

**Standards Hearing Sub Committee
DECISION NOTICE**

Complaint Reference: MO/2020-C02

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HEARING FINDINGS

Date of Hearing	12 October 2020
Subject Member	Councillor Paul Millar East Devon District Councillor
Complainant	Councillor Ben Ingham, East Devon District Councillor
Investigating Officer	Tim Darsley
Membership of Standards Sub Committee	Cllr Cathy Gardner (Chair) Cllr Eleanor Rylance Cllr Phil Twiss <u>Non-voting</u> Cllr Bob Nelson – Parish/Town Member Martin Goscomb – Independent Member
Independent Person	Alison Willan
Monitoring Officer	Henry Gordon Lennox
Legal Advisor to Sub Committee	Anita Williams, Principal Solicitor at EDDC
Democratic Services	Wendy Harris, Democratic Services Officer
Summary of complaint	That Councillor Millar sent a number of emails in which it was alleged that he had ridiculed, harassed and insulted the Chief Executive of EDDC in an unacceptable manner. It is alleged that the content of these emails amounted to breaches of the following paragraphs of East Devon District Council Code of Conduct: 4a – treat others with courtesy and respect 5c – bully any person

	<p>5h – conduct yourself in a manner in such a way to give a reasonable person the impression that you have brought your office or the Council into disrepute.</p>
Any declarations of interest	<p>Cllr Twiss – Devon County Councillor, Feniton & Honiton Division, DCC Standards Committee Member and Governor for RD&E NHS Hospitals Trust</p>
Hearing in public/availability of relevant documents for public inspection	<p>The Sub Committee first considered whether the hearing should be held in public or in private.</p> <p>Owing to the nature of the request from Cllr Millar that the hearing be held in private, the Sub Committee heard representations from Cllr Millar in private session.</p> <p>The Sub Committee agreed that as it would be necessary for the Sub Committee to hear and to consider information of a specific private and sensitive nature relating to Cllr Millar that it would be proportionate and appropriate for the hearing to be held in private.</p> <p>The Sub Committee therefore agreed that under Section 100(A) (4) of the Local Government Act 1972 the public (including the press) be excluded from the meeting as exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, was likely to be disclosed and on balance the public interest was in discussing this item in private session (Part B).</p> <p>The hearing was held in private and the agenda papers have been withheld from publication.</p>
Standards Sub Committee decision on whether or not there has been a failure to comply with the Code of Conduct and reasons for their decision	<p>In dealing with the substantive matters, the Sub Committee considered:</p> <ul style="list-style-type: none"> • the findings of fact as set out in paragraphs 5.1 to 5.31 of the Investigating Officers report; • Cllr Millar’s written representations and those of his representative Ron Metcalfe; • The supporting statements provided on behalf of Cllr Millar; and • Oral evidence from the Investigating Officer, Cllr Millar, Cllr Wragg (who had made a statement in support of Cllr Millar and was permitted by the Chair to attend) and Ron Metcalfe (Cllr Millar’s representative) and the Monitoring Officer. <p>The Sub Committee noted that Cllr Millar did not accept that all of the undisputed findings of fact were in fact undisputed.</p> <p>The Sub Committee further noted that Cllr Millar had not co-operated with the Investigating Officer’s investigation but had co-operated and engaged with the hearing.</p>

In considering the disputed facts, the Sub Committee took into account the relevant material evidence and all the representations that were made.

Courtesy and respect

In relation to paragraph 4(a) the Sub Committee found that Cllr Millar had sent five emails (on 28th January, 16th February and 19th February) in which he said;

28th January @ 8.42

"I'm never surprised about some of the disrespectful comments the CEO makes about Members, he has a long track record going back many years and it's his way of trying to keep Members down, but when they are completely off-hand and contrary to the facts, they have to be challenged."

28th January @11.29

"Your comments were 'Councillor blaming', you did it publicly and they reflect poorly on the Council - there's no public 'officer blaming here' - only rightful disgust that you seek to brand us as having a parochial mindset when this is far from the truth.

I'm copying in the other Group leaders because your remarks are an absolute disgrace and I believe this needs to be taking further, possibly to a vote of confidence. You have a very long pattern of behaviour of briefing against Councillors to the press and I believe it's getting to a point where it has become no longer tolerable."

16th February

"Mr Williams has overseen an organisation in which corrupt activities have been allowed to take place at EDDC, in the Brown affair, which happened very much under his watch."

"There are reasonable grounds to suggest that the elections in East Devon are not being run with due diligence or with full transparency. Postal votes in 2019 were opened before 10pm without counting agents allowed to be present to monitor. This is very concerning indeed."

"In addition, he is cold, arrogant, lazy, pompous, and highly disrespectful in remarks he makes in public about elected, backbench Members."

19th February @ 23.01

So, not in my name, until certain members of the senior officer team start having some respect for elected Members in the way we are spoken to and how we are spoken about, and a stop to elected Members being briefed against in the press and in public meetings. I have never briefed against a senior officer in public, it would be a struggle for me to stoop to that level of skullduggery, as the CEO has and he sets a dreadful example to his colleagues in doing so.

	<p>The Sub Committee felt that in the six incidences outlined the language used was of a personal and derogatory nature which showed a failure to treat the Chief Executive with courtesy and respect. Cllr Millar therefore breached paragraph 4(a) of the Code of Conduct in that he failed to treat others with courtesy and respect.</p> <p><u>Bullying</u> In relation to paragraph 5(c) the Sub Committee considered the wording of the Council’s Code of Conduct in relation to bullying and felt that the wording of the sub paragraph required that there needed to be an abuse or misuse of power or authority for bullying to be found.</p> <p>The Sub Committee further considered that to find a breach of the Code of Conduct in relation to bullying that there needed to be evidence of intent by the subject member and evidence of harm to the recipient. The Sub Committee did not feel that either of these had been evidenced sufficiently.</p> <p>The Sub Committee was not persuaded that Cllr Millar’s actions amounted to a pattern of bullying behaviour and/or misuse or abuse of power or authority and accordingly Cllr Millar was found not have breached paragraph 5(c) of the Code of Conduct.</p> <p><u>Disrepute</u> In relation to paragraph 5(h), the Sub Committee felt that a reasonable person viewing the language and the content of Cllr Millar’s emails (detailed above) would have the impression that this was conduct unbecoming of an elected representative and therefore Cllr Millar brought <i>his office</i> into disrepute.</p> <p>Whilst Cllr Millar had sent many of the emails to a wide audience they had not been sent outside of the Council and on that basis they did not consider that Cllr Millar had brought <i>the Council</i> into disrepute.</p> <p>The Sub Committee concluded that Cllr Millar had breached paragraph 5(h) of the Code of Conduct as he conducted himself in a manner or behaved in such a way so as to give a reasonable person the impression that he had brought <i>his office</i> into disrepute.</p>
Any mitigating circumstances taken into account	Cllr Millar stated that he had been frustrated by the political situation and felt powerless to influence the Council’s actions. He explained the difficulty he had experienced while an independent councilor and that he felt unsupported. He also felt that the actions of the Chief Executive were unwarranted and that this had caused him to react as he did.
Sanctions imposed	The Sub Committee heard representations from the Investigating Officer and the Monitoring Officer on whether a

	<p>sanction should be imposed and if so, what form it should take.</p> <p>The Sub Committee considered the representations and imposed the following sanctions:</p> <ol style="list-style-type: none">1. That Cllr Millar undertake further training, particularly in relation to member/officer relations to include mentoring; and2. Given the seriousness of the breach that Cllr Millar provide a suitably written letter of apology to the Chief Executive with the wording to be approved by the Chair of Standards Committee and the Monitoring Officer.3. The Sub Committee confirmed that the Decision Notice from this Standards Sub Committee would be published.
Additional comments	<p>The Sub Committee expressed concern about the investigation process in relation to this complaint and that it would be appropriate to use a fresh investigator.</p> <p>The Sub Committee also suggested that the wording of paragraph 5(h) in relation to bullying should be reviewed.</p>

Signed:



Cllr Cathy Gardner
Chair of the Standards Sub Committee

Date: 21st October 2020