

Standards Assessment Sub-Committee

MINUTES OF THE STANDARDS ASSESSMENT SUB-COMMITTEE MEETING HELD ON 24 AUGUST 2023 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Ruth Hopkinson (Chairman), Cllr Ernie Clark (Vice-Chairman),
Cllr Richard Britton, Cllr Sam Pearce-Kearney, Kathy Barnes (non-voting) and
Julie Phillips (non-voting)

Also Present:

Tony Drew (Independent Person), John McAllister (Independent Person) (Virtual),
Jed Matthews (Complaints Officer) (Virtual), Marion Stammers (Complaints Officer)
(Virtual), Kieran Elliott (Democracy Manager – Democratic Services), Jo Madeley
(Head of Legal, Deputy Monitoring Officer)

121 **Apologies**

An apology for absence was received from Councillor Gordon King.

122 **Minutes of the Previous Meeting**

The minutes of the meeting held on 20 June 2023 were presented for
consideration, and it was,

Resolved:

To approve and sign the minutes as a true and correct record.

123 **Declarations of Interest**

There were no declarations.

124 **Meeting Procedure and Assessment Criteria**

The procedure and criteria were noted.

125 **Exclusion of the Public**

It was,

Resolved:

**To agree that in accordance with Section 100A(4) of the Local Government
Act 1972 to exclude the public from the meeting for the business specified
in Minute Numbers 126 onwards, because it is likely that if members of the**

public were present there would be disclosure to them of exempt information as defined in Paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 -information relating to an individual

126 **Assessment of Complaint: COC144524**

A complaint was submitted by Joanna Horbury, the Complainant, on behalf of the Downton Cuckoo Fair, regarding the conduct of Councillor Gareth Watts, the Subject Member, of Downton Parish Council.

The complaint related to an email sent by the Subject Member to the trustees of the Stockman and Woodlands Trust Charity, disparaging the Cuckoo Fair, including referencing to 'robbing' Downton and the surrounding villages.

On 16 March 2023 the Sub-Committee determined that, if proven, the allegations could amount to a breach of the Code of Conduct, and referred the matter for investigation.

That investigation report had concluded that the Subject Member had been or would reasonably have been regarded as acting in an official capacity by the recipients of the email. It also concluded that the Subject Member's actions did reach the threshold of representing a breach of paragraph 1.1 of the Code of Conduct: I treat other councillors and members of the public with respect. It found that the actions did not reach the threshold of representing a breach of the provisions of the Code in respect of honesty.

In accordance with Protocol 11 of the Constitution, arrangements for dealing with Code of Conduct complaints:

7.1 Following receipt of an investigation report, where the Monitoring Officer in consultation with the Independent person considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Parties to seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.

7.2 Alternative resolution may involve mediation and may include the Member accepting that their conduct was unacceptable and offering an apology, and/or remedial action by the Council or the Parish Council as the case may be. If the Member complies with the suggested resolution the Monitoring Officer will report the matter to the Assessment Sub-Committee and the relevant Parish Council where appropriate, for information, but will take no further action.

7.3 The Member may elect to proceed to a hearing rather than accept alternative resolution.

The Monitoring Officer had therefore accordingly engaged with the Subject Member, and proposed alternative resolution. This had resulted in the Subject Member sending an email to the recipients of their original email retracting their comments.

Conclusion

The Sub-Committee considered the report and responses of the parties in advance of their meeting. They considered whether the matter could be deferred pending further information or referred to Hearing. They were subsequently advised of the provisions of Protocol 11 and procedures in relation to alternative resolution post an investigation report.

The Sub-Committee therefore reviewed the reports regarding the complaint as well as representations received in advance of their meeting. They did consider the nature and scope of the retraction which had been provided and the form in which it had been made, which was in a similar fashion as the original incident. However, they noted the arrangements for dealing with Code of Conduct complaints, and the Monitoring Officer's conclusion that alternative resolution could reasonably obviate the need for a hearing in this case, and his conclusion that the Subject Member had complied with the proposed resolution and this had been communicated to the Complainant.

Accordingly, although the Sub-Committee appreciated that the Complainant was not satisfied with that resolution and would suggest that a more direct reference of apology within any retraction may have been preferable, they noted the conclusion of the Monitoring Officer that no further action was to be taken in respect of the Complaint.

Resolved:

To note the complaint had been resolved through alternative resolution by the Monitoring Officer.

127 Assessment of Complaint: COC145994

A complaint was received from Councillor John Eaton, Southwick Parish Council, the Complainant, regarding the alleged conduct of Councillor Kath Noble, also of Southwick Parish Council, the Subject Member. The complaint related to alleged comments from the Subject Member referring at or preceding a public meeting of the council to the Complainant as a liar.

At its meeting on 20 June the Sub-Committee received the complaint for initial assessment. After considering all information and statements, the Sub-Committee resolved to defer the matter pending the outcome of discussions between the Monitoring Officer and the Subject Member, to explore options for an alternative resolution.

It was reported to the Sub-Committee that following discussions with the Monitoring Officer and an Independent Person, the Subject Member had agreed to read out an apology publicly for her language at a meeting of the parish council. This has been completed in advance of the Sub-Committee meeting.

At the meeting the Sub-Committee took into account the original complaint and supporting information, response of the Subject Member, the original report of the Monitoring Officer, previous verbal statements which had been made by the parties, and a revised report from the Monitoring Officer on the alternative resolution including comments from the parties.

The Sub-Committee was satisfied that the Monitoring Officer had engaged with the Subject Member and agreed a proportionate resolution, with a statement made at a Parish Council meeting apologising for making inappropriate remarks. It was therefore content to note the decision to resolve the matter through that alternative resolution in accordance with appropriate procedure and assessment criteria.

Resolved:

To note that the complaint had been resolved through alternative resolution.

128 **Assessment of Complaint: COC146700-88**

This item was deferred until the next meeting.

129 **Assessment of Complaint: COC146864 and COC147026**

Two separate complaints had been submitted regarding the same incident by Sgt Gemma Rutter, Wiltshire Police, and Mel Rolph respectively, the Complainants. The complaints were regarding the alleged conduct of Councillor Mark Harris, Melksham Without Parish Council, the Subject Member, in respect of behaviour at a meeting with several PCSOs, and others, which was stated to have been unprofessional and disrespectful.

Preamble

The Sub-Committee was satisfied the initial tests of the assessment criteria had been met, in that the Subject Member was and remains a member of Melksham Without Parish Council and that a copy of the relevant Code of Conduct was provided for the assessment.

There was a dispute between the parties over whether the Subject Member had been acting in their capacity as a Parish Councillor at the time of the meeting during which the alleged conduct occurred. If it was determined that they were not acting or reasonably perceived to be acting in their official capacity, then the alleged conduct would not be capable of being in breach of the Code.

If the Subject Member was acting in their official capacity, the Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of the Code of Conduct. If the Sub-Committee concluded that the alleged behaviour would amount to a breach, then it would have to go on to decide whether it was appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision, the Sub-Committee took into account the original complaint and supporting information, the response of the Subject Member, and the report of the Monitoring Officer. Written statements from the Subject Member and one Complainant were also received. No parties were in attendance.

Discussion

Neither Complainant had been present at the meeting at which the alleged behaviour occurred. One was the responsible Sergeant for the PCSOs, the other was the mother of one of the PCSOs. The meeting was in respect of issues about trailers being parked in contravention of traffic orders in the Bowerhill Industrial Park, which had been a longstanding issue for the community.

The complaint alleges the Subject Member caused shock and insult due to very personal comments, including regarding the mother of one PCSO, pulled faces and made exaggerated tantrum noises, mocked the responses of the officers, and generally behaved in a manner inappropriate for an elected Member.

The Subject Member stated in response to one complaint that his comments had been misreported and misinterpreted, but that he accepted they were ill advised and had made an apology through the Sergeant to those offended, noting he had done so prior to being made aware of a formal complaint being submitted. In response to the other complaint he stated that his comments as alleged had been 'as a way of breaking the ice', and when it did not go down well he accepted it was a 'crass and stupid thing to say'. He stated he had since apologised.

The first question for the Sub-Committee to address was whether the Subject Member had been acting in an official capacity. He set out that he had been told in other forums he could not act as a Member on such matters, and had communicated in writing through personal emails to distinguish his role from that of an elected Member.

The Sub-Committee noted these efforts by the Subject Member. However, in acting in his own words as a spokesperson for residents on a matter which had been raised by him to and on behalf of the Council in other forums, and the lack of clarification provided at the meeting in question, there was a reasonable presumption from those present that he had been acting in an official capacity.

This was further argued by noting that a member of the public would not generally be in a position to arrange a meeting with members of the Neighbourhood Policing Team, clerk to the Parish Council, and local Unitary

Member to discuss a matter of local concern as the Subject Member was able through being a councillor, and the press reporting of the incident which in later responses he confirmed he was happy to have had attributed to him as a councillor, even though he argued this had not been his intention.

Having established that it reasonably appeared the Subject Member had been acting in an official capacity at the meeting, the next question for the Sub-Committee was whether the alleged behaviour, if proven, rose to the level of a breach of any element of the Code of Conduct.

Although the Subject Member had made some effort to distinguish his conduct between official and unofficial capacities, the Sub-Committee would note that where acting in some manner as representative on community matters, in discussion with partners and interacting with council officers and other Elected Members, it would not always be possible to disentangle the different roles as far as others were able to perceive, even if stated that they were separated. Where it was possible, this would need to be made clear to all parties.

In accordance with the assessment criteria it was important to acknowledge the apologies which had been made by the Subject Member in writing, and also the importance of free speech. Whilst insulting or offensive language could rise to the level of a breach depending on the situation and the specific Code of a council, this would generally need to be of a significant level to justify intervention under a standards regime.

Conclusion

The Sub-Committee noted that some of the alleged comments had been of an insulting or disrespectful nature, which the Subject Member had acknowledged as inappropriate. It did not consider these had risen to a level capable of being in breach of the Code.

However, the Sub-Committee noted the response of the Subject Member at one point stating he was 'more than willing to apologise in person'. The Sub-Committee considered it reasonable to encourage the Subject Member on that basis to make the apologies directly to the Complainant in writing.

Although the Subject Member had made some effort to distinguish his conduct between official and unofficial capacities, the Sub-Committee would note that where acting in some manner as representative on community matters, in discussion with partners and interacting with council officers and other Elected Members, it would not always be possible to disentangle the different roles as far as others were able to perceive, even if stated that they were separated. Where it was possible, this would need to be made clear to all parties.

It was therefore

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 9 July 2019, which came into effect on

1 January 2020 and after hearing from the Independent Person, the Assessment Sub-Committee determined to take no further action in respect of the complaints.

(Duration of meeting: 10.00 - 11.05 am)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01701225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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