

BRIGHTON & HOVE CITY COUNCIL
STANDARDS COMMITTEE HEARING PANEL

10.00am 9 JULY 2010

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillors: Lepper and Watkins

Independent Members: Dr M Wilkinson (Chairman),

PART ONE

1. PROCEDURAL BUSINESS

1a Declaration of Substitutes

1.1 There were none.

1b Declarations of Interests

1.2 There were none.

1c Exclusion of the Press and Public

1.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Standards Committee Hearing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

1.4 **RESOLVED** – That the press and public be not excluded and that the confidential papers relating to item 2: Consideration of a Complaint Made Against a Member Case Reference: STC 070 STDS, be made open to the public.

2. CONSIDERATION OF A COMPLAINT MADE AGAINST A MEMBER CASE REFERENCE: SCT 070 STDS

- 2.1 The Panel considered a report from the Monitoring Officer regarding the consideration of a complaint made against a Member, case reference SCT 070 STDS.
- 2.2 The Standards and Complaints Manager, Mr Foley, introduced the report and stated that in February 2009 Councillor Ted Kemble made a complaint against Councillor Jason Kitcat in posting 5 video clips onto YouTube of Council meeting webcasts taken between December 2008 and January 2009.

The complaint centred on the fact that Councillor Kitcat had not obtained the consent of Councillors Mears and Theobald, the subjects of four of the clips, to use the clips, or informed them of his intention to do so. The complaint also highlighted a possible infringement of copyright of Council owned images.

A Standards Assessment Panel considered that if proven, the conduct would amount a breach of the Code under paragraphs 3(1) and 6(b)(i) and (ii).

An investigation into the allegations was conducted, and it was concluded that there had been no breach of paragraph 3(1) or 6(b)(i), but that Councillor Kitcat did breach the Code of Conduct in respect of paragraph 6(b)(ii). A Standards Consideration Panel considered the report but came to no finding and referred the case on to a full Hearing Panel.

Mr Foley outlined the reasoning behind the conclusions of the Investigating Officers report, and stated that in relation to paragraph 3(1), failure to treat others with respect, the Adjudication Panel for England clarified this behaviour as that which is unfair, unreasonable or demeaning. Mr Foley did not believe Councillor Kitcat's behaviour in this regard was unfair or unreasonable, as using the clips was the only way Councillor Kitcat could direct members of the public to specific sections of the webcast at that time, and as the Council has stated that it intends to increase accessibility, openness and transparency it was reasonable for Councillor Kitcat to use the webcasts in this way.

Mr Foley did not believe these actions were demeaning either, as the threshold for a finding of disrespectful conduct was higher when considering the conduct of one Councillor towards another, as opposed to the conduct of a Councillor towards an Officer or member of the public, and the posting of the clip did not represent an "excessive personal attack", nor was it made in a "malicious or bullying manner".

In terms of paragraph 6(b)(i), Mr Foley did not believe Councillor Kitcat had breached the Code of Conduct as at the time the Webcasting Protocol and Members' Guide did not expressly forbid the capture and dissemination of webcast imagery by Councillors.

However, Mr Foley did conclude that Councillor Kitcat had breached the Code of Conduct in terms of paragraph 6(b)(ii). He believed that as there was a cost to the Council in purchasing the hardware and software to create webcasts and as the copyright of the webcasts is owned by the Council, and the Council does charge for CD copies of archived webcasts, this can be considered as a Council resource.

Further, Councillor Kitcat admitted to posting the clips on YouTube for political purposes, and as most of the clips were relating to a politically contentious issue at that time, with the Cabinet Member responsible for this issue being shown in an unflattering light, it was concluded that Councillor Kitcat had breached paragraph 6(b)(ii), “you must ensure that such resources are not used improperly for political purposes (including party political purposes)”.

Therefore, Mr Foley concluded that Councillor Kitcat did not breach the Code of Conduct in terms of paragraph 3(1) and paragraph 6(b)(i), but did breach the Code in terms of paragraph 6(b)(ii), for the reasons set out above.

- 2.3 The Chairman thanked Mr Foley and asked if there were any questions of this statement. Councillor Kitcat had no questions at this stage.
- 2.4 Councillor Lepper asked if the editing of the clips was considered as an issue during the investigation. Mr Foley confirmed that the clips remained unchanged from the original, but they were cropped to make them significantly shorter and to give an immediate reference to a particular issue. The criticism of this was that there was no context in which to place the clips and therefore the 5th clip in particular did not give a full understanding of the situation. It was noted that Councillor Theobald had been unable to answer questions due to meeting procedure rules, and not because he was incapable of answering them.
- 2.5 Councillor Lepper asked if this context was explained anywhere and Mr Foley replied that it was not. He added however that the complaint centred on the issue of disrespect in posting the clips on YouTube without the subject Members’ consent or knowledge.
- 2.6 Councillor Watkins asked if the Council’s website allowed viewers to jump to a particular part of a webcast, and Mr Foley replied that this facility did not work for him. Councillor Kitcat responded that it was not possible to use a link from the website to refer to a particular passage in the webcast, and markers in the webcasts only worked intermittently.
- 2.7 Councillor Watkins asked if there had been any more hits on the YouTube site after the complaint had been made and Mr Foley replied that he did not have the figures for this.
- 2.8 Councillor Watkins asked whether Councillors owned the images of themselves on webcasts. Mr Foley clarified that as it was made clear at the start of each webcast meeting that it was being webcast, it was deemed that informal consent to capture images of individual Councillors was given if they remained in the room and participated in the meeting. The webcasts were therefore the property of the Council and not of individual Councillors.
- 2.9 The Chairman noted that in Parliament, Members of Parliament had to give permission before their images from webcasts could be used, and asked if this set a precedent for the Council. Mr Foley re-iterated that the complaint centred around the taking of the webcast and posting it on YouTube.

- 2.10 Councillor Kitcat asked why only certain Councillors had been interviewed during the investigation process and Mr Foley replied that at the time all other Councillors involved in the complaint were asked if they would like to comment and any that wished to do so had done.
- 2.11 Councillor Kitcat asked Mr Foley to define “improper use” and Mr Foley replied that if a Council resource was used for political purposes it would be classed as an improper use.
- 2.12 Councillor Kitcat asked if merely viewing something could be classed as using it and Mr Foley replied that it may. He agreed that use was different from simply watching or viewing something.
- 2.13 Councillor Kitcat asked whether the role of a Councillor was defined in terms of a job description and Mr Foley agreed that it was not clearly defined.
- 2.14 Councillor Kitcat began his statement of response and stated that he did not believe he had breached the Code of Conduct under any of the three paragraphs relating to the complaint. The video clips Councillor Kitcat used had not been edited in any way and full details of the meeting were included next to the clips.

Councillor Kitcat agreed with the Investigating Officer that he had not failed to treat others with respect. He noted that Council meetings were held in public and he merely put parts of those meetings onto another part of the internet. This was clear for all to see and was not devious or underhanded. Further, as they were not private meetings, he did not feel it was necessary to ask permission of the Councillors involved as these clips were already available for the public to view.

The clips were unedited and showed exactly what happened at the meeting. They did not relate to bullying or malicious interactions and therefore could not be considered bullying or malicious. Given this, Councillor Kitcat refuted this part of the complaint.

Regarding paragraph 6(b)(i), Councillor Kitcat again concurred with the Investigating Officer’s view and noted that the webcasting protocol did not prohibit his actions. Therefore he could not have broken the Code in this regard.

Councillor Kitcat did not agree with the Investigating Officer’s view regarding paragraph 6(b)(ii) however, and did not feel he had breach the Code in this respect.

He stated that as a Councillor all of his actions were politically motivated as he worked in a political field, and this included putting the clips onto YouTube. He felt that the Code put a different emphasis onto what was considered political in terms of a breach of the Code however, and in this regard he did not feel his actions were political. The Investigating Officer’s report accepted there was no material loss to the Council in Councillor Kitcat’s actions, and he argued that if this were the case, it could be claimed that resources were not used at all. Further, as he was properly fulfilling the role of a Councillor when at the meetings, his use of the meeting webcasts was a proper use of Council resources. The issue of communal bins, which were the main focus of the clips, was important at the time in Councillor Kitcat’s ward. In his role as Ward Councillor he

was acting properly in asking questions about the communal bins policy, but was not the Green Group's Waste and Recycling spokesperson, and so was not acting politically.

Regarding Councillor Kemble's opinion that Councillor Kitcat had been politically motivated to post the clips in support of his campaign for the 2009 European Parliamentary Elections, Councillor Kitcat noted that there was nothing relating to elections on his site until two months after Councillor Kemble's complaint had been submitted. He also added that if webcasts of meetings were deemed political material, they should be removed from the Council's website during any purdah period and they are not.

Councillor Kitcat went on to add that he had not broken the Code under paragraph 6(b)(ii) as he did not agree that he had used Council resources.

Councillor Kitcat used his personal computer to view and cut the clips of the webcast. His actions did not use any more of the Council's servers than would a normal viewing of the webcast, and as digital material was able to be used again and again without any detriment or using up of the original, for no cost to the Council, Councillor Kitcat did not feel it could be claimed that he used any Council resources.

With regard to the copyright for the webcast, Councillor Kitcat believed that this was held in trust by the Council for the benefit of the public, and added that if this were truly a financial resource of the Council then royalties should be paid to those Members and Officers featured in webcast clips. No meaningful income was derived from the sale of meetings DVDs and Councillor Kitcat noted that Parliament was shortly going to allow anyone to post clips of its meetings onto any part of the website. Finally, he noted that formal Council minutes were used regularly in much the same way as Councillor Kitcat used the webcasts, and if the Council was prohibiting the use of webcasts by Councillors as this was classed as valuable intellectual property, then Council minutes should be treated in the same way.

For the above reasons Councillor Kitcat refuted the complaint made against him in all respects and he urged the Panel to reject the complaint.

- 2.15 The Chairman asked if there were any questions and Councillor Watkins asked if the Panel were free to look at all aspects of the complaint, or just the complaint in relation to the Investigating Officer's findings. The Solicitor to the Panel, Ms Woodley, replied that as there had been no formal findings regarding this complaint the Panel were free to consider all aspects of it, regardless of the Investigating Officer's findings.
- 2.16 Councillor Watkins asked the Solicitor in support of the Investigating Officer, Mr Dixon, whether he agreed with Councillor Kitcat's interpretation of copyright and Mr Dixon replied that the law did permit some acts which may be done in relation to copyright workings notwithstanding the subsistence of copyright under the "fair dealing" provisions of the Copyright, Designs and Patents Act 1998. By way of example, he explained that where a news broadcaster such as the BBC used copyright protected footage belonging to another broadcaster, for the reporting of current events, this would not infringe the copyright, provided that the user acknowledged the holder of the copyright as the source, unless this was impossible for reasons of practicality. Mr Dixon felt that even if the clips posted by Councillor Kitcat could be deemed as current affairs material, there

was no acknowledgement on the website of the holder of the copyright. In legal terms Councillor Kitcat would have had to include a caption regarding the identity of the copyright holder of the clips to have not infringed the Council's copyright, unless it had been impractical to provide such a caption.

- 2.17 Councillor Kitcat responded that he disputed the need for a caption and stated that an acknowledgement had been given on the right of the clips as to their source.
- 2.18 Councillor Lepper asked if Councillor Kitcat felt that the 5th clip in the series had been cropped so that it was out of context from the rest of the meeting. Councillor Kitcat did not agree with this and added that the time and date of the meeting were displayed next to the clip.
- 2.19 Councillor Lepper asked why no interaction before or after the clip was added and Councillor Kitcat felt that it would have confused members of the public to do so.
- 2.20 Councillor Lepper felt that if members of the public viewed clips 1 to 4 and then viewed clip 5, they might assume that Councillor Theobald was stating an inability to answer questions put in clips 1-4, whereas in fact he was stating that he was unable to answer due to complex Council procedure rules. Councillor Kitcat did not know what the public might or might not think but he added that a link to the full meeting was available on his website.
- 2.21 Councillor Lepper asked if Councillor Kitcat had run a political campaign against communal bins in his ward and he replied he had not. Leaflets that were distributed regarding this issue had been paid for by the Council, and therefore could not contain political content.
- 2.22 The Chairman understood the logic behind posting clips 1-4 as informative material for public consumption but did not understand the purpose behind posting clip 5 on YouTube as it gave no further information about Council issues. Councillor Kitcat replied that he was making a point about the conduct of the Cabinet Member for this issue.
- 2.23 The Chairman asked if this was the case why the clip was not longer to set the comment in its proper context. Councillor Kitcat felt the context was available, as his blog and the minutes referred to this, and a link was given to the full meeting.
- 2.24 The Chairman noted that making a copy of a CD was illegal, even though the original was not used up and asked if Councillor Kitcat's actions were similar. Councillor Kitcat felt that it would depend on whether he was trying to sell the copied CD and added that copyright laws needed to be updated. He stated that there had been no material loss to the Council and his actions used up no more resources than a normal viewing would.
- 2.25 Councillor Watkins stated that Councillor Kitcat's actions had taken control of the webcasts away from the Council and asked if it was his responsibility to act responsibly when doing this. Councillor Kitcat stated that the copying procedure was completed when merely viewing a webcast, and did not disable the use of the webcast for another user so he did not feel this was the case.

- 2.26 Councillor Watkins asked if Councillor Kitcat should have notified the other Councillors of his actions to ensure he was acting responsibly and Councillor Kitcat replied that he had spent about one year talking to the Head of Democratic Services, Councillor Oxley and the software provider for the webcasting service to get the ability to link to specific parts of the webcast on the Council's website but this had not been forthcoming.
- 2.27 The Chairman asked if Councillor Kitcat had any further statements to make and he stated he did not.

Decision

2.28 **RESOLVED –**

- (1) That the Panel agrees with the Officer's findings in respect of paragraphs 6b(i) and 6b(ii) in that Councillor Kitcat did not breach the Code of Conduct in terms of failing to act in accordance with the Authority's reasonable requirements, and that he did breach the Code in terms of failing to ensure that such resources are not used improperly for political or party political purposes.
- (2) The Panel does not agree with the Officer's findings in respect of paragraph 3 in that Councillor Kitcat did fail to treat Councillor Theobald with respect in terms of using the 5th clip to show Councillor Theobald in an unflattering light, which was out-of-context and did not seek to explain fully the circumstances that led to the comment.
- 2.29 Following the reading of the decision, the Chairman asked Mr Foley to comment on appropriate sanctions for the breaches. Mr Foley stated that the possible sanctions open to the Panel were censure; an apology in relation to the lack of respect breach; removal of the clips from the website if they are inappropriate; or suspension of some kind. Mr Foley added that the Panel must act reasonably if using suspension and the suspension length must be proportionate.
- 2.30 The Chairman asked if Councillor Kitcat had a statement of mitigation to make and Councillor Kitcat replied that it was for the Panel to determine and he believed he had made his views clear in that he did not agree with the findings of a breach of the Code of Conduct.
- 2.31 Ms Woodley noted that the Panel were entitled to take good service into account when considering the sanction.

Sanction

2.32 **RESOLVED –**

- (1) That in respect of paragraphs 3 and 6(b)(ii) Councillor Kitcat be censured for his breach of the Code of Conduct;
- (2) That the following sanction in respect of paragraph 3 be imposed:

That Councillor Kitcat be suspended for a period not exceeding six months or until such time as he submits a written apology to Councillor Theobald for the lack of

respect shown to Councillor Theobald on the use of the 5th clip of the Council meeting webcast on Councillor Kitcat's blog. The suspension is not to take effect until the period for appealing has expired.

(3) That the following sanction in respect of the breach of paragraph 6(b)(ii) be imposed:

That Councillor Kitcat be required to take training on the roles and responsibilities of being a Councillor at the direction of the Monitoring Officer (or his Deputy) within three months of the expiry of the appeal period for this decision. If this training is not completed within this time Councillor Kitcat will be suspended for up to 6 months or until such time as he complies with this requirement, whichever is the sooner.

(4) That in the light of this case the Council be recommended to revisit its protocols and guidance on webcasts and the use of webcasts.

2.33 Following the reading of the sanctions, the Chairman highlighted that it was not the intention of the Panel to suspend Councillor Kitcat, merely to require him to apologise for any offence he may have caused, and to take extra training as directed by the Monitoring Officer, as the Panel were aware that Councillor Kitcat had been elected through a by-election and may have missed some of the initial training on the roles and responsibilities of being a Councillor.

3. PART TWO ITEMS

- 3.1 The Committee noted that Item 2 and the associated documentation had been brought into the public arena and therefore would be open to the press and public.
- 3.2 **RESOLVED** – That no information relating to Item 2 on the agenda be exempt from the press and public.

The meeting concluded at 1.30pm

Signed

Chair

Dated this

day of