

EAST RIDING OF YORKSHIRE COUNCIL

STANDARDS COMMITTEE (HEARING)

NOTICE OF DECISION

This record of the decision of the Standards Committee (Hearing) is made pursuant to the provisions of the Localism Act 2011 and procedures adopted by East Riding of Yorkshire Council.

Date of Hearing: 11 October 2021

Venue: County Hall, Beverley

Present:

Councillor T Norman (Chairman) (East Riding of Yorkshire Council)

Councillor P Davison (East Riding of Yorkshire Council)

Councillor D Jeffreys (East Riding of Yorkshire Council)

Mr G Pile (Parish Council Representative)

Mr D Waxman (Independent Member of the Standards Committee)

Also in attendance:

Councillor D Rudd (Market Weighton Town Council & East Riding of Yorkshire Council)

Mr E Wood (Witness for Councillor Rudd)

Mr D Gough (Witness for Councillor Rudd)

Ms E Appleton (Solicitor - Investigating Officer)

Mrs J Lidster (Senior Committee Manager - Clerk to the Hearing)

Advisor to the Hearing: Mrs S Baxter (Democratic Services Manager)

Independent Person: Ms C Bainton

Observer: Councillor B Weeks

All of those present attended the meeting in person.

The Hearing was also streamed live to the Council's YouTube Channel.

1 LA/SASC/282/Rudd/Market Weighton/East Riding of Yorkshire - Local Investigation of Complaint - Councillor David Rudd, Market Weighton Town Council and East Riding of Yorkshire Council

1.1 The Committee received and considered a complaint that had been referred to the Monitoring Officer of East Riding of Yorkshire Council for local investigation by East Riding of Yorkshire Council's Standards Committee Assessment Sub-Committee within the provisions of the Localism Act 2011 and procedures adopted by East Riding of Yorkshire Council. The Hearing was conducted in accordance with the procedure adopted by the Standards Committee.

At the commencement of the meeting Councillor Norman declared a non-pecuniary interest as he was acquainted with the complainant by virtue of being a member of the same political party.

1.2 Details of the complaint were:-

Case Number	Name of Person making Complaint	Name of Person Allegation is Against	Name of Relevant Authority
LA/SASC/282/Rudd/ Market Weighton/ East Riding of Yorkshire	Councillor Peter Hemmerman	Councillor David Rudd	Market Weighton Town Council and East Riding of Yorkshire Council

1.3 The following is a summary of the complaint:-

That on 12 June 2020 Councillor Rudd sent a message to the complainant, which read;

“Dear Peter, I write as a member of the public to ask if any of your ancestors were member of the NAZI Party? A simple question but will I receive a simple answer I wonder? regards David Rudd”

1.4 The Committee considered the following documentation:-

- (a) A summary report prepared by the Democratic Services Manager.
- (b) The report of the Monitoring Officer relating to the investigation, which had been circulated to all interested parties and was dated 16 June 2021.
- (c) Documentation completed by Councillor Rudd in advance of the Hearing.

2 Preliminary Procedural Issues

- 2.1 Councillor Rudd confirmed that he would be representing himself.
- 2.2 The Investigating Officer confirmed that she did not wish to call witnesses. Councillor Rudd indicated that he would like the Committee to hear from two witnesses - Mr E Wood and Mr D Gough.
- 2.3 The Advisor to the Committee clarified that the procedure provided for witnesses to be called if the findings of fact were in dispute or if there were other exceptional circumstances, and that three witness statements had been submitted by Councillor Rudd, which had been circulated with the agenda papers for the meeting.
- 2.4 The Investigating Officer commented that whilst the witness statements submitted may be relevant in terms of Councillor Rudd’s character, she would question the relevance of the wider comments within the statements in relation to the findings of fact. The Investigating Officer also noted the finding of fact which referenced the ‘acrimonious’ history between the complainant and Councillor Rudd.
- 2.5 The Committee determined to hear from the two witnesses present at the meeting. The Chairman clarified that anything not relating to the findings of fact would be disregarded.
- 2.6 Councillor Rudd indicated that other than the third witness statement he had submitted he had no additional documents. The Chairman confirmed that this third statement had been circulated as part of the agenda papers for the meeting. The Investigating Officer confirmed that she did not seek to submit any additional information/documentation.
- 2.7 Councillor Rudd and the Investigating Officer confirmed that they did not wish any part of the paperwork to be withheld or any part of the meeting to be held in private.

3 Submission by the Investigating Officer

- 3.1 The Investigating Officer, on behalf of the Monitoring Officer, had submitted a report detailing their investigation, which had been circulated as part of the agenda papers for the meeting.
- 3.2 The Investigating Officer, on behalf of the Monitoring Officer, had determined the following findings of fact in relation to the complaint, as set out in paragraph 5.1 of the report submitted:-
- (i) Councillor David Rudd is a Councillor of both Market Weighton Town Council and East Riding of Yorkshire Council to which the Member Code of Conduct applies.
 - (ii) Councillor Rudd sent the email subject to this investigation to Councillor Hemmerman on 12 June at 20.33pm, in which he wrote *“Dear Peter, I write as a member of the public to ask if any of your ancestors were member of the Nazi party? A simple question but will I receive a simple answer I wonder? regards David Rudd.”*
 - (iii) There has been previous acrimonious dialogue involving the two councillors.
- 3.3 The Investigating Officer made the following submissions in relation to the findings of fact, whether or not there had been a breach of the Code of Conduct and, in the event a breach was found, in relation to what – if any – recommendations as to sanctions or generally should be made to the appropriate authorities:-
- (a) The Investigating Officer stated that there was no dispute that the email had been sent, but what was in issue was the content and context of it. In relation to the content, it was considered – in the opinion of the Investigating Officer – to be offensive and disrespectful. Even if it was accepted that there was an entitlement to freedom of expression, in accordance with guidance previously issued by Standards for England, individuals should not be subject to unreasonable or excessive personal attack. It was considered that the email went beyond what could be deemed to be legitimate political challenge or jousting.
 - (b) In order for a breach of the Code of Conduct to be found the Committee would need to find that Councillor Rudd had been acting in an official capacity. Whilst it was accepted that the message had been sent from one private email address to another private email address, considering the wider context it was believed that he had been acting in his official capacity. During the investigation Councillor Rudd had been asked what had been meant by the email/what was the purpose of sending it, Councillor Rudd had replied that he had wished to “highlight to him [the complainant] his unacceptable behaviour towards me over the past 10 years”. This was in relation to his role as both a ward and town councillor and with his fellow councillors. This suggested that the sending of the email arose from the councillor relationship between the complainant and Councillor Rudd and not a relationship between private individuals. The Investigating Officer therefore considered on balance that Councillor Rudd had been acting as a councillor at the time of sending the email and that a breach of paragraph 2(1) in relation to treating others with respect had been demonstrated.
 - (c) With regard to recommendations it was suggested that an apology may be considered, although it was noted that Councillor Rudd had indicated that he had already provided a letter of apology by email on 15 June 2020.

(d) The Investigating Officer was not of the opinion that Councillor Rudd's actions had brought his office or either authority into disrepute. The Investigating Officer cited the Livingstone case, in which a distinction was made between conduct which brought the individual into disrepute and conduct which brought their office or the authority of which they were a Member into disrepute. The Investigating Officer stated that there were similarities between the cases and that as Mayor Livingstone had not been found to have brought his office or authority into disrepute, she was similarly not persuaded that Councillor Rudd had breached this provision. Whilst reference had been made to articles that had subsequently appeared in the local press about the matter, there was no suggestion that the source of the articles was Councillor Rudd, and other comments within such articles were not part of this complaint/investigation. The Investigating Officer referred to the Mullaney case in support of her submission.

3.4 Further to the submissions made, Councillor Rudd queried how he could be deemed to have acted as a councillor when the email was sent from one private email address to another. The Investigating Officer responded that whilst it was accepted that the message had been sent from a private email address to a private email address, as part of the investigation Councillor Rudd had referred to the purpose behind the email, which had related to the role of the complainant and himself as councillors. As such, it was considered, on balance, that Councillor Rudd had been acting in his official capacity as a councillor at the time of sending the email.

3.5 The Independent Person had no questions for the Investigating Officer.

3.6 Members of the Committee had no questions for the Investigating Officer.

4 Submission by Councillor Rudd

4.1 Councillor Rudd had completed and returned the pre-hearing paperwork in accordance with the Standards Committee's procedure. A copy of that completed documentation had been circulated with the agenda papers for the meeting.

4.2 Councillor Rudd made the following submissions in relation to the findings of fact, whether or not there had been a breach of the Code of Conduct and, in the event a breach was found, in relation to what – if any – recommendations as to sanctions or generally should be made to the appropriate authorities:-

(a) Councillor Rudd stated that the email was sent from one private person to another private person and that he believed all councillors had a private life and private time. Whilst the email had been sent on purpose it had been sent as a private email. Councillor Rudd felt that the complainant had wanted to make trouble for him, as Councillor Rudd was someone that the complainant did not get on with and someone who "won't dance to his tune". Councillor Rudd explained that he felt the complainant had tried to belittle him on many occasions previously. Councillor Rudd referred to one particular meeting when comments had been made by the complainant in front of other ward councillors and a number of parish councillors. Councillor Rudd advised that following that meeting he had spoken to the complainant and "took him to task".

(b) Councillor Rudd did not deny that he had sent the email and said that he was sorry he had done so. An apology had been sent, which the complainant had not responded to. Councillor Rudd said that he was remorseful and that, given the opportunity, he wouldn't send the email again. Councillor Rudd believed that he had the ability to get on with anyone and stated that he was not a racist. Councillor Rudd referred to his own heritage and his membership of the church. Councillor Rudd

said that he wouldn't be offensive to anyone "normally", but that he had reached "the end of my tether", having taken, what he considered to be, abuse for 12 years. Councillor Rudd explained that at the time of sending the email the election of Town Council Mayor was to take place the following week; having realised that his choice of Mayor would not be elected, and with two glasses of wine having been consumed, he sent the email asking a "cheeky, rude question". Councillor Rudd stated that "I suppose you could" call the email rude. Councillor Rudd reiterated that he was sorry he had sent the email and that, given the opportunity, he wouldn't send it again. Councillor Rudd did feel that if the email had been sent by one of the complainant's "mates" that it would have been laughed off and he believed that the complainant was looking for something to "have a go" at him about. Councillor Rudd said, "Unfortunately I gave him the opportunity".

(c) Councillor Rudd did not consider there to have been a breach of the Code of Conduct as he still maintained that it had been sent from one private individual to another. No other parties were involved, and he didn't tell anyone about it at the time. When his wife had found out she "went crazy, of course". Councillor Rudd stated that he had perhaps asked the question within the email in reference to how he considered the complainant to run the Town Council – like a dictator.

(d) If a breach was found, Councillor Rudd suggested that training may be appropriate.

4.3 Councillor Rudd called Mr Eric Wood as his first witness. Mr Wood confirmed that he was happy to answer any questions in relation to the statement he had submitted. Mr Wood referred to his own heritage and was aware of what anti-German sentiment felt like. Whilst he had not seen the email sent to the complainant, he had experience of what anti-German sentiment was like in life. Mr Wood considered that the wrong person had been investigated in this case and that Councillor Rudd had "dropped his guard on one occasion".

4.4 The Chairman reminded everyone present – in relation to any opinions expressed about the complainant – that the complainant was not present to defend themselves. The Democratic Services Manager also took the opportunity to remind those present that the purpose of witnesses was in relation to disputing the findings of fact.

4.5 Councillor Rudd called Mr David Gough as his second witness. Mr Gough explained that he had known both Councillor Rudd and the complainant for two decades and that he had attended a number of Town Council meetings. Mr Gough referred to how he had felt observing those meetings and to his perception of the behaviour of the complainant towards Councillor Rudd. Mr Gough had always found Councillor Rudd to be "professional, efficient and polite" and considered that the sending of the email had been an "exceptional thing".

4.6 Further to the submissions made, the Investigating Officer had no questions for Councillor Rudd or either of the witnesses.

4.7 The Independent Person had no questions for Councillor Rudd or either of the witnesses.

4.8 Further to the submissions made, Members of the Committee asked Councillor Rudd why he had sent an apology, if he could confirm that the complainant was the Mayor of Market Weighton, if it was possible that the complainant might not have received his apology, and whether an apology would have been sent had he not been asked to do so by the Conservative Group. Councillor Rudd stated that following the sending of the email, he had been advised by the Conservative Group that he would be suspended for at

least two months. He was asked to meet with the then Leader of the Council and have a discussion with him. As part of the discussion it was agreed that Councillor Rudd should apologise and so he did. Councillor Rudd confirmed that the complainant was the Mayor of Market Weighton. Councillor Rudd confirmed that he did send an apology via email and that he was certain it had been received by the complainant. Councillor Rudd also advised that he would have sent an apology even if he had not been asked to do so because of the “furore created” and the “public response”.

5 Address by the Independent Person

5.1 The Independent Person had submitted comments in relation to the Investigating Officer’s report and their recommendations; those comments were included at paragraph 8 of the investigation report circulated as part of the agenda papers for the meeting.

5.2 The Independent Person addressed the Committee in relation to the findings of fact, whether or not there had been a breach of the Code of Conduct and, in the event a breach was found, in relation to what – if any – recommendations as to sanctions or generally should be made to the appropriate authorities, as follows:-

(a) The Independent Person accepted that the message had been sent from a personal email address to a personal email address. There was a belief, however, that Councillor Rudd had been acting as a councillor at the time as a consequence of his explanation of his motivation for sending the email, which was because he “wished to highlight to him [the complainant] his unacceptable behaviour towards me over the past 10 years and my fellow Ward Councillors sometimes over social media, the Market Weighton Town Clerk, some fellow Town Councillors and his attitude towards the East Riding of Yorkshire Council” and that he had gone on to “cite four instances of such behaviour relating to the complainant’s role in the Town Council”. The Independent Person therefore considered that it was hard to believe that Councillor Rudd had not been acting as a councillor at the time of sending the email. In addition, reference was made to Councillor Rudd stating in his apology “the public forum is the right and proper place to debate [the differences/issues between the two]”. The Independent Person considered that if Councillor Rudd had believed he was sending a private email in the first instance then there would be no need to debate such matters in a public forum.

(b) The Independent Person did not consider that the email was just the rough and tumble of political debate, but felt that it was offensive and disrespectful and constituted a breach of the Code of Conduct provision requiring councillors to treat others with respect.

(c) With regard to the provision of the Code of Conduct concerning bringing office or authority into disrepute, the Independent Person commented that the complaint had been received by East Riding of Yorkshire Council on 15 June 2020, which was the same day Councillor Rudd had written in his apology that the public forum was the right and proper place to debate his and the complainant’s differences/issues. The Independent Person considered this to be a recognition by Councillor Rudd that he was wrong to send the email. The press articles were, in the opinion of the Independent Person, evidence of the differences between the two spilling over into the public arena. As a member of the public, the Independent Person considered that Councillor Rudd had acted to bring his office/authority into disrepute.

(d) In the event the Committee found a breach of the Code of Conduct, the Independent Person stated that given that an apology had been attempted, Members may wish to consider recommending censure.

- 5.3 The Investigating Officer had no questions for the Independent Person.
- 5.4 Councillor Rudd queried how the Independent Person had reached the conclusion that he had brought his office/authority into disrepute. The Independent Person referred to her earlier explanation and re-iterated that the issue had spilled into the public forum and that the public arena was not the place to question someone's heritage.
- 5.5 In response to a question from Members of the Committee, the Independent Person stated that she did consider that the actions of the Conservative Group in suspending Councillor Rudd could be evidence of recognition that the behaviour had brought Councillor Rudd's office/authority into disrepute.

6 Summing Up

- 6.1 The Investigating Officer referred to the findings of fact as set out at paragraph 5 of her report. The Investigating Officer stated that the findings of fact were not in dispute. The email had been sent and it had been sent using the words alleged. It was believed that official capacity had been evidenced as a result of Councillor Rudd's acknowledgement of his motivation for sending it, which referred to both his and the complainant's roles as councillors. It was considered that a breach of the provision within the Code of Conduct relating to treating others with respect had occurred for the reasons set out in the investigation report and as outlined at the meeting. It was not considered, however, that a breach of the provision relating to disrepute had been evidenced because of the similarities to previous cases, which were again referenced within the report and as had been noted during the meeting.
- 6.2 The Independent Person considered that a breach of both paragraphs of the Code of Conduct had been established. The Independent Person based this on the fact that she was a member of the public and, as such, might not have been aware of the previous cases referred to.
- 6.3 Councillor Rudd stated that the Conservative Group had no choice but to act on the complainant's email to the Group. At the time there had been a lot of "talk" about racism in political parties and so anything that appeared to sound racist had to be acted upon – hence his original suspension for two months, which had been extended to six months. Although Councillor Rudd had argued his case at the Local Association and at Party HQ, he had not put the matter into the public domain – it was the complainant that had done so. Councillor Rudd reiterated that he had reached the "end of my tether" and thought he would give the complainant a taste of their own medicine.
- 6.4 Prior to the Committee's private deliberations, the Advisor to the Committee sought to clarify explicitly with Councillor Rudd whether he did or did not agree with the findings of fact as set out at paragraph 5 of the Investigating Officer's report. Councillor Rudd confirmed that he did agree with the findings of fact as set out in the report.

7 Standards Committee's Findings of Fact

- 7.1 Following the submissions the Committee considered its findings of fact. The Committee's findings of fact were as set out in the Investigating Officer's report and at paragraph 3.2 above.

8 Paragraphs of the Code of Conduct

- 8.1 The Committee considered the representations made as to whether or not the findings of fact as defined by the Committee constituted a breach of the following paragraphs of the Codes of Conduct as adopted by East Riding of Yorkshire Council and Market Weighton Town Council:-

Paragraph 2(1) East Riding of Yorkshire Council Code/Paragraph 2 Market Weighton Town Council Code: You must treat others with respect.

Paragraph 2(3) East Riding of Yorkshire Council Code/Paragraph 2(2) Market Weighton Town Council Code: You must not conduct yourself in a manner that could reasonably be regarded as bringing your office or authority into disrepute.

9 Breach of the Code of Conduct

- 9.1 Following consideration of the representations, the Committee determined the following:-

- (a) That Councillor Rudd be found to have breached paragraph 2(1) of the Code of Conduct adopted by East Riding of Yorkshire Council and the comparable provision within Market Weighton Town Council's Code of Conduct for the reasons set out in the Investigating Officer's report, and
- (b) that Councillor Rudd be found not to have breached Paragraph 2(3) of the Code of Conduct adopted by East Riding of Yorkshire Council and the comparable provision within Market Weighton Town Council's Code of Conduct for the reasons set out in the Investigating Officer's report.

10 Recommendations as to Sanctions and Generally

- 10.1 The Committee considered the representations made as to whether or not a sanction should be recommended to Market Weighton Town Council and/or East Riding of Yorkshire Council and, if so, what form any sanction should take. The Committee also considered whether or not any general recommendations should be made to either Council with a view to promoting high standards of conduct amongst Members.

- 10.2 The Committee determined:-

- (a) That it be recommended to Market Weighton Town Council that Councillor Rudd be censured;
- (b) that it be recommended to Market Weighton Town Council that Councillor Rudd be recommended to make an apology to the complainant at a Council meeting of Market Weighton Town Council, and
- (c) that it be recommended to East Riding of Yorkshire Council that Councillor Rudd be censured.

18 October 2021