
REPORT OF THE DEPUTY MONITORING OFFICER

HEARING UNDER THE LOCAL RESOLUTION PROTOCOL

The appendices to the report have been redacted to remove personal information which is Exempt from publication under paragraphs 12 and 13 of Schedule 12A to the Local Government Act 1972

Reason for this Report

1. To enable the Hearings Panel (Sub-Committee) to determine a complaint referred to it under the Local Resolution Protocol.

Background

2. The Council has adopted a Local Resolution Protocol for the resolution of low-level 'Member on Member' complaints (updated in November 2017), attached as **Appendix H**.
3. Under the Protocol, if a complaint is not resolved informally, the complainant may request the Monitoring Officer to refer their complaint to a Hearings Panel (sub-committee of the Standards and Ethics Committee) for determination.
4. The Standards and Ethics Committee has adopted a Local Resolution Hearings Procedure for hearings under the Local Resolution Protocol (updated in March 2016), attached as **Appendix J**.

Issues

5. The Monitoring Officer has referred a complaint to the Hearings Panel under the Local Resolution Protocol. The Monitoring Officer's report attached as **Appendix 1** sets out the details of the complaint submitted, the Monitoring Officer's attempts to resolve it informally and her investigation.

6. As the Monitoring Officer has been involved in attempts to informally resolve the complaint, she has asked the Deputy Monitoring Officer to advise the Hearings Panel in relation to the hearing.
7. In preparation for the Hearing, Cllr Michael was asked to confirm the details of his complaint (in accordance with the Local Resolution Procedure paragraph 3.1). On 19th February 2020, during correspondence on this matter, Cllr Michael raised an additional complaint about inaccurate and misleading information given by Cllr McEvoy to a member of the public (details of which are set out under Cllr Michael's Complaint, point 4, below).
8. The complaints for determination by the Hearings Panel, as confirmed by Cllr Michael on 20th February 2020, are set out below.

CLLR MICHAEL'S COMPLAINT

Cllr Michael says that Cllr McEvoy has put out inaccurate and misleading information to the public, specifically:

- (1) Information about the Local Development Plan (LDP) put out by Cllr McEvoy in a newsletter for residents ('the Newsletter', **Appendix A**), informing of a public consultation meeting with 'local Assembly Member, Neil McEvoy', to be held on 1st July 2019,; specifically, the statement that after the next Council elections "we can revoke and reform the LDP to stop more building on green fields". Cllr Michael says this statement is wrong.
- (2) Information in a letter dated 11th July 2019 ('the Letter', **Appendix B**) sent by Cllr McEvoy as Assembly Member for South Wales Central to members of Fairwater Athletic Club ('the Club' or 'FSAC'), regarding a public meeting to be held on 15th July 2019 to discuss the future of the Club, in particular, the statement in the Letter saying "The mess left by the former secretary was nothing short of shocking". Cllr Michael says this statement is inaccurate.
- (3) Information given by Cllr McEvoy at a public meeting held on 15th July 2019 in Fairwater ('the Public Meeting') to discuss the Fairwater Social and Athletic Club ('the Club' or 'FSAC'), specifically, the following:
 - (i) Cllr McEvoy said that a proposed land swap between the Council and the Club was a complete set of lies and that such a deal had not been discussed – Cllr Michael says that this statement is untrue;
 - (ii) Cllr McEvoy said that Cllr Goodway had promised to build a new club – Cllr Michael says this statement is untrue; and
 - (iii) Cllr McEvoy misinformed those at the meeting about the financial position of the Club.

- (4) Information published by a member of the public on the Fairwater Community Group Facebook page on /around 12th February 2020 ('the Facebook post', **Appendix C**), indicates that Cllr McEvoy had informed her that 'he plans to try to stop the second phase of the Llantrisant Road' housing development. Cllr Michael says that there is no second phase in the planning process as the development has planning permission; and building may have phases but those are up to the developer and cannot be stopped or influenced by Cllr McEvoy.

Alleged breach of the Code

9. Cllr Michael says that Cllr McEvoy's conduct in relation to the information given in (1) the Newsletter; (2) the Letter; (3) the Public Meeting; and (4) the Facebook post, could reasonably be regarded as bringing the office of Councillor or the Council into disrepute, and is in breach of paragraph 6.1 (a) of the Members' Code of Conduct. The Members Code of Conduct is attached as **Appendix G**.

Evidence provided by Cllr Michael in support of the Complaints

10. Cllr Michael has supplied copies of the following documents in support of his complaints:

In relation to Complaint 1

- Newsletter published by Neil McEvoy (undated), 'Fight still on to stop Labour's 'Carmageddon' (**Appendix A**)

In relation to Complaints 2 and 3:

- Letter sent by Neil McEvoy AM to Members of Fairwater and Athletic Club, dated 11th July 2019 (**Appendix B**)
- Minutes of Club Committee meeting on 07/08/2017 (unsigned) – **Appendix B2**
- Internal Memorandum from Secretary of Fairwater Social and Athletic Club (DR) to Trustees and Committee of the Club re. Club's Financial Position and Insolvency, dated 21/22 October 2017 – **Appendix B3**
- Various correspondence (emails and 1 memo) between the Club Secretary (DR) and the Chair (SA) dated between 22/10/2017 and 16/11/2017 regarding financial position of Club – **Appendix B4**
- Email advice from Insolvency Practitioner (BD) to 'Nick@hdj-westlake' (Surveyors and Valuers), copied to DR, dated 15/11/2017 – **Appendix B5**
- Email from Account Manager at Molson Coors to DR ('drllandaff@yahoo.co.uk') dated 19/11/2017 – **Appendix B6**
- 3 Emails from Cllr Michael to Chair (SA) dated 23/10/2017, 30/10/2017 & 21/11/2017 – **Appendix B7**

- Email from Trustee (SJ) to Chair (SA) dated 21/11/2017 (resignation as Trustee) – **Appendix B8**
- Email from Secretary (DR) to Chair (SA) dated 16/12/2017 (resignation / appointment of Trustees) – **Appendix B9**
- Letter (undated) from Cllr Neil McEvoy AM to SJ (Trustee) re. Club's position – **Appendix B10**
- Plaid Cymru newsletter (promoted by Neil McEvoy) informing of a public meeting on 18th December to 'Save the Social Club' – **Appendix B11**
- The Club's Accounts for year end 31/12/2015 – **Appendix B12**
- Schedule of various Planning Committee Decisions (2016/17) – **Appendix B13**
- Email from Cllr Michael to Silverbacklaw dated 01/04/2019 confirming his resignation from the Club – **Appendix B14**
- Email from former Club Secretary, DR, to Cllr Michael dated 05/01/2020 – **Appendix B15**
- Statement of NJC dated 15/01/2020 – **Appendix B16**
- Statement of SDC dated 15/01/2020 – **Appendix B17**

In relation to Complaint 4:

- Screenshot of Fairwater Community Group Facebook page, 13th February 2020 (**Appendix C**)

Witnesses requested by Cllr Michael

11. Cllr Michael wishes to call:

- (1) **Phil Williams, the Council's former Head of Planning** - Cllr Michael has been informed that the Panel will receive advice from the Council's Head of Planning. However, Cllr Michael still wishes to call Phil Williams, because he 'is an expert in planning and I believe that although the panel will have advice from the Council's Head of Planning hearing someone who was responsible for the start of the LDP process in real time and to be able to question him as well as myself being able to test Coun McEvoy's half truths and misleading statements would be useful in getting the facts out.'
- (2) **Cllr Lynda Thorne** – Cllr Michael says Cllr Thorne can give evidence about the land swap discussions referred to in Complaint point 3(i))
- (3) **Cllr Russell Goodway** (referred to in Complaint point 3(ii))

Cllr Michael also requested to call Mr Roberts, Former Secretary of Fairwater Social and Athletic Club. However, Mr Roberts has unfortunately since passed away.

CLLR MCEVOY'S RESPONSE

12. On 24th February 2020, an email was sent to Cllr McEvoy, providing full details of the complaints (with copies of all evidence submitted and a list of the complainant's requested witnesses) and asking for his response, to include the information required from him under the Local Resolution Procedure paragraph 3.2 (documentary evidence, witnesses etc). Cllr McEvoy was asked to provide the requested information by 9th March 2020, after which date arrangements would be made for a hearing to determine the complaint on the basis of the information held.
13. On 24th February 2020, Cllr McEvoy emailed the Monitoring Officer saying he had not received any previous emails about these complaints due to problems with his Council IT account. He maintained that his statements were correct and said that he would respond further.
14. This matter was not progressed further during the period from March to October 2020 due to the Covid-19 pandemic and related Council service priorities.
15. On 26th October 2020, an email was sent to Cllr McEvoy notifying him that arrangements were being made to hold a virtual hearing to determine these complaints, providing further copies of all documentation in support of the complaints and asking him to provide any response to the complaints by 30th November 2020. Cllr McEvoy responded the same day to question the admissibility of the complaints, to which a response was sent explaining how the complaint was being dealt with fully in accordance with the approved Local Resolution Procedure.
16. On 30th October 2020, Cllr McEvoy emailed a response to each of the complaints as set out in **Appendix D**.

Evidence submitted by Cllr McEvoy in support of his Response

17. None

Witnesses requested by Cllr McEvoy

18. None

LATE EVIDENCE

19. On 4th November 2020, Cllr Michael submitted further evidence in support of his complaints; and on 9th November 2020 he submitted further late evidence. The late evidence submitted is appended as **Appendix E**, and comprises of the following:

- (1) Emails between Cllr McEvoy and David Roberts, the former FSAC Secretary, dated July 2019, submitted as showing that Cllr McEvoy's comments regarding

the FSAC Secretary were wrong, relating to point 2 of the complaint – **Appendix E1**

- (2) Emails from senior Council officers (the Director of Economic Development, Principal Surveyor and former Head of Estates) confirming discussions about the FSAC, in relation to point 3 of the complaint – **Appendix E2**
 - (3) Emails (with various screen shot attachments) from 2 members of the public relating to allegedly inaccurate and misleading information Cllr McEvoy was said to have given about the LDP at public meetings held in February /March 2020 – **Appendix E3**
20. Cllr Michael was advised that, in accordance with paragraph 9 of the Local Resolution Procedure, he would require the permission of the Panel for this evidence to be considered.
 21. A copy of the late evidence submitted by Cllr Michael was forwarded to Cllr McEvoy, who was invited to provide any representations on the admission of this evidence and any response. Cllr McEvoy responded directly to one of the members of the public who had provided evidence for Cllr Michael (referred to in point 3 above), reiterating his position that his political group would seek to revoke the LDP when in control of Cardiff Council. His response to the late evidence is attached as **Appendix F**.
 22. On 14th December 2020, Cllr McEvoy submitted further evidence in response to point (3)(ii) of the complaint (set out in paragraph 8 of this report), comprising of an email confirming that a new club was promised for the FSAC. Cllr McEvoy was advised that, in accordance with paragraph 9 of the Local Resolution Procedure, he would require the permission of the Panel for this evidence to be considered. A copy of the late evidence submitted by Cllr McEvoy was forwarded to Cllr Michael, who was invited to provide any representations on the admission of this evidence and any response. Cllr Michael responded to this late evidence on 15th December 2020. The further evidence submitted by Cllr McEvoy and the response to this evidence from Cllr Michael is attached as **Appendix FF**.

ARRANGEMENTS FOR THE HEARING

23. **Hearing Date** - As noted above, the scheduling of this hearing has unfortunately been delayed due to the Covid pandemic and related Council service priorities. In accordance with the regulations governing local authority meetings during the pandemic (SI 2020/442), the hearing is to be held remotely. Both Councillors were requested to provide details of their availability for the hearing and the hearing date has been fixed having regard to the response received.
24. **Public Access** - Standards Hearings are held in public, unless the Panel is satisfied it is appropriate to exclude the public for the discussion of exempt information (under the Local Government Act 1972, Schedule 12A). The

evidence submitted by the parties and appended to this report contain personal information about third parties, which is exempt under paragraphs 12 and 13 of the LGA 1972, Schedule 12A, and has therefore been redacted. Both Councillors have been asked to indicate whether they wish to apply to the Panel for the public and press to be excluded from the hearing. Neither party has indicated that they wish to apply for the public to be excluded. Therefore, the hearing may proceed in public, but all parties will be advised of the need to take care not to unlawfully disclose any personal information when giving evidence or submitting representations to the Panel.

25. **Late evidence** – the Panel must decide whether the late evidence submitted by Cllr Michael and by Cllr McEvoy (**Appendix E** and **Appendix FF**) should be allowed, having regard to the representations made and the relevant provisions of the Hearings Procedure, which says that the Panel shall ‘always seek to ensure that neither party is prejudiced and all parties are able to present evidence which is relevant to the matters before the Panel’.
26. **Witnesses** – the Chair has reviewed the arrangements for the hearing and ruled that it is not necessary to call the Council’s former Head of Planning (Mr Phil Williams) as a witness at the hearing. This ruling has been made in the interests of an efficient hearing under the Chair’s powers under the Hearings Procedure paragraph 7.1, on the basis that any expert planning advice which the Panel may require can be provided by the Council’s current Head of Planning or his representative. Both councillors have been notified of the Chair’s ruling. The Panel may call the Head of Planning (or his representative) to provide any advice and assistance required on planning matters (under the Hearings Procedure, paragraph 7.3), and the Head of Planning has confirmed that he or his representative will be available to attend the hearing if required. Cllr Goodway and Cllr Thorne have been invited to attend as witnesses on behalf of the complainant, as requested.
27. Both Councillors were sent a Pre-Hearing Councillor Questionnaire in respect of arrangements for the hearing; and their responses are attached as **Appendix K** and **Appendix L**.

Legal Implications

28. Under the Local Government Act 2000, the Members’ Code of Conduct sets out the duties with which elected Members must comply. The Public Services Ombudsman for Wales may investigate complaints that a Member has breached the Code of Conduct. The Ombudsman encourages Councils to adopt local resolution processes to resolve relatively low level Member on Member complaints.
29. The Local Resolution Protocol (**Appendix H**) sets out Cardiff’s arrangements for local resolution of Member complaints. The Protocol, paragraph 4.2, sets out the sanctions which may be imposed if the Hearings Panel finds a breach of the Code of Conduct, and paragraph 4.3 sets out factors which should be taken into account in considering any appropriate sanction.

30. The procedure to followed by the Hearings Panel in this matter is set out the Local Resolution Hearings Procedure, appended as **Appendix J**.

Financial Implications

31. There are no direct financial implications arising from this report.

RECOMMENDATION

The Committee is recommended to:

- (1) Note the contents of this report and the appendices;
- (2) Consider the following preliminary matters:
 - (a) Whether or not the late evidence (**Appendix E** and or **Appendix FF**) should be allowed; and
 - (b) To call the Head of Planning (or his nominated representative) to provide any advice or clarification required by the Panel in relation to relevant planning issues;
- (3) Hold a hearing in accordance with the Local Resolution Hearings Procedure to determine whether or not Cllr McEvoy has breached the Code of Conduct, and any recommendation or sanction to be issued, if appropriate;
- (4) Announce the Panel's decision; and
- (5) Authorise the Deputy Monitoring Officer, in consultation with the Chair, to finalise the Hearings Panel's written decision and publish it in accordance with the Hearings Procedure.

James Williams

Operational Manager, Litigation & Deputy Monitoring Officer

17th December 2020

APPENDICES

The appendices to the report have been redacted to remove personal information which is Exempt from publication under paragraphs 12 and 13 of Schedule 12A to the Local Government Act 1972

- 1 MO's Report
- A Newsletter referred to in Complaint 1
- B Letter referred to in Complaint 2

- B2 Minutes of Club Committee meeting on 07/08/2017 (unsigned)
- B3 Internal Memorandum from Secretary of Fairwater Social and Athletic Club (DR) to Trustees and Committee of the Club re. Club's Financial Position and Insolvency, dated 21/22 October 2017
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- B15 Email from former Club Secretary, DR, to Cllr Michael dated 05/01/2020
- B16 Statement of NJC dated 15/01/2020
- B17 Statement of SDC dated 15/01/2020

- C Facebook post referred to in Complaint 4

- D Cllr McEvoy's Response to the Complaints

- E Late Evidence submitted by Cllr Michael
- E1 Emails between Cllr McEvoy and DR, the former FSAC Secretary, dated July 2019
- E2 Emails from the Director of Economic Development, Principal Surveyor and former Head of Estates confirming discussions about the FSAC
- E3 Emails (with various screen shot attachments) from 2 members of the public relating to public meetings held in February /March 2020

- F Cllr McEvoy's Response to the Late Evidence submitted by Cllr Michael
- FF Late evidence submitted by Cllr McEvoy and Cllr Michael's response to it

- G Members' Code of Conduct
- H Local Resolution Protocol
- J Local Resolution Hearings Procedure
- K Response to Pre-Hearing Councillor Questionnaire, Cllr Michael
- L Response to Pre-Hearing Councillor Questionnaire, Cllr McEvoy