

Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 16 NOVEMBER 2023 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Trevor Carbin, Cllr Bill Parks, Cllr Derek Walters (Chairman) and Julie Phillips (non-voting)

Also Present:

Lisa Alexander (Senior Democratic Services Officer), Kieran Elliott (Democracy Manager – Democratic Services), Lisa Hayward (Complaints Officer), Matthew Hitch (Democratic Services Officer), Jo Madeley (Deputy Monitoring Officer), John McAllister (Independent Person), Henry Powell (Democracy and Complaints Manager)

6 **Election of Chairman**

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Derek Walters as Chairman for this meeting only.

7 **Declarations of Interest**

There were no Declarations of Interest.

8 **Meeting Procedure**

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

9 **Exclusion of the Press and Public**

After seeking views from the Investigating Officer, Subject Member, and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

10 **Determination of a Code of Complaint COC144873 in respect of Councillor G. Peacock, Redlynch Parish Council**

The Hearing was in relation to complaint COC144873 made by Mr Nicholas Morgan (The Complainant) regarding the alleged conduct of Councillor Gary Peacock, of Redlynch Parish Council (The Subject Member).

The Sub-Committee had received prior notification from both the Complainant and the Subject Member that they would not be attending the Hearing in person.

Investigating Officer Representations

The Investigating Officer, Lisa Hayward, presented their Report and confirmed that no witnesses would be called. In accordance with the procedure the Sub-Committee were invited to ask questions of the Investigating Officer to assist with their assessment of the complaint.

It was alleged that on 7 March 2023, the Subject Member attended the Complainant's property to cut back a hedge and reposition a street name sign. This was after visiting the complainant two months previously and allegedly introducing himself as a parish councillor and asking permission to cut back the hedge for the purpose of exposing a drain cover to assist flood prevention on behalf of Redlynch Parish Council.

In doing so it was alleged that the Subject Member breached the following sections of the Redlynch Parish Council Code of Conduct:

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

Complainant Statement

In accordance with the procedure the Sub-Committee received a written statement from the Complainant in support of their complaint.

Questioning of Investigating Officer

The Sub-Committee then had the opportunity to ask questions of the Investigating Officer, supported by the Independent Person.

Clarification was sought from the Investigating Officer on the detail of the black and white photograph / letterhead mentioned by the complainant. The Investigating Officer confirmed that she had not requested further details on this during the investigation, however the document was said to have been a standard letter produced by the Parish Council, which could be sent to residents when there were situations where there were obstructions of hedges etc.

The Sub-Committee asked for clarification on the nature of the alleged trespass, noting the location of the hedge in Chapel Lane where the Subject Member was also a resident. It was confirmed that Chapel Lane was not an adopted road. The Sub-Committee was advised that the crux of the complaint related to whether there was an element of deceit to the actions, and if so, what impact that had on the individual.

The Sub-Committee noted the explanation in the Code of Conduct on when the code applied.

The Sub-Committee also queried the reason for the Complainant not accepting the offer of an apology and restitution.

Subject Member Representations

In accordance with the procedure the Sub-Committee received a written statement from the Subject Member as evidence and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.

Questioning of the Subject Member

No questions could be asked as the Subject Member was not in attendance.

Concluding Statements

The Investigating Officer made a concluding statement, in which they highlighted their findings as detailed above.

The Subject Member had not provided a concluding statement.

Deliberations

Following the concluding statement, the Sub-Committee withdrew into private session at 10:20, together with the Independent Person, the Deputy Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and her contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 10:50 at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

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 in written statements prior to the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor Gary Peacock of Redlynch Parish Council breached the Parish Council's Code of Conduct under the following provisions

Paragraph 5.1 - I do not bring my role or the Parish Council into disrepute.

Reasons for Decision

Background

The Subject Member is a Member of Redlynch Parish Council. The Subject Member and the Complainant are neighbours, living on the same road in Redlynch.

The Complaint relates to the Subject Member's actions to remove part of the Complainant's hedge, for drainage clearance purposes and to relocate a road name plate on to the Complainant's property.

There were differing accounts of the initial discussion between the Complainant and the Subject Member, with regards to the nature of the request and to which role the Subject Member was acting in at the time of the request and subsequently when the works were carried out.

The Complainant and his wife believed the Subject Member to have introduced himself as a Redlynch Parish Councillor and to have stated that the hedge removal was for drain clearance works and part of a programme which the Parish Council was undertaking. There was no mention of the intention to move the road sign from across the road and to fix it to their property. As the Complainant and his wife believed the hedge works to have been scheduled by the Parish Council permission was granted, with the proviso that prior notice be given by way of a note through the door, of the date of the works.

The Subject Member did not recall hearing the request for prior notification and believed that consent for the hedge to be trimmed back had been given. He also disputed that he introduced himself as a Parish Councillor.

Redlynch Parish Council's Code of Conduct 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.

Acting in a capacity as a Councillor

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 discussions with the Complainant and the subsequent actions of the Subject Member.

The Sub-Committee noted the following from the Redlynch Parish Council's 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;*
- *The Code applies to all forms of communication and interaction, including:
at face-to-face meetings
at online or telephone meetings
in written communication
in verbal communication
in non-verbal communication
in electronic and social media communication, posts, statements and*

comments.

A member may be acting in one of three different roles:

- a) Acting in a private capacity – the code of conduct does not apply.
- b) Acting as a constituent elected member and therefore acting in a public role but not representing the body to which he or she has been elected - the code of conduct does apply.
- c) Acting in an official capacity on behalf of the body to which he or she is elected to - the code of conduct does apply.

The Subject Member was required in their role as a member of the Parish Council to abide by its Code of Conduct, which states at 5.1 that:

“I do not bring my role or the Parish Council into disrepute.”

The Code of Conduct refers:

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public’s confidence in your or the Parish Council’s ability to discharge your/it’s functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.

Although some aspects of the conversation were disputed, such as whether the Subject Member had introduced himself as Parish Councillor during the meeting and whether he had stated the proposed hedge trimming work was on behalf of the Parish Council as part of a wider project, it was not in dispute that the Subject Member had discussed Parish Council relevant business during the initial visit as well as taking a copy of a printed document regarding associated council works. He had also not taken steps to clarify the role in which he was speaking.

The Sub-Committee noted that the line between personal and official business could at times be unclear (particularly in this case where the Subject Member also resided within close proximity of the Complainant) but that it was the responsibility of an elected member to ensure that clarity on which role they were acting in was provided to prevent a public perception being formed incorrectly.

Nonetheless, whatever the Subject Member’s intentions had been in relation to his actions, the requirement of the Code was whether his actions would give the impression to a reasonable member of the public with knowledge of all the facts that he was acting as a councillor, not whether he considered himself to be acting so.

In discussing Parish Council relevant business and in providing a Parish Council written document as evidence of other Parish Council similarly related

works, the Sub-Committee determined that a reasonable person would have had the impression the Subject Member was acting as a councillor, as indeed the Complainant in their submissions had confirmed he had so considered.

Accordingly, the Sub-Committee was satisfied the Code was in effect and they needed to establish on the balance of probabilities whether the actions of the Subject Member amount to a breach of the provisions of the Code of Conduct referred to in the Complaint.

Hedge cutting and movement of the Street Sign

On the 7 March 2023, the Subject Member had visited the location of the hedge from Chapel Lane, whilst no one was at home and significantly cut back the hedge. Whilst there he had also removed a street sign from across the road and installed it on the Complainants land.

Later the same day, a neighbour informed the Complainant of the works which had been carried out by the Subject Member. The Complainant's wife contacted the Parish Council to discuss the hedge cutting and the movement of the street sign. The Clerk confirmed that the Parish Council had not scheduled the work and was unaware of it. After receiving legal advice, the Complainant emailed the Parish Council to lodge a formal complaint.

On 9 March 2023 the Subject Member visited the Complainant's home to speak about the hedge and to apologise. When asked directly, the Subject Member is said to have stated that he was acting on Parish Council business. The Complainant's wife then challenged this stating that the Clerk had confirmed he was not acting on behalf of the Council and asked him to leave their property.

The Subject Member on 15 March 2023 submitted an offer of an apology and a replacement of shrubs, through the Complaint Team as a way of resolving the complaint. This was declined by the Complainant.

The Subject Member contends that his actions came about as the Parish Steward, who had previously been responsible for drain clearance maintenance, had left. As a resident of Chapel Lane, the Subject Member was concerned with the possibility of damage which recent heavy rain may have on the unadopted gravel lane. He contends that his actions were as a concerned resident of Chapel Lane and not in his role of a Parish Councillor.

Conclusions

The Subject Member, during his visit had made reference to Parish Council drain clearance works. In addition, a printed document produced by the Parish Council had been used by the Subject Member as evidence that similar works were being carried out within the community. Whether it was stated by the Subject Member or not, it would be reasonable for a member of the public with knowledge of all the facts to perceive that he was acting as a Parish Councillor, even if this had not been the intention.

The Sub-Committee felt that it was likely that the Subject Member was acting in what he considered to be the best interest of Chapel Lane, and that his intentions had been as a concerned resident in this case. The Sub-Committee noted that if the hedge had been in any other road, other than the one the Subject Member lived on, then there would be no reason for him to involve himself in maintenance and upkeep of shrubs, as the correct process would be for maintenance concerns to be lodged with the Parish Council to take action where appropriate.

The Sub-Committee also noted the attempts of the Subject Member to apologise and to purchase replacement shrubs to make good his actions, as part of a way forward in repairing any damage caused.

In considering whether the action amounted to a breach of Paragraph 5.1, the Sub-Committee considered the Code:

“I do not bring my role or the Parish Council into disrepute.”

The Code of Conduct refers:

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public’s confidence in your or the Parish Council’s ability to discharge your/it’s functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.

The Sub-Committee therefore resolved that there had been a breach of Paragraph 5.1.

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 not being clear in the role in which he was requesting permission to cut back the hedge, it was left open to the Complainant to form his own judgement on the matter, leading to misunderstanding and subsequently resulting in a complaint against the Subject Member in his role as an elected member.

The Sub-Committee considered that the Subject Member believed he was acting as a local resident and in that his actions had not been of a malicious nature. In addition, the Sub-Committee commended the offered apology and the replacement of shrubs which had been made previously.

In considering sanctions the Sub-Committee had regard to the Local Government Sanctions Guide to ensure that when deciding on a sanction the Sub-Committee should ensure that it is reasonable, proportionate and relevant to the subject members behaviour. The Sub-Committee noted that mitigating factors may include a subject members co-operation in rectifying the effects of

that failure (in this case noting the Subject Members offer to replace the shrubs and to discuss and agree the most appropriate site for the sign) and an apology to affected persons (again noting the Subject Members apology to the Complainants).

The Sub-Committee agreed that the Subject Member had brought his role as Parish Councillor or that of the Parish Council into disrepute therefore, it was resolved that there had been a breach of Paragraph 5.1.

Sanctions

The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.

In advance of the Hearing the Subject Member was notified of the procedure for making representations on sanctions if the Sub-Committee found that a breach had taken place. The Subject Member was given the opportunity to be contacted by telephone on the day of the Hearing to make any such representations.

The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the mitigating factors in this case (as referred to above) resolved to recommend that no sanctions be recommended to Redlynch Parish Council.

(Duration of meeting: 10.00 - 10.55 am)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line 01722 434560 , e-mail lisa.alexander@wiltshire.gov.uk

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