

**PETERBOROUGH CITY COUNCIL
DECISION OF
CONSTITUTION & ETHICS COMMITTEE
HEARING PANEL**

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| Subject Members: | Councillor Darren Fower |
| Complainant: | Councillors Fox and Holdich |
| Chairman: | Councillor David Seaton |
| Panel Members: | Councillor Bashir & Councillor Amjad Iqbal |
| Independent Person: | Gillian Holmes |
| Monitoring Officer: | Fiona McMillan |
| Investigating Officer: | Alex Oram |
| Clerk: | Daniel Kalley |
| Date: | 1st April 2019 |

SUMMARY OF THE ALLEGATION

In March 2018 the Monitoring Officer received complaints from the Mayor, Councillor John Fox and the Council's Leader, Cllr John Holdich, concerning alleged breaches of the Code of Conduct (Appendix B of the Agenda Pack) by Councillor Fower. The complaints both related to a campaign that Cllr Fower had launched in response to the closure of the council chamber's public gallery during full council meetings following health and safety concerns having arisen at a council meeting in July 2017.

Cllr Fower had publicised his campaign, which included a petition, through various social media channels and direct emails, within which he attributed the decision to close the gallery to Cllr Fox. Within the body of the email, which was also published in a letter from Cllr Fower on the Peterborough Telegraph's Letters Page on 1st March 2018, Cllr Fower stated:

“WE should not be barred and such facists tendencies NEED to end NOW!”

Cllr Fox considered this remark to be personally insulting towards him and capable of bringing the Council into disrepute. Cllr Holdich considered the remark to be extremely offensive and disrespectful to Cllr Fox both as Mayor and personally. He also highlighted that Cllr Fower had been collecting signatures for the petition and had then gone on to use people's contact details without their knowledge or permission to generate emails to the Council's Chief Executive, the Leader and the Mayor in breach of data protection legislation.

In accordance with good governance and the Guidance for Complaining against a Councillor (Appendix C of the Agenda Pack) the Monitoring Officer notified Cllr Fower of the complaint and

invited his comments. Cllr Fower did not response to this email or to a subsequent chaser email within the time given for a response. The Monitoring Officer proceeded to consult with the Independent Person and it was determined that the complaints should be referred for investigation. The Monitoring Officer appointed Alex Oram ("the Investigating Officer") of CH&I Associates to carry out the independent investigation.

Following completion of the investigation, the Investigating Officer concluded in his report that:

"On this occasion Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults to attack the reputation of Councillor Fox individually and the Council more generally.

I also consider that while Councillor Fower's on-line petitions may have been well-intentioned, he failed to ensure that the information he obtained from those who supported them was handled appropriately. Councillors must make their constituents aware of how they will use any information they provide and ensure that they are in agreement.

Accordingly it is my view that Cllr Fower breached the Council's Code of Conduct by failing to promote and support high standards of conduct and leadership when serving in his public post."

Further the Investigating Officer considered that the complaints could be resolved informally but that in his view, any resolution would have to involve Cllr Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this the Investigating Officer confirmed that his recommendation would be a referral to the Hearing Panel.

The Hearing Panel is tasked with determining whether or not there has been a breach of the Code and, if so, what sanction is required.

RELEVANT SECTIONS OF THE CODE OF CONDUCT

The investigation report indicated a breach of the following obligations of the Code of Conduct:

PART 1 General provisions

1. "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.

Accordingly, when acting in your capacity as a member or co-opted member- 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"

2. That Councillor Fower had failed to comply with his obligations under data protection legislation.

PROCEDURAL ISSUES DETERMINED AT THE COMMENCEMENT OF THE HEARING

The Monitoring Officer confirmed that no request had been received for the hearing to take place in private and consequently no exemptions were applied. No further procedural issues were raised

however the Chairman noted that Cllr Fower had not attended the hearing and the Clerk confirmed that no apologies had been received or any reason given for the non-attendance. The Monitoring Officer confirmed that there was no reason why he should not be aware that the hearing was taking place today having received both telephone and email invites. The Monitoring Officer confirmed that the hearing had been arranged at 3 pm. to suit Cllr Fower's working hours and had sent various communications to ensure that he was aware of the date and time of the hearing. Taking this into account the Chairman and the Panel were in agreement that the hearing should proceed in Councillor Fower's absence.

SUMMARY OF THE EVIDENCE CONSIDERED AND REPRESENTATIONS MADE

Presentation of the Complaint

The Investigating Officer ("IO") summarised the content of his investigation report and in particular that he was instructed to investigate two complaints submitted by Councillors Holdich and Fox which had been summarised on page 33 of his report. The first related to a letter that Cllr Fower had written to the Peterborough Telegraph and subsequently in other published media as part of his campaign to reopen the public gallery and linked to that, the other area of complaint, that he was using people's personal information without giving them sufficient information about how it was going to be used.

The background to the closure of the public gallery had been set out at page 36 of the report. The IO confirmed that the facts as to what happened were not particularly in dispute having discussed this at length with Councillor Fower. Councillor Fower agreed that he sent the letter and made the comments that he did. The investigation therefore focused on his justification for this. The one area of slight dispute was in relation to the email. Here the IO drew particular attention to pages 43 and 44 which were Councillor Fower's responses to the complaint. The main area of disagreement regarding Cllr Fower's evidence was his contention that after the individuals signed the petition they were sent a confirmation email explaining how their information was going to be used. He committed to providing a copy of that. At the time of the investigation none were live online so it was nothing that could be tested and the IO has confirmed that Cllr Fower has not since provided that information to him.

On this basis of the information contained within the investigation report and as subsequently summarised at the hearing, the IO concluded that Councillor Fower's conduct had amounted to a breach of the Code in that:

- Cllr Fower had failed to treat Councillor Fox with respect by the use of the word "fascist" in connection with his decision to close the public gallery which was also repeated in his letter which was published in the Peterborough Telegraph on 1st March. In this letter Cllr Fower advocated for the reopening of the public gallery but in the IO's view unfairly maligned Cllr Fox with the comments he made about him. The IO set out on pages 47-48 what he would consider to be acceptable 'politicking'. Cllrs are able to use emotive language that some may find offensive in order to draw attention to political points they consider important. In this instance however the IO considered that Cllr Fower deliberately used the term "fascist" and attempted to justify by giving his definition of 'forcible suppression of the opposition'. The IO did not consider it to be justified in the circumstances. Although this term is being used more frequently in politics there was nothing that the IO thought in terms of Cllr Fox's conduct that warranted such an attack and by making it in the way that he did failed to show the necessary respect as required by the Code and unfairly damaged the reputation of the Council.

- Cllr Fower has failed to comply with data protection legislation. The IO certainly felt that more should have been done by Cllr Fower to let people know what would have been done with their details. Those signing were obviously sympathetic to his aims but most would have expected their name and address to be delivered in a petition to the council but not to having an email forwarded to senior people at the council which put words into peoples' mouths, particularly those which are inflammatory. Cllr Fower needed to make people aware of that before this happened and his conduct in not doing so was reckless and amounts to another failure to comply with the code.

Presentation of the Response

Cllr Fower was not present to respond to the complaint however the IO had drawn the Panel's particular attention to pages 43 and 44 of the Report which contained a summary of the information shared during the investigative process. The IO also intervened to add clarity and/or correct any misunderstanding on the part of the persons present where it conflicted with his understanding of Councillor Fower's position.

Issues raised by the panel:

The Panel asked questions including the following:

- Councillor Seaton asked several questions in relation to whether or not Councillor Fower had made any attempt to understand the reasons for the decision to close the public gallery. i.e. whether Councillor Fower had given any indication to the IO during the course of the investigatory interview that he had contacted Councillor Fox, the Police and or any other person involved in the decision making (to include the Leader of his own Group) to obtain an informed account of the circumstances. The IO confirmed to the best of his knowledge that Councillor Fower had not taken any steps to do this and did not present any evidence to support his contention that it was the wrong decision. The IO identified that paragraph 5.2.2 of his Report identified much of what he had been told by Councillor Fower as regards his position in relation to the public gallery and it seemed very much to be his personal opinion. The IO confirmed that Councillor Fower had given the impression that he considered the decision to be an overreaction to what he considered to be a minor protest and felt that it was politically motivated in that the protest was aimed at a conservative councillor.
- The IO was however careful to confirm that Councillor Fower did not object per se to the decision that was taken on the particular night that the protest took place but the subsequent failure to re-open the gallery even after 9 months being the point at which he started his campaign. He felt by then that the Council had had long enough to resolve the issue but no evidence was presented as to how he had reached that conclusion and/or what factors may have influenced the ongoing closure. Equally there was no evidence that the decision was specifically a 'conservative' decision with the Mayor (at the time) not himself being a conservative and ultimately the initial closure of the gallery having occurred with input from the Police, officers and Group Leaders.
- The MO was asked to confirm whether any other complaints had been received from members regarding the ongoing closure of the gallery and they had not. The Head of Constitutional Services also confirmed this to be correct.
- The Chair asked the Monitoring Officer to confirm whether or not the Council would have been liable for any subsequent injury or damage. The MO confirmed that certainly the Council could be potentially liable if an accident occurred but that other factors such as the behaviour of the persons concerned would also be taken into account.

- The MO confirmed that the protests continued even whilst the gallery was closed which had resulted in additional accommodation and security requirements for the Council until the public gallery could be reopened. It was confirmed that through these arrangements there were still opportunities for the public to view the proceedings and ask questions as appropriate.
- Councillor Iqbal asked whether the removal of the word “fascist” would have any bearing on the IO’s conclusions. The IO confirmed that yes, it was the use of that word that had caused him the most concern. The IO recognised that there is a role for opposition parties to play in robustly challenging and holding other members to account but that on this occasion the comments had gone beyond what would be considered to be acceptable in his view.
- As regards the alleged breach of data protection requirements, questions aware asked about what, if any, data protection training Councillor Fower had completed. The MO shared that the Data Protection Officer had confirmed that Councillor Fower had not completed any training but had been invited to do so. He would also have received the materials issued during the training subsequently sent out by democratic services.
- The IO was asked whether Councillor Fower had given any impression during the course of the investigative process that he had understood that individuals’ details should not be used in the manner described. The IO confirmed that in his opinion Councillor Fower’s view was that as the system had sent a confirmatory email to people signing the petition, then letting them know how their information had been used, that this would suffice. To that end he considered that the reason for the petition had been made clear to all who signed it and that they had then freely volunteered their name and address. He did not consider that the email went beyond the scope of the petition and therefore that he had misled anyone as to the nature of his campaign.
- The Chair asked whether his intent to mislead would have any bearing on his obligations as a data controller. The IO declined to give a definitive view on that confirming that such advice would need to be provided by the ICO however, he gave a view that under the principles of leadership, Councillors are required to have a duty to carefully consider how they use the data they obtain when acting as Councillors and that he didn’t consider that an appropriate degree of caution had been exercised in these circumstances. Equally he did not consider that the number of actual complaints received by the petitioners was relevant as the panel was being asked to look objectively at the conduct, not necessarily the consequences.
- Councillor Iqbal asked whether or not the IO considered that the confirmation sent to signatories of the petition was sufficient such that it could be considered to be an innocent mistake on Councillor Fower’s part. The IO confirmed that it seemed clear that this had been a mistake i.e that he was not deliberately attempting to mislead people however, when the signatories signed the petition they were unaware that an email drafted by Councillor Fower would then be sent using the inflammatory terms described and to the people who ultimately received them. As part of the investigation some of the people spoken to were explicit that they would not have signed the petition had they known this would be the consequence. This in the IO’s view amounted to reckless behaviour.
- Councillor Iqbal also asked for clarity as to whether the information that Councillor Fower had stated he would provide to the IO had ever been received. The IO confirmed that it had not. The IO confirmed that had the information been received it would have gone in Councillor Fower’s favour however, he would have still considered the actions to be a breach of the Code even if Councillor Fower had been able to evidence that a confirmatory email had been sent to signatories after the event.
- Councillor Bashir asked whether as an incumbent Councillor Fower would have received any training. The MO confirmed that Councillor Fower had been a councillor since 2004 and the Chair confirmed that he is one of the longest serving councillors. Councillor Bashir asked if

during this time he had received any training on data protection issues. The MO confirmed that to the best of her knowledge he had not.

There were no questions from the MO or Independent Person.

Witness Evidence

Councillor Fox was present at the meeting and although not called as a witness the Panel asked if there was anything that he would like to say or contribute to the proceedings.

Councillor Fox addressed the panel by reading out a definition of “fascism” and “armed forces”. Councillor Fox confirmed that he had found Councillor Fower’s comments to be particularly insulting and considered that any veteran would feel the same. He informed the Panel that in his view closing the gallery was the only decision he could take in the circumstances having been advised to do so by the Police. To do otherwise would have resulted in a risk that he was not prepared to take. He did not want to take responsibility for someone falling over the balcony based on the behaviour that had taken place.

The IO clarified that Councillor Fower had been clear throughout the investigative process that he had not intended specifically to call Councillor Fox a fascist but that he was referring to the decision generally. The IO offered his opinion that whilst it was therefore open to the Panel to decide whether or not that was Councillor Fower’s intent, in his view he had not been nearly careful enough to avoid that conclusion being drawn.

Councillor Iqbal asked Cllr Fox to confirm if the decision to close the gallery was made jointly alongside group leaders and Councillor Fox confirmed this to be the case. When asked, Councillor Fox also confirmed that he had not at any point been contacted by Councillor Fower in order to apologise or otherwise attempt to understand the rationale for the decision or to put matters right between them.

Councillor Fox said he had received over 100 emails generated as a result of the petition having been signed, two of which were particularly hurtful because they had come from people whom he considered to be friends. When he had contacted those people following receipt of the email they had expressed their shock as to its contents and that it had gone to him. This was not what they had been expecting and Councillor Fox found this disturbing. The Chair clarified with the IO whether the signatories of the petition had been aware that an email would be generated, what it would say and who it would go to. The IO confirmed that no, they were not aware.

Cllr Fox commented that it was not the way he would have behaved if he had become aware that his actions had caused offence. The chair asked whether or not Councillor Fower had been given any opportunity to make recompense. The MO confirmed that the Council’s agreed procedure is designed to enable exploration of an alternative resolution but that whilst Councillor Fower had been given an opportunity to apologise and attend data protection training he had declined to do so in the continued belief that there had been no wrongdoing on his part.

Neither the MO nor the Independent Person had any questions for Councillor Fox.

Summing Up by IO

The IO summed up by saying there was not much to add as Cllr Fower had not been present to make any representations or challenges. The IO had found this to be disappointing as his initial recommendation was not for this matter not to come to a hearing. Cllr Fower cooperated with the investigation giving an open and honest account of events and whilst Councillor Fower may have disagreed with the appropriateness of the behaviour he seemed for those aspects of which he was criticised to accept those criticisms and to indicate that if there had been misunderstandings he would seek to try and resolve those with the MO which is why he had made the subsequent recommendation of an alternative resolution. The IO was disappointed that he has not followed that up on and that Councillor Fower had also failed to attend the hearing.

Summing Up by Councillor Fower

Cllr Fower was not present to sum up.

The Views of the Independent Person

In accordance with the Council's Hearing Procedure the Independent Person (IP) had been given an opportunity to submit a written view of the complaint and her subsequent report is included at Item 3(e) of the Agenda. The Independent Person did not add anything further to this other than in deliberation to confirm that the content of the Report continued to reflect her view of the circumstances.

DECISION AND FINDINGS

The Panel confirmed that it had listened carefully to the Investigating Officer, and the views of the Council's Independent Person. The Panel had also taken into account the views of Councillor Fower as expressed during the investigative interview and summarised in the IO's Report.

The Panel confirmed that it had decided unanimously that it agreed with the conclusions of the investigation report that Cllr Fower has breached the Code of Conduct in the following respects:

1. As regards the allegation that Cllr Fower had failed to treat Councillor Fox with respect in using the word 'fascist' in his letter to the Peterborough Telegraph and other published media, the Panel determined that the Code had been breached. In particular, the Panel considered that the specific use of Councillor Fox's name was capable and likely to have given the impression to readers that it was intended to apply to him. Whether or not this was Councillor Fower's explicit intent, the Panel considered that the use of the word 'fascist' tipped the balance as to what would be considered acceptable even taking into account what has been described as the usual political 'rough and tumble'.
2. As regards the allegation that Cllr Fower had breached the data protection legislation, the Panel determined that the Code of Conduct had again been breached. In particular, the Panel considered that Cllr Fower ought reasonably to have been aware, whether or not he had attended any training that it would be inappropriate to generate an email, purporting to have originated from the signatories of the petition without their knowledge or consent for their information to have been processed in that way. The Panel heard evidence that none of the signatories to the petition had been aware that such an email would be generated or who it would be sent to when they signed the petition. Indeed, some of the signatories

contacted as part of the investigation indicated that they would not have signed the petition had they known that it would result in anything other than their details being marked on the petition.

SANCTIONS TO BE APPLIED

Prior to the Panel retiring to consider what if any sanctions to impose, the IO outlined what he considered to be aggravating and mitigating factors. Specifically he noted that there were some mitigating factors in that he had believed Cllr Fower when he had told him that there were elements where he accepted he had crossed the line and was prepared to do something about it. However, the fact that he has not since done so and had subsequently failed to attend the hearing had, in the IO's view, become aggravating factors. The IO offered his view that some of the sanctions available to the Panel would require the cooperation of Cllr Fower and the Panel may not therefore wish to rely solely on those sanctions because of the inevitable frustration that can then be encountered when they are not complied with.

The Monitoring Officer advised on the sanctions available as prescribed in the Council's conduct procedure. Examples were also given as to when each sanction may or may not be considered appropriate.

Following deliberation the Panel confirmed again that it had considered the representations of all concerned regarding the form of sanction that should be imposed.

The Panel's unanimous decision was to make the following recommendations:

- The Panel strongly recommended that Councillor Fower should offer an unreserved apology to Councillor Fox for the offence caused by the use of the word "fascist" in a context which could be viewed as having been aimed specifically at him.
- The Panel strongly recommended that Councillor Fower attend appropriate training on data protection requirements as previously offered by the Monitoring Officer.

The Panel's unanimous decision was also to impose the following sanctions:

- The Panel formally censured Cllr Fower for his behaviour and actions and that a report outlining the circumstances, findings and sanctions of this process should be presented at the next available meeting of Full Council for information.
- That this Decision Notice should be published on the Council's website.

Signed: Cllr D. Seaton, Cllr S. Bashir, Cllr A. Iqbal

Dated
01/04/19