

Meeting	Joint Standards Committee Hearings Sub-Committee
Date	3 January 2019
Present	Councillors Kramm (Chair), Hayes and Wiseman (Parish Council Member)
In Attendance	Mr Laverick - Independent Person Mr Goulden - Investigating Officer Mr Hayward - Investigating Officer Mr Khan - Monitoring Officer Cllr Aspden - Subject Member Ms Addy - Subject Member's barrister Mr Watson - Subject Member's solicitor

1. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, any prejudicial interests, or any disclosable pecuniary interests, that they might have in the business on the agenda.

Cllr Wiseman declared a personal interest, as she knew the Subject Member's solicitor from the time when they had both been members of City of York Council.

2. Exclusion of Press and Public

Resolved: That the press and public not be excluded from the meeting during consideration of Agenda Item 4 (Complaint about a Member of City of York Council).

Reason: In view of the decision taken in private session before the start of the hearing not to allow a request that Person A's evidence be heard in private.

3. Public Participation

It was reported that there had been six registrations to speak at the meeting under the Council's Public Participation Scheme, all in relation to Agenda Item 4 (Complaint Against a Member of City of York Council).

Gwen Swinburn commented on the state of the Standards process in York, in particular that this and other cases had been mishandled.

Fiona Evans spoke in support of the Subject Member, Cllr Aspden, praising his character and conduct in the context of her work as leader of the Yearsley Pool Action Group.

Cllr Reid also expressed support for Cllr Aspden, both in a personal capacity and on behalf of the Liberal Democrat group, who felt that he had been badly treated in this case.

Amanda Scrimgeour spoke in support of Cllr Aspden as a former colleague and expressed disbelief at the alleged breaches in the light of his workload at the time.

Verna Campbell spoke in support of Cllr Aspden, whom she had worked with for many years on Fulford Parish Council, praising his work as a local representative.

Dominic Hallas, who had worked with Cllr Aspden in local politics, also spoke in his support, describing him as a great employer and friend.

4. Complaint against a Member of City of York Council

The Panel considered a complaint made against Cllr Keith Aspden, a City of York Councillor. The complaint related to the actions of Cllr Aspden in relation to the recruitment of a council officer.

The matter had been referred to the Hearings Sub-Committee for determination following an investigation.

Introductions were carried out and the procedure for the hearing was explained.

Determining factual disputes

Copies of the investigator's report and the written submissions received had been circulated to the Panel and to the parties prior to the meeting. During the meeting the Panel took advice from the Independent Person.

The investigating officers presented their report and responded to questions.

The following witnesses responded to questions from the Panel, the Monitoring Officer, the Independent Person, Cllr Aspden's barrister and the investigating officers:

- Person A
- Person C (Martin Crosby)
- Person D

Cllr Aspden's barrister presented the Subject Member's case and responded to questions.

The investigating officers summarised their case.

Cllr Aspden's barrister summarised the Subject Member's case.

[The parties, press and public then left the meeting whilst the Panel deliberated in private, returning to hear the Panel's findings]

The Panel gave consideration to the following allegations of breaches of the Code of Conduct:

- a) That Cllr Aspden used his position as a councillor improperly to obtain an advantage for an administrative role, contrary to paragraph 3(8) of the Code of Conduct, by reason of his involvement in the recruitment process whilst having a personal interest.
- b) That Cllr Aspden disclosed confidential information (the paper applications for the administrative role), contrary to paragraph 3(5) of the Code.
- c) That Cllr Aspden, by failing to follow paragraphs 3(5) and 3(8) of the Code in relation to the appointment of the administrative role, acted in a manner which could reasonably be regarded as bringing the Council or his position as a councillor into disrepute, contrary to paragraph 3(7) of the Code.

Panel's Findings

Having considered the written documentation and the verbal representations made at the meeting, the Panel

Resolved: (i) That, in respect of allegation a), Cllr Aspden did not use his position as a councillor improperly to obtain an advantage for an administrative role, contrary to paragraph 3(8) of the Code of Conduct, by reason of his involvement in the process whilst having a personal interest.

Reason: While the Panel are concerned about how Cllr Aspden came to be involved in the appointment process, they are not satisfied that he had at that time a close association with the successful candidate.

(ii) That, in respect of allegation b), Cllr Aspden did disclose confidential information (about the applications for the administrative role), contrary to paragraph 3(5) of the Code.

Reason: On the balance of probabilities the Panel, faced with two conflicting views, are not sufficiently satisfied that that application forms of candidates for the Executive Support Assistant post were physically taken to the Duke of York pub on the evening of 26 June 2015. But all of those present at that meeting gave evidence that there was discussion about the qualities needed in the successful appointee. On the balance of probabilities, taking account of the evidence of all those who have indicated their presence at the meeting, the Panel are satisfied that information about candidates, at least about Persons B and H, was improperly shared at that meeting.

(iii) That, in respect of allegation c), Cllr Aspden did not act in a manner which could reasonably be regarded as bringing the council, or his position as a councillor, into disrepute, contrary to paragraph 3(7) of the Code.

Reason: The Panel do not consider that the breach of paragraph 3(5) of the Code in this case was such as

could reasonably be regarded as bringing the council or Cllr Aspden's position as councillor into disrepute.

Determining Sanctions

The Chair indicated that, in the circumstances, the Panel were not minded to impose any sanction for the breach.

Cllr Aspden's barrister was then invited to make representations as to the sanction she believed to be appropriate.

Having heard those submissions, the Panel

Resolved: That no further action be taken in respect of the breach of the Code of Conduct beyond publicising the Panel's decision.

[The Decision Notice issued following this meeting is attached as an annex to the minutes]

Cllr K Kramm, Chair

[The meeting started at 11.17 am and finished at 10.15 pm].

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City of York Council

Joint Standards Committee Hearings Sub-Committee

3rd January 2019

DECISION NOTICE

In attendance:

Members of the Sub-Committee

Cllr. L. Kramm (Chair)

Cllr. J. Hayes

Cllr. S. Wiseman (Parish Councillor and Vice Chair of the Joint Standards Committee)

Advisors to the Sub-Committee

Mr D. Laverick – Independent Person

Mr. B. Khan - Monitoring Officer, NYCC

Mrs. R. Antonelli – Deputy Monitoring Officer (Standards)

Apologies were given by Ms. A. Davies, Independent Person

Investigating Officers

Mr. J. Goolden – Wilkin Chapman LLP

Mr. D. Hayward – Wilkin Chapman LLP

Subject Member

Cllr K. Aspden – City of York Council

Subject Member's Advisors

Richard Watson – Solicitor, Crombie Wilkinson Solicitors

Caroline Addy – Barrister, One Brick Court Chambers

1. Background

- 1.1. The Sub-Committee was constituted in accordance with procedures approved by the City of York Council's Joint Standards Committee to consider a complaint in relation to the conduct of Councillor Aspden.
- 1.2. The Sub-Committee had the benefit of a report from Wilkin Chapman LLP who had independently investigated the complaint and also written representations from Councillor Aspden, who also attended the Sub-Committee, along with his legal advisors.
- 1.3. In addition three witnesses (Persons A, C and D) who provided written statements for the purposes of the investigation attended the Sub-Committee and gave evidence, as did Councillor Aspden.
- 1.4. The Sub-Committee considered the allegations in the light of the Standards Committee's published criteria for the assessment of complaints.

2. Evidence and Findings of Fact

- 2.1. Following the Council election in 2015 it was agreed that there would be additional administrative support for the Leader, Deputy Leader and the Leader of the Opposition.
- 2.2. The Acting Monitoring Officer advised that the law provides that appointments to such roles were the responsibility of Officers and not of Councillors (i.e. these roles are not political appointments). Councillor Aspden wanted to be involved in the recruitment process and at the request of the former Chief Executive, the officers agreed a way for him to take part in the process of shortlisting and interviewing candidates.
- 2.3. At 9.57am on Friday 26th June 2015, an Officer e-mailed Councillor Aspden and the other members of the interviewing Panel, with copies of the applications forms for all 27 applicants,

which were marked “confidential” and “high importance”. Short-listing for the role was to take place on Monday 29th June 2015.

- 2.4. Some time on the 26th June 2015, Councillor Aspden met at the Duke of York public house with three other individuals, two of whom were Council Officers. The other person was not a Council employee but a member of the public and a Liberal Democrat activist.
- 2.5. The Sub-Committee heard two conflicting views about what occurred in the pub. Two witnesses stated that printed job applications were circulated, but the other two witnesses stated that they were not. The sub-committee, faced with these two conflicting views, were not sufficiently satisfied that the application forms of candidates for the Executive Support Assistant post were physically taken to the Duke of York pub on the evening of 26th June 2015.
- 2.6. All of those present at that meeting gave evidence that there was a discussion about the qualities needed in the successful appointee of a Council position.
- 2.7. Two witnesses (namely Person A and Person C) stated that there were detailed conversations about the applicants and in particular about two favoured applicants. In addition, Person D, whilst categorically denying that printed application forms were distributed, stated that applicants were discussed including whether a particular applicant (Person B and Person H) should be considered for the role.

3. Conclusions The Sub-Committee was concerned that a discussion about applicants for the appointment took place in a public house and involved someone who was not a Member or Officer of the Council. Those applying for the post could expect their applications and the fact that they applied, to remain confidential to those involved in the appointment process.

- 3.2. Whilst it is recognised that the Independent Investigators invited the Sub-Committee to make a finding that just the oral

disclosure constituted improper conduct short of a breach of the Code of Conduct and only, if printed copies of the applications had been taken to the pub, there would have been a breach of the Code of Conduct, that was not a view shared by the Sub-Committee. In the view of the Sub-Committee, the oral disclosure of confidential information as confirmed by all three witnesses constituted a breach of the Code of Conduct by Councillor Aspden.

- 3.3. On the balance of probabilities and taking account of the evidence of all those who have indicated their presence at the meeting, the Sub-Committee are satisfied that information about applicants concerning at least two individuals (Persons B and H) was improperly shared at the public house, including the fact that they had applied for a Council post.
- 3.4. The Sub-Committee therefore concludes that there was a breach of the Code of Conduct paragraph 3(5) in that there was disclosure by Councillor Aspden of confidential information.
- 3.5. The Sub-Committee is concerned about how Councillor Aspden came to be so involved in the appointment process, in particular, chairing the Interviewing Panel but do not see that of itself as constituting any breach of the Code of Conduct. It was understandably in Councillor Aspden's interests to be consulted or involved in the appointment of his support, but the problematic situation was created by the former Chief Executive overriding the correct assessment of officers involved in the appointment process that Members should not be involved in the appointment process of an officer at this level. Through this intervention, Councillor Aspden was encouraged in his view, that a more active involvement was acceptable.
- 3.6. The Sub-Committee are satisfied that Councillor Aspden did not, at the time of the appointment process have a close association with the successful candidate. The Sub-Committee heard evidence that at the time of the interview, the successful candidate had previously been interviewed as an intern for the Liberal Democrat Party and that Councillor Aspden had been

identified by the candidate as the contact/employer on his application form, but noted that there had only been a short amount of contact between the two prior to the application being made. The Sub-Committee heard evidence that it was only after the successful appointment did Person B lodge for a short period of time with Councillor Aspden for which he voluntarily paid him rent.

- 3.7. It was also noted that all three of those on the Interviewing Panel (Councillor Aspden and two Officers) individually gave the successful candidate the highest marks on the various criteria that had been identified. The Sub-Committee concludes that there has not been a breach of paragraph 3(8) of the Code of Conduct which relates to a Councillor using or attempting to use his position improperly to obtain any advantage or disadvantage to the Councillor or any other person. On the basis of the length of time since the incident at the public house occurred and the facts found above, the Sub-Committee do not consider that Councillor Aspden brought his office or the Council into disrepute under paragraph 3(7) of the Code of Conduct. The negative impact on the reputation of the Council is rather created through the management of the allegations and the investigation then by Councillor Aspden's actions in the first place.

Sanctions:

The Sub-Committee have noted the peremptory decision of the then Leader of the Council to remove Councillor Aspden from the Executive. That is a far more severe sanction than the Sub-Committee panel would have considered for this breach. Taking that into account, and the length of time which has already elapsed, and the fact that Councillor Aspden was under increased public scrutiny as the investigation and proceedings did not reach the desired level of confidentiality, the Sub-Committee considers that no further action should be taken beyond publicising this decision.

Other Comments

- (1) The Sub-Committee will ask for a review to seek to establish improvements to the Council's appointment processes with regard to officer and member involvement and to provide appropriate training.
- (2) Bearing in mind that the matter under consideration occurred in 2015, the Standards Committee should seek to speed the process of investigating alleged breaches of the Code of Conduct.
- (3) The Sub-Committee will ask the Joint Standards Committee to consider the inclusion of guidance and a definition of "close associations" in the Councillor Code of Conduct.
- (4) The Sub-Committee also wishes to record their thanks to all the witnesses who appeared before them.

Cllr. L. Kramm

Cllr. J. Hayes

Cllr. S. Wiseman