

**SWALE BOROUGH COUNCIL**  
**STANDARDS HEARING SUB-COMMITTEE**  
**DECISION NOTICE**

**Complaint No: SBC 1.17**

On 19 June 2017 the Standards Hearing Sub-Committee of Swale Borough Council considered a report of an investigation into the alleged conduct of Councillor Baldock, a member of Swale Borough Council. A general summary of the complaint is set out below.

**Complaint summary**

The Complainant alleged: -

1. that Councillor Baldock retained a copy of a confidential paper presented to the Scrutiny Committee on 29 November 2016 contrary to advice provided in advance of the meeting and confirmed at the meeting.
2. that Councillor Baldock informed the Policy and Performance Officer that he had incorrectly brought the wrong set of confidential papers with him and asked to be issued with another set. Having been passed the Officers unnumbered copy of the agenda and papers Cllr Baldock, at the end of the meeting, returned a numbered agenda pack but failed to return the unnumbered papers.

Background to complaint:

The Scrutiny meeting concerned the call-in of a Cabinet decision made on 9 November 2016 where the Cabinet considered a proposal for capital financing and investment in the town centre in Sittingbourne.

The recommendations made by Cabinet were such that to reach their decision confidential, commercial and legally privileged information was part of that decision. In addition, there was a need to provide further information to Scrutiny which related to the finance and business affairs of the authority, which is exempt information under the Local Government Act 1972.

In order that confidentiality be maintained and due to the need to ensure that there was no leak of any information that could seriously prejudice the financial or business affairs of the authority it was decided that papers would be issued on a numbered basis to the members who requested the call-in and scrutiny committee members, and that those members receiving them would be required to sign for them. Any papers issued in this way would then to be handed back to Democratic Services.

## **Consultation with Independent Person**

The Independent Person confirmed that she had been involved as an impartial observer in the consideration of the complaint at the initial stages and believed at that time that the conduct amounted to a potential breach of the Code.

In her view Councillor Baldock had admitted retaining a copy of the confidential papers and his reasons for why he did so did not alter her original view and she was in support of the findings of breach as set out in the Investigating Officers report.

## **Findings**

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Standards Hearing Sub-Committee reached the following decision(s):

1. In respect of Paragraph 5 of the Code of Conduct the sub-committee determined that there was no breach of the code.
2. Paragraph 5 of the Code of Conduct relates to "Listening 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".
3. The sub-committee accepted that there was not a clear exchange of advice that was assessed on its merits, there was only one email, which could have been construed as an instruction rather than advice and therefore this paragraph of the code was not breached.
4. In respect of Paragraph 8 of the Code of Conduct the sub-committee determined that there was a breach of the code.
5. Paragraph 8 of the Code of Conduct relates to "Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources."
6. The sub-committee were of the view that the procedure in respect of the return of exempt papers was reasonable. The sub-committee noted that Regulation 17 (3) of the Access to Information Regulations 2012 did not confer a right of retention of documents to a Scrutiny Committee Member. Further, the sub-committee did not accept that 29 other Members returning their papers constituted 'acting as lemmings' as submitted by Councillor

Baldock's representative, but was evidence of the acceptance and reasonableness of the procedure.

7. The sub-committee considered whether Regulation 17 (3) of the Access to Information Regulations 2012 provided an 'absolute defence' to the allegation, but on balance determined that the Regulations did not do so because although a Councillor would be entitled to have a copy of the papers at the appropriate time, the Regulations went no further than that.
8. The sub-committee also considered whether Councillor Baldock's explanation that at Kent County Council (KCC) Members were allowed to retain confidential papers should have a bearing on this case. The sub-committee determined that when at KCC Councillor Baldock was bound by KCC's rules and procedures, but when at Swale Borough Council (SBC) he would be bound by SBC's rules and procedures. Councillor Baldock's had admitted awareness of what was being required of him at SBC and had chosen to ignore it.
9. The sub-committee were not persuaded by the argument submitted by Councillor Baldock that as a copy of the document could have been secretly retained by any councillor the open retention of the document in this instance had no relevance. The sub-committee were of the view that either act could point to a lack of integrity and one could not justify the other.
10. With regard to the principle of leadership the sub-committee determined that there was a breach of the code.
11. The principle of leadership states that: holders of public office should promote and support the principles contained within the Localism Act by leadership and example.
12. The sub-committee were not satisfied that this principle was being adhered to. In particular the sub-committee were not satisfied by Councillor Baldock's explanation for writing the number one on the spare papers he was issued and did not consider this conduct to be setting the right example given the standards that could be reasonably expected, especially from a Group Leader.
13. The sub-committee did accept Councillor Baldock's submission that the document had not been passed to anyone else, not even his representative.

## Sanctions applied

That the findings of the Standard Hearing Sub-Committee be reported to Full Council for information with a recommendation that Councillor Baldock is removed from the Scrutiny Committee, as a Member or Substitute Member, for a period of three months.

The sub-committee considered whether Councillor Baldock should be removed from all Council Committees and whether the period of the removal should be longer but decided that as there had been a finding that the document had not been passed to any other party that removal from Scrutiny Committee alone, for a three month period was sufficient.

## Appeal

There is no right of appeal against the Standards Hearing Sub-Committee's decision.

## Notification of decision

This decision notice is sent to the:

- Councillor Baldock
- Complainant
- Monitoring Officer

## Additional help

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language.

If you require additional assistance, in the first instance please contact the Monitoring Officer on 01795 417269.

Signed:   
Name: Councillor Horton  
Chairman of the Hearing Sub-Committee

Date: 7<sup>th</sup> July 2017