

Date issued: 7 July 2016
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Our Reference: MO-CO85/MO/HW



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To: Members of the Standards Hearings Sub Committee:
Voting members - Cllrs Stuart Hughes, Alan Dent, Pauline Stott

Non-voting members – Cllr Frances Newth (Town Council
Representative) Martin Goscomb (Independent Representative)

Subject Member – Cllr Paul Hayward, Axminster Town Council
Complainant – Cllr Ian Hall

Monitoring Officer
Deputy Monitoring Officer
Investigating Officer
Independent Person

For Information only:
Members of the Standards Committee (Agenda email only)

**Standards Hearings Sub Committee – Cllr Paul Hayward (MO-C085)
Monday, 18 July 2016**

2pm (There will be a briefing for Sub Committee Members only in the Chairman's Office at 1.30pm)

Council Chamber, Knowle, Sidmouth

Councillors and members of the public are reminded to switch off mobile phones during the meeting. If this is not practical due to particular circumstances, please advise the Chairman in advance of the meeting.

AGENDA

Page/s

1 MO-C085– Cllr Paul Hayward, Axminster Town Council

To hold a hearing to consider an investigation report into a complaint about Councillor Paul Hayward (Axminster Town Council) in accordance with the Council's procedure which includes:

- a) To determine findings of fact and to decide whether or not the Councillor has failed to follow the Code of Conduct.
- b) To determine what sanction, if any, should be imposed.

Attached papers:

- | | |
|---|---------|
| a) Monitoring Officer's pre-hearing covering report | 3 – 4 |
| b) Pre-hearing summary | 5 – 6 |
| c) Final report of the Investigating Officer (Appendix A) | 7 – 24 |
| d) Copy of written representation form (Appendix B) | 25 – 26 |
| e) Hearings procedures (Appendix C) | 27 - 30 |

[Decision making and equalities](#)

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Agenda Item 2

Standards Hearings Sub Committee

18 July 2015

HGL



MO-C085 Pre-hearing Covering report

Summary

The pre-hearing summary report would normally set out any findings of fact disputed by the subject member. However, although invited to do so, Cllr Paul Hayward has not submitted a written representation to challenge the Investigation report or provided any additional information.

Recommendation

Members consider the information in this pre-hearing report during the Hearing process.

a) Reasons for Recommendation

To make sure members have all the information they need to hold a fair Hearing.

b) Alternative Options

None.

c) Risk Considerations

If Members follow the Hearings procedure, and consider all the evidence before reaching a decision, it will mitigate the risk of complaints about the process and decision.

d) Policy and Budgetary Considerations

This Hearing complies with both.

e) Date for Review of Decision

Not applicable.

1 Main Body of the Report

- 1.1 The Pre-hearing Summary Report and Investigation report explains the background to this particular complaint. The Subject Member does not consider that they have breached the Code of Conduct and this has necessitated it being independently investigated and subsequently referred to a Standards Committee Hearing. A copy of the Investigator's report is contained at Appendix A.

- 1.2 Although invited to do so, Councillor Paul Hayward has not submitted a written representation to challenge the Investigation report or provided any additional information. A copy of the written representation form sent to Councillor Hayward for completion is set out in Appendix B.
 - 1.3 At the Hearing the Committee will need to:
 - 1.3.1 Determine findings of fact (Section 5 –Pages 7 – 9 – of the Investigator’s report (agenda pages 13 - 15), and;
 - 1.3.2 Determine whether the Subject Member has breached the Code of Conduct.
 - 1.4 If the Subject Member is found to have breached the Code of Conduct then the Committee will need to go on and consider whether to recommend to Axminster Town Council that a sanction should be imposed and, if so, what sanction is appropriate.
 - 1.5 For information, a copy of the Council’s adopted procedure for the hearing is contained at Appendix C.
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Legal Implications

A solicitor will be present at the hearing to advise on law and procedure as necessary.

Consultation on Reports to the Committee

None

Background Papers

- Hearing papers
-

Henry Gordon Lennox

Standards Hearings Sub Committee

Monitoring Officer

18 July 2016

Standards Hearing Sub Committee

Pre-hearing Summary Report

Name of Authority	Axminster Town Council
The name of the member who the allegation has been made about	Councillor Paul Hayward
The name of the person who made the original allegation (unless there are good reasons to keep his or her identity confidential)	Councillor Ian Hall
The case reference numbers of the principal authority	P Hayward MO-C085
The name of the Standards Committee member who will chair the hearing	Cllr Stuart Hughes
The name of the Investigator	Tim Darsley
The name of the Monitoring Officer	Henry Gordon Lennox
The name of the clerk of the hearing or other administrative officer	Anita Williams, Principal Solicitor to give legal advice to the Committee. Amanda Coombes, Democratic Services Officer to take minutes.
The date the pre-hearing process summary was produced	1 July 2016

The date, time and place of the hearing	18 July 2016, 2pm, Council Offices, Knowle, Sidmouth
A summary of the allegation	It was alleged that Councillor Hayward posted on Twitter a tweet which included content of a pornographic nature, and that such conduct was unacceptable for a Town Councillor.

The relevant section or sections of the Code of Conduct	<p>Relevant paragraphs from the Code of Conduct that were investigated:</p> <p>General obligations</p> <p>5(h) You must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.</p>
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Further background	The Investigator's report details the relevant background and information in respect of this complaint. Despite having had the opportunity to do so Cllr Hayward has not indicated where he disagrees with the content of the report.
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Whether or not the member or the MO will attend.	<p>Although invited to do so, Cllr Hayward has not confirmed whether or not he will be attending the Hearing.</p> <p>The Monitoring Officer and Investigator are attending.</p>
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Signed: 

Name: Henry Gordon Lennox, Monitoring Officer

Dated: 1 July 2016

CONFIDENTIAL

Report of Investigation

Final

**Report of an investigation by Tim Darsley,
appointed by the Monitoring Officer
of East Devon District Council
into allegations concerning Councillor Paul Hayward
of Axminster Town Council**

Case Reference: MO-C085

21 March 2016

C o n t e n t s

- 1. Introduction**
- 2. Councillor Hayward's official details**
- 3. Relevant paragraphs of the Code of Conduct**
- 4. The evidence gathered**
- 5. Findings of fact**
- 6. Reasoning as to whether there has been a failure to comply with the Code of Conduct**
- 7. Findings**
- 8. Schedule of evidence taken into account**

Appendices:

Documents 1 to 4

1. Introduction

- 1.1 On 5 August 2015, Ian Hall made a complaint to East Devon District Council concerning the conduct of Councillor Paul Hayward of Axminster Town Council. Ian Hall is an East Devon District councillor representing the Axminster Rural ward.
- 1.2 His complaint was that, on 13 July 2015, Councillor Hayward posted on Twitter a tweet which included content of a pornographic nature, and that such conduct was unacceptable for a Town Councillor.
- 1.3 Councillor Hayward's tweet as presented on Twitter is shown at document 1. It reads:

Paul, The Other One. @cllrhayward Jul 13
Just getting ready for the July session of @ax_tc #Axminster Town Council at Guildhall. To quote Nelly...

"It's hot in here..."#NSFW

- 1.4 The content referred to by Councillor Hall is that which is accessible through the link to #NSFW. #NSFW is a subject area of content elsewhere on Twitter, the initials standing for 'not suitable for work'.
- 1.5 Since the tweet included the user name of Axminster Town Council (@ax_tc), it was copied to the Town Council. The post was accordingly viewed by Town Council staff.
- 1.6 On 7 August 2015, the Town Mayor, Councillor Douglas Hull, issued a statement about Councillor Hayward's tweet (document 2). The statement said that Town Council staff had found the tweet offensive and distasteful. It went on to say that an apology had been accepted and that the staff did not wish to pursue a standards complaint.
- 1.7 The complaint was assessed by the Monitoring Officer. His view was that, in posting his tweet, Councillor Hayward may have breached the Code of Conduct. He consulted the Independent Person who was in agreement with this view.
- 1.8 In the light of the statement from the Town Mayor, the Monitoring Officer concluded that the element of the complaint relating to the staff of the Town Council had been resolved. However, since the tweet was capable of being viewed by the general public, he considered that a wider apology for the tweet would be appropriate. On 3 December, he requested that Councillor Hayward make such an apology at a Council meeting in order to complete an informal resolution of the complaint.

- 1.9 Councillor Hayward responded on 31 December, disagreeing with the Monitoring Officer's assessment of the complaint and declining to make any further apology (document 3).
- 1.10 In January 2016, the Monitoring Officer concluded that he was not able to achieve an informal resolution to the outstanding element of the complaint and that the matter should be referred for investigation.
- 1.11 The Monitoring Officer appointed me to investigate the complaint on 29 January 2016.

2. Councillor Hayward's official details

- 2.1 Councillor Hayward has been a member of Axminster Town Council since May 2011. He was last elected to the Town Council on 7 May 2015.
- 2.2 As part of his declaration of acceptance of office, signed on 18 May 2015, Councillor Hayward undertook to be guided by the Town Council's Code of Conduct.
- 2.3 Councillor Hayward is aware of and has access to a copy of the Town Council's Code of Conduct but has not attended specific training on the subject.
- 2.4 Councillor Hayward is currently a member of the Town Council's Amenities, Buildings and Finance, Cemetery, Employment, Old Courthouse, Planning and Pippins Committees. He also acts as a liaison officer in respect of youth matters.

3. Relevant paragraphs of the Code of Conduct

- 3.1 I have investigated Councillor Hayward's conduct in relation to the Code of Conduct of Axminster Town Council, adopted in July 2012.
- 3.2 The following paragraph of the Code of Conduct is relevant:

General obligations

- 5(h) You must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

4. The evidence gathered

Documentary evidence

4.1 I have taken account of the following information:

- A copy of the tweet posted by Councillor Hayward on 13 July 2015.
- A statement issued by Councillor Douglas Hull, Mayor of Axminster Town Council on 7 August 2015 or thereabouts.
- Councillor Hayward's letter to the Monitoring Officer of 31 December 2015, responding to the complaint.

On line material

4.2 I have considered and taken account of

- The content currently presented on Twitter under the category #NSFW.

5. Findings of fact

- 5.1 The conduct in question is Councillor Hayward's tweet posted on Twitter on 13 July 2015. The content of the tweet is a matter of record (document 1).

Official capacity

- 5.2 Before this conduct can be assessed against the Code, it is necessary to determine whether Councillor Hayward was acting in his capacity as a town councillor.

- 5.3 Councillors must comply with the Code of Conduct whenever they are acting in their official capacity. The Code is not applicable in a councillor's private life.

- 5.4 Official capacity is defined as;

- when councillors are engaged on the business of the Council, or
- when they behave so as to give a reasonable person the impression that they acting as a representative of the Council.

- 5.5 Although Councillor Hayward tweeted that he was getting ready to attend a meeting of the Town Council, I do not consider that this amounted to carrying out the business of the Council.

- 5.6 Whether he gave the impression that was acting as a councillor has to be judged in relation to the prevailing circumstances.

- 5.7 Councillor Hayward's user name on Twitter is @cllrhayward. At the time of the tweet, the name used in his profile was 'Paul, The Other One' and his profile picture was a head and shoulders photograph of him. Councillor Hayward has since changed both his profile name and picture.

- 5.8 The subject matter of the tweet was the July session of the Axminster Town Council. Councillor Hayward tweeted that he was getting ready for the meeting.

- 5.9 The tweet would have been available to those following Councillor Hayward on Twitter or viewing his Twitter page directly. It would also have been available to those searching Twitter for Axminster or Axminster Town Council. This latter group would only see the tweet itself and not the biographical information about Councillor Hayward on his own page.

- 5.10 The user name 'cillrhayward' would, in my view, normally be interpreted as (title) councillor (name) Hayward. Councillor Hayward accepts this construction but has stated that the title element stands not for councillor but for counsellor. He states that he is a practising minister of the Universal Life Church, administering advocacy and counselling on their behalf. He says the title element therefore refers to this role of counsellor.
- 5.11 I consider that such an interpretation would, in general, be unlikely, particularly in the context of this tweet. The subject of the tweet is Councillor Hayward's attendance at a meeting of Axminster Town Council and it contains a link to the Town Council's account. The references to the Universal Life Church that Councillor Hayward has since added to his account were not present at the time.
- 5.12 Taking the username and the content of the tweet together, I consider that a reasonable person would assume that Councillor Hayward was an Axminster Town Councillor and was tweeting as such.
- 5.13 I find therefore that;
- when he made his tweet of 13 July 2015, Councillor Hayward gave the impression that he was acting as a representative of the Town Council. He was therefore acting in an official capacity.

The complaint

- 5.14 Having concluded on the question of capacity, it is now possible to turn to Councillor Hall's complaint and its constituent components.
- 5.15 The complaint is that Councillor Hayward's tweet included content of a pornographic nature and that this was unacceptable conduct for a town councillor.
- 5.16 Pornography is defined by the Oxford Dictionary as the explicit description or exhibition of sexual activity. It can be seen that the tweet itself did not contain any material of this kind.
- 5.17 The element of concern is the link to #NSFW. #NSFW is not a website but a grouping of material on Twitter, added by users and categorised as NSFW or 'not suitable for work'. By clicking on the #NSFW link, a viewer is taken to the NSFW material.

- 5.18 This takes the form of innumerable posts which are constantly being added to. The material is therefore continually changing and it is not now possible to assess exactly what was present in July 2015. However, assuming that the content today is similar to that in July 2015, it contains tweets of text only, interspersed with tweets containing images and some videos.
- 5.19 Most of the tweets encourage access to other accounts or subject areas, many of which, from their names and profile pictures, appear to be pornographic. Of the images posted in NSFW, a number would be described as pornographic.
- 5.20 Regarding Councillor Hayward's tweet therefore, my findings are that;
- The tweet itself was not pornographic.
 - The tweet contained a link to #NSFW, a category of content on Twitter.
 - NSFW includes tweets encouraging access to accounts and categories which appear to be pornographic and some images of a pornographic nature.
- 5.21 The relationship between the tweet and the link is a further issue. Councillor Hayward has stated that a user is not obliged or invited or forced to click on the hashtag link (document 3). It is certainly true that a user is not obliged or forced to click on the link. However, the link has been placed there by Councillor Hayward for the purpose of the user receiving an illustration of his comment that 'it's hot in here'. In my view, it would be reasonable to describe this as an invitation to access the link to NSFW.
- 5.22 It could be suggested that users would know the nature of the material in NSFW. They could therefore choose whether or not to access the material. This would be so for some users but probably not for all.
- 5.23 I find therefore that;
- By including the link to #NSFW in his tweet, Councillor Hayward invited his readers to access the NSFW material,
 - Not all readers of Councillor Hayward's tweet would know what NSFW stood for or the type of material that it contained.

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

6.1 In the light of the findings above, Councillor Hayward's conduct can be assessed in relation to the relevant provision of the Code of Conduct.

Paragraph 5(h): You must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

6.2 In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a member's behaviour will bring their office into disrepute if it could reasonably be regarded as reducing the public's confidence in that member or adversely affecting the reputation of members generally.

6.3 It is not necessary to demonstrate that a member's actions have actually diminished public confidence or harmed reputation. The test is whether the conduct could reasonably be regarded by a reasonable person as having these effects.

6.4 In this case, the question is; what would a reasonable person think about a councillor whose tweet on the subject of his attendance at a council meeting invited readers to navigate to content containing some pornographic images and multiple links to content of a pornographic nature?

6.5 The answer is not clear cut. There is no such thing as an average person and in reality members of the public will hold a wide range of views about the content in NSFW. Some will find it entertaining; others will find it unsavoury and offensive. In turn, views will vary on whether it is appropriate for a councillor to refer to such material in their tweets.

6.6 I note that the Town Council members of staff who received the tweet are reported to have found the material offensive and distasteful.

6.7 On balance, I consider that a reasonable person would feel it would be inappropriate for a councillor to invite their readers to access the NSFW material and that, if they did so, they would diminish the reputation of their office.

6.8 Accordingly, I find that by posting his tweet on 13 July 2015, Councillor Hayward brought his office into disrepute.

7. Findings

- 7.1 I found that, when he made his tweet of 13 July 2015, Councillor Hayward gave the impression that he was acting as a representative of the Town Council.
- 7.2 Having considered what a reasonable person would think about a councillor whose tweet invited readers to navigate to the 'not suitable for work' content, I have found that:
- **By posting his tweet on 13 July 2015, Councillor Hayward brought his office into disrepute. He therefore failed to follow paragraph 5(h) of the Code of Conduct.**
- 7.3 The reasoning for my finding is set out in section 6 above.
- 7.4 Councillor Hayward and Councillor Hall were sent a draft of this report in early March.
- 7.5 In response, Councillor Hayward repeated his contention that his conduct was not undertaken in an official capacity (document 4).
- 7.6 Councillor Hall did not make any comments on the draft report
- 7.7 I note that the East Devon District Council's complaints procedure provides a further opportunity for the informal resolution of a complaint where an investigation has found a member has breached the Code of Conduct.
- 7.8 The Monitoring Officer has previously suggested to Councillor Hayward that an apology made at a Town Council meeting would constitute a sufficient resolution to the complaint. I agree that this, together with Councillor Hayward being requested to reflect on his use of social media in a council context, would provide an appropriate resolution.
- 7.9 I would hope that Councillor Hayward would take advantage of this opportunity to draw this matter to a close as I do not believe that the expense and time required by all parties in conducting a public hearing would be proportionate or justified in this case.
- 7.10 This is my final report. It will be will be forwarded to the Monitoring Officer who will carry out the remaining stages of the Council's complaints procedure.

8. Schedule of evidence taken into account

Document No.	Description
1	Councillor Hayward's tweet of 13 July 2015.
2	Statement issued by the Mayor of Axminster Town Council on 7 August 2015.
3	Letter from Councillor Hayward to the Monitoring Officer dated 31 December 2015 responding to complaint.
4	Councillor Hayward's response to draft investigation report dated 18 March 2016

Document 1: Councillor Hayward's tweet of 13 July 2015

New to Twitter? Sign up

axminster town council Have an account? Log in

axminster town council

Top Live Accounts Photos Videos More options

New to Twitter?

Sign up now to get your own personalised timeline!

Sign up

Trends

- #TodaysKidsWillNeverKnow
- #PlannedParenthood
- #BastilleDay
- #FeelBetter.Justin
- Honeymoon
- #iHeartPrinceRoyce
- Dan Mullen
- Mhairi Black
- Normani
- Perry Jones

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Paul, The Other One @clrhayward · Jul 13

Just getting ready for the July session of @ax_tc #Axminster Town Council at Guildhall! To quote Nelly...

"It's hot in here..." #NSFW

Retweet 0 Like 0

Christopher Pipe @cplrc · May 30

Axminster Town Council passes vote of no confidence in @CiaraEastell

Support 4 Ax Library @SupportAxminLib
Town Council unanimously passes motion of no confidence facebook.com/50445734299379...
@SpeakUp4Libs @LibraryCampaign

Retweet 1 Like 0

Support 4 Ax Library @SupportAxminLib · May 29

Town Council unanimously passes motion of no confidence after @devonlibraries letter facebook.com/pages/Support-...

Retweet 5 Like 1 View photo

Paul Graham Hayward @paulhayward4dc · May 10

Here we are, 60 hours after voting finished on Thursday and not a single member of #Axminster town council knows how many votes they got!

Retweet 3 Like 0

Neil Parish MP @neil_parish · Apr 21

Good meeting with residents and Axminster Town Council on road safety a Hunters Lodge junction on A35 [bridportnews.co.uk/news/12893577....](#)

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**Document 2: Statement issued by the Mayor of Axminster Town Council
on 7 August 2015**

To Axminster Town Councillors

Dear Councillor,

Recently a Tweet from a Councillor was received in the office which contained a link to a pornographic website which the staff found offensive and distasteful.

I have spoken to the staff who did not wish this to go to the Standard Committee if there was a full apology

An apology has been accepted.

Those using social media should be aware of the risk in using hashtags.

I have said that the offending item should be filed for reference should a similar case arises.

Yours sincerely

Douglas Hull

Town Mayor.

**Document 3: Letter from Councillor Hayward to the Monitoring Officer
dated 31 December 2015 responding to complaint**

Henry Gordon Lennox
Monitoring Officer
EDDC
Knowle
SIDMOUTH
EX10 8HL

Your ref: MO-C085/MO/HGL

31st December 2015

Dear Henry

Thank you for your letter of the 3rd December 2015 which was handed to me by Miss Kirkcaldie, Clerk to Axminster Town Council.

I note the comments made in your letter and the course of action you propose.

I can not agree to this course of action for the following reasons:

1) Your letter of the 3/12 refers to further correspondence dated 2nd October. This correspondence never reached me. I was therefore unable to respond to its contents. I would welcome sight of a copy for my records.

2) Your original letter of the 26th August outlined the complaint under the Code of Conduct by Councillor Ian Hall that "the content of the twitter feed was of a pornographic nature". I will touch on this statement later in this letter. Your letter also states that;

"the first stage of the complaint process will be for me to have an initial discussion with you about the allegations and (sic) will be contacted by you within the next week"

This proposed communication never occurred. You did not contact me within the week. I therefore did not have any further notification that matters were proceeding until your letter of the 3rd December reached me by email on the 7th December, some 103 days later. This does not, in my opinion, appear to be at all reasonable, and begs the question, would any reasonable person (to coin the phrase used so often in Standards hearings) think that an investigation could be strung out over 103 days and a resolution reached without any input from the defendant? This is especially true when one compares this case to CO89 – my complaint against Councillor Iain Chubb which was "processed and closed" in just 19 days!

3) Your letter of the 3rd December states that the tweet in question was sent from my Twitter account @clrhayward, and thus the Code of Conduct was engaged. Your correspondence has inconveniently omitted to note that the "bio header" on this account clearly states that tweets posted represent my own personal views, and are not those of ATC. In essence, this makes your assertion that I was tweeting as a Councillor null and void.

Furthermore, I am obliged to advise you that I am a current, practising minister of the ULC – Universal Life Church – and, as a serving officer for that organisation, I administer both advocacy and counselling on their behalf to those in spiritual need (many of my tweets reflect their humanist beliefs) and thus, I am a Counsellor for them, hence the Cllr in my tweet persona. I am sorry if you have misconstrued the meaning of this abbreviation.

4) Your letter of the 3rd December also goes on to muddy the water with regards to the initial complaint by Councillor Hall which states, as above, that my “tweet” was of a pornographic nature. Your latter correspondence carefully sidesteps this claim which is, of course, necessary given your recent guidance to Councillor Jeremy Walden in his Code of Conduct case, brought by Mr Chapman in relation to Councillor Walden’s statement that #NSFW was a pornographic link...

Councillor Walden’s verbal statement of apology to Axminster Town Council (made with your approval I am led to believe from Mr Chapmans correspondence) includes the words;

“I referred to Mr Chapmans wife and observed that, in my view, she had suggested forwarding a link to a pornographic website (this being the #NSFW hashtag).... This comment was incorrect and I would like to withdraw this remark”

5) Your letter of the 3rd December also states that the tweet in question contained a link (#nsw) to a site that contained inappropriate content. That is incorrect. Hashtags on twitter are used to collate information / content together in one place; they are not a link, nor a gateway to a site, other than Twitter itself. The user is not obliged to click on a hashtag, nor is a user invited or forced to do so. It is a voluntary act, akin to opening a piece of junk mail that has arrived through your letterbox, or spam in your inbox.

The concept of hashtags is widely misunderstood and not regulated, and thus is a grey area for enforcement; indeed, other councillors have used hashtags such as #bbc and #hottub which at first glance seem perfectly innocuous but, if and when clicked, take the user to content which some may deem offensive, others may deem hilarious and some may deem as nothing to write home about; it is a question of interpretation and personal preference. But, they are not links, they are hashtags.

6) Your letter goes on to state that one of the Clerk’s opened the link and was taken to the inappropriate site; this is disingenuous. The Deputy Clerk, Paula Hutchings, saw the tweet as an email notification on her email inbox preview screen. She did not click on it, but simply saw the #NSFW and immediately felt ill-at-ease because of the incident mentioned in 4) above. She then mentioned it to the Clerk, Miss Kirkcaldie, who contacted me and I immediately deleted the tweet as it was causing discomfort to a council employee. I attended the Guildhall that morning and made a full apology to Paula, which was accepted. She reconfirmed that she had not viewed the content but was simply reminded of the repercussions of the earlier incident.

I am drawn back to an email from the previous MO, Denise Lyon, in May 2014 when a complaint from myself against Councillor Douglas Hull for a breach of the Code was considered by Denise. Her reply stated;

**“a) the subject member realised he had made a mistake and apologised to the officer, and
b) the officer concerned had accepted this.**

This is borne out by the views of the Independent Person who I consulted and who considered any further action to be a waste of public money in the circumstances”

I do acknowledge that Hilary took it upon herself to access the #NSFW content by clicking on the hyperlink, but given that Hilary was well aware of the type of content that was included therein, having been a party to the incident in 4) above, she did this of her own free will and with full knowledge of what she might, or might not, see. She, as a council employee, took that action with the benefit of hindsight and experience, and thus your statement that *"you could not be sure that everyone would understand what NSFW stood for"* is false in respect of the Clerks actions.

Beyond the deputy clerk and clerk, no-one else at the council accessed or noted the incident, but it was only when Councillor Hull pressed the matter and ignored the fact that an apology had been made, and accepted, that matters escalated. Councillor Hull, against the Clerks advice, made this a matter of public relevance by making his statement at a meeting of the town council and it was this escalation that ultimately resulted in the resignation of the deputy clerk, who quoted the episode as one of the contributory factors in her departure.

In summary, this matter has not been handled in a fair, even-handed or consistent manner. I therefore am not in agreement with your conclusions and would ask you to pass my decision to the standards committee. I would welcome a chance to discuss this matter with the independent person, although I believe that their views are now pre-determined.

I look forward to hearing from you in due course. For your information, I will be on vacation from Monday 11th January until Saturday 16th. No correspondence will be answered during this period.

My best wishes

Paul Hayward
Axminster Town Council

Paul.hayward@axminstertowncouncil.co.uk

COPY

Document 4: Councillor Hayward's response to draft investigation report dated 18 March 2016

Good evening, Mr Darsley

Thank you for forwarding your draft report which I have read with interest, coupled with a re-reading of all the documents from the Monitoring Officer, many of them contradictory.

In essence it contains nothing unexpected, but simply reinforces my belief that a fair, impartial hearing of this case was never going to be on the cards.

The whole foundation of the complaint against me rests on whether my twitter account @cllrhayward is a dedicated councillor account, or a private / personal account; our views differ. Put simply, does inclusion of the 4 letters 'Cllr' in anyone's Twitter "nom de guerre" mean that by default every viewer of that Twitter account, regardless of conflicting Bio caveats, assumes the same thing regarding their interpretation of the content of that piece of social media output.. My supporting evidence proves otherwise. Many other "reasonable" persons draw the same conclusions as I, and they consider this case to be wholly politically motivated from the outset, something which itself is contrary to EDDC policy in this case.

Conversely, recent communications from the MO muddy the water still further with a blurring of the lines between official and personal, even when hard facts and council resources err towards the former.

Similarly, does a single piece of punctuation - in this case a # symbol - make a world of difference to one tweet from 13,000. Would the 4 letters NSFW without a # have caused the same complaint. And, furthermore, is 'context' ever a consideration. Again, our views differ.

That said, you must submit whatever you consider appropriately "independent" prior to submitting your invoice for payment from EDDC.

Given the circumstances of this case, and the wealth of evidence in my support (conveniently glossed over at every stage), I must press towards a meeting with the Standards Committee at some point to make my feelings on this matter perfectly clear. I will, of course, bring with me all the case precedents and documentary evidence I have amassed at that juncture. Needless to say, given that two of the sitting members of that committee themselves are facing unrelated complaints, it will be a strange meeting to attend; but attend I will.

My very best wishes, and thank you for your involvement in this matter.

Paul Hayward

Written representation form

Please return to:

monitoringofficer@eastdevon.gov.uk

Monitoring Officer, EDDC, Council Offices, Knowle, Sidmouth EX10 8HL

By 12pm, Thursday 30 June 2016



Complaint Ref: MO-C085

Subject member: Cllr Paul Hayward, Axminster Town Council

Submitted by:

(Subject member) – in response to the evidence set out in the investigation report.

1. Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative (please continue on a separate sheet if necessary).

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

2. Please advise of any additional evidence you feel is relevant to the complaint that you feel should be taken into account. You may wish to attach any witness statements.

Relevant paragraph number from the investigation report	Additional/supporting evidence

- 3 Please advise of any legitimate reasons for holding the Hearing in confidential session or for any of the relevant documents being withheld from public inspection.**

Reasons for holding the Hearing in confidential session

Reasons for any part of the documents to be withheld from public inspection (please specify which documents you are referring to)

- 4 Please advise of any mitigating circumstances you wish to be taken into account if you are found to have failed to follow the Code of Conduct.**

Factors for the Standards Sub Committee to take into account when deciding any sanctions or making recommendations

- 5 Please confirm whether or not you will be attending the Hearing on the proposed date.**

I will / will not* be attending the hearing

(*please delete as appropriate)

If you are not attending, please explain why:

I will be accompanied by a friend/associate :

Standards Hearings Sub Committee Hearings Procedure

(a) General Principles

1. The Standards Sub Committee is a formal committee meeting of the Council. However it does act in a quasi judicial manner in that it is obliged to objectively determine facts and draw conclusions from them so as to provide the basis, where justified, for official action, which may affect the legal rights, duties or privileges of the Councillor whose actions led to the investigation (“the Subject Member”).
2. Notwithstanding this, the Sub Committee is not a court of law and therefore the general principle (which is subject to the proviso in paragraph 9 below) is that the Sub Committee will only hear representations directly from the relevant parties as further detailed in Section (c) below. While both the Subject Member and Complainant may have persons attending in support / representation, formal cross-examination of anyone making representations will not be permitted, any questions from the parties shall be directed through the Chairman of the Sub Committee. The Chairman may, at his absolute discretion, permit oral representations from other persons if it is considered necessary and appropriate to do so.
3. The Sub Committee will comprise a Chairman and two other voting members. It will also comprise two non-voting Members being one of the Independent Members and one of the Parish Council Members. The Committee will be advised by a Legal Officer and supported by a Democratic Services Officer (“the clerk”). The Monitoring Officer (or Deputy) and Investigator will also be in attendance. One of the Independent Persons may be in attendance but it is not essential that they are present for the Sub Committee to proceed.

(b) Prior to the Hearing

4. In advance of the Hearing the Monitoring Officer (or his Deputy) will write to the Subject Member and ask them to respond indicating the areas of the Investigator’s report which they disagree with and to detail other information that they think is relevant to the Sub Committee’s deliberations on the matter (“the Subject Member’s Response”). This will enable the Sub Committee to focus on the relevant areas when the Hearing is held.
5. Both the Subject Member and Complainant may provide supporting written statements (either their own or from others) to be provided to the Sub Committee, although there is no obligation on either of the Subject Member or Complainant to provide their own representations in written form, if they are intending to make oral representations at the Hearing.
6. The Monitoring Officer (or his Deputy), having received all the relevant paperwork, will prepare the Hearing Papers which will be presented to the

Sub Committee as part of a formal agenda with a covering committee report. The Hearing Papers comprise a Pre-Hearing Summary Report (providing detail in respect of the allegation including a summary of the allegation and events and also highlighting the areas of disagreement with the Investigator's report), the Investigator's report, the Subject Member's Response, any written statements provided by the parties and a copy of the Hearing's procedure.

7. The presumption will be that the hearing will normally be held in public unless the Sub Committee exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972. Accordingly once the Hearing Papers have been compiled they will be provided to the Subject Member and Complainant who will have the opportunity to request that the Hearing be held in private. If no such request is made, then the agenda, including the Hearing Papers, will be published and made available in the normal way. If such a request is made, then the Sub Committee will hear representations on the day of the Hearing and then determine whether the matter should be held in public or private. Where such a request is made the formal agenda will be published in the normal way but without the committee report / Hearing Papers available to the public. In the event the Sub Committee determine that the meeting should be held in public then the Chairman will explain that the committee report / Hearing Papers will be published online after the Hearing has taken place.

(c) Formalities at the Hearing

8. The Chairman of the Sub Committee will introduce the members of the Sub Committee, the officers supporting them, the Subject Member, the Complainant, the Monitoring Officer (or Deputy) the Investigator and Independent Member (if present).
9. The Chairman will explain the reason for the meeting and outline the procedure to be followed. The Chairman may choose to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
10. The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the Hearing begins. Should either the Complainant or Subject Member have sought to have the meeting held in private, the Sub Committee will consider that at this stage.
11. If any procedural issues are raised, including whether the Hearing should be held in private, the Sub Committee will hear representations on them, before determining them.
12. If the Subject Member is not present at the start of the meeting, the Sub Committee will consider any reasons given by them for his/her non-attendance. If the Sub Committee is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the Subject Member.

13. If the Sub Committee is not satisfied that there is good reason for the Subject Member's non-attendance, or if the Subject Member failed to give any reason for his/her non-attendance, the Committee can decide:
 - whether to consider the matter and make a determination in the absence of the Subject Member, or
 - agree to adjourn the Hearing to another date.

(d) The Hearing

14. The Committee will identify the areas of disagreement between the Investigator and the Subject Member on the Investigation report's facts or conclusions.
15. The Investigator will be invited to make representations in support of his/her report and on anything contained in the Subject Member's Response. The Subject Member shall have the chance to ask questions of the Investigator. The Sub Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Investigator.
16. The Subject Member will then be invited to make representations in support of the fact(s) concerned and whether the evidence gives rise to a breach or breaches of the Code of Conduct. The Investigator shall have the chance to ask questions of the Subject Member. The Sub Committee and the Monitoring Officer (or Deputy) will have the opportunity to ask questions of the Subject Member.
17. The Complainant will then be invited to comment on representations made by the Investigator and Subject Member.
18. The Sub Committee has the discretion to question or permit questions of any of the parties at any point, as it sees fit. The Sub Committee shall seek the views of the Independent Person before reaching any conclusion, although this shall not prevent the Sub Committee from continuing with the Hearing if the Independent Person is not in attendance.
19. The Sub Committee will consider what it has heard in private accompanied only by its Clerk. The Sub Committee may ask the Legal Officer to advise them when required.
20. The Chairman will then announce to all present at the Hearing the Sub Committee's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.
21. If the Sub Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee will then consider whether it should make any recommendations to the Council.

(e) Sanction

22. If the Sub Committee decides that the Subject Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer and the Subject Member as to:
 - a. whether or not the Sub Committee should impose a sanction and/or recommend to Council that a sanction be imposed; and
 - b. what form of sanction(s) is/are appropriate.
 - c. Any mitigation the Subject Member wishes the Sub Committee to take into account
23. The Sub Committee will consider in private, accompanied only by its Clerk [and legal advisor if required] whether or not to impose/recommend the imposition of a sanction on the Subject Member and, if so, what form.
24. The Sub Committee will also consider whether or not it should make any recommendations with a view to promoting high standards of conduct among members of the relevant authority.

(d) Issue of decision

25. In announcing its decision in public at the conclusion of the hearing the Sub Committee will also provide a short written decision.
26. The Sub Committee will issue a full written decision including reasons within two weeks of the hearing.