

DECISION NOTICE: BREACH **Reference COC145647**

Subject Member

Cllr Elizabeth Snell (P.E. Snell), Southwick Parish Council

Complainant

Cllr John Eaton, Southwick Parish Council

Investigating Officer

Jed Matthews

Monitoring Officer

Perry Holmes

Independent Person

John McAllister

Hearing Sub-Committee

Cllr Allison Bucknell (Chairman)

Cllr Bill Parks

Cllr Graham Wright

Julie Phillips (non-voting)

Decision Date

11 October 2023

Issue Date

18 October 2023

Complaint

1. It was alleged that on 28 April 2023 the Subject Member made claims of improper behaviour and a lack of transparency by the Complainant in respect of a local planning matter to a local news reporter during a phone conversation, and had then sought to coerce the newspaper from giving evidence.
2. In doing so it was alleged that the Subject Member breached the following sections of the Southwick Parish Council Code of Conduct:

Paragraph 2.1	I do not bully any person.
Paragraph 5.1	I do not bring my role or local authority into disrepute.
Paragraph 8.3	I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

Meeting

1. The Hearing Sub-Committee (“The Sub-Committee”) met on 11 October 2023 at the Council Chamber, County Hall, Trowbridge, to hear the complaint.
2. A Chairman was elected for the meeting and there was opportunity for any declarations from the Sub-Committee members before the procedure for the meeting was noted and introductions were made for all those present. After deliberation the Sub-Committee did not exclude the press or public from the remainder of the Hearing. The Chairman then briefly detailed the process that would be followed for the hearing in accordance with Paragraph 8 of the Council’s Arrangements for dealing with Code of Conduct Complaints, Protocol 11 of the Constitution, which had been circulated with the agenda papers.
3. In accordance with the procedure the Sub-Committee received representations from each of the parties and the single witness called, with questioning of and by the parties. There was also a statement from the Complainant. The Sub-Committee then withdrew into private session, together with the Independent Person, the Monitoring Officer, and other supporting officers.
4. The Independent Person was consulted throughout the process and his contributions were taken into account by the Sub-Committee in reaching their decision.
5. The Hearing resumed at the conclusion of deliberations, and the decision of the Sub-Committee was announced to the parties and their representatives as follows:

Decision

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer’s report, the submissions made by the parties as detailed in the agenda papers and at the Hearing, testimony from the witness, and the statement of the Complainant, the Sub-Committee concluded on the balance of probabilities that Councillor Elizabeth Snell of Southwick Parish Council breached the Parish Council’s Code of Conduct under the following provisions:

Paragraph 2.1 I do not bully any person.

Paragraph 5.1 I do not bring my role or local authority into disrepute.

Reasons for Decision

Background

1. Both the Subject Member and Complainant are Members of Southwick Parish Council, with the Complainant currently serving as Chairman.
2. Following the phone discussion between a local reporter and the Subject Member on 28 April 2023 regarding a local planning matter and other issues, the local reporter contacted the Complainant for comment on allegations they believed had been made regarding the Complainant in his role as a Parish Councillor. This led to the submission of a complaint on 21 May 2023.

3. The differing accounts of the phone discussion will be explored in the next section, but the basic situation was that in discussing a local planning matter it was allegedly suggested that the Complainant was, as a Councillor, behaving improperly in a way which had caused others concern, in particular some councillors, in relation to that matter, and that he might receive a discount on a large property from developers. The Subject Member disputed that such an allegation was made.
4. Southwick Parish Council have adopted the model LGA Code of Conduct. This includes the provisions which were alleged to have been breached as detailed above, as well as explanatory text to aid in the interpretation of whether a specific action or behaviour meets the requirements of those provisions, as well as generalised text on when the Code applies and in what situations.

Scope

5. It was apparent from submissions to the Investigating Officer that there was some history of disagreement between the Subject Member and Complainant on a variety of local matters, in particular relating to planning and potential development within the parish. This had caused a degree of dispute between them which had on occasion spilled over into personal disagreement and accusations of poor behaviour, and the submissions included some detail and additional allegations on that past disagreement to seek to provide additional context.
6. However, notwithstanding that history the Hearing focused upon the allegations specifically relating to the phone discussion on 28 April 2023 which was the principal subject of complaint. Details of other matters raised by either party will be included within the minutes.

Acting in a capacity as a Councillor

7. In order for there to be a finding that the Subject Member was in breach of the Parish Council Code of Conduct it was necessary to establish whether the Code applied during the discussion with the local reporter.
8. The Subject Member maintained in her submissions and at the Hearing that she had regarded the conversation as a personal, private matter, as she lived near to the application site to which she had concerns. In response to the complaint, she stated she had accepted it was a mistake to speak to the reporter about the matter and should have been more explicit about speaking as a member of the public.
9. The Sub-Committee noted the following from the Code of Conduct:

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *you misuse your position as a councillor*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;*

10. Although some aspects of the phone conversation were disputed, such as whether the Subject Member had been addressed as Councillor during the call, whether she had confirmed her living close to the site, and whether all detail of other matters was included within the reporter's notes of the conversation, it was not in dispute that the Subject Member had discussed other parish councillors and parish council relevant

business during the call as well, and by her own account had not taken any steps to clarify the role in which she was speaking.

11. The witness testimony of the local reporter and his notes made clear that his impression was that the Subject Member had been speaking in her capacity as a councillor. Further, that she had raised matters about parish council business and possible complaints about the Complainant in his role as Chairman of the Parish Council, in addition to matters specifically relating to planning concerns about an application.
12. It was accepted that the Subject Member had been on the Parish Council for only not quite two years at the time of the phone conversation, and inexperience or naivety may have contributed to her not realising she needed to be more explicit about the capacity in which she was making comments. It was acknowledged that the line between personal and official business could at times be unclear.
13. Nonetheless, whatever the Subject Member's sincere personal feelings about the nature of the conversation, the requirement of the Code was whether her actions would give the impression to a reasonable member of the public with knowledge of all the facts that she was acting as a councillor, not whether she considered herself to be acting so.
14. In discussing parish council relevant business and the conduct of the Complainant in his role as a fellow councillor and Chairman of the Parish Council, the Sub-Committee agreed that a reasonable person would have had the impression the Subject Member was acting as a councillor, as indeed the local reporter confirmed at the Hearing he had so considered.
15. Accordingly, the Sub-Committee was satisfied the Code was in effect and they needed to establish on the balance of probabilities the facts of the conversation between the Subject Member and the local reporter.

Phone Conversation

16. The Subject Member had raised the matter of the contentious planning application with a photographer who worked for the newspaper, and who was also a resident in the village and an acquaintance of some degree.
17. The local reporter testified the photographer had asked him to contact the Subject member in relation to concerns about the Chairman of the Parish Council and the Neighbourhood Plan, and in relation to a planning application.
18. The local reporter had provided details from his notes of his conversation with the Subject Member. These included that a number of councillors were unhappy about the Complainant, they had held a meeting to discuss making a formal complaint about his conduct, made vague allusions to 'something going on' which could not be pinpointed, that he was not informing the parish council of everything he was doing, and similar allegations relating to parish councillors and the Chairman.
19. The notes and testimony were that the complaints seemed to relate to a planning application in the village, and that the Subject Member stated there had been lots of comments about the plans and she had a personal interest in the matter.

20. The Subject Member stated that the reporter's account was embellished and included innuendo not of her making. She further stated the account did not include all details, and that she had been motivated by concerns about planning development and how it was being handled. She refuted that she had made any allegation of corruption, only that she had mentioned a rumour about villagers and discounts, and the reporter had added his own extravagant construction to that, and she regrets mentioning it.
21. It is noted for the decision notice that in her initial response to the complaint the Subject Member stated she contacted the reporter as a "concerned parishioner regarding a planning matter in the hope that the Wiltshire Times could help to highlight the issues". Whilst disputing she made any allegation of corruption and other matters, she concluded that "I did email the reporter as I was unable to speak to him on the phone and asked him not to do anything as I had second thoughts about it". The reporter's notes confirm the day after conversation he was asked not to publish a story at that moment by the Subject Member. Subsequent interviews with the Subject Member state she had not expected the reporter to take the matter further or expected any publication from her discussion with him.

Conclusions

22. The notes from the reporter suggested a direct accusation had been made that the Complainant was being offered a discount by a developer if he wished to purchase one of the houses proposed to be built. The Subject Member disputed this in submissions and at the Hearing, as detailed above. The notes as provided by the reporter do not use the words corruption, but refer to a 'serious allegation' about the Complainant specifically receiving a discount.
23. The Sub-Committee felt it could not establish with certainty the precise words used, given the disputed accounts. Nonetheless, from the accounts it appeared there had been accusations regarding the conduct of the Complainant in addition to the raising of issues to do with the planning application, and mention of a rumour of villagers getting discounts for properties. The Subject Member could not confirm at the Hearing if she had mentioned the existence of the rumour generally or only specifically in relation to the Complainant. The reporter stated the implication he received was that the Complainant might be receiving one of the properties, though the Subject Member stated she did not believe she had said anything which might be considered degrading regarding the Complainant.
24. On balance, the Sub-Committee was satisfied that in the course of the discussion with the local reporter the Subject Member had given the impression to the reporter that the Complainant had been behaving in an improper manner regarding the planning application, and this had included potentially taking up an offer of a discount on a property. Whatever the precise words that were used, and notwithstanding other topics being included in the discussion as confirmed by both accounts, a professional reporter had understood the comments to include such an accusation.
25. In considering whether the action amounted to a breach of Paragraph 2.1, the Sub-Committee considered the Code guidance on bullying.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying

might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

26. Bullying behaviour could, in some cases, be the result of a one-off incident, and was not necessarily obvious or blunt. The Sub-Committee found that the comments made had the effect of either undermining, humiliating, denigrating, or injuring the recipient, particularly as they could have been reported widely, even if neither the denigration nor the potential publication had been the Subject Member's intention.
27. The Sub-Committee therefore resolved that there had been a breach of Paragraph 2.1.
28. The Sub-Committee was also unpersuaded by the Subject Member's explanation at the Hearing that she had wished to discuss the planning matter with the local reporter, without any expectation of a report or publication following the conversation.
29. The Subject Member had never met the local reporter and stated at the Hearing she had not known who he was prior to their phone conversation. It was therefore unclear to the Sub-Committee for what reason the Subject Member would wish to have a private conversation about a local planning matter and concerns about the conduct of the Chairman of the Parish Council with a local reporter unknown to her personally, in the absence of any intention for the matter to potentially be reported. Even supposing the conversation had not been solicited and there was no wish for a publication to emerge as a result, a reporter unknown to the Subject Member phoning about a contentious local matter would reasonably have been presumed to have been doing so regarding a potential news item, even if only on the specifics of the planning matter.
30. Although the Subject Member had subsequently requested the story not be published and made complaints to the editor of the newspaper about the conversation she said she believed to have been private being relayed to a third party, her actions could have resulted in serious accusations about another member of the Council being widely distributed. Had the reporter not contacted the Complainant for comment on the accusations he believed to have been made, and in reaction to that the newspaper deciding not to proceed with the story, there would have been dissemination of damaging allegations without accompanying foundation, bringing the Complainant and Parish Council into disrepute as a result of the Subject Member's comments.
31. Whilst Paragraph 5.1 of the Code makes clear a councillor can hold their council and fellow councillors to account, including expressing concern about decisions and processes, the Sub-Committee considered that the actions of the Subject Member in this instance were reckless and exceeded that function.
32. As the Code sets out holders of public office should be aware that their actions might have an adverse impact on themselves, other councillors, their authority or council, and may lower the public's confidence in their ability to discharge their function. In making comments to a reporter which were taken to be serious accusations of improper behaviour by the Complainant, the Subject Member had brought her role and that of the Council into disrepute.
33. The Sub-Committee therefore resolved that there had been a breach of Paragraph 5.1.

34. In relation to whether there had been a breach of Paragraph 8.3 of the Code, the Sub-Committee noted this was in the context of Paragraph 8.2 relating to co-operating with a Code of Conduct investigation or determination.
35. The Subject Member had contacted the local newspaper to complain about the conduct of the local reporter in respect of their conversation. The Investigating Officer had concluded that there was no evidence to indicate the complaint was made with the intention of affecting any Code of Conduct investigation.
36. Accordingly, the Sub-Committee agreed with the finding of the Investigating Officer that no breach of Paragraph 8.3 had occurred.

Sanctions

1. The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.
2. The Subject Member had not returned to the Hearing following the Sub-Committee withdrawing into deliberation, as she had work matters which required her attention. The clerk to the Hearing contacted her by telephone to advise her that in the event the Sub-Committee determined a finding of a breach of the Code of Conduct, as Subject Member she was entitled to be asked her view of an appropriate sanction.
3. The Subject Member confirmed verbally that she was not able to return to the Hearing, and that matters could proceed in her absence without a comment on appropriate sanction, in the event a breach was determined.
4. The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person, resolved to recommend that Southwick Parish Council impose the following sanctions as a result of the finding of a breach of the Code of Conduct:
 - i) That the Parish Council arrange training for Councillor Snell regarding Code of Conduct matters, in particular relating to the role of a Councillor and when they could be considered acting in an official capacity, and regarding interactions with the media.
 - ii) That Councillor Snell not be appointed to or remain on any planning related sub-committees or working groups established by the Parish Council, until such training has taken place.
 - iii) That the Parish Council publish the findings of the Hearing Sub-Committee, in the form of the decision notice, in the minutes of the next Parish Council meeting.