

Joint Standards Committee Hearings Sub-Committee

Tuesday, 7 September 2021

DECISION NOTICE

ATTENDANCE:

Panel Members of the Hearings Sub-Committee:

Cllr D Carr – Chair

Cllr R Baker

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

Advisors to the Hearings Sub-Committee:

Mr D Laverick – Independent Person

Miss J Berry – Monitoring Officer, City of York Council

Mrs R Antonelli – Deputy Monitoring Officer, City of York Council

Investigating Officer:

Mr G Allen, Senior Solicitor, City of York Council

Mr Allen sent his apologies as he was absent from work for personal reasons

Subject Member:

Cllr M Warters – City of York Councillor (Osbaldwick and Derwent Ward)

Cllr Warters chose not to attend

Complainant:

Mr Moore

Mr Moore was not in attendance and sent his apologies. Mr Moore's representative, who was acting in the capacity of a friend, Mr Arif Khalfe was in attendance.

BACKGROUND

The Hearing Sub-Committee

The Sub-Committee was constituted in accordance with procedures approved by the City of York Council Joint Standards Committee to consider a complaint in relation to the conduct of Councillor M Warters.

The procedure for the conduct of the Sub-Committee was circulated to all Parties as part of the agenda for the Sub-Committee.

The hearing took place in public with the agreement of all parties and the Panel made the decision to exclude the press and public for the following aspects of the hearing:

- Instances whereby the Panel seeks legal advice;
- Deliberations by the Panel Members; and
- Decision-making prior to the public declaration of the decision.

The Complaint

The Panel was concerned with a complaint made in relation to the conduct of Councillor M Warters by Mr J Moore of the York Foot Clinic, Hull Road, York. The complaint was submitted on 3rd January 2021.

The Panel received a report from Mr G Allen, Senior Solicitor with City of York Council who had been appointed by the Monitoring Officer to investigate the complaint. Mr Allen was appointed as a Deputy Monitoring Officer for the purposes of undertaking this particular investigation. Mr Allen was instructed to follow the published procedure when undertaking his investigation.

Mr Allen's report is dated 11th March 2021, and a copy of the same was circulated to all as part of the agenda for the Sub-Committee hearing.

Witnesses

The Panel decided at the outset that their sole focus was limited to the complaint made by Mr Moore, namely the telephone conversation which took place between Mr Moore and Councillor Warters on Saturday 28 November 2020.

The Panel considered the allegations in light of the Joint Standards Committee's published criteria for the assessment of complaints.

EVIDENCE AND FINDINGS OF FACT

The Complainant operates a business called York Foot Clinic from premises located at 289 Hull Road, York which is within the Osbaldwick and Derwent Ward.

On 27th November 2020, the complainant was aware that fencing had been erected on behalf of the Council on grassed land opposite properties along Hull Road, including on land which it transpires is registered at the Land Registry as being in the ownership of the complainant.

On 28th November 2020, a telephone conversation took place between the complainant and Councillor Warters. It is this telephone call which the Panel Members decided was the sole focus of the dispute between the complainant and the subject member.

As detailed within the Investigator's Report, the Complainant alleges that during the telephone conversation Councillor Warters engaged in the following conduct, contending that:

- (i) Councillor Warters was "aggressive in his manner" from early in the conversation after the Complainant thanked him for returning their call but informing them they had already spoken to Councillor Rowley who was investigating the fencing matter and who would be meeting them on Monday 30th November to discuss the fencing matter.
- (ii) Councillor Warters allegedly stated:
 - a. That they [the Complainant] was "wrong", that "it's the Council land and we will do what we want on it."
 - b. "It's not my money" when the Complainant said to him that the land belonged to the Complainant and so erecting of fencing on the Land by the Council was a waste of money and time.
 - c. He had already denied the Complainant's previous application for dropping/lowering of kerb to facilitate vehicular access to/egress from the land for the purpose of parking vehicles in connection with the operation of the Complainant's business and that he would deny any future applications they might submit.

- d. He had “fought bigger people than [the Complainant] and stopped bigger issues than this”.
- e. He had “a million better things to do with his time than deal with people like [the Complainant]” when the Complainant invited him to attend the meeting between them and Councillor Rowley arranged for 30th November.

- (iii) It is further alleged that Councillor Warters refused to accept the land belonged to the Complainant even though they allege that they offered to supply him with documents proving their ownership of the land.

The Complainant also contended that Councillor Warters’ alleged behaviour during the telephone conversation failed to adhere to the following principles upon which the Code of Conduct is specified as being based:

- Openness,
- Accountability,
- Treating others with respect,
- Bullying and Intimidation,
- Equality enactment/Legislation
- Bringing the Council into disrepute.

As detailed within the Investigators Report, Councillor Warters alleges that during the telephone conversation with the Complainant:

- (i) Councillor Warters said that he “had no aggression or anger when talking with the complainant”. Councillor Warters denied saying to the Complainant that he had “fought bigger people than you and stopped bigger issues than this”. Councillor Warters reported that the telephone conversation was “perfectly amiable to start with” and that it was the Complainant (Mr Moore) who became increasingly “animated and aggressive when realising that I was not going to be a pushover for the Complainant to get his way”.
- (ii) Councillor Warters strongly denied stating “it’s not my money” in response to the Complainant stating that the erection of the fencing was a waste of

money. Councillor Warters stated that his response to the Complainant was to say “I was happy to see the War money being spend on supporting the residents on this section of the road who had put up with so much over the years”. He also denied ever stating to the Complainant that he had “better things to do with his time than deal with people like you”. Councillor Warters said that he informed the Complainant that he had already spoken with the Council’s contractor the previous evening (27th November) to instruct the contractor not to erect fencing on the part of the grass verge opposite Number 289. He stated that he explained to the Complainant that he “[has] a million and one things to do in a morning before I finally get out to work”. Councillor Warters said the reason why he declined the Complainant’s invitation to attend a meeting between them and Councillor Rowley on 30th November was that, at the point of the telephone conversation, he did not know the legal position as to whether the land was owned by the Council as highway authority or was in the private ownership of the Complainant, so considered any meeting/further discussion should await him obtaining clarification of the ownership position from Council officers.

- (iii) Councillor Warters denied ever stating in the telephone conversation that he had “already denied the Complainant’s application for a dropped kerb and would deny any future applications that [the Complainant] would make”. He said he was aware of the process for determining applications for vehicle crossing/dropping of kerbs and said that he knew that such applications are not a matter for him to make the determination on. Councillor Warters said that he simply informed the Complainant/Mr Moore that he was aware they had previously unsuccessfully applied for permission to drop the kerb and park vehicles on the land.
- (iv) Although the Complainant stated at the end of the telephone conversation that they would forward to

him documents which they told him showed they own the land, Councillor Warters said that he never received the documents from the Complainant. He denied failing to listen to the Complainant.

Whilst Councillor Warters put forward a number of witnesses in support of his position, the Panel reminded themselves that the sole focus of the complaint was the contents of a telephone call on 28th November 2020, and also noted the following comment from the Investigators Report:

“In the separate respective interviews with Councillor Warters and Mr and Mrs Moore, both parties confirmed that there were no independent witnesses to the telephone conversation. When Councillor Warters telephoned Jason Moore’s mobile phone on 28th November, the only parties to the telephone conversation were Councillor Warters and Jason Moore.”

As a result, the Panel Members had prior consideration of the witnesses evidence submitted however used their discretion and determined that the Witnesses should not be called.

The Panel Members note the Investigating Officer’s report. The Panel notes that during the investigatory process, the Investigating Officer was made aware by the Complainant that on 26th January an email had been sent by Councillor Warters at 15:44 hours on 28th December 2020 to various Council officers referring to the Complainant. The complainant wished to complain about the content and tone of that email and it was included in the Investigating Officer’s report.

CONCLUSION

In the absence of both the subject Member and the Complainant at this hearing it has proved impossible to have the opportunity to hear direct evidence as to the conduct, manner and tone of the telephone call in question. In the absence of any other relevant evidence being brought to the Panel’s attention it has not, in our opinion, been possible to make a direct link between the telephone conversation and the email in the investigating officer’s report.

The email referred to in the Investigating Officer’s report does not, in the Panel’s opinion, cast sufficient light on the conduct or tone of the subject or relevant telephone conversation. There is

no evidence presented to the Panel that there has been a breach of the Code of Conduct.

The Panel reminds itself that the only witnesses to the telephone call were the complainant, Mr Moore, and the subject Member, Councillor Warters. In the absence of any evidence it has not been possible for the Panel to determine whether or not Councillor Warters breached the Code of Conduct. Therefore, the Panel has decided to dismiss the complaint.

SANCTIONS

There will be no sanctions applied due to the Complaint being dismissed.