

MINUTES OF A MEETING OF THE STANDARDS COMMUNITY SUB-COMMITTEE HELD BY ZOOM ON THURSDAY, 27 MAY 2021

PRESENT: Mr S Hays (Chair)

Independent Members: Mrs J Evans, Mrs C Moore and Mrs C Mulholland

County Councillor: County Councillor K M Roberts-Jones

Town and Community Council Representatives: Councillor M Morris,
Councillor H Pattrick and Councillor J Shearer

Mr C Pinney, Monitoring Officer, Powys County Council

Representatives of the Public Services Ombudsman for Wales:
Ms S Cook, Assistant Investigation Manager,
Mr L McAndrew, Investigation Officer

Witnesses called by the Public Services Ombudsman for Wales:
Mrs L Hardwick
Rev. P Goodband
Rev. K Dare

1.	APOLOGIES
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There were no apologies.

The Chair welcomed everyone to the hearing. The Sub Committee members and Council officers introduced themselves and the Chair introduced the Ombudsman's representatives and noted the witnesses in attendance.

2.	DECLARATIONS OF INTEREST
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There were no declarations of interest.

3.	EXEMPT ITEMS
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The Chair explained the format of the hearing.

Stage 1 – Preliminary Procedural Issues

The Monitoring Officer advised that Councillor Johns was not present at the hearing, was not represented and had not sent any representations. He confirmed that Councillor Johns had been given sufficient notice of the date of the hearing. The Monitoring Officer reminded the Sub-Committee that at its meeting on 26 February 2021 it had agreed to adopt the County Council's Procedure for Dealing with Allegations made against Councillors, as set out in Rule 18.4 of the Constitution of Powys County Council. He referred the Sub-Committee to paragraphs 18.4.11.1 and 18.4.11.2 which referred to the failure of a councillor to make representations and if a councillor fails to be present or be represented at a hearing, respectively. The Sub-Committee had to consider whether to continue in Councillor Johns' absence or adjourn the meeting.

The Monitoring Officer advised that Councillor Johns had been contacted via email at various stages and in one email he had advised that he had appointed a solicitor to represent him.

The Standards Community Sub-Committee considered whether or not to proceed in the absence of Councillor Johns. The Sub-Committee considered whether it should adjourn to allow Councillor Johns to be contacted by telephone to enable him to join the meeting should he wish to do so. The Sub-Committee concluded that Councillor Johns had been given sufficient notice of the date of the meeting, had ample opportunity to submit representations and had not provided any evidence of why he was unable to attend.

Accordingly, the Standards Community Sub-Committee decided to proceed in the absence of Councillor Johns.

The Sub-Committee considered whether to hold the hearing in public or private [paragraph 18.4.10 of the adopted procedures]. The Monitoring Officer referred the Sub-Committee to the revised Public Services Ombudsman Wales [PSOW] code of conduct guidance, issued May 2021, where the presumption was that hearings would be held in public unless the Sub-Committee considered that there was good reason to move into private session [paragraph 1.28]. The Sub-Committee agreed that the hearing should be held in public as there was no good reason to exclude the public and that Councillor Johns had not made any representations.

4.	CONSIDERATION OF REPRESENTATIONS AND FINAL DETERMINATION OF A REPORT PREPARED BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES UNDER SECTION 71 (2) OF THE LOCAL GOVERNMENT ACT 2000 [REF 201907610]
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Stage 2 – Making the Finding of Facts

Following a complaint to the Ombudsman that the Member Councillor Johns, Knighton Town Council may have failed to comply with the Code of Conduct, the Ombudsman decided to investigate. The Ombudsman considered the complaint and concluded that there was evidence to suggest that the Member had breached the following provisions of the Code of Conduct:

- 4(b) – to show respect and consideration for others;
- 4(c) – not to use bullying behaviour or harass any person;
- 6(1)(a) - not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

The Standards Community Sub-Committee considered the written report of the Ombudsman's investigation and oral submission from the Assistant Investigation Manager ["the Ombudsman's Representative"] and witnesses. The Sub-Committee noted that Councillor Johns had not submitted any representations regarding the disputed facts and had not submitted any comments on the draft Ombudsman's report.

In response to a question regarding the weight that should be given to the Police caution which had been accepted by Councillor Johns, the Ombudsman's Representative advised that Councillor Johns had indicated that he only accepted the caution in respect of the abusive language he used towards the

Chair of the meeting in question. However, the Ombudsman's Representative advised that this was not clear from the evidence provided by the police in their account of the incident. She advised that the caution refers to threatening abusive and insulting words and behaviour and disorderly behaviour towards the whole meeting. The Monitoring Officer referred the Sub-Committee to the police's incident log of 18 March 2020 within their agenda papers.

The Committee withdrew to a private meeting to consider the matter of disputed facts.

After reaching their decision the Sub-Committee returned to the public meeting and the Chair announced that the Standards Community Sub-Committee had decided on the matter of disputed facts as follows:

1. Did Councillor Johns use further rude and abusive language?
That, based on the submission of witness statements and the oral evidence of witnesses Rev. Dare, Rev. Goodband and Mrs Hardwick, Councillor Johns used offensive rude and abusive language on two occasions to an open public meeting and to Mrs Hardwick directly when he told her to "F... off" and called her "ginger".

Examples of the swear words used include, but are not limited to:
"Fucking wankers" (Reported by Mrs Hardwick, Mr Alker, Dr Goodband and Mr Harding)
"Fucking bastards" (Reported by Mr Alker, Ms England and Ms Williams)
"Fucking Nazis" (Reported by Dr Goodband and Mr Harding)

The Sub-Committee accepted that evidence and unanimously decided that Councillor Johns had used further rude and abusive language over and above his admission.

2. Did Councillor Johns show aggressive, bullying and/or harassing behaviour towards Mrs Hardwick and others?

The Sub-Committee heard evidence that Councillor Johns had an aggressive manner, for example, in standing up he knocked a chair to the ground. Witnesses also reported Councillor Johns to be shouting and swearing at a public meeting. He did this twice: on the first occasion during the meeting; he then left the meeting for a short time and then came in again shouting and swearing. Examples of the swear words used are given at 1 above.

The Sub-Committee also noted that witness Mrs Hardwick reported longer term effects of being anxious and afraid and looking over her shoulder. In addition, witness Rev. Goodband also reported longer term effects. She said she has had nightmares after the incident. She also felt intimidated when seeing him.

The Sub-Committee accepted that evidence and unanimously decided that Councillor Johns had shown aggressive, bullying and/or harassing behaviour towards Mrs Hardwick and others.

Stage 3 – Deciding whether the Member has failed to comply with the Code

The Ombudsman's Representative stated that taking the evidence into account, on balance it was the view of the Ombudsman that there was sufficient evidence to suggest that Councillor Johns used disrespectful and offensive language above and beyond the comment he admitted to in his caution. The Ombudsman considered his behaviour was outrageous and unexpected and his verbal attack on Mrs Hardwick outside the meeting was also unprovoked. The Ombudsman's Representative suggested that Councillor Johns' account lacks credibility and is not supported by the witness evidence. The Ombudsman's Representative noted that Councillor Johns acknowledged during his interview that he considered that there clearly was a breach of the code. The Ombudsman's Representative was of the view that the outrageous and offensive language used by Councillor Johns is suggestive of a breach of 4 (b) of the code of conduct, that the behaviour towards Mrs Hardwick which was unprovoked was bullying and both actions are suggestive of breach of paragraph 4 (c) of the code of conduct. The Ombudsman's Representative considered the behaviour of Councillor Johns to be particularly shocking and could have a negative impact on the reputation of Council he was representing and of the office of member which he holds. The Ombudsman therefore submitted that Councillor Johns' behaviour was suggestive of a breach of paragraph 6.1 (a) of the code of conduct. In addition, the Ombudsman's Representative noted that Councillor Johns pleaded guilty to a public order offence, which specifies he used threatening or abusive or insulting words or behaviour or disorderly conduct within sight or hearing of a person likely to be caused harassment or alarm or distress. The Ombudsman's Representative had considered carefully the members right to freedom of expression and enhanced protection when comments which are made are political in nature, be they about opposing political opinions or matters which relate to the running of a council or other local government structures. However, the Ombudsman's Representative had not seen evidence to suggest that the comments made by Councillor Johns were political in nature. It was noted that the comments were considered so egregious that Dyfed-Powys Police deemed that Councillor Johns' right to freedom of expression should be restricted, for the protection of others and issued him with a Conditional Caution which he accepted.

The Sub-Committee withdrew to a private meeting to consider whether Councillor Johns had failed to comply with the Code of Conduct. The Chair returned to the public meeting and advised that the Sub-Committee had nearly completed its deliberations and that due to the time, the meeting would adjourn for lunch. The meeting was adjourned at 13.00 until 14.00.

The meeting reconvened at 14.00 and the Sub-Committee continued its deliberation in the private meeting. After reaching a decision the Sub-Committee returned to the public meeting and the Chair announced the Sub-Committee had made the following decision:

The Sub-Committee noted that in his interview with the Ombudsman Councillor Johns, [page 151 of the agenda pack], stated "...Well clearly there has been a breach. I did it so there we are..."

The Sub-Committee considered each breach in turn:

- 4(b) Failure to show respect and consideration.

The Sub-Committee found that Councillor Johns used outrageous and offensive language which was shouted at a public meeting, some of which was addressed to individuals.

- 4(c) Not to use bullying behaviour or harassing a person.

The Sub-Committee found that Councillor Johns:

- has admitted, through a Police caution, to calling Mr Grierson a “fucking wanker” which could be considered bullying.
- told Mrs Hardwick to “fuck off”, as reported by two witnesses. She, with others, had also been recipients of his invective on two occasions in the meeting room.
- two witnesses who gave verbal evidence continue to feel fearful. The Sub-Committee consider this clearly demonstrates bullying and harassing behaviour.

- 6.1(a) Not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

The Sub-Committee found that Councillor Johns introduced himself to the meeting as Chair of Knighton Town Council and was there on behalf of the council. Given this introduction, attendees at the meeting would consider him to be representing the council and not there as a private individual. This was a public meeting seeking co-operation of various groups to assist in responding to the Covid-19 pandemic. The Sub-Committee found that he had also breached this section of the code.

Stage 4 – Action to be taken

The Ombudsman’s Representative was invited to make representations in light of the Sub-Committees finding that the Code of Conduct had been breached.

The Ombudsman’s Representative advised that whilst it is not for the Ombudsman to say what sanction should be applied, the Ombudsman is of the view that this is a serious breach of the Code of Conduct. The Committee noted that no similar breaches elsewhere in Wales of such outrageous behaviour, particularly by a mayor of a council, had been found in the Ombudsman’s Casebook.

Councillor Johns’ actions were so serious that the police considered that it was appropriate to charge him with a Public Order Offence, for which he accepted guilt and for which he received a conditional caution. The Ombudsman’s Representative noted in mitigation that this took place at a single event, although Councillor Johns returned to the meeting and repeated the behaviour, at the meeting again and again outside in the car park. She advised that the aggravating factors are significant in that his behaviour when representing the Town Council, as a member and Mayor, had a significant impact on the witnesses and the relationship between the council and community groups. She suggested he had not shown any remorse or recognition for his behaviour suggesting that his actions had been exaggerated by the witnesses. She suggested that he had also been dishonest about his role in the events during

the course of investigation and noted that he had not apologised to the people involved and failed to make any representations or attend the hearing, which might have afforded him an opportunity to show that he had reflected on the matter and that he was remorseful. This suggests a lack of insight into his actions and a failure to co-operate with the standards committee process.

The Ombudsman's Representative referred the Sub-Committee to the Adjudication Panel for Wales [APW] Guidance on sanctions and the section on Assessing the seriousness of the breach and specifically paragraph 36. The Ombudsman's Representative advised that the reputational damage to the office and the authority was significant. The Ombudsman's Representative advised that the maximum sanction which the Sub-Committee can impose is a suspension of up to six months and that the seriousness of the breaches found, the lack of insight into the misconduct or apology to those involved would warrant the most serious of sanctions. She suggested that the comments were not political expressions and the language was so egregious. The Ombudsman's Representative also advised that any sanction would be appropriate and would not be disproportionate interference into his Article 10 rights.

The Sub-Committee withdrew to a private meeting to consider the sanction.

After reaching their decision the Sub-Committee reconvened and the Chair announced that the sanction to be applied to Councillor Johns for breaches of parts 4 (b), 4 (c) and 6 (1)(a) of the Code of Conduct.

The Chair advised that after careful consideration as to the appropriateness of a sanction and the Sub-Committee considered a sanction was appropriate.

The Sub-Committee would not expect this behaviour of any town councillor. It considered it is an aggravating factor that at the time Councillor Johns was the mayor who had experience, seniority and responsibility.

The Sub-Committee took the following into account:

- That Councillor Johns did not attend the hearing or send a representative and so the Sub-Committee did not hear any mitigation or representations.
- The Ombudsman considered this to be a very serious breach of three parts of the code of conduct.
- The Sub-Committee also assessed that this is a very serious breach. This includes the nature and extent of the breaches and the consequences of the breaches on individuals.
- There were a number of aggravating factors (taken from Adjudication Panel for Wales Sanctions Guidance):
 - ii. - seeking to unfairly blame others for the member's own actions;
 - vi. - repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
 - viii. - lack of understanding or acceptance of the misconduct and any consequences;
 - xii. - the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others;

- xiv. - refusal to accept the facts despite clear evidence to the contrary;
- xv. - action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xviii. - continuing to deny the facts, despite clear evidence to the contrary.

The Standards Community Sub-Committee was unanimous in its decision that Councillor Johns be suspended for a period of six 6 months with immediate effect.

The Chair thanked all for attending the hearing.

Mr S Hays (Chair)