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Peterborough City Council

Weightmans' reference: SG/216935/146

Report of an investigation into an allegation concerning the conduct of
Councillor David Seaton of Peterborough City Council

The logo for Weightmans, featuring the word "Weightmans" in white text on a dark teal, wavy rectangular background.

Weightmans

Simon Goacher, Partner
Weightmans LLP
100 Old Hall Street
Liverpool L3 9QJ

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Contents

Summary	Page 3
Relevant legislation	Pages 3-4
Councillor details	Page 5
Background	Page 5
The evidence obtained	Pages 5-12
Findings of fact	Pages 12-13
Reasoning as to whether there is a breach of the Code of Conduct	Page 13
Comments received on the draft report	Pages 14-15
Finding	Page 15
Schedule of evidence	Page 16

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Summary

1. A complaint was made that Cllr David Seaton, an elected member of Peterborough City Council (“the Council”), failed to comply with the Council’s Code of Conduct (“the Code”). The complaint was made by Cllr Ed Murphy who is also an elected member of the Council. The complaint was referred to me by the Council’s Deputy Monitoring Officer to investigate.
2. The complaint relates to Cllr Seaton’s alleged behaviour at a meeting of the Adults & Communities Scrutiny Committee on Monday 28th October 2019.
3. I have investigated whether Cllr Seaton acted in the way alleged, whether in so doing he was acting as a councillor and whether he failed to comply with the Code as a result.
4. As a result of the investigation, I have concluded that Cllr Seaton was acting as a councillor when he engaged in the behaviour complained about.
5. I have also found that in acting he did Cllr Seaton **failed to comply with the code of conduct** for the reasons set out below.

Relevant Legislation

6. The Localism Act 2011 (“the 2011 Act”) has governed standards of conduct for elected members in England since July 2012.

Under the 2011 Act, the Council:

- a. is under a duty to promote and maintain high standards of conduct;
- b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- c. must have in place arrangements for investigating allegations of failure to comply with the Code, and taking decisions about them, including appointing one or more Independent Persons, one of whose views must be sought before a decision is made, and one of whose views may be sought by the member against whom an allegation is made.

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7. Section 27 (2) of the 2011 Act states:

In discharging its duty under subsection (1), a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.

Therefore, the Code applies only when a councillor is acting in their capacity as a councillor.

8. The Council has adopted the Code pursuant to the 2011 Act (SG1).

9. So far as material, the Code provides as follows:

The Members' Code of Conduct is intended to promote high standards of behaviour amongst the elected and co-opted members of the council.

The Code is underpinned by the following principles of public life, which should be borne in mind, when interpreting the meaning of the Code...:

iv. 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...

vii. 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...

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles - selflessness, integrity, objectivity, accountability, openness, honesty and leadership...

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

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Councillor details

10. Cllr Seaton has been a member of the Council since 2008. He is the Cabinet member for finance.

Background

11. This complaint arose as a result of alleged conduct by Cllr Seaton at the meeting of the Council's Adults and Communities Overview and Scrutiny Committee on 28 October 2019.
12. The purpose of the meeting was to consider a "call-in" of a decision of a Cabinet member, Cllr Steve Allen, in relation to the council's proposed acquisition of a number of properties known as "St Michael's Gate". The council held a lease for those properties, which it used for the provision of temporary accommodation, and the lease was due to expire at the end of October. The Cabinet member had to decide whether to buy the properties in order to continue to provide that temporary accommodation. The Scrutiny Committee has the power to call-in the decision, which means implementing it is put on hold until a decision about what to do is made at the Scrutiny Meeting. The issue of St Michael's Gate generally has been a politically controversial one for the various political groups at the council.
13. Cllr Murphy and Cllr Seaton both attended the committee meeting but were not members of the committee so sat in the public area. There was a heated discussion between them during the meeting and Cllr Seaton left. Cllr Murphy claims that Cllr Seaton struck him with a bundle of papers; Cllr Seaton states that he tapped Murphy on the shoulder as he left the meeting.

The evidence obtained

14. The following witnesses were interviewed during the investigation:

Cllr Murphy	(SG2)
Cllr Yasin	(SG3)
15. Cllr Murphy has agreed a written record of his interview. Cllr Yasin has not confirmed that she agrees the written record despite being asked to.
16. I contacted Cllr Fower on four occasions by email asking him if he would be interviewed but I did not receive any response to any of those emails.

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17. I contacted Cllr Judy Fox to ask if she was willing to be interviewed. I spoke to her and she indicated that though she had attended the relevant meeting she did not see any incident between Cllr Seaton and Cllr Murphy.
18. I asked Cllr Seaton to be interviewed but he declined to be interviewed. He provided some information by email (SG4).
19. I have also reviewed a witness statement provided by the Council's Monitoring Officer to the police following the incident (SG5)
20. The Council's Deputy Monitoring Officer, described the process leading to my instructions and supplied me with information received from Cllr Murphy about the complaint and information which he had been sent by the police about the complaint which he had made to them (SG6).
21. I considered seeking to interview others present at the meeting but felt that I had sufficient evidence to reach conclusions on what happened and whether there had been a breach of the Code by Cllr Seaton. I felt further interviews would be disproportionate.
22. I also listened to the relevant part of the recording of the meeting.

Evidence of Cllr Murphy

23. Cllr Murphy explained that he is a member of the Council. He confirmed that he had made a complaint to the Council's Monitoring Officer about Cllr Seaton.
24. Cllr Murphy stated that the documentation from the police which he had provided to the Monitoring Officer had much of the information needed.
25. Cllr Murphy explained that his complaint related to Cllr Seaton's actions at a meeting of the Council's Overview and Scrutiny Committee on 28 October 2019. He stated that it was a call in about St Michaels Gate. He explained that the Council had agreed a deal to move homeless people out. He stated that Cllr Seaton had probably brokered the deal. Cllr Murphy stated that there were councillors sitting on each side and behind them was a "public gallery". He stated that he was sat in the second or third row of the gallery. He stated that Cllr Seaton was sat behind him. Cllr Murphy stated that he and Cllr Seaton were bickering which people will have seen. Cllr Murphy stated that following interruptions and comments he moved forward a row and across to be further away from Cllr Seaton and nearer to the committee members.

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26. He stated that he recalled that Cllr Mrs Fox may have been present. He stated that the Head of Democratic Services and a number of officers were also present. He stated that the Council's Beadle at some time may have been behind them. He stated that the Monitoring Officer was present herself.
27. Cllr Murphy stated that his memory had faded as it was some time ago but he had given his police statement soon after the meeting.
28. Cllr Murphy stated that he and Cllr Seaton made some comments at the meeting which they probably shouldn't have done. He stated that Cllr Seaton slapped him around the head. He stated that one councillor, Cllr Fowler did ask the chair about the incident but nothing really happened. He stated that one or two councillors may have said something but he could not recall.
29. Cllr Murphy stated that Cllr Fower had blogged about the incident afterwards but he had not seen it himself. He stated that Cllr Yasin had been sat next to Cllr Fower. He stated that Cllr Yasin told him afterwards that she had seen the incident.
30. Cllr Murphy stated that he reported the incident the day afterwards. He stated that he had not been too fazed by it but if it had been somebody else it would have made a case. He stated that the police interviewed him and took his statement and may have interviewed councillors or others present.
31. Cllr Murphy stated that he received an email from the leader of the Conservative Group saying that his behaviour had been outrageous and the police would not be taking any action. Cllr Murphy stated that at that time he had not been told by the police that no further action would be taken so he did not know how the leader of the Council knew this.
32. Cllr Murphy stated that he did not know who the police spoke to but the document he provided to the MO had all the details which he had. He stated that a councillor officer Rachel Edwards with a colleague was sat to the left of him. He stated that Cllr Fower also probably saw it and Cllr Yasin definitely saw it.

Evidence of Cllr Yasin

33. Cllr Yasin she was a member of the Council and had been since May 2019.

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34. Cllr Yasin confirmed that she had been at the meeting Council's Adults and Communities Overview and Scrutiny Committee on 28 October 2019 as a member of the committee. She stated that the meeting had been to discuss the St Michael's Gate call in and she had been one of the signatories of the call in. I asked if she had witnessed any incident between Cllr Seaton and Cllr Murphy. She stated that she had.
35. Cllr Yasin stated that they had been discussing various points about the call in. She stated that Cllrs Hiller and Allen and Pete Carpenter, the acting finance director had been presenting their report. She stated that Cllr Murphy and Cllr Seaton had been sitting behind where the people presenting the reports were sat, where members of the public would normally sit.
36. She stated that she saw communications passing between Cllr Murphy and Cllr Seaton but she could not hear what they were saying. She stated that Cllr Seaton had a bundle of papers or a book in his hand and he hit Cllr Murphy over the head with it and then left.
37. Cllr Yasin stated that when she saw the incident she took a sharp intake of breath. She stated that Cllr Fower who was sat next to her asked her what had happened. She stated that she told Cllr Fower that Cllr Seaton had just hit Cllr Murphy. She stated that Cllr Fower raised it with the chair of the committee, Cllr Simons. She stated that Cllr Simons said that he had not seen anything and the meeting moved on.
38. I asked Cllr Yasin if anyone else had seen the incident. She stated that it was difficult to tell. She stated that after Cllr Fower brought it to Cllr Simons' attention no-one said anything. She stated that she thought Cllr Simons would have seen it because Cllr Murphy and Cllr Seaton were directly in his eye line but Cllr Simons said at the time that he did not see it.
39. Cllr Yasin stated that she had not spoken to anyone else since it happened but she had been contacted by the police who had asked her for her account of what happened. She stated that she could provide the police officer's details. She stated that she did not know the outcome of the police investigation.
40. Cllr Yasin stated that the room where the meeting took place had been split in two. She stated that there was an oval shaped table where the committee members sat. She stated that there was a table facing them

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where the cabinet members and officers presenting reports sat. She stated that behind that was where the observers sat including Cllr Murphy and Cllr Seaton.

41. Cllr Yasin stated that it was a very brief incident so some people may not have seen it.

Evidence of Fiona McMillan

42. I have reviewed the witness statement which Ms McMillan provided to the police in it she explains the background to the committee meeting, who was present and what she saw. She indicated that she saw Cllr Seaton make contact with Cllr Murphy which is consistent with what Cllr Seaton has said.

Emails from Cllr Seaton

43. I invited Cllr Seaton to attend an interview about the complaint. He responded stating:

Without Prejudice

I have no great wish to be interviewed.

To be frank;

1. *Councillor Murphy has a history of spurious complaints.*
2. *At the time he tried to pitch story to Peterborough Telegraph, they asked had he reported to Police, he did so, they fully investigated including a statement from myself. The complaint was dismissed and indeed the Police criticised Cllr Murphy for his attempt to use the media.*
3. *There is an existing independent investigation into Cllr Murphy. That took months to agree and is still incomplete.*
4. *In my case, it took a matter of days to decide on an independent investigation. This falls far short of balance and natural justice.*
5. *I believe the recording of the meeting confirms that Cllr Murphy shouted (from the audience) at Councillors, then tried to blame his actions on me. I tapped him on the shoulder, told him that was unacceptable and I was leaving the meeting so he could not do that.*

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If you have specific points, I may be prepared to respond in writing. However I see little point in going back over matters the Police have already considered.

Regards

44. I emailed Cllr Seaton again stating:

Cllr Seaton

Thank you for your email.

It is of course a matter for you whether you agree to be interviewed. If you choose not to then inevitably that will have an impact on my findings and will be reflected in my report.

I have noted your comments, though most of them are not relevant to my investigation.

As you will no doubt be aware any criminal investigation is entirely separate to a code of conduct investigation and the burden of proof applied is also different. Decisions in respect of a code of conduct investigation are made on the balance of probabilities whereas in criminal proceedings the test is beyond a reasonable doubt. The police and CPS also apply a different test in terms of whether a matter should be prosecuted even if they think that there is sufficient evidence they may choose not to prosecute for policy reasons.

Having said that it would be helpful if you have any correspondence from the police explaining their decision not to take any action if you could shared it with me.

I would be grateful if you could also answer the following questions:

You state that you "tapped [Cllr Murphy] on the shoulder as you left." Could you explain why you tapped him on the shoulder?

What did you tap him with, your finger, the palm of your hand, another part of your body or an object? If an object what was the object?

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Could you say how much force was used? Cllr Murphy has indicated that it was sufficient to cause tenderness what is your response to that?

Cllr Murphy states that you "slapped him around the head." Is it possible that when you "tapped him on the shoulder" you also touched his head?

Are there any witnesses to the incident who you think I should speak to?

I look forward to hearing from you.

Yours sincerely

45. Cllr Seaton responded stating:

Simon

We will have to disagree as to relevance. Personally I cannot see how a clear record of a certain type of behaviour is irrelevant, nor apparent bias / lack of natural justice by the team who instructed you nor recorded evidence of behaviour showing the mood of an individual.

You state that you "tapped [Cllr Murphy] on the shoulder as you left." Could you explain why you tapped him on the shoulder?

As already stated, "I believe the recording of the meeting confirms that Cllr Murphy shouted (from the audience) at Councillors, then tried to blame his actions on me. I tapped him on the shoulder, told him that was unacceptable and I was leaving the meeting so he could not do that".

He shouted more than once.

What did you tap him with, your finger, the palm of your hand, another part of your body or an object? If an object what was the object?

For clarity, I had no papers at the meeting so Murphys claim to Police that I hit him with a sheaf of papers is nonsense. My recollection is it was with the fingers of my right hand on his left shoulder (as I was behind him to his left).

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Could you say how much force was used? Cllr Murphy has indicated that it was sufficient to cause tenderness what is your response to that?

From my perspective a light tap but sufficient to get the attention of someone who had lost his cool. Not enough to cause tenderness on the shoulder of anyone.

Cllr Murphy states that you "slapped him around the head." Is it possible that when you "tapped him on the shoulder" you also touched his head?

No. 'Slapped' is a considerable distance from 'touched'. He may have felt my hand on his hair.

Yours sincerely

Findings of fact

46. I must make findings on the balance of probabilities and that is the test which I have applied in relation to the material facts. I make the following findings:
- a. Cllr Seaton and Cllr Murphy were in attendance at the meeting of the Adults & Communities Scrutiny Committee on Monday 28th October 2019;
 - b. Cllr Murphy made a number of comments during the meeting;
 - c. Cllr Seaton became exasperated and deliberately touched Cllr Murphy without his consent as he left the meeting;
 - d. On balance I do not find that Cllr Seaton "slapped" Cllr Murphy or hit him with an object.
47. I make these findings for the following reasons;
- a. This is accepted by all parties;
 - b. This is accepted by all parties;
 - c. Cllr Seaton accepts that he told Cllr Murphy that his behaviour was unacceptable and tapped him as he left the meeting, the evidence of Cllr Murphy, Cllr Yasin and Fiona McMillan is that Cllr Seaton touched Cllr Murphy;
 - d. The evidence of Cllr Murphy on this point has been inconsistent with his comments in the media differing from his statement to the

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police and is strongly denied by Cllr Seaton. Cllr Murphy's allegation is supported by Cllr Yasin and Ms McMillan, to an extent but the evidence is insufficiently clear to find this proven on the balance of probabilities.

Reasoning as to whether there has been a failure to comply with the Code.

48. The relevant paragraphs of the Code which I have considered during my investigation are set out at paragraph 9 above.
49. The test in deciding whether or not there has been a failure to comply with the Code is objective: would a reasonable person aware of all the material facts and ignoring all immaterial factors consider that there has been a breach of the Code?
50. The Act section 27(2) provides that the code of conduct only applies to the conduct of a member acting in their capacity as such. In my view at all material times Cllr Seaton was acting in his capacity as a councillor. He has not sought to argue otherwise. The incident occurred at a meeting of the overview and scrutiny committee of the Council he was attending.
51. Cllr Murphy was being disruptive at the meeting. He should not have been. It is unsurprising that Cllr Seaton found this annoying. However, he should not have made physical contact with Cllr Murphy. The contact was, in my view on balance, fairly minor but in my view both councillors should have exercised a greater degree of control over their actions at the meeting.
52. In making deliberate physical contact with Cllr Murphy without his consent in my view Cllr Seaton failed to comply with the standards of conduct in public life in the Council's code. He failed to exercise leadership and to be accountable and he failed to promote high standards of conduct.
53. In finding this I am of the view that the breach was relatively minor and there was a strong degree of mitigation arising from Cllr Murphy's own behaviour. It is regrettable that the cost and time of an investigation has been incurred by the Council from this relatively trivial incident. It would have been better if Cllr Seaton had accepted that, despite the provocation, he went too far in deliberately physically touching Cllr Murphy without his consent in response, apologised and everyone moved on. I would hope that he might do so now and avoid the need for any hearing.

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Comments on the Draft Report

54. In accordance with the Council's procedures I have given Cllrs Murphy and Seaton the opportunity to read my draft report. I did not receive any response from Cllr Seaton.

55. Cllr Murphy responded stating:

Thanks for sending me this draft. I do concur with you that this may have been an unnecessary expense for the council over the incident. However he did hit me on the right hand side of the head either with his hand or whatever may have been in it. It didn't feel like a fist. The force may have been increased because he was standing up and moving past me and I was sitting down and lower than him.

You probably need to check the typo hearing insert as In line 5...

I can't recall the press or media reports on this though I do know Robert Alexander local government reporter, who should have been at the meeting but thought it had been cancelled, was aware of the incident as I spoke to him the next morning. I didn't release any press note or statements. What are the inconsistencies that you are referring to so I can have a think about them, they may be down to how the matter was reported not necessary what I said. I bet they're about what may or may not have been in his hand. I recall he left some papers on the table or touched them on the press table after he'd hit me.

If you'd like me to chase up anybody for example Cllr F I can ask him to get in touch with you.

The document you sent me doesn't contain all the contents that are listed for example the monitoring officer (I was interested in what she said she saw) nor the police stuff but I've seen most of that. I didn't know that you'd got these statements for Cllrs until today.

If this matter is not resolved as your suggestion by way of apology I am wondering if it does go to a hearing could the hearing conclude that I was actually hit.

There is a strong possibility that somebody else in the room did actually see this and remember what happened last year.

When we discussed this there had been a delay before you were asked to take on the task and I see that you may have had some trouble getting responses since. Has there been any intentional blocks and non-responses put in the way to increase the time this has all taken to come to conclusion?

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56. I have considered Cllr Murphy's comments. I have not had any internal blocks on my investigation. I did not consider it proportionate to seek to interview further witnesses present at the meeting given that it is clear on Cllr Seaton's own admission that he did touch Cllr Murphy without his consent and against his will. It is unlikely to be possible to identify clearly the degree of force which was used and the evidence which I have already obtained is conflicting and the police noted the inconsistency in Cllr Murphy's own evidence.
57. I never provide the parties with all of the supporting evidence at the stage of sharing the draft reports as it is not necessary to do so to enable them to comment.

Finding

58. My finding is that there **has been a failure** on the part of Cllr Seaton to comply with the Council's Code of Conduct.
59. I am sending a copy of this report to the Council's Monitoring Officer.

**Simon Goacher, Partner
Weightmans LLP**

14 January 2021

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Schedule of evidence

- SG1 Peterborough City Council Code of Conduct for Members
- SG2 Record of interview of Cllr Murphy
- SG3 Record of interview of Cllr Yasin
- SG4 Emails from Cllr Seaton
- SG5 Statement of Fiona McMillan
- SG6 Information from the complainant and the police

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