Public Life:

In addition to Paragraphs 3.4 of the Code of Conduct it is necessary to highlight that the Code also applies, at paragraph 2.2, “*whenever a Member conducts the business, or are present at a meeting, of the Authority;*”. and “*at all times and in any capacity, in respect of conduct identified in paragraphs 3.4(a) and 3.5;*” and the Nolan Principle of Leadership “*Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.*”.

INFORMAL RESOLUTION AND SANCTION

Informal Resolution:

Councillor Cawthron, initially acknowledged the matter in his discussion with the Monitoring Officer on 15 December 2020, and confirmed that, depending upon the format of an apology, he was prepared to apologise. Having asked the Monitoring Officer to advise him on appropriate wording, and her sending him some suggested wording by email of 18 December 2020, he then failed to further respond and has failed to respond again since that time.

Section 7.1.1 of the Council's Complaints Procedure, authorises the Monitoring Officer in consultation with one of the Independent Persons to seek an informal resolution. Consideration was given to an informal resolution, whether that was appropriate and proportionate, with the investigation outcome and the resolution being reported to the Standards Committee but that route is not considered appropriate in this case.

In reaching that decision, consideration has also been given to the sanctions which are afforded to the Committee at Section 8 of the Complaints Procedure and which for ease of reference are set out below. However, not all sanctions listed are available as Councillor Cawthron does not belong to any political party and is not in any group of Members.

Sanctions:

- (i) Publish its findings in respect of Councillor Cawthron's conduct on the Council's website;**
- (ii) Report its findings to Full Council for information;**
- (iii) Recommends that Councillor Cawthron should undergo refresher Code of Conduct training; and/or**
- (iv) Recommend to Full Council the exclusion of the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**

Other sanctions are available, see paragraph 8 of the Complaints Procedure, but are not thought appropriate or proportionate in this matter.

HEARING AND SANCTIONS

Hearing

The Investigator's findings in this matter, taken with the lack of contact or response from Councillor Cawthron, means that this matter is not suitable for resolution by informal resolution. As a result, and following a conversation with one of the Independent Persons this matter is suitable for referral to the Standards Committee for a hearing following which that Committee can make a decision, and then, if appropriate, decide upon the sanction or sanctions.

At the hearing, and following the Council's procedures, the report can be formally presented to the Committee; Councillor Cawthron can attend; and both sides may call such witnesses as are considered necessary. In this case it is proposed to call the Investigator, John Austin, to answer any questions concerning his investigation that the Committee may have.

Should the Committee need to consider sanctions in this matter then some of those are set out above, and are also to be found at paragraph 8 of the Complaints Procedure, in Appendix 1.

The Committee is held in public, the Members can provide comments and observations and the minutes of the meeting are reported to full Council.

Sanctions:

These are set out in the paragraph above, under "Informal Resolution and Sanctions", and are also to be found at paragraph 8 of the Complaints Procedure.

CONSULTATION WITH THE INDEPENDENT PERSON

Jane Watts commented in response to the consultation with her on the investigation findings that there "seemed nothing more we can reasonably do" to engage Councillor Cawthron, and that a referral to the Standards Committee for a hearing in this matter was reasonable.

A member who is the subject of a complaint, also has the right to speak to an Independent Person as part of the process but as Councillor Cawthron has not engaged, then the Deputy Monitoring Officer has not provided any contact details for any of the Independent Persons.

MISCELLANEOUS MATTERS

None.

APPENDICES

- Appendix 1 – Code of Conduct and Complaints Procedure
- Appendix 2 - Report of investigator, John Austin.

