

Standards Assessment Sub-Committee

MINUTES OF THE STANDARDS ASSESSMENT SUB-COMMITTEE MEETING HELD ON 28 JUNE 2022 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

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

Also Present:

Tony Drew (Independent Person), Frank Cain (Head of Legal Services), Henry Powell (Democracy and Complaints Manager), Kieran Elliott (Democracy Manager - Democratic Services), Matthew Hitch (Democratic Services), Paul Jubbie (Complainant COC134813), Sally Turnham (Complainant COC139420), Gilly Gillian (Complainant COC149519) and Nathalie Woodward (Senior Complaints Officer)

46 **Election of a Chairman for 2022/23**

It was,

Resolved:

To elect Councillor Ruth Hopkinson as Chairman for the forthcoming year.

47 **Election of a Vice-Chairman for 2022/23**

It was,

Resolved:

To elect Councillor Ernie Clark as Vice-Chairman for the forthcoming year.

48 **Apologies**

There were no apologies.

49 **Minutes of the Previous Meeting**

The minutes of the meeting held on 10 February 2022 were presented for consideration, and it was,

Resolved:

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

50 **Declarations of Interest**

There were no declarations.

51 **Meeting Procedure and Assessment Criteria**

The procedure and criteria were noted.

52 **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 53 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

53 **Complaint COC134813**

Preamble

A complaint had been submitted by Paul Jubbie, the Complainant, regarding the alleged conduct of Councillor Chris Beaver of Trowbridge Town Council, the Subject Member. The complaint was regarding alleged conflict between the Subject Members role as a councillor and employment as a planning consultant and agent, and the registration and declaration of pecuniary and other interests.

The complaint was initially assessed on 31 July 2021 where it was determined to refer the matter for investigation. Following that investigation, the Investigating Officer's report concluded that the threshold for a breach of the Code of Conduct had not been reached in respect of alleged breaches of Part 1 and Part 2A of the Trowbridge Town Council Code of Conduct in relation to a meeting on 13 April 2021, in respect of any declarations in respect of registration and declaration of Beaumont (Bath) Ltd, or an email to a member of the public dated 9 May 2021 following a meeting.

The report concluded there may have been a breach in respect of Part 2A, in relation to the meeting of 21 May 2019 in that the Subject Member had a potential interest that may have activated a need to declare and refrain from participation due to apparent bias. However, for reasons further set out in that report, due to the historical nature of the complaint, the difficulty in drawing the line in respect of such interests, and the Subject Member demonstrating a conscious commitment to comply with the Code of Conduct in respect of

interests, the report concluded that it was not in the public interest to take the matter further.

In consultation with an Independent Person, the Monitoring Officer considered the report and determined to recommend to the Sub-Committee that no further action be taken in respect of the complaint, although he recommended including an advisory note regarding one aspect of the complaint as part of the decision.

In reaching its decision, the Sub-Committee took into account the Investigating Officer's report and supporting documentation, which included the original complaint, the response of the Subject Member, the initial assessment decision, other evidence provided during the investigation, and the decision notice of the Monitoring Officer to take no further action.

The Sub-Committee also considered a written statement from the Subject Member, who was not in attendance, and a verbal statement from the Complainant, who was in attendance. The verbal statement and accompanying documentation were provided.

Discussion

As noted above the complaint involved a series of alleged actions by the Subject Member involving his employment as a planning consultant and agent and alleged conflict with his role on the Town Council, and the registration and declaration of his pecuniary and other interests at council meetings and elsewhere.

The Subject Member contended throughout that there was no conflict of interest in their actions, with any planning work undertaken legitimately through correct processes, and that they were entitled to defend the reputation of their business interests and that the complaints were politically motivated and vexatious. He disputed the conclusion of the Investigating Officer that there had been any apparent bias in relation to the meeting on 21 May 2019, allegation iv, as there had been no live instruction relating to the site under discussion.

The Complainant considered that the evidence did not support a finding of no breach in relation to any allegation. He highlighted the use of a personal or business email in general for council purposes and that the Subject Member had been acting in his capacity as a councillor at several instances alleged, and in so doing breached the Code. He considered the Subject Member had had an active business interest at the same time as acting as a councillor.

Some of the allegations had related to a potential disclosable pecuniary interest. On that basis, and although the allegations were quite historic, the Sub-Committee had considered in July 2021 that it was in the public interest that the matter be investigated given the seriousness of such an allegation and concurrent presence of a more recent allegation which it had likewise determined should be investigated.

However, it was relevant that both under the arrangements for dealing with Code of Conduct complaints and in respect of the Localism Act 2011, such

historic allegations would not, absent other justifying reasoning, normally be considered for investigation by the Sub-Committee. Accordingly, depending on the conclusion reached, the historic nature of the incidents was also relevant when considering what actions, if any, would be in the public interest should a breach be identified as probable or simply potential.

Conclusion

On balance the Sub-Committee agreed with the recommendation of the Monitoring Officer that it was not in the public interest to take any further action in respect of the complaint.

Although there may have been later developments, at the time of the earliest allegation a disclosable pecuniary interest had not existed, and so there was no possibility of participation being contrary to the Localism Act. Participation in later meetings had been in a personal or business capacity, and appropriate declarations had been made.

However, it was noted that the nature of the Subject Member's business, whilst also offering potential insight into planning issues, was such that actual and potential conflicts had and would continue to arise in relation to that business and his role as a Town Councillor. This required careful and continued consideration in the registration and declarations of interests, and other appropriate action such as withdrawing in his capacity as a councillor. It also required a responsibility to avoid both actual bias and predetermination, and any apparent bias. This was where a fair minded and informed observer, having considered the facts, could reasonably conclude there was a real possibility of bias.

From the Investigating Officer's report, it was clear that the Subject Member took such a responsibility seriously, by seeking advice, making declarations, and maintaining his register of interests. Notwithstanding the Investigating Officer's conclusion that there was a possibility a technical breach may have occurred in respect to a potential interest which might give rise to apparent bias at the meeting on 21 May 2019, it was acknowledged this was not a simple assessment for a Member to make, and the Subject Member's general conduct in respect of registration and declaration of interests indicated a commitment to appropriately separating his professional and council roles.

For that reason, and for the reasons set out by the Investigating Officer accepted by the Monitoring Officer and in particular the very historic nature of the allegation, the Sub-Committee was satisfied to uphold the recommendation to take no further action, and not to convene a Hearing Sub-Committee.

Nevertheless, the Sub-Committee, like the Monitoring Officer, was concerned the Subject Member's use of a personal or business email for council purposes had undermined any genuine attempts to be clear about the capacity in which he was acting, particularly where council, personal and business interests could or might be perceived to intersect. As the Monitoring Officer put it:

Care should be taken when councillors write correspondence that they do not commingle personal, business and council matters as this can be unnecessarily confusing for members of the public. The Town Council should be encouraged to create council email addresses for councillors to use for all formal council correspondence. This will provide clarity for residents and be a helpful reminder to councillors to maintain a clear delineation between council business and other matters that are personal or business related.

Additionally, the Sub-Committee noted that given his potentially conflicting roles as planning agent and town councillor, instances would likely arise again in future where the relationship between those roles was challenged.

Whilst the Subject Member naturally sought to and had a right to defend his personal and business conduct, the email on 9 May 2021 in response to such a challenge about his professional and business roles, whatever its provenance and motivation, had in places been inappropriate. Given the use of a business email for council use, and reference to acting in that council capacity in responding to the issues raised, the tone and content could be argued to approach the level of a breach of the Code of Conduct as it was not purely a professional business matter, as the Subject Member's responses had confirmed. Although the Sub-Committee did not consider that level had been reached on this occasion, the potential for confusion about the role in which the Subject Member was acting, and the significance of planning matters, meant a more respectful discourse from all parties should be adhered to wherever possible.

In summary, the Sub-Committee was satisfied with the recommendation of the Monitoring Officer that no further action be taken in respect of the complaint, and that the Investigation conducted into the complaint was sound. It therefore concluded the matter on the basis of no further action, but felt it important to set out comments on aspects of the complaint and decision as detailed above.

Therefore, it was,

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 complaint.

54 **Complaint COC136344**

Preamble

A complaint was submitted by Llew de Souza regarding the alleged conduct of Councillor Owen Gibbs of Brinkworth Parish Council. The complaint was

regarding allegedly using an official role to benefit personal interests, without disclosing those interests.

The complaint was initially assessed on 25 November 2021 where it was determined to refer the matter for investigation. Following that investigation, the Investigating Officer's report concluded that there had not been any breaches of the Code of Conduct.

In consultation with an Independent Person, the Monitoring Officer considered the report and determined to recommend to the Sub-Committee that no further action be taken in respect of the complaint.

In reaching its decision, the Sub-Committee took into account the Investigating Officer's report and supporting documentation, which included the original complaint, the response of the Subject Member, the initial assessment decision, other evidence provided during the investigation, and the decision notice of the Monitoring Officer to take no further action.

The Sub-Committee also considered written statements from the Subject Member and Complainant. Neither was in attendance.

Discussion

The complaint involved allegations the Subject Member had not properly registered or disclosed relevant interests during council and personal actions concerning the Complainant's ownership of a local business park. There were also allegations regarding a visit made by the Subject Member to businesses in the business park on 18 September 2021, which the Complainant alleged involved the Subject Member using his position as a councillor to further his own personal interests.

The Investigating Officer's report had concluded there had been no evidence of bullying, intimidation or harassment by the Subject Member. It did not consider the threshold criteria of the Parish Council Code of Conduct had been met in respect of a failure to register an interest, and noted that the Subject Member had amended his entry once the matter had been highlighted. It did not consider there had been a breach at the Parish Council and Northern Area Planning Committee meetings, noting the proximity to the relevant parts of the business park from the Subject Member's residential property was in excess of 200m and therefore not related to the disclosable pecuniary interest.

In their statement the Complainant raised the potential issue of trespassing. However, the Sub-Committee considered that any concern relating to trespassing would be a private matter for the landowner, not matter for consideration under the Standards regime. The Subject Member in his statement had also noted he had apologised to the tenant of a unit who had been concerned about his attending the site, and the apology had been accepted.

Conclusion

The Sub-Committee was satisfied with the recommendation of the Monitoring Officer to take no further action in respect of the complaint.

Although the Subject Member should continue to note the importance of maintaining and updating their register of interest and make appropriate declarations at relevant stages, including, where appropriate, personal interests, the Sub-Committee agreed with the Investigating Officer's conclusion that there had been no disclosable pecuniary interest and accordingly no breach of the Code of Conduct. If there was a personal interest a declaration would be appropriate when participating in a council discussion.

In determining to take no further action, the Sub-Committee further noted the suggestion that the Subject member might recuse himself from participation as a parish councillor from matters relating to the business park out of an abundance of caution. It noted this would avoid any appearance or suggestion of inappropriate conduct, and, as a voluntary action, was beyond that which was legally required and so further justified no further action being necessary.

In summary, the Sub-Committee was satisfied with the recommendation of the Monitoring Officer that no further action be taken in respect of the complaint, and that the investigation conducted into the complaint was sound.

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 complaint.

55 Assessment of Complaint: COC139519

A complaint was submitted by Councillor Gilly Gillian of Tilshead Parish Council, the Complainant, regarding the conduct of Councillor Deborah Potter, the Subject Member, also of Tilshead Parish Council. The complaint related to communications between the two, amendment of publicised comments and alleged verbal abuse.

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 Tilshead Parish Council and that a copy of the relevant Code of Conduct was provided for the assessment.

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.

The Sub-Committee also considered a written statement from the Subject Member, who was not in attendance, and a verbal statement from the Complainant, who was in attendance.

Discussion

The complaint involved communications sent by the Subject Member to the Complainant, the alleged instruction to have article details written by the Complainant amended without their consent, and verbally abusing the Complainant at a parish council meeting.

The Subject Member contends that they had been polite and considerate in their communications, and stated her actions in Chairing the council meeting in question had been reasonable and appropriate. They offered an apology for requesting the editor of the parish newsletter to suggest changes.

The Complainant contended that the Subject Member had escalated matters, and that the changing of her letter, in her name, without permission was unethical. She stated the Chair refused to apologise and abused her verbally at the meeting in question.

Conclusion

The dispute between the parties had initially arisen as a result of a discussion regarding the legality of riding horses on roadside verges, which had then escalated and led to further confrontation. It was noted the Complainant had indicated a desire to avoid escalation in their communications to the Subject Member.

Whatever the catalyst for dispute and disagreement, it was important for communication to be conducted in an appropriate manner. The Sub-Committee did not consider the alleged communication's content or tone to rise to the level which was capable of being a breach of the Code of Conduct.

In respect of the meeting of the parish council, the Sub-Committee noted the differing accounts, but also that the assessment criteria required sufficient information to be provided at the initial stages to enable understanding the substance of complaint, and to justify further consideration of the complaint. Specific details of the alleged abuse had not been provided, and accordingly it could not conclude the alleged behaviour would be capable of breaching the Code of Conduct.

Notwithstanding this, the Sub-Committee noted that the Subject Member had provided an apology for her actions in respect of the amendment of an article of the Complainant's in the parish newsletter. Although this only addressed one aspect of the complaint, the Sub-Committee considered the offering of the

apology, and its view on the other allegations, was such that it was not in the public interest to investigate further.

In summary, the Sub-Committee therefore resolved to take no further action in respect of the complaint.

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 complaint.

56 **Assessment of Complaint: COC139420**

A complaint was submitted by Sally Turnham, the Complainant, regarding the alleged conduct of Councillor David Gagen of Clyffe Pypard Parish Council, the Subject Member. The complaint was regarding alleged conflicts of interest and false statements.

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 Clyffe Pypard Parish Council and that a copy of the relevant Code of Conduct was provided for the assessment.

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.

The Sub-Committee also considered a written statement from the Subject Member, who was not in attendance, and a verbal statement from the Complainant, who was in attendance.

Discussion

The complaint involved the Complainant's ownership of the Goddard Arms public house, and the Subject Member's alleged actions as a parish councillor and member of a local community group 'Save the Goddard Arms'.

The Complainant contends that the Subject Member had provided inaccurate information in a manner designed to put her at a disadvantage and made offensive comments about her character at public meetings.

The Subject Member stated they had had no intention to mislead and corrected any errors made in respect of comments, about the Plunkett Foundation, at the earliest opportunity. They contended they had mistaken the dates about certain parish council meetings, but that the substance of complaint was incorrect, and that they had been commenting as a member of the public.

Conclusion

The Sub-Committee noted that the Subject Member had acknowledged making some errors of fact, but that he had or will correct these. Even if more care could have been taken on references when submitting comments, they considered a reasonable explanation had been provided and in line with the assessment criteria did not consider the allegations therefore rose to the level where it was in the public interest to investigate further.

The Sub-Committee noted the Subject Member's position on the 'Save the Goddard Arms' ad hoc group was included on his register of interest. They noted it was not unusual or inappropriate for local councillors to belong to many different interest groups. Provided appropriate registrations and declarations had been made, there was no conflict in holding the roles and it was not considered the allegation was capable of breaching the Code of Conduct.

In summary, the Sub-Committee therefore resolved to take no further action in respect of the complaint.

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 complaint.

57 **Assessment of Complaints: COC139676 & COC140276**

Due to some of the parties being unwell, the Sub-Committee agreed to defer the complaints until the next meeting.

(Duration of meeting: 10.30 am - 12.35 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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