

AUDIT AND GOVERNANCE COMMITTEE AGENDA



Thursday 20 August 2015

at 11.00 am

**(or immediately following the Audit and Governance Committee which
commences at 10.00am or whichever is the later)**

in Committee Room B, Civic Centre, Hartlepool

MEMBERS: AUDIT AND GOVERNANCE COMMITTEE

Councillors Ainslie, S Akers-Belcher, Belcher, Cook, Lawton and Martin-Wells.

Standards Co-opted Members; Mr Norman Rollo and Ms Clare Wilson.

Parish Council Representatives: Parish Councillor J Cambridge (Headland) and
Parish Councillor B Walker (Greatham)

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**

3. MINUTES

No items.

4. AUDIT ITEMS

No Items.

5. STANDARDS ITEMS

- 5.1 Consideration of Investigation Report – SC04/2015 and SC06/2015 – *Chief Solicitor and Monitoring Officer (To follow)*



6. STATUTORY SCRUTINY ITEMS

No items.

7. MINUTES FROM THE RECENT MEETING OF THE HEALTH AND WELLBEING BOARD

No items.

8. MINUTES FROM THE RECENT MEETING OF THE FINANCE AND POLICY COMMITTEE RELATING TO PUBLIC HEALTH

No items.

9. MINUTES FROM RECENT MEETING OF TEES VALLEY HEALTH SCRUTINY JOINT COMMITTEE

No items.

10. MINUTES FROM RECENT MEETING OF SAFER HARTLEPOOL PARTNERSHIP

No items.

11. REGIONAL HEALTH SCRUTINY UPDATE

12. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT

ITEMS FOR INFORMATION

Date of next meeting – Thursday 3 September 2015 at 10.00am in the Civic Centre, Hartlepool



AUDIT AND GOVERNANCE COMMITTEE

20 AUGUST 2015



Report of: Chief Solicitor and Monitoring Officer

Subject: CONSIDERATION OF INVESTIGATION REPORT –
SCO4/2015 and SCO6/2015

1. BACKGROUND

1.1 The attached investigation report relates to the extraordinary meeting held on the 16 February, 2015 (**Appendix 1** Report SCO4/2015 and CO6/2015). The subject matter relates to the chairing of that meeting as detailed therein, by Councillor Stephen Akers-Belcher. It is alleged that his conduct and behaviour in chairing that meeting was in contravention of the Council's Code of Conduct. The complaints received (of which there were several) suggest breaches of two of the "general obligations" contained within the Code of Conduct, namely:

- 1.1 You must treat others with respect
- 1.2 You must not conduct yourself in a matter which is contrary to the Authority's duty to promote and maintain high standards of conduct amongst its Members.

1.2 Both of these complaints were assessed against the Council's adopted criteria by the Monitoring Officer in association with the Independent Persons. For the purpose of embarking upon a formal investigation, the following criteria need to be satisfied;

- the complaint was against a named member of the Authority
- the named member was in office at the time of the alleged misconduct and the Code of Conduct was in force at that time the complaint, if proven, would be a breach of the Code under which a member was operating at the time of the alleged misconduct.

All these criteria being satisfied and given the public interest generated by these complaints, the setting of those complaints against the background of extraordinary meetings of the Borough Council and the nature of the allegations received, a formal investigation was required.

2. OUTCOME OF INVESTIGATION

2.1 The Case Reports which were ‘amalgamated’ for the reasons specified, do not disclose a breach of the Code of Conduct, although, some criticism can be applied towards use of certain terms in that meeting. Nevertheless this was a particularly tempestuous meeting and one where a sense of proportion appeared to have escaped many of those attending, potentially for a variety of reasons.

2.2 The accompanying investigation report is constructed as follows;

- Background
- The subject members official details
- The relevant legislation and applicable codes and protocols
- The investigation
- The subject members submissions
- Reasoning as to whether there has been a failure to comply with the Code of Conduct
- Findings
- Recommendations

2.3 Following on from an investigation, a report must generally be made with one of the following findings;

- that there has been a failure to comply with the Code of Conduct (a ‘finding of failure’), or
- that there has not been a failure to comply with the Code (a ‘finding of no failure’).

In both cases of complaint I do not find a breach of the Council’s Code of Conduct.

2.4 The Committee is requested to consider the appended investigation report. The views of the Independent Persons have been made known within the confines of the attached report but as advisors and co-opted members to the Committee, their views should also be canvassed during the consideration of this report.

3. SUMMARY

3.1 Following investigation, it is the Monitoring Officer’s view that there is not a ‘finding of failure’ to abide by the Code of Conduct by the Subject Member in relation to case reference SC04/2015 and SC06/2015. Accordingly, the recommendations contained within that report are commended to the Audit and Governance Committee.

4. RECOMMENDATIONS

- 4.1 The committee considers the appended report.

5. CONTACT OFFICER

Peter Devlin
Chief Solicitor
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Report

CASE REFERENCES: SC04/2015 & SC06/2015

Report of an investigation under Section 28(6) of the Localism Act, 2011, by
Peter Devlin, Monitoring Officer for Hartlepool Borough Council into allegations
concerning Councillor Stephen Akers-Belcher

Date: 17th August, 2015

CONTENT

1. Background
2. Councillor Stephen Akers-Belcher's Official Details
3. Relevant Legislation and applicable Codes and Protocols
4. The investigation
5. Councillor Stephen Akers-Belcher's submissions
6. Reasons as to whether there has been a failure to comply with the Code of Conduct
7. Findings
8. Recommendations

1. **BACKGROUND**

- 1.1 On 16th February, 2015 an Extraordinary Council meeting was held in the Council Chamber, Civic Centre, Hartlepool to discuss the 'North Tees and Hartlepool NHS Foundation Trust's Quality Accounts 2014/2015'. Ostensibly, this meeting comprised a presentation from two representatives from the Foundation Trust covering the main outcomes from the Trust's 2013/2014 Quality Accounts and the key priorities for 2014/15. There was also the opportunity for Members of the Borough Council (as well as a public question session) to question the Trust representatives on a variety of themes, including the 'Hospital-level Mortality Indicator' and the 'Hospital Standardised Mortality Ratio'. As per the report submitted in conjunction with the meeting, the Health Act 2009 requires all providers of NHS Health Care services to produce on an annual basis, a 'Quality Account' comprising certain prescribed information relevant to the quality of the services provided. There is also the obligation for a Trust to involve the Overview and Scrutiny Committee (or equivalent) from each Local Authority in the formulation and submission of third party declarations. As the Statutory Health Scrutiny functions and responsibilities had at that point been transferred from the Audit and Governance Committee to Council following a resolution on the 24th November, 2014, the responsibility for the formulation of Hartlepool's 'Third Party Declaration' was therefore with the Council and hence the convening of the Extraordinary meeting.
- 1.2 This was a well attended public meeting, not least as two days prior, there had been a gathering to support what has become known as the 'Save Our Hospital' campaign and also for the return of certain services including those relating to accident/emergency and critical care. A headline which appeared in the local media provides something of the context to the meeting held on the 16th February as *'Hartlepool Hospital meeting descends into chaos as public fires jibes at Councillors'*. A number of complaints were received, initially concerning the exclusion by the Ceremonial Mayor of a member of the public which was assigned a case reference of SC04/2015. A sense of

the grievance held by one of the complainant's was stated as follows;

' I wish to express my feelings as to the way the meeting was held regarding the above ('public meeting regarding Hartlepool Hospital and the NHS Foundation Trust') and wish to complain the way the Mayor handled it with contempt'.

A series of other complaints followed not specifically relating to the exclusion of the member of public but through the use of the terminology of 'closing' the meeting as opposed to an 'adjournment'. The point being that there is a marked difference between these two sayings and where a meeting is formally closed it cannot thereafter be adjourned and would need to go through the formal legal requirements of giving notice for the convening of any subsequent meeting. Those complaints were assigned a case reference of SC06/2015 and for the purpose of this report those two case references have been combined for ease of reference, if nothing else.

- 1.3 The Council adopted a Code of Conduct to conform with the changes introduced to the Ethical Framework under the Localism Act, 2011, on the 2nd August, 2012. The Code reflects the duty placed upon all Elected and Co-Elected Members of the Borough Council *'to promote and maintain high standards of conduct'*. This duty applies to a member when they act in their 'official capacity' as Councillor (or a Co-Opted Member) of Hartlepool Borough Council. Clearly, the complaints directed against Councillor Stephen Akers Belcher, the then Ceremonial Mayor in chairing this particular extraordinary meeting, was in his official capacity as a Councillor and Ceremonial Mayor. The Code also contains the 'general principles' of conduct in public life namely;

- Selflessness
- Integrity
- Objectivity
- Accountability

- Openness
- Honesty
- Leadership

The Council's Code has also incorporated those 'additional' provisions as set out in the original concept of principles that should be displayed in public life, namely;

- Leadership
- Respect for others
- Duty to uphold the law.

There are also 'general obligations' contained within the Code of Conduct upon which these complaints need to be based namely;

1. *When acting in your role as a member of the Authority*
 - 1.1 *You must treat others with respect*
 - 1.2 *You must not conduct yourself in a manner which is contrary to the Authority's duty to promote and maintain high standards of conduct amongst its Members.*

It is against these general principles and general obligations upon which this complaint must be assessed and whether or not Councillor Stephen Akers-Belcher has breached the provisions of the Councillors Code of Conduct. For the avoidance of doubt, on receipt of these complaints, the Monitoring Officer met with the Independent Persons to see if these complaints merited a formal investigation, or whether 'other action' or 'no action' was appropriate. Given the volume of complaints received, the resulting publicity and issues surrounding cooperation with partner bodies such as the NHS Foundation Trust, this matter merited a formal investigation.

2. Councillor Stephen Akers-Belcher's Official Details

2.1 Councillor Stephen Akers-Belcher represents the Manor House Ward on Hartlepool Borough Council and was elected to that Ward under 'all out' elections following the recommendations of the Local Government Boundary Commission for England and the resulting Hartlepool (Electoral Changes) Order 2012. Prior to this Councillor Akers-Belcher represented the Rift House Ward on Hartlepool Borough Council from the period May 2004 to May 2012. In addition, Councillor Stephen Akers-Belcher holds the following positions as a member of the Borough Council which includes representation on various outside bodies and organisations;

- Planning Committee
- Regeneration Services Committee (Vice Chair)
- Audit and Governance Committee (Vice Chair)
- Civic Honours Committee
- South and Central Neighbourhood Forum
- Cleveland Fire Authority
- Tees Valley Joint Health Scrutiny Committee
- Northern Consortium of Housing Authorities
- National Association of Councillors (English Region and General Management Committee)
- Local Government Association

3. The Relevant Legislation and Applicable Codes and Protocols

3.1 Elected and Co-opted Members of the Borough Council are obligated to comply with the requirements of the Councils Code of Conduct. As stated in the introduction to the Code of Conduct;

'You are a representative of this Authority and the public will view you as such. Therefore your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority'.

The Code can be referenced within Part 5 ('Codes and Protocols') of the Council's Constitution and is accessible on the Council's website www.hartlepool.gov.uk

4. The Investigation

- 4.1 This was undoubtedly an emotive meeting and this is highlighted in a press report which describes the events of the meeting held on the 16th February, 2015 as follows;

'A stormy health meeting descended into chaos and the meeting had to be halted after an angry row over a bid to cut off Council cooperation with an under fire Hospital Trust'.

This report also indicated that the meeting was, as indicated, *'halted for ten minutes after members of the public fired jibes at Councillors'*. This was a meeting to consider and make comment solely upon the North Tees and Hartlepool NHS Foundation Trust's 'Quality Accounts' 2014/2015. There had been a call for a vote to be taken on a motion which had requested the Council to *'withdraw all co-operation with the Trust, due to anger over hospital services being shifted from the town to the University Hospital of North Tees'*. When the meeting was given legal advice to the effect that such a motion would put the Council in breach of their legal duty this evidently (from press reports) led to members of the public *'who packed into Hartlepool Civic Centre'* then venting *'their frustrations at Labour Councillors'*. There was a period of 'suspension' of the meeting and reports indicate that on the meeting being reconvened, Councillor Stephen Akers Belcher stated *'if we don't have order in the chamber I will suspend this meeting'*. It is also recorded that a former Hartlepool Borough Council Councillor, Mr Keith Fisher, who was also a leading campaigner in the 'Save

Our Hospital' group, was told he may have to leave the meeting after criticising the Ceremonial Mayor. It is further recorded at some point thereafter; Mr Fisher left the meeting '*after being approached by security staff*'. The complaints received in respect of that particular incident entails that the direction given by the Ceremonial Mayor for Mr Fisher to leave the meeting was '*extremely savage and unwarranted*'. Another complainant indicates that it was most unfortunate for '*an ex member of our own Council*' to be '*thrown out of the meeting for having the temerity to continue to fight for a cause he has devoted a significant chunk of his life towards*'. In essence, it is alleged that Councillor Stephen Akers-Belcher did not treat Mr Fisher with respect and did not therefore accord with the 'duty to promote and maintain high standards of conduct'. There is also the contention that in using phrases such as '*closing this meeting down*' Councillor Akers-Belcher effectively terminated proceedings without the ability for it to be reconvened or otherwise adjourned. I was specifically requested to view video footage of this meeting and whilst there is a lack of clarity as to things said, it can be adequately recorded that at 46.50 minutes/seconds of this meeting Councillor Akers-Belcher did state '*I will close this meeting down if there is no order*'. At 49.50 there is a further statement comprising '*I am closing this meeting down*'. Further, at 51.06 '*right that's it I'm going to close this meeting*'. There is also the intervention from the Council's Assistant Chief Executive recorded at 51.38 wherein '*this meeting is being adjourned for 5 minutes at which point the meeting will continue*'. The complaints received place emphasis upon the word 'closed' rather than the meeting being 'adjourned'. It is more the case of the general propriety behind such remarks. It was also asserted, that through the general confusion, a number of members of the public left the meeting on the premise that they believed it had indeed been closed rather than simply being adjourned.

- 4.2 During the course of this investigation I had cause to interview several council officers who attended this particular council meeting. The general consensus was that as this meeting proceeded it '*became more unruly*'. Further, that the Ceremonial Mayor did use terminology to the effect that he would either '*close*' the meeting or '*stop*' the meeting. Materially, at the time

the Ceremonial Mayor announced the '*last interruption*' it is recorded (at 51.06) that '*I am going to close this meeting*'. A senior officer sat close to the Ceremonial Mayor indicates that at this point in the proceedings the Ceremonial Mayor did say that he had '*adjourned*' the meeting. Owing to the cacophony of noise, this cannot be discerned on the video footage which is accessible on various social media and other sites. It was this that prompted the Assistant Chief Executive Officer to go back into the meeting (51.38) to announce '*this meeting is being adjourned for 5 minutes at which point the meeting will continue*'. Another officer indicates that '*after a number of warnings he [the Ceremonial Mayor] adjourned the meeting*'. This officer also stated '*I understood it was to be temporary until order was resumed*'. Such was the level of disruption; the Assistant Chief Executive on returning to the Council Chamber had to make use of the gavel and the microphone to be heard. This is further corroborated by another officer who stated the Assistant Chief Executive '*had some difficulty getting this message across due to a number of people shouting*'. When the meeting recommenced all in attendance were evidently advised that the Ceremonial Mayor would not stand for any further heckling and wanted '*some form of order*'. It appears that at this point Mr Fisher stood up to speak. In what appeared to be persistent questioning by Mr Fisher, it seems that on 3 or possibly 4 occasions he was requested to '*sit down*' and on failing to comply with this instruction, the Ceremonial Mayor asked him to leave the meeting. It also appears that Mr Fisher was requested by members of the public to '*sit down*' with one Councillor apparently gesturing to Mr Fisher that he should be seated.

- 4.3 On the 16th April, 2015 I had the opportunity to meet with Mr Fisher in the Council offices in order that he could provide an explanation of events from his own perspective. He confirmed that the gallery was '*packed*' following the campaigning and interest generated in 'Saving Hartlepool Hospital'. It appeared there was initial trepidation that members of the public would not be allowed to speak at this meeting although, the Council agenda does indicate (paragraph 4 refers that Council Procedure Rules would be suspended) that the Chair could exercise discretion to allow members of

public to speak. However, it is not a general expectation that members of the public would be conversant with the Council procedures. Mr Fisher indicates that *'trouble started immediately'* through the Chair's opening announcements which Mr Fisher took and he indicates that the vast majority of those attending so took as being *'spoken down to'*. Those opening remarks, for the avoidance of doubt, are as follows:

'This Chamber will be respected. I don't want any shouting from any member of our Council, if members want to speak please indicate, and there will be an opportunity later for members of the public to speak. I will not tolerate any jeering or bad behaviour from anyone in here. If that happens, I will bring the meeting to a close and I will stand by that.'

In Mr Fisher's opinion this was the catalyst to the way the meeting descended on this particular evening. In Mr Fisher's opinion such a statement was *'rude'* and had been issued, before anyone had spoken. He also remarked that using the terminology of *'closed'* on a number of occasions had allowed confusion to intervene into this meeting. He further recalled a Councillor raising a number of questions and proposing a motion to the effect that the Hartlepool Borough Council should disassociate itself from any involvement with the Foundation Trust. He did not see any provocation behind such questioning and the introduction of this motion *'didn't worsen the meeting it just continued in that way'*. Drawing upon his own recollection of his time as a Borough Councillor, he indicated that the meeting was *'as bad as I have seen'*. He also ventured that he knew the Ceremonial Mayor particularly well, as Councillor Akers- Belcher had been his Vice Chair under his Chairmanship of the Audit and Governance Committee. He also indicated that he was aware that Councillor Akers- Belcher could chair meetings *'very well'*, but on this particular occasion things fell *'below his own standards'*. Pertinently, he remarked *'I have seen him chair meetings very well, but this wasn't one of them'*.

- 4.4 It was confirmed that there was a 'Save our Hospital' meeting on the 14th February, wherein there were calls for *'all cooperation should be withdrawn with the Foundation Trust'*. This therefore featured in the questions at the

Council meeting and the resulting motion, which was ruled 'out of order' but which became a centrepiece of this meeting. Consequently, there were more people in the public gallery on the 16th February than would have been the case had it not been for the meeting held on 14th February. In Mr Fisher's opinion the Ceremonial Mayor should have afforded respect to all attending at the start of the meeting rather than being '*confrontational and rude*'. Further, that by using the language of '*closing down the meeting*' '*he made a situation*'. At the point in time when the Ceremonial Mayor announced the meeting was to be 'closed' it was Mr Fisher's considered opinion (and he suggests the opinion of others), that the meeting had been officially closed and he and others took steps to leave.

- 4.5 Owing to mobility problems, Mr Fisher generally allows other individuals, as on this occasion, to leave a meeting before he physically vacates his own seat. He testifies that in his opinion a number of members of the public did leave this meeting on the basis that it had indeed been formally closed. At the point in time when the Assistant Chief Executive came back into the meeting and stated it had been 'adjourned' he indicates that he was '*not surprised*' at this development '*as the purpose the meeting had not been fulfilled as the report had not been accepted*'. However, he also felt that you couldn't simply '*close*' a meeting and then '*re-open*'. On the Ceremonial Mayor coming back into the meeting and indicating that a further disturbance would see the closing of the meeting it was at that point that Mr Fisher stood up and said that this was '*completely out of order*'. Mr Fisher was then approached by the security officer who indicated '*I have to put you out*'. Although, Mr Fisher recalls there was a brief discussion with the security officer he then left the meeting of his own volition. In Mr Fisher's opinion the statements made by the Ceremonial Mayor as to the 'closing' of the meeting manifested itself in members of the public physically leaving the meeting and therefore being denied the opportunity to see its outcome. In fairness Mr Fisher indicates that although he didn't hear the 3 or 4 warnings directed to himself, the same could have been issued by the Ceremonial Mayor. Mr Fisher concluded that the Ceremonial Mayors approach to the meeting was unnecessarily '*aggressive*' but his main issue was that members of the

public left the meeting on the understanding that it had at that stage been formally closed. He also ventured, as indicated, that chairing a meeting requires special skills and is a very difficult task. However, on this occasion, Councillor Akers-Belcher made a difficult situation worse.

5. Councillor Stephen Akers-Belcher's Submissions

- 5.1 On the 5th June, 2015 I had occasion to meet with Councillor Stephen Akers-Belcher surrounding the events of the Extraordinary meeting held on 16th February, 2015. He indicated that he opened the meeting and followed the agenda through receiving apologies from absent members and then any declarations of interest. This included a declaration that he had been granted a dispensation through the Council's Chief Solicitor which would allow him to '*stay in the meeting and chair*'. Although, this declaration is mentioned in subsequent minutes the dispensation is also publicly accessible in conjunction with Councillor Akers-Belcher's 'Register of Interests'. Thereafter, he made the opening remarks surrounding the '*respect*' that should be shown within the Council Chamber, as fully documented earlier within this report. He then moved onto the substantive item of this Extraordinary meeting, namely dealing with the North Tees and Hartlepool NHS Foundation Trust's Quality Accounts 2014/15. This proceeded through a presentation by two officers from the Foundation Trust with a public question session, followed by questions from members of the Council. By calling for 'respect' at the start of the meeting Councillor Akers-Belcher felt this had universal application to all those present in this particular meeting. Further, it was not intended to be in any way provocative but merely that the proceedings should be respected. In essence, this was based upon the '*mutuality*' of respect, which should exist when transacting Council business. On the two aspects of the complaint he fully accepts (the same being documented) that he used the word 'close' and whilst this terminology may not have been strictly correct it was intended to try to restore order to the meeting and if necessary lead to a period of adjournment to the proceedings to enable order to be restored. He accepts using this terminology but at the

point in time (recorded at 51:06) that he is *'going to close the meeting'* he did use the term *'adjourned'*. Further, he gave an instruction to the Assistant Chief Executive Officer to clarify the position, so that all were aware and this took place within minutes of leaving the Council Chamber during this interruption in proceedings. He appreciates that members of the public may well have left the meeting but all members of Council attending, remained. There was no *'malice intended in what I did, simply wanting to ensure everyone had their say but this should be done in an orderly and respectful way'*. He also indicated that he took advice on the conduct of Mr Fisher and following a number of warnings he asked Mr Fisher to leave the meeting. They were fundamental issues with the motion proposed and upon the advice of the legal officer attending, he ruled that the motion was *'out of order, upon that advice'* His motivation was to chair a meeting without individuals, particularly those representing the Foundation Trust, being either verbally abused or intimidated and that there would not be any toleration of such abuse. He indicated, subsequent to the meeting, he had received correspondence from the Foundation Trust by way of appreciation of his efforts in trying to maintain order at the meeting. There was an acceptance that the terminology of *'closing'* a meeting was not ideal but the circumstances of this meeting dictated events and the use of language which may not have been procedurally correct. In relation to Mr Fisher he had been warned on a number of occasions to moderate his behaviour and upon those warnings not being heeded, he sought advice and thereafter ordered his removal from the meeting.

6. Reasons as to whether there has been a failure to comply with the Code of Conduct

- 6.1 All who attended this meeting would probably form the conclusion that it was 'stormy' but which must also necessarily reflect upon all those attending. There are two complaints lodged against Councillor Stephen Akers-Belcher. There is the inescapable fact that it is the person who chairs a meeting, who is most closely under the microscope of public scrutiny. For his part,

Councillor Akers-Belcher mentions that he opened the meeting calling for ‘respect’ and which is the premise behind the proper conduct and behaviour of a meeting. The complainants indicated that such an opening mark was ‘provocative’ and unnecessarily so and which also set the general tone and led to the disintegration of this meeting. Such views are diametrically opposed and will remain the case. It is though accepted by Councillor Akers-Belcher that references to ‘closing’ a meeting may not have been procedurally correct and the main consequence being, that some members of the public left this meeting believing that it had indeed been closed. It is also the case that Elected Members did remain in the Chamber and when this meeting did ‘reconvene’ no member for the Borough Council had departed. There is however a fundamental distinction between a meeting being formally ‘closed’ and being ‘adjourned’. An adjourned meeting is that part of the original meeting that continues and importantly formal notice of adjournment is not required although there is a clear advantage of providing the same, to avoid any doubt. An adjournment would cover that part of the unfinished business of the original meeting. Should it be the case that additional items are received, a fresh meeting would need to be convened. It is also recognised that it is the duty of the Chairman ‘to preserve order, and to take care that proceedings are conducted in a proper manner’ (National Dwelling Society –v- Sykes (1894)). However, the power to ‘adjourn’ should not be taken as a power vested solely in the Chairman. The person presiding cannot adjourn a meeting ‘without the consent, express or implied, of those present’. Hence, although the Chair could make the declaration of an adjournment, this should come from the consensus of Elected Members then present. Where a Chairman acts so contrary to the wishes of Elected Members then it is open for those Members to elect someone else to preside and conclude and properly transact the remainder of the business. Such actions would be valid (R -v- Dorris (1908)). In the case of National Dwelling Society –v- Sykes, it was mentioned;

‘The meeting is called for the particular purposes. He (the Chair) presides with the business which is then to be transacted. He cannot say, after that business has been opened ‘I will have no more to do

with it: I will not let this meeting proceed: I will stop it: I declare the meeting dissolved and I leave the chair'. That is not within his power. A meeting by itself can resolve to go on with the business which the Chairman, forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he does not like'.

- 6.2 In this particular case, there was no divergence between the views of the Chair and the Elected Members attending insofar at the point of reconvening the meeting all Members remained present in the Chamber and the business of the meeting continued. The use of the terms 'closing/ close' are not ideal and it is an accepted consequence that some members of the public believed the meeting had been closed and accordingly left, unaware that it would reopen and thereafter formally conclude. The video footage which I have seen carries a note '*apologies for sound quality*'. It is stated by the Ceremonial Mayor that he did use the word 'adjourned' before he left the Chamber and this is corroborated by a senior council officer. Further, moments later there was a public declaration of the status of the meeting following an announcement made by the Assistant Chief Executive.
- 6.3 It is also the case, that provided a Chairman does not act improperly or maliciously there should be no interference with what has transpired. A court would not interfere unless a complaint alleging 'irregularity' is from a '*representative majority of the meeting*'. There clearly was confusion at this meeting and the terminology used was not particularly helpful. However, this must be seen against the background of a particularly heated and as mentioned 'stormy' proceedings upon which there were a variety of challenges in maintaining and preserving some degree of order. It is very easy to focus on the person chairing, but it is the actions of the meeting as a collective which often bears responsibility and directs how a meeting is conducted. I believe it is pertinent what Mr Fisher has said in that Chairing a meeting is difficult and perhaps the Ceremonial Mayor through the use of such loose terminology made the conduct of a meeting which by itself was hard, even harder. However, this does not necessarily either engage or offend the general principles of conduct in public life or the general

obligations within the Council's Code of Conduct. In his opening remarks, the Chair sought to express what he described as the 'mutuality of respect' which if anything reinforces the principles behind the Code of Conduct. In essence this was a highly unsatisfactory meeting and it was widely reported that members of the public '*who packed into Hartlepool Civic Centre....vented their frustrations' towards Councillors*'. Most particularly against '*Labour Councillors*.' Further, there were cries of '*you are a disgrace*' and '*shame on you*' which predominantly were aimed at the Ceremonial Mayor. I have also been made aware of a response received through the NHS Foundation Trust wherein the Ceremonial Mayor was commended '*for trying to focus on the business of the meeting and ensuring my staff were not subject to inappropriate comments*'. This reflects upon the Ceremonial Mayor's opening remarks in trying to ensure the order was maintained through recognition of the 'respect' for others. Accordingly, I did not find a breach of the Code of Conduct although I must recognise the inappropriate terminology used by the Ceremonial Mayor, which did not assist and is a component part, along with other matters, serving to undermine the overall conduct of this meeting.

- 6.3 In relation to the removal of Mr Fisher from the meeting this was viewed as a matter of '*contempt*' by one of the complainants. Following my investigation of this matter I must take a contrary view. From a variety of sources it is mentioned on at least 3 if not 4 occasions Mr Fisher was warned as to his conduct. Indeed, Mr Fisher although oblivious of the warnings given during the concurrency of this meeting does not deny that such warnings were given. The Ceremonial Mayor also indicates that he took advice on this particular issue. The Council's Constitution through Council Procedure Rule 22.1 states;

'If a member of the public interrupts proceedings the Chair will warn the person concerned. If that person continues to interrupt, the Chair will order his/ her removal from the meeting room'.

- 6.4 I was informed that such warnings were given and that even members of the public had mentioned to Mr Fisher that he should moderate his behaviour

and there was a gesture from an Elected Member to indicate essentially that Mr Fisher should '*calm down*'. There is no denying that Mr Fisher along with all who attended this meeting were passionate for the provision of health services within the Borough. Further, those attending this meeting and had been privy to the gathering on the 14th February would have been consumed by the desire to safeguard the services as well as the return of services and such thoughts may well have displaced the ability to clearly heed the warnings given by the Chair of this meeting. Some may have seen the behaviour of Mr Fisher in making some form of 'statement' and certainly Mr Fisher indicates that his own behaviour was dictated in large part by the way the Chair conducted this meeting. Nevertheless, he did receive repeated warnings, failed to heed the same and therefore in conjunction with the Council's Procedure Rules, there was little alternative other than to request his removal from the meeting. Such an order to remove is taken sparingly and only in the most exceptional circumstances. This appeared to be the case in this particular instance. I therefore do not believe that Councillor Akers-Belcher breached the Code of Conduct in relation to the exclusion of Mr Fisher.

7. Findings

- 7.1 The Extraordinary meeting on the 16th February was not conducive to the proper dispatch of business and does not reflect well upon the governance of the Council. Whilst the Council had resolved that all matters relating to Statutory Health Scrutiny, including the consideration of the 'Quality Accounts' of the NHS Foundation Trust, be referred to Council, it is more proper for such consideration to be thorough the Audit and Governance Committee. Council has subsequently resolved that this should be the case. There are issues given their significance and impacts upon the Borough which will always require the handle of Council but this necessarily is not one of those cases. It was unfortunate that this meeting coincided with the public rally which called for support to disengage with the Foundation Trust as held on the 14th February, 2015. It appears that the basis of this motion from the 14th

February was taken forward into the confines of the Extraordinary meeting. The use and reliance on the term 'closing' or 'closed' did cause some confusion at points where some members of the public thought that the meeting had been closed, when this appears not to have been the case. In this respect, I would draw heavily upon the comment made by Mr Fisher that the Ceremonial Mayor has chaired a number of meetings '*very well, but this wasn't one of them*'. Again, as expressed, chairing a meeting is hard, on this occasion, through circumstances prevailing, Councillor Akers-Belcher made it even harder. However, this does not necessarily entail that there has been a breach to the Council's Code of Conduct. Certainly, this will be a meeting which many would wish to consign to the past and would hope never to be repeated. Such sentiments can be recognised but do neither engage nor conflict with the Code of Conduct, as expressed within this report.

- 7.2 I therefore make the finding that Councillor Stephen Akers-Belcher has complied with the Council's Code of Conduct following an investigation under section 28 (7) of the Localism Act, 2011. In accordance with the provision, the views of an Independent Person, which must be made known and taken into account by the Council before it takes any decision on an allegation it has decided to investigate are stated below;

'This is an extremely difficult case but, on balance, I would concur with the conclusion that the Code of Conduct has not been breached. Whilst the apparent use of the terms "close/closing" is unfortunate, I would suggest that the heated and volatile atmosphere of the meeting would be mitigating factors for what I believe to have been an honest misuse of terminology. Moreover, this was corrected to "adjourned" by the Assistant Chief Executive within thirty seconds, although I acknowledge that some members of the public may well have left the meeting in that intervening period. I do not believe, however, that this would have had any significant bearing on the outcome of the meeting.'

My view of the allegation that the Ceremonial Mayor was being disrespectful or talking down to the public is that this was much more to do with him trying to lay down the ground rules of debate to both Elected Members and public alike, albeit rather forcefully. His subsequent exclusion of Mr Fisher from the meeting seems to have been justified, given the evidence provided. It seems to be rightly accepted by all concerned that chairing a meeting is an extremely difficult task and I would conclude by stating my view that the Ceremonial Mayor was trying to do his best in a highly pressurised situation.'

8. Recommendations

- 8.1 In accordance with Section 28 (6) of the Localism Act, 2001, complaints being received and duly investigated it has been determined that Councillor Stephen Akers Belcher did not breach the Council's Code of Conduct in relation to an extraordinary meeting of Council held on 16th February 2015.

Signed P J Devlin.....

Dated 17th August 2015.....