

# Local Standards Hearing Panel Minutes

Date: Friday, 11th January, 2013

Time: 10.00 am - 2.50 pm

## **PRESENT:**

Cllr Ms Rachel Knight, Cllr John Savage and Cllr Ms Julia Wassell

**Also Present:** Parish Councillor A Konieczny (Subject Member), Mr John Osman (Wansbroughs – Investigating Officer), Mrs Eileen Springford (Independent Person) and Witnesses: Parish Councillor E Furness, Mr D Jarman & Mrs P Ewart.

## **1 APPOINTMENT OF CHAIRMAN**

Councillor Ms J Wassell proposed that Councillor J Savage chair the Panel, this was seconded by Councillor Ms R Knight. In response Councillor Savage agreed to chair the Meeting.

## **2 APOLOGIES FOR ABSENCE**

An apology for absence was received from Mr D Ruddock (Monitoring Officer – Wycombe District Council) who was unwell; Deputy Monitoring Officer Ms K Khanna was present as a replacement.

## **3 DECLARATIONS OF INTEREST**

There were no declarations of interest.

## **4 QUORUM**

The Chairman confirmed that the Meeting was quorate.

## **EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED:** That pursuant to Section 100B(2) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of minute 5 because of its reference to matters which contain exempt information as defined as follows:

**Minute No 5 – Determination of Allegations against a Councillor - Case IA44.**

Information relating to an individual, information which is likely to reveal the identity of an individual and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Paragraphs 1, 2 & 5 (respectively) of Part 1 of Schedule 12A to the Local Government Act 1972).

Re Paragraphs 1 & 2 it was considered that the public interest in maintaining the exemption outweighed the public interest in disclosing the information as the distress that might be caused to the individual(s) concerned outweighed the public interest in disclosure.

Re Paragraph 5 it was considered that the public interest in maintaining the exemption outweighed the public interest in disclosing the information as it was not possible for the Panel to deal with cases of this nature without the ability to seek and obtain confidential legal advice.

## **5 DETERMINATION OF ALLEGATIONS AGAINST A COUNCILLOR (REF IA44)**

The Chairman was aware that the Subject Member had a number of **preliminary points** he wished to make, invited and heard these.

In response it was confirmed that separate proceedings elsewhere were not relevant to the hearing before the Panel.

It was also confirmed that no new evidence, which had not been available at the time of the Investigating Officer's investigation, could be considered at the Hearing.

The Chairman assured the Subject Member that the Panel would be arriving at its own conclusions as to whether breaches had occurred; the Investigating Officer was only making recommendations to them in the Report.

The Chairman went through the **full procedure** to be followed at the meeting.

The Subject Member confirmed that he maintained the position as set out in the Pre-Hearing Summary Report.

The Chairman confirmed that if the Subject Member had not been present the Panel was entitled to hear and decide the case in his absence.

The Deputy Monitoring Officer then presented the **Pre-Hearing Summary Report**.

The Deputy Monitoring Officer also outlined the change of regime in respect of Standards Cases that had occurred under the Localism Act which had come into effect at the end of July 2012. The case before the Panel had been initiated under

the old regime; where a finding had not yet been made under the old regime, it was confirmed that the allegation shall be treated as having been made under the new provisions, the Panel confirmed that this would be the case today.

**The Investigating Officer then presented his report.** Given its size the Investigating Officer has prepared a far smaller set of documents, which was circulated to all present. These represented the key pieces of evidence from the bulky report, it was confirmed that no new evidence that hadn't been contained in the full report was being introduced in this smaller set of documents.

The Investigating Officer started his presentation by referring to the summary in his report in that he had concluded that breaches of the Code of Conduct had occurred and that the Subject Member had failed to treat a member of staff with respect and that bullying of that employee had occurred.

The Officer presented some fifteen key pieces of evidence which represented comments made at Parish Council meetings, e-mails sent and internet articles/comments posted by the Subject Member which supported his opinion of the behaviour regards the breaches.

Within his key bundle of documents the Officer referred to some incidents/communications etc which had been presented to him by witnesses as evidence which he had dismissed as not constituting a breach. Additionally evidence was referred to which, though not proof of any breach, outlined for the panel the situation and circumstances under which the Parish Council was operating at the time of the incidents.

The Officer referred to the documents that he had received from witnesses after the conclusion of his investigation which he had been duty bound to include in the paperwork of the full report. These he did not wish the Panel to consider in arriving at their conclusions. These documents the Panel confirmed would not be considered.

The Officer confirmed he had approached some 14 witnesses; 8 provided by the Subject Member, 6 by the complainant(s). The Officer confirmed that he had diligently contacted all these witnesses, some had not responded, that had been their choice; all had had the opportunity to contribute to the investigation.

The background to the situation was outlined in that the Council and Community had both sub-divided into two camps in respect of the issue of the consideration of the provision of Rural Affordable Housing. The Subject Member's frustration was appreciated but he had not been victimised by the clerk. The Council as a whole may have been responsible for his frustration but the Council could not be held to blame for the Subject Member's comments at meetings, e-mail communications and internet postings in respect of the clerk. There were better ways of expressing a grievance.

In mitigation the Investigating Officer outlined that the Council had been in error to attempt to bind members to collective responsibility, particularly alongside legitimate obligations regards behaviour. It was confirmed that the subject member

on receipt of complaints regards previous internet postings had removed these forthwith without quibble; however the pattern of behaviour had recommenced. The Subject Member was only trying to represent a vocal public group; it was the manner used which was the issue before the Panel.

The **Panel asked a number of questions** and received clarification from the Investigating Officer on a number of points:

- How the Parish Council would be considered to have had sufficient capacity to deal with the Affordable Housing issue, consultants had been utilised.
- In terms of definitions of bullying, respect etc, what standards had been used to arrive at his findings? The Investigating Officer had referred to Standards for England guidance under the previous Standards regime in the absence of new definitions under the Localism regime.
- The status of the Parish Chairman as the employee's line manager in respect of the timesheets issue was established.
- It was confirmed by the Investigating Officer that the subject member had not shown any conciliation or issued any apology at any time to date.

The **Subject Member was invited to respond** by the Chairman.

The Subject Member indicated that he did not recognise the Member described in the Investigating Officer's submission as himself.

The Subject Member's assertion as to a bias of the Investigating Officer in respect of Rural Affordable Housing was dismissed by the Panel as irrelevant to the matter before the Panel.

The Subject Member outlined that his persistent questioning of the Parish Council had been constantly 'stonewalled'. He had had less and less confidence in the Clerk, he believed that the Chairman and Clerk had been teaming up against him.

**The Panel had a number of questions of the Subject Member:**

- The Subject Member confirmed he knew that the Clerk had been upset but he had only been trying to do his job.
- The Subject Member acknowledged that the Chairman was the appropriate line manager to which to address any issues regards the clerk's behaviour, however as said he believed the Chairman and Clerk were colluding against him.
- The Subject Member confirmed that as he had become more experienced as a Councillor he acknowledged that a more 'community minded' approach to communicating as a Councillor had to be adopted.

The **Subject Member was asked whether he wished to call any witnesses**, to which he indicated he would like to call Mr Furness.

Mr Furness was called and answered a number of questions in respect of his evidence. He indicated that he felt his evidence presented in the report (which he had seen) did not reflect that he had indicated to the Investigating Officer that the helpfulness of the Parish Clerk prior to his election as a Parish Councillor had been considerably less than after election. Only the latter helpfulness had been reflected in the Report.

Mr Furness indicated he felt the website articles, e-mails and public comments made by the Subject Member were reasonable given the circumstances.

The Subject Member indicated he did not wish to call any further witnesses.

**The Investigating Officer indicated he wished to call two witnesses:**

- A Mr Jarman (a former Councillor at the concerned Parish) entered the Meeting. He recounted how the clerk had been in tears at the Council office regards the Subject Member's behaviour on numerous occasions and how he had attempted to console her. He did not believe the Subject Member had been abiding by the Code of Conduct all the Parish Councillors had signed upon election/co-option.

Mr Jarman confirmed that mediation in the dispute had been considered, another Councillor with experience of Counselling had attempted to initiate such, the breakdown of such had resulted in the redress of the Council to Legal Advice.

Mr Jarman confirmed that he believed that the Subject Member had been fully aware of the distress he was causing to the employee. He confirmed that he did not believe that the Council had been 'misled' by the clerk.

- A Mrs Ewart (former Chairman of the Parish Councillor) was called and confirmed to the Panel that she had seen and heard the Subject Member make inappropriate comments about the employee at Council Meetings. Mrs Ewart confirmed that the Subject Member had posted numerous disparaging remarks about the Council and various Councillors on the internet, but primarily regards the Parish Clerk.

Mrs Ewart confirmed she had seen various derogatory e-mails regards the Clerk which were virtually always copied in to a considerable number of people.

Mrs Ewart confirmed she was the clerk's line manager and that the Subject Member always felt that he was being denied an opportunity to express his views, when often it was the inappropriate time, opportunity would occur under the correct procedure the Council was always adhering to.

Mrs Ewart confirmed that the Subject Member had accused the clerk of not being able to do her job in his remarks mentioning her 'P45'.

The Subject Member then indicated that he did not wish to remain in the Hearing. The Chairman indicated, as previously, that the Panel was entitled to hear the matter and reach a decision in his absence.

Mrs Khanna advised the Subject Member that he was welcome to stay for the remainder of the Hearing and that the Panel would listen to any final statements he needed to make before they retired to make a decision. The Subject Member decided to leave never the less.

**The Panel at this point took the opportunity to break for lunch.**

Upon resumption of the Panel Hearing after lunch, the Chairman asked the present 'Independent Person'; Mrs E Springford for her view as to whether the Subject Member had contravened the Code of Conduct as alleged.

Mrs Springford indicated that she felt that the Subject Member had breached both 3(1) & 3(2)b of the Code of Conduct. Mrs Springford agreed with the findings of the Investigating Officers report, nothing the Subject Member or any of the witnesses had said before the Panel had made her think otherwise. The Subject Member was wrong to take out his frustration on an employee.

**The Panel then retired to consider their determination.**

Here the Panel considered all that had been presented to them in the Report and during the Hearing that morning.

They too concurred with the Independent Person's opinion and **returned to the Committee Room** and:

**RESOLVED:**

- (i) That Councillor Konieczny had breached section 3(1) of the Members Code of Conduct in that he failed to treat others with respect. Specifically he had failed to treat the Parish Clerk an employee of Hughenden Parish Council with respect. This was evidenced by the fact that Councillor Konieczny had subjected the Parish Clerk to unreasonable and excessive personal attacks at meetings, in emails and internet articles which went far beyond the normal course of reasonable debate. The evidence confirmed that on some occasions Cllr Konieczny's comments were not made, off the cuff, in the heat of the moment or were limited to one off remarks. In those circumstances it would appear that Cllr Konieczny had made considered and intentional comments to the detriment of the Parish Clerk.
- (ii) Councillor Konieczny had breached section 3(2)b of the Members Code of Conduct in that he has bullied an employee.

Specifically Councillor Konieczny has bullied the Parish Clerk. This was evidenced by the fact that Councillor Konieczny had subjected the Parish Clerk to offensive, insulting and humiliating behaviour at meetings, in emails and internet articles. The bullying behaviour appears to have started in July 2010 and continued until April 2011. The longevity of the conduct, the nature of the behaviour, the fact that Councillor Konieczny was in a position of influence and power and that the Parish Clerk's confidence and capability had been adversely affected lead the Panel to this conclusion. The evidence confirmed that on some occasions Cllr Koniecznys comments were not made, off the cuff, in the heat of the moment or were limited to one off remarks. In those circumstances the Panel considered that Cllr Konieczny had made considered and intentional comments to the detriment of the Parish Clerk.

Reasons:

- (iii) Councillor Konieczny had breached the code of conduct by making inappropriate comments about the Parish Clerk at Hughenden Parish Council meetings.
- (iv) Councillor Konieczny had breached the code of conduct by making inappropriate comments about the Parish Clerk in emails.
- (v) Councillor Konieczny had breached the code of conduct by making inappropriate comments about the Parish Clerk on the internet.

The Panel then considered the actions available to them to in respect of this case. It was noted that had the matter been heard over a year ago under the previous Standards regime, a suspension/period of disqualification would have been contemplated in this matter. However the Localism Act had severely curtailed the actions open to the Panel for imposition.

The Independent Person present was consulted in respect of actions. Mrs Springford indicated that this had been a serious breach; it was appalling that a member of staff had been treated in this way. Mrs Springford indicated that the possible actions 1 to 3 featured in the report were essential; however the actions 4 to 7 would be recommendations to the Parish Council which would obviously be free to disregard them if they so wished.

**The Panel then retired to consider the actions (if any) applicable.**

The Panel decided that the said first 3 actions were appropriate however recommendations in respect of training and suspension in respect of some of the Subject Members Parish Council duties also needed to be made.

**The Panel returned to the Committee Room and:**

**RESOLVED:** That Cllr A Konieczny having failed to comply with sections 3(1) and 3(2)b of the Code of Conduct of Hughenden Parish Council, the following actions be taken:

- (i) reprimand of the member;
- (ii) publication of its findings in respect of the member's conduct;
- (iii) report of its findings to the Parish Council for information;
- (iv) recommendation that the Parish Council arrange training for the member on the Members' Code of Conduct and on the procedures of the Parish Council;
- (v) recommendation to the Parish Council that the member be removed from all outside appointments to which he may have been appointed or nominated by the Parish Council.

**The following officers were in attendance at the meeting:**

- |              |                                                   |
|--------------|---------------------------------------------------|
| Peter Druce  | - Democratic Services                             |
| Kiran Khanna | - Principal Solicitor (Deputy Monitoring Officer) |