

COMPLAINTS AGAINST CLLR DAVID FARRY

INVESTIGATOR'S REPORT

Introduction

1. I have been appointed as the Investigating Officer by Durham County Council's Monitoring Officer to carry out an investigation into five complaints that Cllr David Farry, Mayor of Ferryhill Town Council ("the Council"), has failed to comply with the Council's Code of Conduct ("the Code").
2. I am a self-employed barrister, with a specialism in local government law, and was one of the co-authors of the leading textbook on the subject of local government standards, *Cornerstone on Councillors' Conduct* (Bloomsbury Professional, 2015).

The complaints

Complaints of Simone Devine, Angela Devine and Brian Gibson (COM 211, 212, 213)

3. These three separate complaints all relate to Cllr Farry's attendance at the beacon-lighting ceremony hosted by the Council on the evening of 11 November 2018 to commemorate the centenary of the end of the First World War.
4. In summary, all three complainants alleged that Cllr Farry had attended the ceremony while drunk. The Devines also alleged that Cllr Farry had been talking with others during the ceremony. All three described being "*disgusted*" or "*appalled*" by Cllr Farry's alleged behaviour at the ceremony and felt that it showed a lack of respect to those being honoured in the commemorations.
5. Cllr Farry, when given an opportunity to respond by the County Council's Governance Solicitor, accepted he was present at the ceremony, denied that he was there in any official capacity and completely denied the allegations of inappropriate behaviour, which he described as "*vexatious*" and "*politically motivated*". The Governance Solicitor carried out an initial assessment on 3 January 2019 and decided to refer the complaints for external investigation to establish whether Cllr Farry had breached paragraphs 1 and 6 of the Code.

Complaint of Cllr Carole Atkinson (COM 223)

6. Cllr Atkinson is a member of the Council. Her complaint was submitted on 6 January 2019. It relates to a phone call between her and Cllr Farry around lunchtime on Friday 4 January 2019. Cllr Atkinson alleged that Cllr Farry had been “*very verbally aggressive*” towards her and had implied she was stupid. She described Cllr Farry’s alleged behaviour as “*a clear example of male to female bullying which in my opinion seems to be quite acceptable today at our council...*”.
7. Cllr Farry accepted that the phone call had taken place but completely denied the allegations and in turn alleged that he had been on the receiving end of a “*continued verbal assault*” from Cllr Atkinson.
8. The Governance Solicitor decided to refer this complaint also for external investigation to establish whether Cllr Farry had breached paragraphs 1 and 2 of the Code.

Complaint of Derek Snowball (COM 236)

9. Mr Derek Snowball is the Clerk of the Council. His complaint was submitted on 15 February 2019. Mr Snowball alleged that Cllr Farry had harassed, bullied and victimised him; that Cllr Farry had made Council business negative and destructive; and that Cllr Farry was out to destroy him personally. Cllr Farry completely denied the allegations. The Governance Solicitor decided that this complaint should be investigated along with the complaints already referred for investigation.

The Code

10. The Council has adopted its own Code of Conduct (“the Code”), pursuant to section 27(2) of the Localism Act 2011. Insofar as material, the Code provides:

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. *He/she shall behave in such a way that a reasonable person would regard as respectful.*
2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*

6. *You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.*

11. The Code does not apply to everything a councillor does; it will only apply when they are acting, claiming to act or giving the impression of acting as a representative of the Council. A more concise way of expressing this concept is that a councillor is subject to the Code whenever he or she is acting in their "official capacity".

12. Cllr Farry and I spent some time discussing the concept of "official capacity". He suggested that, in the case of the Mayor, there was a "chains on/chains off" rule, such that the Mayor will only be acting in his official capacity when he is wearing his ceremonial badge of office. That is wrong. There is no special rule for the Mayor; he will be subject to the Code whenever he is acting in his official capacity, no matter how he is dressed.

Investigation

13. I personally interviewed: Angela Devine (complainant); Simone Devine (complainant; by phone); Brian Gibson (complainant); Cllr Atkinson (complainant; member of the Council); Derek Snowball (complainant; Town Clerk); [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] and Cllr Farry. I also received letters from [REDACTED] and [REDACTED]. Both Mr Snowball and Cllr Farry provided a large number of emails and other documents for me to read. I have listened to recordings of the Council's meetings on 11 May 2018 and 18 July 2018 and of a meeting between Cllr Farry, [REDACTED] and Mr Snowball on 22 March 2019. I have also considered a number of Council policies as well as agendas and minutes for a number of Council and committee meetings between 2017-19. I have carefully considered all of this evidence.

Cllr Farry

14. Cllr Farry is an experienced local government councillor, having served at parish, district and county level over the years. He was elected to the Council in May 2017. He was appointed the Mayor of the Council for the remainder of the civic year 2018/19 at its meeting on 18 July 2018.

15. I am aware that he has been subject to a number of previous complaints to the County Council and I have read the various decision notices issued by the County Council. My approach has been to consider these new complaints before me on their own merits and to test for myself the evidence which has been presented to me. I have given no weight to these previous complaints.

Findings

The beacon-lighting ceremony (COM 211, 212, 213)

16. The beacon lighting ceremony was an official event in the Council's civic calendar. Indeed, Cllr Farry told me that hosting the event had been his idea; he had suggested it be added to the agenda of the Events Management Sub-Committee for its meeting on 5 September 2018. Cllr Farry chaired that Sub-Committee and the meeting at which the proposal was formally approved.
17. On 24 October 2018, the Council issued a press release announcing the beacon lighting ceremony and inviting residents to attend. It is worth quoting that press release more or less in full:

***“THE BATTLE’S OVER – A NATIONS TRIBUTE
FERRYHILL COMMEMORATES 100 YEARS OF REMEMBRANCE***

Ferryhill Town Council is honoured to be joining more than 800 organisations taking part in a WWI Beacons of Light Ceremony on Remembrance Sunday, 11th November 2018.

A short service will be held in the Town Hall gardens by St. Luke’s Church at 6.40pm and will be followed by a speech by the Town’s Mayor, Councillor David Farry.

To complete the tribute and in synchronising with other organisations taking part in the commemorations the Mayor will then light Ferryhill’s beacon at 7pm.

All residents of Ferryhill are invited to attend this fitting tribute which will be followed by light refreshments in the upstairs room of Ferryhill Town Hall.

Mayor of Ferryhill, Councillor David Farry said ‘Ferryhill Town Council is honoured to take part in this tribute to commemorate 100 years of Remembrance, and are

pleased to invite residents of the Town to join in the commemorations.”

(emphasis added)

18. That press release is unequivocal: Cllr Farry would attend the ceremony in his official capacity in order to give a speech and light the beacon. It is consistent with what I was told by [REDACTED] who was in charge of organising the event on behalf of the Council. [REDACTED] told me that Cllr Farry had agreed to both light the beacon and give a speech, though he had later changed his mind about the speech. On the evening in question, [REDACTED] was expecting Cllr Farry to attend on time, wearing his chains, in order to perform this official function. This is further corroborated by the order of service distributed on the day which explicitly states that the Mayor would be in attendance (to give a speech). Similarly, [REDACTED] described how [REDACTED] had talked Cllr Farry through the process of lighting the beacon a few days before the ceremony.
19. Cllr Farry denied that this was the plan. He said he did not agree to give a speech. He also denied agreeing to light the beacon and went as far as to say he had never been asked. He said that, on the day, he had made a conscious decision *not* to attend the ceremony and instead to go out for a meal with his partner. He accepted that he did not tell anyone at the Council of this change of plan.
20. Cllr Farry’s account flies in the face of public statements issued by the Council and the accounts given by the two Council staff most closely involved in the event’s organisation. This ceremony was a significant event in the Council’s civic calendar which residents would expect the Mayor to attend on behalf of the Council.
21. Taking all of the evidence into account, I find Cllr Farry’s account to be implausible and I cannot accept it. I find that Cllr Farry was supposed to have attended the ceremony in his official capacity as Mayor of Ferryhill in order to light the beacon.
22. Everyone, including Cllr Farry himself, agreed that Cllr Farry did actually attend the ceremony, albeit he arrived after it had already started. Nor was there any dispute that Cllr Farry neither lit the beacon (it was lit by [REDACTED]) nor gave a speech. Angela and Simone Devine, Cllr Atkinson and [REDACTED] all gave descriptions of Cllr Farry stumbling or staggering and all formed the opinion that he was drunk. [REDACTED] said [REDACTED] did not see Cllr Farry stumbling but [REDACTED] said it was clear he had been drinking. [REDACTED] said that [REDACTED] had been asked by [REDACTED], at the last minute, and unexpectedly, to light the beacon because Cllr Farry was “*not fit*” to do it himself.

23. So was Cllr Farry drunk? Cllr Farry, [REDACTED] and [REDACTED] all categorically denied that he was. So did the authors of the letters provided to me by Cllr Farry. However, on the balance of probabilities, I find that Cllr Farry was drunk when he attended the beacon lighting ceremony. My reasons are as follows:

(a) he accepted (and so did [REDACTED], who was with him throughout) that he had spent the afternoon (between the last official ceremony of the morning and the beacon-lighting ceremony in the evening) at the Ferryhill Workmen's Club and then at the Greyhound pub – and that during that period he had consumed alcohol;

(b) the behaviour described by five separate witnesses is consistent with him being drunk and, having questioned them personally, I can see no reason to doubt their credibility. In particular, there is no evidence to support Cllr Farry's assertion that the complainants have conspired in some way for political reasons; and

(c) it provides the most obvious explanation as to why Cllr Farry did not attend the ceremony in accordance with the agreed plan and, in particular, why he did not light the beacon.

24. I find that Cllr Farry attended the ceremony in his official capacity. He knew full well that he was expected to light the beacon on the Council's behalf and had agreed to do so. He arrived late and was prevented from lighting the beacon because he was drunk. He cannot escape responsibility for his official functions simply because, as he told me, his mayoral chains were locked in the glove-box of his car.

25. For completeness, I should add that I make no separate finding that Cllr Farry was talking during the ceremony. The witnesses gave contradictory accounts about this. In any case, it hardly adds to my findings above. I will also add that, without meaning any disrespect to him, I have not placed any weight on Brian Gibson's evidence: not only was he not in attendance (he was at commemoration events in London), his information was third-hand.

26. Having found that Cllr Farry attended the beacon-lighting ceremony drunk while in his official capacity, I recommend that there should be a finding that he has breached:

(a) **paragraph 1 of the Code** because such behaviour is quite obviously disrespectful, above all, to the servicemen and women who are commemorated on Remembrance Sunday. It is also disrespectful to the residents of Ferryhill who had attended a solemn act of remembrance. Finally it is disrespectful to all of those who worked hard to put on the ceremony;

(b) **paragraph 6 of the Code** because such behaviour clearly brings the office of Mayor into disrepute. This was an official civic event at which the Mayor would be the public face of the Council and would perform a symbolic act of remembrance. I am hardly surprised that the complainants described themselves as being “*appalled*” by what had happened or, as one witness put it to me, that it was embarrassing for the town. For this reason, it seems to me that Cllr Farry brought not just his office but the Council as a whole into disrepute.

Cllr Atkinson’s complaint (COM 223)

27. The background to this complaint concerns the long term sickness absence of the Council’s Clerk (Derek Snowball) and a decision that was made at a meeting attended by Mr Snowball, the County Council’s HR officers and Cllr Atkinson, in late December 2018, that Mr Snowball would begin a phased return to work starting on Monday 7 January 2019.
28. It appears, for one reason or another, that the decision was not promptly reported back to Cllr Farry and the Personnel Sub-Committee, which he chaired. The problem – from Cllr Farry’s perspective – is that formal responsibility for making that decision rested with the Personnel Sub-Committee and that Cllr Atkinson (on the Council’s behalf) had approved the arrangements for Mr Snowball’s return without delegated authority. Cllr Farry called Cllr Atkinson around lunchtime on 4 January 2019 to discuss this and it is this conversation which is the subject of her complaint.
29. I acknowledge that Cllr Farry is probably correct that the Personnel Sub-Committee ought formally to have approved the arrangements for Mr Snowball’s return to work. I would add that the Council’s Sickness Absence Policy does not deal with what happens when the Clerk is unwell and that the arrangements for managing his absence were not clear – a point with which Cllr Farry agreed. I would also add that I have found no evidence of bad faith on the part of Cllr Atkinson and conclude that she was doing what she honestly believed she was required and permitted to do in the best interests of both the Council and Mr Snowball.
30. However, what I am actually concerned with is whether Cllr Farry behaved disrespectfully, or was bullying or intimidatory, towards Cllr Atkinson on the phone. Cllr Farry not only described this as “*rubbish*” and politically-motivated, he told me that Cllr Atkinson was screaming at him during the phone call and that he could barely get a word in edgeways.

31. On balance, I find that Cllr Farry did behave disrespectfully towards Cllr Atkinson on the phone. My reasons are as follows:

- (a) by the end of her meeting with me, having described the conversation and its background in some detail, Cllr Atkinson was in tears. She appeared to me to be a sincere and honest witness and I accept her account of the phone call. In particular, I consider it highly unlikely that she was screaming at Cllr Farry as he alleged;
- (b) ██████████ (County Council HR officer) told me that ██████ colleague had been called by Cllr Atkinson not long after the phone call with Cllr Farry and that Cllr Atkinson had sounded shaken, which ██████ thought was uncharacteristic of Cllr Atkinson;
- (c) Cllr Atkinson was acting in good faith and in what she considered to be the best interests of the Council and Mr Snowball; and
- (d) it is consistent with the follow-up email which Cllr Farry sent to Cllr Atkinson on or around 6 January 2019, which I find to be unnecessarily condescending in tone.

32. Having found that Cllr Farry behaved disrespectfully towards Cllr Atkinson on the phone, I would recommend that there should be a finding that he has breached **paragraph 1 of the Code**. While Cllr Farry *may* have had a good reason for his belief that the proper procedure had not been followed, this cannot justify behaving disrespectfully towards a fellow elected member. This is especially the case where they are dealing with personnel issues and not some contentious issue of policy.

33. Having only been asked to consider this one incident in isolation, I have concluded that the evidence cannot support a finding of bullying or intimidation. Therefore I do *not* find that Cllr Farry breached paragraph 2 of the Code.

Mr Snowball's complaint (COM 236)

34. Mr Snowball has been Clerk to the Council since 2013 and has served under a number of previous Mayors. His formal letter of complaint has six discrete elements to it but really boils down to a complaint of bullying.

35. "Bullying" refers to an attempt to undermine an individual in a way that is detrimental to their confidence and capability and which may harm their health.¹ I have borne in mind that, as

¹ *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), [126-127]

the clerk, Mr Snowball is the most senior officer of the Council and therefore it is important that members are able to scrutinise and, where justified, criticise his conduct.

36. The background to the complaint is long and complex. It would appear that the relationship between Mr Snowball and Cllr Farry began to break down at least as early as June 2017 when Mr Snowball apparently accused Cllr Farry of having made defamatory statements at a Council meeting of the same date. He later retracted these accusations. It is clear from the increasingly bad-tempered email exchanges between them that their relationship steadily deteriorated until July 2018 when Mr Snowball went on sick leave. That correspondence contains numerous disputes over matters of Council procedure, typically where Cllr Farry has proposed something and Mr Snowball has resisted the proposal. It is clear that Cllr Farry has become increasingly frustrated at what he perceives to be obstruction on the part of Mr Snowball. Mr Snowball, in turn, believes his position as Clerk is being undermined by Cllr Farry's unwillingness to accept his advice and decisions on matters of procedure. Mr Snowball told me that Cllr Farry routinely creates conflict between the two of them and that he felt constantly attacked by Cllr Farry to the extent that his confidence had been destroyed.
37. It is difficult from the outside to get a real sense of what was going on, especially when most of the surviving evidence is in the form of emails. I have reviewed the evidence leading up to July 2018, when Mr Snowball first went on leave, but I am satisfied that this clearly shows evidence of bullying by Cllr Farry. There are several incidents of petty disputes between the two in which Cllr Farry could have adopted a more polite or constructive tone but these are equally consistent with a member robustly challenging decisions made by the clerk.
38. However, things changed in July 2018. Mr Snowball was signed off work due to stress and began a period of long term sickness absence on or around 18 July. He attributed the breakdown in his mental health to Cllr Farry's behaviour towards him. Cllr Farry cannot have been unaware of that fact. Firstly, he chaired the Personnel Sub-Committee which was overseeing Mr Snowball's absence. Secondly, for precisely this reason, he had agreed that Cllr Atkinson (and, before her, ██████████) should attend Mr Snowball's meetings with County Council HR officers to represent the Council, rather than Cllr Farry himself. Thirdly, he was kept updated (albeit in general terms, with no specific details due to confidentiality) by the County Council about these meetings and the plan for a phased return to work.
39. In the period from July 2018, the following incidents stand out.
40. Firstly, notwithstanding their earlier relationship of conflict, or the fact that Mr Snowball blamed Cllr Farry for a breakdown in his mental health, Cllr Farry insisted on directly

managing Mr Snowball's absence and return to work: he insisted on making the decision to approve his return (via the Personnel Sub-Committee, which he chaired); and rejected advice by County Council HR officers to continue to involve Cllr Atkinson in managing Mr Snowball's return. This is despite the obvious potential for further conflict inherent in that arrangement.

41. Secondly, having learned that a date had been agreed for Mr Snowball's return to work (see paragraphs 27-28 above), Cllr Farry personally intervened to postpone it – ostensibly so that the decision could be formally taken by the Personnel Sub-Committee. This is clear from an email sent by [REDACTED] to Cllr Farry on 4 January 2019 which records Cllr Farry's objection and insistence that the date be postponed until a Personnel Sub-Committee meeting could be arranged. Cllr Farry would have been aware that this decision could distress an employee preparing to return to work after a long period of sickness absence – especially when it was made by the very person the employee blames for their need to be on sick leave. I find this intervention to be oppressive and note that it stands in stark contrast to Cllr Farry's later decision, made without any resolution of the Personnel Sub-Committee, to place Mr Snowball on gardening leave (as to which, see paragraph 45 below).

42. Thirdly, Cllr Farry has not made a sincere effort to support Mr Snowball on his return to work. Both of the factors described in paragraphs 40 and 41 above have obviously contributed to a hostile environment for Mr Snowball to return to. Cllr Farry accepts that he and Mr Snowball are barely on speaking terms, outside of formal meetings. As the employer, the onus is on Cllr Farry to be supportive. He has not been supportive. A clear example of Cllr Farry's unsupportive attitude towards Mr Snowball can be found in one of the very first emails he sent to Mr Snowball following his return, on 7 February 2019:

“Dear Derek

Can I thank you for your email and also welcome you back to your roll as Town Clerk after your long absence.

I can clearly understand your guidance notes! However could you please provide me with the LGA and the legal position on declaring an apology for none attendance?

In my own mind I think this is nit picking and none productive to the Council and less then what I would expect from the Town Clerk. As you know as Chair I'm here to discuss any problems/issues you have in your roll as Clerk.

Your sincerely

Dave Farry Chair Ferryhill Town Council”

43. Fourthly, Cllr Farry has on several occasions accused Mr Snowball of political bias. This is a damaging accusation to make against the Clerk and undermines his position. Even in our interview, he openly described Mr Snowball's decision to call a meeting in July 2018 to consider a motion of no confidence in the Council's previous Chair (which was presented by the Labour group) as demonstrating Mr Snowball's "*bias and stupidity*". I have found no evidence to substantiate this unwarranted accusation.
44. Finally, the most concerning episode has occurred during the course of my investigation. I was provided with a copy of a letter dated 22 March 2019 which was personally handed on the same date to Mr Snowball by Cllr Farry at a catch-up meeting which [REDACTED] also attended. That letter informed Mr Snowball that:

"Over the last few weeks some of your behaviour and actions at work have lead myself and other Members to question whether you are medically and mentally fit to undertake your duties, especially as you have only very recently returned from long term sickness absence.

As your employer, the Town Council has a duty of care towards all of its employees and I take that responsibility very seriously. Consequently, I intend to refer you to the Council's Occupational Health Adviser (OHA) who will be asked to advise the Council on whether you are currently fit to attend work.

I will do that as soon as possible and until such time as you have attended an appointment with the OHA and I have received their advice, you are not required to attend work.

I would advise you to also seek the advice of your own Doctor and if you do and are subsequently signed off work as unfit for duty, then this absence will be considered as sickness.

If not then you will be effectively on 'garden leave' from Monday 25 March 2019.

Can I stress that I am taking this action primarily in your own interests to ensure that your attendance at work is not having a detrimental effect upon your health. I am also concerned, of course, to ensure that the Council meets its duty of care responsibilities.

During this period you should not undertake any work from home or visit the Council offices, without my prior agreement.

Yours sincerely

Cllr David Farry

Chairman

Ferryhill Town Council"

45. Subsequent to issuing my report in draft, I learned that Cllr Farry had taken advice from the Council's HR advisers, NEREO, and that this letter was copied more or less word-for-word from that advice. Nonetheless, I am troubled by the letter for a number of reasons:

- (a) Cllr Farry had no medical evidence to justify this decision and was not qualified to make any clinical judgment about Mr Snowball's health. I accept that an employer is entitled to raise concerns about an employee's fitness for work. However, as the letter itself acknowledges, no referral to Occupational Health had yet been made;
- (b) in fact, as things turned out, both the Occupational Health adviser and Mr Snowball's GP concluded that he was fit to be at work. Therefore Cllr Farry's concerns were not justified;
- (c) I cannot see evidence that Cllr Farry had formally raised with Mr Snowball the issue of his fitness for work before this letter;
- (d) nor can I see any evidence that Cllr Farry took advice from an occupational health adviser before making this decision. The advice from NEREO was based on whatever information Cllr Farry himself had provided to them – which turned out to be unjustified;
- (e) the decision was made personally by Cllr Farry as he had no authorisation from the Personnel Sub-Committee (authorisation was granted retrospectively). This stands in stark contrast to his insistence that the Personnel Sub-Committee authorise Mr Snowball's return to work.

46. The letter was personally handed to Mr Snowball at a meeting with Cllrs Farry and Cansella. Cllr Farry provided me with a copy of an audio recording of that meeting, which I have listened to. It makes for uncomfortable listening. Mr Snowball appears to have been unaccompanied. During that meeting (which lasted for around 2 hours), the two councillors subjected Mr Snowball to a series of hostile questions and accusations, taunted him, cut him short when trying to speak and were plainly unwilling to listen to his concerns about the lack of support he had received on his return to work.

47. As I observed above, this has not been an easy case to resolve. It is difficult to reconstruct the relationship between Cllr Farry and Mr Snowball from the outside. Therefore the audio recording is perhaps the most revealing evidence of that relationship and it is clear evidence of bullying. I have also considered Cllr Farry's demeanour during his two interviews with me during which he showed a lack of respect and genuine concern for Mr Snowball's wellbeing.
48. Taking all of this evidence into account, I am satisfied that Cllr Farry has embarked on a sustained course of conduct, beginning just before Mr Snowball's return to work and then during his first few months back at work, with the intention of undermining Mr Snowball. I am also satisfied, having spoken with Mr Snowball face to face, that this conduct has caused him considerable upset and distress.
49. For all of these reasons, I would recommend a finding that Cllr Farry has breached **paragraph 2 of the Code** by behaving in a way which a reasonable person would regard as bullying.

Conclusion

50. In summary my findings are as follows:

- (a) COM 211, 212 and 213: Cllr Farry has breached paragraphs 1 and 6 of the Code;
- (b) COM 223: Cllr Farry has breached paragraph 1 of the Code;
- (c) COM 236: Cllr Farry has breached paragraph 2 of the Code.

Matt Lewin
Cornerstone Barristers

25 June 2019