

# WHITEHAVEN TOWN COUNCIL

**Clerk to the Council:**

Marlene Jewell

Telephone: 01946 67366

**Chairman:**

Councillor Brian O'Kane

**To: Members of the Whitehaven Town Council**

You are duly **SUMMONED** to attend an **EXTRAORDINARY** meeting of the **WHITEHAVEN TOWN COUNCIL** which will be held at

**Venue: THE ENNERDALE ROOM, WHITEHAVEN CIVIC HALL**

**Date: Tuesday 6<sup>th</sup> February 2018**

**Time: 6.00pm**

Signed.....*Marlene Jewell*.....Dated.....*31<sup>st</sup> January 2018*  
Marlene Jewell, Clerk

## AGENDA

### 1. Apologies for Absence

To receive apologies for absence

### 2. Declarations of Interest

To receive declarations of interests by elected members in respect of Agenda items

If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact the Clerk at least 24 hours in advance of the meeting.

### 3 Public Participation

4. **MV700 Gladiator Chewing Gum Removal machine** -to consider a report to suspend Standing Orders to hire a chewing gum removal machine

5 **Employment Tribunal Judgement** – to consider a report and the attached Employment Tribunal Judgement and to make a decision on this

6. **Audit and Governance Decision Notices** – to consider five Decision Notices of Copeland Borough Council’s Audit and Governance Committee and the recommendations made therein
7. **Ceremonial Medals** – to consider a report on two ceremonial medals purchased and to decide what is to be done with them

**MV700 Gladiator Chewing Gum Removal Machine**

**Purpose of the Report and Recommendation**

To inform Members about a recent demonstration of a chewing gum removal machine and of a quote received from the company to remove chewing gum from streets in Whitehaven

Recommendation

1. That in accordance with Financial Regulation 18.2 the Council considers the resolution to suspend Financial Regulations made at the Council meeting on 25<sup>th</sup> January 2018 together with the reasons for suspension and risk assessment which appear in paragraph 1.5 hereof in order to hire the MV 700 Gladiator machine for a five day period at a cost of £11,000.00 plus accommodation costs for 3 operatives to remove chewing gum from King Street, Lowther Street, Tangier Street, Market Place, part of Duke Street and Civic Hall.

**1.0 INTRODUCTION**

- 1.1 On 17<sup>th</sup> January 2018 there was a demonstration of a MV700 Gladiator chewing gum removal machine in Whitehaven. Present at the demonstration were Councillor O’Kane, Councillor Maudling, Councillor Roberts Vanessa Gorley and Janice Carrol (CBC). A copy of the company’s web page is attached at Appendix 1 and as members will see there is a video that can be watched showing the machine in action.
- 1.2 Everyone was impressed by the performance of the machine and the way it removed all traces of chewing gum from the pavement and also cobbled areas. It also removed the moss on the pavement.
- 1.3 The Sub-Contractors for Addex (who are the manufacturers of the MV700 machine) have said that they can clean King Street, Lowther Street, Market Place, Tangier Street, part of Duke Street and outside the Civic Hall over a 5 day period at a cost of £11,000.00 plus accommodation costs for 3 operatives.
- 1.4 Addex is the only company that produces this unique machine and it will not therefore be possible to get 3 quotes from other companies and if the Council wishes to go ahead with this project it will be necessary to

suspend Financial Regulation 11.

1.5 Financial Regulation 18.2 says that the Council may by resolution of the Council duly notified prior to the relevant meeting of the Council suspend any part of the Financial Regulations provided that reasons for the suspension are recorded and that an assessment of the risks arising has been drawn up and presented in advance to all members of the Council. The reason for the suspension is that 3 quotes cannot be obtained as no other companies supply this machine. The assessment of the risks is as follows:-

- That the machine is not effective which is not the case as it has been observed in action
- That damage could be done to pavements by using the machine. This is not the case as the machine uses steam and chemicals and is not high pressure
- That the work could be done cheaper by another company. This is difficult to assess as no other companies manufacture the same machine
- That it is not value for money.

1.6 At the Council meeting on 25<sup>th</sup> January 2018 and in accordance with Financial Regulation 18.2 the Council made a resolution to suspend Financial Regulations for the reasons and the risk assessment given to the Council at that meeting and which appear in paragraph 1.5 above. This resolution is the prior notification and this meeting of the Council is the relevant meeting.

1.7 The Sub contractor for the Addex machine has said that they will be working in the north at The Metro Centre and Old Trafford very shortly and therefore it would only be a short distance to come to Whitehaven following that.

1.8 As Members will be aware the Chairman said that BEC have said that they would contribute £2,000 towards this project.

## 2.0 RECOMMENDATION

2.1 That in accordance with Financial Regulation 18.2 the Council considers the resolution to suspend Financial Regulations made at the Council meeting on 25<sup>th</sup> January 2018 together with the reasons for suspension and risk assessment which appear in paragraph 1.5 hereof in order to hire the MV 700 Gladiator machine for a five day period at a cost of £11,000.00 plus accommodation costs for 3 operatives to remove chewing gum from King Street, Lowther Street, Tangier Street, Market Place, part of Duke Street and Civic Hall

# Manchester

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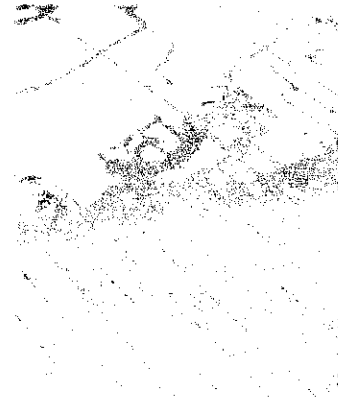
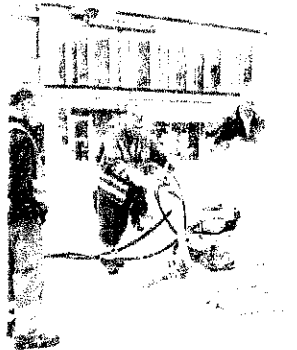
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the wide scale removal of  
ingrained dirt, bringing surfaces  
back a high level of cleanliness.

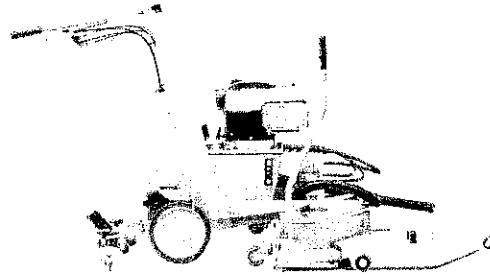
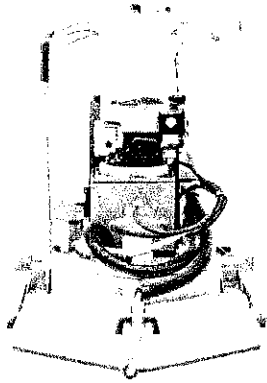
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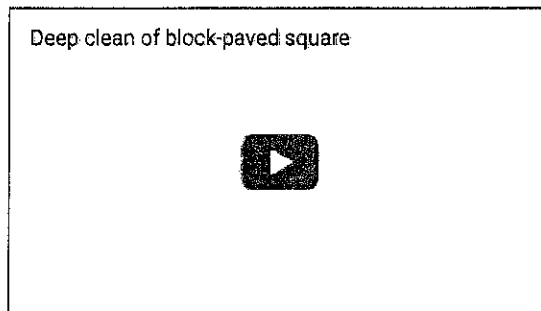
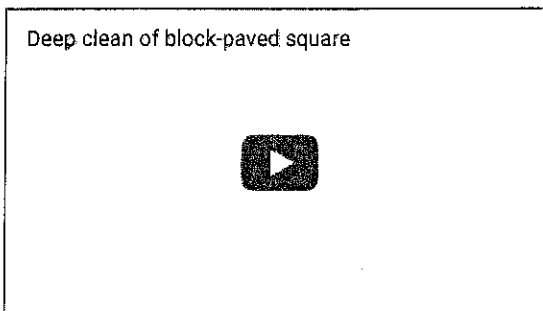
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## **Employment Tribunal Judgement**

### **Purpose of the Report and Recommendation**

That Members consider the Employment Tribunal Judgement and the action to be taken on the Judgement.

## **1.0 INTRODUCTION**

- 1.1 Members will be aware that the Council was recently involved in a claim involving a former employee and that this was heard at an Employment Tribunal in January 2018.
- 1.2 The Employment Tribunal Judgement has now been received together with the written reasons for the decision and is attached at Appendix 1.

## **2.0 LEGAL POSITION**

- 2.1 The Judgement was dated 29<sup>th</sup> January 2018 and there are time constraints depending on what action the Council wishes to take in respect of the Judgement that all run from this date.
- 2.2 In the Judgement the Tribunal ordered that the Council pay the Claimant a sum of money. The Council has 3 options:-
- (i) To pay the judgement sum which must be paid within 14 days of the date on which the Judgement was sent (29<sup>th</sup> January 2018). If it is paid later than that there is interest payable on the judgement sum at the rate of 8% per day
  - (ii) To ask the Employment Tribunal to reconsider the judgement or decision. Again an application for reconsideration must be made 14 days of the date the Judgement was sent (29<sup>th</sup> January 2018)
  - (iii) To appeal the judgement which must be made within 42 days of 29<sup>th</sup> January 2018 if the judgement contains written reasons for the judgement. The grounds for appeal may be that
    - a) the Tribunal has made a mistake in the application of the law; or



b) the judgement was one which no reasonable tribunal could have reached

### **3.0 RECOMMENDATION**

3.1 That Members consider the Employment Tribunal Judgement and decide the course of action to take



## EMPLOYMENT TRIBUNALS

To: Ms J McHale Young  
Archers Law LLP  
Lakeside House  
Kingfisher Way  
Stockton on Tees  
TS18 3NB

Alexandra House, 14-22 The Parsonage,  
Manchester, M3 2JA

Office : 0161 833 6100  
Fax: 0870 739 4433  
DX 743570 Manchester 66

Your Ref:

e-mail: [manchesteret@hmcts.gsi.gov.uk](mailto:manchesteret@hmcts.gsi.gov.uk)

To: Whitehaven Town Council  
Councillor Raymond Gill  
Room 3 Civic Hall  
Lowther Street  
Whitehaven  
Cumbria  
CA28 7SH

Your Ref:

Date 29 January 2018

**Case Number: 2401796/2017**

### Claimant

Mr L Abrahams

v

### Respondent

Whitehaven Town Council

## EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment is enclosed. There is important information contained in 'The Judgment' booklet which you should read, including guidance about enforcement. The booklet can be found by entering the form number **T426** in the **form/leaflet number** search box on the following link <http://hmctsformfinder.justice.gov.uk>

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to reconsider a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits.** An application for a reconsideration must be made within 14 days of the date the decision was sent to you. An application to appeal must generally be made within 42 days of the date the decision was sent to you; but there are exceptions: see the booklet.


The booklet also explains about asking for written reasons for the judgment (if they are not included with the judgment). These will almost always be necessary if you wish to appeal. You must apply for reasons (if not included with the judgment) within 14 days of the date on which the judgment was sent. If you do so, the 42 day time limit for appeal runs from when these reasons were sent to you. Otherwise time runs from the date the judgment was sent to you or your representative.

For further information, it is important that you read the Judgment booklet. You may find further information about the EAT at <https://www.gov.uk/appeal-employment-appeal-tribunal>

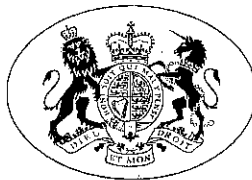
An appeal form can be obtained from the Employment Appeal Tribunal at: Employment Appeal Tribunal, Second Floor, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX or in Scotland at 52 Melville Street, Edinburgh EH3 7HS.

Please note that all judgments are published on the online judgment register unless an Employment Judge orders otherwise. The online judgment register can be accessed via: <https://www.gov.uk/employment-tribunal-decisions>

Yours faithfully,



MISS L HUNTER  
For the Tribunal Office



# THE EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant:** Mr L Abrahams

**Respondent:** Whitehaven Town Council

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Heard at:** Carlisle Hearing Centre

**On:** 10 January, 2018

**Before:** Employment Judge Nicol (sitting alone)

### Representation

**Claimant:** Mr Collins, Counsel

**Respondent:** Ms J McLeod, HR adviser

### RESERVED JUDGMENT

It is the Judgment of the Tribunal that

- 1 by agreement with the parties, the claimant's complaint that he did not receive all of the holiday pay to which he was entitled on the termination of his employment is well founded and that he is entitled to the agreed compensation of £1509.37
- 2 the claimant's complaint that he was entitled to payment for accrued time off in lieu for additional hours worked to which he was entitled on the termination of his employment is not well founded and is dismissed
- 3 by agreement with the parties, the claimant's complaint that the respondent breached his contract of employment by making deductions from his wages in respect of intended pension contributions but not contributing them to a pension scheme is well founded and that he is entitled to the agreed compensation of £2358.84

- 4 the claimant's complaint that the respondent breached his contract of employment by not contributing to a pension scheme for his benefit is well founded and that he is entitled to the compensation of £5774.35
- 5 the claimant's claim for interest on any or part of the sums awarded to him is not well founded and is dismissed
- 6 the claimant's claim for the recovery of bank charges is not well founded and is dismissed
- 7 by agreement with the parties, the claimant was overpaid wages during his employment and received an excess of £1331.65
- 8 the claimant was overpaid money after the termination of his employment and received £2442.45 to which he was not entitled
- 9 with regard to Section 207A of the Trade Union and Labour Relations Act, 1992, the claims to which these proceedings relate
  - 9.1 concern matters to which a relevant Code of Practice applies,
  - 9.2 the respondent has failed to comply with that Code of Practice
  - 9.3 that failure was unreasonable
  - 9.4 it is just and reasonable in all the circumstances to increase the award to the claimant and
  - 9.5 that increase should be by twenty per cent

and the Tribunal orders the respondent to pay to the claimant the sum of £7630.95 as calculated and set out in the Reasons annexed to this Judgment

## REASONS

1 These are complaints by Leslie Abrahams, the claimant, against Whitehaven Town Council, the respondent, arising out of his employment with the respondent as the Clerk (Proper Officer and Responsible Financial Officer). The claimant's employment with the respondent commenced on 7 December, 2015, and the effective date of termination was 7 December, 2016, when the claimant had been in continuous employment for one complete year.

2 The claimant alleges that he did not receive all of the holiday pay to which he was entitled on the termination of his employment, that he did not receive payment for time accrued as time off in lieu, that he is entitled to repayment of pension contributions deducted from his salary, that he is entitled to compensation because the respondent did not make contributions towards a pension scheme for the benefit of the claimant and that he was dismissed without the relevant ACAS Code of Practice having been followed. The claimant also claims interest and bank charges. The respondent accepts that it did not pay the claimant all of the holiday pay to which he was entitled and that he is entitled to repayment of the pension contributions deducted from his salary but disputes the other allegations. Further, the

respondent claims to set off against any sums found due to the claimant overpayments of wages, the amount of which is accepted by the claimant, made during the course of his employment and overpayments made after the termination of his employment, which the claimant disputes.

3 The outstanding issues to be decided by this Tribunal are

- 3.1 did the claimant accrue hours to be taken as time off in lieu for which he was not paid during the course of his employment and, if so, to what remedy is he entitled
- 3.2 is the claimant entitled to compensation because the respondent did not make contributions to a pension scheme for the benefit of the claimant and, if so, to what remedy is the claimant entitled
- 3.3 is the respondent entitled to claim the benefit for the overpayment of wages during the course of the claimant's employment
- 3.4 is the respondent entitled to claim the benefit for the overpayment made to the claimant after the termination of his employment
- 3.5 did the respondent follow the relevant ACAS procedure when it dismissed the claimant and, if not, to what additional remedy, if any, is the claimant entitled?

4 The Tribunal heard evidence from the claimant and from Raymond Gill, mayor, on behalf of the respondent. The witnesses gave their evidence in chief in written statements (Mr Gill asked that one paragraph of his statement be deleted) and, as allowed by the Tribunal, answering supplementary questions. The statements were read by the Tribunal at the start of the hearing and each witness confirmed the truth of his statement at the start of his oral evidence. All witnesses were cross-examined and answered questions from the Tribunal. The Tribunal had before it a bundle of documents prepared by the respondent, marked 'Exhibit R1' to which additional documents were added at the start of the hearing by the claimant. Both parties made oral closing submissions.

5 From the evidence that it heard and the documents that it saw, the Tribunal finds the following facts.

6 Although the various versions of the claimant's contract of employment make reference to a job description, one was not provided, although this may have been of assistance. The situation was further complicated because the contracts incorporate the National Agreement on Pay and Conditions of Service of the National Joint Council for Local Government Services (known as 'the green book') but, again, a copy was not made available to the Tribunal although concessions made by the respondent were based on its contents. Also, the Tribunal was not provided with any details of an appropriate pension so that it could be aware of the provisions, if any, if a beneficiary of the scheme ceased to be a member less than one year after joining. It is therefore assumed that there are no relevant provisions.

7 The respondent is a small local authority in the area of Copeland Borough Council. It was formerly known as a parish council but became a town council in 2015 with newly elected councillors. It only employs two people but at times there was only the claimant as an employee. The councillors have limited experience as town councillors, although some have experience at district level. It appeared that the respondent did have some support from Copeland Borough Council.

8 The clerk to the respondent is the senior employee, when more than one, and holds a very responsible position because the postholder, among other things, fulfils the statutory functions of both the proper officer and the responsible financial officer. In some local authorities, these two roles are held by different people but this is not necessary and is at the discretion of the local authority. In local authorities such as the respondent, it would be expected that the clerk would have full knowledge of the respondent's administrative procedures, including levels of authority, and its financial procedures and would be able to give advice on such matters. The clerk would also be expected to put into effect the respondent's decisions, including arranging authorised payments.

9 The claimant was offered the post of clerk in a letter dated 2 December, 2015. The letter stated that the post was accountable to the respondent's full council. On starting, he was to report to the then chairman, the office that was subsequently renamed 'mayor'. The claimant countersigned the letter to confirm acceptance. The claimant's contract of employment went through various versions before it was finally agreed by both parties, which took several months.

10 The Tribunal was satisfied that as part of his remuneration package the claimant was to be offered a pension to be paid for by contributions from the claimant and the respondent as was eventually recorded in the minutes of the respondent's staffing committee meeting held on 13 April, 2016. However, the respondent was not a member of an appropriate pension scheme at the start of the claimant's employment. One of the claimant's tasks was to enrol the respondent in such a scheme. In anticipation of this, the claimant arranged that deductions were made from his salary payments of the contribution that he would be expected to make when the pension scheme was operating. These were to be held by the respondent until they could be paid over to the pension provider. There is considerable documentation about the attempts to join a scheme but it was not in dispute that the respondent never joined a scheme during the claimant's employment. The respondent conceded that the claimant's contributions should be paid to him but disputed that he was entitled to compensation for the loss he would eventually suffer as a result of not having had the benefit of the respondent's contributions. The claimant's contributions amounted to £2358.84 and the respondent would have contributed at the rate of £564.49 in March, 2016, and thereafter at the rate of £564.71 per month.

11 On 19 May, 2016, the respondent resolved to join the Local Government Pension Scheme. A copy of the minute was sent to the operator of the scheme on 28 October, 2016, by the claimant. It was not clear why he had not done this earlier as he was aware of the need to provide the minute from an email dated 7 March, 2016.

12 As the Responsible Financial Officer, the claimant was responsible for properly administering the respondent's finances. The Tribunal understood that

authority from the respondent's full council was required before payments could be made. The actual payments required the signature of two out of four authorised signatories, which did not include the claimant, for cheques or by standing order or other form of bank transfer.

13 Management of the respondent's payroll was contracted out to Cumbria Payroll Services Limited. However, it appeared that salaries were paid by the respondent using standing orders. This does not allow for any flexibility as a fixed amount is paid each month. The bundle included details from the respondent's bank that showed that from April, 2016, to the end of his employment, the claimant was paid £2381.34 net each month.

14. During his employment with the respondent, the claimant's initial tax code was 1060L and this was applied to his salary until the payment in March, 2016. From April, 2016, this changed to 1100L. This, of itself, would result in a change in the net pay that the claimant received. The claimant's net pay, as shown on his payslips was £2237.00 plus a few pence, the precise amount varying each month.

15 It follows from the above that the claimant was allowing himself to be over paid at the rate of £144.34 per month.

16 The claimant attempted to explain this by saying that he was initially taxed at an emergency rate and that there were problems in sorting it out. He also said that it took time to get authority to vary standing orders. Normally, it would be expected that an emergency tax code would only apply for a short time until HMRC notified the employer of the correct tax code. If the initially applied tax code was actually correct, it would not be changed. The change in the claimant's tax code can be explained by the change in the rate of personal allowances on the commencement of a new tax year. The tax code for the 2016/7 financial year appeared to be the intended tax code. The claimant did not produce any evidence to try to show that it was incorrect or that he had sought to have it varied.

17 Whatever, the situation may have been, there was not any evidence before the Tribunal to confirm that the claimant had drawn the matter to the attention of the respondent or had attempted to have the rate of the standing order changed. The respondent did receive regular reports concerning its financial affairs but it is unlikely that these would have been sufficiently detailed to identify the error in the payments made to the claimant.

18 The claimant conceded that he had been overpaid and that the respondent was entitled to repayment of the excess.

19 An early version of the claimant's contract of employment included the provision that

You are required to work 37 hours per week. Such hours will be agreed with the Chairman of the Council or the Chairman of the Staffing Committee and will be subject to change from week to week to accommodate evening meetings. Normal working hours will be 7 hours 24 minutes per day between 0900 hours and 1700 hours each days but variable to enable time to



accommodate evening meetings. Hours agreed shall be notified to the Staffing Committee on a monthly basis.

Also that

If you work more than your normal working hours, then subject to the Council's prior approval, you may take time off in lieu at a time to be agreed between you and the Council.

20 In what was said to be the final version of the contract, the second of the above provisions was retained but the first was reduced to

You are required to work 37 hours per week from 0900 to 1630.

21 The respondent conceded that any time off in lieu not taken on the termination of employment would be paid by the respondent at the claimant's normal rate of pay.

22 The claimant accepted that he did adjust his hours to allow for evening meetings but said that he did not take time off to compensate for hours worked at weekends. However, he did not claim to have obtained specific authority to do this and it appeared to have developed as custom and practice. The hours involved would have been relatively insignificant given the frequency of meetings of the respondent and their length. He also stated that it was agreed that he could take time off in lieu for hours worked at weekends by the chair of the staffing committee.

23 Mr Gill stated that the claimant refused to agree to record his actual hours worked and the claimant failed to produce to the Tribunal any records of the hours that he worked. The respondent claimed that the claimant took more time off during normal working hours than he admitted but the lack of evidence of the hours worked meant that this could not be verified.

24 During the second half of 2016, the claimant contends that he worked at weekends on six events but that he did not have an opportunity to take time off in lieu of the additional time worked. For each of the activities, the claimant claimed two days were worked, even when the activity only took place on one of them, and that he should be allowed two days' time off in lieu for each event. The claimant did not produce any evidence to support this, such as diary notes, notes of appointments or any other records. Similarly, there was not any supporting evidence to show what the claimant did in respect of these events or why his attendance was necessary. He claimed that he had approached the chair of the staffing committee who had confirmed that time off in lieu would be allowed for each of these activities. Again, there was not anything in writing to confirm this and neither party called the chair of the staffing committee to give evidence.

25 As the claimant says in his statement

The Clerk's primary responsibility is to advise the Council and to recommend ways in which decisions can be implemented. The Clerk must recognise that the Council is responsible for all decisions and that he/she takes instructions from the Council as a body. The Clerk is not answerable to any individual Councillor – not even the Chairman.

26 The one person within the respondent who should have been aware of the decision making process, levels of responsibility and management lines was its clerk, that is the claimant. Mr Gill indicated, and the Tribunal accepted, that the respondent's committees were advisory in nature and did not have decision making powers. This is consistent with the minutes in the bundle and the decision making processes that they reveal. Mr Gill also indicated that the only person who might have been approached as an individual to give authority to the claimant was himself but this had not happened.

27 Within the bundle are details of some of the events but it is not clear from these how much involvement the claimant had. There are also minutes of meetings where the activities were discussed and it would have been quite possible and appropriate for reference to the claimant requesting time off in lieu to have been noted but there are not any references to suggest a request was made.

28 It appeared that the relationship between the claimant and the respondent did not progress as the respondent wished. By a letter dated 30 November, 2016, Mr Gill wrote to the claimant suspending him from his duties on the grounds that the relationship had broken down and that the claimant was alleged to have 'failed to take instructions or have taken actions outside of your remit...'. The claimant was told that a meeting of the full council would be convened to make a decision 'into the next steps of the investigation process'.

29 A meeting of the respondent was held on 6 December, 2016, at which the claimant was not present. The respondent's representative was present as an adviser and she gave advice on 'aspects of employment law relevant to the issue and the legality of dismissal in the way that was proposed'. The meeting resolved, among other things, 'to dismiss the clerk forthwith on the grounds of gross misconduct particulars of which would be set out in the letter of dismissal' and that 'a forensic audit be undertaken into the council's accounts'.

30 In accordance with the decision of the full council of the respondent, Mr Gill signed a letter on 7 December, 2016, to the claimant informing him that he was being dismissed with immediate effect with one month's pay in lieu of notice. The letter was hand delivered to the claimant's address, although he claims that he was not present at the time. However, this was the address that the respondent had for the claimant and his employment ended on that date.

31 Also on 7 December, 2016, the claimant sent Mr Gill an email asking that all correspondence between himself and the respondent should be conducted by email 'in a timely manner as your failure to do so may prejudice my right of appeal'. It may be inferred from this that the claimant was aware of the decision to dismiss him.

32 A further email was sent to Mr Gill on 15 December, 2016, acknowledging receipt of the letter, referring to the ACAS Code of Practice and dealing with how the payment in lieu of notice should be paid. The claimant also asked about how he might appeal against the decision of the respondent. Apparently, in response to this, Mr Gill wrote stating that the claimant's salary for December, 2016, would be paid on the usual day, as would his payment for January, 2017, after which the standing order would be cancelled. Mr Gill claimed to have had advice on this although he did

not appear to have authority for any change. In any event, the claimant would not have known about the advice.

33 On 25 May, 2017, Mr Gill wrote to the claimant seeking repayment of the overpayment of salary of £143.52 per month referred to above, including for the months of December, 2016, and January, 2017. Mr Gill did not refer to the claimant receiving payment for more than the one month's notice.

34 The claimant did not produce any evidence to suggest that he had suffered any consequential loss as a result of payments not received or that he had altered his position because of amounts that he received but should not have. No explanation was provided as to why, from when or in respect of what the claimant should receive interest.

35 The contentions of the parties were explained in their closing submissions. Briefly, the claimant contends that it was part of his remuneration package that he would receive the benefit of a pension to which he and the respondent would make contributions during the course of his employment but he has lost the benefit as the respondent did not make its contributions. Further, he was given authority to take time off in lieu in respect of time worked on six weekends but has not been paid for the hours that he says that he worked. Still further, the claimant contends that he was dismissed without the provisions of the relevant ACAS Code of Practice being followed. The respondent contends that the claimant is not entitled to compensation for the contributions that the respondent would have paid if the claimant had arranged for the respondent to participate in a pension scheme. Further, that he did not have authority to take time off in lieu of time worked at weekends and/or he did not work the hours claimed and/or he took time off in lieu, whether authorised or not. Still further, the claimant has had the benefit of overpayments made to him by the respondent for which the respondent should receive credit. Finally, the respondent contends that it was entitled to dismiss the claimant at the time when and in the manner which it did.

36 The Tribunal had regard to the Employment Tribunals Extension of Jurisdiction (England and Wales) Order, 1994, the Working Time Regulations, 1998, Section 207A of the Trade Union and Labour Relations (Consolidation) Act, 1992, and Part II of the Employment Rights Act, 1996. The Tribunal also referred to the authorities referred to by the parties.

37 In this case, the claimant was, in effect, the executive arm of the respondent. He was in a position of trust with the respondent expecting to be able to rely on his advice and support. There was little evidence before the Tribunal to show how the relationship between the parties developed but there are some indicators. For example, the claimant allowed himself to be overpaid without any evidence that he tried to correct the situation. Also, the enrolment of the respondent in a pension scheme was largely dependent on the claimant processing the matter efficiently but little seems to have been done. The claimant was, or should have been, aware of the limits on his own authority and that of individual councillors.

38 With regard to holiday pay, the claimant enjoyed a contractual entitlement to leave well in excess of the minimum in accordance with the Working Time Regulations. The respondent conceded that he was contractually entitled to be

compensated for any leave not used at the time of the claimant's dismissal and this was agreed in the sum of £1509.37.

39 In respect of time off in lieu, the respondent conceded that if there was any outstanding at the date of the claimant's dismissal, he was entitled to compensation for that time. However, it denied that any time was outstanding.

40 The claimant was unable to itemise the amount of time off in lieu that he was claiming. He could only refer to events where he said he had worked additional hours without taking time off in lieu. For each of these events, he claimed two days' pay, even where the event took place on a single day. He then said that he had the authority of the chair of the staffing committee to work the additional hours and claim the time off in lieu. However, he did not provide evidence of how the chair of the staffing committee's alleged authority arose. The respondent denied that such authority existed. The claimant's contract of employment had been varied to exclude specific reference to the chair of the staffing committee having authority. On the balance of probability, the Tribunal doubted that the claimant did seek authority to work additional hours and then take time off in lieu. However, even if this is not correct, the claimant was the one person who knew or ought to have known the limits on the authority of individual councillors and how the necessary authority should have been obtained. The claimant accepted that he did adjust his working hours, apparently on his own authority, to take into account evening events and the respondent contended that he made further adjustments for the weekend working, whether authorised or not. The claimant did not produce any records of the hours that he actually worked. Having regard to all of the circumstances, the Tribunal finds that the claimant did not have authority to work additional hours and to take time off in lieu and this head of complaint therefore is not well founded and is dismissed.

41 With regard to the situation concerning the claimant's pension, the problem arises because the claimant failed and/or was unable to obtain the registration of the respondent with a pension provider. The respondent conceded that the claimant was entitled to compensation for the contributions that he actually made. Notwithstanding the extent that any failure on the part of the claimant may have caused and/or contributed to the problem, the Tribunal finds that the claimant was contractually entitled to the benefit of being a member of the pension scheme. This would have included the benefit produced by his own contributions and those of the respondent. The Tribunal therefore finds that the claimant is entitled to compensation for the loss of the benefits that he would have received from both sets of contributions and should be compensated accordingly.

42 The agreed amount of pension contributions made by the claimant was £2358.84. This was for a period of eleven months from March, 2016, to January, 2017. Whilst this sum was agreed, that agreement was reached in advance of the Tribunal making its findings in respect of the final payment made to the claimant in January, 2017, as to which and the consequences of this agreement, please see below.

43 The compensation for the contributions that the respondent should have made needs to be calculated for the period March, 2016, to December, 2016, plus a further seven days to take into account the one month's pay in lieu of notice. The

rate of contributions should have been £564.49 for March, 2016, and £564.71 per month thereafter.

Compensation is calculated as follows

March, 2016,		£564.49
April to December, 2016,	564.71 x 9	£5082.39
Plus 7 days	564.71x7/31	<u>£127.47</u>
Total		£5774.35

44 In respect of interest, the Tribunal was not shown any authority on which the claimant relied or provided with any reason why this item should be allowed. This head of complaint is therefore dismissed.

45 Similarly, the claimant did not produce any evidence to suggest that he incurred bank charges as a result of the failure of the respondent and this head of complaint is also dismissed.

46 There are many leading cases dealing with recovery of overpaid sums. It is now well established that an overpayment is recoverable unless

- 46.1 The employer has led the employee to believe that he or she is entitled to treat the money as his or her own
- 46.2 The employee has in good faith changed his or her position, that is spent the money believing it to be his or her own, and
- 46.3 The overpayment was not caused primarily by the fault of the employee.

47 The respondent sought to offset against any award in favour of the claimant sums already paid to the claimant. These were the salary overpayments and the sum beyond the month's pay in lieu of notice paid to the claimant after the termination of his employment. The claimant did not dispute the principle that the respondent was entitled to do this and conceded that the salary overpayments had taken place, including the amounts. Had the concession not been made, the Tribunal would have found that the respondent was entitled to recover these overpayments as it would have found that the claimant had not acted in good faith, had not demonstrated that he had changed his position and he was primarily responsible for the overpayment.

48 However, the claimant disputed that the respondent was entitled to benefit from the excess amount paid to him after the termination of his employment. In respect of this amount, it was argued on behalf of the claimant that he was entitled to believe that the payments were intended and had altered his position in reliance on this. The Tribunal did not accept the claimant's arguments. He had received notice that he would receive one month's pay in lieu of notice and had acknowledged this. He was therefore on notice of the amount he would be paid and that this was a decision of the respondent's full council. When he received subsequent

correspondence and the payments, he should, at the very least, have queried this. As the former responsible financial officer, he knew or ought to have known the significance of a decision of the full council of the respondent and the steps needed to change it. Whilst it does not make him responsible, the sums were paid under a system set up by the claimant that needed positive action to change it. On the claimant's evidence in relation to the earlier salary overpayments, this would have taken time and the claimant was aware of this. The Tribunal therefore finds that the respondent is entitled to recover the overpayment.

49 The overpayment during employment is calculated as follows

April to December, 2016,	144.34 x 9	£1299.06
Plus seven days	144.34 x 7/31	<u>£32.59</u>
Total		£1331.65

50 The parties have agreed to repayment of the full claimant's pension contributions for January, 2017, whereas the claimant was not entitled to a full month's payment for that month. It is therefore necessary to add the repayment for 24 days to the sum overpaid to the claimant to avoid the claimant having a double benefit. The amount of the overpayment is calculated as follows

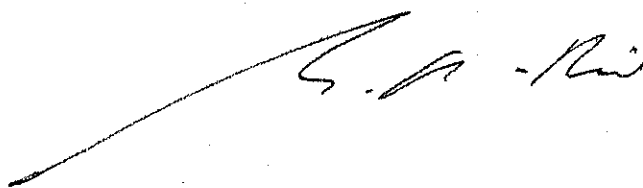
Monthly pay		£3154.83
Less for 7 days	3154.83 x 7/31	£712.38
Overpayment sub-total		£2442.45
Plus	214.44 x 24/31	<u>£166.02</u>
Total		£2608.47

51 With regard to, Section 207A of the Trade Union and Labour Relations (Consolidation) Act, 1992, it was accepted that the section was relevant to the matters in dispute. The respondent had dismissed the claimant without having regard to and/or failing to observe the relevant ACAS Code of Practice. The respondent had taken advice but, apart from the suspension, had failed to follow the relevant Code of Practice or any procedure in which the claimant had the opportunity to answer the allegations made against him. Whilst it may not have affected the eventual outcome, the claimant was still entitled to this opportunity. The Tribunal was not aware of the actual advice that the respondent received but it was either poor advice or it was not followed. It was not made clear why there was such a need for urgency and it appeared that further investigations, including the forensic analysis of the accounts, were to take place. On the other hand, the respondent is a small local authority with limited resources and councillors who may well not be used to handling employment matters. The Tribunal finds that the respondent acted unreasonably in failing to follow the Code of Practice and it is just and equitable in all of the circumstances to uplift the award to the claimant by twenty per cent.

52 The amount to be paid to the claimant is calculated as follows

Agreed compensation in respect of	
Untaken holiday	£1509.37
Compensation for contributions deducted	
from the claimant's salary in respect of	
pension	£2358.84
Compensation for contributions that	
should have been made by the	
respondent to the claimant's pension	£5774.35
Sub-Total	£9642.56
Uplift of 20%	<u>£1928.51</u>
Total	£11571.07
Less overpayments of salary	£1331.65
Less overpayment in final payments	<u>£2608.47</u>
Amount due to claimant	£7630.95

53 Accordingly, the Tribunal orders that the respondent pay the claimant the sum of £7630.95.

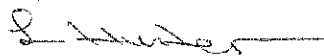


.....  
Employment Judge Nicol

Date...23 January 2018.....

RESERVED JUDGMENT SENT TO THE PARTIES ON

29 January 2018

.....  
  
.....

FOR THE TRIBUNALS OFFICE





## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2401796/2017

Name of case(s): Mr L Abrahams v Whitehaven Town Council

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 29 January 2018.

"the calculation day" is: **30 January 2018**

"the stipulated rate of interest" is: 8%

MISS L HUNTER  
For the Employment Tribunal Office

## INTEREST ON TRIBUNAL AWARDS

### GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at [www.justice.gov.uk/tribunals/employment/claims/booklets](http://www.justice.gov.uk/tribunals/employment/claims/booklets)

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.

**Audit and Governance Committee Decision Notices**

**Purpose of the Report and Recommendation**

That members consider the five Decision Notices issued by Copeland Borough Council's Audit and Governance Committee and the recommendations made therein.

**1.0 INTRODUCTION**

- 1.1 Attached at Appendix 1 are five Decision Notices issued following hearings by Copeland Borough Council's Audit and Governance Committee in respect of complaints involving Whitehaven Town Councillors.
- 1.2 Recommendations have been made in respect of the hearing findings in three cases and sanctions made in two cases.

**2.0 RECOMMENDATION**

- 2.1 That Members consider the Decision Notices and the recommendations/sanctions contained therein.



*Proud of our past. Energised for our future.*

Copeland Borough Council  
The Copeland Centre,  
Catherine Street, Whitehaven,  
Cumbria CA28 7SJ

tel: 0845 054 8600  
fax: 01946 59 83 03  
email: [info@copeland.gov.uk](mailto:info@copeland.gov.uk)  
web: [www.copeland.gov.uk](http://www.copeland.gov.uk)

Mrs Marlene Jewel  
Town Clerk  
Whitehaven Town Council  
Whitehaven Civic Hall  
Whitehaven  
CA28 7SH

Dear Mrs Jewell

Re: Code of conduct complaint outcomes

Please find attached the notices of decisions for the complaint hearing on five cases involving Whitehaven Town Councillors. These cases have been referred to you for a number of reasons.

Firstly, sanctions for two cases have been made under (b) which, if a parish member, be copied to the clerk of the parish council.

Secondly, recommendations have been made as a result of the hearing findings in three cases to Whitehaven Town Council of action they may consider.

Please note this is the final stage of this code of conduct complaint process. Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal.

Yours sincerely

Julie Betteridge  
Director of Customer and Community Services

## Audit and Governance Committee

### Notice of Decision

---

Subject Member:	Councillor Raymond Gill – Whitehaven Town Council
Subject Member Representative:	None
Complainant:	Whitehaven Town Councillors Jayne Laine and Michael Guest
Witnesses:	Whitehaven Town Councillors Jayne Laine and Michael Guest
Audit and Governance Committee Members:	Michael Bonner (Independent Chairman) Councillor Graham Sunderland (Deputy) <b>Councillor Martin Barbour – Apologies 9 November 2017</b> Councillor Gwynneth Everett Councillor Joan Hully <b>Councillor David Riley – Apologies 10 November 2017</b> Councillor Gillian Troughton Councillor Gilbert Scurrah
Monitoring Officer representative:	Clinton Boyce (Monitoring Officer)
Investigating Officer:	Clinton Boyce
Independent Person:	Anthony Payne
Independent Director:	Fiona Rooney Director Commercial and Corporate Resources – 9 November 2017 Julie Betteridge Director Customer and Community Services 10 November 2017
Clerk to the Panel:	Denise James – 9 November 2017 Clive Willoughby - 10 November 2017
Date of Hearing:	Thursday 9 November 2017 and Friday 10 November 2017

## Complaint Summary

This was a hearing to consider whether Councillor Raymond Gill had failed to comply with the Whitehaven Town Council's Code of Conduct by: -

1. participating in an amendment to the Council's standing orders increasing the number who could convene an Extraordinary General Meeting (EGM) from 2 to 4
2. and when told that that was unlawful failed to correct the same; and
3. then cancelled a lawfully convened meeting.

## Proceedings

The Committee was convened under the Council's Arrangements for Dealing with Complaints about the Code of Conduct for Members in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

Michael Bonner confirmed his position as Independent Chairman of Committee and introduced Anthony Payne as Independent Person who was tasked to observe, challenge and advise.

The Solicitor and Monitoring Officer, Clinton Boyce, went on to detail the procedure which was to be followed and the role which Julie Betteridge, Director Customer and Community Services and Fiona Rooney, Director Commercial and Corporate Resources held through the process

The Committee heard oral and written representations from the Investigating Officer Clinton Boyce and Complainants Whitehaven Town Councillors Jayne Layne and Michael Guest which set out details of the complaint against Councillor Raymond Gill.

A full questioning and open debate then took place and the Solicitor and complainant summed up. The complainant issued a written statement to all Members with a list of proposed sanctions.

Councillor Raymond Gill was then given the final word in summing up.

## Hearing Findings

Having heard all the facts and responses the Committee agreed the following facts: -

- It was clear the named Councillor acted on advice of the Town Council Clerk, at the time believing it to be correct.
- When advised that the advice was unlawful, he failed to act promptly to rectify.
- Committee disregarded the comments made by the Solicitor/Monitoring Officer in italics within section 6c (page 32 of the agenda) as they felt this did not form part of the complaint.

- The written statement to all Members from the complainant was noted and the proposed sanctions disregarded

### Hearing Outcome

With regard to: -

1. participating in an amendment to the Council's standing orders increasing the number who could convene an Extraordinary General Meeting (EGM) from 2 to 4

It was unanimously **AGREED** that Councillor Raymond Gill was not in breach of Whitehaven Town Council's code of conduct.

And unanimously **AGREED** that the complaint be **DISMISSED**.

With regard to: -

2. and when told that that was unlawful failed to correct the same; and
3. then cancelled a lawfully convened meeting.

It was unanimously **AGREED** that Councillor Raymond Gill was in breach of Whitehaven Town Councils code of conduct paragraphs: -

- 5(4) You must not bring your office or Council into disrepute;
- 5(5) You must treat others with respect;
- 5(7) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office;
- 5(8) You must be open as possible about your decisions and actions of your Council and should be prepared to give reasons for those decisions and action; and
- 5(11) You must promote and support high standards of conduct when serving office.

of the Whitehaven Town Council's Code of conduct.

And unanimously **AGREED** that the complaint be **UPHELD** and the following sanctions should apply: -

- (b) The Member should be censured – an expression of strong disapproval or criticism – with such censure being in writing, copied to the leader of any political group the member is a member of and, if a parish member, copied to the clerk of the parish council;
- (c) In addition to (b) that the member should be reported to and his conduct noted by full Council or if a parish member referred to the parish council meeting for noting;
- (e) That the member should be required to undergo training;

It was further recommended that Whitehaven Town Council offer the training to all members.

Signed

J. Bettelcke

Date

5 December 2017

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**Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Audit and Governance Committee.



## Audit and Governance Committee

### Notice of Decision

---

Subject Member:	Councillor Raymond Gill – Whitehaven Town Council
Subject Member Representative:	None
Complainant:	Whitehaven Town Councillor Jayne Laine
Witness:	Whitehaven Town Councillor Jayne Laine
Audit and Governance Committee Members:	Michael Bonner (Independent Chairman) Councillor Graham Sunderland (Deputy) <b>Councillor Martin Barbour – Apologies 9 November 2017</b> Councillor Gwynneth Everett Councillor Joan Hully <b>Councillor David Riley – Apologies 10 November 2017</b> Councillor Gillian Troughton Councillor Gilbert Scurrah
Monitoring Officer representative:	Clinton Boyce (Monitoring Officer)
Investigating Officer:	Clinton Boyce
Independent Person:	Anthony Payne
Independent Director:	Fiona Rooney Director Commercial and Corporate Resources – 9 November 2017 Julie Betteridge Director Customer and Community Services 10 November 2017
Clerk to the Panel:	Denise James – 9 November 2017 Clive Willoughby - 10 November 2017
Date of Hearing:	Thursday 9 November 2017 and Friday 10 November 2017

## Complaint Summary

This was a hearing to consider whether Councillor Raymond Gill had failed to comply with the Whitehaven Town Council's Code of Conduct by failing to respond to emails from Councillor Laine regarding her health and safety. This followed continuing difficult meetings in which Councillor Laine felt intimidated and also the member of public who attended the anonymous complainant's place of work, also visited her at her home.

## Proceedings

The Committee was convened under the Council's Arrangements for Dealing with Complaints about the Code of Conduct for Members in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

Michael Bonner confirmed his position as Independent Chairman of Committee and introduced Anthony Payne as Independent Person who was tasked to observe, challenge and advise.

The Solicitor and Monitoring Officer, Clinton Boyce, went on to detail the procedure which was to be followed and the role which Julie Betteridge, Director Customer and Community Services and Fiona Rooney, Director Commercial and Corporate Resources held through the process

The Committee heard oral and written representations from the Investigating Officer Clinton Boyce and Complainants Jayne Layne and Michael Guest which set out details of the complaint against Councillor Raymond Gill.

A full questioning and open debate then took place and the Solicitor and complainant summed up. The complainant issued a written statement to all Members with a list of proposed sanctions.

Councillor Raymond Gill was then given the final word in summing up.

## Hearing Findings

Having heard all the facts and responses the Committee agreed the following facts:-

- It was clear that the Whitehaven Town Council was dysfunctional.
- All members of the Whitehaven Town Council were aware of the Health & Safety Policy. As there was no evidence that one single member had overall responsibility for Health & Safety, all Town Councillors had a duty of care to each other.

Hearing Outcome

It was unanimously **AGREED** that Councillor Raymond Gill was not in breach of Whitehaven Town Council's code of conduct.

And unanimously **AGREED** that the complaint be **DISMISSED**.

However, it was strongly recommended that **ALL** members of the Whitehaven Town Council undergo training on Health & Safety and proper procedures put in place.

Signed

J D Bettendorfe

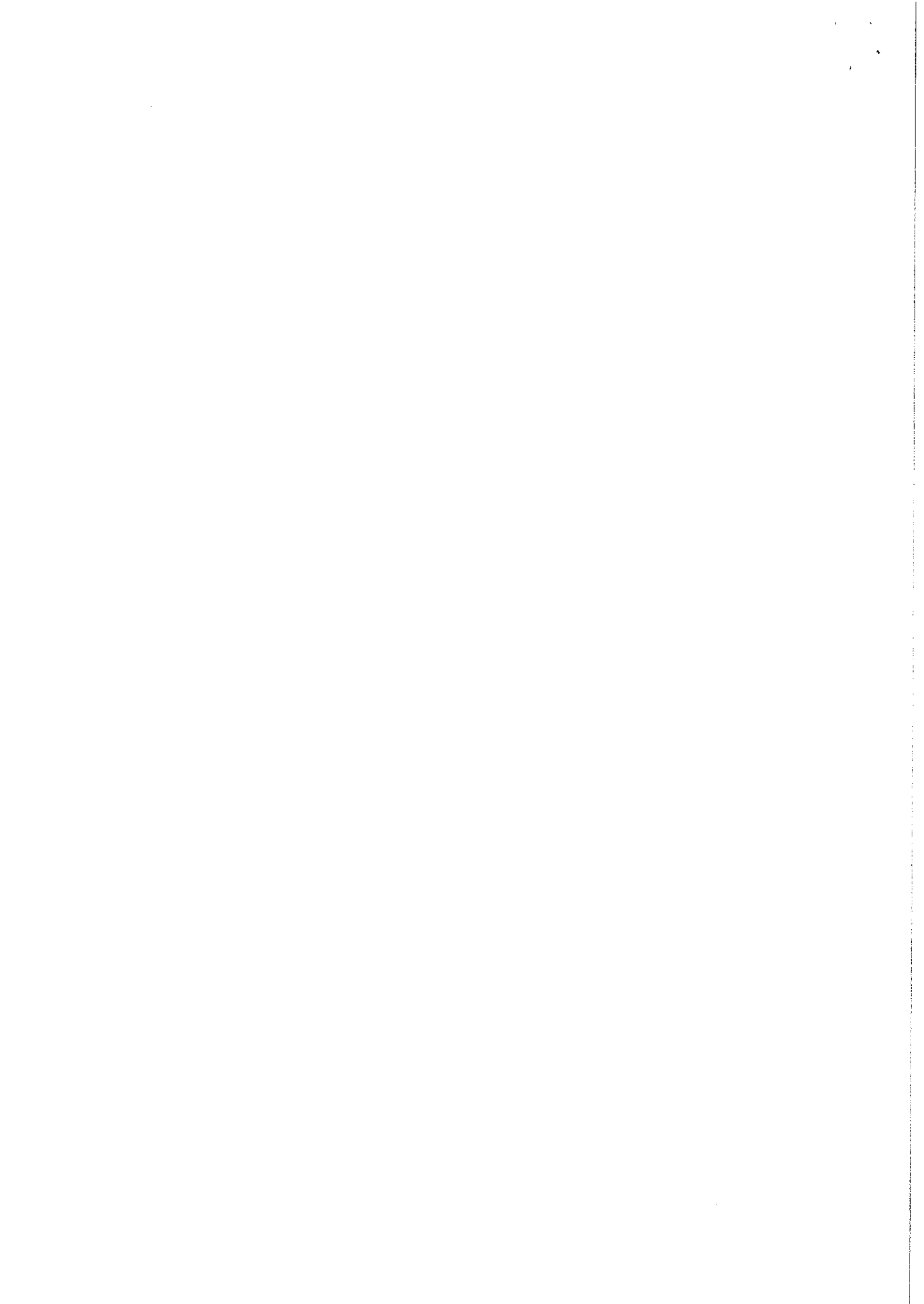
Date

5 December 2017

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**Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Audit and Governance Committee.



## Audit and Governance Committee

### Notice of Decision

---

Subject Member:	Councillor Raymond Gill – Whitehaven Town Council
Subject Member Representative:	None
Complainant:	Whitehaven Town Councillor Jayne Laine
Witness:	Whitehaven Town Councillor Jayne Laine
Audit and Governance Committee Members:	Michael Bonner (Independent Chairman) Councillor Graham Sunderland (Deputy) <b>Councillor Martin Barbour – Apologies 9 November 2017</b> Councillor Gwynneth Everett Councillor Joan Hully <b>Councillor David Riley – Apologies 10 November 2017</b> Councillor Gillian Troughton Councillor Gilbert Scurrah
Monitoring Officer representative:	Clinton Boyce (Monitoring Officer)
Investigating Officer:	Clinton Boyce
Independent Person:	Anthony Payne
Independent Director:	Fiona Rooney Director Commercial and Corporate Resources – 9 November 2017 Julie Betteridge Director Customer and Community Services 10 November 2017
Clerk to the Panel:	Denise James – 9 November 2017 Clive Willoughby - 10 November 2017
Date of Hearing:	Thursday 9 November 2017 and Friday 10 November 2017

## **Complaint Summary**

This was a hearing to consider whether Councillor Raymond Gill had failed to comply with the Whitehaven Town Council's Code of Conduct by issuing a press release following an altercation between Councillor Laine and a Member of the public after a meeting in which both accused each other of assault. Councillor Laine complains that Councillor Raymond Gill issued a press release which was defamatory against her following the incident.

## **Proceedings**

The Committee was convened under the Council's Arrangements for Dealing with Complaints about the Code of Conduct for Members in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

Michael Bonner confirmed his position as Independent Chairman of Committee and introduced Anthony Payne as Independent Person who was tasked to observe, challenge and advise.

The Solicitor and Monitoring Officer, Clinton Boyce, went on to detail the procedure which was to be followed and the role which Julie Betteridge, Director Customer and Community Services and Fiona Rooney, Director Commercial and Corporate Resources held through the process

The Committee heard oral and written representations from the Investigating Officer Clinton Boyce and Complainant Jayne Layne which set out details of the complaint against Councillor Raymond Gill.

A full questioning and open debate then took place and the Solicitor and complainant summed up. The complainant issued a written statement to all Members with a list of proposed sanctions.

Councillor Raymond Gill was then given the final word in summing up.

## **Hearing Findings**

Having heard all the facts and responses the Committee agreed the following facts: -

- The Press release was prepared and sent directly from the Whitehaven Town Clerk to the press with the Chairman being copied in.
- The Chairman had the opportunity to stop the statement being published, but failed to do so.
- Members felt this was not the expected behaviour from an experienced Councillor.

### Hearing Outcome

It was unanimously **AGREED** that Councillor Gill was in breach of Whitehaven Town Councils code of conduct paragraphs: -

5(4) You must not bring your office or Council into disrepute;

5(5) You must treat others with respect;

5(10) You must ensure, when using or authorising the use by others of the resources of your Council that such resources are not used improperly for political (including party political purposes) and you must have regard to any applicable Local Council Code of Publicity made under the Local Government Act 1986. and

5(11) You must promote and support high standards of conduct when serving office.

And unanimously **AGREED** that the complaint be **UPHELD** and the following sanction should apply:-

- (b) The Member should be censured – an expression of strong disapproval or criticism – with such censure being in writing, copied to the leader of any political group the member is a member of and, if a parish member, copied to the clerk of the parish council.

Signed

J D Betteridge

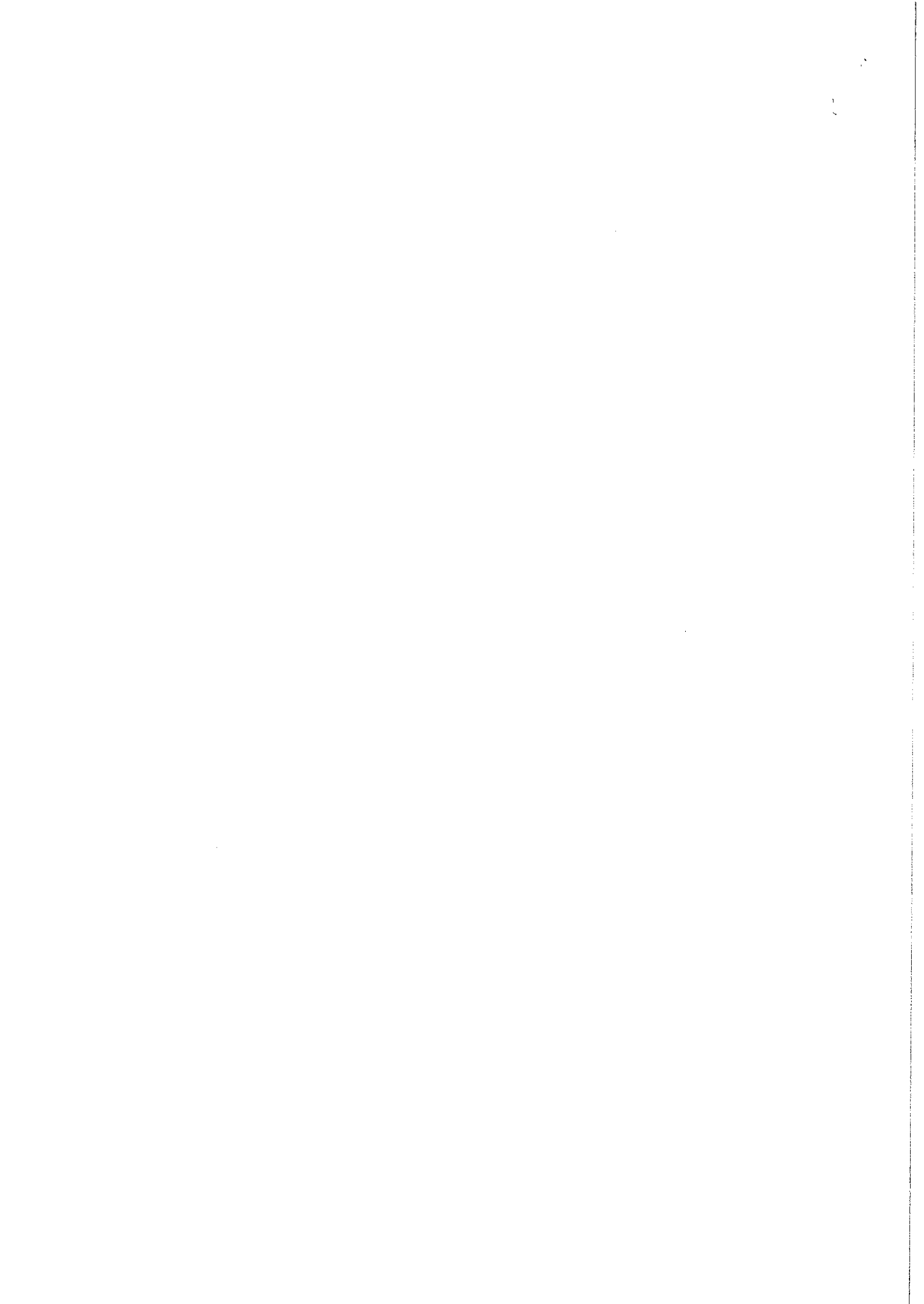
Date

5 December 2017

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### **Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Audit and Governance Committee.





## Audit and Governance Committee

### Notice of Decision

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Subject Member:	Councillor Michael Guest – Whitehaven Town Council
Subject Member Representative:	None
Complainant:	Mr Gordon McNeil
Witness:	None
Audit and Governance Committee Members:	Michael Bonner (Independent Chairman) Councillor Graham Sunderland (Deputy) <b>Councillor Martin Barbour – Apologies 9 November 2017</b> Councillor Gwynneth Everett Councillor Joan Hully <b>Councillor David Riley – Apologies 10 November 2017</b> Councillor Gillian Troughton Councillor Gilbert Scurrah
Monitoring Officer representative:	Clinton Boyce (Monitoring Officer)
Investigating Officer:	Clinton Boyce
Independent Person:	Anthony Payne
Independent Director:	Fiona Rooney Director Commercial and Corporate Resources – 9 November 2017 Julie Betteridge Director Customer and Community Services 10 November 2017
Clerk to the Panel:	Denise James – 9 November 2017 Clive Willoughby - 10 November 2017
Date of Hearing:	Thursday 9 November 2017 and Friday 10 November 2017

## Complaint Summary

This was a hearing to consider whether Councillor Michael Guest had failed to comply with the Whitehaven Town Council's Code of Conduct by upon leaving a meeting which was held in private, immediately disclosing to the person who was directly affected by the decision the decision and who voted which way.

## Proceedings

The Committee was convened under the Council's Arrangements for Dealing with Complaints about the Code of Conduct for Members in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

Michael Bonner confirmed his position as Independent Chairman of Committee and introduced Anthony Payne as Independent Person who was tasked to observe, challenge and advise.

The Solicitor and Monitoring Officer, Clinton Boyce, went on to detail the procedure which was to be followed and the role which Julie Betteridge, Director Customer and Community Services and Fiona Rooney, Director Commercial and Corporate Resources held through the process

The Committee heard oral and written representations from the Investigating Officer Clinton Boyce which set out details of the complaint against Councillor Michael Guest.

A full questioning and open debate then took place and the Solicitor and complainant summed up. The complainant issued a written statement to all Members with a list of proposed sanctions.

Councillor Michael Guest was then given the final word in summing up.

## Hearing Findings

Having heard all the facts and responses the Committee agreed the following facts: -

- Members felt that there was a total lack of attrition and also felt the member was not taking the matter seriously.
- Members felt this attitude did not reflect what is expected of a modern Town Councillor.

### Hearing Outcome

It was unanimously **AGREED** that Councillor Guest was in breach of Whitehaven Town Councils code of conduct paragraphs: -

- 5(3) You must not disclose any information given to you as a Member in breach of any confidence
- 5(4) You must not bring your office or Council into disrepute;
- 5(5) You must treat others with respect;
- 5(11) You must promote and support high standards of conduct when serving office.

And unanimously **AGREED** that the complaint be **UPHELD** and the following sanctions should apply:-

- (b) The Member should be censured – an expression of strong disapproval or criticism – with such censure being in writing, copied to the leader of any political group the member is a member of and, if a parish member, copied to the clerk of the parish council;
- (c) In addition to (b) that the member should be reported to and his conduct noted by full Council or if a parish member referred to the parish council meeting for noting;
- (e) That the member should be required to undergo training;

It was further recommended that training on what is expected of a modern Town Councillor be offered to all members of the Whitehaven Town Council.

Signed

J D Betteridge

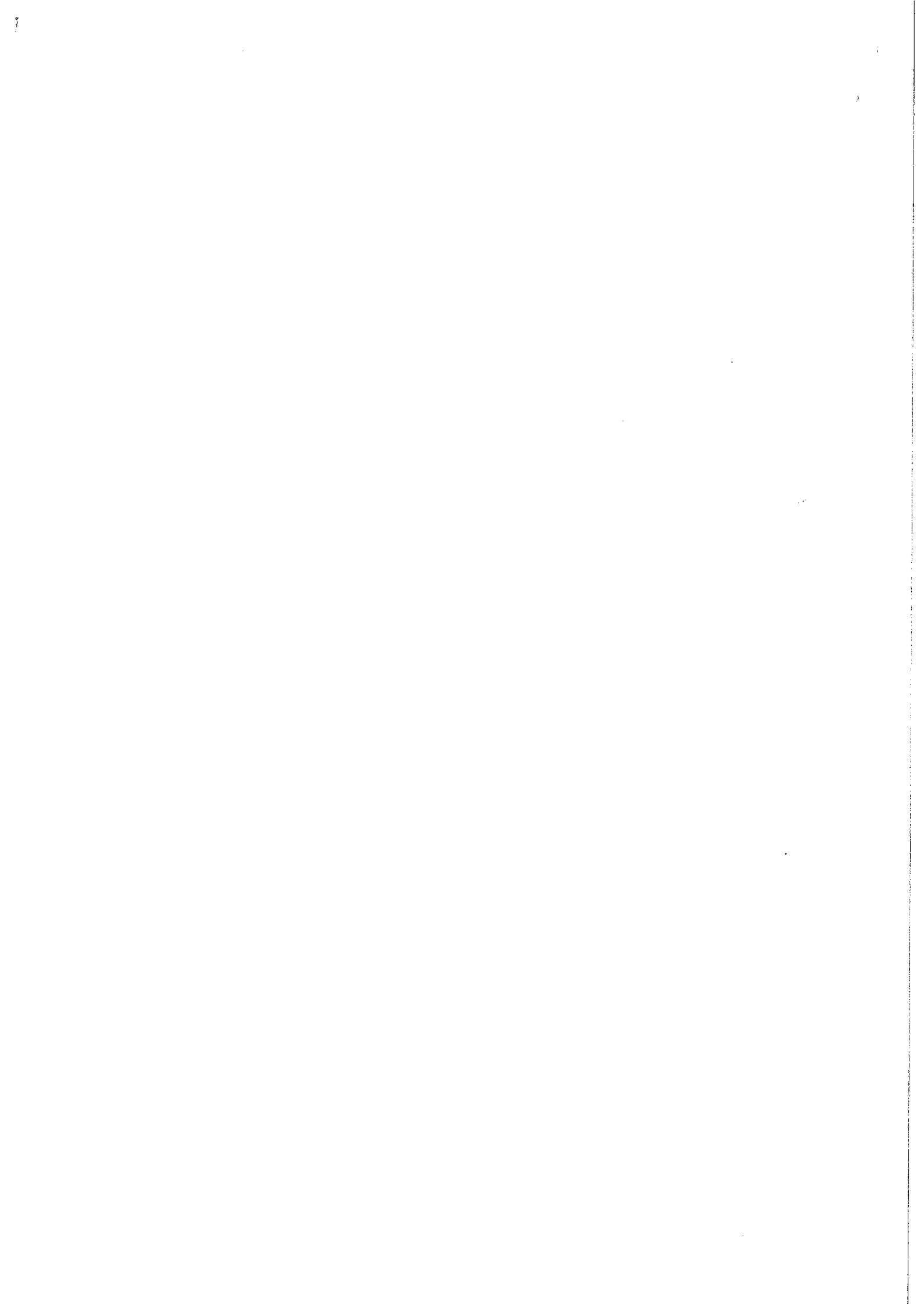
Date

5 December 2017

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### **Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Audit and Governance Committee.



## Audit and Governance Committee

### Notice of Decision

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Subject Member:	Councillor Raymond Gill – Whitehaven Town Council
Subject Member Representative:	None
Complainant:	Whitehaven Town Councillor Michael Guest
Witness:	Whitehaven Town Councillor Michael Guest
Audit and Governance Committee Members:	Michael Bonner (Independent Chairman) Councillor Graham Sunderland (Deputy) <b>Councillor Martin Barbour – Apologies 9 November 2017</b> Councillor Gwynneth Everett Councillor Joan Hully <b>Councillor David Riley – Apologies 10 November 2017</b> Councillor Gillian Troughton Councillor Gilbert Scurrah
Monitoring Officer representative:	Clinton Boyce (Monitoring Officer)
Investigating Officer:	Clinton Boyce
Independent Person:	Anthony Payne
Independent Director:	Fiona Rooney Director Commercial and Corporate Resources – 9 November 2017 Julie Betteridge Director Customer and Community Services 10 November 2017
Clerk to the Panel:	Denise James – 9 November 2017 Clive Willoughby - 10 November 2017
Date of Hearing:	Thursday 9 November 2017 and Friday 10 November 2017

## **Complaint Summary**

This was a hearing to consider whether Councillor Raymond Gill had failed to comply with the Whitehaven Town Council's Code of Conduct. Councillor Michael Guest claims he purchased two badges, one a past Mayors badge and one a past Mayoresses badge from his Chairman's allowance. This purchase was authorised by the Town Clerk, the complaint was that when the badges arrived the Town Council, including Councillor Raymond Gill refused to hand them over.

## **Proceedings**

The Committee was convened under the Council's Arrangements for Dealing with Complaints about the Code of Conduct for Members in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

Michael Bonner confirmed his position as Independent Chairman of Committee and introduced Anthony Payne as Independent Person who was tasked to observe, challenge and advise.

The Solicitor and Monitoring Officer, Clinton Boyce, went on to detail the procedure which was to be followed and the role which Julie Betteridge, Director Customer and Community Services and Fiona Rooney, Director Commercial and Corporate Resources held through the process

The Committee heard oral and written representations from the Investigating Officer Clinton Boyce and Complainant Michael Guest which set out details of the complaint against Councillor Raymond Gill.

A full questioning and open debate then took place and the Solicitor and complainant summed up. The complainant issued a written statement to all Members with a list of proposed sanctions.

Councillor Raymond Gill was then given the final word in summing up.

## **Hearing Findings**

Having heard all the facts and responses the Committee agreed the following facts: -

- Members felt that there was no clear definition, procedure or guidance for the spending of the Chairman's Allowance.
- The written statement to all Members from the complainant was noted and the proposed sanctions disregarded.

- The Members felt that this was not a Code of Conduct matter and rather a matter for Members of Whitehaven Town Council as a body to resolve in this instance.

### Hearing Outcome

As this complaint was against the whole of the Whitehaven Town Council and not an individual Councillor this was therefore deemed to be outside the scope of the Code of Conduct process.

It was unanimously **AGREED** that Councillor Raymond Gill was not in breach of Whitehaven Town Council's code of conduct.

And unanimously **AGREED** that the complaint be **DISMISSED**.

Signed

J D Bettendorfe

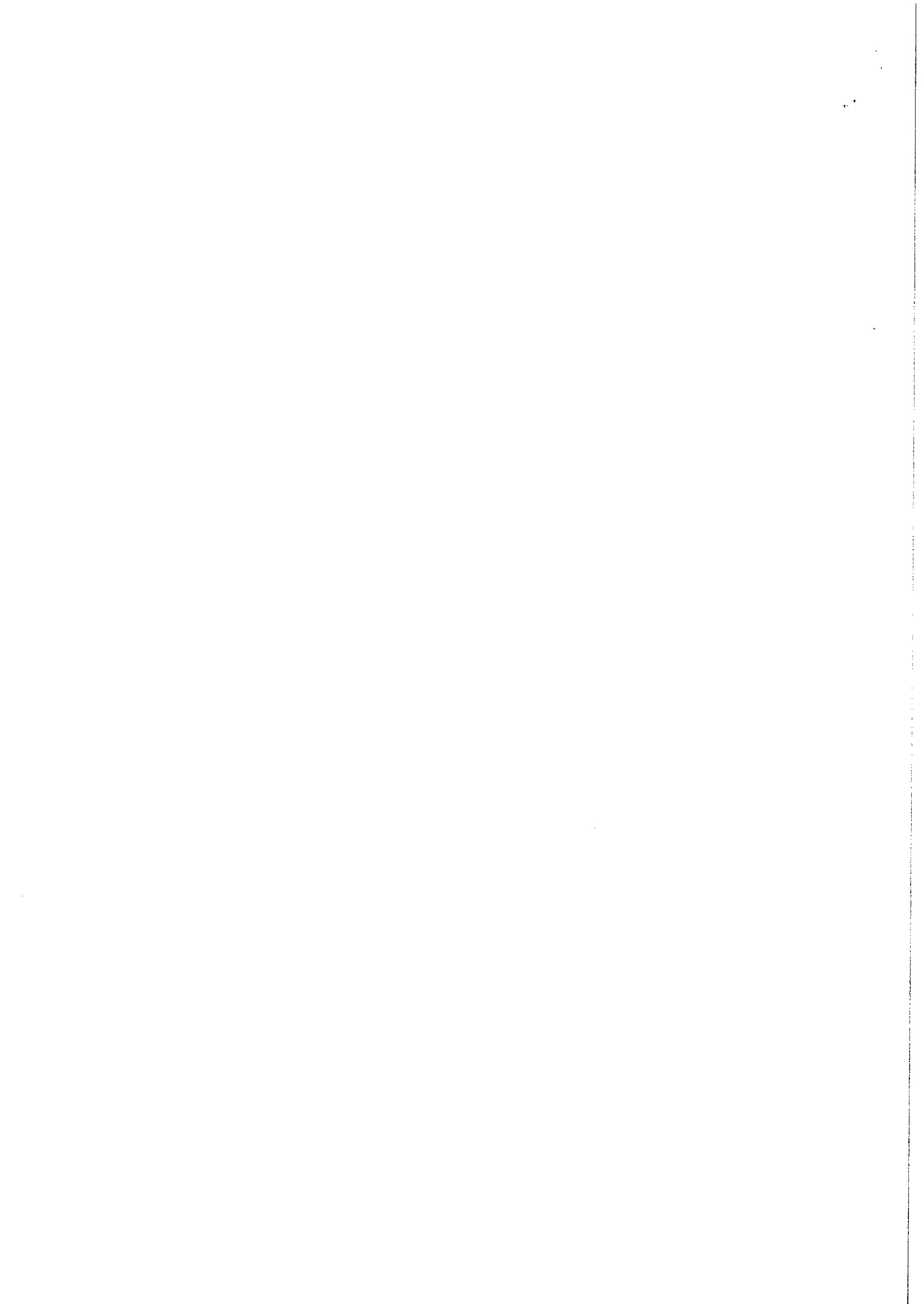
Date

5 December 2017

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### **Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Audit and Governance Committee.





## **Ceremonial Medals**

### **Purpose of the Report and Recommendation**

That Members consider a report on two ceremonial medals purchased in 2016 and to decide what should be done with them.

## **1.0 INTRODUCTION**

1.1 In 2016 two ceremonial medals were purchased by the Council from Vaughtons at a cost including VAT and carriage of £1820.44. One of the medals had the words "Past Mayor" engraved on it and the other was blank. See Appendix 1.

1.2 The invoice from Vaughtons was dated 25/5/16 and was addressed to Whitehaven Town Council. See Appendix 2. The medals were purchased by the Town Council out of the Mayors Allowance budget and the VAT of £303.41 was reclaimed by the Council

1.3 The Councillor is seeking to have the medals returned to him and was told in email by the former Clerk that the retention of property purchased by the Council was not a breach of law and that a Chairman's allowance may be used for civic duties and for expenses incurred during the tenure; that purchases made from an allowance did not confer ownership and that expenditure on items from a Chairman's allowance remain the property of the Council and are placed on the asset register and insured accordingly.

## **2.0 CHAIRMAN'S ALLOWANCE**

2.1 The Chairman may be paid an allowance to meet the expenses of his office such as attendance at civic events and gifts for visitors (s15(5) of the Local Government Act 1972 and NALC "The Good Councillors Guide")

2.2 The Chairman's allowance is designed to defray the expense of the Chairmanship itself and which allows the Chairman to meet the expenses associated with his special office ("Local Councils Explained" a NALC publication).

2.3 The amount of allowance should be fixed by the Council (which it always has been) in advance. It may reasonably consider what the Chairman has to do which are generally in 2 parts:-

(i) The duties outside the Council Chamber but arising from the ordinary business of the Council

(ii) The activities expected of him by the public

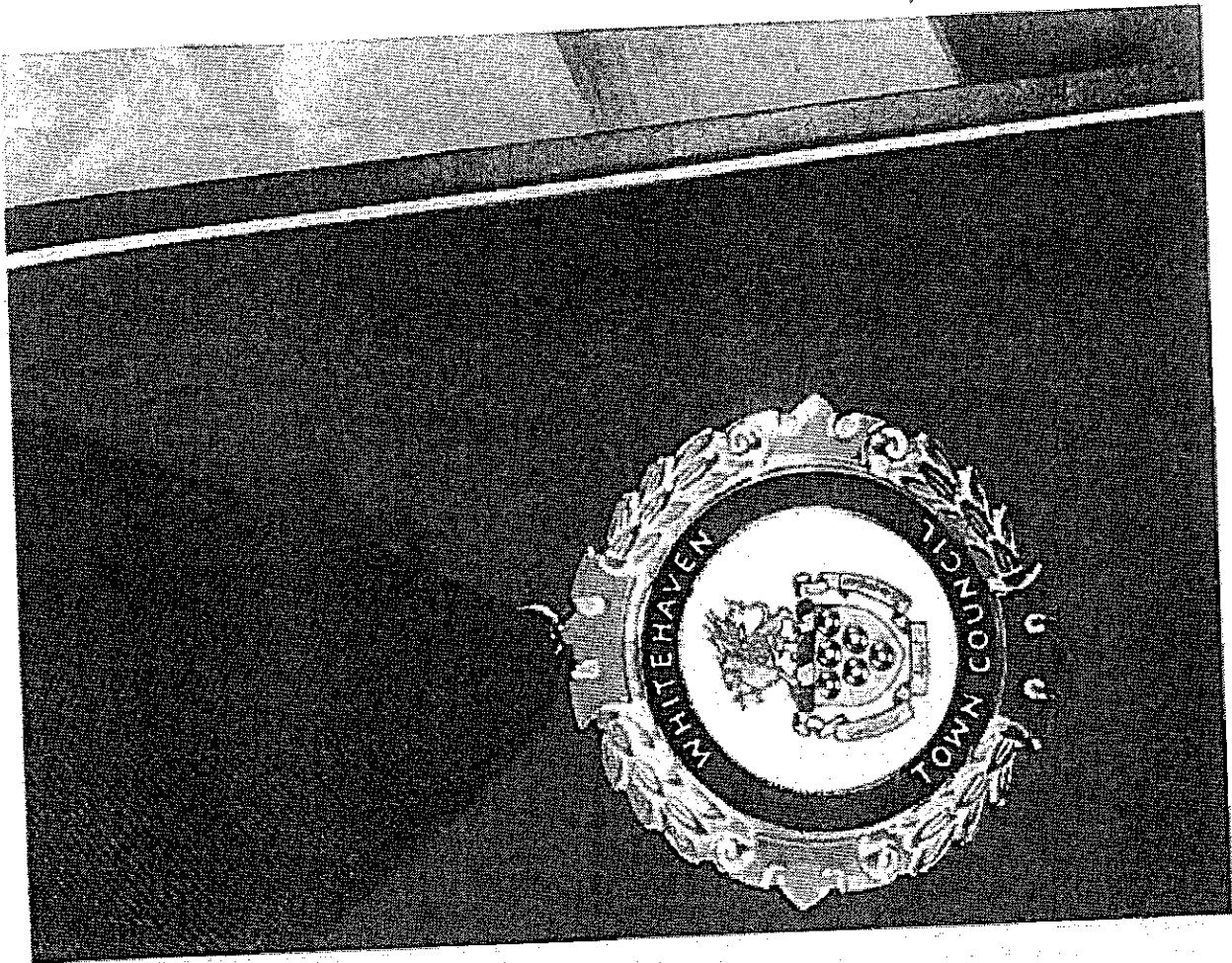
2.4 As long as the Chairman's allowance is a reasonable reimbursement of the expenses of the unpaid office and contain no element of remuneration for the holder, HMRC treat it as not chargeable for tax but they do ask Councils how much is paid and where it is thought that there might be an element of remuneration they might ask the Chairman for details of the uses to which the allowances are put (Arnold Baker on Local Council Administration).

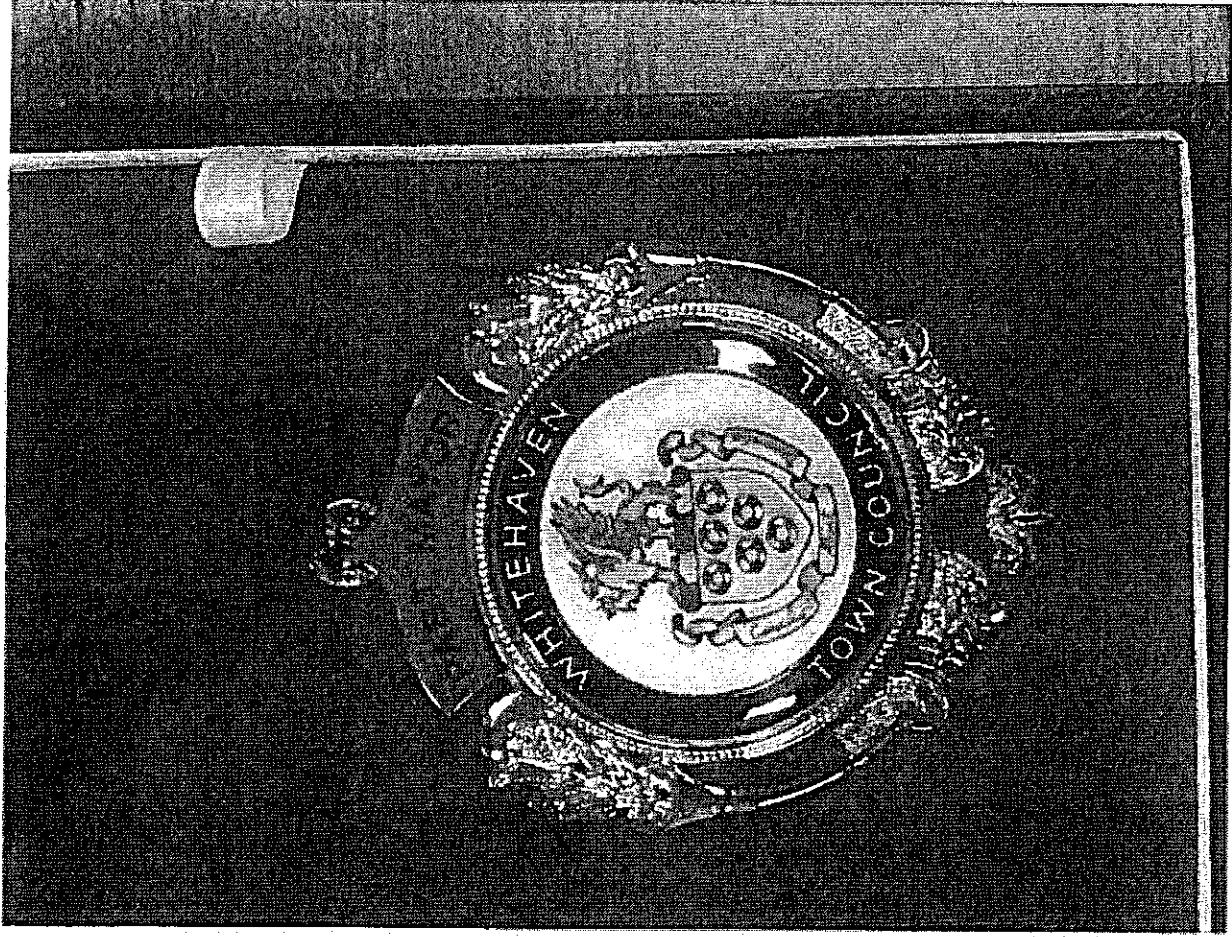
### **3.0 RECOMMENDATION**

3.1 Members are requested to consider the situation and to decide what to do with the two medals

# APPENDIX I

Medals





# PRO-FORMA INVOICE

NO: 51940



16 Well Street,  
BIRMINGHAM  
B19 3BJ

ACCOUNT: W279  
YOUR ORDER NO: PO-WTC-16-006  
INVOICE DATE: 26/ 5/16  
PAGE NO: 1 of 1

Tel No: 0121 554 0032  
Fax No: 0121 523 3585  
E-mail: info@vaughtons.com  
Web: www.vaughtons.com

**Invoice Address**

WHITEHAVEN TOWN COUNCIL  
Room 3, Lowther Street  
Whitehaven

**Delivery Address**

WHITEHAVEN TOWN COUNCIL  
Room 3, Lowther Street  
Whitehaven

CA28 7SH

CA28 7SH

STOCK CODE	DESCRIPTION	QUANTITY	PRICE	UNIT	VALUE
WHITEHAVENPMAYOR.JEW.G	Quotation N720 WHITEHAVEN TOWN COUNCIL JEWEL PAST MAYOR H/PAINT NO4 B/PLATE	1	840.70	1	840.70
WHITEHAVENCONSORT.JEW.S/	WHITEHAVEN TOWN COUNCIL JEWEL CONSORT H/PAINT NO7B S/GILT	1	549.01	1	549.01
DOUBLE	DOUBLE MITRED NECK RIBBON Navy ribbon	2	22.82	1	45.64
DEEPEGRAVINGENAMEL	DEEP ENGRAVING WITH ENAMEL PRICE PER CHARACTER 'PAST MAYOR'	9	0.82	1	7.38
LCASE	LEATHERETTE PENDANT CASE BLUE WITH GILT TRIM & FITTINGS	2	31.90	1	63.80

**Amount Due**

Total Goods	1506.53
Carriage	10.50
Total VAT	303.41 <i>VR</i>
<b>TOTAL</b>	<b>1820.44</b>

BANK DETAILS:- ROYAL BANK OF SCOTLAND  
SORT CODE 16 13 19 A/C 10072622

VAT Reg No: GB 861 0427 46  
Company Reg No: 05337453  
GOODS REMAIN THE PROPERTY OF VAUGHTONS UNTIL PAID IN FULL  
Registered in England: 16 Well Street, Hockley, Birmingham B19 3BJ