

The **HEARING SUB COMMITTEE** met at **WARWICK** on the **7 December 2009**

Present: -

Independent Member

John Bridgeman (Chair) (CBE)

County Councillors

Tim Naylor

John Vereker (CBE)

Also in Attendance

Councillor Martin Heatley (Member concerned)

Councillor Alan Farnell, Leader of the Council

Councillor June Tandy, Leader of the Labour Group

Gordon Collett (former Councillor)

Officers

Greta Needham, Head of Law and Governance

Jean Hardwick, Principal Committee Administrator

Garry Rollason, Chief Risk and Assurance Manager (Investigating Officer)

Jenny McLoughlin, Payroll Services Manager

Complainant and public

Mr. K. Kondakor, Environmental Campaigner (Complainant)

Sam Dimner (Press, Nuneaton Tribune)

Two Members of the Public (at the start of the meeting)

1. General

(1) Apologies for absence

None

(2) Members' Disclosures of Personal and Prejudicial Interests

Councillor Vereker declared a personal interest in agenda item 3 "Complaint Under the Member Code of Conduct" as he had a close working relationship with the member the subject of the complaint.

2. Reports Containing Confidential or Exempt Information

The Sub-Committee (hereafter referred to as the Panel) did not pass the exempt resolution and the members of the public remained in the meeting.

The Chair welcomed everyone to the meeting and introductions were made.

3. Complaint Under the Member Code of Conduct

The Panel considered the report of the Strategic Director of Customers, Workforce and Governance. The report contained the outcome of an investigation into a complaint against a member of the authority, Councillor Martin Heatley, under the Member Code of Conduct and asked the Panel to determine whether a breach had occurred and if so what sanctions if any should be imposed.

Copies of emails received in support of Councillor Heatley from Reg Place, Janice Semple, John Haynes and Bransby Thomas were referred to and made available at the meeting together with copies of the evidence file.

The Chair explained the hearing procedures and invited representation from Garry Rollason, the Investigating Officer.

Garry Rollason said that he had nothing to add to the report but was willing to answer questions if Members required further clarification on the evidence.

(The following is a summary of detailed questions put to Garry Rollason, Jenny McLoughlin and Councillor Heatley).

In reply to Members' questions Garry Rollason explained –

1. that members expense claim forms were handed to Payroll Section for processing and payment. The Payroll Manager was on call to answer more detailed question if required.
2. that the last periodic check of members expense claims was carried out three months ago at the request of the Audit and Standards Committee. This check involved a random check of 20-30 claims and prior to this the last check took place five years previously.

Jenny McLoughlin Payroll Section Manager, in attendance

In reply to questions Jenny McLoughlin said that –

1. An administrative check only was made of Members' expense claim forms e.g. accuracy of the total mileage and that the appropriate receipts were attached.
2. This would not include a check as to whether the journey related to council business; so long as the receipts were attached the claim would be paid.
3. The onus was on the claimant to ensure the claim was legitimate.

(Jenny McLoughlin was excused from meeting)

(Members' questions of Garry Rollason continued.)

1. Regarding the purchase of rail tickets (0383 of information file) – when Councillor Heatley was asked for more information on journeys made to Nuneaton he suggested that the total of 10 miles included a claim for more than one journey. This included travel to the Rail Station to purchase a rail ticket in advance of the day of travel.

Cllr Heatley added that the claim also included mileage to pick up Cllr Haynes and that one or other of them would have purchased tickets. He did not keep a daily record of his mileage but aggregated his mileage at the end of the month and filled in the expense claim by looking at his pocket diary. He did not use his tachometer for every journey to Shire Hall.

(Members' questions of Garry Rollason continued)

2. All claims for rail travel appeared to be 1st class; the receipts did not specify whether they were for 1st or standard class. The only exception that allowed Members to use 1st class was when there was no seat available in standard class then the Member would be able to upgrade. The rules for travel were set out in the Members' Remuneration Scheme (MRS). This Scheme was reviewed each year.

Councillor Heatley said that, when discussing with other political parties CAA and LGA matters, 1st class travel was more private than 2nd class and enabled highly sensitive issues to be discussed. Referring to the email from Janice Semple he confirmed that he understood that travel to conferences included all conferences and that 1st class travel was allowed if it prevented an overnight stay and on the occasions that he accompanied a member who was disabled. He accepted that 1st class travel was allowed only in exceptional circumstances.

(Members' questions of Garry Rollason continued)

3. He explained his calculations relating to the difference in cost claimed for 1st class with a rail card as compared to standard fares (table 6 of the report).
4. He confirmed that expense claims would be returned if there were an issue about legibility.
5. Plans were in hand to review the procedure for processing members' claims.
6. With regard to the claim for attending the 2 Area Committee meetings, he confirmed that he was not aware of anything similar happening before. The double claim for the Summer school has not yet been repaid.

The Chair then asked Gary Rollason about the conclusion reached at the end of the report, and asked whether he was content with the areas he had drawn to Members' attention, or whether there was anything he had heard that had led him to want to change the conclusions.

Garry Rollason confirmed that he had not heard anything that had made him want to change the conclusions.

The Chair then invited Councillor Heatley to address the Panel

Councillor Heatley called his witnesses as follows –

Gordon Collett (GC) – former County Councillor and Conservative Group Leader on the Council for 7 years.

In reply to questions from Councillor Heatley Gordon Collett confirmed that –

(1) He had travelled with Councillor Heatley to attend the CCN, LGA and other Conferences; he had not claimed mileage nor had Councillor Heatley claimed for an extra passenger, which he believed was 1p per mile.

Garry Rollason said this was not relevant in that prior to April this year the MRS did not make any provision for payment for passengers.

(2) By an agreement between him and the former leader of the Council (Ian Bottrill) he had delegated Councillor Heatley to travel 1st class when important matters of a private nature were to be discussed. This agreement meant that Members could meet up with Councillor Heatley on the train with appropriate time to discuss the day's business.

In reply to questions from the Chair, regarding clarification of the reason for this agreement, Gordon Collett said that it was not easy for members, who lived busy lives, to find other times to prepare for important meetings. This was the time of the Foot and Mouth crisis, a unique situation, when the future of Warwickshire was at stake and, despite whatever political group, a united front was required. In hindsight it might have been appropriate to change the MRS to accommodate this situation.

In reply to Members' question Councillor Heatley –

1. Acknowledged that the meetings schedule for CCN and LGA Conferences were known well in advance and that the tickets for these events could have been purchased before the day of travel. He referred to the difficulty of making advance ticket bookings through the County Council but said that matters had now improved.
2. Confirmed that the “custom and practice” of travelling first class had been in operation for many years;
3. Explained that he used his odometer for non-habitual journeys but did not give an explanation as to why his mileage claim was the same for different journeys (page 389 of the file). (From Warwick University and Stoneleigh).
4. Accepted that he was in receipt of an allowance that covered his constituency work.

In reply to a further question from Councillor Heatley, Gordon Collett said that Councillor Heatley was an asset to Warwickshire and the County Council and that, whilst it was easy for people to criticise, being a County Councillor was difficult and an impossible job to do and retain a private life.

Councillor June Tandy, Leader of the Labour Group.

In reply to Questions from Councillor Heatley, Councillor Tandy confirmed –

(1) That she lived near him and had travelled with him to conferences on a number of occasions

(2) She travelled with him to the LGA Conference in Harrogate where they had arrived late; and it took time to find the hotel, which added extra miles to the journey time and that she did not claim travel expenses for that journey.

(Councillor Tandy then asked to be excused from the meeting and left the room.)

Councillor Alan Farnell, Leader of the Council

In reply to questions from Councillor Heatley, Councillor Farnell said that on many occasions one, two or three people had shared journeys with Councillor Heatley and that shared journey had probably saved the Council pounds as each person could have travelled separately.

In reply to a question from the Chair, Councillor Heatley confirmed that he did not use multi-map as he had a trip machine in his car.

Cllr Farnell said that Councillor Heatley was a very good councillor and that, with regard to the train journeys, no errors had been picked up during the spot check 3 months ago and no mistakes brought to his attention. The issue of 1st class travel had not been raised before, as this was custom and practice.

Cllr Heatley added that over a 5-year period of submitting expense claims only 3 mistakes had been identified

The Chair invited the Investigating Officer and Councillor Heatley the opportunity sum up their presentations.

(Cllr H. then asked for a 10 minute break.)

Garry Rollason summarised the findings of his investigations as follows –

- (1) Mileage claims – it was clear that the information on claim forms was not complete, mileage not recorded and that journeys were amalgamated;
- (2) MRS did not state that the shortest route should be claimed but members should ensure a reasonable claim was made;
- (3) Multi-map was used for the investigation to validate mileage but would expect members to use a trip meter (or Multi-map) when preparing claims;
- (4) Rail Travel – 1st class travel should only be used in exceptional situations. Comparative information indicated that 1st class with railcard would not be as cheap as 2nd class. The need for confidential discussions was mitigation not fact. An upgrade to 1st class on the day of travel was provided for in the MRS.
- (5) Completion of claim forms – illegibility and completion of claims. Claims submitted by other members were clear and they used continuation sheets to provide more detail.

- (6) Mileage/routes claimed – he referred to the evidence contained in the information and the routes claimed - it was for the Panel to take a view on whether the claims were reasonable.

In response Cllr Heatley said that –

- (1) upgrades on rail journeys were horrendously expensive.

(The Chair commented that there was no claim for upgrades over the last 3 years.)

- (2) Mileage – claims made were consistent and fair as possible – areas where there was an under-claim he had used milometer in first instance to check. It was agreed that he did not have to use the most direct routes.
- (3) 1st class carriage – was less crowded and enabled the discussion of sensitive issues in privacy that could not be dealt with before because this was a busy time.
- (4) Claim form – his claims had never been referred to any Senior Officer/County Treasurer or Chief Executive. These were genuine mistakes and clearly the process would have picked up mistakes and matters rectified. The double claim for the Conference should be deducted from his December expenses.
- (5) These last 5 years of claims had been subject to forensic examination and from 600 pages only 3 mistakes made over 5 years.

In reply to a question Councillor Heatley said that the 3 mistakes related to the double claim for Conference attendance, and the 2 Area Committee meetings.

Cllr Heatley continued and said that –

- (6) He felt the current system was not sufficient for modern day working and that the Panel should find no case to answer. The witnesses had confirmed the custom and practice and his claims had never been subject to scrutiny before. He was convinced that he never consciously exceeded his claims or what the authority expected of him. Over 30 years he had never done anything to put the Council in disrepute and his belief was that the Panel would find there was no case to answer.

The Panel then adjourned to consider the submissions.

The Panel reconvened and the Chair read out the Stage 1 Findings of Fact

STAGE 1 : FINDINGS OF FACT

1. A Members' Remuneration Scheme has been in place during the whole period of this investigation and is included in the Council's Constitution.
2. All members have accepted the Scheme. There is therefore an expectation that all members know of it and will abide by it.
3. However, the Panel accepts that certain senior Councillors were advised to adopt some variations to the Scheme in terms of rail travel on a cross party basis, and that they genuinely believed that they were entitled to take advantage of those variations in relation to first class rail travel.

4. The Panel are clear, however, that first class rail seats have been used for availability, convenience and space, as opposed to confidentiality. The Panel does not accept that a first class seat is anymore private than a seat in standard class.
5. The Panel also accepts that Councillors with a disability may travel first class and that it would be reasonable for those accompanying him/her to also travel first class.
6. The Panel has considered the following specific areas:-

(1) Rail travel

- The Scheme expectations in relation to rail travel are clear
- The Panel does not accept that Councillor H has followed the requirements of the Scheme in relation to first class rail travel.
- However, the Panel accepts that Councillor H genuinely believed that he had complied with those requirements. That belief was based on the following:-
 - E-mail submissions from witnesses (fellow rail travellers) who confirm that they have followed the same method.
 - Guidance received by Councillor H from the previous Payroll Manager.
 - An assumption by Councillor H that no space would be available in standard class, as permitted under the Scheme.

(2) Mileage

- Although the Panel accepts that Councillor H has the right to travel by any route he chooses, it is the Authority's reasonable expectation that he will only claim the shortest mileage other than in exceptional circumstances.
- Councillor H has failed to satisfy the Panel that the mileages he has claimed always comply with the terms of the Scheme.
- The Panel acknowledges however that there are instances where Councillor H has used his vehicle for Council business but has chosen not to make a claim.

(3) Other issues

- The Panel acknowledges Councillor H's acceptance that there have been three occasions on which he has made a mistaken claim and accepts his apology.
- Full and accurate completion of claim forms is a reasonable requirement of the Authority. The Panel does not accept that the number of journeys, the resulting number of claims sheets and the

time required to complete the forms are valid reasons for failing to comply with this requirement.

The Panel then adjourned.

The Panel reconvened and the Chair invited Councillor Heatley to respond to the Stage 1 Findings of Fact

Councillor Heatley -

Rail Travel

I do not believe I have been in breach of the code because:

- I have been able to demonstrate “Custom and Practice” within the Authority to allow or even encourage first class rail travel on appropriate occasions.
- And as the Investigating Officer acknowledges I have neither sought nor received any financial advantage from my rail travel on behalf of the authority.

Mileage

- The MRS acknowledges that members are not required to claim for the shortest route on any journey.
- There seem to now be ambivalence about how the shortest journey is calculated – it is common practice to use milometer in their cars to calculate the mileage they claim.
- In my judgement and best belief I have chosen a route (from Nun to Wark) that gets be there in the quickest time, given the common rush-hour congestion in and around Nuneaton.
- The investigator also acknowledges that I have not secured a financial advantage by claiming for the route that I have taken – for these reasons Mr. Chairman, I do not believe that I have broken the Code in this respect.

Other Issues

- The current (and long established) claim forms for the Authority provide too small and inadequate space to provide the detail that Mr. Rollason deems appropriate – this is something that the Committee may wish to address – Mr. Chairman.
- Although some Councillors may have used continuation sheets to provide more detail, it is my belief and contention – Mr. Chairman – that the majority of Councillors (and Officers) probably provide similar levels of detail in their claims form and myself.
- For these reason – Mr. Chairman I also believe that I cannot be held to be in breach of the Code in this respect.

The Chair then invited the Investigating Officer to respond –

Garry Rollason said he had nothing to add to the investigative report and referred to the conclusions set out in pages 12 and 13 of that report.

The Chair then asked if anyone had any other questions.

In reply to questions –

Garry Rollason said that only the shortest route should be claimed other than in exceptional circumstances for example traffic hold-ups.

Councillor Heatley said that he might have attended some training on Members' Code of Conduct, but not specifically on expenses. He accepted that lack of training did not exempt him from knowing about members' expenses; that it was important for the council and public figures to set a good example, to be thorough and accurate and that being too busy and taking on too many responsibilities was put forward as an explanation.

The Panel then adjourned to consider whether a breach of conduct had occurred.

The Panel re-convened and the Chair read out the following -

Stage 2 : Findings of the Standards Sub Committee in respect of potential breaches of the Member Code of Conduct

The Panel has considered which of its findings of fact, if any, contribute to a finding that there has been a breach of the Member Code of Conduct under any of the following paragraphs:

(1) You must, when using or authorising the use by others of the resources of your authority act in accordance with your authority's reasonable requirements (Para 6 (b)(i))

- It is the Authority's reasonable requirement that members will provide full details of all expense claims.
- Councillor H has by his own acknowledgement developed a system of aggregating his various claims. He is therefore not complying with the Authority's reasonable requirements.
- Councillor H's claim forms have not always been accurate.
- It is also a reasonable requirement of the Authority that a member will follow the requirements of the scheme in relation to first class rail travel. The Panel has already concluded in its findings of fact that Councillor H has not followed these requirements, albeit due to the genuine belief based on previous custom and practice (referred to by the Panel in its findings of fact) that his first class rail journeys were allowable.

The Panel concludes therefore that Councillor H is in breach of Paragraph 6 (b)(i) of the Member Code of Conduct

(2) You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage (Para 6 (a))

- The Panel has deliberated long and hard in relation to this paragraph in the Member Code of Conduct. The Sub-Committee has been shown no conclusive evidence to demonstrate that Councillor H has secured any financial advantage.
- In terms of any non-financial advantage, the Panel is satisfied that the issues that have concerned it (as set out in paragraph (1) above) have already been dealt with under the breach of the Code found under Paragraph 6 (b) (i) above.
- For those instances where Councillor H has acknowledged a mistaken claim, the Panel has accepted his apology and noted his willingness to pay.

The Panel has not found any breach under this Paragraph of the Code.

(3) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (Para 5)

- The Panel is not minded on the evidence to go so far as to conclude that Councillor H has conducted himself in a manner that could reasonably be regarded as bringing the Authority into disrepute. The Panel has not therefore found any breach under this Paragraph of the Code.

The Panel concluded that the reputation of WCC rests on its ability to address as a matter of urgency the deficiencies in the current Member Remuneration Scheme highlighted by this investigation.

The Chair then invited presentations from the Investigating officer and Councillor Heatley on the appropriateness of sanctions (a) – (f). As set out on page 3 of 6 of the Audit Commission's suggested hearing procedure.

Garry Rollason said that his role was to help the Committee by presenting information as the basis for the Committee to judge whether there had been a breach of the Code and that it was not his role to give a view on sanctions. He drew Members' attention to the Standards' Board Guidance list of mitigating and aggravating factors.

Councillor Heatley said he did not feel he could give any excuses and asked for a copy of the findings. He asked for a short recess to consider the findings.

The Panel adjourned to enable Cllr Heatley to obtain a copy of the mitigating and aggravating factors, as out in the Standards Board's Guidance.

The Panel reconvened and Councillor Heatley presented the following statement -

Mr. Chairman –

1. In terms of the findings that I have breached the code 6 (B) (i) I ask the Panel to accept that I was at all times acting in what I believed was an acceptable manner and within established custom and practice.
2. I now accept that that belief was misguided and I would find appropriate training in relation to the Code and Members Remuneration Scheme helpful.
3. However, I would respectfully suggest Mr. Chairman that as I may not be the only councillor or officer who could find themselves in this predicament that such training could be made available to ALL members and Senior Officers.
4. In relation to the mitigating examples 0048 I believe the following may be applicable.
 - An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
 - A member's previous record of good service. (I entered into Council work voluntarily because someone was mistreated in hospital and intended being there for 10 years and did not expect to stand this time but have record of good service to the Borough Council, NFU etc).
 - Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure.
 - Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public (the message that you would want to send to all the people of Warwickshire on the outcome of this enquiry that I acted in the best interests and therefore the last bullet point does show some defence in the actions relating to members allowance and officer attendance.)

The Chair said that the Panel would adjourn to consider the matters of mitigating and aggravating factors and what sanctions would be appropriate -

The Panel reconvened -

The Chair read out the following statement

The Panel has decided as follows:

- To censure Councillor Heatley in respect of those issues where the Panel has found him to be in breach of the Member Code of Conduct under paragraph 6 (b) (i).
- To instruct Councillor Heatley to make an apology to the Council in respect of his breaches of the Code of Conduct under Para 6 (b)(i) of the Member Code of Conduct.
- To instruct Councillor Heatley to undertake training in respect of both the Member Code of Conduct and the Members Remuneration Scheme.

- Bearing in mind the onerous extent of Councillor Heatley's list of current responsibilities, to ask Councillor Heatley to agree with the Leader of the Council how he will reduce his current external representations on behalf of the Council and to report his intentions to the full Council by the end of March 2010.
- To require Councillor Heatley to repay any expenses claimed in error by the end of December 2009.

.....
Chair

The Panel rose at 5:00 p.m.