



South Bucks District Council

Non- Executive Delegated Decisions Made by Officers

Regulation 7 of the Openness of Local Government Bodies Regulations 2014 requires a written record to be produced as soon as reasonably practicable after an Officer has made a decision under delegation. This means that in order to comply with these new requirements, Officers discharging delegated powers which would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body either under a specific express authorisation; or under a general authorisation to officers to a) grant a permission or licence; b) affect the rights of an individual or c) award a contract or incur expenditure which in either case materially affects the Council's financial position must complete the form below.

1. **Name and role of officer:** Edwina Adefehinti, Deputy Monitoring Officer
2. **Date of decision:** 5th December 2019
3. **Summary of the decision:**

The Monitoring Officer received a complaint in July 2019 concerning the alleged conduct of Councillor Paul Kelly of South Bucks District Council. In accordance with the Council's Complaints Procedure Councillor Kelly was invited to comment on the complaint. The response received from Councillor Kelly was passed to the Complainant who remained dissatisfied and considered that it did not adequately address their concerns. The complainant therefore asked for the complaint to be considered under Stage 2 of the Procedure.

At stage 2 the Deputy Monitoring Officer considers whether the complaint should be referred for investigation or whether no further action is warranted taking into account the following criteria set out in the Council's Complaints Procedure:-

- The complaint appears to be vexatious, malicious, politically motivated, relatively minor, insufficiently serious, tit-for-tat, or there are other reasons why an investigation may not be in the public interest.
- The same, or substantially similar, complaint has already been the subject of assessment or investigation and there is nothing more to be gained by further action being taken.
- It appears that the complaint concerns or is really about dissatisfaction with a Council decision or policy rather than a breach of the Code of Conduct.
- There is not enough information currently available to justify a decision to refer the matter for investigation.
- The complaint is about someone who has died, resigned, is seriously ill or is no longer a Member of the Council concerned and therefore it is not in the public interest to pursue.
- Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter and it is considered in the public interest that it be investigated.
- Where the event/s or incident/s took place more than 6 months prior to the date of complaint being received or where those involved are unlikely to remember the event/s or incident/s clearly enough to provide credible evidence.
- The complaint is such that it is unlikely that an investigation will be able to

come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain.

- If it is considered that the subject Member has offered a satisfactory remedy to the complainant (for example by apologising) or the complaint is capable of other informal resolution such as mediation and the Member complained of is amenable to such approach.
- If it is satisfied that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation does not justify the cost of such an investigation.
- Where the allegation discloses a potential breach of the Code of Conduct but it is considered that the complaint is not serious enough to warrant any further action and:
 - the Member and Officer resource needed to investigate and determine the complaint is wholly disproportionate to the matter complained about; or
 - in all the circumstances there is no overriding public benefit or interest in carrying out an investigation

Having carefully considered the details of the complaint, the response from Councillor Kelly, the referral criteria set out above and the views of the Council's Independent Person, the Deputy Monitoring Officer decided in consultation with the Chairman of the Audit and Standards Committee, that the complaint should not be referred for investigation because having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation did not justify the cost of such an investigation.

4. Reasons for the decision:

Background to the Complaint.

The Complainant alleged that Councillor Kelly has repeatedly cyber-bullied, harassed, posted inappropriate public Facebook images (sharing offensive material and failing to exercise good judgement), disseminated misleading information to make himself look important (claiming false credit), claimed credit for work done by others (dishonesty), publicly posted on social media that SBDC is unable to solve issues (e.g. fly-tipping) and then that he has personally solved the issue when solutions were already planned by other council employees (failing to support the council), posted derisive and inflammatory statements to create division within the community, undermining the work of other groups and smearing individual's reputations for good work.

Reasons for the Decision.

- Councillor Kelly has been an elected member of the Council since May 2010.
- The Complainant states that Cllr Kelly has repeatedly cyber-bullied, harassed, posted inappropriate public Facebook images (sharing offensive material and failing to exercise good judgement), disseminated misleading information to make himself look important (claiming false credit), claimed credit for work done by others (dishonesty), publicly posted on social media that SBDC is unable to solve issues (e.g. fly-tipping) and then that he has personally solved the issue when solutions were already planned by other council employees (failing to support the council), posted derisive and inflammatory statements to create division within the community, undermining the work of other groups and smearing individual's reputations for good work.
- The Complainant also complains of a Facebook picture on Cllr Kelly's private page. This picture is of a character in Blackadder with a swear word visible.

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- In response to the complaint, Councillor Kelly denies the alleged breach of the Code and confirms that he has never set out to belittle the Complainant. He challenges the Complainant to provide evidence where he has made himself look like a victim and does not agree to make a public apology. He apologises if the Complainant has mis-interpreted any of his attempts to work with them. He states that he was certainly not aware of any issues before they made the official complaint. He confirms that the conversations are the Complainant's interpretation of the events and not his. He states there is nothing vindictive in his messages nor is there any attempt to point score/try to make himself look better. He says that he actually finds the Complainant comments quite offensive as he works extremely hard for all of his residents that he has been elected to represent.
- Councillor Kelly asked the Complainant if they would be willing to meet with him to resolve the issue. He states that he has offered to meet with the Complainant on a few occasions previously.
- Regarding complaints about Cllr Kelly's posts on the Complainant's Facebook page, The Deputy Monitoring Officer was not satisfied that the alleged breach meets the threshold of harassment or disseminating misleading information, claiming false credit (failing to support the council, posting derisive and inflammatory statements to create division within the community, undermining the work of other groups and smearing individual's reputations for good work. The Deputy Monitoring Officer takes the view that Politicians must be able to comment on and offer critical perspectives on matters. In this case, the Deputy Monitoring Officer is unable to find that Cllr Kelly was dishonest in his posts or took false credit. Cllr Kelly's posts may be subject to subjective interpretation and without conclusive contrary evidence the Monitoring officer is unable to find that Cllr Kelly has breached the Code.
- The Complainant also complains about Cllr Kelly's smiley emojis on all their posts on Facebook. Cllr Kelly explains that the smiley emojis were not to make fun of the complainant but rather it was to do with how he felt about the situation being discussed. The Monitoring Officer had no reason to challenge Cllr Kelly's explanation as a smiley emoji could be used for any number of reasons including criticising or agreeing with a post.
- The Complainant complains that on 13th August Cllr Kelly contacted them via Facebook messenger even after he knew that they had made a complaint. The Deputy Monitoring Officer did not accept that Cllr Kelly was unaware of the complaint or as he put it "I was completely unaware that I had been harassing the Complainant as they had never said there was any issue". From records held by the Council, Cllr Kelly was first informed of the complaint on 22nd July 2019, the Deputy Monitoring Officer is therefore satisfied that Cllr Kelly knew the Complainant had made allegations about him harassing them and should have been sensitive to their complaint. However, the Deputy Monitoring officer accepts Cllr Kelly's explanation about why he needed to contact the Complainant because he was trying to reach their partner urgently. The Deputy Monitoring officer is therefore satisfied that Cllr Kelly did not breach the code.
- The Deputy Monitoring officer considers that this complaint is not sufficiently serious to investigate and is satisfied that there is no public benefit from an investigation which would be unlikely to bring to light any further evidence in addition to what Councillor Kelly has provided in his reply and in the absence of any further evidence from the Complainant.
- However the Deputy Monitoring officer is satisfied that the picture of the Blackadder Character, the post about another councillor and the picture about what a hard border in Ireland looks like were posted on Cllr Kelly's private Facebook page while not performing his functions as a Councillor. Having regard to the case of Livingstone v Adjudication Panel for England case, in which Mr Justice Collins found that whilst the Code of Conduct could extend to a member's acts

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outside an official capacity, those acts had to be 'in performing his functions' and 'any other circumstance' was to be construed narrowly to that effect. I am unable to find that Cllr Kelly was performing his functions as a Councillor when he made those posts. Accordingly, the Code of conduct is not engaged.

5. **When making the decision did the officer take into account information from another report?** Yes No The background papers for this decision are exempt information under paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.
6. **Details of any alternative options considered and rejected by the officer when making the decision:** The option of referring the complaint for investigation under Stage 2 of the Complaints Procedure was considered but having regard to the criteria adopted by the Council and for the reasons stated at paragraph 4 above the Deputy Monitoring Officer considered that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation did not justify the cost of such an investigation.
7. (a) **Details of any conflict of interests declared by any Member who was consulted regarding the decision:** No conflicts of interest.
- (b) **Note of dispensation:** Not applicable.

Does this notice contain any exempt information? Yes (if yes, select reasons below) No

- 1. Identifies individuals (names, addresses, contact information etc.)
- 2. Likely to reveal the identity of an individual
- 3. Financial or business affairs of any person or organisation
- 4. Consultations or negotiations in connection with any labour relations
- 5. Legal professional privilege that could be used in legal proceedings
- 6. Any enactment (prosecution) to a person or organisation
- 7. Any action taken to do with prevention/investigation/prosecution of crime

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