



Democratic Services Officer: Jane Fulton (Ext. 37611)

1 July 2016

## **STANDARDS COMMITTEE**

A meeting of the Standards Committee will be held in the Pink Room at the Arun Civic Centre, Maltravers Road, Littlehampton on **Thursday, 14 July 2016 at 6.00 pm** and you are requested to attend.

District Council Members: Councillors English [Chairman], D. Maconachie [Vice Chairman], Mrs Bence, Dillon, Edwards, Mrs Rapnik, Tyler, Dr Walsh and Wheal.

Independent Persons: Mr B Green, Mr M Howdle, Mr J Thompson and Mrs K Vagg.

## **A G E N D A**

### **1. APOLOGIES FOR ABSENCE**

### **2. DECLARATIONS OF INTEREST**

Members and Officers are reminded to make any declaration of personal and/or prejudicial interests that they may have in relation to items on this agenda.

You should declare your interest by stating:

- a) the item you have the interest in
- b) whether it is a personal interest and the nature of the interest
- c) whether it is also a prejudicial/pecuniary interest

You then need to re-declare your interest and the nature of the interest at the commencement of the item or when the interest becomes apparent.

3. MINUTES

To approve as a correct record the Minutes of the meeting held 30 November 2015, as attached.

4. ITEMS NOT ON THE AGENDA THAT THE CHAIRMAN OF THE MEETING IS OF THE OPINION SHOULD BE CONSIDERED AS A MATTER OF URGENCY BY REASON OF SPECIAL CIRCUMSTANCES

5. START TIMES

The Committee is asked to agree its start times for meetings during 2016/17

6. \*ASSESSMENT OF PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

This report advises the Committee about an allegation concerning Bognor Regis Town Councillor - James Brooks

7. \*ASSESSMENT OF A PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

This report advises the Committee about an allegation concerning Bognor Regis Town Councillor - Jan Cosgrove.

8. \*ASSESSMENT OF PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

This report advises the Committee about an allegation concerning Bognor Regis Town Councillor - Adam Cunard

9. \*ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

This report advises the Committee about an allegation concerning Bognor Regis Town Councillor - Jan Cosgrove.

10. \*ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A PARISH COUNCILLOR

This report advises the Committee about an allegation concerning Ferring Parish Councillor - Carole Robertson

11. \*LOCAL ASSESSMENT PROCEDURE - REVISION

The new Code of Conduct has been in existence since July 2012 and over a period of time it has become clear that the existing Local Assessment Procedure, which sets out how the Council deals with complaints against Councillors, is in need of a review.

This report seeks to address those issues and provides new guidelines on dealing with those issues.

12. EXEMPT INFORMATION

The Committee is asked to consider passing the following resolution:-

That under Section 100A(4) of the Local Government Act 1972, the public and accredited representatives of newspapers be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act by virtue of the paragraph specified against the item.

13. \*REGISTER OF ASSESSMENTS OF COMPLAINTS AGAINST COUNCILLORS

(Exempt – Paragraph 1 and 7C – Information Relating to any Individual and the Deliberations of the Standards Committee

The Committee is requested to note this report.

Note : \*Indicates report is attached for Members of the Committee only and the press (excluding exempt items). Copies of reports can be obtained on request from the Committee Manager s or accessed via the website at [www.arun.gov.uk](http://www.arun.gov.uk)).

Note : Members are reminded that if they have any detailed questions would they please inform the Chairman and/or Solicitor to the Council in advance of the meeting.

AGENDA ITEM NO. 6ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

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## Information Paper

Subject : Assessment Panel Decision Concerning Allegation against a Bognor Regis Town Councillor

Report by : Legal Services System Administrator

Report date: 20 June 2016

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1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning Bognor Regis Town Councillor James Brooks.

1.2 To advise the Committee of the Assessment Panel's decision.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached and Members are requested to note that following an assessment by the Assessment Panel, it was decided not to take any action.

**Background Papers: None**

**Contact: Sue Dudley – Extn 37713**



## Assessment Panel

# DECISION NOTICE: NO BREACH

**Reference:** 00004784/SD - Councillor James Brooks

**Date:** 11 March 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member.

**The role of the Assessment Panel is to consider whether the subject matter of the alleged complaint has breached the Local Members' Code of Conduct. If its finding is yes, then its role is to go on and decide if the matter is so serious to need further referral, or whether an alternative course of action should be taken.**

### Complaint

On 11 March 2016 Councillor Stephen Haymes (Chairman), Councillors Graham Tyler and Mrs Susan Bence sat as the Assessment Panel of Arun District Council's Standards Committee, and with Mr Brian Green present as an Independent Person to consult, considered a complaint from Simon Fyfe (the Complainant) concerning the alleged conduct of Councillor James Brooks (the Subject Member), a member of Bognor Regis Town Council.

### SUMMARY OF THE COMPLAINT

The complaint is primarily concerned with events at the Bognor Regis Town Council meeting held on 7 September 2015.

The Complainant's summary is lengthy. It takes the form of an initial seven page document consisting of submissions and questions. This was later followed by two further addendums consisting of submissions of two pages each.

In essence, the complaint revolves around allegations that Cllr Brooks failed to declare at that meeting Disclosable Pecuniary Interests which he had previously recorded in the Members' Register of Interests, namely being an 'MD' of an 'electronic display company'. At that meeting he participated and voted in a council debate about the Picturedrome project. It was suggested that this was wrongful because he, or his company, Leaderboard Sports (UK) Ltd (hereafter referred to as LSL) had some years previously, supplied a display sign free of charge to the Picturedrome. The allegation appears to be that this amounted to a gift by him in order to win contracts, directly or indirectly from the Council, or that it would affect the partiality of Cllr Brooks in making decisions about the Picturedrome. The Complainant further suggests that by virtue of the employment of LSL's company secretary, [REDACTED], at BRTC, the gesture of the free sign may be construed as an attempt to win further work.

The following pages cover the reasons that the Assessment Panel came to its decision against each allegation. In addition, reference is made to parts of the complaint that are not covered by the Members' Code of Conduct.

## **DECISION**

### **NO BREACH**

Councillor James Brooks, a member of Bognor Regis Town Council has not breached the Bognor Regis Town Council Code of Conduct and therefore no further action will be taken in relation to the allegations made by Mr Simon Fyfe.

The Assessment Panel considered each allegation in turn and the full reasons for this Decision are set out below.

The first question that the Panel considered was whether this complaint should be looked at as a complaint under the local Code of Conduct:

#### **1. Does the local Code of Conduct Apply?**

The Code of Conduct applies when a Councillor conducts Council business.

“Conducts Council business” means participating in meetings of the Council, Committees and Sub Committees and other Council meetings whether public or private and where the Councillor is held out by himself or others as being and acting as a Councillor and representing the Council.

**The Assessment Panel decided that the Code of Conduct therefore does apply to this complaint, and then went on to consider the Complainant’s comments.**

Each alleged breach is set out under each paragraph of the Code of Conduct with the Decision of the Assessment Panel and its reasons.

#### **2. Paragraph 3.2 - Councillors must comply with their statutory obligations.**

**Decision: NO BREACH.**

**Reason for the Decision:**

The Complainant has not addressed this part of the Code in detail in the heads of his complaint. However the allegations which can be inferred from that and his summary are that Cllr Brooks failed to comply with his obligations under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the associated Code of Conduct. These are dealt with below under their appropriate paragraphs.

The Complaint further raises issues connected to the Bribery Act 2010, and whether offences may have been committed under its provisions. Bribery is not specifically provided for within the Code of Conduct. However, the Bribery Act applies to all walks of life. It is particularly aimed at the commercial world, rather than being legislation specifically attached to councillors.

The question raised in the complaint is whether it can be inferred from the evidence that Cllr Brooks bribed BRTC to award his company a number of contracts, the bribe being the free supply of a display sign to the Picturedrome. The relevant offence is provided for in section 1 of the Act, set out at Annex 12. On the wording of the complaint it seems the alleged case is that Cllr Brooks gave the free sign intending that this would induce BRTC or officers employed by it to perform a function, namely awarding business contracts as part of their public function.

If this were the case then this would clearly be an offence of bribery. Cllr Brooks has given a full response in this regard. He is clear that this was neither his intention, and that on the facts it could not reasonably be inferred that this was the case. So far as the law is concerned, such issues are a question of fact, to be decided in all the circumstances of the case, and on the evidence.

Whilst Cllr Brooks’s explanation assists, the following features are also of relevance. In deciding whether there is evidence of intention, a salient factor to consider is the value of any alleged advantage (in this case being the sign supplied). There is no clear evidence of this. The Complainant puts it at at least £1,000. However, this estimate has not been supported by any evidence or expertise, and appears to be based upon guesswork. Cllr Brooks describes the estimate as irrelevant, stating that it was a free gesture, and that it was old technology, only having been retained by him for use as spare parts.

Further to the above, the sign was supplied in May 2013, being the financial year of 2013/14. Cllr Brooks, in his response states that only two contracts were awarded to his company by BRTC since then. The Town Clerk advises that in that year a contract valued at £1,000 was awarded to LSL, directly by BRTC (July 2013). If the Complainant's estimate of the value of the 'gift' is correct (and Cllr Brooks states that it is not), then this may have cost more than the benefit of the contract was worth, once overheads were deducted. No contract was won in the following financial year, although two have been won from BRTC in the current financial year. This is a total of three since the 'free of charge' gesture, although it appears from Cllr Brooks's evidence that one of these was subsequently cancelled. However, this highlights the evidence from BRTC which states that LSL was one of a number of bidders which sought to win various contracts through proper process over the years. Sometimes they were successful, sometimes they were not.

The Complainant asks whether the free gesture of the sign by Cllr Brooks could be construed as an attempt to win future work. He bases this question on the fact that his employee, [REDACTED], is also an employee of BRTC with responsibility for awarding contracts for signage services. No evidence has been provided as to [REDACTED] actual role, responsibilities or powers within BRTC. However, the alleged facts beg the question as to why anyone so minded would feel it necessary to make a gift to win work when they have, as the complainant seems to suggest, an 'inside man' in the first place. On the facts, including the value of the 'gift', the value of the contracts won, and the lack of any direct relationship between the gift and the authority awarding the contracts which were won, it is difficult to see how any such intention can be construed.

In his response, Cllr Brooks states that [REDACTED] has worked for the company on a wholly voluntary basis since before they commenced employment with BRTC. Mr Fyfe has not set out any basis upon which it might be considered that this presents a conflict of interest or other position by which the Code may have been breached.

**3. Paragraph 3.10 - Councillors must not use or attempt to use their position as a councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.**

**Decision: NO BREACH.**

**Reason for the Decision:**

Again, this area is not addressed in any detail under the specific heads of complaint, but is dealt with generally in the summary.

The issue of the alleged Disclosable Pecuniary Interest (DPI) is dealt with later in this report. This section is concerned only with the wider question of whether there was any improper advantage.

There does not appear to be any evidence that Cllr Brooks was attempting to use his position improperly at the relevant meeting so as to secure any advantage or disadvantage at that time. Indeed, the Complainant has not particularised any specific allegation in this regard. There is no evidence to show that the outcome of that meeting or Cllr Brooks's participation in it would have had any advantage or disadvantage to him or any other person as a result of that participation. Rather, the allegation centres on the contracts awarded to his company directly or indirectly by BRTC. In particular, whether as the director of the company he gave a gift in order to secure such contracts.

The complaint centres upon the fact that in May 2013, Cllr Brooks's company supplied without charge an item of electronic signage to the Picturedrome. The Complainant points to evidence provided by BRTC which shows that since that supply, LSL has been awarded a number of contracts directly or indirectly by the Council. He seeks to raise an inference that the winning of these contracts was assisted by that gift. Information provided by BRTC shows that none of these were connected to the Picturedrome itself. It should be noted that LSL was awarded contracts prior to that supply and also failed to win certain bids for work following it - facts which would not support the Complainant's inference.

However, the key issue under this head of complaint, and the first hurdle for a complaint to jump, is the requirement for it to be shown that the member in question was acting in an official capacity as a representative of his or her authority at the time of the conduct. From both the complaint and the evidence it is clear that the sign in question was supplied by Cllr Brooks in May 2013 in his private capacity. Accordingly, these facts cannot in law support any finding that there was a breach of the Code.

4. **Paragraph 4.1** - A Councillor has a “Disclosable Pecuniary Interest” in any business of the Council if the interest is of a description set out in paragraph 4.2 below and is an interest of a Relevant Person and, if the Relevant Person is not the Councillor, the Councillor is aware that that other person has the interest.

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to Paragraph 5.1 below (Paragraph 4.1 is for information only)

5. **Paragraph 4.2** - “Disclosable Pecuniary Interests” are as defined from time to time by the Secretary of State in Regulations. The Regulations current at the time of adoption of this Code are The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are set out in Appendix 2.

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to Paragraph 5.1 below (Paragraph 4.2 is for information only)

6. **Paragraph 5.1** - Subject to paragraph 7, Councillors must, within 28 days of this Code being adopted by the Council or their election or appointment to office (whichever is the later), register in the District Council's Register of Councillors' Interests (maintained under section 29(1) of the Localism Act 2011) details of their Disclosable Pecuniary Interests (as referred to in paragraph 4 above) by completing the appropriate form and delivering this to the Council's Town Clerk who will forward it to the Monitoring Officer.

**Decision: NO BREACH.**

**Reason for the Decision:**

On 18 May 2015 (and it appears also in September 2015), Cllr Brooks completed and signed a declaration in the Register of Interests regarding his employment, office, trade, etc. as follows: 'M.D. Electronic Display Company.' In fact his position was that he held office as director (or managing director) of LSL and also of Leaderboard Ltd. The register entries could be more precise, because at first glance they could be taken as meaning that he is simply employed by a firm called M.D. Electronic Display Company. It would be preferable for actual company names to be provided, in the absence of reasons to do otherwise. However, this does not make this a breach of the Code of Conduct.

7. **Paragraph 5.2** - Subject to paragraph 7, Councillors must, within 28 days of becoming aware of any Disclosable Pecuniary Interests (as referred to in paragraph 4 above) which they have not registered, or any change to such an interest which they have registered under paragraph 5.16, register details of that unregistered interest or change by completing the appropriate form and delivering this to the Council's Town Clerk who will forward it to the District Council's Monitoring Officer.

**Decision: NO BREACH.**

**Reason for the Decision:**

No allegations are made as to any matters additional to those dealt with in paragraph 5.1 above.

8. **Paragraph 8.1:**

Paragraphs 8.2 and 8.3 apply if a Councillor:

8.1.1 is present at a meeting;

8.1.2 has a Disclosable Pecuniary Interest or an Ordinary Interest in any matter to be considered, or being considered, at the meeting; and

8.1.3 is aware or ought reasonably to be aware that the condition in paragraph

8.1.2Error! Reference source not found. is met.

**Decision: NO BREACH.**

**Reason for the Decision:**



The issue is whether Cllr Brooks had a Disclosable Pecuniary Interest in the matter being discussed at the meeting, namely the Picturedrome project.

Cllr Brooks was the director of two companies. He previously disclosed his interest in this regard in the Register of Interests. Evidence is produced regarding one of these, LSL, which shows that between 2012 and 2015 it won a number of contracts to supply hire equipment, directly or indirectly, from BRTC. None of these contracts were in any way connected to the Picturedrome. There is no other evidence connecting either of the two companies to the Picturedrome. The only connection in this regard is the supply of the sign, free of charge, for a launch event in May 2013, being more than two years prior to the meeting. No payment has ever been made for this and it currently remains unused. Access problems have prevented its removal. The item under discussion at the relevant meeting was not concerned in any way with this sign or its previous supply.

It is not considered that it would be reasonable on this basis to find that Cllr Brooks had a Pecuniary Interest requiring disclosure at the relevant meeting.

**9. Paragraph 8.2 - Subject to paragraph 7.3Error! Reference source not found., the Councillor must disclose the existence and the nature of the interest to the meeting.**

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to the afore-going advice

**10. Paragraph 8.3 - If the interest is a Disclosable Pecuniary Interest which is not entered in the Council's register and is not the subject of a pending notification, the Councillor must notify the Council's Monitoring Officer of the interest as soon as possible and in any event before the end of 28 days beginning with the date of the disclosure.**

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to the afore-going advice

**11. Paragraph 9 Participation at Meetings:**

**9.1 Paragraph - 9.2 applies if a Councillor:**

**9.1.1 is present at a meeting; and**

**9.1.2 has a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting; or**

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to the afore-going advice

**12. Paragraph 9 Participation at Meetings:**

**9.2 - Subject to paragraph 10, the Councillor:**

**9.2.1 may not participate, or participate further, in any discussion of the matter at the meeting,**

**9.2.2 may not participate in any vote, or further vote, taken on the matter at the meeting; and**

**9.2.3 must withdraw from the room where the meeting considering the business is being held.**

**Decision: NO BREACH.**

**Reason for the Decision:**

Please refer to the afore-going advice

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**Additional information to this complaint:**

The Complainant makes references and allegations against the Subject Member which are not included in the Bognor Regis Code of Conduct, as follows:

**Bribery Act 2010 – Chapter 23 Sections 1 to 5**

As detailed in the attached 'overall summary – document 1' including appendices 1-16 inclusive.

**PUBLICATION OF THE DECISION**

The Assessment Panel requests the Monitoring Officer to publish this Decision on the Council's website for a period of 12 months from the date of this Decision Notice.

**Arun District Council's Standards Committee**

The Assessment Panel members for consideration of this complaint were:

Councillor Stephen Haymes – Chairman  
Councillor Graham Tyler – Panel Member  
Councillor Mrs Susan Bence – Panel Member

and Mr Brian Green acted as the Consultant

Arun District Council – The Civic Centre, Maltravers Road, Littlehampton BN17 5LF

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**The terms of reference for the Arun District Council Assessment Panel considering this matter are in the Arun District Council's Local Assessment Procedure, a copy of which is available from the Council's Legal Services Department.**

**Right of review**

If either the Complainant or the Subject Member considers the decision of the Assessment Panel is not fair, or proportionate, they can appeal within 20 working days from the date of the Decision Notice, giving the reasons why they consider the decision not to be fair or proportionate. The original decision may be reviewed by the Council's Standards Committee if those reasons given are valid.

If either the Complainant or Subject Member do not agree with the subsequent review decision that the Standards Committee makes, they have the right to pursue that decision through the courts, as a Judicial Review.

AGENDA ITEM NO. 7ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

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Information Paper

Subject : Assessment Panel Decision concerning allegation against a Bognor Regis Town Councillor

Report by : Legal Services System Administrator

Report date: 21 April 2016

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1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning Bognor Regis Town Councillor Jan Cosgrove.

1.2 To advise the Committee of the Assessment Panel's decision.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached and Members are requested to note that following an assessment by the Assessment Panel, it was decided not to take any action.

**Background papers: None**

**Contact: Sue Dudley – Extn 37713**



## Assessment Panel

# DECISION NOTICE: NO BREACH

**Reference:** 00004882/SD - Councillor Jan Cosgrove

**Date:** 11 March 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member.

**The role of the Assessment Panel is to consider whether the subject matter of the alleged complaint has breached the Local Code of Conduct. If its finding is yes, then its role is to go on and decide if the matter is so serious to need further referral, or whether an alternative course of action should be taken.**

### Complaint

On 11 March 2016 Councillor Stephen Haymes (Chairman), Councillors Graham Tyler and Mrs Susan Bence sat on the Assessment Panel of Arun District Council's Standards Committee, and with Mr Brian Green present as an Independent Person to consult, considered a complaint from Simon Fyfe (the Complainant) concerning the alleged conduct of Councillor Jan Cosgrove (the Subject Member), a member of Bognor Regis Town Council.

### SUMMARY OF THE COMPLAINT

Mr Fyfe makes a series of comments and puts a number of questions, asking whether correspondence he has received from Cllr Cosgrove has breached the provisions of the Code of Conduct.

Mr Fyfe draws attention to use of the apparent abbreviation 'WTF' in the question; '*WTF are you on about?*' He asks whether this can be regarded as disrespectful, bullying, intimidatory or conduct which brings the office of Councillor, or the Council into disrepute.

Mr Fyfe additionally raises issues regarding Cllr Cosgrove's statement that he would advise other Councillors to do as he had decided to do, namely to reserve their views and not respond to Mr Fyfe's questions. This concerned questions challenging the preferred contractor's fee, which was subject to scrutiny by a working party and which the Town Clerk had previously considered and advised to be exempt information under section 43(2) of the Freedom of Information Act 2000 (Commercial Interests). Mr Fyfe asks whether Cllr Cosgrove, in stating what he did, compromised, or was likely to compromise, the impartiality of those who work for or on behalf of the Council. He further asks whether he has improperly prevented him from getting access to information to which he is entitled by law.

Finally, Mr Fyfe asks whether the use of bold and italic text by the Councillor to reinforce his statement has compromised the impartiality of, and bullied, other Councillors.

The following pages cover the reasons that the Assessment Panel came to its decision against each allegation.

## **DECISION**

### **NO BREACH**

Councillor Jan Cosgrove, a member of Bognor Regis Town Council has not breached the local Code of Conduct and therefore no further action will be taken in relation to the allegation made by Simon Fyfe.

The Assessment Panel considered each allegation in turn and the full reasons for this Decision are set out below.

The first question that the Panel considered was whether this complaint should be looked at as a complaint under the local Code of Conduct:

#### **1. Does the local Code of Conduct Apply?**

The Code of Conduct applies when a Councillor conducts Council business.

“Conducts Council business” means participating in meetings of the Council, Committees and Sub Committees and other Council meetings whether public or private and where the Councillor is held out by himself or others as being and acting as a Councillor and representing the Council.

The specific issue of concern in this case is the email correspondence between Mr Fyfe and Cllr Cosgrove.

The email correspondence in question concerned Council business, namely the Picturedrome project. It was initiated by Mr Fyfe, a Marine Ward constituent, who addressed his correspondence to Jan Cosgrove as a Councillor. It was responded to by Cllr Cosgrove, who signed off that reply as ‘Jan Cosgrove.’ Although the latter did not use his title of Town Councillor, it is clear from the nature and contents of his emails that he was corresponding as such.

In all the circumstances it is considered that Cllr Cosgrove was conducting the business of the Council in so far as it included the business of the office to which he was elected, i.e. the office of Councillor (paragraph 2.1.1 of the Code). Accordingly, the Code has effect for the purposes of this complaint.

**The Assessment Panel decided that the Code of Conduct therefore does apply to this complaint, and then went on to consider the Complainant’s comments.**

#### **2. Paragraph 3.1 Councillors must treat others with respect.**

**Decision: NO BREACH.**

#### **Reason for the Decision:**

The complaint focuses upon the use by Cllr Cosgrove of the expression ‘WTF’ in his question: ‘*WTF are you on about?*’ It is said that this is an abbreviation of ‘what the fuck.’ Indeed, this is commonly used throughout society. Cllr Cosgrove confirms that this was the case in this instance. Mr Fyfe asks whether this could be regarded as disrespectful.

The Case Review of 2010 published by Standards for England, has considered this part of the Code. Whilst none of the guidance or previously considered cases which it cites have considered this particular term, it does provide useful assistance.

The Case Review suggests that it might be considered disrespectful where personal abuse has been aimed at a person or their personal characteristics. There is no suggestion that Cllr Cosgrove has done this, and the expression complained of is unlikely to be regarded in this light.

The Case Review shows that it could also be disrespectful to refer in a derogatory way or question someone’s professional abilities. Again, Mr Fyfe has not claimed this. Conversely, however, it might more likely be considered that Mr Fyfe himself has acted in this way. In his email at 10.31 on 18 October (Appendix 6) he claims that Cllr Cosgrove has ‘*issues with time management*’ and doesn’t understand basic financial information, before suggesting that he buys the book ‘Time Management for Dummies.’

Whether or not Mr Fyfe's own remarks might be considered disrespectful, Cllr Cosgrove's 'WTF' expression was in direct response to those. The Tribunal dealing with Standards appeals has stated that allowance must be made for passion and frustration to be expressed in discussions on the efficient running of a Council, and that all the circumstances in sending an email must be taken into account. Cllr Cosgrove's reply to an email which he regarded, with some justification, as sarcastic, and which others may regard as at least condescending, might be regarded as justified.

3. **Paragraph 3.4** Councillors must not bully any person.

**Decision: NO BREACH.**

*Standards for England* defines bullying as '*offensive, intimidating, malicious, insulting or humiliating behaviour ... based on abuse or misuse of power or authority, which attempts to undermine an individual or group.*' It goes on to state that '*Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and member contributed equally to the breakdown in relations.*' (Page 41, Case Review 2010)

In the present case, the Panel considered that any breakdown of relations between Mr Fyfe and Cllr Cosgrove came about entirely from the content and tone of the complainant's own emails. These consist of the item referred to above and his earlier email at 9.25 the same evening in which he described Cllr Cosgrove's email as '*lacking in substance or meaningful dialect.*'

In any event, it is advised that the complainant has not produced evidence of any behaviour which a reasonable bystander might consider satisfies the above definition. Indeed, Mr Fyfe has not claimed that he indeed felt bullied; he merely asks the question as to whether the use of 'WTF' could amount to such.

In light of the above it is further considered that the use of bold and italic text, referred to by Mr Fyfe at paragraph 12.0 of his complaint, cannot amount to bullying conduct towards other Councillors either.

4. **Paragraph 3.5 - Councillors must not intimidate nor attempt to intimidate any person who is or is likely to be:**

**3.5.1 a complainant;**

**Decision: NO BREACH.**

**Reason for the Decision:**

This provision of the Code is aimed at protecting any person who is, or is likely to be, a Complainant in relation to an allegation that a member has failed to comply with the Code of conduct. It can be seen, therefore, that for this provision of the Code to apply, a complaint must already have been made, or the possibility of such has arisen.

Mr Fyfe does not specifically state what the operative or possible complaint was. The present Code of Conduct complaint followed the use of 'WTF' and so is irrelevant. The only complaint alluded to by Mr Fyfe prior to this related to the Cllr's use of bold italics in the word '*that*' (per Appendix 4) when he expressed to Mr Fyfe what the proper course of action for Councillors was.

For intimidation to be found, there should be an example of coercive, threatening or intimidatory behaviour. It is not considered that the use of the word complained of could reasonably be regarded as amounting to this. Indeed, Mr Fyfe has not claimed that he indeed felt intimidated; he merely asks the question as to whether the use of 'WTF' could amount to intimidation. There is nothing to suggest that the Cllr attempted or intended to intimidate him.

5. **Paragraph 3.6 - Councillors must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.**

**Decision: NO BREACH.**

**Reason for the Decision:**

This provision of the Code is '*directed at any activity that seeks to put pressure on officers to carry out their duties in a way that is biased or partisan.*' (Page 52 - Case Review 2010). Examples include: preparing committee reports, the allocation of council housing, and the appointment of staff.

The Complainant does not set out how it is claimed that the use of 'WTF' in an email sent to him could properly be considered in this context.

At paragraph 11.0 of his 'Summary' Mr Fyfe asks whether, by advising other Councillors to reserve their views, Cllr Cosgrove breaches this part of the Code. It is submitted that because Councillors are not employees of the Council, nor other contractors or consultants providing services to it, then this part cannot apply to them. Notwithstanding this, there is no evidence to establish that Cllr Cosgrove so advised them in any event. It should be remembered that unlike officers, Councillors are not required to remain impartial. It is the role of Councillors to seek to persuade other members as to their viewpoint, if they choose to do so.

In light of the above, it is not considered that there is a breach of this part of his complaint, nor paragraph 12.0 of that document which refers to other Councillors.

**6. Paragraph 3.8 - Councillors must not prevent another person from gaining access to information to which that person is entitled by law.**

**Decision: NO BREACH.**

**Reason for the Decision:**

The Complainant does not set out how it is claimed that the use of 'WTF' in an email sent to him could properly be considered in this context.

Notwithstanding the above, it is clear that Mr Fyfe had previously made a Freedom of Information request to the Council regarding the matter upon which he was in correspondence with Cllr Cosgrove. It is correct to say that, prima facie, a person is entitled by law to information under the Freedom of Information Act 2000. However, that entitlement is subject to certain statutory exemptions. Mr Fyfe had been denied access to the information which he sought on the basis of one of those exemptions; that relating to commercial interests. He was advised of this by the Town Clerk on an earlier date.

In light of this exemption, Mr Fyfe was not entitled to that information by law. Accordingly, there can be no breach of this part of his complaint, nor paragraph 11.0 as it relates to other Councillors. It is further noted that he has neither formally complained about the Town Clerk's decision, nor applied to the Information Commissioner for a decision under section 50 of the 2000 Act.

**7. Paragraph 3.9 - Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.**

**Decision: NO BREACH.**

**Reason for the Decision:**

As with the provisions referred to above, Mr Fyfe has not set out the basis upon which he claims that the use of 'WTF' could result in disrepute – he merely asks whether it does.

Whilst the Case Review 2010 states that this part of the Code applies where members are acting in an official capacity, it goes on to emphasise this in the context of situations where they are conducting the business of the authority or giving the impression that they are representing their authority. The most obvious example of this is where they are discussing council business at a council meeting. This part of the Code, therefore, seems to require more than simply conducting the office of Councillor.

To breach this part of the Code, the Case Review 2010 cites conduct which could reasonably be regarded as reducing the public's confidence in that member being able to fulfil their role, or adversely affecting the reputation of members generally. Again, this is an objective test. The question is how it would be regarded by an objective observer. However, the Case Review envisages that this would most often be satisfied in any case in which the member's honesty or integrity is brought into question.

It might be considered that the use of 'WTF' in an email falls considerably short of this test.

**Other Considerations of this Complaint:**

The Assessment Panel wished to add that Councillors as a whole should be aware that although no breach was found to have been committed on this occasion, they should be careful about the usage of expressions in all forms including email communications and social media, which might be considered intemperate by others.

**PUBLICATION OF THE DECISION**

The Assessment Panel requests the Monitoring Officer to publish this Decision on the Council's website for a period of 12 months from the date of this Decision Notice.

**Arun District Council's Standards Committee**

The Assessment Panel members for consideration of this complaint were:

Councillor Stephen Haymes	– Chairman
Councillor Graham Tyler	– Panel Member
Councillor Mrs Susan Bence	– Panel Member

and Mr Brian Green acted as the Consultant

Arun District Council – The Civic Centre, Maltravers Road, Littlehampton BN17 5LF

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**The terms of reference for the Arun District Council Assessment Panel considering this matter are in the Arun District Council's Local Assessment Procedure, a copy of which is available from the Council's Legal Services Department.**

**Right of review**

If either the Complainant or the Subject Member considers the decision of the Assessment Panel is not fair, or proportionate, they can appeal within 20 working days from the date of the Decision Notice, giving the reasons why they consider the decision not to be fair or proportionate. The original decision may be reviewed by the Council's Standards Committee if those reasons given are valid.

If either the Complainant or Subject Member do not agree with the subsequent review decision that the Standards Committee makes, they have the right to pursue that decision through the courts, as a Judicial Review.



AGENDA ITEM NO. 8ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

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Information Paper

Subject : Assessment Panel Decision concerning allegation against a Bognor Regis Town Councillor

Report by : Legal Services System Administrator

Report date: 20 June 2016

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1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning Bognor Regis Town Councillor Adam Cunard.

1.2 To advise the Committee of the Assessment Panel's decision.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached and Members are requested to note that following an assessment by the Assessment Panel, it was decided not to take any action.

**Background papers: None**

**Contact: Sue Dudley – Extn 37713**



## Assessment Panel

# DECISION NOTICE:

## NO BREACH

**Reference:** 00004844/SD - Councillor Adam Cunard

**Date:** 11 March 2016

Please be aware and take care when passing on information that is in this notice or about this notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member.

**The role of the Assessment Panel is to consider whether the subject matter of the alleged complaint has breached the Local Code of Conduct. If its finding is yes, then its role is to go on and decide if the matter is so serious to need further referral, or whether an alternative course of action should be taken.**

### Complaint

On 11 March 2016 Councillor Stephen Haymes (Chairman), Councillors Graham Tyler and Councillor Mrs Susan Bence sat on the Assessment Panel of Arun District Council's Standards Committee, and with Mr Brian Green present as an Independent Person to consult, considered a complaint from Simon Fyfe (the Complainant) concerning the alleged conduct of Councillor Adam Cunard (the Subject Member), a member of Bognor Regis Town Council.

### SUMMARY OF THE COMPLAINT

The complaint is primarily concerned with two areas. Firstly, events attended by Cllr Cunard, along with various other parties involved with the Picturedrome (PD) extension. These events consisted of one 'Briefing Meeting' and two 'Liaison Design Meetings' held at Bognor Regis Town Hall between March and June 2015 [minutes produced by Grant Associates, the Quantity Surveyors for the project are enclosed]. The second part of the complaint centres on the connection between Cllr Cunard and Cllr Brooks, the latter being the subject of a related complaint by Mr Fyfe.

The Complainant, Mr Fyfe's summary is lengthy, consisting of 9 pages. This details areas of complaint as well as questions and submissions. Not all of these can be readily linked to any of the specific requirements of the Code of Conduct. The complaint form, which should itemise the paragraphs of the Code said to have been breached, as well as provide details of the breach and evidence, has not been fully completed. Rather, it makes reference to the supporting summary. This decision can, and will, only be concerned with the specific provisions of the Code which have been referred to in the Complainant's documents.

The essence of the first part of the complaint is that Cllr Cunard had a Disclosable Pecuniary Interest (DPI), previously declared by him in the proper manner. It is said that this should have prevented his participation in the three meetings referred to above. The Complainant points out that the cinema is owned by the Council (by its ownership of the Bognor Pier Company), and that Cllr Cunard is both a director of that company (and the operator of the cinema) as well as a member of the Council. As such, it is suggested that he has access to confidential information about the project and Council

funds, and that he stands to benefit from decisions about the PD. By virtue of all of this, it is said, he should not have been involved in the discussions.

The essence of the second part of the complaint is that Cllr Cunard became subject to a DPI in the company owned by Cllr Brooks by virtue of the latter gifting the free use of a sign to publicise the PD launch in 2013. It is further suggested that this 'gift' is linked to the winning of certain contracts by Cllr Brooks at a time when Cllr Cunard was either leader of the Council or heading the Policy and Resources Committee.

The following pages cover the reasons that the Assessment Panel came to its decision against each allegation.

## **DECISION**

### **NO BREACH**

Councillor Adam Cunard, a member of Bognor Regis Town Council has not breached the local Code of Conduct and therefore no further action will be taken in relation to the allegation made by Simon Fyfe.

The Assessment Panel considered each allegation in turn and the full reasons for this Decision are set out below.

The first question that the Panel considered was whether this complaint should be looked at as a complaint under the local Code of Conduct:

#### **1. Does the local Code of Conduct Apply?**

The Code of Conduct applies when a Councillor conducts Council business.

“Conducts Council business” means participating in meetings of the Council, Committees and Sub Committees and other Council meetings whether public or private and where the Councillor is held out by himself or others as being and acting as a Councillor and representing the Council.

It is considered that Cllr Cunard’s attendance at the meetings referred to, as raised in the first part of the complaint, did not relate to the conduct of the business of the council, nor to his acting as a representative of the authority. Full advice in this regard is given in the assessment below.

It is not considered that affirmative answers to the above questions apply to the second part of the complaint, namely the suggestion that Cllr Cunard may have improperly used his position as Leader of the Council or as Chairman/Vice-Chairman of Policy and Resources to award contracts to Cllr Brooks’s company. In view of the absence of any evidence that Cllr Cunard acted in the manner alleged, there can be no basis upon which to then go on and consider his standing when any such conduct took place. It will be seen from his response to the complaint that Cllr Cunard does not accept having been on any committee which may have awarded a contract to Cllr Brooks. In view of the lack of particulars provided by the complainant to support his complaint in this regard, the panel takes the view that this part of the complaint also fails both of the above tests. Accordingly, although the panel dismisses the complaint in its entirety, it makes the following observations.

#### **2. Paragraph 3.9 - Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.**

**Decision: NO BREACH.**

**Reason for the Decision:**

In his form of complaint the Complainant has merely cited the paragraph number, making reference to the attached overall summary. However, that overall summary does not specifically detail how it is alleged that Cllr Cunard has conducted himself in such a manner.

The panel did not consider that the evidence supported a finding of disrepute.

#### **3. Paragraph 3.10 - Councillors must not use or attempt to use their position as a councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.**

**Decision: NO BREACH.**

In his form of complaint the Complainant has merely cited the paragraph number, making reference to the attached overall summary.

The summary appears to allege a breach in two respects. Firstly, that Cllr Cunard improperly used his position with regard the three meetings referred to above. Secondly, that as Leader of the Council or the P and R Committee, he misused his position to award contracts to Cllr Brooks.

The first head of complaint cannot succeed in law. Paragraph 3.10 of the Code attaches to members acting in an official capacity only. As the Town Clerk made clear in her responses to Mr Fyfe's Requests for Information, 'Mr Cunard' attended the meetings 'as the cinema operator, not as a Councillor.' The meetings themselves were not council or committee meetings, being minuted by the surveyors only as briefings or liaison meetings. Those minutes record Mr Cunard being present as the PD Tenant, and there is no evidence to show that he was claiming to act, nor giving the impression that he was acting as a representative of the authority. Indeed, no councillors were present at any of those meetings. The Town Clerk was present and she makes it clear in her written answers to the Complainant that Mr Cunard's presence was perfectly in order as the operator of the cinema. Mr Fyfe does not set out how it is claimed that Cllr Cunard was indeed acting in his official capacity as Councillor.

Even if this head of complaint had any legal foundation, there is no evidence to establish that Mr, or indeed Cllr Cunard secured any advantage by being present at the meetings. The complaint appears to infer advantage merely by virtue of involvement. It is suggested by Mr Fyfe that Mr or Cllr Cunard had access to sensitive financial information by these discussions. However, this is not particularised in any detail, and nor is it said how this may have benefitted him. Again, however, it needs to be shown that Cllr Cunard was acting in an official capacity at this time.

It is suggested by the Complainant that Mr Cunard's position as a councillor was incompatible with his attendance at these meetings. The Panel thought it unreasonable to suggest that the legitimate commercial operator and tenant of the PD should be excluded from discussions relevant to its future viability. No suggestion has been made that Mr Cunard should not, by virtue of the office of Councillor, be permitted to operate the cinema. Accordingly, it would be unreasonable to hold that he be prohibited from taking part in discussions about its future.

The second head of complaint rests on the fact that in 2013 Cllr Brooks, as the director of a signage company 'gifted' an electronic signboard for the launch event of the PD, which remains there. It is further claimed that Cllr Brooks in turn gets free storage of the item. Linked to this is the award of contracts to Cllr Brooks by BRTC when Cllr Cunard was in a position of influence there. By virtue of all this it is suggested that each has a DPI in the other's company. That said, this decision is confined to the position of Cllr Cunard only. The complaint concerning Cllr Brooks will be dealt with separately.

The issue of DPIs is considered below. As regards the issue of improper advantage, again there is no evidence to show that the receipt of the 'gift' or its continued retention, by Mr Cunard as the cinema operator, is in any way associated with his official capacity as a councillor.

The Complainant refers to Cllr Cunard being Leader of the Council or Chairman/Vice-Chairman of P and R. The holder of such posts does not have the power to unilaterally ensure where contracts are awarded. In this regard it should be remembered that in his complaint against Cllr Brooks, the Complainant identified [REDACTED], an employee of BRTC, as being key to this area of decision making. In her responses to the complaint about Cllr Brooks, the Town Clerk pointed out that a proper process is applied. In his response, Cllr Cunard refers to the 'blind' tendering process and states that any contracts which were awarded to Cllr Brooks's company were likely to have been granted by a number of committees which enjoyed delegated powers without any requirement for sanction by the P and R Committee. In any event, any allegation that this 'gift' was intended to, or was sufficient to bribe or induce anyone to award contracts is not supported by any evidence. The Complainant has provided estimates for the value of the sign, weekly hire charge and storage cost. However, no evidence is provided to illustrate how realistic these are or how those values were estimated. Of the £12,000 worth of contracts referred to as having been awarded to Cllr Brooks's company, £9,000 was given before the 'gift' was made. Only £1,000 was awarded in the two following financial years. Not all contracts bid for were won, and over 50% came indirectly from BRTC. The panel did not find that this evidence supported allegations of improper conduct.

- 4. Paragraph 5.1 - Subject to paragraph 7, Councillors must, within 28 days of this Code being adopted by the Council or their election or appointment to office (whichever is the later), register in the District Council's Register of Councillors' Interests (maintained under section 29(1) of the Localism Act 2011) details of their Disclosable Pecuniary Interests (as referred to in paragraph 4 above) by completing the appropriate form and delivering this to the Council's Town Clerk who will forward it to the Monitoring Officer.**

**Decision: NO BREACH.**

**Reason for the Decision:**

The Complainant asks whether the gifting of the sign resulted in Cllr Cunard having a DPI in Cllr Brooks's company. The said value of the sign, which is unsupported by any evidence, is of no relevance in this regard.

The issue as to what can amount to a DPI is clearly set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. These are repeated in the Register of Interests Form, and so it is not intended to rehearse them here. It will be seen from those documents that neither the gifting of a sign by a company, nor the continuing retention of that sign, can result in the recipient accruing thereby a DPI in that company. The same applies regardless of whether Cllr Cunard is providing rent-free storage of that sign as alleged.

On 3 June 2015, and later in September, Cllr Cunard made certain disclosures in the Register of Interests. No complaint is made that these were incorrect, or inadequate, save as is referred to above.

The Complainant additionally refers to Participation in discussions of matters in which Cllr Cunard had DPIs. Section 31 of the Localism Act 2011 restricts participation in meetings where a member has a pecuniary interest. The type of meetings affected by this provision are set out in sub-section (1). The meeting in question must be 'a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority.' This is the first hurdle. Unless the meeting falls into one of those categories, there need be no further consideration of the issue of participation. It is considered that none of the three meetings referred to above can be regarded as being within these categories. Further, the Complainant fails to set out any basis upon which it might be argued that they do so.

No allegations are made that he participated or voted in any meetings of the Council or its committees, the complaints focusing only upon the briefing and liaison meetings already referred to. In all the circumstances there is no evidence of a breach of any of the provisions dealing with Disclosable Pecuniary Interests.

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## **PUBLICATION OF THE DECISION**

The Assessment Panel requests the Monitoring Officer to publish this Decision on the Council's website for a period of 12 months from the date of this Decision Notice.

### **Arun District Council's Standards Committee**

The Assessment Panel members for consideration of this complaint were:

Councillor Stephen Haymes	– Chairman
Councillor Graham Tyler	– Panel Member
Councillor Mrs Susan Bence	– Panel Member

and Mr Brian Green acted as the Consultant

Arun District Council – The Civic Centre, Maltravers Road, Littlehampton BN17 5LF

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**The terms of reference for the Arun District Council Assessment Panel considering this matter are in the Arun District Council's Local Assessment Procedure, a copy of which is available from the Council's Legal Services Department.**

### **Right of review**

If either the Complainant or the Subject Member considers the decision of the Assessment Panel is not fair, or proportionate, they can appeal within 20 working days from the date of the Decision Notice, giving the reasons why they consider the decision not to be fair or proportionate. The original decision may be reviewed by the Council's Standards Committee if those reasons given are valid.

If either the Complainant or Subject Member do not agree with the subsequent review decision that the Standards Committee makes, they have the right to pursue that decision through the courts, as a Judicial Review.

AGENDA ITEM NO. 9ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

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Information Paper

Subject : Assessment Panel Decision concerning allegation against a Bognor Regis Town Council Parish Councillor

Report by : Legal Services System Administrator

Report date: 20 June 2016

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1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning Bognor Regis Town Councillor Jan Cosgrove.

1.2 To advise the Committee of the Assessment Panel's decision.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached for information.

**Background papers: None**

**Contact: Sue Dudley – Extn 37713**



## Assessment Panel

# DECISION NOTICE: BREACH

**Reference:** 00004854/SD - Councillor Jan Cosgrove – Bognor Regis Town Council

**Date:** 24 March 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member.

**The role of the Assessment Panel is to consider whether the subject matter of the alleged complaint has breached the Local Code of Conduct. If its finding is yes, then its role is to go on and decide if the matter is so serious to need further referral, or whether an alternative course of action should be taken.**

### Complaint

On 24 March 2016 Councillor Graham Tyler (Chairman), Councillor Mrs Ann Rapnik and Councillor Dougal Maconachie sat as the Assessment Panel of Arun District Council's Standards Committee, and with John Thompson present as an Independent Person to consult, considered a complaint from Andrew Evans (the Complainant) concerning the alleged conduct of Councillor Jan Cosgrove (the Subject Member), a member of Bognor Regis Town Council.

### SUMMARY OF ALLEGATIONS

Mr Evans complains that Councillor Cosgrove wrongfully disseminated confidential information relating to him on social media, namely Facebook. The material in question was an email written by Mr Evans, as a constituent, to the Councillor regarding Council business. The complaint specifically focuses upon the publication of his personal details, rather than the substantive contents of the email. Mr Evans claims that this breached the Code of Conduct in a number of ways.



## **DECISION**

### **BREACH**

The Panel finds that Councillor Jan Cosgrove, a member of Bognor Regis Town Council has breached the local Code of Conduct in relation to an allegation made by Andrew Evans.

The Assessment Panel considered each allegation in turn and the full reasons for this Decision are set out below.

The first question that the Panel considered was whether this complaint should be looked at as a complaint under the local Code of Conduct:

#### **Does the local Code of Conduct Apply?**

The Code of Conduct applies whenever a Councillor acts in their official capacity.

'Official capacity' includes; (1) the conduct of council business, including participating in meetings of the Council, Committees and Sub Committees and other Council meetings whether public or private and (2) where the Councillor is held out by himself or others as being and acting as a Councillor and representing the Council.

The Meeting of the Town Council held on 9 November 2015 is not directly relevant to the complaint. Whilst Mr Evans refers to the meeting as part of the background to his complaint, the matter of specific concern is the email correspondence between Mr Evans and Councillor Cosgrove, and the subsequent dissemination of that on the social media website, Facebook.

The email correspondence in question concerned Council business, namely the Picturedrome project and the consideration of that at the Council Meeting. It was initiated by Mr Evans, a former Arun District Councillor and now Marine Ward constituent, who addressed his correspondence to Jan Cosgrove as a Councillor. It was responded to by Councillor Cosgrove, who signed off that reply as 'Jan Cosgrove, Town Councillor.'

In all the circumstances it is considered that Councillor Cosgrove was conducting the business of the Council in so far as it included the business of the office to which he was elected, i.e. the office of Councillor (paragraph 2.1.1 of the Code).

**Accordingly, the Assessment Panel decided that the Code of Conduct has effect for the purposes of this Complaint, and therefore went on to consider the Complainant's comments.**

#### **Paragraph 3.1 - Councillors must treat others with respect**

**Decision: No breach on present evidence.**

##### **Reason for the Decision:**

When considering complaints the Panel takes into account guidance issued by the Standards Board for England, contained within the Case Review of 2010. Whilst the complainant may feel that the publication of his address was disrespectful, the cases cited in the Case Review clearly indicate that the test of whether any action amounted to disrespect is an objective one. The question, therefore, is whether the behaviour would be regarded as disrespectful by a reasonable person.

Cases previously considered by the Tribunal dealing with Standards appeals have almost entirely been concerned with cases involving allegations of threatening, intimidating and humiliating conduct. Clearly, none of these characteristics feature in the present case. That aside, the issue is whether it can reasonably be said that the publication of a personal address demonstrated a lack of respect. It is considered that whilst this may show a failure of confidentiality, it falls short of the type of behaviour normally associated with disrespect.

#### **Paragraph 3.2 - Councillors must comply with their statutory obligations.**

**Decision: No breach on present evidence**

The Complainant does not directly state which statutory obligation it is claimed has been breached. Reference is however made to the Data Protection Act 1998 (DPA) in his summary. The Code of Conduct is not set on a statutory basis.

It is likely that Councillor Cosgrove was the data processor because he received the information from Mr Evans in his capacity as a councillor. He then took that information and used it for his own purposes and at that point he became the data controller of that information. Councillor Cosgrove published the information in his personal capacity, not as part of his role as a councillor. So there is no breach on present evidence on this paragraph of the Members' Code of Conduct. However Councillor Cosgrove may have breached Section 55 of the DPA.

Mr Evans has lodged a complaint with the Information Commissioner's Office (ICO). That organisation will adjudicate upon the issue of whether the DPA is invoked in this matter and any breach of that if it is. It was therefore unnecessary for the Panel to consider this issue. This is particularly so in view of the fact that the Panel is able to consider the disclosure of the information under other provisions of the Code, below.

### **Paragraph 3.7 Confidential Information etc.:**

3.7 Councillors must not disclose information given to them in confidence by anyone, or information acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature, except where:

3.7.1 they have the consent of a person authorised to give it;

.....

3.7.4 the disclosure is:

3.7.4.1 reasonable and in the public interest

### **Decision: BREACH.**

#### **Reason for the Decision:**

Irrespective of the applicability of the Data Protection Act 1998 to this matter, the 'Guidance on Dealing with Requests for MPs' Correspondence Relating to Constituents' issued by the ICO is of assistance. Paragraph 2 of that document states that the Guidance equally applies to Councillors, and points out that it is vital to protect the personal details of constituents. Paragraph 13 states that there is usually a legitimate expectation by the constituent that information disclosed will be treated as confidential. It goes on to say that *'this means that letters sent on behalf of a constituent may be subject to a duty of confidentiality.'* Whilst this last sentence is aimed at M.P.s' letters sent on behalf of their constituent, it is submitted that there is no good reason to distinguish these from constituents' letters sent to their M.P.s or Councillors.

It is considered that the names and addresses of constituent letter writers are confidential, being intrinsically personal information. Accordingly, Councillor Cosgrove, at the least, ought reasonably have been aware of this. Indeed, his response to the complaint demonstrates that he was so aware in that he excuses its disclosure by saying he thought his correspondent was a fellow councillor and therefore not protected in the same way as a constituent. Paragraphs 3.7.1 to 3.7.4 set out exceptions where disclosure might be made. On the face of the matter none of these appear to apply. Councillor Cosgrove does not cite them in his response.

The evidence presented by the Complainant shows that he sent his email to Councillor Cosgrove on the evening of 8 November 2015, signed simply as 'Andrew Evans.' The Councillor replied that same evening, at 7.54 pm, seemingly under the mistaken impression that his correspondent was 'District Councillor Evans.' He wrote again several minutes later, at 8.08 pm, making it clear that he had realised his error. The offending Facebook post included the entirety of that original email, including Mr Evans's name and address, and both of Councillor Cosgrove's responses to it. Upon discovering that Facebook post Mr Evans complained to the Councillor about the publication of his home address. Councillor Cosgrove excused himself by stating that he thought Mr Evans was still a councillor. when he posted it. Whilst that Facebook post is, unhelpfully, neither dated nor timed, its contents clearly show that Councillor Cosgrove was in possession of the full facts, particularly Mr Evans's non-councillor status, when he published it.

At paragraph 4 of his response, Councillor Cosgrove states that he posted the correspondence on Facebook as an individual, not as a councillor. However, that correspondence was sent to and received by him only by virtue of his office. Accordingly confidentiality applied.

The Complainant has focused upon the disclosure of his home address. However, the above principles and advice apply equally to the entire email.

**Paragraph 3.9 - Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.**

**Decision: No breach on present evidence.**

**Reason for the Decision:**

Whilst the Case Review 2010 re-states that this part of the Code applies where members are acting in an official capacity, it goes on to emphasise this in the context of situations where they are conducting the business of the authority or giving the impression that they are representing their authority. The most obvious example of this is where they are discussing council business at a council meeting. This part of the Code, therefore, seems to require more than simply conducting the office of councillor.

To breach this part of the Code, the Case Review 2010 cites conduct which could reasonably be regarded as reducing the public's confidence in that member being able to fulfil their role, or adversely affecting the reputation of members generally. Again, this is an objective test. The question is how it would be regarded by an objective observer. However, the Case Review envisages that this would most often be satisfied in any case in which the member's honesty or integrity is brought into question.

It is considered that the publishing of confidential information on a social media website by a councillor 'off their own bat' falls short of this test.

**ACTIONS**

The Assessment Panel has requested that, once the Decision Notice is published, the Monitoring Officer write to Bognor Regis Town Council on its behalf to bring to Bognor Regis Town Council's attention that this is not the first time that Councillor Jan Cosgrove has had a complaint made against him related to social media. The Monitoring Officer to also bring to the Council's attention the actions open to it whereby it could specifically link the Bognor Regis Town Council's Social Media Policy to its Members' Code of Conduct.

The Assessment Panel would also like it noted that it is its view that private addresses should not be published on social media, including the private addresses of councillors or past councillors.

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**PUBLICATION OF THE DECISION**

The Assessment Panel requests the Monitoring Officer to publish this Decision on the Council's website for a period of 12 months from the date of this Decision Notice.

**Arun District Council's Standards Committee**

The Assessment Panel members for consideration of this complaint were:

Councillor Graham Tyler	– Chairman
Councillor Mrs Ann Rapnik	– Panel Member
Councillor Dougal Maconachie	– Panel Member

and Independent Person John Thompson acted as the Consultant

Arun District Council – The Civic Centre. Maltravers Road. Littlehampton BN17 5LF

**The terms of reference for the Arun District Council Assessment Panel considering this matter are in the Arun District Council's Local Assessment Procedure, a copy of which is available from the Council's Legal Services Department.**

**Right of review**

If either the Complainant or the Subject Member considers the decision of the Assessment Panel is not fair, or proportionate, they can appeal within 20 working days from the date of the letter enclosing the Decision Notice, giving the reasons why they consider the decision not to be fair or proportionate. The original decision may be reviewed by the Council's Standards Committee if those reasons given are valid.

If either the Complainant or Subject Member do not agree with the subsequent review decision that the Standards Committee makes, they have the right to pursue that decision through the courts, as a Judicial Review.

AGENDA ITEM NO. 10ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

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## Information Paper

Subject : Assessment Panel Decision concerning allegation against a Ferring Parish Councillor

Report by : Legal Services System Administrator  
Report date: 8 June 2016

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1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning Ferring Parish Councillor Carole Robertson.

1.2 To advise the Committee of the Assessment Panel's decision.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached and Members are requested to note that following an assessment by the Assessment Panel, it was decided that this was not a Code of Conduct matter.

**Background papers: None**

**Contact: Sue Dudley – Extn 37713**



## Assessment Panel

# DECISION NOTICE: NO BREACH

**Reference:** 00005040/SD - Councillor Carole Robertson – Ferring Parish Council

**Date:** 24 March 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member.

**The role of the Assessment Panel is to consider whether the subject matter of the alleged complaint has breached the Local Code of Conduct. If its finding is yes, then its role is to go on and decide if the matter is so serious to need further referral, or whether an alternative course of action should be taken.**

### Complaint

On 24 March 2016 Councillor Graham Tyler (Chairman), Councillors Mrs Ann Rapnik and Councillor Dougal Maconachie sat as the Assessment Panel of Arun District Council's Standards Committee, and with John Thompson present as an Independent Person to consult, considered a complaint from Nigel Johnstone (the Complainant) concerning the alleged conduct of Councillor Carole Robertson (the Subject Member), a member of Ferring Parish Council.

### SUMMARY OF ALLEGATIONS

The complaint concerns events and meetings relating to the Little Paddocks estate in Ferring, its ownership company (Little Paddocks Freeholders Ltd), Ferring Parish Council (FPC), and FPC's Neighbourhood Plan for the area including the estate. At all relevant times Carole Robertson was a councillor of FPC, and a resident of the estate in her private capacity. For part of the time she occupied two additional private roles, being those of a director and Chairman of Little Paddocks Freeholders Ltd. The complainant, Mr Johnstone, was at all material times a director and company secretary of Little Paddocks Freeholders Ltd.

Mr Johnstone alleges that Carole Robertson subjected him, to prolonged bullying, harassment and 'libellous behaviour' over a lengthy period. This centres around the period between March 2014 and October 2015, being that in which FPC's proposals were being subjected to scrutiny by Little Paddocks Freeholders Ltd. The allegations are reference by way of the contents of correspondence issued by Carole Robertson. That correspondence makes similar allegations against Mr Johnstone.

## **DECISION**

## **NO BREACH**

The Assessment Panel considered the allegations and the evidence. It held that Councillor Carole Robertson, a member of Ferring Parish Council, had not breached the local Code of Conduct and that therefore no further action would be taken.

The full reasons for this Decision are set out below.

The first question that the Panel considered was whether the local Code of Conduct applied to this complaint.

### **Does the local Code of Conduct Apply?**

The Code of Conduct only applies when councillors act in an official capacity. This arises either where they conduct council business, or where they act or claim to be acting as representatives of the authority. The 'conducting of council business' means participating in meetings of the council, its committees and sub-committees and other council meetings whether public or private and where the councillor is held out by herself or others as being and acting as a councillor and representing the council.

The Assessment Panel decided that there was no case to be answered by Parish Councillor Carole Robertson regarding this complaint, for the reasons below:

The Code of Conduct, and the requirement to comply with its provisions, attaches only to members of the authority when acting in their official capacity. That official capacity arises in only the two circumstances set out above. Many councillors simultaneously occupy other posts and positions in society in their capacity as private citizens; these are relevant only where they touch upon and affect the performance of their public duties.

The complainant relies upon and produces a number of documents in support of his complaint. He cites no other evidence in addition to these. Those which connect directly with Parish Councillor Carole Robertson consist of the minutes of a meeting of Little Paddocks Freeholders Ltd as well as a personal statement, one letter and one email. In none of these can it be seen that she was acting in the conduct of Parish Council business or claiming to do so. All the actions that are the subject of this complaint relate to actions in Carole Robertson's capacity as a private citizen conducting business pertaining to a private company. Her attendance at the relevant meeting and her authorship of correspondence was clearly undertaken in her role as a present or former director and/or chairman of Little Paddocks Freeholders Ltd, and which she occupied by virtue of being a resident of the Little Paddocks estate.

Mr Johnstone does not set out any basis upon which he claims that Carole Robertson was indeed acting in her official capacity as Councillor. He does however refer to an alleged conflict of interest between her role as a Ferring Parish Councillor and that of Little Paddocks Freeholders Ltd director. However it is unclear how any such possible conflict breached the Code, if indeed one can be found to have existed, which the Panel does not so find. The complainant does not properly set out a case as to how it is alleged that any of the interests Parish Councillor Carole Robertson had at the relevant time served to advance any of those at the expense of others.

It was therefore decided that there was no breach of the Code on the basis of the complaint made. Accordingly, the detailed provisions of the Code have not been considered further.

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**PUBLICATION OF THE DECISION**

The Assessment Panel requests the Monitoring Officer to publish this Decision on the Council's website for a period of 12 months from the date of this Decision Notice.

**Arun District Council's Standards Committee**

The Assessment Panel members for consideration of this complaint were:

Councillor Graham Tyler	– Chairman
Mrs Ann Rapnik	– Panel Member
Councillor Dougal Maconachie	– Panel Member

John Thompson (Independent Person) acted as the Consultant

Arun District Council – The Civic Centre, Maltravers Road, Littlehampton BN17 5LF

**The terms of reference for the Arun District Council Assessment Panel considering this matter are in the Arun District Council's Local Assessment Procedure, a copy of which is available from the Council's Legal Services Department.**

AGENDA ITEM NO. 11ARUN DISTRICT COUNCILSTANDARDS COMMITTEE14 JULY 2016

## Decision Paper

Subject : Local Assessment Procedure - Revision

Report by : Head of Legal and Administration &amp; Monitoring Officer

Report date: 27 June 2016

1.0 INTRODUCTION

- 1.1 The new Code of Conduct has been in existence since July 2012. Over a period of time it has become clear that the existing Local Assessment Procedure, which sets out how we deal with Complaints against Councillors, is in need of a review, and issues have arisen where a process for dealing with these has not been included in the current Local Assessment Procedure. This report seeks to address those issues and provide new guidelines on dealing with those issues.
- 1.2 In addition it is proposed that some of the initial assessments are to be carried out by the Monitoring Officer, in consultation with an Independent Person.
- 1.2 Standards Committee Members are asked to make a decision on the proposed changes.

2.0 PROPOSED CHANGES

- 2.1 The following changes are to be considered by the Standards Committee Members:

- 2.1.1 The Monitoring Officer to have an initial assessment role, consulting with an Independent Person where appropriate, and dismissing complaints which do not qualify or are vexatious etc.

The complaints would be dealt with by the Monitoring Officer at the initial assessment stage and then reported to the next Standards Committee meeting.

Any request to review an initial assessment Decision would be referred to the Assessment Panel. (reviews are currently dealt with at Standards Committee meetings.)

In practice this should mean that the number of complaints currently referred to Assessment Panel, and reviews at Standards Committee meetings should reduce.



2.1.2 A new Habitual/Vexatious Complaints Policy to be introduced and then annexed to the revised Local Assessment Procedure.

2.1.3 Initial assessment procedures often make reference to an immediate referral to the Director of Public Prosecutions in the case of possible offences.

If a complaint has been received where there has been a possible breach relating to a pecuniary interest, then the complaint to be dealt with as follows:

- The complaint to be considered initially by the Assessment Panel, and the Assessment Panel will reach a conclusion as to whether or not a Pecuniary Interest has arisen that has not been properly declared and/or a subsequent breach of the Local Code of Conduct has arisen.
- Where the Assessment Panel is not satisfied that there has been no breach, the complaint will be referred to the Director of Public Prosecutions, together with all the available information in the public domain that the Monitoring Officer and Assessment Panel are aware of.

2.1.4 The current Local Assessment Procedure to be redrafted to include more details on procedure and investigations, and to review the current process for dealing with complaints. The redrafted Local Assessment Procedure to be brought back to the Standards Committee for consideration with final approval by Full Council.

### 3.0 RECOMMENDATIONS

3.1 That the Standards Committee supports the Proposals 2.1.1, 2.1.2, 2.1.3 and 2.1.4 above;

3.2 The Monitoring Officer consults with all Members of the Council and brings back a further report to the Standards Committee setting out details of the responses received from that consultation; and

3.3 The current Local Assessment Procedure be redrafted and brought back to the Standards Committee for consideration with final approval by Full Council.

#### **Background papers:**

Local Assessment Procedure - <http://www.arun.gov.uk/complaints-against-councillors>

**Contact: Wendy Ashenden-Bax – Extension 37589**