



Democratic Services Officer: Jane Fulton (Ext. 37611)

30 September 2016

STANDARDS COMMITTEE

A meeting of the Standards Committee will be held in Committee Room 1 (the Pink Room) at the Arun Civic Centre, Maltravers Road, Littlehampton on **Thursday, 13 October 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 Wheel.

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

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 14 July 2016 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. COMPLAINT REFERENCE 3031 – ARUN DISTRICT COUNCILLOR FRANCIS OPPLER

Following the outcome of the Motion debated at Full Council on 20 July 2016, the Head of Legal and Administration will provide a verbal update on this matter.

6. RECRUITMENT OF INDEPENDENT PERSONS - UPDATE

The Head of Legal and Administration will provide a verbal update on progress made in recruiting two more Independent Persons to the Committee.

7. LOCAL ASSESSMENT PROCEDURE – UPDATE

The Head of Legal and Administration will provide a verbal update on progress with this work since the last meeting of the Committee on 14 July 2016.

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

This report advises the Committee about an allegation concerning Angmering Parish Councillor - Paul Bicknell

9. *ASSESSMENT OF PANEL DECISION CONCERNING ALLEGATION AGAINST A DISTRICT COUNCILLOR

This report advises the Committee about an allegation concerning Arun District Councillor - Philippa Bower

10. 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.

11. *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).

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.

STANDARDS COMMITTEE16 July 2015 at 6.04 p.m.

Present: - Councillors English (Chairman), Dillon, Mrs Rapnik, Tyler, Dr Walsh and Wheal.

Independent Persons - Mr B Green, Mr J Thompson and Mrs K Vagg.

[Note: Independent Person, Mrs Vagg, was absent from the meeting during consideration of the matters contained within Minute 94 to Minute 103 (Part)].

94. WELCOME

The Chairman welcomed Members and Independent Persons and Officers to the meeting.

A special welcome was extended to Councillor Wheal as a new Member to the Committee.

95. APOLOGY FOR ABSENCE

An apology for absence had been received from Councillor Maconachie.

The Committee extended its best wishes to Councillor Maconachie for a speedy recovery.

96. DECLARATIONS OF INTEREST

The Monitoring Officer has advised Members of interim arrangements to follow when making declarations of interest. They have been advised that for the reasons explained below, they should make their declarations on the same basis as the former Code of Conduct using the descriptions of Personal and Prejudicial Interests.

Reasons

- The Council has adopted the Government's example for a new local code of conduct, but new policies and procedures relating to the new local code are yet to be considered and adopted.
- Members have not yet been trained on the provisions on the new local code of conduct.

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14.07.16

- The definition of Pecuniary Interests is narrower than the definition of Prejudicial Interests, so by declaring a matter as a Prejudicial Interest, that will cover the requirement to declare a Pecuniary Interest in the same matter.

Where a member declares a “Prejudicial Interest”, this will, in the interests of clarity for the public, be recorded in the minutes as a Prejudicial and Pecuniary Interest.

There were no Declarations of Interest made.

97. MINUTES

The Minutes of the Committee meeting held on 30 November 2015 were approved by the Committee as a correct record and signed by the Chairman.

98. RESIGNATION OF AN INDEPENDENT PERSON OF THE COMMITTEE

The Chairman requested and the Committee agreed to the receiving of an urgent update following the resignation of one of its Independent Persons.

It was agreed that this matter needed to be brought to the Committee’s attention as the next meeting of the Committee was not scheduled to take place until October 2016.

The Chairman confirmed that he had received written notification from Mrs Kathy Vagg of her need to resign as an Independent Person of the Committee from September 2016 due to her relocating to Oxfordshire.

On behalf of the Committee, the Chairman wished to have recorded his thanks to Mrs Vagg for all of her hard work and commitment given to the work of the Committee over the last seven years. It was agreed that a formal letter of thanks would be sent on behalf of the Committee by the Monitoring Officer to Mrs Vagg.

The Chairman asked the Committee if it could take a view on whether it felt it necessary to commence a recruitment process to find a replacement Independent Person.

Discussion on this saw numerous reasons being presented as to why a recruitment process should commence as soon as possible. These were:

- The resignation of Mrs Vagg would only leave 3 Independent Persons to assist the Committee with Assessment Panel hearings which could be complex and lengthy;
- This would put undue pressure onto the remaining three Independent Persons
- The Monitoring Officer should be instructed to commence the recruitment of two Independent Persons to provide continuity of experience in the future
- Contact should be made with the following to assess if there might be interest:
 - Town and Parish Council Clerks
 - The Sussex Association of Local Councils
 - The Voluntary Sector such as the Citizens Advice Bureau and the Sussex Voluntary Action Group
 - Advertisement in the local press

The Committee then

RESOLVED - That

- (1) Mrs Kathy Vagg's resignation as an Independent Person of this Committee be noted;
- (2) The Monitoring Officer writes to Mrs Vagg to thank her on behalf of the Committee for her contributions to the work of the Standards Committee and to wish her well for the future; and
- (3) Two Independent Person candidates on the Committee be sought using the ideas outlined in the above minute.

99. START TIMES

The Committee

RESOLVED

That its start times for meetings during 2016/2017 be 6.00 pm.

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100. ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

The Committee received and noted an information report regarding a case dealt with by the Assessment Panel relating to Bognor Regis Town Councillor – James Brooks.

101. ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

The Committee received and noted an information report regarding a case dealt with by the Assessment Panel relating to Bognor Regis Town Councillor – Jan Cosgrove.

102. ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

The Committee received and noted an information report regarding a case dealt with by the Assessment Panel relating to Bognor Regis Town Councillor – Adam Cunard.

103. ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A TOWN COUNCILLOR

The Committee received and noted an information report regarding a case dealt with by the Assessment Panel relating to Bognor Regis Town Councillor – Jan Cosgrove.

104. ASSESSMENT PANEL DECISION CONCERNING ALLEGATION AGAINST A PARISH COUNCILLOR

The Committee received and noted an information report regarding a case dealt with by the Assessment Panel relating to Ferring Parish Councillor – Carole Robertson.

Having noted all of the Assessment Panel Decisions, Councillor Tyler wished to have placed on record his thanks, on behalf of the Committee, to Richard Orridge for the professional and efficient way in which he had assisted Members with the Assessment Panel meetings reported above. It was explained that Mr Orridge was employed by the Council to assist it in dealing with Assessment Panel and Licensing hearings.

105. LOCAL ASSESSMENT PROCEDURE – REVISION

The Committee received a report from the Head of Legal and Administration and Monitoring Officer which outlined that over a period of time it had become clear that the existing Local Assessment Procedure, setting out how the Council dealt with complaints against Councillors, was in need of a review.

This was because issues had arisen where a process for dealing with these had not been included in the current Local Assessment Procedure. The report therefore sought to address these issues and it aimed to provide new guidelines when dealing with such issues.

In addition, it was proposed that some of the initial assessments in the future be carried out by the Monitoring Officer, in consultation with an Independent Person.

The report set out a list of proposed changes and the Committee worked through each of these as follows:

- 2.1.1 - The Monitoring Officer to have an initial assessment role, consulting with an Independent Person where appropriate and dismissing complaints that did not qualify or were vexatious.

This was agreed by the Committee as this practice had already been adopted by many other local authorities and worked well whilst at the same time had streamlined what was a lengthy process.

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

This was agreed by the Committee subject to the following word changes – additions are shown in **bold**. “The complaints would be dealt with by the Monitoring Officer **in consultation with the Chairman and an Independent Person of the Committee** 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 the Assessment Panel and the review at Standards Committee meetings should reduce.

This was not accepted by the Committee.

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

This was agreed by the Committee. The Head of Legal and Administration/Monitoring Officer was asked why Councillors were no longer sent a copy of the Customers of Concern Register. She confirmed that a direction from the Information Commissioner's Office (ICO) confirmed that this register could not be made available to Councillors in this way. This was of concern to Members in terms of their health and safety as it was more than likely that at some point when running a constituent surgery or dealing with casework a Councillor could be approached by an angry, stressed or upset constituent who may be known to the authority. To receive a copy of the Register would overcome this threat. It was agreed that the Head of Legal and Administration would investigate this and would report back her findings to Members.

- 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.

This was agreed by the Committee.

- 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.

This was agreed by the Committee.

The Committee then

RESOLVED – That

(1) the proposals set out as 2.1.1; 2.1.2 (as amended and with bullet point three deleted); 2.1.3 and 2.1.4 be supported; and

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

106. EXEMPT INFORMATION

The Committee

RESOLVED

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 may involve 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.

Standards Committee
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107. REGISTER OF ASSESSMENTS OF COMPLAINTS AGAINST COUNCILLORS (Exempt – Paragraphs 1 and 7C – Information Relating to any Individual and the Deliberations of the Standards Committee.

The Committee received a report from the Head of Legal and Administration which provided Members with updated information to add to their Register of Assessments of Complaints against Councillors.

For the benefit of Councillor Wheal as a new Member to the Committee, the Head of Legal and Administration explained that this provided Members with a full record of complaints considered since January 2012.

(The meeting concluded at 7.05 pm)

AGENDA ITEM NO. 8ARUN DISTRICT COUNCILSTANDARDS COMMITTEE13 OCTOBER 2016

Information Paper

Subject : Assessment Panel Decision concerning allegation against a Councillor in his role as an Angmering Parish Councillor

Report by : Legal Services Systems Administrator Report date: 1 September 2016

1.0 INTRODUCTION

1.1 To advise the Committee about an allegation concerning District Councillor Paul Bicknell in his role as an Angmering Parish Councillor.

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

1.3 To advise the Committee that Councillor Bicknell has conformed to the actions of the Decision Notice by:

- apologising to the Complainant and Angmering Parish Council's Maintenance Committee Members on 27 June 2016 (the apology was made before the Complaint was assessed on 12 August 2016)
- attending a meeting with the Monitoring Officer and the Leader of the Council on 1 September 2016.

2.0 RECOMMENDATION

2.1 The Decision Notice is attached for Members to note

Background papers: None

Contact: Sue Dudley – Extn 37713



Assessment Panel

DECISION NOTICE:

Reference: 00005310/SD - Councillor Paul Bicknell

Date: 23 August 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member. The information will be processed according to Data Protection Act 1998 Schedule 2, Paragraph 5(d) - for the exercise of any other functions of a public nature exercised in the public interest by any person.

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 12 August 2016 Councillor Paul English (Chairman), Councillor Pat Dillon and Councillor Mrs Ann Rapnik sat as the Assessment Panel of Arun District Council's Standards Committee, and with Mr John Thompson present as an Independent Person to consult, considered a complaint from Claire Fullman (the Complainant) concerning the alleged conduct of Councillor Paul Bicknell (the Subject Member), a member of Angmering Parish Council.

SUMMARY OF ALLEGATIONS

This complaint concerns events at a meeting of Angmering Parish Council's Maintenance Committee held on 30 March 2016. It is made by the clerk to the meeting, and supported in a variety of ways by five councillors, one of whom was present as an observer.

The essence of the complaint is that the Subject Member was disrespectful to both the officer and to other councillors, particularly the chairman of the meeting, Cllr Phelon.

By the Complainant, it is said that his manner was authoritative and aggressive. Further, that he failed or refused to follow correct meeting procedures, and acted in a confrontational and intimidating manner despite repeatedly being asked to stop.

Other councillors present variously describe his behaviour as being aggressive, menacing and inappropriate, stating that he shouted on more than one occasion and deviated from a discussion item.

DECISION

BREACH

Paragraphs 9 and 10

The Panel found that Councillor Paul Bicknell, a member of Angmering Parish Council had breached the Local Code of Conduct in relation to the allegations made by Claire Fullman.

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.

In all the circumstances it is considered that the Subject Member 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 and attended the committee meeting in his official capacity as a member of it.

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

Paragraph 9 of the Local Code of Conduct:

A councillor must value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between them that is essential to good local government

Decision: BREACH

Reason for the Decision:

The Panel considered the available guidance. The Standards for England Case Review of 2010 gives some attention to the issue of 'respect', and considers aspects of aggressive and similar behaviour within that.

The kind of behaviour which it often considers to be undermining of respect includes examples of personal insults, disruptive conduct, criticism of the competency of council officers and personal attacks. No guidance can be exhaustive, and every case must be considered on its own facts.

The Standards for England Case Review of 2010 (the Case Review) gives some attention to the issue of conduct in the context of 'respect', and provides the following useful examples:

[N.B. The following are examples of what the definition of 'respect' includes; they are not examples of behaviour exhibited by the Subject Member in this complaint]

- A councillor visiting council offices 15 times in a month, and on each occasion becoming angry, aggressive, invading the clerk's personal space, and describing him as incompetent on several occasions in public: Breach.
- Sending rude emails to the Chief Executive: No Breach.
- Referring to a senior police officer by his surname outside the expected norms of such relationships: Breach.
- Referring to the town clerk as 'difficult to get on with' and saying this was the view of many others: No Breach

The Case Review also points out that regard must be had of the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council. However, if a member's conduct is demeaning to a particular person, and is considered malicious or bullying, then the threshold is likely to be reached.

The unsigned minutes of the meeting provided by the Complainant, show that the Subject Member participated in most agenda items. It is noted that at page 3, in the final paragraph of item reference 14/038, the comment is made that the Subject Member 'became irate' with the administrator, and that a heated discussion delayed progress. Although, it isn't clear, it appears that this minute record was made by the same person who later lodged the complaint. The Panel considered that if the matter were before a court, such a statement would likely be regarded as 'self-serving' and so disregarded that evidence.

In her complaint, the Complainant criticises the Subject Member's behaviour in a number of regards. However, these points are largely made in generic terms and without examples of specific behaviour or words used in order to illustrate the allegations. The Panel noted the following with regard to the complaint summary.

1. The reading of the minutes.

It is said that the Subject Member refused to hand the minutes back for signing. He advised that he had not received a copy of the draft before the meeting. That being the case, he would be entitled to a reasonable opportunity to read them. However, the Subject Member could have contacted the clerk before the meeting and advised that he had not received a copy, and a copy could have been emailed to him in advance. There being no spare copy available at the meeting, the reading of the minutes by the Subject Member inevitably delayed the signing of the draft. It was also stated that he was slow in allowing them to be signed, and this in turn gave the appearance that he was being obstructive.

He is accused of 'authoritative behaviour'. However, no examples have been given of words actually said or specific behaviour adopted in order to illustrate what is essentially a generic term.

2. 'Aggressive and Disrespectful Manner'.

The Complainant refers to the Subject Member as 'confrontational' and intimidating'. It is noted that Councillor Phelon asked the Subject Member to desist on at least two occasions and referred to the incident as a heated discussion, and that the Subject Member shouted and 'could have made it uncomfortable for those present'. Councillor Phelon also described the Subject Member's 'over aggressive attitude'. The remainder of his evidence describes the Subject Member as being difficult to control.

It was noted that neither the Chairman nor anyone else present moved that the Subject Member be no longer heard or excluded from the meeting, as permitted by Standing Order 10, nor was the Subject Member formally requested to moderate or improve his conduct. Nonetheless, the panel was satisfied that such a move would, in the circumstances, have been justified.

The Panel further had regard to the fact that the complaint is supported by a number of other councillors who were in attendance at the meeting.

3. Previous Incidents.

The Complainant has made reference to two previous alleged incidents. They are said to have occurred sometime prior to the above incident and no complaints were made at the earliest opportunity. In view of this and the fact that they are not fully particularised, the Panel has not considered them further at this stage.

Paragraph 10 of the Local Code of Conduct:

A councillor must always treat people with respect, including the organisations and public they engage with and those they work alongside

Decision: **BREACH**

Reason for the Decision:

The Panel considered that its reasons for this being a breach are set out above under Paragraph 9, as the two paragraphs are closely related with regards to a member's behaviour.

The Complainant complains that the Subject Member did not adhere to this paragraph of the code as his aggressive manner was disrespectful to all in attendance at the public Parish Maintenance Committee Meeting on Wednesday 30th March 2016

In addition to the above, the meeting to assess this complaint has been delayed for the following reason. Since the complaint was made, the Independent Person, John Thompson has made a number of attempts to meet the Subject Member. Such meetings are offered to support the Subject Members in responding to the Complaint. Unfortunately, all such meetings as had been arranged were then subsequently cancelled by the Subject Member.

The Panel expressed its severe concern regarding the alleged behaviour by the Subject Member and also that no formal written response had been received by the Monitoring Officer from the Subject Member.

The Panel has therefore had to make its decision based only on the evidence submitted by the Complainant.

OUTCOME:

The Assessment Panel has requested that the Subject Member:

1. makes a full and open apology at a public meeting of Angmering Parish Council to the clerk of the meeting and the parish council for each of the paragraphs that have been breached, as follows:

Paragraph 9: A councillor must value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between them that is essential to good local government.

Paragraph 10: A councillor must always treat people with respect, including the organisations and public they engage with and those they work alongside

The apology:

- must be made within 3 months of the date of the Decision Notice, and
 - the Subject Member to request that the details of the apology be recorded in the Minutes of Angmering Parish Council
 - within 14 days of making the apology the Subject Member to send written details of that apology to the Monitoring Officer to confirm that this has happened.
2. meet with the Monitoring Officer and his political leader within 1 months of the date of the Decision Notice to discuss how the Subject Member proposes to change his behaviour to avoid a reoccurrence of the issues described in this complaint. The Monitoring Officer to have sole discretion over arranging the meeting(s).
 3. notes that on this occasion the Panel decided against recommending to the Parish Council that the Subject Member be taken off the Committees for the parish Council for a specified period not exceeding 12 months as:
 - this was a first complaint, and
 - no recommendation was made, at the time of the incidents complained of, to move that the Subject Member be no longer heard or be excluded from the meeting, as permitted by Standing Order 10., nor was the Subject Member formally requested at the meeting to moderate or improve his conduct.

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 Paul English	– Chairman
Councillor Pat Dillon	– Panel Member
Councillor Mrs Ann Rapnik	– Panel Member

and Mr 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 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 COMMITTEE13 OCTOBER 2016

Information Paper

Subject : Assessment Panel Decision concerning allegation against an Arun District Councillor

Report by : Legal Services Systems Administrator Report date: 1 September 2016

1.0 INTRODUCTION

- 1.1 To advise the Committee about an allegation concerning Councillor Mrs Philippa Bower, a Member of Arun District Council.
- 1.2 To advise the Committee of the Assessment Panel's decision.
- 1.3 To advise the Committee that Councillor Mrs Philippa Bower has conformed to the actions of the Decision Notice by apologising to the Complainant and East Preston Parish Council in writing on 27 August 2016.

2.0 RECOMMENDATION

- 2.1 The Decision Notice is attached for Members to note.
- 2.2 Lessons Learnt – The Assessment Panel wanted it conveyed to all Members that councillors should think before making throwaway remarks at meetings. Many avoidable complaints originate from such comments.

Background papers: None

Contact: Sue Dudley – Extn 37713



Assessment Panel

DECISION NOTICE: BREACH

Reference: 00005407/SD - Councillor Philippa Bower of Arun District Council

Date: 24 August 2016

References in this Decision Notice relate to paragraphs in the local Code of Conduct that applies to the Subject Member. The information will be processed according to Data Protection Act 1998 Schedule 2, Paragraph 5(d) - for the exercise of any other functions of a public nature exercised in the public interest by any person.

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 12 August 2016, Councillor Paul English (Chairman), Councillor Pat Dillon and Councillor Mrs Ann Rapnik sat as the Assessment Panel of Arun District Council's Standards Committee, and with Mr John Thompson present as an Independent Person to consult, considered a complaint from Joop Duijf (the Complainant) concerning the alleged conduct of Councillor Philippa Bower (the Subject Member), a member of Arun District Council.

SUMMARY OF ALLEGATIONS

Councillor Linton of East Preston Parish Council (EPPC) attended a meeting of Arun District Council's Development and Control Committee (DCC) on 18 May 2016. The Complaint has been made on her behalf by East Preston Parish Councillor Duijf of events during that meeting, and is counter-signed by 9 other EPPC councillors. However, it would appear that only Councillor Linton was present.

Councillor Linton attended in order to make representations regarding three planning applications of interest to EPPC. It is alleged that between the second and third of these, the Subject Member, who is a member of DCC, asked whether it was necessary for EPPC to object to every single planning application in East Preston, and whether it was good use of public money to do so and to send a representative to DCC.

It is alleged that these remarks offended nine of the seventeen principles of the Code of Conduct. In essence, however, the complaint is that the Subject Member demonstrated a lack of respect for, and an undermining of, the role of the Parish Council, together with a dismissive attitude towards its representative. A resident present at the meeting supports the allegation and described the Subject Member as being condescending towards Councillor Linton.

DECISION

BREACH

Paragraphs 1, 2, 5, 7, 10 and 11

Councillor Philippa Bower, a member of Arun District Council has breached the local Code of Conduct in relation to the allegation made by East Preston Parish Councillor Joop Duijf.

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 alleged conduct took place at a meeting of Arun District Council's Development Control Committee, of which the Subject Member was a member, and at which she was present, according to the minutes.

In all the circumstances it is considered that the Subject Member was conducting the business of the Council in so far as it included the business of the office to which she was elected, i.e. the office of Councillor.

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 1 of the Local Code of Conduct:

A councillor must champion the needs of residents – the whole community and in a special way their constituents, including those who did not vote for them – and putting the whole community's interests first

Decision: BREACH

Reason for the Decision:

In order for a positive finding to be made regarding an allegation, the Panel needs only be satisfied on the balance of probabilities that a breach occurred. This is distinct from the 'beyond reasonable doubt' test of the criminal law. The Panel decided that there was, on the balance of probabilities, a breach.

The evidence shows that the reported words of the Subject Member were indeed said. It might be argued that querying the necessity of making objections, of attending to make them and the cost of doing so, illustrates a regard for the proper use of public finances, and in that way does in fact champion the needs and interests of residents and the community at large. Indeed, the Subject Member states that her only concern was the waste of the 'over-stretched Planning Department's' time.

Whilst those are worthy sentiments, the committee was obliged to allow a fair hearing to those elected to represent the needs and interests of East Preston residents and community, in ensuring that its local plan was adhered to. The Subject Member's inaccurate remarks that EPPC objected to every planning application might reasonably have given the impression that she thought all objections were made as a matter of course or routine by EPPC regardless of their merits. As a result, it might be thought that those objections were accordingly devalued the committee or individual members of it.

Although the Subject Member might indeed have given full and proper consideration to all matters, regardless of her remarks, it is advised that fair hearings must be seen to be given as well as actually given. On this basis it is considered that she breached the Code.

Further, the Code requires that the interests of residents be put first. The financial implications of EPPC members attending committee are of course a matter of interest to residents. However, some might argue that a full and rigorous planning regime is of equal, if not higher, importance. The Subject Member's response that she was concerned with Planning Department time is of limited weight, because the representations of East Preston Parish Councillor Linton did not impinge directly upon this. Her contributions were short, being about a minute's duration at the committee meeting itself. It may be that the Subject Member was in fact referring to the time spent by the Planning Department in processing initial letters of representation at an earlier stage of the application process. If so, this may illustrate a further intolerance towards the Parish Council's role.

In addition the Panel was of the view that a member or the public, or any other person invited to speak publically after the incident at that meeting may have felt intimidated, and been put under additional pressure by the Subject Member and this may have caused further disruptions or at worst may have influenced any decision made by DCC. The Panel felt that this was the wrong platform to voice these remarks, and concerns about the proper use of public finances should be raised at Arun District Council's Governance and Audit Committee.

Paragraph 2 of the Local Code of Conduct:

A councillor must deal with representations or enquiries from residents, members of their community and visitors fairly, appropriately and impartially.

Decision: BREACH

The Panel refers to the outcome and decision in Paragraph 1, which equally applies to this paragraph. The DCC, and the Subject Member as part of it, was required to hear representations, including those of EPPC. Whilst it isn't possible to find that she failed to hear such representations as were made, or that she acted in an unfair or partial way, the Subject Member's words, additionally described as 'condescending' by a resident, might be considered, at the very least, to have illustrated an inappropriate way of dealing with EPPC's representations.

Paragraph 3 of the Local Code of Conduct:

A councillor must not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing constituents' casework, the interests of the district of Arun (or Parish/Town council if the complaint is against a parish or town councillor) or the good governance of the authority in a proper manner.

Decision: NO BREACH

Reason for the Decision:

The Complaint commented that the Subject Member's comments could be construed as her having concerns about the length of the meeting, regardless of her responsibility to hear objections raised by Parish Councils.

The Panel responded that concern about the length of council meetings is a legitimate consideration. This has to be balanced against the need to give full and proper consideration to council business and provide good governance. However, the Panel decided that this part of the Code is primarily concerned with external pressures or issues not directly relevant to Council business. It does not seem to the Panel that concern about the length of meetings is the type of external pressure that this provision of the Code envisages.

Paragraph 5 of the Local Code of Conduct:

A councillor must listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

Decision: BREACH

Reason for the Decision:

The Complainant stated that the Subject Member's comments suggested she was unwilling to listen to EPPC's views on any Planning Application despite EPPC's prerogative to attend and speak at DCC meetings in support of any objections it has raised.

The Panel noted that the Subject Member had made the reported remarks when that Planning Application was being considered. In addition the Panel considered that it could be reasonable to assume that the Subject Member was against EPPC's objection for that particular Planning Application, and that she agreed with the officer's report prior any debate or decision.

Paragraph 7 of the Local Code of Conduct:

A councillor must contribute to making their authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding themselves and other members to account but restrict access to information when the wider public interest or the law requires it.

Decision: BREACH.

Reason for the Decision:

This provision of the Code is concerned with the decision making processes employed by the Council. The public speaking process allows for a representative of a parish council to speak for 3 minutes. The Subject Member's interjection by cutting short East Preston Parish Councillor Linton's speech, with the challenge to the necessity of attendance at DCC when written representations had already been received could be seen as stifling the person speaking at the time, and by intimidating that person, cutting the speaker off prematurely. The Panel considered that members of the public and parish council representatives would probably be more nervous when presenting their speeches to DCC, than District Council Members. Had the Subject Member interjected when a District Council Member was speaking, she would have probably been reprimanded immediately by either the Member speaking or other Members on the Committee at the time.

The interruption could be intimated as fettering the right to speak and therefore could sway the decision of DCC, as important information may not have been imparted. This may also have set the precedent for the rest of the meeting, as those listening before delivering their own speeches may have felt that they would be receiving the same treatment as East Preston Parish Councillor Linton.

Paragraph 8 of the Local Code of Conduct:

A councillor must behave in accordance with all the legal obligations, alongside any requirements contained within their authority's policies, protocols and procedures, including on the use of the authority's resources.

Decision: NO BREACH.

Reason for the Decision:

There is no evidence that the Subject Member acted unlawfully or otherwise than in accordance with policies and protocols, etc. Whilst she challenged the need or necessity for objections or attendance to make them, this is altogether different from then going on to fail to listen to them.

Paragraph 9 of the Local Code of Conduct:

A councillor must value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between them that is essential to good local government.

Decision: NO BREACH

Reason for the Decision:

The Panel considered whether the Parish Council, and in turn parish councillors, could be considered as colleagues or staff. The Panel decided that members of Parish Councils are not colleagues, they are members of organisations that the Council works alongside and therefore Paragraph 9 of the Code of Conduct cannot have been breached.

Paragraph 10 of the Local Code of Conduct:

A councillor must always treat people with respect, including the organisations and public they engage with and those they work alongside

Decision: BREACH

Reason for the Decision:

The Complainant complains that the Subject Member's comments showed no respect shown toward parish councils, their representatives and the residents they represent. East Preston Parish Councillor Linton felt very belittled by the Subject Member's comments which were made immediately before East Preston Parish Councillor Linton was to address the committee about the Planning Application in question.

The Standards for England Case Review of 2010 gives some attention to the issue of 'respect' and what kind of behaviour might be considered as undermining of it. Examples cited are primarily concerned with incidents of personal insults, disruptive conduct, criticism of the competency of council officers and personal attacks. This guidance is not exhaustive.

The Subject Member's remarks were inappropriate and the Panel agreed that the comments made were indeed belittling and disrespectful.

Paragraph 11 of the Local Code of Conduct:

A councillor must provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within their authority.

Decision: BREACH**Reason for the Decision:**

A councillor must provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within their authority.

The Panel refers the Decision back to Paragraph 1 above. The interests of the residents of East Preston and the community at large were being considered by DCC. Accordingly a breach of paragraph 1 supports a similar finding with regard to this paragraph, although no additional behaviour is cited.

OUTCOME:

The Assessment Panel has requested that the Subject Member:

1. apologises to the Complainant and East Preston Parish Councillor Linton, in writing, for each of the Paragraphs that have been breached, as follows:

Paragraph 1: A councillor must champion the needs of residents – the whole community and in a special way their constituents, including those who did not vote for them – and putting the whole community's interests first

Paragraph 2: A councillor must deal with representations or enquiries from residents, members of their community and visitors fairly, appropriately and impartially.

Paragraph 5: A councillor must listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

Paragraph 7: A councillor must contribute to making their authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding themselves and other members to account but restrict access to information when the wider public interest or the law requires it.

Paragraph 10: A councillor must always treat people with respect, including the organisations and public they engage with and those they work alongside

Paragraph 11: A councillor must provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within their authority.

2. The apology must:

- be made within 3 months of the date of the Decision Notice, and
- within 14 days of the apology being made, the Subject Member to send a copy of the letter to the Monitoring Officer to confirm that this has happened

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 Paul English – Chairman
Councillor Pat Dillon – Panel Member
Councillor Mrs Ann Rapnik – Panel Member

and Mr 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 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.