

---

## Standards Hearing Sub-Committee

---

**MINUTES** of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT on Monday, 27 November 2023 from 2.00 pm - 7.00 pm.

**PRESENT:** Councillors James Hunt, Hannah Perkin and Ashley Wise (Chair).

**OFFICERS PRESENT:** Robin Harris, Jo Millard, Larissa Reed and Gary Rowland.

**ALSO IN ATTENDANCE:** Councillors Mike Baldock and Richard Palmer.

**ALSO IN ATTENDANCE (VIRTUALLY):** Councillors Lloyd Chapman, Elliott Jayes and Julien Speed.

### 435 **Emergency Evacuation Procedure**

The Democratic and Electoral Services Manager drew attention to the Emergency Evacuation Procedure.

### 436 **Point of Order**

The subject Member raised a point of order on whether the panel Members had received training to sit on the panel. The Monitoring Officer advised that he had spoken to the Members of the panel previously and they had all confirmed that they had sufficient training knowledge of the hearing procedures, which is the training suggested in the Constitution, in order to undertake their role. Two panel members had previous hearing experience and one had been briefed about the procedures.

The subject Member then raised a further point of order relating to evidence he had submitted under a Freedom of Information request that the Chair of the Standards Committee had excluded from the agenda papers, because the subject Member said the Chair had determined that it was not relevant. The subject Member considered the Chair to be pre-determined in considering the evidence and questioned whether due process had been followed. The Legal Advisor said he did not believe the Chair to be pre-determined, merely through having considered the evidence. The Chief Executive added that there may have been other reasons why the evidence was not included. The Chair confirmed he was not pre-determined.

### 437 **Election of Chair**

**Resolved:**

**(1) That Councillor Ashley Wise be confirmed as Chair for this meeting.**

### 438 **Declarations of Interest**

No interests were declared.

### 439 **Exclusion of the Press and Public**

**Resolved:**

**(1) That under Section 100A(4) of the Local Government Act 1972, the press and**

***public 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 Paragraphs 5 and 7 of Part 1 of Schedule 12A of the Act:***

**1. Information relating to any individual.**

The Chair used his discretion to allow the subject Member's Group Leader to remain in the Council Chamber for the duration of the hearing.

**440 Consideration of Breach of Code of Conduct**

The Monitoring Officer, who was the investigating officer for the complaint, presented the pre-hearing summary report which considered whether the subject Member had breached the Members' Code of Conduct, arising from communication with an officer at the Council on 7 March 2023, in relation to a Planning Committee report. The subject Member raised issue with the accuracy of the summary and the points it raised, and the Monitoring Officer drew attention to paragraphs 2.3 and 2.4 of the former Monitoring Officer's report, which set out the relevance of the objections raised by the subject Member.

The Monitoring Officer then read out the email communication between the officer and the subject Member, referring specifically to a comment made at point (3) of the subject Member's email of 7 March 2023, and of the apology they then made to the officer in an email on 19 March 2023. The Monitoring Officer drew attention to an email from the subject Member dated 1 August 2023, in which he agreed the matter should be considered by the Standards Committee after the former Monitoring Officer's initial findings were that the subject Member's conduct in sending the email of 7 March 2023 had amounted to a breach of sections 1.2, 2.1 and 3.1 as well as the general principles of the code of conduct.

The Monitoring Officer went through Appendix II on pages 29 to 46, drawing attention that in the view of the former Monitoring Officer, there had been a breach of section 1.2 of the code, as the subject Member had subjected the officer to personal attack. He said that statement 2.1 of the code said 'I do not bully any person', and 3.1 said 'I do not compromise, or attempt to compromise the impartiality of anyone who works for, or on behalf of, the local authority.' The Monitoring Officer set out the legal test for the panel to consider in respect of freedom of expression from the High Court case of *Sanders v Kingston* (2005), and the additional factors that arose in respect of civil servants and officers, from the High Court case of *Heesom vs Public Service Ombudsman of Wales* (2014).

The Monitoring Officer advised that no formal training had been carried out on the current Member Code of Conduct, which had been agreed by Full Council in February 2023, although all Members had been invited to a briefing before it was agreed, and there were discussions on it at the Members' induction sessions that had taken place in May 2023 for all Members.

The Chair invited the subject Member to put any questions to the Monitoring Officer. The Monitoring Officer responded to all questions put including clarification on where the subject Member had requested changes to the report.

The subject Member requested that the hearing be adjourned because correspondence

was excluded from the papers. The Chair explained this point had already been discussed and the hearing continued.

The subject Member said he was representing his community in the comments made in the email and he had brought their views into the decision making process. He said that he and residents considered the report that was to be discussed at the Planning Committee on 9 March 2023 was deficient, rushed and had missing and incorrect information in it, and gave an unbalanced view. He said he believed his comments were firm but not in breach of the code of conduct.

The subject Member's witness read out their statement which had been shared with the panel. The statement referred to the telephone conversation the subject Member had with the former Monitoring Officer, when he telephoned the subject Member on 9 March 2023 to advise that the officer had raised issues. The subject Member questioned the witness, who had heard the content of the conversation, and she considered the purpose of the phone call was to stop the subject Member speaking up on behalf of residents. When panel Members questioned further, the witness said the former Monitoring Officer's speech was mild mannered but menacing, and advised there could be legal implications if accusations were made. The Monitoring Officer confirmed with the witness that they knew the hearing was in respect of the email sent from the subject Member to an officer on 7 March 2023 and they had nothing to do with the email.

Referring to the sequence of events, the subject Member then drew attention to the email correspondence with the officer on page 176 of the agenda, setting out that after reflecting on the email, which was the subject of the complaint, a further email was sent on 19 March 2023 clarifying what was meant. They said they stood by the comments that it was an inferior report.

The subject Member said at that stage they did not know a complaint had been submitted and did not consider the matter was justified to be considered by the Standards Committee as, in their view, a Councillor was merely forcefully representing their residents and his comment, that was the subject of the complaint, was a 'throw away comment'. He then referred to the meeting that took place with the Independent person Mrs Richards and he considered that Mrs Richards had accepted no bullying had taken place but there was an issue with respect. (Mrs Richards later disputed this version of events).

Referring to the issue of defamation that had been raised by the officer's solicitor who submitted the complaint, the subject Member said that he felt the former Monitoring Officer wanted to bring the complaint to a Standards Hearing and avoid a defamation complaint that he had dealt with separately.

The subject Member disputed some of the information in the report saying none of the timelines in the report fitted with the sequence of events, he had not seen the notes of the meeting between Mrs Richards and the former Monitoring Officer, and he questioned the processes saying they would not stand up to scrutiny by the Local Government Ombudsman. He questioned where the evidence was for bullying and lack of respect, saying that the officer had shown arrogance and ignored him and said Councillors should be able to represent their residents without being gagged.

The subject Member then said he had an enhanced protection under Article 10 of the Human Rights Act to give his opinion.

In response to questions from panel Members, the subject Member said the officer's Planning report was updated before being added to the portal, but confirmed it was signed off by the Chair of the Planning Committee. Referring to 'errors in the report' he said that evidence was withheld, and more information could and should have been included. He said that not allowing the evidence to be included was a breach of Article of 6 of the Human Rights Act.

The subject Member then confirmed to the panel who he had included in the email he sent on 7 March 2023, and said he had highlighted his concerns over the report to the Head of Planning Services.

After the subject Member questioned the necessity for the Standards Hearing, a member of the panel referred the subject Member to the email the officer sent on 20 March 2023, and asked whether he considered this to be a complaint? In response, the subject Member said that the officer's report was challenged and most reports were challenged at Planning Committee. He said the matter should not have been reported to a Standards Hearing as the officer should have produced a sufficient report and he had dealt with the matter by way of apology. He added that he had done nothing wrong but challenge the officer with the comments made by the public.

The subject Member then drew attention to an email exchange between the officer and the developer and was critical that the officer used a personal email address in addition to their SBC email address.

The subject Member reiterated that he did not consider he had bullied or shown a lack of respect to the officer but represented his residents in a robust way, using words not everyone would use.

The panel asked the subject Member further questions, including clarification on what he meant by the comments he made. The subject Member said it was an expression spoken out of frustration, as the officer was not responding to him.

The Chair referred to the subject Member's comments about the officer's social media pages, and questioned whether the subject Member could have expressed himself better. He then asked the subject Member to confirm he was fully aware of the Member Code of Conduct that all Members had signed up to. The subject Member confirmed he was fully aware but did not believe he was in breach of it.

The subject Member continued to state that the case should not have been brought to a Standards Hearing and he did not consider correct procedures had been followed. A panel Member said that informal resolutions to complaints were encouraged. The subject Member said he did not consider a formal written complaint had been submitted and the officer was only interested in his reputation.

The Chair referred to the subject Member's comments that the expression he had used was born out of frustration, and that he did not consider he had breached the code of conduct around respect. The subject Member said that the officer should have responded to correspondence, and he did not believe he felt bullied.

A panel Member sought clarification on the timeline that residents had commented on the report for the subject Member to contact the officer. The subject Member said that the Parish Council had reported no response from the officer and he then became

involved.

In summing up, the Monitoring Officer addressed the points the subject Member had made including:

- The complaint from the officer came via their solicitor's email of 9 March 2023 (paragraph 19) and the subject Member was informed that a Standards Hearing would be necessary by email on 14 June 2023;
- the former Monitoring Officer sent a draft copy of his report to the subject Member and independent person on 14 April 2023, and provided a hard copy for their meeting on 21 April 2023;
- the subject Member received the solicitor's letter on 9 March 2023;
- the Copeland case, as referred to by the subject Member, had been discussed with the subject Member previously and was interesting but not binding, and was superior to the cases of Sanders and Heesom which were High Court cases, whereas Copeland was a First Tier Tribunal case;
- referred to the email chain and response from the Chief Executive on 4 March 2023, addressing the points that the subject Member had raised around the report;
- the officer noted the apology from the subject Member in their email of 19 March 2023, but ended the email stating 'I await the outcome of my complaint with interest' so had not considered the matter to be concluded;
- referred to the email exchange between the officer and the former Monitoring Officer on 20 March 2023 confirming the officer considered the Member Code of Conduct had been breached;
- drew attention to the email from the Monitoring Officer to the subject Member on 31 July 2023, which set out alternatives considered and the subject Member's preference to follow the Standards regime; and
- referred to the email on 14 April 2023 from the former Monitoring Officer to the subject Member which was later referenced and evidenced receipt of the report.

The Monitoring Officer set out the process followed, and referred to the initial assessment of the complaint as set out in pages 128 – 131 in the agenda and the meeting held with the independent person. The Monitoring Officer said it was then usual to assess any potential breaches of the code and a pre-hearing report produced. There were numerous emails included in pages 163-170 in the agenda, some robust, but it was only considered that one paragraph in an email crossed the line, as set out in paragraph 3 on page 21 of the agenda (being the email the subject of the complaint date 9 March 2023). The subject Member had accepted the comment was made in frustration. The Planning application continued to be considered at Planning Committee and Members were able to refuse it. The Monitoring Officer said the Planning Committee report was not the issue, but the content of the email was. He referred to the recent Peer Review which had recognised disrespect of officers as an issue.

The subject Member referred to the former Monitoring Officer's initial review dated 10 March 2023 and questioned how an investigation could start without a written complaint which was not received until 20 March 2023. He said that he did not become aware of the complaint until the phone call he received on 4 April 2023. The subject Member maintained that he had enhanced protection under the Human Rights Act and said it had been a robust discussion between two people.

Mrs Richards, independent person, confirmed the email from the former Monitoring

Officer sent to the subject Member on 14 April 2023 which gave a draft of the complaint. She said that a two hour discussion took place, face to face, on 21 April 2023 and the subject Member had agreed there had been a breach of the Member Code of Conduct. Mrs Richards said the subject Member said they would consider their options and would give an apology at Full Council. She said that in her opinion the subject Member had breached the Code of Conduct. The subject Member said he did not admit there had been a breach of the Member Code of Conduct but that it could be seen as a breach, but on reflection did not consider there had been. Mrs Richards said that recollections may vary.

Mr Christopher Webb said he had met the subject Member on 19 October 2023 after reading all correspondence and it was clear that they were doing the best for their residents. He said that exchanges with the officer were strong, forthright and robust. Mr Webb said that on looking at all the evidence, his overall view on the balance of probability on whether there was clear evidence a breach had occurred was unclear but if there had been, it was very marginal.

The Sub-Committee and the Legal Advisor left the meeting at 5.55 pm and returned at 6.35 pm to give their decision. The Chair announced that all Members agreed there had been a breach of the Member Code of Conduct in relation to 1.2 Respect and 2.1 Bullying.

Mrs Richards agreed with the decision and said sanctions should be applied.

The Monitoring Officer agreed sanctions should be applied, advising that a), b) and d) were potential sanctions, but c), e), f) and g) were not necessarily appropriate.

The subject Member said they would accept the decision but reserve their right to appeal and they did not consider it a serious breach. He raised issue that Mr Webb had left the meeting so was unable give any further views. The Chair said Mr Webb's absence and inability to give his views would be taken into account.

Members of the Sub-Committee left the meeting again at 6.38 pm, and returned at 6.59 pm and the sanctions were announced.

***Resolved:***

- (1) That the findings of the Standards Hearing Sub-Committee into the consideration of a breach of the Member's Code of Conduct be reported to Full Council.***
- (2) That the Group Leader be written to, to remove the subject Member from the Standards Committee until the end of the civic year 2023/24***
- (3) That relevant training be given to the subject member.***

441 **Adjournment**

The meeting was adjourned at 3.16 pm and reconvened at 3.25 pm, at 4.45 pm and reconvened at 4.51 pm, at 5.55 pm and reconvened at 6.35 pm and at 6.38 pm and reconvened at 6.51 pm.

Chair

Copies of this document are available on the Council website <http://www.swale.gov.uk/dso/>. If you would like hard copies or alternative versions (i.e. large print, audio, different language) we will do our best to accommodate your request please contact Swale Borough Council at Swale House, East Street, Sittingbourne, Kent, ME10 3HT or telephone the Customer Service Centre 01795 417850.

All minutes are draft until agreed at the next meeting of the Committee/Panel