

John Austin Associates

Tendring District Council

Investigation Report

Complaint from Lisa Hastings (Council Monitoring Officer)
against Councillor Peter Cawthron

September 2021

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1. Introduction

1.1 I was commissioned by the Deputy Monitoring Officer at Tendring District Council to investigate a complaint by Lisa Hastings (the Authority's Monitoring Officer) against Councillor Peter Cawthron (a District Councillor).

1.2 The complaint is as follows:

“Councillor Cawthron has admitted to using an obscenity during a formal and recorded Council meeting on 24 November 2020. The complainant feels that Councillor Cawthron has not had regard to the Principles of Public Life, namely accountability, and has failed to comply with the Council's Members' Code of Conduct, specifically in relation to Conduct and paragraphs 3.4(a) and 3.4(c).”

2. Summary of Findings

2.1 Below is a summary of my findings. These are set out in more detail in section 8 of this report.

2.2 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 regarded 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 (see paragraph 8.18 of this report).

2.3 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. (Paragraph 8.19 refers)

3. Terms of Reference

- 3.1 I conducted my investigation in accordance with the District Council's Members' Code of Conduct and the associated complaints procedure. The Council's Code is dated April 2018.
- 3.2 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. This is one of the principles on which the Council's Code of Conduct is based (The Nolan Principles - Appendix A to the Code).

The relevant parts of the Code of Conduct are paragraphs 3.4(a) and 3.4(c) as follows:

Members must:

3.4(a) - not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Authority into disrepute, and

3.4(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 powers."

4. Documents Reviewed

In the course of my investigation, I reviewed the following:

- (a) The complaint from Ms Hastings

- (b) The decision notice from the Deputy Monitoring Officer dated 9 March 2021
- (c) The Council's Members' Code of Conduct dated April 2018
- (d) The Council's Complaints Procedure
- (e) E mails between Ms Hastings and Councillor Cawthron between 25 November 2020 and 13 January 2021.
- (f) The recording of the relevant part of the Council meeting on 24 November 2020.

5. Evidence Gathering and Comments on the Report

- 5.1 I interviewed Ms Hastings on 22 April 2021. Councillor Cawthron did not respond to my two e mail requests for an interview sent to him on 15 and 24 April 2021.
- 5.2 I also had email correspondence with District Councillor James Codling (see paragraph 7).
- 5.3 Both Ms Hastings and Councillor Cawthron were sent a copy of this report for comments on accuracy and fact. Ms Hastings replied, accepting the report, and adding that its content accords with the complaint and the unfortunate situation Tendring District Council found itself in. I allowed Councillor Cawston longer than normal to respond over the summer holiday period. He failed to do so.

6. Interview between myself and Ms Hastings on 22 April 2021

- 6.1 I reminded Ms Hastings that I had been appointed by her Deputy Monitoring Officer (Linda Trembath) to investigate her complaint against Councillor Cawthron. The complaint was as follows:

“Councillor Cawthron used an obscenity during a formal and recorded Council meeting on 24 November 2020. As the complainant, she feels that he has not had regard to the Principles of Public Life, namely accountability, and has failed to comply with the Council's Members' Code of Conduct, specifically in relation to Conduct and paragraphs 3.4(a) and 3.4(c).

- 6.2 I asked if my understanding was correct. She replied yes but it wasn't just about the fact that Councillor Cawthron swore. It was also about his response that it was an acceptable word to use in today's society.
- 6.3 I asked Ms Hastings to outline the reasons for making the complaint. She replied that for her to make this complaint was an option of last resort. Her role and relationships with members meant that she would try to resolve such issues informally. She said she gave Councillor Cawthron ample opportunity to engage with her to seek an informal resolution. She suggested he made an apology to members and the public. The disappointing thing for her was that Councillor Cawthron initially agreed to consider such an apology and she prepared a draft, but she then didn't hear anything from him. She said she considered the complaint to be an inappropriate use of Council resources. It is not something she has done lightly but it cannot be the case that Tendring District Council accepts that swearing in the Council Chamber is acceptable. In her opinion, it is damaging to its reputation.
- 6.4 I said that I understood that Councillor Cawthron apologised at the time it happened at the Council meeting. Ms Hastings said no - that was not the case. Councillor Calver heard the comment and raised it at the meeting. Councillor Cawthron admitted it was him immediately but added that it was an acceptable word to use. Ms Hastings said that she didn't hear it during the meeting but did so when listening to the recording the following day.
- 6.5 I reminded Ms Hastings that in her complaint she stated that Councillor Codling said he would try to speak to Councillor Cawthron. I asked if this conversation had taken place. She replied that she didn't know. She advised me that Councillor Codling was at the time in the UKIP Group along with Councillor Cawthron (who was the Group Leader). Councillor Codling has since moved to the Conservative Group. The Council's complaints procedure says that if the complaint involves the Leader of a Group, the Monitoring Officer may speak to the relevant Group's Deputy Leader to try to resolve the matter – in this case Councillor Codling. She added that

the Council does not have Councillor Cawthron's telephone number.

6.6 I said that I understood that the recording of the Council meeting was available but I couldn't locate it on the Council's website. Ms Hastings agreed to send me the recording and to indicate where in the meeting the offending word was said.

6.7 I advised that Councillor Cawthron had not yet responded to my request to meet with him. I asked if he had been in contact with her recently. Ms Hastings replied no, adding that he doesn't tend to respond to correspondence. He does however access the Council's system and attend meetings.

7. Evidence from elsewhere

Following my interview with Ms Hastings (see paragraph 6.5 above) I e mailed Councillor Codling and asked him if he had spoken to Councillor Cawthron about the incident. He replied:

"No I did not subsequently contact Peter Cawthron.

The reason for this was that, on reflection, I felt that Councillor Cawthron as an experienced councillor and Group Leader should be fully aware of his obligation to make an apology informal or otherwise.

It seems also from his feelings on the use of the offending word being acceptable in today's society that he is trying to make a point which has no justification under the circumstances."

8. Evaluation of Evidence and Findings

8.1 As mentioned in paragraph 5.1 above, I e mailed Councillor Cawthron on 15 and 24 April 2021. He did not respond to both requests for an interview. In my view therefore he has failed to comply with my investigation.

8.2 I viewed the recording of the relevant part of the Council meeting on 24 November 2020.

- 8.3 After a vote was taken on item 15 of the agenda (minute no. 47) a member was heard to utter the word “f**k”. This was timed at 1.44.52 on the meeting timeclock. The meeting carried on and then at 1.45.53 on the clock, Councillor Calver spoke up and said that he had heard an obscenity uttered. If the meeting was being recorded, he asked for the matter to be investigated so the member could be identified. Councillor Cawthron then intervened (1.46.27 on the clock) and admitted that he had uttered what would have been an obscenity in the 1950, 60s and 70s but it was no longer perceived to be one by the majority of the British people. The meeting then continued.
- 8.4 There is no doubt therefore that the offending word was said, and Councillor Cawthron has admitted to having said it.
- 8.5 In the detail that accompanied her complaint, Ms Hastings said that neither the Chairman, Chief Executive, or the Leader of the Council or herself heard the offending word. However, she listened to the recording on the following Wednesday morning, and it was clear what was said.
- 8.6 Ms Hastings added that she wrote to Councillor Cawthron on 25 and 26 November asking him to contact her to discuss the incident. No response was received. She e mailed him again on 27 November with a more formal request stating that it may have been his view that it was an acceptable word but that is not the case when acting as a councillor, on Council business and in formal Council meetings, during which a higher standard of conduct is expected. She added that despite the wideness and proliferation of its use in many sections of society, the word remains a swear word and an expression of profanity within the English language and is still regarded as highly offensive within many settings.
- 8.7 Ms Hastings said that she genuinely believed that Councillor Cawthron may have said the word in the meeting unintentionally whilst being unmuted and had not aimed it at anyone in particular. However, it was said immediately following a motion the Council had just decided upon. It may also be the case that not everyone watching would have been offended. However, it is not in her view acceptable to use

such language while carrying out Council business and therefore, she considered as the Council's Monitoring Officer that the most appropriate form of action would have been to resolve the matter informally and for Councillor Cawthron to issue an apology to the Chairman, Tendring District Council Members and the public. This would in her opinion have enabled everyone to move on.

- 8.8 Ms Hastings asked Councillor Cawthron to reflect on his position, adding that she felt sure that he would not wish to be perceived as acting in a manner which could reasonably be regarded as bringing his role as a Councillor, or Tendring District Council into disrepute and have a negative impact on the Council's reputation. She asked him for confirmation as to whether he was prepared to issue an apology and if so, when this would be. She offered to discuss the matter further early the following week and to assist with the wording of the apology.
- 8.9 No response was received to the email sent on 27th November, therefore a further email was sent on 2nd December copying Councillor Codling into the email. This correspondence highlighted the Council's Complaints Procedure which contains provisions for when a complaint relates to a Group Leader and authorising the Monitoring Officer to try and resolve matters informally, involving the Deputy Group Leader. Reference was made to the formal complaints procedure and potential reference to the Standards Committee.
- 8.10 On 15th December, Councillor Cawthron contacted Ms Hastings via email and explained he had been working away, at very short notice, for the last two weeks and away from his email. He confirmed he had no problem with an apology depending upon the format. He asked Ms Hastings to advise on the options. In response, Ms Hastings offered to draft some words for him to consider, which was accepted. The suggested apology was sent to him via email on 18th December 2020. No response was received and reminders were sent on 6th January and 13th January 2021. On the latter date, Ms Hastings also sent the email during the All Member Briefing in which Councillor Cawthron joined and was on-line.

Councillor Cawthron also joined the Planning Committee on 19th January 2021, in which she also attended. Even though he was 'active' as a member at that time, Councillor Cawthron failed to acknowledge or respond to Ms Hastings' attempts to resolve the matter informally.

- 8.11 Ms Hastings told me that she was extremely disappointed in having to make this complaint and invoke the formal procedures. But she felt she had no other option. She added that the Council and its Monitoring Officer cannot condone Councillor Cawthron's behaviour. The reputation of the Council is at stake.
- 8.12 Ms Hastings also said that both she and members of Tendring Council have a duty to maintain and promote high standards of conduct in accordance with the Localism Act 2011. Councillor Cawthron is bound by the Council's Members' Code of Conduct. By saying in full Council that he considered the use of a swear word to be acceptable when conducting Council business and failing to apologise upon reflection, he has in Ms Hastings' view brought his office and the Council into disrepute.
- 8.13 Paragraphs 8.5 to 8.10 above show the efforts Ms Hastings made to reach out to Councillor Cawthron, to facilitate an apology and hopefully draw a line under the matter. He failed to engage with the Monitoring Officer in a constructive manner to resolve the matter informally and thereby prevent a formal investigation taking place.
- 8.14 I am advised that it is not possible to contact Councillor Cawthron by telephone, as he has not provided additional contact details and relies on the Council's email system.
- 8.15 There is no doubt that Councillor Cawthron used the word "f*ck" during the Council meeting. It is clear from the recording and he admitted it when Councillor Calver raised the matter shortly afterwards. My view is that Councillor Cawthron probably uttered the offending word out of frustration at the outcome of the vote. I do not think he directed it at any individual or group. He may also have thought his microphone

was muted. It is a relatively common mistake during remote meetings.

- 8.16 I do not however accept Councillor Cawthron's explanation that the word is more acceptable today's than it was decades ago. It might arguably be more commonly used in everyday life but it is not acceptable in his position as a councillor in a formal Council meeting. I concur with the Monitoring Officer in paragraph 8.6 when she told Councillor Cawthron that the word remains a swear word and an expression of profanity within the English language and is still regarded as highly offensive within many settings.
- 8.17 The correct course of action would have been for Councillor Cawthron to apologise immediately. He failed to do that. He also failed subsequently to agree a suitable apology with the Monitoring Officer after initially indicating his willingness to do so. Had he had done so, it would probably have been the end of the matter.
- 8.18 By his actions during and after the Council meeting, I therefore find sufficient evidence to show that Councillor Cawthron conducted himself in a manner that could reasonably be regarded 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.
- 8.19 Councillor Cawthron also 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 my opinion, Councillor Cawthron has failed to comply with the Nolan Principle of Accountability by avoiding and ignoring communication with the Council's statutory officer employed to deal with Member Complaints (plus myself acting on behalf of the Deputy Monitoring Officer). I find therefore 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 their respective powers. In doing so, he has

caused the Council to expend valuable resources both in officer time and the cost of my investigation.

8.20 I fully understand the difficulties faced by the Monitoring Officer in making this complaint. As she said in paragraph 6.3, it was an option of last resort. In my view she adopted the correct course of action in trying to resolve the matter informally. When that failed, she had no option but to make the formal complaint to preserve the integrity of and standards within the Council. I commend Ms Hastings for her actions.

30 September 2021