



Hearings Sub-Committee minutes

Minutes of the meeting of the Hearings Sub-Committee held on Thursday 2 March 2023 in Conference Room 1 The Gateway Aylesbury, commencing at 10.00 am and concluding at 10.52 am.

Members present

T Broom, B Chapple OBE and D Thompson

Others in attendance

Mr N Graham – Deputy Monitoring Officer, Buckinghamshire Council

Mr J Thomas – external investigator ('Investigating Officer') appointed by the Council (19 January only)

Complainant for Complaint PC 32, as a witness called by Mr Thomas (19 January only)

Mr G Watson – Principal Governance Officer

Mr C Saunders – Committee and Governance Services Manager

Ms C Gray – Principal Committee and Governance Services Manager

Agenda Item

1 Apologies for Absence

The Sub-Committee noted that the Subject Member, Cllr Derrick, whilst invited, had chosen not to attend the meeting. She had however submitted written comments for the meeting on 19 January.

2 Declarations of interest

There were no declarations of interest.

3 Exclusion of the Press and Public

The Sub-Committee excluded the public from the hearing because the public interest in doing so outweighed the public interest in disclosing personal information. Members were informed that the Subject Member had expressed that she would prefer the hearing to be in public. However, the information contained in the agenda and any discussion of the details of it in the meeting would include personal information of other parties, namely the complainants. The complainant for PC47 had asked that the hearing of that complaint be in exempt session. The complainant for PC32 also on balance was more comfortable with the hearing taking place in exempt session. The complainant for PC52 had not expressed a firm view.

The Sub-Committee agreed that as the complaints contained personal information of identifiable individuals it would be appropriate to hear the matter in exempt session.

RESOLVED -

that under Section 100(A)(4) of the Local Government Act 1972 the public be excluded from the meeting for the following item(s) of business on the grounds that it involves the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Act.

Paragraph 1 Information relating to an individual

4 Determination of Code of Conduct Complaint PC32, PC47 and PC52 Regarding a Parish Councillor

This was an investigation into three complaints that Councillor Derrick (the Subject Member) had breached the Hughenden Parish Council Code of Conduct. (the Code).

PC 32 – Complaint 1

This complaint was made by an employee who has since left the Parish Council. The complaint alleged that on 14 May 2021, Cllr Derrick made unreasonable demands of the officer to see documentation held by the Council, despite Cllr Derrick having been informed that this was contrary to the Council's previous resolutions. The employee felt that Cllr Derrick disrespected the employee's role and felt bullied by her into providing the file on Cllr Derrick's terms and not on the Council's.

PC 47 – Complaint 2

This complaint was made by a Hughenden Parish Councillor (since resigned). The complaint was two-fold. 1) That, as in PC 32, Cllr Derrick made unreasonable demands of the employee on 14 May 2021 to access the documentation 2) That Cllr Derrick made unreasonable criticisms of the same employee in online blog posts.

PC 52 – Complaint 3

This complaint was made by a second employee, who has since left the Parish Council. The complaint was that Cllr Derrick unreasonably required that any meetings between Cllr Derrick and the employee be recorded or witnessed by a third party. The employee considered this to be disrespectful of her role and that the behaviour was tantamount to bullying and harassment of her.

CONSIDERATION BY THE HEARING SUB-COMMITTEE

All parties confirmed that they had read all the written material submitted with the agenda and listened to all the evidence, witnesses and submissions.

In terms of the process, the hearing followed Buckinghamshire Council's 'Contested Hearing Procedure' which had been circulated in advance to all parties and was

included at page 3 of the agenda.

- 1) The Chairman of the Hearing Sub-Committee introduced all persons present.
- 2) The Deputy Monitoring Officer (on behalf of the Monitoring Officer) outlined the pre-hearing process and the considerations that had led the matter to come before the Hearing Sub-Committee, including consultation with the Independent Person, Mr Dobson at Stage 2. He advised that Joe Thomas had been appointed as an independent investigator by the Monitoring Officer to investigate the complaints, at Stage 3 of the Council's Arrangements for dealing with complaints against members. Mr Graham noted that, within Cllr Derrick's submission, there was reference to the Subject Member having no confidence in BC's competence, integrity and impartiality in managing BC's complaints processes. The Deputy Monitoring Officer confirmed that, notwithstanding an initial delay in the processing of PC 32 and PC 47, the process had been followed as set out in Buckinghamshire Council's Arrangements for dealing with complaints against councillors and that a response had been given to all of the queries about the process raised by Cllr Derrick as they occurred.
- 3) At the invitation of the Chairman, the Investigating Officer presented his report on each of the complaints dealing first (at the invitation of the Chairman) with PC32 and the first part of PC47, then the remaining part of PC47 and then PC 52. In each case, as permitted by the Hearing Sub-Committee, Mr Thomas presented his conclusions as to the factual basis of his findings and also as to whether he regarded a breach of the Code had occurred.
- 4) In relation to PC32 and first part of PC47 the Investigating Officer asked questions of the witness.
- 5) The Subject Member Cllr Derrick was not in attendance to present her statement. The Deputy Monitoring Officer referred the Panel to the submissions from Cllr Derrick and commented that Cllr Derrick did not accept that she had breached the Code of Conduct.
- 6) The Sub-Committee asked questions of the Investigating Officer and witness.
- 7) The Independent Person was asked if he wished to put forward any views.
- 8) The Sub-Committee noted that it had heard from the Investigator and similarly noted the contributions from the witness and that the member of the Sub-Committee had read and noted Cllr Derrick's submissions. The Sub-Committee was satisfied that it had heard enough now to retire to reach its own views on the facts and whether breaches may have occurred. The Sub-Committee therefore retired to consider the recommendations made to it within the Investigator's report (summarised at paragraphs 74-77) and to do so in the light of all the evidence it had received.
- 9) The Investigating Officer, witness and Principal Governance Officer left the meeting. The former two persons were called back for a point of clarification on the report's conclusions before again leaving the meeting.

The Investigator's recommendations to the Sub-Committee (report paragraph number included):

- 75. With regards to complaint PC32 and the 1st aspect of PC47, CD [Cllr Derrick] breached paragraph 7.1 of the code (the requirement to treat employees

with respect) and paragraph 7.2 (to refrain from bullying).

- 76. With regards to the 2nd aspect of PC47, CD breached paragraph 7.1 of the code (to treat employees with respect). CD did not breach paragraph 7.2 of the code (to refrain from bullying).
- 77. With regards to complaint PC52, CD breached paragraph 7.1 of the code and paragraph 7.2. CD did not harass the second employee as alleged.

RATIONALE FOR DECISIONS

In reaching its decisions, the Sub-Committee considered that:

PC 32 and equivalent part of PC 47:

A. Findings of fact:

The Sub-Committee accepted that the respective accounts of the events relating to the incident on 14 May 2021 were largely agreed by all parties, except that Cllr Derrick did not believe she gave an assurance not to take copies of the document. On balance, the Sub-Committee accepted the facts as reflected in the Investigator's report and other submissions. The Sub-Committee also accepted the witness's testimony and Mr Thomas representation of it in his report, as corroborated by the ex - Hughenden Parish Councillor's witnessing of the employee's condition the same afternoon, that the employee had suffered considerable distress as a result of the behaviour from Cllr Derrick to the extent that the employee needed to leave work for the remainder of the day.

B. Conclusions:

The Sub-Committee agreed that the employee had been put in an invidious and intimidating position in being made to provide documents in a manner expressed by Cllr Derrick, contrary to what the employee genuinely believed to be the stated will of the Council. The Sub-Committee agreed with the investigator that this represented a failure to treat the employee's position and person with respect, that there were other procedural ways in which any disagreement with the employee's role and position could have been addressed; Cllr Derrick's insistence on acting contrary to the employee's statement of the Council's stance and then taking pictures of the material in direct opposition to that stance, was disrespectful. The Sub-Committee considered that the deep upset caused to the employee, albeit during one-off incident, and seemingly not intended as such by Cllr Derrick, was an instance of bullying, having regard to the ACAS definition.

PC 47 – second element

A. Findings of fact:

The Sub-Committee, having considered the complaint, Mr Thomas' report and Cllr Derrick's comments, agreed that blog posts critical of the employee were made by Cllr Derrick as cited by the complainant and referenced by the Investigator. The Sub-Committee accepted that Cllr Derrick was acting as a councillor at the time of the

blog posts in that the primary feature of them had been a discussion of council business from the perspective of a local councillor. The Sub-Committee noted that councillors do have a strong right to freedom of speech; and does accept that public bodies should expect scrutiny. The Sub-Committee noted that while the employee was not named, she would be clearly identifiable to the intended audience of the blog. The Sub-Committee accepted the evidence that the blog posts did amount to criticisms of the employee's performance which the Parish Council's procedures would expect to be made internally through established processes.

B. Conclusions:

The Sub-Committee agreed with the investigator's conclusion that the blog posts were, effectively, a public criticism of the employee's performance. Such concerns should have been addressed through the Council's internal staffing procedures. Publishing the criticisms went beyond Cllr Derrick's rights to freedom of expression: it contravened the Council's processes for dealing with concerns about an employee's performance; and it raised the matters in an arena where the employee did not have a legitimate right of reply and when there was no compelling or immediate reason to have done so. The Sub-Committee considered that this behaviour was disrespectful of the role and position of an employee of Hughenden Parish Council and so breached the Code of Conduct in that respect. The Sub-Committee also noted from the investigator's report that while the employee considered the posts to be "frustrating and on occasion humiliating" they did not have a sustained impact which could be considered bullying: as such the Sub-Committee did not find that bullying had occurred.

PC 52

A. Findings of fact:

The Sub-Committee noted that there was no disagreement between the various parties as to the facts underlying this complaint: that is, that Cllr Derrick had written to the second employee to say that she would not meet with her unless the meeting was recorded or witnessed. The justification for such a request, and the impact and implication of it, is a separate matter. However, the fact of the statement having been made is clear. The Sub-Committee also accepts the complainant's evidence that she felt this requirement carried a strong connotation of being considered untrustworthy. The Sub-Committee has considered and noted Cllr Derrick's view that she viewed this requirement as a means to protect her position in a wider context of an additional complaint from the second employee on a separate matter; and in view of what Cllr Derrick considered might be potential constructive dismissal claims. The Sub-Committee agreed with the Investigator's summary that this insistence was "a draconian and severe step" and "is tantamount to a serious insult regarding an individual's probity and professionalism". There were other procedural means of dealing with matters. The Sub-Committee noted and accepted the Investigator's explanation as to why the incident did not amount to harassment: in itself, this was a one-off circumstance.

B. Conclusions

The Sub-Committee agreed with the recommendation of the investigator that Cllr Derrick's requirement was inappropriate and unreasonable. The Sub-Committee agreed with the investigator that "the insistence on having a witness/recording by a councillor is an abuse of power which has very strong negative connotations regarding the trustworthiness" and accepts that the requirement caused the second employee a great deal of upset. As such, the Sub-Committee agreed that the requirement was disrespectful to the person and position of the employee and so breached the Code; and that the impact of the behaviour was such that it was bullying in nature, and consequently was a breach of the Code.

The Independent Person, while advisory only and not a decision-maker, was in agreement with the Sub-Committee's conclusions as to fact and as to whether a breach had occurred in each instance.

The Sub-Committee then agreed the following resolution:-

RESOLVED:

Following consideration of all of the evidence presented to it, the Sub-Committee upheld each of the recommendations contained in the Investigator's report. Consequently, it found that Cllr Derrick had breached the Hughenden Parish Council Member Code of Conduct in relation to each of the three complaints as set out below. The Panel also upheld two recommendations to find that the Code of Conduct had not been breached as set out below.

PC 32

1. Cllr Derrick breached paragraph 7.1 of the Code, in that Cllr Derrick failed to show respect to an employee of the Council in relation to the incident on 14 May 2021
2. Cllr Derrick breached paragraph 7.2 of the Code in relation to that incident, in that Cllr Derrick was found to have bullied the employee

PC 47

The first part of this complaint was, in essence, the same as in PC 32. In relation to this (as above):

3. Cllr Derrick breached paragraph 7.1 of the Code, in that Cllr Derrick failed to treat an employee with respect in relation to the incident on 14 May 2021
4. Cllr Derrick breached paragraph 7.2 of the Code in relation to that incident, in that Cllr Derrick bullied the employee

The second part of this complaint related to blog posts by Cllr Derrick which allegedly made public criticisms of the same employee. In relation to this:

5. Cllr Derrick breached paragraph 7.1 of the Code, in that Cllr Derrick failed to treat an employee with respect in posting the public blog posts critical of the employee
6. Cllr Derrick did not breach paragraph 7.2 (duty to refrain from bullying) in

relation to this complaint.

PC 52

7. Cllr Derrick breached paragraph 7.1 of the Code, in that Cllr Derrick failed to treat the second employee with respect in saying that she would only meet with the employee if the meeting were witnessed or recorded

8. Cllr Derrick breached paragraph 7.2 of the Code in that Cllr Derrick bullied the employee in making this requirement

9. Cllr Derrick did not harass the employee with regard to this matter and so did not breach the Code (paragraph 7.2) in respect of harassment.

Having made its findings, the Sub-Committee also RESOLVED TO adjourn the meeting until 2 March in order to discuss any appropriate sanctions that should apply where a breach of the Code had been found. The Sub-Committee noted that while Cllr Derrick had decided not to attend the proceedings of the Hearing Sub-Committee on 19 January, it would nevertheless offer her the opportunity to comment on the subject of sanctions, as envisaged in the Contested Hearing Procedure. In the interim, the above Record of Decision was sent to the Investigating Officer, Independent Person and Councillor Derrick. [Views relating to possible sanctions were sought from the Investigating Officer and Independent Person. In the event, Cllr Derrick did not make any comment and did not attend the reconvened meeting].

The decisions as regards PC 32, 47 and 52 were however final and there was no right of appeal.

RECONVENING OF MEETING ON 2 MARCH 2023

The Sub-Committee was reconvened on 2 March to discuss any sanctions following written submissions. Although permitted to attend under the Contested Hearing Procedure, neither the Subject Member nor the Investigating Officer chose to do so.

RESOLVED -

that under Section 100(A)(4) of the Local Government Act 1972 the public be excluded from the meeting for the following item(s) of business on the grounds that it involves the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Act.

Paragraph 1 Information relating to an individual

CONSIDERATION BY THE HEARING SUB-COMMITTEE

All parties confirmed that they had read all the written material submitted with the agenda. and listened to all the evidence, witnesses and submissions.

In terms of the process, the reconvened hearing followed the relevant paragraphs (i.e those numbers 21-27) of Buckinghamshire Council's 'Contested Hearing Procedure' which had been circulated in advance to all parties and was included at

page 3 of the agenda. In practice the following occurred:-

- 1) The Chairman of the Hearing Sub-Committee introduced all persons present.
- 2) The Deputy Monitoring Officer (on behalf of the Monitoring Officer) outlined the possible sanctions including the observations he had received from the Investigating Officer regarding sanctions.
- 3) Views of the Independent Person were sought.
- 4) Members of the Sub-Committee raised issues relating to the report which also related to the aggravating and mitigating factors.
- 5) The Sub-Committee retired and considered what sanction should be imposed.
- 6) The Sub-Committee went into public session to report their decision.

RESOLVED:-

The Sub-Committee decided to recommend the following sanctions to Hughenden Parish Council as an appropriate and proportionate means of addressing the various breaches found:

- A. Ask Cllr Derrick to issue a written apology to the complainants of PC 32 and PC 52, (to recognise the upset caused to both former employees)**
- B. Censure Cllr Derrick for each of the breaches (given the seriousness of the findings and to place on record the Council's collective commitment to high standards of public conduct)**
- C. Issue a press release to report the breaches and sanctions to the wider public (to demonstrate the importance of high standards of public conduct and the integrity of the Member Code of Conduct complaints process); and to note where breaches were not found**
- D. Place a statement on the Parish Council's website and public notice boards about the breaches and sanctions; a similar notice to be placed on Buckinghamshire Council's website (for the same reason as in C, with particular emphasis on informing local people of the same); and to note where breaches were not found**
- E. Require Cllr Derrick to attend arranged training in observing the member code of conduct; councillor-officer relations; and in handling personal data (to ensure proper understanding of these areas of governance and to ensure Cllr Derrick can be more fully effective in future as a councillor)**
- F. That from the date of Hughenden PC's resolution until Cllr Derrick attends this training, she be excluded from attending any premises of HPC except to attend meetings of the Council (given that Cllr Derrick's behaviour was directed towards an SC employee outside of a meeting context)**

This decision is final and there is no right of appeal. The Sub-Committee also **RESOLVED** that it would issue a press statement about the above decisions, to give transparency to them. The Independent Person concurred with the Sub-Committee's deliberation and considered that the recommended sanctions in this case were relevant and proportionate; and that a press statement was appropriate.

ADDITIONALLY

As a separate issue from the complaints and having regard to the future arrangements of Hughenden Parish Council, the Sub-Committee agreed to highlight the following best practice to the Council to it: 1) Consider adopting a Councillor-Officer Protocol – such as the model protocol issued by the Civility & Respect Project 2) Consider adopting a Social Media Protocol 3) Consider further developing the Council’s ethical culture by, for example, giving consideration to the Civility and Respect Pledge formulated by the Civility and Respect Project.